

SOUTH AFRICA / JUDGMENT

Competition Commission v Key Moves CC (CO227Feb16) [2015] ZACT 146 (25 August 2015)

[2015] ZACT 146

COURT

Competition Tribunal

BEFORE

N Manoim, I Valodia, F Tregenna

CASE / FILE NUMBER

CO227Feb16

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: CO227Feb16

In the matter between:

THE COMPETITION COMMISSION Applicant And KEY MOVES CC Respondent

Panel: N Manoim (Presiding Member)

I Valodia (Tribunal Member)

F Tregenna (Tribunal Member)

Heard on: 17 February 2016

Decided on: 17 February 2016

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Key Moves CC annexed hereto marked "A".

Presiding Member

17 February 2016

Mr N Manoim

Date

Concurring: Prof. I Valodia and Prof. F Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No: 2011Jun0069

In the matter between

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 KEY MOVES CC, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (iii) OF THE COMPETITION ACT, NO 89 OF 1998

Preamble

The Competition Commission and Key Moves CC 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 (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, 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 2011Jun0069;

1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Key Moves CC;

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 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; and

1.7 "Key Moves-CC" means Key Moves, a close corporation incorporated under the laws of the Republic of South Africa with its principal place of business situated at 62 Modderfontein, Johannesburg, Gauteng Province;

1.8 "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(8)(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, Sifkile 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 its complaint to Include other furniture removal firms as respondents in the complaint on the basis of further information obtained in the course of the investigation of the complaint These furniture removal 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; Elliott 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; JNK Transport Services;

Trapezium Removals; Elite International; City to City Transport; Wiets Removals; H&M Removals; AGS Frasers International (Pty) Ltd; Key Moves cc and all then present members of the Professional Movers Association.

2.3 On 13 June 2013, the Commission further amended Its complaint to include other furniture removal firms as respondents In the complaint on the basis of further information obtained in the course of the investigation of the complaint. These firms are Easy Moves CC; Reliable Removals CC; Deon Nel Sale 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 June 2015, Key Moves tendered 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 Key Moves colluded with Afriworld 142 (Pty) Ltd ("Afriworld") on tenders issued by the South African National Defence Force.

2.5.5 The Commission further found that, pursuant to the arrangement set out above, Key Moves engaged in 2 instances of cover pricing with Afriworld.

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

3. ADMISSION

Key Moves admits that it engaged in 2 instances of cover pricing in contravention of section 4(1)(b) (iii) of the Act.

4. CO-OPERATION

Key Moves 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

Key Moves 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 the Consent Agreement as an order of the Tribunal;

5.2. refrain from engaging in conduct in contravention 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 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, Key Moves is liable to pay an administrative penalty.

6.2. Key Moves agrees and undertakes to pay an administrative penalty in the amount of R216 249 (Two Hundred and Sixteen Thousand, Two Hundred and Forty Nine Rands), This administrative penalty represents 4% of Key Moves annual turnover for the financial year ended 2014.

6.3. Key Moves shall pay the administrative penalty set out in paragraph 6.2 above to the Commission in two (2) equal instalments over a period of six (6) months, The first payment shall be made within thirty (30) days of the confirmation of this Consent Agreement as an order of the Tribunal.

6.4. The administrative penalty payable by Key Moves in terms of this Consent Agreement shall 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: 3[...]

Ref: 2011Jun0069/ Key Moves

6.5. 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.

7. Full and Final Settlement

This agreement, upon confirmation as an order of 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 Key Moves in respect of this conduct only.

Dated and signed at Midrand on the 6th day of August 2015

For Key Moves CC

Member

Name in Full:

Date and signed at Pretoria on the 24th day of August 2015

For the Commission

Tembinkosi Bonakele

Competition Commissioner

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