



TERMS OF REFERENCE

For the appointment of an Industry Expert

To assist the Competition Commission ("the Commission") with the assessment allegations raised and developments in the Steel Industry, including but not limited to the effect of Export Parity Pricing of Iron Ore, if any.

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1. INTRODUCTION AND PURPOSE

- 1.1. The Competition Commission ("the Commission") is a statutory body constituted in terms of the Competition Act No 89 of 1998, as amended ("the Competition Act"). It is empowered to investigate, control, and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy.
- 1.2. The Commission is currently seeking services of an industry expert with extensive knowledge of the steel industry, globally and in South Africa.

2. BACKGROUND

- 2.1. On 18 December 2020, ArcelorMittal South Africa Limited, ("AMSA" or "the Complainant") lodged a complaint in terms of section 49B(2) of the Competition Act, 89 of 1998, as amended ("the Act") against Sishen Iron Ore Company Propriety Limited ("SIOC" or "the Respondent") and its parent company Kumba Iron Ore Limited ("Kumba") for alleged contravention of the Act.
- 2.2. The complaint arises from a supply arrangement between AMSA and SIOC which enables SIOC to supply AMSA with iron ore requirements on agreed terms and conditions ("Supply Arrangement"). AMSA alleges that the pricing regime contemplated in terms of the Supply Arrangement constitutes excessive pricing to the detriment of both consumers and customers. AMSA further alleges that the Supply Arrangement has resulted in substantial adverse public effects in that it has resulted in temporary domestic plant closures and retrenchments within AMSA. According to AMSA, SIOC's conduct is in contravention of section 8(1)(a) of the Act. It is alleged that the conduct commenced from 1 January 2016 and is on-going.
- 2.3. The product subject of this complaint is Iron Ore. Iron Ore is used as an input in the production of steel. The information gathered during the investigation revealed that there is no substitute of iron ore when it comes to production of steel.
- 2.4. AMSA's concern is that SIOC charges excessive prices for Iron Ore and therefore, as an intermediate consumer of iron ore who uses iron ore as an input to produce steel it incurs high input costs in its's production of steel, thereby resulting in artificial high steel prices in the country and further harming steel consumers. Further, AMSAs' view is that SIOCs' iron ore pricing has also resulted in closure of its' plant in Saldanha Bay, which resulted in retrenchments and loss of income to members of the society.

3. SCOPE OF WORK

3.1 The Commission in the course of finalising its' investigation of the complaint and requires the expert advice from the steel industry expert in relation to the allegations and the preliminary findings in this matter. The Industry Expert will assist the investigation by providing expert advice in relation to:

- 3.1.1 Preliminary findings of the investigation;
- 3.1.2 Views on Export Parity Pricing and the impact thereof on the competitiveness of the steel industry;
- 3.1.3 The impact of the alleged conduct on the Complainant's ability to compete; and
- 3.1.4 Developments in the steel industry and pricing of iron ore.

4. CONFIDENTIALITY CLAIM

- 4.1 All data and information received from the Competition Commission for the purpose of this assignment are to be treated confidentially and are only to be used in connection with the execution of these Terms of Reference.
- 4.2 The contents of written materials obtained and used in this assignment may not be disclosed to any third parties without the expressed advance written authorization of the Competition Commission.
- 4.3 The technical consultant will be expected to conclude and sign a confidentiality agreement in order to protect the information of the Commission and its business processes.

5. INTEGRITY AND CONFLICT OF INTEREST

- 5.1. The Industry Expert will be required to demonstrate the highest level of integrity and diligence in performing all professional assignments and will accept only assignments for which there is a reasonable expectation that such assignments will be completed with professional competence.

- 5.2. The successful Industry Expert will be required to conduct the assignments and compile the required reports with the utmost integrity, honesty and collect sufficient, appropriate evidence to assist the Commission with its assessments.

6. INTELLECTUAL PROPERTY

- 6.1. The Commission will take ownership of any reports, any work and other intellectual property that will arise out of this assignment.

7. REPORTING

- 7.1. The appointed Industry Expert shall be given instructions by- or shall report to- the Divisional Manager of the Market Conduct Division or any delegated official appointed by the Divisional Manager.

8. SCHEDULE

- 8.1. The appointed Industry Expert is expected to complete this assignment and submit a report/opinion within 14 days from appointment.

9. TECHNICAL CONSULTANT SERVICES PRICING

- 9.1. The amount quoted must be denominated in the South Africa Rand value, and should include VAT.
- 9.2. The pricing for the technical resources must be a rate per hour for 14 days with a total amount.
- 9.3. The above hours are an estimate and guide for the duration of 14 days.
- 9.4. Final hours will be specified by the Competition Commission.

10. EXPECTED OUTPUT

- 10.1. Upon completion of the assignment, the Industry Expert is expected to provide the Commission with an opinion and/or report regarding the scope of work identified above.