

SOUTH AFRICA / JUDGMENT

Competition Commission v Del Transport CC t/a De Langes Transport (020735) [2015] ZACT 17 (2 March 2015)

[2015] ZACT 17

COURT

Competition Tribunal

BEFORE

A Wessels, M Mazwai, M Mokuena

CASE / FILE NUMBER

020735

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 020735

In the matter between:

The Competition

Commission.....Applicant

And

Del Transport CC t/a De Langes

Transport.....Respondent

Panel: A Wessels (Presiding Member)

M M.azwai (Tribunal Member)

M Mokuena (Tribunal Member)

Heard on: 25 February 2015

Addendum received on: 02 March 2015

Decided on: 02 March 2015

Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Del Transport CC t/a De Langes Transport, annexed hereto marked "A" and addendum marked "B".

02 March 2015

Date

Presiding Member

Mr. A Wessels

Concurring: Ms. M Mazwai and Ms. M Mokuena

THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No: 2011Jun0069

In the matter between

COMPETITION COMMISSION.....Applicant

and

DEL TRANSPORT CC t/a OE LANGES TRANSPORT.....Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 490 AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, NO, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND DEL TRANSPORT CC, IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and DEL. Transport CC t/a De Langes 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 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 "De Langes Transport" means DEL Transport CC, a company incorporated under the laws of the Republic of South Africa with its principal place of business situated at 17 Stellenbosch, Hargreaves Avenue, King William's Town;

1.3 "CLP" means the Commission's Corporate Leniency Policy (Government Gazette Notice no. 628 of 23 May 2008) published in Government Gazette no. 31064 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 Mulayo 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 2011Jun0069;

1.7 "Consent Agreement" means this agreement duly signed and concluded between the Commission and De Langes Transport;

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 De Langes Transport; 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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 THE COMMISSION 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. Retief Transport CC, Patrick Removals (Pty) Ltd, Cape Express Removals (Pty) Ltd, Sifikile Transport CC, Gloway Transpost CC, De Wet Human CC t/a Viking Furniture,Stuttafort 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, JNK Transport

Services, Trapezium Removals, Elite International, City to City Transport, Wiets Removals, H&M Removals, AGS Frasers International (Pty) Ltd, and all 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 Nel Sole Proprietorship t/a AD Transport, Bear Transport (Pty) Ltd, J&H Removais (Pty) Ltd, Mini Maxi Movers CC, Baxter International Movers CC, Louis do Preez Sole Proprietorship t/a Removal 4 Les, A to Z Relocation Services t/a The Moving Company and AKA Loading & Transport CC.

2.4 The firms listed to 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 collusively 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 (PPG),

2.5.5 The Commission further found that, pursuant to the arrangement set out above, De Langes Transport had engaged in 22 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

De Langes Transport 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

De Langes Transport 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:

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.

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

5. FUTURE CONDUCT

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

6.2. De Langes Transport agrees and undertakes to pay an administrative penalty in the amount of R210 415.45(two hundred and ten thousand ninety four hundred and fifteen rand and forty-five cents). This administrative penalty represents 5% of its annual turnover for the financial year ended February 2013.

6.3. De Langes Transport pay the amount set out in paragraph 6.2 above to the Commission in eight equal quarterly instalments over a period of 24 months. The first payment shall be made within 30 (thirty) days of the confirmation of this Consent Agreement as an order of the Tribunal.

6.4. De Langes Transport will thereafter pay the balances of the amount above in seven equal quarterly instalments.

6.5. De Langes Transport will also pay an interest of 9.25% p/a on the outstanding balance from the 13th months in terms of Public Finance Management Act on interest to be levied on debts owing to the State.

6.8. 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: 4[...]

Branch Code: 323345

Ref: 2011Jun0069/De Langes Transport

6.7. 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

This agreement upon confirmation as an order by the 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 De Langes Transport in respect of this conduct only.

Dated and signed at King William's Town on the 3rd day of February 2015

For DEL Transport CC

Member

Name in Full: J.S.L. De Lange

Dated and signed at Pretoria on the 10th day of February 2015

For the Commission

Tembinkosi Bonakele

Competition Commissioner

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CC CASE NO: 2011Jun0069

CT CASE NO: 020735

In the matter between

THE COMPETITION COMMISSION.....Applicant

DEL TRANSPORT CC t/a DE LANGES TRANSPORT.....Respondent

ADDENDUM TO THE CONSENT AGREEMENT

The parties to the consent agreement hereby agree to the deletion in clause 6.2 of the words “ninety”, so that the final reading of the amount in words is “Two Hundred and Ten Thousand, Four Hundred and Fifteen Rands and Forty Five Cents” (R210 415.45).

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

Name in Full: JSL De Lange

Dated and signed at Pretoria on the 27th day of Feb 2015.

For the Commission

Tembinkosi Bonakele

Competition Commissioner

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