

SOUTH AFRICA / JUDGMENT

Competition Commission of South Africa v QQQ Trading Enterprise (Pty) Ltd (CO032May22) [2022] ZACT 58 (21 June 2022) [2022] ZACT 58

COURT

Competition Tribunal

BEFORE

Y Carrim, I Valodia, A Ndoni

CASE / FILE NUMBER

CO032May22

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COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO032May22

In the matter between:

The Competition Commission of South Africa Applicant

And

QQQ Trading Enterprise (Pty) Ltd Respondent

Panel: Y Carrim (Presiding Member) I Valodia (Tribunal Member) A Ndoni (Tribunal Member)

Heard on: 21 June 2022

Decided on: 21 June 2022

SETTLEMENT AGREEMENT

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and QQQ Trading Enterprise

(Pty) Ltd annexed hereto.

Signed by: Yasmin Tayob Carrim

Signed at: 2022-06-21 13:49:09 +02:00

Reason: Witnessing Yasmin Tayob Carri

Presiding Member Ms Yasmin Carrim

Date: 21 June 2022

Concurring: Prof. Imraan Valodia and Ms. Andiswa Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO:

CC CASE NO: 2019FEB0033

COMPETITION COMMISSION OF SA

Applicant

QQQ TRADING ENTERPRISE (PTY) LTD Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 490 READ WITH SECTION 58(1)

(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND QQQ TRADING ENTERPRISE (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) AND (iii) OF THE COMPETITION ACT 89 OF 1998

Preamble

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. "QQQ Trading" means a company duly registered in accordance with the laws of the Republic of South Africa, with its registered place of business situated at 112 Eenheid Palace, Eersterust Extension 2, Gauteng.

1.3. "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 Tl Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.4. "Commissioner" means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act.

1.5. "Investigation" means investigation of the Complaint.

1.6. "Complaint" means the complaint submitted by the Department of Correctional Services on 21 February 2019 in terms of section 49B(2)(b) of the Act under case number 2019Feb0033.

1.7. "Consent Agreement" means this agreement duly signed and concluded between the Commission and QQQ Trading.

1.8. "Department of Correctional Services" means a government department, responsible for providing prison administration and inmates housing services in South Africa, with its principal place of business situated at 124 W.F Nkomo street, Poyntons Building, Pretoria, Gauteng.

1.9. "DCS Tender" means tender issued by the Department of Correctional Services under tender number: GTC 9/2017, GTC 10/2017 and GTC 11/2017 for the supply, delivery and offloading of coal peas at correctional facilities under the control of the Department of Correctional Services.

1.10. "uparties" means the Commission and QQQ Trading.

1.11. "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 21 February 2019, the Commission received a complaint from the Department of Correctional Services (the DCS) in terms of section 49B(2)(b) of the Act. The DCS alleged that QQQ Trading and ERB Investments (Pty) Ltd (ERB Investments) being firms in a horizontal relationship colluded when tendering for the DCS tenders.

2.2. The DCS tenders were for the supply, delivery and offloading of coal peas. Coal peas are used in the DCS correctional facilities for boiling water and cooking.

2.3. This complaint was investigated under case number 2019Feb0033.

2.4. The Commission's investigation found that on or about November 2017, QQQ Trading and ERB Investments assisted each other when completing tender documents for the DCS Tenders. In this regard, the investigation revealed that, in addition to other factors, directors of QQQ Trading and ERB Investments submitted bids with a similar price in respect of Kgosi Mampuru correctional facility and also submitted bids with prices which vary with consistent small margins in respect of other correctional facilities.

2.5. The conduct between QQQ Trading and ERB Investments amounts to collusive tendering in contravention of section 4(1)(b)(i) and (iii) of the Act.

3. ADMISSION

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

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

3.2.1 QQQ Trading is a small firm;

3.2.2 QQQ Trading is a first-time offender; and

3.2.3 It has never contravened the Act before.

4. CO-OPERATION

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

5. AGREEMENT REGARDING FUTURE CONDUCT

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

5.2. QQQ Trading 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. QQQ Trading 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. QQQ Trading agrees that it is liable to pay an administrative penalty of R30 000 (Thirty Thousand Rand). This amount does not exceed 10% of QQQ Trading's annual turnover for the financial year ending February 2019.

6.2. QQQ Trading will pay R30 000 (Thirty Thousand Rand) to the Commission within 30 days after the confirmation of the Consent 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

Branch name:

Bank Pretoria

Account holder:

Competition Commission Fees Account

Account number:

[...]

Account type:

Current Account

Branch Code: Reference: 632005 2019FEB0033/QQQ TRADING

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. QQQ Trading 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: 2019Feb0033 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and QQQ Trading relating to the conduct that is the subject of the Commission's investigation under Case Number: 2019Feb0033.

FOR QQQ TRADING

THUNGAZA SAM NHLEKO

Director

Dated and signed at Witbank on the 01 June 2022

FOR THE COMMISSION

TEMBINKOSI BONAKELE

Dated and signed at Pretoria on the 03rd June 2022.

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Prepared on 13 October 2026 · Esheria