

SOUTH AFRICA / JUDGMENT

Competition Commission v Western Granite Bricks (Pty) Ltd (020750) [2015] ZACT 24 (18 March 2015) [2015] ZACT 24

COURT
Competition Tribunal

BEFORE
A Roskam, I Valodia, F Tregenna

CASE / FILE NUMBER
020750

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 020750

in the matter between:

The Competition Commission.....Applicant

And

Western Granite Bricks (Pty) Ltd.....Respondent

Panel: A Roskam (Presiding Member)

I Valodia (Tribunal Member)

F Tregenna (Tribunal Member)

Heard on: 18 March 2015

Decided on : 18 March 2015

Order

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Western Granite Bricks (Pty) Ltd, annexed hereto marked “A”.

18 March 2015

Date

Presiding Member

Mr. A Roskam

Concurring: Mr. A Roskam and Prof. F Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No:

CC Case No: 2012Feb5783

In the matter between

COMPETITION COMMISSION.....Applicant

WESTERN GRANITE BRICKS (PTY) LTD.....Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 49D 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 WESTERN GRANITE (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i) and (ii) OF THE COMPETITION ACT, 1998

The Competition Commission and Western Granite Bricks (Pty) Ltd) hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D 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 sections 4(1)(b)(i) and (ii) 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 No, 89 of 1998, as amended;

1.2 "Western Granite Bricks" means Western Granite Bricks (Pty) Ltd (“Western Granite*), a company duly registered and incorporated in terms of the laws of the Republic of South Africa with its principal place of business at Stasle Road,, Eerstenvier, Cape Town;

1.3 “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;

1.4 "Commissioner” means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

1.5 "Complaint" means the complaint initiated by the Commissioner In terms of section 49B(1) of the Act under case number 2012Feb5783;

1.6 "Settlement Agreement" means this agreement duly signed by the Commission and Western Granite Bricks;

1.7 "Parties" means the Commission and Western Granite Bricks; and

1.8 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 28 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'S INVESTIGATION AND FINDINGS

2.1 On 08- February 2012, the Commissioner initiated a mm pi a ini In terms of section 49B (1) of the Act against, inter aim, Columbia DBL (Pty) Ltd ("Columbia") and Western Granite {Pty} Ltd ("Western Granite") in relation to price fixing and the division of markets in the production and supply of face bricks in the Western Cape In contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act.

2.2 Western Granite and Columbia will be referred to collectively as the "respondents".

2.3 The respondents are in a horizontal relationship as contemplated in section 1 of the Act on account of the fact that they are in the same line of business in the manufacture and supply of face bricks,

2.4 In or about 2005 the respondents entered into an agreement in terms of which they agreed to fix prices and to divide markets for the supply of face bricks in the Western Cape. At the time of the agreement the respondents were both manufacturers of face bricks in the upstream market as well as suppliers of face bricks in the- downstream market

2.5 In terms of the agreement, Columbia undertook to exit the upstream market for the supply of face bricks, and as quid pro quo, Western Granite- agreed to supply face bricks to Columbia on favourable terms, which included discounts and rebates. The discount and rebates were aimed at compensating Columbia for exiting the upstream production 'market

2.6 The respondents agreed that Columbia will purchase its entire stock from Western Granite on condition that Columbia will supply its face brick stock to the market at the same pricing structure used by Western Granite.

3. ADMISSION

Western Granite admits that it entered into an agreement with Columbia to fix prices and to divide markets for the manufacture and supply of face bricks in the Western Gape in contravention of sections 4(1)(b)(i) and 4(1)(b)(u) of the Act.

4. FUTURE CONDUCT

Western Granite agrees to:

4.1 prepare and circulate a statement which summarises the content of this agreement to Its employees, managers and directors within 14 (fourteen) days of the date of confirmation of this settlement agreement as an order of the Tribunal;

4.2. refrain from engaging in conduct in contravention of section 4(1)(b)(i) and 4(1)(b)(ii) of the Act in future;

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 Ad;

4.4. submit a copy of such compliance programme to the Commission within 80 days of the date of confirmation of the settlement agreement as an order by the Tribunal

5 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, Western Granite is liable to pay an administrative penalty.

6.2 Western Granite agrees and undertakes to pay an administrative penalty in the amount of R100 000 (One hundred thousand rand) representing 0.7% of its annual turnover for the financial year 2011«

6.3 Western Granite shall pay an amount R100 000.00. (One hundred thousand rand) This amount shall be paid in Five {5} monthly instalments of R15 000.00 {Fifteen Thousand Rand) from January 2015 to May 2015 and followed by the last instalment of R25 000. 00 (Twenty thousand Rand) in June 2015, The first instalment shall be payable within 60 (sixty) days of confirmation of this Consent Agreement as an order of the Tribunal.

6.4 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: [...]

BRANCH CODE: 323 345

REF: 2012Feb5783/WESTERNGRANITE

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 by the Tribunal, is entered into in Ml and final settlement and concludes ail proceedings between the Commission and Western Granite relating to any alleged contravention of the Act that Is the subject of the Commission's investigation under Commission Case No: 2012Feb5783

Dated and signed at Kenilworth on the 24th day of November 2014

For Western Granite (Pty) Ltd

Marlies Kappers

Manager

Dated and signed at Pretoria on the 23rd day of January 2015

For the Commission

Competition Commissioner

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