

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:
CR093Jan07/SA083Aug19

In the matter between:

Competition Commission

Applicant

And

Wireforce Steelbar (Pty) Ltd

Respondent

Panel : E Daniels (Presiding Member)
: Y Carrim (Tribunal Panel Member)
: A Ndoni (Tribunal Panel Member)
Heard on : 18 September 2019
Decided on : 18 September 2019

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Wireforce Steelbar (Pty) Ltd annexed hereto marked "A".



Presiding Member
Mr Enver Daniels

18 September 2019

Date

Concurring: Ms Yasmin Carrim and Ms Andiswa Ndoni

A

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**HELD IN PRETORIA****CT CASE NO: 09/CR/Jan07; 63/CR/SEP09**

In the matter between:

THE COMPETITION COMMISSION**Applicant****and****WIREFORCE STEELBAR (PTY) LTD****Respondent**

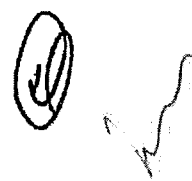
SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION**AND WIREFORCE STEELBAR (PTY) LTD**

The Competition Commission and Wireforce Steelbar (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b) of the Act.

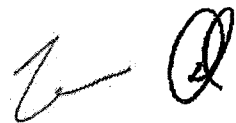
1 DEFINITIONS

For purposes of this settlement agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "Barnes" means Barnes Fencing Industries (Pty) Ltd, Dunrose (Pty) Ltd and F&G Quality Tubes (Pty) Ltd;



- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its offices at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 **"CWI"** means Consolidated Wire Industries Limited;
- 1.5 **"Other Respondents"** means Cape Gate (Pty) Ltd, Allens Meshco (Pty) Ltd, Hendok (Pty) Ltd, Agriwire (Pty) Ltd, Agriwire North (Pty) Ltd, Agriwire Upington (Pty) Ltd, Cape Wire (Pty) Ltd, Forest Wire (Pty) Ltd, Independent Galvanising (Pty) Ltd, Associated Wire Industries (Pty) Ltd and CWI;
- 1.6 **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and Wireforce;
- 1.7 **"Parties"** means the Commission and Wireforce;
- 1.8 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its offices at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and
- 1.9 **"Wireforce"** means Wireforce Steelbar (Pty) Ltd, a private company incorporated in accordance with the laws of South Africa (registration number: 1999/022715/09) with its principal place of business at 11 Brammer Street, Germiston, Gauteng;



2 BACKGROUND

- 2.1 On 19 December 2003, Barnes filed a complaint against certain firms including Wireforce, alleging that Wireforce and certain of its competitors¹ engaged in collusive conduct.
- 2.2 On 15 January 2007, the Commission referred the complaints lodged by Barnes against, amongst others, Wireforce ("the 2007 Referral"). The Commission alleged that Wireforce together with its competitors² contravened section 4(1)(b)(i) of the Act.
- 2.3 On 28 July 2008, CWI applied for corporate leniency for its involvement in certain cartel activity in the wire industry. Based on this information, the Commission initiated a complaint against various firms, including Wireforce, and began investigating the matter.
- 2.4 On 7 September 2009, the Commission concluded its investigations and referred its findings to the Tribunal that Wireforce and the Other Respondents had contravened section 4(1)(b) of the Act ("the 2009 Referral").³

3 COMMISSION'S REFERRAL

¹ Allens Meshco, Hendok, Galfwire, Independent Galvanising, Associated Wire Industries (AWI) ("the Other Respondents in the 2007 Referral").

² Allens Meshco, Hendok, Independent Galvanising, AWI ("the Other Respondents in the 2007 Referral").

³ The 2007 referral (Tribunal case: 09/CR/JAN07) and 2008 referral (Tribunal case 63/CR/SEP09) were later consolidated as they related to similar conduct and respondents.



3.1 The 2007 Referral alleges that Wireforce and its competitors⁴ contravened section 4(1)(b)(i) of the Act as follows:

3.1.1 During 2002, they agreed to fix the price of lightly galvanized wire to common customers; and

3.1.2 From 2003, they agreed to fix the selling price of wire and various wire products by jointly advertising such products.

3.2 The 2009 Referral alleges that from 2001 to about 2008, Wireforce had met, through its authorized representatives,⁵ and corresponded with representatives of the Other Respondents, on numerous occasions, to fix their selling prices in South Africa of wire and wire related products supplied by Wireforce.⁶ In the Referral, the prices were fixed by agreeing on following a common national price list and certain discounts that may be deducted from the national price list.⁷

3.3 In addition, the 2009 Referral alleges that from 2006 to 2008, Wireforce and the Other Respondents allocated customers for wire and wire related products by agreeing to share customers, not compete for each other's

⁴ Allens Meshco, Hendek, Independent Galvanising, AWI

⁵ For example, Mr Rick Allen also represented Allens Meshco (Pty) Ltd, Hendek (Pty) Ltd, Agriwire (Pty) Ltd, Agriwire North (Pty) Ltd, Agriwire Upington (Pty) Ltd, Cape Wire (Pty) Ltd, Forest Wire (Pty) Ltd, Independent Galvanising (Pty) Ltd, Associated Wire Industries (Pty) Ltd.

⁶ Including products such as diamond mesh fencing, nails and barbed wire. For further detail, please see Annex "NN2" to the Referral.

⁷ Para 28 of the Referral.

"traditional" customers or not to sell into certain geographic areas.⁸

3.4 Finally, the 2009 Referral alleges that from 2001 to 2008, Wireforce and the Other Respondents, tendered collusively by co-ordinating their respective bids or deciding not to bid for the supply of cable armouring. These firms coordinated their bids to ensure that an allocated respondent was awarded certain tenders. These tenders were the Malasela Technologies tender, the Africa Cables tender⁹ as well as the 2001 Harmony Gold tender.

3.5 The above referrals allege that the above conduct contravened sections 4(1)(b)(i) (ii) and (iii) of the Act.

4 ADMISSION

4.1 Wireforce admits that it had engaged in conduct in contravention of section 4(1)(b)(i) of the Act.

5 CO-OPERATION

5.1 Wireforce agrees to fully cooperate with the Commission in its prosecution of the remaining respondents in the above collusive conduct.

This co-operation includes, but is not limited to:

⁸ Para 29 of the Referral.

⁹ Not involving Cape Gate (Pty) Ltd.

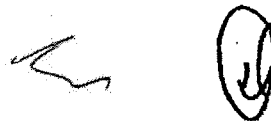


- 5.1.1 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this Settlement Agreement;
- 5.1.2 Avail employees of Wireforce, and using reasonable endeavours to contact past employees of Wireforce, to assist the Commission in the prosecution of the alleged contraventions covered by this Settlement Agreement; and
- 5.1.3 To the extent that it is able, testify in respect of the alleged contraventions covered by this Settlement Agreement.

6 FUTURE CONDUCT

Wireforce agrees and undertakes to:

- 6.1 prepare and circulate a statement summarising the content of this agreement to its managers and directors within 14 (fourteen) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;
- 6.2 if not already doing so, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the Act. Wireforce undertakes to engage proactively



with the Commission within 30 days of this settlement being confirmed by the Tribunal, to assess any existing programme and further developments of its internal programme. This programme will be submitted to the Commission; and

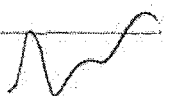
6.3 refrain from engaging in any contraventions of the Act.

7 ADMINISTRATIVE PENALTY

7.1 After considering the factors in section 59(3) of the Act, the parties agree that Wireforce pay an administrative penalty of R4 319 951.22 (four million three hundred and nineteen thousand nine hundred and fifty one rand and twenty two cents), which constitutes an appropriate administrative penalty to be paid by Wireforce in full and final settlement of the complaint referrals.

7.2 Wireforce will pay an administrative penalty over five years from the date when this settlement agreement is made an order of the Tribunal. Wireforce agrees to pay the administrative penalty in five equal annual instalments of R863 990.24. The first instalment shall be paid within one year from the date of the Tribunal Order, and thereafter on or within each successive anniversary of the date of the confirmation of this settlement agreement by the Tribunal.

7.3 No interest will be levied upon the administrative penalty for the first twelve months from the date on which this settlement agreement is made an order of the Tribunal. Thereafter, interest on the remaining outstanding amounts



will be levied at the prevailing interest rate on debts owed to the State in terms of section 80(1)(b) of the Public Finance Administration Act 1999, as amended.

- 7.4 Payment of the above administrative penalty shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Penalties Account Commission
Account number:	40-8764-1778
Account type:	CALL ACCOUNT
Branch Code:	638056
Reference:	63/CR/SEP09(Wireforce)

- 7.5 The administrative penalty shall be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

8 FULL AND FINAL SETTLEMENT

- 8.1 This Settlement Agreement is entered into in full and final settlement of the above referrals, upon confirmation by the Tribunal, concludes all proceedings between the Commission and Wireforce in respect of the above referrals under Tribunal number 09/CR/JAN07 and 63/CR/SEP09.



For Wireforce

Dated and signed at Johannesburg on the 14th day of June 2019



Name: R. B. Allen

Designation: Director

For the Commission

Dated and signed at TSHWANE on the 18th day of JUNE 2019



TEMBINKOSI BONAKELE

Commissioner