

SOUTH AFRICA / JUDGMENT

Competition Commission v H & M Removals CC (CO069Jul15) [2015] ZACT 121; [2015] 2 CPLR 403 (CT) (16 September 2015) [2015] ZACT 121

COURT
Competition Tribunal

BEFORE
M Mazwai, A Roskam, A Ndoni

CASE / FILE NUMBER
CO069Jul15

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: C0069Jul15

In the matter between:

The Competition Commission

Applicant

And

H & M Removals CC

Respondent

Panel

: M Mazwai (Presiding Member)

: A Roskam (Tribunal Member)

: A Ndoni (Tribunal Member)

Heard on

: 16 September 2015

Decided on

: 16 September 2015

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and H & M Removals CC annexed hereto marked "A".

16 September 2015

Date

Presiding Member

Ms M Mazwai

Concurring: Mr A Roskam and Ms A Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No: 2011Jun0069

In the matter between

THE COMPETITION COMMISSION Applicant

and

H& M REMOVALS CC Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 490 AS READ WITH SECTIONS 58(1)(a)(i) and 58(1)

(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND H&M REMOVALS CC, IN RESPECT OF CONTRAVENTIONS OF SECTION .4(1)(b) (iii) OF THE COMPETITION ACT, NO 89 OF 1998

Preamble

The Competition Commission and H&M Removals 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 1996 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 49B(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 H&M Removals 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 Cape Town, Western Cape Province; and

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(9)(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 Relief Transport CC, Patrick Removals (Pty) Ltd, Cape Express Removals (Pty) Ltd, Sillkile 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; Elliot International CC; Execu-Move CC; Joel Transport (Pty) Ltd; Langs Furniture Removals; Lowe Lines CC; Majorsheff; 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; Wlets Removals; H&M Removals; AGS Frasers International (Pty) Ltd; 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 Sole Proprietorship t/a AD Transport; Bear Transport (Pty) Ltd; J&H Removals (Pty) Ltd; Mini Maxi Movers CC; Baxter Intemational Movers CC; Louis du Preez Sole Proprietorship t/a Removals 4 Less; A to Z Relocation Services t/a The Moving Campany; 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 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 in 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 H&M Removals colluded With Gape Express Removals (Pty) Ltd and Pro Pack Removals CC 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, H&M Removals engaged in approximately 9 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

H&M Removals admits that it engaged in approximately 9 instances of cover pricing in contravention of section 4(1)(b) (iii) of the Act.

4. CO-OPERATION

H&M Removals 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

H&M Removals 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 this 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, H&M Removals is liable to pay an administrative penalty.

6.2. H&M Removals agrees and undertakes to pay an administrative penalty in the amount of R196 364.15 (One Hundred and Ninety..Six

Thousand, Three Hundred and Sixty-Four Rand, and Fifteen Cents). This administrative penalty represents 4% of H&M Removals' household local and long distance division's turnover for the financial year ended February 2013.

6.3. H&M Removals shall pay the administrative penalty set out in paragraph

6.2 above to the Commission within thirty (30) days of the confirmation of this Consent Agreement as an order of the Tribunal.

6.4. The administrative penalty payable by H&M Removals 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; [.....]

Branch Code: 323 345

Ref: 2.011Jun00691H&M Removals

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 H&M Removals in respect of this conduct only.

Dated and signed at CAPE TOWN on the 6 day of JULY 2015

For H&M Removals

Member

Name in Full: ANTHONY JOHN HEALEY

Dated and signed at PRETORIA on the 9th day of JULY 2015

Theminkosi Bonakele

Competition Commissioner

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