

Media release from Competition Commission

1 September 2009

Competition Commission requests fines for steel companies and initiates construction sector investigation

The Competition Commission today referred findings of its investigation into collusion by four producers of long steel products in South Africa and their industry association to the Competition Tribunal for prosecution.

In a separate matter, the Commission initiated an industry wide investigation into collusive practices in the construction industry, a priority sector for the Commission.

Prosecution of steel companies

The Commission is recommending that the Competition Tribunal impose an administrative penalty against ArcelorMittal South Africa Limited, Cape Gate (Pty) Limited and Cape Town Iron Steel Works (Pty) Limited amounting to 10% of their annual turnover in South Africa and their exports from the Republic for the preceding financial year.

On 22 April 2008 the Commissioner initiated a complaint against producers of long and flat steel products and pursued an investigation concerning steel mills as well as steel merchants in South Africa. The investigation was as a result of concerns raised by the Department of Trade and Industry and research conducted by the Commission which suggested that the steel mills were charging local steel customers at around import parity price levels since 2002; notwithstanding that South Africa is a net exporter of steel.

Following a search-and-seizure operation in some of the respondent's premises one of the respondents investigated, Scaw South Africa (Pty) Ltd, applied for corporate leniency for price fixing and market allocation in relation to rebar, wire rod, sections (including rounds, squares, angles and profiles). Scaw admitted its participation in the cartel and confirmed that there has been a long-standing culture of cooperation amongst the steel mills regarding the prices to be charged, and discounts to be offered, for their steel products. The cooperation extended to arrangements for market division.

The Commission's investigation confirmed the allegations made by Scaw and uncovered further evidence of collusion. The Commission found that the four producers exchanged information by using their membership in The South African Iron and Steel Institute (SAISI) to facilitate cartel activity, which involved price fixing, the fixing of trading conditions and market division.

The Competition Commission has therefore referred a complaint to the Competition Tribunal against the alleged parties for an order in the following terms:

- Declaring that Mittal, Cape Gate and Cape Town Iron Steel Works commit or committed a prohibited practice in contravention of section 4(1)(b)(i) and (ii) of the Competition Act, 89 of 1998 ("the Act");
- Interdicting them from contravening section 4(1)(b)(i) and (ii) of the Competition Act, 89 of 1998 ("the Act");

- Interdicting all of the respondents from exchanging and/or facilitating the exchange of sensitive market information, i.e. in any manner that facilitates collusion amongst any of the respondents.

Investigation into collusive practices in construction industry

Since March 2009, the Commission has received several applications for corporate leniency from construction companies for collusive practices with respect to certain construction projects.

The Commission's preliminary investigations on the projects covered in the CLP applications indicate that there may be wide spread collusion in the construction industry. In particular, the applications revealed that the following collusive practices could be prevalent in the sector:

- Price fixing in the form of fixing margins for tenders and compensating the losing bidder;
- Allocation of customers/projects/tenders through the use of score cards;
- Collusive tendering by submitting uncompetitive bids (cover pricing).

The Commission's preliminary investigations also show that construction firms, which will ordinarily bid independently, often form joint ventures when bidding for certain projects. In so far as they bring competitors together, these joint ventures may be used as a platform to engage in collusive practices. Some of the joint ventures have permanent status and continue to be used by competitors in the industry as a platform for sharing sensitive competitive information.

Consequently the Commission has initiated an industry wide investigation against Grinaker, Stefanutti, Group Five, WBHO, Concor, Liviero, Giuricich, Hochtief, Dura, Nishimatsu, Esorfranki, VNA Pilings, Rodio, Diabor, Gauteng Piling, Fairbrother, Geomechanics, Murray & Roberts, Aveng and other firms, including joint ventures in the construction industry.

Such collusive practices tend to distort competition and increase prices. This is particularly problematic given the recent boom in activity in infrastructure and construction in the country, as it implies that costs have been inflated while above desirable competitive levels – creating burden on the state and the economy. The collusive practices may also slow down delivery of key infrastructure as well as houses in the country.

"International experience has shown that collusive practices of this nature are also prevalent in the construction industry in other countries" says Tembinkosi Bonakele, the Deputy Commissioner. "Examples include the Netherlands and the United Kingdom where a large number of construction firms took advantage of the corporate leniency policy to come forward and to clean up their act once investigations were launched."

ENDS

Prepared by: FD Beachhead

Jennifer Cohen 011 214 2401/ 082 468 6469/ jennifer.cohen@fd.com Dani Cohen 021 487 9021 / 082 897 0443 dani.cohen@fd.com Senzi Dlamini 011 214 2420 / 073 494 0030 senzi.dlamini@fd.com

On behalf of: The Competition Commission

Further info:

Keitumetse Letebele, HOD Communications
012 394 3200 / 082 783 3397