

SOUTH AFRICA / JUDGMENT

Competition Commission of South Africa v Monnye and Khomo Construction CC (CO160Jan22; 2021FEB0014) [2022] ZACT 46; [2022] 1 CPLR 5 (CT) (27 January 2022) [2022] ZACT 46

COURT

Competition Tribunal

BEFORE

AW Wessels, E Daniels, L Mncube

CASE / FILE NUMBER

CO160Jan22

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COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO160Jan22

In the matter between:

The Competition Commission of South Africa Applicant

And

Monnye and Khomo Construction CC Respondent

Panel: AW Wessels (Presiding Member)

E Daniels (Tribunal Member)

L Mncube (Tribunal Member)

Heard on: 27 January 2022

Decided on: 27 January 2022

CONSENT AGREEMENT

The Tribunal hereby confirms, in terms of section 58(1)(b) of the Competition Act,

Date: 27 January 2022

Presiding Member Mr Andreas Wessels

Concurring: Mr Enver Daniels and Dr. Liberty Mncube

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO:

CC CASE NO: 2021FEB0014

COMPETITION COMMISSION OF SA

Applicant

MONNYE AND KHOMO CONSTRUCTION CC Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND MONNYE AND KHOMO CONSTRUCTION CC, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89 OF 1998

Preamble

The Competition Commission (“Commission”) and Monnye Khomo Construction CC (“Monnye”) hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended (“the Act”), in respect of a contravention of section 4(1)(b)(iii) of the Act.

1. DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply

1.1. “Act” means the Competition Act No. 89 of 1998, as amended.

1.2. “Monnye and Khomo Construction CC” means a close corporation duly registered in accordance with the laws of the Republic of South Africa, with its registered place of business situated at 12 Botana Office Park, Embankment Road, Centurion.

1.3. “Mokgatshelwa Projects and Trading CC” means a close corporation duly registered in accordance with the laws of the Republic of South Africa, with its registered place of business situated at 12 Botana Office Park, Embankment Road, Centurion.

1.4. “Commission” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.5. “Commissioner” means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act.

1.6. “Consent Agreement” means this agreement duly signed and concluded between the Commission and Monnye.

1.7. “Gauteng Provincial Treasury” means a Treasury Department for the Gauteng Province, with its principal place of business at 75 Fox Street, Imbumba, House, Johannesburg

1.8. “GPT Tender” means tender issued by the Gauteng Provincial Treasury under tender number: GT/GPT/069/2018 for the supply and delivery of groceries and toiletries to the Gauteng Provincial Government (“GPG”) Institutions and State Information Technology Agency (“SITA”).

1.9. “Parties” means the Commission and Monnye.

1.10. “Tribunal” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at the 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION’S INVESTIGATION AND FINDINGS

2.1. On 24 February 2021, the Commission received a complaint from the Gauteng Provincial Treasury (“GPT”) in terms of section 49B(2)(b) of the Competition Act 89 of 1998, as amended (“the Act”). The GPT alleged that Mokgatshelwa Projects and Trading CC (“Mokgatshelwa”) and Monnye colluded when tendering for the GPT Tender.

2.2. The GPT Tender was for the supply and delivery of groceries and toiletries to the GPG Institutions and SITA.

2.3. This complaint was investigated under case number 2016MAR0077.

2.4. The Commission’s investigation found that on or about February 2021, Mokgatshelwa and Monnye assisted each other when completing tender documents for GT/GPT/069/2018 Tender as evidenced by, inter alia, similarities in their bid documents including pricing.

2.5. The conduct between Mokgatshelwa and Monnye amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION

3.1. Monnye does not admit that it has acted in contravention of section 4(1)(b)(iii) of the Act as described in paragraph 2 above.

3.2. The Commission has agreed to enter into the Consent Agreement without admission of liability with Monnye based on the following factors:

3.2.1 Monnye is a small firm;

3.2.2 Given the small size of Monnye as well as the small size of the tender, the Commission does not consider it worthy to engage in protracted and costly litigation with Monnye;

3.2.3 Monnye has not won the tender in question; and

3.2.4 Monnye has never contravene the Act before.

4. CO-OPERATION

4.1. Monnye has provided full and expeditious co-operation to the Commission concerning the prohibited practice.

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1. Monnye undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act in future.

5.2. Monnye will develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all its members and board of directors do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection and monitoring and detection of any contraventions of the Act.

5.3. Monnye shall circulate a statement summarising the contents of this Consent Agreement to all its members and board of directors within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

6. ADMINISTRATIVE PENALTY

6.1. Monnye agrees that it is liable to pay an administrative penalty of R71 225 (Seventy-One Thousand, Two Hundred and Twenty-Five Rand). This amount does not exceed 10% of Monnye's annual turnover for the financial year ending February 2021

6.2. Monnye will pay R71 225 (Seventy-One Thousand, Two Hundred and Twenty- Five Rand) to the Commission within 6 months in two equal instalments after the confirmation of the Consent Agreement as an order of the Tribunal. The first payment to be made within 30 (thirty) days after confirmation of the settlement agreement as an order of the Tribunal.

6.3. The payment shall be made into the Commission's bank account, details of which are as follows:

Bank name:

Absa Bank

Branch name:

Pretoria

Account holder:

Competition Commission Fees

Account Account number: [...]

Account type:

Current Account

Branch Code:

632005

Reference:

2021FEB0014/MONNYE

6.4. The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

7. MONITORING

7.1. Monnye undertakes to submit a copy of the compliance programme referred to in clause 5.2 to the Commission within 60 calendar days of the date of confirmation of this Consent Agreement as an order to the Tribunal.

7.2. All reports in relation to conditions set out in this agreement, including but not limited to compliance programmes, proof of payment(s) etc, shall be submitted to the Commission at CartelSettlements@compcom.co.za.

8. FULL AND FINAL SETTLEMENT

8.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under case number: 2021FEB0014 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Monnye relating to the conduct that is the subject of the Commission's investigation under case number: 2021FEB0014.

Dated and signed at _Midrand on the _6th day of _December 2021.

FOR THE COMMISSION:

TEMBINKOSI BONAKELE

Commissioner

Dated and signed at PRETORIA on the _14 day of _DECEMBER 2021.

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