

SUMMARY OF CEMENT CROSS BORDER CARTEL IN SACU

Introduction

The cement cartel was a cartel of four cement producers PPC, Lafarge, Afrisam and NPC (“Cement Producers”) which all have their headquarters in South Africa but had presence in the Southern African Custom Union (SACU). Southern African countries that make SACU are South Africa, Botswana, Namibia and Eswatini. These Cement Producers supply their products throughout the SACU region.

In South Africa, the cement cartel started in the 1940s when the then apartheid government authorized cement producers to legal collude. Each cartel member was allocated market shares in accordance with their productive capacity, and they were also allocated territories where they should supply their cementitious products. The legal cartel was ended in 1995 when the exemption to the cement industry was withdrawn by the Competition Board, the Commission’s predecessor. The cement producers were expected to compete going forward. However, the cement producers did not cease the conduct, instead, decided to continue with their collusion arrangements secretly.

The cement cartel

This cartel entailed the agreement by cement producers to maintain their market share in accordance which were in accordance with their productive capacities. They also had territorial allocations among themselves. For example, PPC was allocated Botswana, Lafarge was allocated Northern Natal, a region in South Africa and Afrisam was allocated Namibia, Lesotho and Eswatini.

In 1996, PPC deviated from the agreement and increased its market share beyond what was allocated. This sparked a price war between the cement producers between 1996 and 1997. In 1998, the cement producers had a meeting in Port Shepstone, where they reached an agreement to stop the price war and revert to their agreement of maintaining their historic market share. They further agreed to stick to their territorial allocation. In addition, the cement producers agreed on when to increase prices of cement and the level of such price increases. They agreed

to increase prices twice per year, in January and July every year and that PPC will always lead in increasing those prices.

Following the price war, the cement producers no longer trusted each other to comply with the terms of their collusive agreement. They then decided to set mechanism to monitor compliance with the collusive agreement. They agreed to submit sales information on monthly basis to the Cement and Concrete Institute of Southern Africa (“C&CI”)¹ to calculate their individual market share and relay individual market share results to each of the cement producer.

The Commission’s investigation and findings

The Commission launched an investigation against the cement producers in June 2008. In June 2009, the Commission raided the offices of PPC, Afrisam, Lafarge and NPC and seized hard copy documents and electronic data. Subsequently, PPC approached the Commission in 2009 and applied for immunity in terms of the Commission Corporate Leniency Policy (“CLP”). In its CLP application PPC implicated the cement producers in a cartel.

The Commission’s investigations found that between 1997 and 1998 the cement producers held series of meetings with a view to end the price war and stabilizing the market. These meetings culminated in the cement producers reaching an agreement on market shares, pricing parameters, scaling back on marketing and distribution activities including closure of certain offices and depots in some regions, and not to offer special discounts on higher quality cement.

The investigation also found that between 1999 and 2002 the cement producers met regularly to discuss the implementation of their collusive agreement. As part of the implementation, they agreed to submit detailed sales data on monthly basis to an audit firm appointed by C&CI, which will aggregate the sales data across them and disseminate the aggregated data to the cement producers. The investigation found with the aggregated sales data, the cement producers were able to measure their own market shares for the whole SACU region, as well

¹ C&CI is a marketing organisation that aims to grow the market share for concrete industry by providing information, technical and consulting services, research and development, education and training, marketing services, regulatory. Its membership includes all the producers of cementitious materials (Producer Members), the concrete industry (Associate members) and built environment professionals (Built Environment Professional Members).

as for the defined sub-regions, product categories and customer categories, and monitor if fellow cartelists are adhering to the agreement.

Conclusion

The Commission concluded that there was sufficient evidence to launch a prosecution against the cement producers for colluding. Prior to referring the matter to the Competition Tribunal for prosecution, AfriSam and Lafarge approached the Commission individually and proposed to settle the matter. Following settlement engagements, AfriSam and Lafarge agreed to settle with the Commission, and they paid a penalty of R124 878 870 and R148 724 400 respectively.

NPC did not settle and the case against it was referred to the Tribunal for prosecution. The Tribunal ruled in the favour of NPC dismissing the Commission case on the basis that there was no sufficient evidence that NPC attended the Port Shepstone meeting from 2008. The Commission appealed this decision to the Competition Appeal Court which upheld the Tribunal's decision.