

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 15/CR/Feb09

In the matter between:

The Competition Commission

Applicant

and

Marley Pipes System (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and A Wessels (Tribunal Member)

Heard on : 31 March 2010

Decided on : 31 March 2010

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



N Manoim

Concurring: Y Carrim and A Wessels

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CCCASENO: 2008MAR3596
CT CASE NO.: 15/CR/FEB09

In the matter between:

THE COMPETITION COMMISSION Applicant

and

MARLEY PIPE SYSTEMS (PTY) LTD Respondent

In re:

THE COMPETITION COMMISSION Applicant

DPI PLASTICS (PTY) LTD First Respondent

PETZETAKIS AFRICA (PTY) LTD Second Respondent

MARLEY PIPE SYSTEM (PTY) LTD Third Respondent

SWAN PLASTICS (PTY) LTD Fourth Respondent

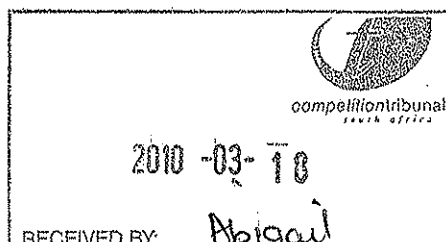
AMITECH SOUTH AFRICA (PTY) LTD Fifth Respondent

FLO-TEK PIPES & IRRIGATION (PTY) LTD Sixth Respondent

MACNEIL AGENCIES (PTY) LTD Seventh Respondent

ANDRAG (PTY) LTD Eighth Respondent

GAZELLE PLASTICS (PTY) LTD Ninth Respondent



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SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND MARLEY PIPE SYSTEMS (PTY) LTD IN REGARD TO CONTRAVENTIONS OF SECTION 4 (1) (b) OF THE COMPETITION ACT 89 OF 1998

The Competition Commission and Marley Pipe Systems (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of sections 58 (1)(a)(iii) and 59(1) (a) of the Competition Act 89 of 1998, on the terms set out below:

1. Definitions

For the 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 **"Amitech"** means Amitech South Africa (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 33 Potgieter Street, Alrode;

1.3 **"Andrag"** means Andrag (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of



South Africa, with its registered office, alternatively principal place of business at La Belle Road, Bellville;

1.4 **"CLP"** means the Corporate Leniency Policy prepared and issued by the Commission as a guideline to clarify the Commission's policy approach on matters falling within its jurisdiction in terms of the Act;

1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;

1.6 **"Commissioner"** means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;

1.7 **"Pipes Complaint Referral"** means the Complaint Referral referred to the Tribunal by the Commission under case number 15/CR/Feb09;

1.8 **"DPI"** means DPI Plastics (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Setchell Road, Roodekop, Germiston;

1.9 **"FLO-TEK"** means FLO-TEK Pipes and Irrigation (Pty) Ltd, a public company registered and incorporated in accordance with laws of the Republic of South Africa, with its registered office,

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alternatively principal place of business at 320 Ida street, Menlo Park, Gauteng ;

1.10 **"Gazelle"** means Gazelle Plastics (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business at Panorama Office Estate Unit 3, Kudu Street Allensnek, Gauteng

1.11 **"HDPE"** means High Density Polyethylene, which is the pipe product that is harder and more opaque and can withstand somewhat higher temperature.

1.12 **"Macneil Agencies"** means Macneil Moulding Agencies (Pty) Ltd, a public company registered and incorporated in accordance with laws of the Republic of South Africa, with its registered office alternatively principal place of business at Noland House, River Park, Cape Town.

1.13 **"Marley"** means Marley Pipe Systems (Pty) Ltd, a public company registered in accordance with laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Brickley Road, Pretoriusstad, Nigel;

1.14 **"Petzetakis"** means Petzetakis Africa (Pty) Ltd, a public company registered in accordance with laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Piet Pretorius Street, Rosslyn

1.15 "PVC" means Polyvinylchloride, is a thermoplastic polymer pipes products which is used in construction.

1.16 "Specialty Products" means Marley's speciality products that are more sophisticated than ordinary PVC and HDPE pipes (such as Roof Syphonics Systems), and require targeted marketing and sales activities to engineers, architects and consultants.

1.17 "Swan Plastics" means Swan Plastics CC, a close corporation registered and incorporated in accordance with laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 49 Jeffels Road, Prospecton, Durban;

1.18 "Settlement Agreement" means this settlement agreement duly signed and concluded between the Commission and Marley.

1.19 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.

2 Complaint investigation and Commission's findings

2.1 The Commission has informed Marley that:

2.1.1 On 12 October 2007, the first respondent filed an intermediate merger notification with the Commission. It intended to merge with Incledon Cape (Pty) Ltd.

2.1.2 During the course of the merger investigation the Commission found *inter alia* that the merging parties were involved in collusive



activities in contravention of the Act. The merger was subsequently prohibited.

2.1.3 Prior to the prohibition of the merger, the first respondent applied for immunity from prosecution and fines in terms of the Commission's Corporate Leniency Policy. In its application submitted on 08 January 2008, the first respondent furnished the Commission with evidence of the existence of collusion in the markets for pipe products involving it and the other respondents. The alleged collusion involved:

- 2.1.3.1 Price fixing;
- 2.1.3.2 Bid rigging; and
- 2.1.3.3 Allocation of markets and/ or customers.

2.2 The Commission initiated and conducted an investigation as a result of which it found that all respondents had contravened section 4 (1) (b) of the Act as follows:

2.2.1 The respondents agreed to fix the discounts that each would give to customers in contravention of section 4(1) (b) (i) of the Act.

2.2.2 The respondents agreed to submit uniform prices in response to tenders and allocate tenders to one another on rotational basis in contravention of sections 4 (1)(b)(ii) and (iii) of the Act.



2.2.3 On 02 February 2009 the Commission referred its findings to the Tribunal under CT case number 15/CR/Feb09.

3. Settlement discussions

- 3.1 Marley co-operated with the Commission's investigation and provided information to the Commission, including detailed statements from its employees.
- 3.2 Marley admitted that it had contravened the Act in that during the period between 2004 to 2007, Marley and the other respondents, in respect of PVC and HDPE pipes products:
 - 3.2.1 attended a series of meetings wherein agreements, arrangements and understandings to fix selling prices and/or price discounts in respect of the PVC and the HDPE pipes products were reached, in contravention of section 4 (1) (b) (i) of the Act;
 - 3.2.2 attended a series of meetings wherein agreements, arrangements and/or understandings to divide markets for pipes products in the respective areas (Eastern Cape, Kwazulu-Natal, Gauteng and Western Cape) were reached, in contravention of section 4(1)(b)(ii) of the Act; and
 - 3.2.3 agreed to allocate/share contracts amongst themselves in accordance with agreed upon percentage shares of the markets for PVC and HDPE pipes products and fixing the prices at which quotations were offered to



contractors in order to secure such contracts, in contravention of section 4(1) (b) (iii) of the Act.

3.3 The conduct referred to above occurred in *inter alia*:

3.3.1 Eastern Cape;

3.3.2 Kwazulu-Natal;

3.3.3 Gauteng; and

3.3.4 Western Cape.

3.4 Marley and the Commission then engaged in protracted settlement discussions pertaining to the determination of an appropriate penalty, the outcome of which is this Settlement Agreement.

4 Admissions

4.1 Marley admits that it has contravened section 4 (1)(b) (i),(ii) and (iii) of the Act as detailed in paragraph 3 above.

5 Agreement concerning future conduct

5.1 Marley agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents in this Complaint referral. Without limiting the generality of the above, Marley specifically agrees to:

5.1.1 testify in support of the Commission's case regarding the contraventions in this settlement agreement; and

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5.1.2 provide evidence, written or otherwise, which is in its possession or under its control concerning the contraventions contained in this settlement agreement.

5.2 Marley agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that employees, management and directors within Marley, its subsidiaries and business units do not engage in any contraventions of section 4 (1) (b) of the Act, a copy of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this settlement agreement as an order by the Tribunal.

5.3 Marley agrees that it will cease to engage in conduct detailed in paragraph 3.

6 Administrative Penalty

6.1 Having regard to the provisions of section 58(1) (a) (iii), read with sections 59(1) (a), 59(2) and (3) of the Act, Marley accepts that it is liable to pay an administrative penalty.

6.2 The parties have agreed that Marley will pay an administrative penalty in the sum of R31 078 213.02 (thirty one million one hundred and seventy-eight thousand two hundred and thirteen rands and two cents) being 6% of Marley's total turnover in the 2007 financial year, less the turnover attributable to Specialty Products.



6.3 Marley will pay the penalty amount to the Commission in two equal annual payments, the first such payment to be made within 30 days of confirmation of this Settlement Agreement by the Tribunal and the remaining payment on or before 28 February 2011.

6.4 The Commission will pay these sums to the National Revenue Fund in terms of section 59 (4) of the Act.

7 Full and final resolution

This settlement agreement is entered into in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Marley relating to any alleged contraventions by Marley of section 4 (1) (b) of the Act that are the subject of the Commission's investigation under case number 2008Mar3596 and its complaint referral under CT case number 15/CR/Feb09.

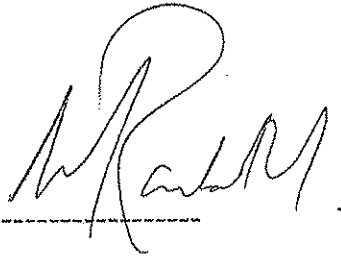
Dated at Nigel on this the 9 day of March 2010


Louis Albertyn

Managing Director: Marley Pipe Systems (Pty) Ltd

Dated at Pretoria on this the 16 day of March 2010



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Shan Ramburuth

The Commissioner, Competition Commissioner

