

SOUTH AFRICA / JUDGMENT

Competition Commission v Enviro Options (Pty) Ltd (CR205Mar21; SA014May23; CR206Mar21; SA013May23) [2023] ZACT 43; [2023] 3 CPLR 47 (CT) (4 August 2023) [2023] ZACT 43

COURT

Competition Tribunal

BEFORE

T Ngcukaitobi, F Tregenna, T Vilakazi

CASE / FILE NUMBER

CR205Mar21; CR206Mar21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case Nos: CR205Mar21 /SA014May23

CR206Mar21 /SA013May23

In the matter between:

The Competition Commission Applicant

And

Enviro Options (Pty) Ltd Respondent

Panel: T Ngcukaitobi (Presiding Member)

F Tregenna (Tribunal Member)

T Vilakazi (Tribunal Member)

Heard on: 04 August 2023

Decided on: 04 August 2023

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Enviro Options (Pty) Ltd annexed hereto.

Presiding Member

Adv. Tembeka Ngcukaitobi SC

Concurring: Professor Fiona Tregenna and Dr Thando Vilakazi

Date: 04 August 2023

(HELD IN PRETORIA)

CT Case No: CR205Mar21

& CR206Mar21

CC Case No: No:2014JUL0040

In the matter between

COMPETITION COMMISSION

APPLICANT

and

ENVIRO OPTIONS (PTY) LTD

RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 490 AS READ WITH SECTIONS 18(1)(a)(III) AND 58(1b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND ENVIRO OPTIONS (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i), (ii) AND (III) OF THE COMPETITION ACT, 1998, AS AMENDED

The Competition Commission and Enviro Options (Pty) Ltd hereby agree that an 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 contravention of section 4(1)(b)(ii) 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 business address at 1st Floor, 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 submitted to the Commission in terms of section 49B(1)(b) of the Act under case number:2014JUL0400;

1.5. "Consent Agreement" means this Agreement duly signed and concluded between the Commission and Enviro Options (Pty) Ltd In full and final settlement of Tribunal case numbers: CR205MAR21 and CR206MAR21;

1.6. "Enviro Options" means Enviro Options (Pty) Ltd, a private company duly registered and incorporated under the laws of South Africa with its principal place of business situated at 27 Pillans Street, Chamdor, Krugersdorp, Gauteng;

1.7. "Sakhikhaya" means Sakhikhaya Supplies CC, a close corporation duly incorporated under the laws of the Republic of South Africa with its principal place of business situated at 6 Jones Street, Parow, Cape Town;

1.8. "African Sanitation" means African Sanitation (Pty) Ltd, a private company duly incorporated under the laws of the Republic of South Africa with its principal place of business situated at 1 Linton Close, Beaconvale, Parow;

1.9. "City of Cape Town" means the City of Cape Town Metropolitan Municipality. a municipality established; in terms of section 11 of the Constitution of the Republic of south Africa. Act 108 of 1996;

1.10. "Parties" means the Commission and Enviro Options;

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 3rd Floor, Mulayo Bullding (Block C). the OTI Campus. 77 Melntjies Street, Sunnyside. Pretoria. Gauteng;

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1 On 28 July 2014¹ the City of Cape Town Metropolitan Municipality (" City of Cape Town") submitted a complaint to the Commission against Enviro Options (Pty) Ltd ("Enviro Options", African Sanitation (Pty) Ltd ("African Sanitation") and Sakhikhaya Supplies cc Sakhikhayaj, hereinafter called the 'Respondents' for engaging in conduct in possible contravention of section 4(1)(b) of the Competition Act no. 89 of 1998, as amended ("The Act"). This complaint was investigated under case number: 2014JUL0400.

2.2 The allegations against the Respondents are that they entered into an agreement and/ or engaged in a concerted practice to fix prices, divide markets by allocating specific products and tendered conclusively when responding to tender number: 2308/2012/13 issued by the City of Cape Town for the servicing, maintenance and cleaning of dehydrated toilet units meant for the informal settlements in the City of Cape Town for a period of 3 (Three) years ending 30 June

2015. The tender was divided in two parts, these being the single (urine diversion) use toilets and communal (evaporation) use toilets within the City of Cape Town's Informal settlements.

2.3 On 03 March 2021 the Commission filed two separate complaint referrals With the Tribunal under case numbers CR206Mar21 (single use toilets) and CR205Mar21 (communal use toilets). Enviro Options was the common respondent in both matters.

Conduct Relating to Single Use Toilets

2.4 The Commission investigation found that on or about January 2013 Enviro Options and African Sanitation discussed and agreed that African Sanitation would only submit a bid for part of the tender related to the servicing, maintenance and cleaning of dehydration toilet units for single use while Enviro Options would only submit a bid for the part of the tender related to the servicing1 maintenance and cleaning of dehydration toilet units for communal use. Both firms submitted their bids as per the collusive agreement

2.5 This conduct between Enviro Options and African Sanitation amounts to market division by allocation of specific products and collusive tendering in contravention of sections 4(1)(b)(ii) and (iii) of the Act.

Conduct Relating to Communal Use Toilets

2.6 The Commission Investigation found that Enviro Options and Sakhikhaya quoted the same prices on 3 out of 4 line Items in relation to the servicing, cleaning, monitoring and condition reporting of communal use dehydration toilet units. Enviro Options and Sakhikhaya also quoted the same prices on all 27- line Items In relation to supply, deliver and fit spare parts as well as supply of cleaning accessories for communal use dehydration toilet units.

2.7 This conduct between Enviro Options and Sakhikhaya amounts to price fixing and collusive tendering in contravention of sections 4(1)(b)(i) and (iii) of the Act.

3. ADMISSION OF LIABILITY

3.1. Enviro Options does not admit liability in respect of the prohibited conduct described In paragraph 2 above.

4. AGREEMENT REGARDING FUTURE CONDUCT

Enviro Options agrees and undertakes to:

4.1. refrain from engaging In any conduct that may be In contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice In future;

4.2. prepare and circulate a statement summarizing the content of this agreement to Its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

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 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal;

5. ADMINISTRATIVE PENALTY

5.1. Enviro Options agrees and undertakes to pay an administrative penalty In the amount of R745 000,00 (Seven Hundred and Forty-Five Thousand Rands). This amount does not exceed 10% of Enviro Options' annual turnover for the financial year ending 30 April 2018.

5.2. Enviro Options will pay the amount Of the administrative penalty set out in paragraph 5.1 above to the Commission in 12 (Twelve) instalments payable Within a period of 3 (Three) years from date of the confirmation of this Consent

Agreement as an order of the Tribunal.

5.3. Interest on the remaining capital amount shall accrue as from the first anniversary of the confirmation of the Consent Agreement as an order of the Tribunal. The interest shall be as determined in terms of section 80(1) (a) and (b) of the Public Finance Management Act 1999 (Act No.1 OF 1999).

5.4. The payments shall be made Into the Commission's bank account, details of which are as follows:

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

6. FULL AND FINAL SETILEMENT

6.1. This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2014Jul0040 and concluded all proceedings between the Commission and Enviro Options relating to the conduct that is the subject of the Commission's two separate complaint referrals under Tribunal case numbers: CR205Mar21 and CR206Mar21.

For Enviro Options (Pty) Ltd

Dated and signed at FOURWAYS on the 22nd day of April 2023.

For the Commission

Dated and signed at PRETORIA on the 10th day of May 2023.

Doris Tshepe

Commissioner

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Prepared on 9 October 2026 · Esheria