



COMPETITION ALERT

THE CONCRETE AND BRICK INDUSTRIES UNDER INVESTIGATION

In the last two months, the Competition Commission has launched investigations into the concrete and brick manufacturing industries, with both investigations focusing on alleged collusion. This is in keeping with several public statements made by the Commission that it will be keeping a close eye on the construction and infrastructure sectors generally. Firms engaged in these industries should consider whether their affairs are in order, from a competition law perspective and, if necessary, apply to the Commission for leniency under the revised Corporate Leniency Policy (CLP). In terms of the CLP firms participating in collusive behaviour are permitted to 'blow the whistle' and disclose information regarding the cartel to the Commission in return for leniency or immunity from prosecution.

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THE COMPETITION AMENDMENT BILL HAS BEEN PASSED

The Competition Amendment Bill was passed by the National Assembly on 21 August 2008. Public hearings on the Bill took place on 29 and 30 July 2008 before a Parliamentary Portfolio Committee. The Bill contentiously introduces personal criminal liability for directors and managers that have caused or allowed their firms to engage in collusion, contemplates the regulation of 'complex monopolies', introduces a general market enquiry function for the Commission and seeks to clarify the legal standing of the Corporate Leniency Policy as well as the issue of concurrent jurisdiction between the Competition Authorities and other regulators.

Not surprisingly, the criminalisation provisions of the Bill have received the most attention from the public and the Competition Authorities. Conviction of the offence of causing a firm to engage in collusive conduct or 'knowingly acquiescing' to such conduct could lead to a fine of up to R500 000 or a jail sentence of up to ten years, or both. Also, in terms of the Bill, firms are prohibited from paying the fines and legal costs of convicted directors and/or managers, or from taking out indemnity insurance to cover a convicted director and/or manager's conduct in this respect.

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ANSAC REFUSED A CONSENT ORDER APPLICATION

In 2000, Botswana Ash (Botash) laid a complaint against American Natural Ash Soda Corporation (Ansac), a joint venture (and alleged) cartel of soda ash producers that jointly sell soda ash into the South African market and in doing so fix the selling price,. The matter was referred to the Competition Tribunal in 2000 and has since made its way to higher adjudicative bodies including the Competition Appeal Court and the Supreme Court of Appeal. The latest event in the saga, is that the Tribunal has refused to confirm a consent agreement entered into between Ansac and the Commission some years ago. The Commission reached the agreement with Ansac that would have ended the matter but then quickly indicated that it no longer wished to be bound by it. Ansac applied to have the consent agreement confirmed by the Tribunal. The Tribunal's ruling effectively means that consent order agreements are not enforceable in law as between the Commission and other party to the agreement, if the Commission elects, prior to the confirmation of the order by the Tribunal, not to be bound by it.

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CONTACT US

Should any further information be required, or for competition law-related advice in general, please do not hesitate to contact one of our specialist practitioners:



Mondo Ntsha
National Practice Head; Director
T +27 (0)11 290 7128
E mondo.ntsha@dcladh.com



Petra Krusche
Regional Practice Head; Director
T +27 (0)21 481 6351
E petra.krusche@dcladh.com

JOHANNESBURG (Sandton)

6 Sandown Valley Crescent
Sandown
Sandton 2196
Private Bag X40
Benmore 2010
South Africa
Dx 154 Randburg
T +27 (0)11 286 1100
F +27 (0)11 286 1264
E jhb@dcladh.com

1 Protea Place
Sandown
Sandton 2196
Private Bag X7
Benmore 2010
South Africa
Dx 42 Johannesburg
T +27 (0)11 290 7000
F +27 (0)11 290 7300
E jhb@dcladh.com

CAPE TOWN

11 Buitengracht Street
Cape Town 8001
PO Box 695
Cape Town 8000
South Africa
Dx 5 Cape Town
T +27 (0)21 481 6300
F +27 (0)21 481 6388
E ctn@dcladh.com

21st floor 2 Long Street
Cape Town 8001
PO Box 1221
Cape Town 8000
South Africa
Dx 39 Cape Town
T +27 (0)21 405 6000
F +27 (0)21 419 5909
E ctn@dcladh.com

CLAREMONT (Cape Town)

5th floor Protea Place
Protea Road
Claremont
PO Box 23110
Claremont 7735
South Africa
Dx 5 Cape Town
T +27 (0)21 683 2621
F +27 (0)21 671 9740
E ctn@dcladh.com

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