

MEDIA RELEASE

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Commission refers a case of collusion against Natal Portland Cement Cimpor (Pty) Ltd

On Monday, 23 February 2015, the Commission referred to the Tribunal a case of indirect price fixing and market division against Natal Portland Cement Cimpor (Pty) Limited (NPC).

The referral follows the Commission's investigation, between 2008 and 2012, of collusive conduct in the cement cartel against the four main cement producers, NPC, Pretoria Portland Cement Company Limited (PPC), Lafarge Industries South Africa (Lafarge) and AfriSam Consortium (Pty) Ltd (AfriSam). The commission is not seeking any relief against PPC, AfriSam or Lafarge.

PPC was granted conditional leniency in terms of the corporate leniency policy of the Commission. AfriSam settled with the Commission and agreed to pay an administrative penalty in the sum of R128, 848, 870 representing 3% of its annual turnover. This was for cement sales in the SACU region for the financial year ended 31 December 2010.

Lafarge also settled with the Commission and agreed to pay an administrative penalty in the sum of R148, 724, 400.00 representing 6% of its annual turnover. This was for cement sales in the SACU region for the financial year ended 31 December 2010.

The differences in the administrative penalties were due to, among other factors, the different degree of cooperation and timing of settlement between the two firms. The consent agreement between the Commission and AfriSam was confirmed as an order of the Competition Tribunal on 16 November 2011 and the consent agreement between the Commission and Lafarge was confirmed as an order of the Competition Tribunal on 28 March 2012.

The investigation found that the four cement producers agreed to collude and to divide the cement market by allocating market shares and indirectly fixing the price of cement prior the end of the legal cartel in 1996. They subsequently reinforced these collusive arrangements through a series of other agreements, to which NPC's representatives were party to, including an agreement to progressively exchange competitively sensitive sales data through the Concrete and Cement Institute of South Africa ("C & CI").

An official and legal cement cartel operated in the country from the 1940s until its disbandment in 1996. The firms agreed then that each firm's market share should be proportional to their production capacities and maintained this agreement through information sharing post disbandment of the legal cartel.

After the disbandment of the legal cartel, the four competitors agreed to exchange information through the auditors appointed by the Cement and Concrete Institute (C&CI) and in return received the aggregated tables from the C&CI. This arrangement made it possible for them to monitor and maintain target market shares, and the pricing structures for different types of cement products. They continued to share detailed information until the Commission stopped the practice in 2009.

The Commission found that in terms of the cartel agreement, concluded in Port Shepstone in 1998 and reinforced in subsequent agreements, market shares and territories were allocated to members of the cartel, to which all members agreed to

adhere. NPC, which before 2002 was jointly owned by AfriSam, PPC and Lafarge, was party to the several anti-competitive arrangements and meetings.

NPC has not settled with the Commission, despite an invitation to do so.

The Commission is pursuing a maximum penalty of ten percent (10%) of NPC's annual turnover and a Tribunal order that, NPC contravened the Competition Act.

"By maintaining and monitoring market shares, competitors indirectly restrain price competition. This anti-competitive conduct defeats the incentives to compete fairly in the market, effectively denying consumers more competitive prices, better service and differentiation of products to make them more attractive. The Commission's recent study also found that the cement cartel cost the South African economy billions in price overcharge," said Commissioner Tembinkosi Bonakele.

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