

SOUTH AFRICA / JUDGMENT

Competition Commission v Today's Destiny Trading and Project 81 CC and Another (CR079Aug16/SA166Nov16) [2016] ZACT 112 (30 October 2016)

[2016] ZACT 112

COURT

Competition Tribunal

BEFORE

N Manoim, A Wessels, M Mokuena

CASE / FILE NUMBER

CR079Aug16/SA166Nov16

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: CR079Aug16/SA166Nov16

In the matter between:

The Competition Commission

Applicant

And

Today's Destiny Trading and Project 81 CC

First Respondent

Raite Security Services and Consulting CC

Second Respondent

Panel :

N Manoim (Presiding Member)

A Wessels (Tribunal Member)

M Mokuena (Tribunal Member)

Heard on :

30 November 2016

Decided on :

30 November 2016

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Raite Security Services and Consulting CC annexed hereto marked "A".

30 November 2016

Date

Presiding Member

Mr Norman Manoim

Concurring: Mr Andreas Wessels and Ms Medi Mokuena

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD IN PRETORIA

CT CASE NO. CR079Aug16/SA166Nov16

CC CASE NO. 20150CT0556

THE. COMPETITION COMMISSION

Applicant

and

TODAY'S DESTINY TRADING AND PROJECTS 81 CC Respondent

In re:

COMPETITION COMMISSION Applicant

TODAY'S DESTINY TRADING AND PROJECT 81 CC

First Respondent

RAITE SECURITY SERVICES AND CONSULTING CC

Second Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND

TODAY'S DESTINY TRADING AND PROJECT 81 CC IN REGARD TO ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(i) AND (iii) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED.

The Commission and Today's Destiny hereby agree that application be made to the Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with section 58 (1)(b) and 59(1)(a) of the Act on the terms set out below.

1. DEFINITIONS

For the purposes of this Settlement Agreement the following definitions shall apply;

1.1 "Act" means the Competition Act, 1998 (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 Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;

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 by the Council for Geoscience ("Geoscience") in terms of section 49B(2)(b) of the Act under case number: 20150ct0556;

1.5 "Today's Destiny" means a close corporation duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business at 154 Pine Street, Arcadia, Pretoria.

1.6 "Parties" means the Commission and Today's Destiny;

1.7 "Respondents" means all the firms that are cited as the respondents in the Commission's complaint referral filed under competition Tribunal Case number: CR079Aug16; respectively, namely Today's Destiny Trading and Projects 81 CC ("Today's Destiny") and Raite Security Services and Consulting CC ("Raite").

1.8 "Settlement Agreement" means this settlement agreement duly signed and concluded between the Commission and Today's Destiny;

1.9 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its place of business at Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;

2. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

2.1 On 9 October 2015, the Commission received a complaint from Geoscience against Today's Destiny and Raite, collectively referred to as ("the Respondents"), in terms of which Geoscience alleged that both respondents have contravened section 4(1)(b)(i) and (iii) of the Act, in that whilst being competitors in the market for the provision of security services, they have entered

into an agreement and/or alternatively engaged in a concerted practice to lender collusively when bidding for tender number CGS-2015-014 Issued by Geoscience. The tender was for the provision of security services at the Geoscience 's offices.

2.2 The Commission investigated the alleged conduct and found that the respondents' pricing pattern for the tender is the same in that they each priced their respective bids for each of the three years without escalation, despite the provision for escalation being made in the tender specification. The Commission had amongst others found evidence detailling the following;

2.2.1 The contingency plan document and key contact sheet attached to the respondents' lender documents are identical and are similar In content and form; and

2.2.2 The respondents submitted the same letter from the bank for the provision of credit facilities, same cars in !heir inventory of vehicles that were to be used In carrying out the services tendered for and same postal address.

3. THE COMMISSION'S REFERRAL

3.1 Following its investigation, the Commission concluded that the conduct by Today's Destiny and Raite constituted a contravention of section 4(1)(b)(I) and (iii) of the Act, in that the engaged in a conduct referred to in paragraph 2 above.

3.2 In light of it's findings, the Commission decided to refer the complaint on 9 June 2016 to the Tribunal for delermination. The

complaint was finally referred to the Tribunal on 11 August 2016.'

4. AGREEMENTS

4.1 Admissions

4.1.1 Today 's Destiny admits that its conduct amounts to a contravention of section 4(1)(b)0) and (iii) of the Act

4.2. Future Conduct

4.2.1 Today's Destiny agrees to fully co-operate with the Commission in relation to the prosecution of any other respondent who is the subject of Its investigations and referral to the Tribunal. Without limiting the generality of the foregoing, Today's Destiny specifically agrees to:

4.2.1.1 Testify before the Tribunal regarding the conduct and events forming the factual basis of the Commission's referral affidavit and which are covered by this Settlement Agreement; and

4.2.1.2 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control; concerning the alleged contraventions set Commission's referral affidavit; out in the

4.2.1.3 Desist from engaging in the conduct complained of.

4.2.2 Today's Destiny agrees that it will in future refrain from engaging in a cartel conduct which may lead to a possible contravention of section 4(1)(b) of the Act.

4.2.3 Today's Destiny will attend a competition law compliance training programme incorporating corporate governance to be provided by the Commission and designed to ensure that its employees, management, directors and agents does not engage in future contravention of the Act.

4.2.4 Today's Destiny will ensure that such training materials will be made available to all new employees joining Today's Destiny.

4.2.5 Furthermore, Today's Destiny will update and repeat such training materials annually to ensure on an ongoing basis that its employees, management, directors and agents do not engage in any future contraventions of the Competition Act.

5. Administrative Penalty

5.1 In accordance with the provisions of section 58(1)(a)(iii) as read with 59(1)(a), 59(2) and 59(3) of the Act, Today's Destiny agrees to pay an administrative penalty in the sum of R 50 000.00 (Fifty Thousand Rand) which is equivalent to 2.1% of Today's Destiny's annual turnover for the financial year ended February 2016.

5.2 This payment shall be made into the Commission's bank account, details of which are as follows:

Name: Competition Commission Fee Account

Bank: ABSA Bank, Pretoria

Account no:[4.....]

Branch code: 323 345

Ref: CC 20150ct0556 (Today's Destiny)

5.3 The Commission will pay this sum to the National Revenue Fund in terms of section 59(4) of the Act

6. Terms of Payment

Payment of the amount referred to in paragraph 5.1 above will be made within a period of 12 months from the date of confirmation of this agreement as an order of the Tribunal.

7. Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings

between the Commission and Today's Destiny relating to any alleged contravention by the respondents of the Act that is the subject of the Commission's investigation (CC Case no'fO 50cto556).

Dated and signed at PRETORIA on this 14 day of NOVEMBER 2016

For Today's Destiny

[title]

For the Commission

Competition Commissioner

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/competition-commission-v-todays-destiny-trading-collusive-tendering-act-2016>

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