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competitiontribunal
south africa

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR057Jun15/SA114Jul17

In the matter between:

The Competition Commission

Applicant

and

Cape Brick (Pty) Ltd

Respondent

Panel : A Ndoni (Presiding Member)
I Valodia (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 16 August 2017

Decided on : 16 August 2017

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Cape Brick (Pty) Ltd annexed hereto marked "A".


Presiding Member
Ms Andiswa Ndoni

16 August 2017
Date

Concurring: Prof Imraan Valodia and Prof Fiona Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CRO57 June 15 / SA 114 July
CC CASE NO: 2012 Feb 5783

In the matter between:

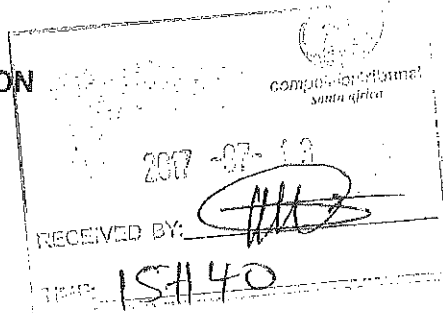
THE COMPETITION COMMISSION

Applicant

And

CAPE BRICK (PTY) LTD

Respondent



CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND CAPE BRICK (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (i) and (ii) OF THE COMPETITION ACT, 1998

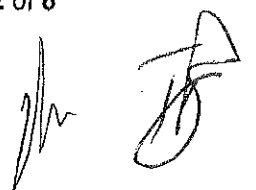
Preamble

The Competition Commission and Cape Brick (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 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended , in respect of a contravention of section 4(1)(b)(i) and (ii) of the Act.

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 **"Cape Brick"** means Good Hope Brick (Pty) Ltd, a private company duly incorporated in accordance with the Company Laws of the Republic of South Africa with its principal place of business at Cnr Old Lansdowne & Weltevreden Road, Philippi Western Cape; although duly registered as Good Hope Brick the company trades for all intends and purposes under the name Cape Brick.
- 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 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Cape Brick;
- 1.5 **"Parties"** means the Commission and Cape Brick;
- 1.6 **"Respondent"** means Cape Brick;
- 1.7 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place



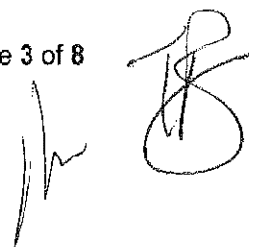
of business at 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

2. INVESTIGATION AND FINDINGS OF THE COMMISSION

2.1. On 12 February 2012, the Commissioner initiated a complaint in terms of section 49B (1) of the Act into alleged prohibited practices relating to price fixing and market division in contravention of section 4(1)(b) (i) and (ii) of the Act in the masonry brick market in the Western Cape against Cape Brick, Columbia DBL (Pty) Ltd ("Columbia DBL") and Inca Concrete Products ("Inca"). Where appropriate, Cape Brick, Columbia DBL AND Inca shall be referred to as the "Respondents".

2.2. The Commission's investigation under Case No. 2012Feb5783 revealed the following:

2.2.1. During the period 2001 to 2011, Inca, Columbia DBL and Cape Brick, agreed to allocate customers of concrete and masonry products to each other. In order to sustain this arrangement, these firms also agreed on prices they would quote customers that belonged to the other in terms of the customer allocation agreement between them. This conduct amounts to allocation of customers and price fixing in contravention of section 4(1)(b)(i) and (ii) of the Act.



2.2.2. In terms of the agreement the Respondents drew up customer lists which would be regularly exchanged amongst them indicating each firm's preferred customers. The Respondents would then formulate a final customer list which indicated which customer belonged to which firm. This list was regularly updated.

2.2.3. The Respondents further agreed on prices they would charge customers that are not allocated to them. In carrying out this agreement the Respondents exchanged price lists indicating agreed prices that each would charge customers that were not allocated to it as per customer list. the purpose of this agreement was to ensure that the firm allocated the customer appears cheaper than its two competitors.

3. ADMISSION

3.1. Cape Brick admits that it engaged in the conduct set out in clause 2 above in contravention of section 4(1)(b) (i) and (ii) of the Act.

4. CO-OPERATION

4.1. Cape Brick confirms that it has ceased engaging in the conduct set out in clause 2 above.

4.2. Cape Brick agrees to fully co-operate with the Commission in its

investigation and prosecution of any other participant(s) in the alleged contravention. This co-operation includes, but is not limited to the following:

4.2.1. 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.

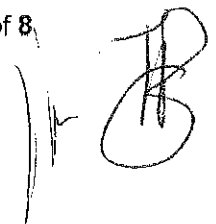
4.2.2. Testifying in any complaint referral which may arise in respect of this conduct.

4.2.3. Availing its employees to testify as witnesses for the Commission. Where witnesses are no longer in Cape Brick's employ, but previously were in its employ, Cape Brick undertakes to use its best endeavours to procure the co-operation of such witnesses with the Commission in the manner aforesaid.

5. ADMINISTRATIVE PENALTY

5.1. Cape Brick agrees that it is liable to pay an administrative penalty of R300 000 00 (Three hundred thousand rand). This amount represents 1.13% of Cape Brick's annual turnover for the year ended February 2011;

5.2. Cape Brick shall pay the abovementioned R300 000 00 (Three hundred

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thousand rand) to the Commission in 10 (ten) instalments of R30 000 (Thirty thousand rand);

5.3. The first payment being made within 30 days of the confirmation of the Consent Agreement as a consent order by the Tribunal. The remaining nine instalments will thereafter be paid monthly from the second month until the date of final instalment.

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

Bank name: Absa Bank

Branch name: Pretoria

Account holder: Competition Commission Fees Account

Account number: [REDACTED]

[REDACTED] type: Current Account

Branch Code: 632005

Reference: Case Number: 2012Feb5873/Cape Brick.

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



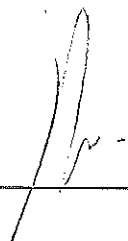
6. AGREEMENT REGARDING FUTURE CONDUCT

- 6.1. Cape Brick undertakes to refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future.
- 6.2. Cape Brick shall implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act;
- 6.3. Cape Brick shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Cape Brick within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

7. FULL AND FINAL SETTLEMENT

- 7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2012Feb5783 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Cape Brick relating to the conduct that is the subject of the Commission's investigation under Case No. 2012Feb5783.

For Cape Brick



Dated and signed at PHILIPPI on the 3RD day of JULY 2017

For the Commission



TEMBINKOSI BONAKELE
Commissioner

Dated and signed at Johannesburg on the 4th day of JULY 2017