

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 016337

In the matter between:

The Competition Commission

Applicant

and

MVA Bricks (Pty) Ltd

Respondent

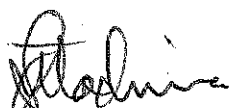
Panel : T Madima (Presiding Member), A Ndoni (Tribunal Member) and A Roskam (Tribunal Member)

Heard on : 20 March 2013

Decided on : 20 March 2013

Order

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



Presiding Member
T Madima

Concurring: A Ndoni and A Roskam

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

CT Case No: 30/CR/Mar12

CC Case No: 2009May4419

In the matter between:

THE COMPETITION COMMISSION

Applicant

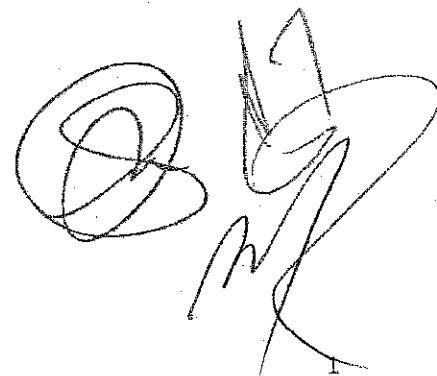
and

MVA BRICKS (PTY) LIMITED

Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
MVA BRICKS (PTY) LIMITED IN REGARD TO A CONTRAVENTION OF SECTION
4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998 (AS AMENDED)**

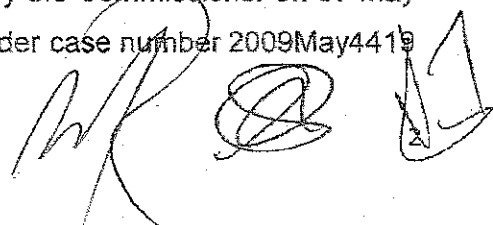
The Competition Commission ("Commission") and MVA Bricks (Pty) Limited ("MVA Bricks") hereby agree that an application be made to the Competition Tribunal ("Tribunal") for confirmation of this Settlement Agreement as an order of the Tribunal in terms of sections 58(1)(a)(iii) and 59(1)(a) of the Competition Act, No. 89 of 1998 (as amended), on the terms set out below:



1 Definitions

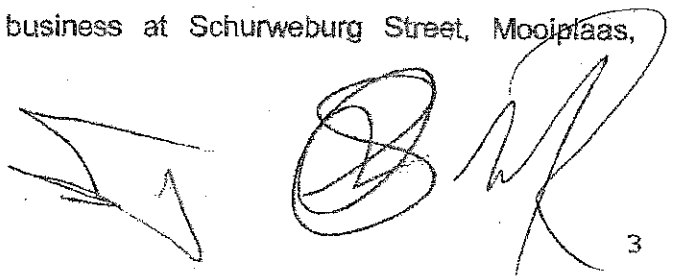
For the purposes of this Settlement Agreement the following definitions shall apply –

- 1.1 **"Bosun Brick"** means Bosun Brick Midrand (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at corner Cresset and Musket Roads, Midrand Industrial Park, Midrand;
- 1.2 **"Cast Industries"** means Cast Industries (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at 38 Spanner Road, Clayville Industrial, Midrand;
- 1.3 **"CLP"** means the corporate leniency policy of the Commission published in the Government Notice No. 628 of 23 May 2008, in Government Gazette No. 31064 of 23 May 2008.
- 1.4 **"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, Gauteng;
- 1.5 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6 **"Concor Technicrete"** means Murray & Roberts Building Products (Pty) Ltd t/a Concor Technicrete a company duly incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at corner Main Reef and Houtkapper Street, Roodepoort, Johannesburg;
- 1.7 **"Complaint"** means the complaint initiated by the Commissioner on 07 May 2009 in terms of section 49B(1) of the Act under case number 2009May4419



against the *respondents* for alleged contravention of section 4(1)(b)(i) of the Act;

- 1.8 "**Generic paving blocks**" means paving blocks which include interlocking and bevelled paving blocks used in the industrial, commercial and residential markets in South Africa;
- 1.9 "**Infraset**" means Aveng (Africa) Limited t/a Infraset, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at 204 Rivonia Road, Morningside, Sandton;
- 1.10 "**MVA Bricks**" means MVA Bricks (Pty) Limited, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Roger Dyson Road, Pretoria West Industrial, Pretoria.
- 1.11 "**Respondents**" means *Infraset, Bosun Brick, Cast Industries, Concor Technicrete, Vibro Bricks and MVA Bricks.*
- 1.12 "**Settlement Agreement**" means this agreement duly signed and concluded between the Commission and MVA Bricks;
- 1.13 "**The Act**" means the Competition Act, No. 89 of 1998, as amended;
- 1.14 "**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, Gauteng;
- 1.15 "**Vibro Bricks**" means Vibro Bricks (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Schurweburg Street, Mooiplaas, Laudium, Pretoria.



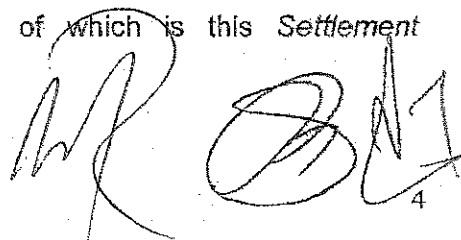
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2 Complaint investigation and the Commission's findings

- 2.1 On 22 October 2008 *Infraset* applied for corporate leniency in terms of the *CLP* regarding its involvement in a cartel in the market for the manufacture and supply of *generic paving blocks* in South Africa. In the *CLP* application, *Infraset* submitted information and documents to the *Commission* indicating, *inter alia*, the *respondents* held meetings and discussions as a result of which they, *inter alia*, agreed to fix the selling price of *generic paving blocks* in contravention of section 4(1)(b)(i) of the *Act*.
- 2.2 Following *Infraset's* application for corporate leniency, on 07 May 2009 the *Commissioner* initiated a *complaint* in terms of section 49B(1) of the *Act* against the *respondents*. The *Commission* duly investigated the *complaint* and found that the *respondents* had entered into an agreement, arrangement and understanding involving the fixing of the selling price of *generic paving blocks* in contravention of section 4(1)(b)(i) of the *Act*. The fixing of the selling price included an agreement among the *respondents* on, *inter alia*, minimum prices, transport costs and price increases of *generic paving blocks*. The *Commission's* investigation established that the aforementioned conduct of the *respondents* commenced in or about 2001 and continued until at least 2008.

3 Settlement Discussions

- 3.1 On 28 November 2012 *MVA Bricks* made a written settlement proposal to the *Commission*. Following *MVA Bricks'* settlement proposal, the *Commission* and *MVA Bricks* engaged in settlement discussions.
- 3.2 Eventually, on 18 February 2013 the *Commission* and *MVA Bricks* reached an agreement, the outcome of which is this *Settlement Agreement*



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4. Admission

MVA Bricks admits that it has entered into an agreement with the *Vibro Bricks*, *Cast Industries*, *Bosun Brick*, and *Concor Technicrete* which contravened section 4(1)(b)(i) of the Act.

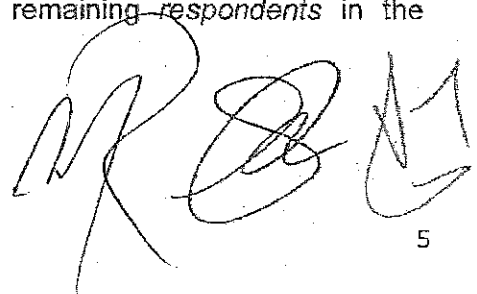
5. Agreement concerning future conduct

MVA Bricks agrees and undertakes to:

- 5.1 prepare and circulate a statement summarising the content of this *Settlement Agreement* to its employees who are managers and to its directors and relevant corporate governance structures within one (1) month after the date of confirmation of this *Settlement Agreement* as an order of the *Tribunal*;
- 5.2 refrain from engaging in price fixing in contravention of section 4(1)(b)(i) of the Act; and
- 5.3 develop and implement a compliance programme in order to ensure that its employees, management and directors do not engage in any conduct which constitutes a prohibited practice in terms of the Act.
- 5.4 A copy of the compliance programme shall be submitted to the *Commission* within three (3) months after the date of confirmation of this *Settlement Agreement* as an order of the *Tribunal*.

6. Co-operation

- 6.1 *MVA Bricks* agrees and undertakes to cooperate fully with the *Commission* in its prosecution of the remaining respondents in the complaint referral.

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6.2 This cooperation includes, but is not limited to:

6.2.1 providing the *Commission* with all relevant evidence available to it that may assist the *Commission* in its prosecution of the remaining *respondents* in the complaint referral; and

6.2.2 ensuring that all *MVA Bricks's* current employees, and to the extent possible, former employees, who have knowledge of the meetings and discussions among the *respondents* are available to and co-operate with the *Commission*, both for purposes of consultation and to give evidence in proceedings before the *Tribunal*.

7. Administrative Penalty

7.1 *MVA Bricks* is liable to pay an administrative penalty in terms of section 58(1)(a)(iii), read with sections 59(1)(a), 59(2) and (3) of the *Act* in the amount of R672 565.47 (SIX HUNDRED THOUSAND SEVENTY TWO THOUSAND AND FIVE HUNDRED AND SIXTY FIVE RAND FORTY SEVEN CENTS) representing 2.5% of *MVA Bricks's* affected turnover for the financial year ended in February 2011;

7.2 *MVA Bricks* will pay the administrative penalty to the *Commission* within seven (7) months after the date of the confirmation of this *Settlement Agreement* as an order of the *Tribunal*;

7.3 *MVA Bricks* shall remit payment of the administrative penalty into the following bank account:

Name of account holder:

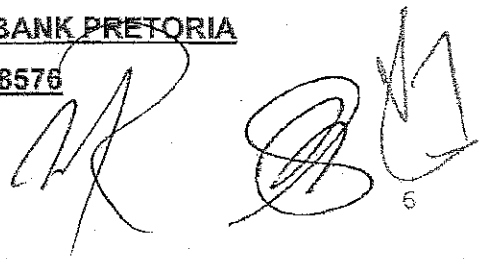
COMPETITION COMMISSION

Bank name:

ABSA BANK PRETORIA

Account number:

4050778576

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Branch code:

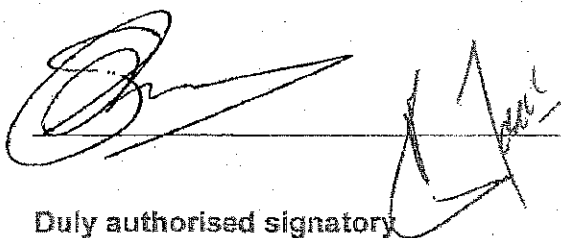
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7.3 The *Commission* will pay the administrative penalty into the National Revenue Fund in terms of section 59(4) of *the Act*.

8. Full and final settlement

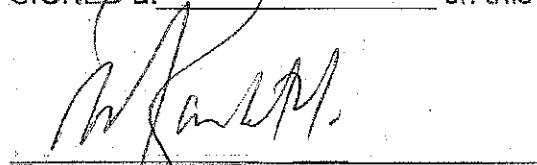
This *Settlement Agreement*, upon confirmation thereof as an order by the *Tribunal* concludes all proceedings between the *Commission* and *MVA Bricks* in relation to the contravention of section 4(1)(b)(i) of *the Act*, referred to the *Tribunal* under case number: CT Case No: 30/CR/Mar12.

SIGNED at PRETORIA on this the 26th day of FEBRUARY 2013.



Duly authorised signatory
MVA Bricks (Pty) Limited

SIGNED at Pretoria on this the 11 day of March 2013.



Shan Ramburuth
The Commissioner, Competition Commission