

SOUTH AFRICA / JUDGMENT

Competition Commission v Crown Relocations (Pty) Ltd (019810)

[2014] ZACT 85 (19 November 2014)

[2014] ZACT 85

COURT

Competition Tribunal

BEFORE

M Mazwai, M Mokuena, F Tregenna

CASE / FILE NUMBER

019810

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 019810

In the matter between:

The Competition

Commission.....Applicant

And

Crown Relocations (Pty)

Ltd.....Respondent

Panel: M Mazwai (Presiding Member)

M Mokuena (Tribunal Member)

F Tregenna (Tribunal Member)

Heard on : 19 November 2014

Decided on : 19 November 2014

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and Crown Relocations (Pty) Ltd, annexed hereto marked "A".

19 November 2014

Date

Presiding Member

Ms. M Mazwai

Concurring: Ms. M Mokuena and Prof. F Tregenna

ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No: 2010Nov5447

In the matter between

COMPETITION COMMISSION.....Applicant

and

CROWN RELOCATIONS (PTY) LTD.....Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 490 AS READ WITH SECTIONS 58(1) and 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND CROWN RELOCATIONS (PTY) LTD, IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b) (lit) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Crown Relocations (Pty) Ltd 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) and 58(1)(b) of the Competition Act 1998 Act No, 89 of 1998, as amended (the Act), in respect of contraventions of section 4(1)(b) (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, 1998 (Act No. 89 of 1998), as amended;

1.2 “Crown Relocations” means Crown Relocations (Pty) Ltd.. a company incorporated under the laws of the Republic of South Africa with its principal place of business at No. 1 Drakensberger Drive, Longmeadow Business Estate West, Modderfontein, Johannesburg.

1.3 “CLP” means the Commission's Corporate Leniency Policy (Government Gazette Notice no. 828 of 23 May 2008) published in Government Gazette no.31GS4 of 23 May 2008;

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 IVluyayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.5 “Commissioner” means the Commissioner of the Competition 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 2G11Jun0069;

1.7 “Consent Agreement” means this agreement duly signed and concluded between the Commission and Crown Relocations (Pty) Ltd;

1.8 “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 to a firm that does wish to win that tender in order that the firm that wishes to win the tender may submit a lower price;

1.9 “Parties” means the Commission and Crown Relocations (Pty) Ltd; and

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

2. 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.B Relief

Transport CC, Patrick. Removals (Pty) Ltd, Cape Express Removals (Pty) Ltd, Sifktfe Transport CC, Gloway Transport CC, De Wet Human CC t/a Viking

Furniture, Stuttaford Van Lines (Pty) Ltd and Pro-Pack Removals CC.

2.2 On 1 June 2011, the Commission amended the complaint 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, JMK Transport Services, Trapezium Removals, Elite International City to City Transport Wlets Removals, H&M Removals, AGS Frasers international (Pty) Ltd, and ali present members of the Professional Movers Association,

2.3 On 13 June 2013, the Commission further amended the complaint 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 Net Sole Proprietorship t/a AD Transport, Bear Transport (Pty) -Ltd, J&H Removals (Pty) Ltd, Mini Maxi Movers CC, Baxfer International Movers CC, Louis du Preez Sole Proprietorship t/a Removals 4 Less, A to 2 Relocation Services t/a The Moving Company and AKA Loading & Transport CC,

2.4 The firms fisted 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, the firms identified- in paragraphs 2.1, 2.2 and 2.3 above, being competitors in the market for the provision of furniture removal services agreed to tender coliusively in relation to the provision of furniture removal services.

2.5.2 In terms of the agreement a firm that was contacted first regarding a request for quotation for 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 The Respondents arranged to collude on tenders issued by various government departments, including but not limited to, the South African National Defence Force (SANDF), South African Police Services (SAPS), as well as tenders issued by large corporates such as Eskom and Pretoria Portland Cement (RFC),

2.5.5 The Commission further found-that, pursuant to the arrangement set out above, Crown Relocations had engaged in 81 instances of cover pricing.

2.5.6 This conduct constitutes collusive tendering in contravention of section 4(1)(b) (iii) of the Act.

3. ADMISSION

Crown Relocations admits that it engaged in the conduct set out. In paragraph 2.5 above in contravention of section, 4(1)(b) (iii) of the Act.

4. CO-OPERATION

Crown; Relocations agrees to fully cooperate with the Commission in its investigation and prosecution of the remaining respondents in the 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 its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement.

4.2. Testifying in the complaint referral (if any) in respect of the contraventions set out in this Consent Agreement.

5. FUTURE CONDUCT

Crown Relocations agrees to:

5.1 prepare and circulate a statement summarising the content of this 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 60 days of the date of confirmation of the 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, Crown Relocations is liable to pay an administrative penalty.

6.2 Crown Relocations agrees and undertakes to pay an administrative penalty in the amount of R849 873,36 (eight hundred and forty nine thousand eight hundred and seventy three rands and thirty six cents). This administrative penalty represents 7% of its annual turnover for the financial year ended December 2013.

6.3 Crown Relocations will pay 50% of the amount set out in paragraph 6.2 above to the Commission within 7 (seven) days of the confirmation of this Consent Agreement as an order of tie Tribunal.

6.4 Crown Relocations will thereafter pay the balance of the amount above in two equal quarterly instalments within 8 months from the date of the Tribunal's order.

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

Name; The Competition Commission Fee Account

Bank: Afosa Bank, Pretoria

Account Number: [...]

Branch Code: 323 345

Ref: 2011Jun0069/Crown Relocations

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

7 Full and Final Settlement

This agreement upon confirmation as an order by tie Tribunal, Is entered into in full and final settlement of the conduct set out in paragraph 2.5 above and concludes all proceedings between the Commission and Crown Relocations in respect of this conduct only.

Dated and signed at Edenvale on the 16th day of October 2014

For Crown Relocations (Pty) Ltd

Chief Executive Officer

Name in Full: Ian Pettey

Dated and signed at PRETORIA on the 22 day of October 2014

For the Commission

Tembinkosi Bonakele

Competition Commissioner

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