



TERMS OF REFERENCE

For the appointment of a Renewable Energy Expert ("Technical Consultant")

To assist the Competition Commission ("the Commission") with the assessment of justifications raised by Global Roofing Solutions.

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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 a technical consultant with extensive knowledge of the renewable energy (especially the solar energy and solar mounting structures) and the metal roofing industry.

2. BACKGROUND

- 2.1. On 18 December 2019, the Commission received a complaint from Metal Roof Innovations currently trading as S5 (“the Complainant”) in terms of section 49B (2) of the Competition Act, against Global Roofing Solutions (“the Respondent”).
- 2.2. The Complainant alleges that the Respondent supplies concealed fix and standing seam roofing to consumers in South Africa with a material warranty which covers the customer in the event of the roof perforating or the paint fading. This warranty is provided on condition that the Respondent’s solar panel mounting clamps (any roofing attachments) are used when installing solar panels. For instance, the Respondent’s brochure states that “the GRS [Respondent] extended Concealed fix installation warranty will only be applicable if the GRS [Respondent] BB-PV Clamp is used when installing photovoltaic panel by an approved contractor”.
- 2.3. The product subject of this complaint are solar panel mounting clamps (“solar clamps”). These are products are used to mount solar panels onto steel roofing. To mount solar panels to any roof, a method of fixing is required. Where steel roofs are involved, the fixation of the solar panel framework to the roof can be either by piercing the roof with bolts or screws or by non-piercing clamps (used in concealed fix steel roofing). The Commission is of the view that both mounting methods are utilized in the South African marketplace, depending on the type of steel roofing solar mounting is required.
- 2.4. The Complainant’s concern is that the Respondent uses its presence and alleged dominance in the steel roofing industry as a manufacturer of steel roofs to expand its presence in the supply of solar clamps by way of a roofing warranty which is honoured on condition that the customer uses the Respondent’s clamps (for steel roofs supplied by the Respondent) when mounting solar panels.
- 2.5. The Complainant submits that it is excluded from supplying mounting clamps for the Respondent’s concealed fix and standing seam roofing products because of the conditions on the warranty. The warranty guarantees the customers over a period of 15 years and the conduct is ongoing. The Complainant further submits that the Respondent is a dominant firm in the market for the supply of

standing seam and concealed fix roofing products. The Complainant is of the view that the Respondent has contravened section 8(1)(d)(i) and/or 8(1)(c) of the Competition Act,

- 2.6. The Commission in the course of investigating the complaint sent an information request to the Respondent and the raised several defences. The technical consultant will assist the investigation with assessing the validity of the defences raised by the Respondent. The Respondent submitted that the warranty only applies when its solar clamps have been used and gave the following justifications:

- 2.6.1. It is satisfied that its own solar panel clamps will not fail in use;
- 2.6.2. Its concealed fix clips, which secure the roof to the purlin, will not fail when GRS solar clamps are used to install solar panels on the roof; and
- 2.6.3. The metal used in its clamps is compatible, chemically, with its metal roofing products.

3. SCOPE OF WORK

- 3.1. The technical consultant will assist the Commission with the assessment of justification raised by the Respondent and any related technical issues identified in the course of the investigation.
- 3.2. The role of the technical consultant is to provide technical expertise on the following:
- 3.2.1. the application and/or substitutability of different types of solar mounting clamps;
 - 3.2.2. the compatibility of the Respondent's metal roofing with competing solar mounting clamps; and
 - 3.2.3. review and provide expert opinion on justifications relating to warranty conditions listed in paragraph 2.6. above.

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 technical consultant 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 technical consultant 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 technical consultant appointed shall be given instructions by or shall report to the Divisional Manager -Market Conduct Division or any delegated official.

8. SCHEDULE

- 8.1. The appointed technical consultant 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 technical consultant is expected to provide the Commission with an opinion and/or report regarding the technical expertise of solar mounting clamps used on metal roofing structures and assessment of justifications raised by the Respondent.