

SOUTH AFRICA / JUDGMENT

Competition Commission v Airports Company South Africa SOC Limited (020982) [2015] ZACT 28 (25 March 2015) [2015] ZACT 28

COURT
Competition Tribunal

BEFORE
N Manoim, A Wessels, F Tregenna

CASE / FILE NUMBER
020982

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 020982

In the matter between:

The Competition Commission.....Applicant

And

Airports Company South Africa SOC Limited.....Respondent

Panel: N Manoim (Presiding Member)

A Wessels (Tribunal Member)

F Tregenna (Tribunal Member)

Heard on: 25 March 2015

Decided on: 25 March 2015

Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Airports Company South Africa SOC Limited and the addendum to the consent agreement , annexed hereto marked “A” and “B” respectively.

27 March 2015

Date

Presiding Member

Mr. N Manoim

Concurring: Mr. A Wessels and Prof. F Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No: 2012JUL0401

THE COMPETITION COMMISSION.....Applicant

and

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED.....Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1)

(b) OF THE COMPETITION ACT, ACT NO. 89 OF 1993, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND THE AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED, IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b) (i) OF THE COMPETITION ACT, NO 39 OF 1998, AS AMENDED.

Preamble

The Competition Commission and the Airports Company South Africa SOC Limited hereby agree that application be made to the Competition Tribunal (Tribunal) for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1 XaXw) and 58(1)(b) of the Competition Act No, 80 of 1998, as amended (the Act), in respect of a contravention of section 4(1){b} (i) of the Act on the terms set out below.

1. Definitions

For the purposes of this Consent Agreement the following definitions shall apply:

1.1 "Act" means the Competition Act 89 of 1998, as amended;

1.2 "ACSA" means the Airports Company South Africa SOC Limited, a company duly incorporated in accordance with the company laws of the Republic of South Africa and the Airports Company Act of 1993 as amended, with its registered office at The Maples, Riverwoods Office Park, 24 Johnson Road, Bedford view;

1.3 “Bombela” means Bombela Concession Company (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office at 22 Milky Way Avenue, Linbro Business Park, Johannesburg;

14 “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 Mulayo Building (Block C), the DTI Campus, 77 Meintjes Street, Sunnyside, Pretoria, Gauteng;

1.5 “Commissioner” means the Commissioner of the Commission, appointed in terms of section 22 of the Act;

1.6 “Complaint” means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2012Jul0401;

1.7 “Consent Agreement” means this agreement duly signed and concluded between the Commission and ACSA;

1.8 “ORTIA” means the O.R Tambo International Airport, one of nine (9) Airports managed by ACSA, which is located in Johannesburg;

1.9 “Parties” means the Commission and ACSA; and

1.10 “Tribunal” means the Competition Tribunal of South Africa, a statutory body established in terms of section 28 of the Act, with its principal place of business at Mulayo building (Block C), the DTI Campus, 77 Meintjes Street, Sunnyside, Pretoria, Gauteng,

2. THE COMMISSION’S INVESTIGATION AND FINDINGS

2.1 On 10 July 2012S the Commissioner initiated a complaint in terms of section 49(B) (1) of the Act into alleged prohibited practices relating to price fixing in the market for the supply of parking bays to car rental companies at ORTIA and Gautrain stations against Bombeia and ACSA (the respondents),

2.2 The Commission’s investigation revealed the following:

2.2.1 During or about the period 2010 to at least 2011, the respondents, being competitors in the market for the supply of parking bays, agreed to fix rates for parking bays supplied to car rental companies.

2.2.2 In terms of the arrangement, Bombeia requested ACSA to provide it with rates that ACSA charges car rental companies at ORTIA in order for Bombeia not to under-cut the rates that ACSA charges car rental companies for parking bays at ORTIA.

2.2.3 On the basis of this understanding ACSA supplied Bombeia with the rates as requested.

2.2.4 This conduct constitutes price fixing in contravention of section 4(1 Xb) (I) of the Act.

3. ADMISSION

ACSA admits that it engaged in the conduct set out in paragraph 2,3 above in contravention of section 4(1)(b) (i) of the Act,

4. FUTURE CONDUCT

ACSA agrees to;

4.1. prepare and circulate a statement summarising the content of this consent agreement to its employees, managers and directors within fourteen

(14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.2. refrain from engaging in conduct in contravention of section 4 (1)(b) or any prohibited practice in contravention of the Act in future;

4.3. develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;

4.4. submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order of the Tribunal.

5. ADMINISTRATIVE PENALTY

5.1 Having regard to the provisions of sections 58(1)(s)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, ACSA is liable to pay an administrative penalty,

5.2. ACSA agrees and undertakes to pay an administrative penalty in the amount of R1 079 881 (One Million Nine Hundred and Seventy-Nine Thousand Eight Hundred and Eighty-One cents). This amount does not exceed 10% of ACSA's annual turnover for the financial year ended 2013,

5.3. ACSA will pay the amount set out in paragraph 5.2 above to the Commission within 30 (thirty) days of the confirmation of this Consent Agreement as an order of the Tribunal.

5.4. The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: [...]

Branch Code: 323 345

Ref: 2012Jul0401/ACSA

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

6. Full and Final Settlement

This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of the prohibited practice engaged in by ACS A and Bombela as set out in paragraph 2.3 above and concludes all proceedings between the Commission and ACSA in respect of the said prohibited practice only under case number 2012Jul0401.

Dated and signed at Bedfordview on the 09 day of March 2015

For Airports Company South Africa SOC Limited

Chief Executive Officer

Name in Full: Bongani Maseko

Dated and signed at PRETORIA on the 13th day of March 2015

For Competition Commission

Tembinkosi Bonakele

Competition Commissioner

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CC CASE NO: 2012Jul0401

CT CASE NO: 020982

In the matter between

THE COMPETITION COMMISSION.....Applicant

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED.....Respondent

ADDENDUM

The parties to the consent agreement to which this addendum is annexed hereby agree to the following changes:

In paragraph 3 of the consent agreement: substitution of the number 2.3 with the number 2.2.

In paragraph 5.2 of the consent agreement: substitution of the words cents in the expression of the amount of R1 979 881 in words with the words Rands so that the final amount expressed in words reads as One Million. Nine Hundred and Seventy Nine Thousand, Eight Hundred and Eighty One Rands.

In paragraph 6 of the consent agreement: substitution of the number 2.3 with the number 2.2.

Dated and signed at Pretoria on the 25th day of March 2015.

For Airports Company South Africa SOC Limited

Legal Counsel

Name in Full: Bongani Machobane

Dated and signed at Pretoria on the 25th day of March 2015.

For Competition Commission

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