



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 019844

In the matter between:

The Competition Commission

Applicant

and

JH Retief Transport CC

Respondent

Panel : N Manoim (Presiding Member)
M Mazwai (Tribunal Member)
A Wessels (Tribunal Member)

Heard on : 12 November 2014

Decided on : 12 November 2014

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and JH Retief Transport CC, annexed hereto marked "A".

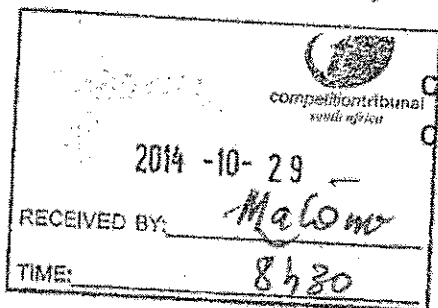


Presiding Member
Mr. N Manoim

12 November 2014
Date

Concurring: Ms. M Mazwai and Mr. A Wessels

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)



CT Case No.
CC Case No.: 2010Nov5447

In the matter between

COMPETITION COMMISSION

Applicant

and

J.H. RETIEF TRANSPORT CC

Respondent

CONSENT 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 J.H. RETIEF TRANSPORT CC, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i),(ii) and (iii) OF THE COMPETITION ACT, 1998

Preamble



The Competition Commission and J.H. Retief Transport 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 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)(iii) of the Act, on the terms set out below.

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1. Definitions

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "J.H. Retief Transport" means J.H. Retief Transport CC a close corporation incorporated under the laws of the Republic of South Africa with its principal place of business at Willow Road, Stikland, Bellville, Western Cape Province;
- 1.3 "CLP" means the Commission's Corporate Leniency Policy (Government Gazette Notice no. 628 of 23 May 2008) published in Government Gazette no.31064 of 23 May 2008;
- 1.4 "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;
- 1.5 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2010Nov5447;
- 1.7 "Consent Agreement" means this agreement duly signed and concluded between the Commission and J.H. Retief Transport;
- 1.8 "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;

- 1.9 "Parties" means the Commission and J.H. Retief Transport; and
- 1.10 "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. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 3 November 2010, the Commission initiated a complaint in terms of section 49(B)(1) of the Act into alleged prohibited practices relating to collusive tendering in the supply of furniture removal services in South Africa against J.H Retief Transport, Patrick Removals (Pty) Ltd, Cape Express Removals (Pty) Ltd, Sifikile Transport CC, Gloway Transport CC, De Wef Human CC t/a Viking Furniture, Stuttaford Van Lines (Pty) Ltd and Pro-Pack Removals.
- 2.2 On 1 June 2011, the Commission amended the complaint to include other furniture removal firms as respondents in the complaint on the basis of further information obtained in the investigation of the complaint. These 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, Majorshelf, Matthee Removals, North Western Transport CC, Pickfords Removals (Pty) Ltd, Pulse



International Removals, Stanley's Removals CC, Transfreight International CC, Western Transport Services CC, JNK Transport Services, Trapezium Removals, Elite International, City to City Transport, Wiets Removals, H&M Removals, AGS Frasers International (Pty) Ltd, and all present members of the Professional Movers Association.

- 2.3 On 13 June 2013, the Commission further amended the complaint to include other furniture removal firms as respondents in the complaint on the basis of further information obtained in 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 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 be hereinafter referred to as "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 2.1, 2.2 and 2.3 above, being competitors in the market for the provision of furniture removal services agreed to tender collusively in relation to the supply of furniture removal services.
- 2.5.2 In terms of the agreement a firm that is 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 will then contact two or more of its competitors and request the competitors to submit cover prices.



2.5.3 The cover prices will 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 The Respondents arranged to collude on tenders issued by various government departments, including but not limited to, the South African National Defence Force (SANDF), South African Police Services (SAPS), as well as tenders issued by large corporates such as Eskom and Pretoria Portland Cement (PPC).

2.5.5 The Commission further found that, pursuant to the arrangement set out above, J.H. Retief Transport had engaged in 3487 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

J.H. Retief Transport admits that it engaged in the conduct set out in paragraph 2.5 above in contravention of section 4(1)(b) (iii) of the Act.

4. CO-OPERATION

J.H. Retief Transport 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


J.H. Relief Transport agrees to:

- 5.1 prepare and circulate a statement summarising the content of this 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 section 4 (1)(b) (iii) 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 60 days of the date of confirmation of the Consent Agreement as an order by the Tribunal; and
- 5.5 undertake 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, J.H. Retief Transport is liable to pay an administrative penalty.
- 6.2 J.H. Retief Transport agrees and undertakes to pay an administrative penalty in the amount of R4 273 060.80 (four million two hundred and seventy-three thousand and sixty rands and eighty cents) representing 10% of its annual turnover for the financial year ending 2012;
- 6.3 J.H. Retief Transport will pay R1000 000.00 (one million) of the amount set out in paragraph 6.2 above to the Commission within 30 days of the confirmation of this Consent Agreement as an order of the Tribunal.
- 6.4 J.H. Retief Transport will further pay 50% of the balance of the amount in clause 6.3 above which amounts to R1 636 530.00 (one million six hundred and thirty six thousand five hundred and thirty rand) within 3 (three) months of the confirmation of this Consent Agreement as an order of the Tribunal.
- 6.5 J.H. Retief Transport will thereafter pay the outstanding balance of the amount in clause 6.4 above which amounts to R1 636 530.00 (one million six hundred and thirty six thousand five hundred and thirty rand) within 6 (six) months of the confirmation of this Consent Agreement as an order of the Tribunal.
- 6.6 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: 4050778576

Branch Code: 323 345

Ref: 2010/Nov5447/J.H. Retief Transport

- 6.7 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 full and final settlement of the conduct set out in paragraph 2.5 above and concludes all proceedings between the Commission and J.H. Retief Transport in respect of this conduct only.

Dated and signed at Bellville on the 24th day of October 2014

For J.H. Retief Transport CC



Chief Executive Officer

Name in Full: Johannes Mendrick Retief

Dated and signed at PRETORIA on the 28th day of October 2014

For the Commission



Tembinkosi Bonakele
Competition Commissioner