**THE COMPETITION APPEAL COURT OF SOUTH AFRICA**

**CT CASE NO: 84/CR/DEC09**

**(CAC CASE NO: 119/120/CAC/May 2013)**

In the matter between:

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| **REINFORCING MESH SOLUTIONS (PTY) LTD** | 1st Appellant (2nd Respondent a quo) |
| **VULCANIA REINFORCING (PTY) LTD** | 2nd Appellant (3rd Respondent a quo) |

and

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| **THE COMPETITION COMMISSION** | Respondent (Cross-Appellant and Applicant a quo) |

and

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| **AVENG (AFRICA) LTD t/a STEELEDALE** | 1st Respondent |
| **REINFORCING MESH SOLUTIONS (PTY) LTD** | 2nd Respondent |
| **VULCANIA REINFORCING (PTY) LTD** | 3rd Respondent |
| **BRC MESH REINFORCING (PTY) LTD** | 4th Respondent |

**Coram:** **DAVIS JP, DAMBUZA JA et NDITA AJA**

**Heard:** **5 December 2012**

**Delivered:** **15 November 2013**

**ORDER**

On appeal from: Competition Tribunal

1. The first appellant's appeal is dismissed with costs.
2. The second appellant's appeal is dismissed with costs.
3. The cross- appeal is dismissed with costs.

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**JUDGMENT**

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**NDITA, AJA**

**Introduction**

[1] This judgment concerns two appeals and a cross-appeal against orders of the Competition Tribunal for the contravention of s 4(1)(b)(i) and 4(1)(b)(ii) of the Competition Act No.89 of 1998 ("the Act"). On 01 May 2012, the Competition Tribunal found the first and second appellant guilty of involvement in a cartel of wire mesh producers during a period which lasted from 2001 to 2008. It imposed an administrative penalty in the amount of R5,600 000.00

on the first appellant and R21,600 000,00 on the second appellant. The basis on which the penalty amounts were calculated is **the** subject of the present appeal and will be dealt with later in this judgment. In the cross-appeal, the Competition Commission appeals against the administrative penalties imposed against the appellants as well as the first and fourth respondents in the cross-appeal.

[2] The first appellant Vulcania Reinforcing (Pty) Ltd ("Vulcania") is a private company duly incorporated in accordance with the company laws of the Republic of South Africa and has its principal place of business at 19 Molecule Road, Vulcania Extension 2, Brakpan. Vulcania is the manufacturer of brick mesh and reinforcing mesh, galvanised wire, hard drawn wire, nails and wall tiles. The second appellant, Reinforcing Mesh Solutions ("RMS") is also a company with its place of business at 30 North Reef Road, Elandsfontein, Germiston. RMS was established in 2002 as a division of Capital Steele (Pty) Ltd. RMS manufactures reinforcing mesh and the cutting, bending and installation of reinforcing bars. The appellants are the second and fourth respondents, respectively, in the cross-appeal by the Competition Commission.

[3] The first respondent in the cross-appeal is Aveng (Africa) Ltd t/a Steeledale. Steeledale comprises of six business units namely, Steeledale Mesh, Steeledale Reinforcing Gauteng, Steeledale Reinforcing KZN, Steeledale Reinforcing Freestate, Steeledale Reinforcing Cape Town and Imsteel. The first respondent is for the purpose of this judgment referred to as Steeledale. Steeledale is part of Aveng Group which consists of a number of operating divisions, including inter alia, Lennings Rail Services, Infraset, Duraset and Grinaker LTA, a construction and engineering business that is regarded as an in-house customer of Steeledale's construction products. The fourth respondent in the cross-appeal, BRC Mesh Reinforcing (Pty) Ltd ("BRC") is a subsidiary of Murray and Roberts Steele Group. It manufactures and sells reinforcing mesh to the construction industry in South Africa. The Murray and Roberts construction group's other subsidiaries and associated companies are Cape Town Iron and Steele Works ("CISCO"), Concor, Freyssinet, Posten and Toll Road Concessionaries ("TOLCON").

[4] The appellants and the respondents in the cross-appeal manufacture and supply reinforcing mesh products, including welded mesh to the construction industry.

[5] It must be emphasised from the outset that Steeledale admitted being involved in anti-competitive behaviour of wire mesh products and rebar (reinforcing bar). Pursuant to the admission, a penalty (in terms of a settlement agreement with the commission) in the amount of R128 904 640, representing 8% of Steeledale's (Aveng was trading as Steeledale) turnover for the 2008 financial year was imposed. BRC was granted conditional leniency by the Commission in terms of its corporate leniency policy ("CLP") published in Government Gazette no. 31064 of 23 May 2008.

**Factual Background**

[6] The Competition Commission, after investigating the prohibited anti-competitive behaviour against the appellants and the respondents in the cross-appeal, referred to the Tribunal on 2 December 2009, a complaint against the latter. According to the Commission, the respondent's conduct constituted a contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act. The sections provide as follows:

**"Restrictive horizontal practices prohibited**

4 (1) An agreement between or concerted practice by, firms, or a decision by an association of firms is prohibited if it is between parties in a horizontal relationship and if ---

(a) . .

(b) It involves any of the following restrictive horizontal practices:

(i) directly or indirectly fixing a purchase or selling price or any

other trading condition;

(ii) dividing markets by allocating customers, suppliers, territories or specific type of goods or services."

The Commission alleged that the respondents entered into agreements with other firms in a bid to prohibit competition in the reinforced mesh products, on the following terms:

1. price setting for reinforcing mesh products;

2. the allocation of the market for mesh reinforcing products by agreeing not to compete for and to share only certain customers according to a list circulated to sales and marketing staff. In terms of this agreement the appellants also designated in-house customers;

3. the level of discounts to be offered to a certain category of customers.

[7] The reinforcing wire mesh is a product manufactured from steel, placed in sheet formations and is mostly used to reinforce concrete slabs. Rebar (reinforcing bar) is described as a steel product manufactured in bars and is used for cement reinforcement. The production of the reinforcing mesh commences with the purchasing of coils of steel from suppliers. The coils are drawn into wire, welded at specific intervals and the end product distributed to the construction or building industry for use in the construction of residential and commercial buildings. It follows that customers were mainly construction companies as well those selling building and related products. As earlier stated, RMS and VULCANIA are manufacturers and distributors of the aforementioned products. It appears from the record that Steeledale enjoyed a presence all over the country, whilst the RMS custom was largely in the East London area. BRC operated on a national basis and Vulcania, although based in Cape Town, had influence over the Gauteng market. According to the evidence of Mr Griffin, the main role players in the production and supply of mesh were all the respondents in the cross-appeal.

**The Cartel**

[8] The record does not reveal any factual disputes with regard to the existence of a cartel in the wire mesh industry involving both appellants. RMS readily admitted its involvement in the cartel and the Tribunal therefore only had to consider the appropriate administrative penalty to impose on it. In so far as Vulcania is concerned, its role in the cartel was placed in dispute before the Tribunal. In the light of the dispute, evidence from members of the cartel was led.

[9] Mr Michael Hartnady ("Hartnady"), the marketing manager of Steeledale Mesh, testified that the main players in the mesh market in 2000 were BRC,Allen Meshco, Hendoc Meshrite, and Vulcania. He had been involved in the South African Fabric Reinforcing Association (SAFRA) activities since joining the industry in 1975 and was elected to serve on its committee. At that time SAFRA was canvassing the mesh producers to join the association but its chairman or director had to approach and recruit new members. SAFRA held meetings which were attended by its members. During those meetings the wire mesh manufacturers would discuss and agree on a recommended price list for their products. CIFSA or SAFRA supplied its members with indices and

calculated price increases or decreases, as the case may be. The manufacturers applied the increases suggested by the association. The price list would be distributed to members, who in turn, after effecting minor changes or adjustments, duplicated it onto their own letterheads and implemented the agreed price.

[10] During 2005, SAFRA stopped supplying the members with a list. Regarding discount levels, Hartnady confirmed that discussions were held as to what sort of levels they should be applied to, and it would be agreed that they be adjusted in line with the market change. The members specifically agreed to apply the discount structures to their in-house companies, other construction companies and low cost housing. When SAFRA stopped supplying its members with a price list, the members called to one of its meetings Mr Costa Casa ("Costa"), who at that time was the managing director of Steeledale. Costa supplied them with a formula which enabled the competing firms to uniformly pass on input costs increases by providing a common mechanism for determining the final price. The cartel meetings according to Hartnady stopped some time in 2008 because the members, pursuant to advice from Steeledale, were afraid that the Competition Commission might uncover the collusion and or anti-

competitive agreements. Vulcania, although not a major player, participated in some of these meetings and it is to its involvement that I now turn.

**Vulcania's liability**

[11] The involvement of Vulcania in the cartel, according to a statement deposed to by its managing director, Mr Sean Greve ("Greve"), commenced in February 2006, after he was co-opted by Mr Adrian Mountford to join SAFRA. He attended the first SAFRA meeting on 7 February 2006 and thereafter several informal meetings. The thrust of the discussions at the informal meetings related to pricing levels that should be allowed to various customers as well as the fact that SAFRA members should not supply customers of another supplier. In short, members agreed on pricing adjustments and customer allocations. It is for this reason that they were required to provide a list of their existing customers. From time to time members of the cartel would be provided with an updated price list, the formula for escalations and the customer allocation list. However, according to Greve, Vulcania did not abide by any decisions taken at the meetings. Neither did it implement the formula created by Costa. All Vulcania did was to create an impression that it was abiding thereby,

whereas in reality it sold mesh at prices significantly lower than the prices reflected in the price list. This it had to do because of its vulnerability in the market at that time. All its raw material input for mesh production was purchased from its competitors. In any event, so testified Greve, in the five or six meetings he attended, he did not play any active role. He only listened and took instructions. According to Greve, shortly after concluding an agreement with Cape Gate to purchase rod in coil at a competitive price, it acted independently of the cartel and Greve stopped attending the meetings.

[12] The role played by Vulcania in the cartel is further explained in the statement and testimony of Mr Martin Cawood ("Cawood"), who in 2007 was a Sales and Marketing Manager at BRC, a position which was previously held by Griffin. Cawood testified that he was introduced to Greve by Griffin at the latter's farewell function attended by the role players in the mesh market. During October 2007, the steel mills announced that there would be a 3% steel price increase which would be effective from the following month, i.e November 2007. Mesh manufacturers held a meeting wherein it was decided that the 3% increase should be applied to the selling price and not to the cost of the raw material. BRC's

general manager Mr Koszweski rejected the cartel's formula and directed that the increase be applied to the raw material.

[13] According to Cawood, had BRC applied the cartel formula, it would have derived profits that it would not have been entitled to at the expense of the customers. When a further 6% increase, was announced by the steel mills in January 2008 a meeting of the manufacturers took place. Cawood was admonished by the manufacturers; including Greve, for having applied the earlier increase to raw material. Cawood testified that when it became obvious to the cartel that he was charging customers a lower price than were other suppliers, Greve took out his calculator and performed a calculation which demonstrated that Cawood was not implementing the increase as agreed.

[14] Greve's version of the incident is that he performed the calculations merely to help Cawood implement the formula correctly. Vulcania had contended that, although Greve attended between five and six meetings, he was passive throughout. By contrast, both Griffin and Hartnady testified that Greve contributed to the deliberations. The Tribunal emphasised that, as Greve had

taken out his calculator and thus intervened in the meeting, even on his own version, he was hardly passive.

[15] The Tribunal thus rejected Greve's evidence and held that Vulcania was a willing participant in the cartel and had benefitted from the cartel agreements, and in the result had contravened sections 4(1)(b)(i) and (ii) of the Act.

**Vulcania's Appeal**

[16] In the present proceedings Vulcania appeals against the decision of the Tribunal on the following grounds:

1. The Competition Tribunal erred in holding that Vulcania was guilty of contravening sections 4(1)(b)(i) and (ii) in that it was a party to the prohibited agreement between members of the cartel.

2. The Tribunal ought to have accepted or given sufficient weight to Greve's evidence to the effect that his attendance of the meeting was a sham, necessitated by the Vulcania's need to create an appearance of cooperation with the cartel in order to protect its supply of raw material it received from cartel members.

3. Vulcania did not apply any of the discounts and prices agreed upon by members of the cartel and withdrew from it when it

was no longer necessary for it (Vulcania) to rely on them for the supply of raw material.

4. Given that the Act specifically requires it be shown that Vulcania was a party to the cartel agreement, the Commission had to show that there was consensus with other participants. In finding the presence of such consensus, the Tribunal applied principles applicable in European law

**The Decision of the Tribunal**

[17] The above grounds of appeal were raised as defences before the Tribunal. The Tribunal, after considering the evidence, was satisfied that the conduct of Vulcania fell squarely into the prism of the anti-competitive behaviour envisaged in s 4(1) (b). It held that Vulcania's participation in meetings with competitors at which prices and discounts were set and customer allocation agreed upon, rendered it liable. More particularly, it held that Greve's evidence with regard to an existence of an understanding between the cartel members to the effect that no member was to poach from the other allocated customers, sufficed for liability even if some ratification by some major firms was required before the understanding could be implemented.

**ANALYSIS**

[18] I deem it prudent to first deal with the contention that the conduct complained of on the part of Vulcania does not amount to a cartel agreement between the parties as defined in the Act and the application of foreign legal principles. The Act defines agreement thus:

"'agreement', when used in relation to a prohibited practice, includes a contract, arrangement or understanding, whether or not legally enforceable."

In *Netstar (Pty) Ltd and Others v Competition Commission and another* [2011] 1 CPLR 45 CAC, this court considered the definition of agreement and stated that:

"[25] By contrast, an agreement arises from the actions and discussions among the parties directed at arriving at an arrangement that will bind them either contractually or by virtue of moral suasion or commercial interest. It may be a contract, which is legally binding or an arrangement or understanding that is not, but which the parties regard as binding upon them. Its essence is that the parties have reached some kind of consensus. No doubt in many cases, the same evidence may be relied upon as pointing towards either an agreement or a concerted practice. However, sight should not be lost of the fact that they are different. The

definition of an agreement extends the concept beyond a contractual agreement. However, what it requires is some form of arrangement that the parties regard as binding upon both themselves and the other parties to the agreement. Absent such an arrangement there is no agreement even in the more extended sense embodied in the definition."

[19] Flowing from the above, conduct of the parties alleged to be in a cartel agreement directed at arriving at an arrangement that will bind them either contractually or by virtue of moral suasion or commercial interest is central to determining whether the parties have reached some kind of consensus. It is abundantly clear from the wording of s 4(1)(b) that in order to establish a contravention, the Competition Commission must produce proof which shows an agreement to engage in the prohibited anti-competitive behaviour. The key concern is to determine whether a sufficient consensus was achieved to constitute 'an agreement' as defined in the Act and, which, as explained in *Netstar*, cannot be determined solely by recourse to private law principles of contract. In holding Vulcania liable, the Tribunal extensively referred to European jurisprudence relevant to the determination of passive participation. There cannot, in my view, be anything amiss with this

approach as the Act itself sanctions recourse to foreign and international law for it provides that:

"(2) This Act must be interpreted ---

(a) in a manner that is consistent with the Constitution and gives effect to the purposes set out in section 2; and

(b) in compliance with international law obligations of the Republic.

(3) Any person interpreting or applying this Act may consider appropriate foreign and international law."

It was contended that the Tribunal did not only have due regard to foreign jurisprudence, but imported the interpretation thereof and applied it to the facts and found Vulcania liable on that basis. If this contention is correct, the approach of the Tribunal would be clearly wrong because as early as 2004, this court in *Federal-Mogul Aftermarket Southern Africa (Pty) Ltd v Competition Commission and another* [2004] 1 CPLR 25 (CAC) considered the application of foreign law and explained that:

"There is no justification for the application of foreign dicta that may not only be at odds with an express purpose of the Act but the result of which would lead to an interpretation which is at war with the express words of the section."

The Tribunal did not in my view, import foreign legal principles and apply them to the facts of the present matter. Its judgment amply demonstrates that it found Vulcania liable on the basis of the interpretation of the Act and the rejection of Greve's evidence to the effect that the informal meetings could not take binding decisions. To this end, it stated that:

"[97] Greve's evidence on this aspect cannot be accepted.

[98] Nor as a matter of law does it have substance. The Act makes it abundantly clear that agreements amongst firms do not require the formality of agreements in contract. The Act has extended the ordinary definition of the term agreement when used in relation to a prohibited practice to include '. . . a contract, arrangement or understanding, whether or not legally enforceable'. It is clear that the meetings arrived at 'understandings' or 'arrangements' between competitors on customer allocation to the effect that a member would not compete for another firm's customers, as well as establishing the formula for adjusting selling prices to cater for increases in input costs. It is also clear from all the witnesses that the firms declared their intention to implement the decisions reached at these meetings, even though some 'cheating' occurred in practice."

[20] The issue on appeal, as was in the Tribunal, is whether the Commission established the existence of an agreement between members of the cartel to engage in anti-competitive behaviour.

[21] To the extent that it is necessary, I should add that the basic rationale of European law, that passive participation without some indication that the firm in question distances itself from the arrangement, is not incongruent with the principle in our common law that silence may amount to acceptance of an offer where there is a duty to speak. See Christie *The Law of Contract in South Africa* (6th ed) at 70 and the authorities cited therein. The duty to speak exists, in this context, in order to reject participation in the most egregious of anti-competitive forms of behaviour.

[22] With this in mind, I now proceed to consider whether Vulcania was part of the consensus or arrangement reached between members of the cartel. This exercise necessitates the consideration of the evidence in detail. It is trite that where consensus is in dispute, an inference of its existence can be made from the facts of the case.

[23] With regard to price fixing in wire mesh products, it is common cause that members of the cartel, including Vulcania were members of SAFRA. It was during SAFRA meetings that a recommended industry-wide price of mesh was discussed and adopted. Once the recommended base price was adopted, it was circulated to SAFRA members and they would adopt it in exactly the same form for their individual pricing, albeit with insignificant adjustments. After SAFRA's base price practice ceased to exist, pursuant to advice received from Mr Macdonald, to the effect that the discussions and agreements could be perceived as anti-competitive, cartel members continued to use and implement the SAFRA price list as a guide when discussing discounts in their informal meetings. Vulcania formed part of those meetings. The meetings were usually held after the steel mills had announced an increase in the price of steel. This was designed to ensure that cartel members implemented the increase consistently and uniformly and that the prices were applied simultaneously so as to limit the choices of customers. Vulcania attended five or six informal meetings at which the increase in the price of steel was discussed and agreed upon. By Greve's own admission, Vulcania did apply the 3% discount agreed upon by the cartel on the selling price.

[24] Similarly, when the steel mills announced an increase of 7%, in January 2008, the cartel convened another meeting to discuss and regulate the manner in which it would be applied. Again, Vulcania was a party to this agreement. When it became apparent that Cawood did not pass on the previous increase, Greve took it upon himself to calculate and assist in clarifying the "proper" calculations to be adopted. According to Greve, Vulcania's participation was a sham intended to create an impression to cartel members that he was part and parcel of the agreement because of fear of commercial reprisals that would ensue had Vulcania demonstrated otherwise. However, Hartnady, in his statement, explained that there were a number of firms that were not part of the cartel and which competed against the members of the cartel in the Mesh market. He further stated that:

"Together the suppliers that were not part of the cartel arrangements, accounted for approximately 40-50% of the productive capacity in respect of Mesh. Some of these firms, such as Barnes Wire Industries, managed to grow their share of the Mesh Market during the period 2001-2008 despite the presence of the cartel."

[25] In my view, the conduct of Vulcania in implementing the price increases agreed upon by the cartel amply demonstrates an

intention to be bound by the cartel agreements and was in consensus with the cartel's anti-competitive behaviour. To suggest that it was all this time shamming is in the face of this evidence, in my view, improbable. To my mind, even if Vulcania was a relatively small player, and was passive during the price fixing discussions, it did more than simply acquiesce, and when it implemented the cartel prices it directly fixed a purchasing or selling price in contravention of s 4(1)(b). It never distanced itself from the cartel but by contrast followed the agreement. Based on the evidence, it clearly operated at the very least, in accordance with the terms of the arrangement or understanding when it implemented the cartel prices and discounts. To hold otherwise would defeat the very object and purport of the Act, which is to prevent price fixing and participation in cartels. Furthermore, there can be no doubt that the price fixing as well as discount allocation arrangement of which Vulcania was part of had the effect of lessening or preventing competition in the mesh market. This is borne out by the fact that Vulcania itself sought protection by joining the cartel.

[26] The second leg of the cartel conduct relates to the allocation of customers. Subsequent to Vulcania's joining the cartel, a

meeting was held wherein cartel members were requested to provide a list of their existing customers. According to the evidence, the customer list was updated every now and again and contained names of customers that were allocated to members of the cartel as well as the cartel members' existing customers. The agreement pertaining thereto was that cartel members would not target other members' customers. The list divided customers into three categories, namely, the "*in-house customers*", "*preferred customers*" and *"free for all customers"*. The methodology adopted is best explained by Griffin in his statement as follows:

"32 The preferred customers were those that were associated with the competitor due to the existence of a long standing supplier-customer relationship. The "free for all" customers were those customers that could be supplied by any competitor.

33 In order to ensure that customers only bought from their suppliers, a "cover price" in the form of reduced discount rates was applied. For example, where a customer belonging to one competitor approached another competitor for supply, the former would allow for a discount that would be less than that offered by the latter. In this way, customers were 'encouraged' to only buy from the allocated suppliers."

[27] Greve in his evidence readily conceded that Vulcania benefitted from the customer allocation arrangement as other firms respected its customers. To this end, he stated thus:

"'Apex who was my customer was allocated to me and what I mean is that the other guys wouldn't … well, they said they didn't ever go there and try and take business away from me, from Apex."

[28] Vulcania's stance is that it did not implement the customer allocation agreement. According to Greve, it did not consider it binding upon it. The Tribunal considered this assertion in the light of the history of the emergence of Vulcania in the mesh market.

[29] In order to fully comprehend the approach adopted by the Tribunal in this regard, it is necessary to repeat the history of Vulcania. It is common cause that Vulcania evolved out of a firm known as Polymesh, which entered the market in the 1990s. Polymesh produced mesh from wire in coil. Faced with a cost disadvantage of 10%, Polymesh became a supplier to small building contractors. Vulcania took over the business from Polymesh. In the beginning, it experienced the same hardships brought to bear upon Polymesh. In 2005, Vulcania purchased a 50%interest in a company known as Steel Straighteners. Its

partner was an Alens Meshco subsidiary. It took some time for Vulcania to establish itself in the mesh market. Things changed for the better when it acquired the custom of Cape Gate. This background must be understood in the context of Greve's testimony that Vulcania, as a small player in terms of its market share in the mesh industry, was vulnerable. It is for this reason that it pretended to adhere to the cartel agreements, whereas it had no intention of being bound by the agreements relating to allocation of customers. In its version, it had its own customers before it joined the cartel.

[30] It must be accepted that Vulcania did not attend all the cartel meetings. Similarly, the evidence does not support a finding to the effect that it implemented the decisions relating to customer allocation agreement. This is understandable when regard is had to the fact that it is nigh impossible for the cartel members' collusive conduct to be monitored or enforced. However, an agreement comes into existence once the parties agree on a particular course of conduct to be followed regardless of the number of meetings. Vulcania's defence that it never intended to adhere to the terms of the agreement is unsustainable.

[31] The Tribunal, in rejecting this defence, was of the view that an agreement itself is covered by s 4 (1) (b). It held that the section does not render it necessary for the Commission to show that it has been implemented. Assistance for this interpretation can be gleaned by reference to the European Commission judgment in *Industrial and Medical Gases* [2003] OJ L 84/1. I do so advisedly, bearing in mind the caution sounded by this court in the *Federal-Mogul* judgment relating to the application of comparative jurisprudence. Be that as it may, the European Commission said the following:

"351. The Commission notes that the fact that Air Liquide and Westfalen participated in several meetings, and that the object of these meetings was to restrict competition, is confirmed by the documentary evidence in the Commission's file. The finding that the behaviour described constitutes agreements within the meaning of Article 81 (1) of the Treaty is not altered even if it is established that one or more participants had no intention to implement the joint intentions expressed by them. Having regard to the manifestly anti-competitive nature of the meetings at which intentions were expressed, the undertakings concerned, by taking part without publicly distancing themselves, gave the other participants the impression that they subscribed to what was discussed and would act in conformity with it. The notion of 'agreement' is objective in nature. The actual motives (and hidden intentions) which underlay the behaviour adopted is irrelevant."

[32] Vulcania submitted that, because the customer allocation agreements were not ratified by the major or senior players, the requirements of s 4(1)(b)(ii) had not been satisfied. I turn to consider this contention.

[33] The Tribunal rejected this defence on the basis that it was bad in both fact and the law as it was not supported by evidence. Furthermore, the Act does not require that an arrangement or understanding should have the status of a contract. As stated earlier, the approach of the Tribunal is correct in respect of the law. Regarding the facts, the evidence establishes that Vulcania submitted its tonnages and customer lists to the cartel. It is not in dispute that the purpose of the list was to establish each member's market share. Neither is there any indication that when Vulcania did so, it raised any of the concerns relating to the ratification it now relies upon. In my view, such conduct is inconsistent with Vulcania's alleged state of mind of not being bound by the agreement due to lack of ratification. Even if that were so, it still would not exonerate it from the liability envisaged in s 4(1)(b)(i) as is evident from the attendance of the cartel meetings and the division of markets by allocating customers. Sutherland and Kemp,

*Competition Law of South Africa*, at 5.59, summarise this position as follows:

"Section 4(1) (b) determines that 'dividing markets by allocating customers, suppliers, territories, or specific goods or services' is per se prohibited. Four types of market allocation are prohibited here.

Firms may not collude to allocate customers. They may not agree that certain classes of customers will be served only by particular firms eg A will supply to state institutions while B will supply to private companies.

. . . "

[34] In conclusion, the collusive conduct of fixing mesh prices, allocating customers and discounts on the part of the cartel, inclusive of Vulcania, falls squarely within the prohibition of s 4(1)(b) as the parties were in a horizontal relationship. In the light of this finding, there is no reason to disturb the finding of the Tribunal to the effect that Vulcania contravened s 4(1)(b). It follows that Vulcania's appeal must be dismissed with costs.

**The Appeals against the Administrative Penalties imposed by the Tribunal:**

[35] The legislative framework that underpins the imposition of administrative penalties is set out in s 59 of the Act which provides thus:

"59 Administrative penalties

(1) The Competition Tribunal may impose an administrative penalty only-

(a) for a prohibited practice in terms of section (4(1)(b…,

. . .

(2) An administrative penalty imposed in terms of subsection (1) may not exceed 10% of the firm's annual turnover in the Republic and its imports from the Republic during the firm's preceding financial year.

(3) When determining an appropriate penalty, the Competition Tribunal must consider the following factors:

(a) the nature, duration, gravity and extent of the contravention;

(b) any loss or damage suffered as a result of the contravention;

(c) the behaviour of the respondent;

(d) the market circumstances in which the contravention took place;

(e) the level of profits derives from the contravention

(f) the degree to which the respondent has cooperated with the Competition Commission and the Competition Tribunal; and

(g) whether the respondent has previously been found in contravention of this Act."

[36] Both Vulcania and RMS' grounds of appeal are premised on the basis that the administrative penalties imposed on them respectively, are inconsistent with the purpose of s 59. RMS specifically alleged that no penalty ought to have been imposed on it, given that it enjoyed no turnover in the financial year preceding

the imposition of the penalty by the Tribunal. Vulcania, on the other hand, contended that because its involvement in the cartel was maintained at a minimum level required to protect its business and ceased when it gained the ability to sustain itself, as well as the fact that from its evidence, it was clear that its participation did not yield any gain, no penalty should have been imposed it.

[37] In the cross-appeal, the Commission's grounds of appeal are that, first, because cartel conduct is the most egregious offence in competition law, the Tribunal should have imposed a penalty higher than the 15% of the affected turnover. Second, the Tribunal erred in its assessment of the loss or damage caused by the cartel as well the level of profit derived. Accordingly, the Tribunal should have, due to the deleterious effect of cartels on competition, not limited its consideration to monetary profit and ought to have imposed higher penalties than those imposed upon the appellants, subject to the cap in section 59(2). Furthermore, the individual circumstances of the appellants did not justify the same discount, and where a discount was justified, it should have been less than 40%.

**Evaluation**

[38] The approach to an appeal against the Tribunal's assessment and imposition of a penalty was stated in *Federal-Mogul* supra thus:

"This court does not enjoy unfettered discretion to interfere with the Tribunal's assessment and imposition of an administrative penalty. Even if we decided that a different penalty was appropriate we are not merely at large to substitute a finding for that of the tribunal. This approach is consistent with general principle that an appeal against the exercise of its discretion by a court or statutory body, the court on appeal has limited power to interfere. It can only do so on a certain well recognised grounds namely the court a quo exercises its discretion capriciously or upon a wrong principle or it has not brought its unbiased judgment in the question or it does not act for substantial reasons."

[39] In considering factors to take into account in imposing administrative penalties, the Tribunal adopted a six step approach. This approach constitutes, in part, an adaptation of the European Union guidelines relevant to s 59. It is necessary to set out the steps as the Commission's cross-appeal is premised on one of them.

"**Step one**: determination of the affected turnover in the relevant year of assessment.

**Step two**: calculation of the base amount, being that proportion of the relevant turnover relied upon.

**Step three**: where the contravention exceeds one year, multiplying the amount obtained in step 2 by the duration of the contravention.

**Step four**: rounding off the figure obtained in step 3, if it exceeds the cap provided for by section 59(2).

**Step five**: considering factors that might mitigate or aggravate the amount reached in step 4, by way of discount or premium expressed as percentage of that amount that is either subtracted from or added to it.

**Step six**: rounding off this amount if it exceeds the cap provided for in section 59(2). If it does, it must be adjusted downwards so that it does not exceed the cap, as explained by the CAC in SPC."

[40] In *Southern Pipeline Contractors and another v Competition Commission* [2011] 239 (CAC), this Court emphasized that the cap described in s 59(2) is the determination of the maximum penalty that can possibly be imposed and becomes operative only after the Tribunal has taken account of the factors set out in s59(3) and decided upon a penalty. It is then required to determine whether that proposed penalty falls within the maximum allowable penalty as provided for in s 59(2).

[41] The Tribunal in implementing its formula considered that the last full financial year in which Vulcania participated in cartel activity was the financial year ending 31 December 2007. It accepted that Vulcania's turnover for reinforced wire mesh for that year, as reflected in its financial year figures, was R31,6 million. Using the EU guidelines, it regarded 15% of the turnover as appropriate which it calculated thus 31,6 x 15% = 4,74. The amount of R4, 74 million was then multiplied by 2 (Vulcania's years of participation in the cartel) which gave rise to a figure of R9,48 million. It noted that Vulcania was not an instigator; it was coerced to join, and refrained from implementing some of the cartel's decision. However, the presence of senior members in the cartel meetings was considered to be an aggravating factor. Nonetheless, it was of the view that the mitigating factors, cumulatively examined, entitled the company to a substantial reduction of the penalty by 40% in the basic amount. The overall amount for which Vulcania became liable in the result was, R5, 6 million. According to the Tribunal, this amount does not exceed Vulcania's turnover for either 2010 or 2011 and as such it was not necessary for it to be rounded so that it fell below the cap.

[42] With regard to RMS, the Tribunal noted that the Commission distinguished between the wire mesh and hard drawn wire turnovers, but for the purpose of the penalty the affected turnover was restricted to R62 million. Applying the same 15% base, the overall amount became R9.3 million, which was multiplied by 4, resulting in a figure of R37 million. Seeing that this amount was in excess of 10 % of RMS's turnover of R363 million for the 2007 financial year, the Tribunal reduced it to R36 million. This amount was further reduced by a 40% discount to R21, 6m. The Tribunal justified the discount on the basis that although in the case of RMS there were aggravating factors, these were outweighed by the fact that it (RMS) disrupted the cartel both prior to its joining it and during its period of involvement.

**RMS's submissions**

[43] Mr Cilliers, who appeared together with Ms Engelbrecht on behalf of the first appellant, submitted that the Tribunal misdirected itself when it imposed a penalty upon RMS. A penalty calculated on the basis of a turnover of the last year of the company's economically active year rather than the financial year immediately preceding the imposition of the penalty ran contrary to the clear wording of s 59(2) of the Act. Had the Tribunal followed the

wording of s 59(2), no penalty could have been imposed on RMS, as it had nil turnover in the year immediately preceding the imposition of a penalty. In particular, it was contended that, in terms of s 59, the Tribunal is required to make an appropriate order within its jurisdictional limits. This is especially so because the Act provides for a single financial year. Furthermore, by resorting to a purposive approach in interpreting s 59(2) and imposing the penalty on RMS, it acted arbitrarily and in variance with the wording of the key purpose of the administrative penalty regime, when it justified its approach as follows:

"In our view the clear purpose of section 59(2) of the Competition Act is to prevent a penalty being levied which is disproportionate in relation to the size of the firm concerned and hence the cap imposed on turnover. Since however the preceding financial year may not always reflect the firm's 'real economic situation', as the ECJ referred to it, it is permissible to rely on another year which reflects the firm's turnover in a year of 'normal economic activity'".

According to RMS, this approach to penalties would have the effect of crippling or extinguishing a firm and could not have been intended by the legislature. If this gives rise to a *lacuna*, the court cannot substitute uncertainty for absurdity.

[44] In relation to the Commissioner's cross-appeal, RMS reiterated the contentions alluded to above and emphasized that s

59(3) enjoins the Tribunal to take into account all the prescribed factors. This in essence entails the individualized consideration of the evidence, not a generalised approach and presumed effects of the cartel activity aimed at solely punishing cartel conduct. In *Southern Pipelines Contractors* supra, this court bemoaned the absence of evidence regarding significant considerations that the Tribunal was mandated to take into account, including 'loss or damages suffered as a result of the contravention, the level of profit derived from the contravention and the effect on the market'.

**Vulcania's submissions**

[45] Mr McNally, who appeared for Vulcania, criticised the fact that the Tribunal, when it imposed the penalty, treated all the years the same, whereas Vulcania's annual turnover was not the same over the years. According to Vulcania, the imposition of penalties is not a mechanical process. Certain factors ought to weigh more than others. Furthermore, the Tribunal accepted that there was no meaningful participation on its part in the cartel and its involvement took place during the dying years of the cartel. The effect of participation also ought to be taken into account. In addition, the Tribunal in its judgment failed to take into account that Vulcania joined the cartel when it was at its weakest and shortly thereafter

the meetings ceased. For all of these reasons, so contended Vulcania, the penalty imposed by the Tribunal was disproportionate to the role it played and fell foul of s 59(2) as the cap imposed was irrational as it bore no relation to the trading activities.

**The Commission**

[46] Mr Maenetje, who appeared with Mr Ngcangisa for the Commissioner, contended that there is justification in s 59(3) for use of the affected turnover as a basis for determining the appropriate penalty before applying the provisions of s 59(2). In his opinion, the use of affected turnover achieves proportionality between the nature of the offence and the benefit derived therefrom, the interests of the consumer community and the legitimate interests of the offender. He further submitted that this court is entitled to interfere with the penalties imposed by the Tribunal as its step 2 has no foundations in s 59. Mr Maenetje also submitted that this step seemed to bend over backwards to accommodate a situation where the cap in s 59(2) was not exceeded before the Tribunal considered the mitigating and aggravating factors. In addition, the basic amount of 15% was too

low in respect of cartel conduct which constituted the most egregious of all contraventions; it is deleterious and causes substantial harm in the market. This ought to be presumed when factors in s 59(3)(a) and (d) are considered. In the view of the Commission, the Tribunal failed to attach due weight to the need to discourage entry into cartel conduct. Besides, it is an error to insist on quantification of loss or damage or the level of profit derived in determining penalties in cartel cases. Similarly, the discount of 40% is too high when regard is had to the impact of cartels. It effectively undermines the objective of deterrence; and in any event, the Tribunal ought not to have implemented uniform discounts; instead, it ought to have tailored them such that individual circumstances applied to the appellants.

**Evaluation**

[47] It is necessary for the purpose of evaluation to restate the provisions of 59(2):

"An administrative penalty imposed in terms of subsection (1) may not exceed 10 per cent of the firm's annual turnover . . . during the firm's preceding financial year."

Two crucial questions flow from this section:

1. Whether the preceding financial year must be understood to mean the firm's last year of economic activity or the year preceding the imposition of the administrative penalty.
2. Whether the words "annual" and "year" indicate that the subsection refers to a single financial year.

A third issue which was raised in this appeal relates to the calculation of the administrative penalties applicable to the respective appellants.

[48] The first two issues turn on the interpretation of s 59 (2). The proper approach to statutory interpretation has been set out by Wallis JA, in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 SCA at 603 - 604 para 18 as follows:

"[18] The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose for which it is directed and the material known to those responsible for its production. Where more than one meaning is

possible each possibility must be weighed in the light of these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads insensible businesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context, it is to make a contract for the parties than the one they in fact made. 'The inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

[49] With this background in mind, I turn to consider the interpretation of s 59(2). The Oxford English Dictionary gives to the word 'precede' the following meaning:

"To come before in time, to happen, occur, or exist before: to be earlier than or anterior to."

It follows that the textual meaning to be attached to the term 'preceding financial year' is the financial year preceding the imposition of the administrative penalty. Similarly, the literal interpretation to be accorded to the term "annual turnover" is that it refers to a single year.

[50] This interpretation presents a number of difficulties which may lead to an absurdity that could never have been contemplated by the legislature. For example, as correctly pointed out by Mr Maenetje, if a firm had been involved in cartel activity for five years and had for the period preceding the imposition of a penalty ceased to trade, and thus had a nil turnover in the year immediately preceding the imposition of the penalty, it would mean that for all the years it had been benefitting from the cartel, no sanction could be imposed. The following example illustrates the problem. Firm A is a key participant in a national cartel. In October 2010, a complaint is lodged in terms of s 4(1) (b) of the Act and is referred to the Tribunal. The hearing is finalised in June 2013. Between January 2011 until March 2012, Firm A does not trade. By May 2012 it resumes trading. Its financial year is between 1 March to 25 February. As it has a nil turnover in the immediately preceding year, no penalty can be imposed, save if the suspension of trade was a sham.

[51] This scenario is repugnant to the very purpose of the legislation. (See *Commissioner SARS v Multichoice Africa (Pty) Ltd & another* (218/10) [2011] ZASCA 41 (29 March 2011). In my view, there is nothing in the Act, either expressly or impliedly

stated, that could indicate that the drafters of the legislation intended that no penalties should be imposed for contraventions in these circumstances. In similar vein, the dictionary meaning of the word ‘preceding’ cannot be restricted to ‘immediately’ preceding. The determination of a penalty must for all intents and purposes relate to the time the firm was trading otherwise the Act will serve no purpose.

[52] It is clear to me that in order to give effect and coherent meaning to the Act, s 59 must be interpreted purposively. In so interpreting this section, the starting point ought to be the purpose of the Act. To this end, s 2 provides that:

“The purpose of this Act is to promote and maintain competition in the Republic in order to:

(a) to promote the efficiency, adaptability and development of the economy;

(b) to provide consumers with competitive prices and product choices;

(c) to promote employment and advance the social and economic welfare of South Africans;

(d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;

(e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and

(f) to promote greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons."

[53] This section provides a contextual indication of the legislature's intention. This approach is affirmed by the *Competition Commission of South Africa v Senwes* Ltd 2012 (7) BCLR 667 (CC) when commenting on the approach to the interpretation of the Act with regard to referral of complaints, the court noted that:

"There is no indication in the Act that the interpretation and determination of the ambit of the referral should be narrowly or restrictively interpreted. Excessive formality would not be in keeping with the purpose of the Act."

Although this was stated in the context of the referral procedure, according to Mr Maenetje, by parity of reasoning it is equally applicable to the contentious provisions in this appeal. Further support for the adoption of the purposive approach can be found in *Southern Pipeline Contractors* where it was stated that:

"[9] Given the constitutional dispensation in terms of which the Act is located, and the further injunction of section 39(2) of the Constitution of the Republic of South Africa 108 of 1996 that, a court must promote the spirit, purport and object of the Bill of Rights. . . ."

[54] The purpose of administrative penalties is to punish and deter firms for the contraventions of the Act. *Khumalo, Mashiane and Roberts* in their paper titled *Harm and Overcharge in the South African Precast Concrete Products Cartel* give an overview of the effects of cartel activity and state thus:

". . . our study does indicate that cartels are nonetheless very harmful to consumers and the economy in general, and that the effects importantly extend far beyond the specific turnover on which prices are mantained at above competitive levels. These effects include on consumers who are denied alternatives, the dampening of non-price rivalry, and the undermining of dynamism from such arrangements."

[55] Section 59(1) empowers the Tribunal to impose penalties, inter alia, for contraventions of s 4(1)(b) of the Act, affords it guidelines for determination of appropriate penalties. Such penalties should not exceed the cap in s 59 (2). When the Tribunal considers an appropriate penalty, it must determine the level of profit derived from the contravention. To do so, it must first identify a turnover from which the profit can be established. Logically, the turnover can only be determined by reference to the time when the firm was trading. Section 59(2) operates on the factual premise that turnover was achieved in the financial year preceding the imposition of the penalty. Stated differently, it presupposes that

there was a full financial year of normal economic activity immediately preceding the imposition of the penalty. On this basis, it makes perfect sense in my view to interpret the 'preceding' year to mean the year in which the firm traded. Where no turnover was achieved, the cap should not operate.

[56] As illustrated above, the interpretation contended for by Mr Cilliers is untenable because **,** not only does it defeat the purpose of the Act, but it would enable firms involved in cartel activities to circumvent the Act and avoid punishment by simply ceasing to trade in sufficient time prior to the adoption of the Tribunal decision.

[57] Returning to the calculation, the affected turnover should include the number of years the firm was involved in the cartel. This approach is in line with that adopted by the Court of Justice in *Britannia Alloys & Chemicals v Commission of the European Communities* , (case No. C76-06 on 7 June 2007) which when faced with facts similar to the matter at hand reasoned as follows:

"25. It is clear from the above considerations that, in determining the "preceding business year" , the Commission must assess, in each specific case and having regard to both to the context and the objectives pursued by

the scheme of penalties created by Regulation No 17, the intended impact on the undertaking in question, taking into account in particular a turnover which reflects the undertaking's real economic situation during the period in which the infringement was committed . . .

30 Accordingly, where, as in the present case, the undertaking concerned has not achieved any turnover for the business year preceding the adoption of the Commission decision, the Commission is entitled to refer to another business year in order to be able to make a correct assessment of the financial resources of that undertaking and to ensure that the fine has a sufficient deterrent effect."

It further held that:

"The Court of First Instance therefore did not err in law by holding that the Commission could refer, pursuant to the first subparagraph of Article 15(2) of Regulation No 17, to the last complete business year preceding the adoption of the contested decision . . ."

[58] It must be acknowledged that the approach I have adopted in this matter appears to be at variance with the remarks made by this court in *Southern Pipeline Contractors* to the following effect:

"[61] Although not strictly necessary for the determination of this case, I intend to accept the approach adopted by Sutherland and Kemp Competition Law of South Africa at 12 – 11 that a plain reading of s59(2) supports a conclusion that the base year for the determination of the cap is the financial year preceding that in which the penalties were imposed. This conclusion

therefore illuminates the animating idea that the legislature was concerned that the penalty, although severe, should not, on its own be destructive of the offending party's business; hence the restraint of the cap."

However, the court in *Southern Pipeline* was not confronted with the specific problem of a nil return in the immediately preceding year. When the court in *Southern Pipeline* referred to the preceding year, it did so to reinforce its view that the penalty should not destroy a business. It did not deal with the problem confronting this Court and to that extent, its approach requires a qualification.

Hence, the 'preceding year' in s 59 (2) means the firm's year of economic activity.

It follows that the approach adopted by the Tribunal cannot be faulted.

**The Administrative penalties**

[59] The Tribunal imposed an administrative penalty in the amount of R5,600 000.00 on Vulcania and R21,600 000,00 on RMS. The purpose of administrative fines, is captured with clarity by Wils, in an article with the title optimal *Antitrust Fines: Theory and Practice:*

"Fines are however an important instrument in the prevention of violations. As already indicated, the imposition of fines on companies that are found to have breached the antitrust prohibitions could in three ways contribute to preventing such violations. First, it may have a different effect, by creating a credible threat of being prosecuted and fined which weighs sufficiently in the balance of expected costs and benefits to deter calculating companies from committing antitrust violations. Secondly, it may at the same time have a moral effect, in that it sends a message to the spontaneously law-abiding, reinforcing their commitment to the antitrust prohibitions. Thirdly, through leniency policies and through the use of other aggravating or attenuating circumstances affecting the amount of the fine imposed, the cost of setting up and running cartels can be raised."

In short, and as set out in this court's jurisprudence, the imposition of penalties entails a proportionality exercise.

[60] In exercising its discretion, the Tribunal, acknowledged that Vulcania was not an instigator. It accepted that to a certain extent, it was strong-armed by the bigger firms to join the cartel, and its profit therefrom was slight and it also did not implement the cartel decisions. However, it did not escape the Tribunal that the most senior members of Vulcania attended the cartel meetings. Hence, the Tribunal carefully weighed all the relevant factors and in my view, the penalty imposed on Vulcania is justified.

[61] With regard to RMS, the Tribunal justified its 40% reduction, (as was also applied to Vulcania) on the basis that the evidence established that RMS disrupted the cartel meetings prior to its involvement. The role played by RMS is much more significant than Vulcania's. It will be recalled that RMS's executive chairman Mr Di Nicola attended a meeting where it was agreed that members should respect each other's operations. Mr Hankey, a senior manager at RMS, acting in concert with Mr Di Nicola implemented the decisions. RMS was also instrumental in recruiting Vulcania to join the cartel. What aggravates its role is that RMS, despite having been advised by Mr MacDonald that the cartel conduct was prohibited, continued to attend secret meetings and persisted with this conduct. It only stopped when the Commission commenced its investigation of the cartel activity. Taking all these factors into account, I find no basis to interfere with the Tribunal's exercise of its discretion. In the result, the penalty imposed on RMS is in my view appropriate.

**The Cross-Appeal**

[62] I have already set out the basis on which the Commission assails the Tribunal's administrative penalty determination. Suffice

to restate that the main basis is that the penalties imposed were too lenient. Having found that the penalties imposed by the Tribunal were justified, I think, it would be unjustified to decide differently in respect of the cross-appeal. The reasoning alluded to in the examination of whether the penalties were justified manifestly applies equally to the cross-appeal. The purpose of s 59 is not to crush the business of the affected firms, but to deter. Whilst I consider the conduct of the appellant to be egregious, in my view, the objectives of the Act have been achieved by the penalties imposed by the Tribunal.

[63] What remains to be considered is whether step four of the Tribunal's approach constitutes an inappropriate step and is not justified by the scheme of the Act. The Commission did not seriously pursue this line of argument. In its Heads of Argument, it unequivocally states that it "does not have objection to the Tribunal's overall approach to the determination of penalties as set out in its decision, which in essence is an attempt to achieve a level of certainty and to remain faithful to the provisions of s 59(20) and (3)". I have difficulty with the isolation of one step from the entire proceedings as a basis for the appeal given that in the final analysis, the administrative penalty so imposed serves the

purpose and objective of the Act. To my mind, the cross-appeal unnecessarily places emphasis on form rather than substance. The inescapable conclusion that flows from this approach is that the cross-appeal is to be dismissed with costs.

[64] In the light of the aforegoing, the following order is made:

1. The first appellant's appeal is dismissed with costs.
2. The second appellant's appeal is dismissed with costs
3. The cross – appeal is also dismissed with costs.

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NDITA, AJA

DavisJP and Dambuza JA concurred

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CORAM **THE HONOURABLE NDITA AJA**
**(DAVIS JP, et DAMBUZA JA) concurs**

FOR THE 1st APPLICANT - Adv. SC Cilliers (SC) & Adv MJ Engelbrecht

INSTRUCTED BY - Cliffe Decker Hofmeyr Inc

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| FOR THE 2nd APPLICANT | - | Adv. JPV McNally (SC) |
| INSTRUCTED BY | - | Chritelis Artemidis |
| FOR THE RESPONDENT | - | Adv. N H Maenetje (SC) & Adv. G Ngcangisa |
| INSTRUCTED BY | - | |
| DATE OF HEARING | - | 15 November 2013 |
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