

SOUTH AFRICA / JUDGMENT

Competition Commission v BJ Transport Management Services (Pty) Lts t/a Advance Transport (CO139Oct16) [2016] ZACT 110; [2016] 2 CPLR 610 (CT) (9 November 2016) [2016] ZACT 110

COURT

Competition Tribunal

BEFORE

A Wessels, A Ndoni, M Mazwai

CASE / FILE NUMBER

CO139Oct16

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competitiontribunal

COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: C01390ct16

In the matter between:

The Competition Commission

Applicant

And

BJ Transport Management Services (Pty) Ltd t/a Advance Transport

Respondent

Panel :

A Wessels (Presiding Member)

A Ndoni (Tribunal Member)

M Mazwai (Tribunal Member)

Heard on :

09 November 2016

Decided on :

09 November 2016

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and BJ Transport Management

Services (Pty) Ltd t/a Advance Transport annexed hereto marked "A".

09 November 2016

Date

Presiding Member

Mr Andreas Wessels

Concurring: Ms Andiswa Ndoni and Ms Mondo Mazwai

ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No: 2010Nov5447

2011June0069

In the matter between

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COMPETITION COMMISSION Applicant

BJ TRANSPORT MANAGEMENT SERVICES

(PTY) LTD t/a ADVANCE TRANSPORT

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND BJ TRANSPORT MANAGEMENT SERVICES (PTY) LTD t/a ADVANCE TRANSPORT, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and BJ Transport Management Services (Pty) Ltd t/a Advance Transport hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal In terms of section 490 read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b) (i), (ii) and (iii) 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, No. 89 of 1998, as amended;

1.2 "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 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.3 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

1.4 "Complaint" means the complaint initiated by the Commissioner in terms of section 498(1) of the Act under case numbers 2010Nov5447 and 2011June0069;

1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Advance Transport;

1.6 "Cover Price" means generally, a price that is provided by a firm that wishes to win a tender to a firm that does not wish to do so, in order that the firm that does not wish to win the tender may submit a higher price; or alternatively a price that is provided by a firm that does not wish to win a tender in order that the firm that wishes to win the tender may submit a lower price;

1.7 "Advance Transport" means BJ Transport Management Services (Pty) Ltd I/a Advance Transport, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 18 Railway Road, Montague Gardens, Cape Town;

1.8 "Parties" means the Commission and Advance Transport;

1.9 "RFQ" means Request for Quotation; and

1.19 "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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. BACKGROUND TO THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1 On 3 November 2010, the Commission initiated a complaint in terms of section 49(B)(1) of the Act into alleged prohibited practices relating to Collusive tendering in the market for the provision of furniture removal services in South Africa against

J.H Relief Transport, Patrick Removals (Pty) Ltd (Patrick Removals), Cape Express Removals (Pty) Ltd (Cape Express), Sifikile Transport CC (Sifikile), Gloway Transport CC (Gloway), De Wet Human CC t/a Viking Furniture (Viking furniture), Stuttaford Van Lines (Pty) Ltd (Stuttaford) and Pro-Pack Removals.

2.2 On 1 June 2011, the Commission amended its complaint initiation to include other furniture removal firms as respondents in the complaint on the basis of further information obtained in the investigation of the complaint. These firms are A&B Movers CC, Advance Transport (Pty) Ltd, African Palletized Storage, Afriworld Furniture Removals CC, Core Relocations (Pty) Ltd, Crown Relocations (Pty) Ltd, De Lange Transport (Pty) Ltd, Elliot International CC, Execu-Move CC, Joel Transport (Pty) Ltd, Langs Furniture Removals, Lowe Lines CC, Majorshelf, Matthee Removals, North Western Transport CC, Pickfords Removals (Pty) Ltd, Pulse International Removals, Stanley's Removals CC, Transfreight International CC, Western Transport Services CC, JNK Transport Services, Trapezium Removals, Elite International, City to City Transport, Wiets Removals, H&M Removals, AGS, and all present members of the Professional Movers Association.

2.3 On 13 June 2013, the Commission further

amended its complaint initiation to include other furniture removal firms as respondents in the complaint on the basis of further information obtained in the investigation of the complaint. These firms are Easy Moves CC, Reliable Removals CC, Deon Nel Sole Proprietorship t/a AD Transport, Bear Transport (Pty) Ltd, J&H Removals (Pty) Ltd, Mini Maxi Movers CC, Baxter International Movers CC, Louis du Preez Sole Proprietorship t/a Removals 4 Less, A to Z Relocation Services t/a The Moving Company and AKA Loading & Transport CC.

2.4 The firms listed in paragraphs 2. 1, 2.2 and 2.3 above shall hereinafter be referred to as the Respondents.

2.5 The Commission's investigation revealed the following:

2.5.1 During or about the period 2007 to at least December 2012, Advance Transport, together with some of the Respondents, tendered collusively in relation to the provision of furniture removal services.

2.5.2 In terms of the collusion a firm that was contacted first regarding a request for quotation for the provision of furniture removal services would offer to source two or more quotations on behalf of the customer, and would then contact two or more of its competitors and request the competitors to submit cover prices.

2.5.3 The cover prices would either be sent directly to the customer or to the competitor wishing to win the tender for onward submission to the customer.

2.5.4 Advance Transport colluded with JH Relief, Cape Express, Patrick Removals and Sifikile on tenders issued by various government departments, including but not limited to, the South African National Defence Force (SANDF), the South African Police Services (SAPS), as well as tenders issued by large corporates such as Eskom and Pretoria Portland Cement ("PPC"). This conduct contravened section 4(1)(b){i}, (ii) and (iii) of the Act.

2.5.5 The Commission further found that, pursuant to the collusive tendering set out above, Advance Transport engaged in 198 instances of collusive tendering in contravention of section 4 (1) (b) (i), (ii) and (iii) of the Act.

3. ADMISSION

Advance Transport admits that it engaged in 198 instances of cover pricing in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

4. CO-OPERATION

Advance Transport agrees to fully cooperate with the Commission in its Investigation and prosecution of the remaining respondents in the Commission's complaint. This cooperation includes, but is not limited to:

4.1 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of Advance Transport or under Advance Transport's control, concerning the alleged prohibited practices set out in this Consent Agreement.

4.2 Testifying during the hearing of the complaint, if any, in respect of the contraventions set out in this Consent Agreement.

5. FUTURE CONDUCT

Advance Transport agrees to:

5.1 prepare and circulate a statement summarising the contents 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;

5.2 refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future;

5.3 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;

5.4 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and

5.5 undertakes henceforth to engage in competitive bidding.

6. ADMINISTRATIVE PENALTY

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

6.2 Advance Transport agrees and undertakes to pay a cumulative administrative penalty in the amount of R709 073.12 (Seven Hundred and Nine Thousand, Seventy Three Rand and Twelve Cents).

6.3 The administrative penalty, individually and in respect of each incidence of prohibited practices, does not exceed 10% of Advance Transport's annual turnover in the Republic of South Africa for the financial year ended February 2015.

6.4 This cumulative administrative penalty represents the total penalty levied against each of the one hundred and ninety-eight (198) incidences of prohibited practices engaged in by Advance Transport.

6.5 Advance Transport will pay the administrative penalty set out in paragraph 6.2 above to the Commission by making an initial payment in the sum of R259 073.12.00 (Two Hundred and Fifty Nine Thousand and Seventy Three Rands and Twelve Cents) within 30 days of this Consent Agreement being made an order of the Tribunal. The balance shall be paid in 24 (twenty four) monthly instalments of not less than R20 000.00 (Twenty Thousand Rands).

6.6 The first instalment shall be paid at the end of the first month preceding the date of payment of the initial payment and subsequent instalments shall be paid at the end of each month following thereto.

6.7 No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter

interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended.

At the time of the signature of this Consent Agreement, the applicable interest rate is 10,5%

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

Name: The Competition Commission Bank: Absa Bank, Pretoria

Account Number: [4.....]

Branch Code: 632005

Ref: 2011June0069/ Advance Transport

6.9 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.

7. Full and Final Settlement

Notwithstanding the fact that the penalty is calculated on one hundred and ninety-eight

(198) incidences of prohibited practices, this agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of all prohibited practices engaged in by Advance Transport and its competitors as set out in paragraph 2.5 above and concludes all proceedings between the Commission and Advance Transport in respect of all prohibited practices spanning from 2007 up to and including December 2012.

Dated and signed at CAPE TOWN on the 27th day of SEPTEMBER 2016

For BJ Transport Management Services (Pty) Ltd t/a Advance Transport

Chief Executive Officer

Name in Full: Patrick Joseph Lombard

Dated and signed at PRETORIA on the 20th day of OCT 2016

For the Commission

Tembinkosi Bonakele

Competition Commissioner

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