

Mittal to cough up R1,5bn for cartel conduct

The Competition Commission has shown it means business by hefting a massive R1,5bn fine on ArcelorMittal SA (Mittal) for cartel conduct. Nor will it show mercy on previously state-owned enterprises. The company operated as Iscor Limited before it was privatised in 1989.



The fine was a result of Mittal's involvement in the long steel and scrap metal cartels in contravention of section 4(1)(b) of the Competition Act 89 of 1998. This section prohibits competitors from engaging in price fixing, allocating customers or dividing markets or collusive tendering, the so-called cartel conduct. A firm that is found to have contravened this section of the Competition Act can be liable for a fine that may amount to up to 10% of that firm's annual turnover in South Africa and its exports from South Africa.

"The fine has firmly put the spotlight on the importance of company boards or owners to consistently appraise their competition law compliance programmes in order to mitigate against the risk of punitive fines by the competition authorities," says Maphanga Maseko, associate in competition law at TGR Attorneys.

"It is not clear to us at this stage if there is any interest that has been levied on the fine," adds Maseko. "We will have to wait for the competition tribunal to issue a consent order confirming the terms of this settlement agreement to ascertain if there is any interest payable as contemplated in the commission's Guidelines for the Determination of Administrative Penalties for Prohibited Practices," adds Maseko.

Pricing abuse complaint

Mittal also agreed to resolve the pricing abuse complaint related to the flat steel market without admitting that such conduct constituted a contravention of the Competition Act.

In addition to the R1, 5bn fine, Mittal also undertook to limit its margins on flat steel products sold in South Africa to a cap of 10% and also committed to a R4,64bn capital expenditure over the next five years to negate the pricing complaint related to flat steel products.

“The margin cap of 10% for flat steel products sold in South Africa is quite interesting in light of the tough economic environment of low growth and imports from China. While it is encouraging to see creative remedies being proposed by the commission, it is not clear what the cap margin of 10% is intended to achieve and whether or not that will stimulate competition in the flat steel market in South Africa.”

A clear warning

“The Competition Act does not, in our view, seem to take into account the ability of a firm to pay a penalty, thus exposing firms to fines that may lead to closure or downsizing in some instances. This may seem to be an omission in the Competition Act, but a contrary view would be that the fines are a deterrence against cartel conduct. Likewise, the threat of criminal liability for director(s) as envisaged in the Amendment Act would be a further deterrence against cartel conduct.”

“The fine is a clear warning to company boards, even those listed on the JSE, that they must have a holistic approach rather than reactionary approach to competition law compliance and ensure that their employees receive consistent training and re training to mitigate against the risk of punitive penalties, which may lead to the destruction of shareholder value and possible lawsuits by shareholders against those directors for breach of fiduciary duties.” says Maseko.

South Africa is open for business but that does come with its own adverse risks if you fall foul of the Competition Act, amongst others.

“The settlement would allow Mittal to focus on its business without a cloud of a huge fine hanging over it in a tough economic environment of low growth,” he concludes.

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