

MEDIA RELEASE

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Competition Commission refers pilings cartel case to the Competition Tribunal and settles with Aveng (t/a Steeledale) on wire mesh and rebar cartels

The Competition Commission ('Commission') continues to make good progress in uncovering cartel conduct in construction related areas. In two separate developments, the Commission has today referred a case of collusive conduct in pilings and related activities, which are a crucial component of many large construction projects, and has also settled with Aveng (Africa) Ltd on two cartels in wire mesh and reinforcing steel bar in which its Steeledale subsidiary was involved.

Pilings cartel referral

The Commission has referred a case of collusive tendering, price fixing and market allocation in the pilings market against Grinaker-LTA (an operating group of Aveng (Africa) Ltd), Esorfranki Ltd, Rodio Geotechnics (PTY) Ltd, Dura Soltanche Bachy (PTY) Ltd, Geomechanics CC and Diabor (PTY) Ltd. Grinaker-LTA applied for and was granted conditional immunity and therefore no penalty is sought against it. The Commission is seeking a penalty of ten percent (10%) of the annual turnover of the firms implicated in this case other than Grinaker-LTA.

In terms of formal arrangements among themselves the respondents allocated tenders/customers/projects between themselves and fixed tender prices. The tenders were allocated in accordance with agreed rules and each allocation was recorded in a document called the "**scorecard**" or "**Book**" which was intended to record the agreed percentage market share of each participant. These arrangements existed in both Gauteng and KwaZulu-Natal. There was furthermore, *ad hoc* collusive conduct pertaining to certain projects.

There are indications that the conduct may have been in place since the 1970s. Some of the projects implicated in this conduct are: Lusip Dam grouting in Swaziland; SAPPI/SAICCOR piling project; Moses Mabhida Stadium Piling project; Coega Harbour diaphragm wall project, the Gautrain; and Lesotho Highlands Water project.

The conduct appears typical to that already uncovered by the Commission in other construction related areas and points to the far reaching nature of such practices in the construction sector.

Aveng/Steeledale settlement

The Commission has reached a settlement with Aveng (Africa) Ltd in the mesh and rebar cartel cases referred by the Commission. In terms of the settlement agreement, Aveng:

- admits that its Steeledale operation entered into agreements with its competitors to fix prices and divide markets by allocating customers in the mesh and rebar markets, and to collusive tendering in the rebar market;
- will pay an administrative penalty of R128,904,640 (one hundred and twenty eight million nine hundred and four thousands six hundred and forty rands) equivalent to 8% of Steeledale's annual turnover for the 2008 financial year;
- undertakes to cooperate with the Commission in its prosecution of the remaining respondents;
- has committed to cooperate in the Commission's Construction Fast Track Process; and
- undertakes to implement a competition compliance programme.

The settlement agreement will be submitted to the Competition Tribunal for confirmation.

END

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Background

1. Pilings

Grinaker-LTA (an operating group of Aveng (Africa) Ltd) lodged an application for corporate leniency on 1 April 2009 on behalf of GEL (a division within Grinaker-LTA's civil engineering business unit responsible for ground engineering services, such as piling, grouting, lateral support and geotechnical drilling investigations services). The application detailed GEL involvement with its competitors principally in Gauteng and KwaZulu-Natal, in collusive tendering in the provision of piling, grouting, lateral support services as well as related markets for the provision of geotechnical drilling investigations services. The application related to formal and certain ad-hoc collusive practices. Another application for leniency was lodged by Grinaker-LTA on 20 July 2009 for its involvement through GEL in certain ad-hoc collusive practices in geotechnical drilling investigation services. The Commission consolidated the complaints.

The substance of the Commission's investigation and referral is that the respondents entered into arrangements to divide/allocate projects/tenders amongst themselves in accordance with **scorecards**, also known as '**the Book**', largely corresponding to their market shares. They further engaged in ad-hoc arrangement from time to time that went beyond the formalised scorecard arrangements, in terms of which they divided/allocated project/tenders amongst themselves. Briefly the relevant markets or activities are described below:

Piling: Piling is a process used to stabilise foundations of big structure such as building, bridges, substations and dams, in order to prevent the collapse of these

structures. Different types of piles are used in the process whereby piles are driven into the ground to support the structure/building.

Lateral support: Lateral support techniques are used to prevent horizontal movement in excavations. The process involve reinforcing earth walls with a view to ensuring that adjacent foundations or structures that are already in existence do not collapse (or move or shake) during surface excavations.

Grouting: grouting is a process used in construction to stop water flow through the ground and the filling of voids in cavities to stabilise ground masses. It is done through drilling holes and filling the holes with cement and water mix known as grout.

Geotechnical drilling investigation services: Geotechnical drilling investigations services refers to investigation processes and techniques carried out by geotechnical companies to assess ground/earth conditions prior to design and/or construction of usually big structures such as bridges and buildings. These investigations are aimed at providing an overview of the subsurface conditions (that is below surface of an area identified for construction), depth of bed rock and soil characteristics in order to determine whether the site/location is suitable for construction and if so, what foundation solution would be suitable.

2. Mesh

The Commission initiated a complaint in the mesh market on 26 January 2009 following an application for corporate leniency received from Murray and Roberts Steel filed on behalf of its subsidiary, BRC Mesh Reinforcing (PTY) Ltd. Information submitted by M&R indicated that between 2001 and 2008, Reinforcing & Mesh Solution (PTY) Ltd (RMS), Aveng (Africa) Limited t/a Steeledale, Vulcania Reinforcing and BRC had engaged in price fixing and dividing markets by allocating customers in the mesh market.

The Commission also found that the respondents were members of the South African Fabric Reinforcing Association ('SAFRA') in which suggested price lists (or recommended price lists) as well as periodic adjustments to these price lists, were calculated and circulated. In addition to formal meetings at SAFRA, the companies met informally and had telephonic discussions for purposes of agreeing on the levels of discounts to be offered to different categories of customers in the mesh market. The respondents also discussed increasing prices of reinforcing mesh and the date of implementing the increases.

The investigation also revealed that there was clear customer allocation between the respondents and that a breach of this arrangement will be met by retaliatory action against the offending cartel member. A customer sheet was prepared for this purpose by cartel members to identify which customer 'belonged' to which competitors, as well as which customers were 'free game' for all to supply.

3. Rebar

The Commission initiated the rebar complaint on 26 January 2009 following an application for leniency made by Murray & Roberts on behalf of its subsidiary Reinforcing Steel Contractors (PTY) Ltd (RSC). Information submitted by RSC indicated that there was agreement on price fixing, market allocation and collusive tendering in the supply, cutting, bending and sale of rebar. Firms implicated in these

arrangement included Steeledale, Silverton Reinforcing and Wire Products (PTY) Ltd, Reinforcing Mesh Solutions (PTY) Ltd, Koedoespoort Reinforcing Steel (PTY) Ltd, Witbank Reinforcing and Wire Products (PTY) Ltd, Dynamic (PTY) Ltd, Bestforce Reinforcing (PTY) Ltd, Apex Rebar and Mesh CC, Dynamic (PTY) Ltd, Domestic Reinforcing Steel (PTY) Ltd, Barker Reinforcing (PTY) Ltd, Hulse Reinforcing (PTY) Ltd, Siyazama Reinforcing (PTY) Ltd, Alert Steel (PTY) Ltd, Kopanong Reinforcing Steel Contractors (PTY) Ltd, Mac-Fell Laduma Reinforcing (Pty) Ltd, Reinforcing Contractors (PTY) Ltd and the South African Reinforcing Concrete Engineers' Association.

The Commission's investigation revealed that the cartel conduct took place in five regions – Gauteng, KwaZulu-Natal, Mpumalanga, Limpopo and Western Cape. While the conduct may have taken place in the five regions, it was part of a single overall national conduct involving common participants, similar ways of operating and the same objective of price fixing, customer allocation and collusive tendering. The investigation revealed that there were discussions, meetings or contacts between the firms to discuss prices, margins, tenders/projects as well as customers. In most instances, the respondents used an agreed price list to determine prices and cover pricing, and an agreed allocation sheet to allocate customers and collude on tenders.