

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016857

In the matter between:

The Competition Commission

Applicant

And

Shekinah Medical and Disposables CC

Respondent

Panel : A Wessels (Presiding Member)

A Ndoni (Tribunal Member)

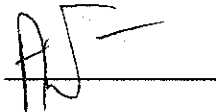
M Mokuena (Tribunal Member)

Heard on : 16 July 2013

Decided on : 16 July 2013

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the Respondent, attached hereto as "**Annexure A**", to be read with the addendum to the Settlement Agreement, attached hereto as "**Annexure B**".



A Wessels

Presiding Member

Concurring: A Ndoni and M Mokuena

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA**

CT CASE NO. 016295

CC CASE NO. 2011NOV0370

In the matter between:

THE COMPETITION COMMISSION

Applicant

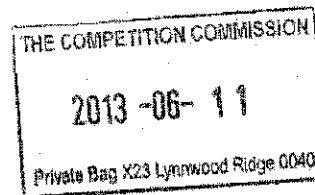
and

SHEKINAH MEDICAL & DISPOSABLES CC

Respondent

In re:

THE COMPETITION COMMISSION



Applicant

and

SHEKINAH MEDICAL & DISPOSABLES CC

Respondent

HOSANNA MEDICAL & DISPOSABLES CC

Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND SHEKINAH MEDICAL & DISPOSABLES CC ("SHEKINAH") IN REGARD TO ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED.

The *Commission* and Shekinah 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 lodged by the National Treasury of South Africa ("the National Treasury") in terms of section 49B of the Act under case number:2011NOV0370. The National Treasury is a government Department that is responsible for, *inter alia*, the national budget, supporting efficient and sustainable public financial management, and good governance. The National Treasury is governed by the Public Finance Management Act ("PFMA") 1 of 1999, and has its principal place of business at 40 Church Square, Pretoria.
- 1.5 "**Settlement Agreement**" means this settlement agreement duly signed and concluded between the Commission and Shekinah;
- 1.6 "**Shekinah**" means Shekinah Medical & Disposables CC, a close corporation duly registered and incorporated in terms of



the Close Corporation Act, 69 of 1984, with its main place of business at 43 Adcock Street, Chamdor, Krugersdorp, Gauteng Province.

- 1.7 **"Parties"** means the Commission and Shekinah;
- 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 Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa.
- 1.9 **"Respondents"** means all the firms that are cited as the respondents in the Commission's complaint referral filed under Competition Tribunal Case number: 016295 respectively, namely: Shekinah Medical & Disposables CC and Hosanna Medical & Disposables CC.

2. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

- 2.1 On 21 November 2011, the Commission received a complaint from the National Treasury in terms of which Shekinah and Hosanna were alleged to have contravened section 4(1)(b)(iii) of the Act, in that being competitors in the market for the supply and delivery of screening and confirmatory rapid HIV test kits, they met to discuss prices and shared commercially sensitive information relating to the Tender RT41-2011ME, being a tender which was advertised on the 10th of December 2010 on behalf of the National Department of Health ("NDoH").
- 2.2 The Commission investigated the alleged conduct and found that in deed, the respondents had multiple contacts with each other regarding the tender as follows;



- 2.2.1 On or about November 2010, Garson Naidoo ("Naidoo") representing Hosanna held a meeting with Shannon Abboy ("Abboy"), representing Shekinah in terms of which Naidoo requested an undertaking from Abboy that Shekinah would supply Hosanna with HIV test kits to fulfil the requirements of the tender.
- 2.2.2 Abboy offered to assist Naidoo, with the help of his Chinese-based supplier or agent, Grand Ocean, to secure a supplier with a different brand of products.
- 2.2.3 Subsequent to this meeting but before the tender closing date, Abboy met with Naidoo and they discussed the tender, *inter alia*, in respect of promotion of small business (section under SBD 6.2 of the tender documents), price qualification and contract price adjustment procedure, and specialist functions contract management.
- 2.2.4 Shekinah and Hosanna submitted bids to the National Treasury which were similar in material respects.

3. THE COMMISSION'S REFERRAL

- 3.1 Following its investigation, the Commission concluded that the conduct by Hosanna and Shekinah constituted a contravention of section 4(1)(b)(iii) of the Act, in that they engaged in the conduct referred to in paragraph 2 above.
- 3.2 In light of its findings, the Commission decided to refer the complaint on 27 February 2013 to the Tribunal for determination.

4. AGREEMENT

4.1 Admission

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4.1.1 Shekinah admits that its conduct amounts to a contravention of section 4(1)(b)(iii) of the Act.

4.2. Future Conduct

4.2.1 Shekinah agrees to fully cooperate, to the extent possible given due regard to the circumstances, with the Commission in relation to the prosecution of the other respondent which is the subject of its investigation and referral to the Tribunal. Without limiting the generality of the foregoing, Shekinah 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 out in the Commission's referral affidavit.

4.2.1.3 Desist from engaging in the conduct complained of.

4.2.2 Shekinah agrees that it will in future refrain from participating in meeting(s) aimed at engaging in a cartel conduct which will lead to a contravention of section 4(1)(b) of the Act.

4.2.3 Shekinah agrees that its management and directors will attend a competition law compliance training programme

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incorporating corporate governance to be provided by the Commission and designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act.

4.2.4 Shekinah will ensure that such training materials will be made available to all the employees and agents of Shekinah.

4.2.5 Furthermore, Shekinah will update such training materials as often as it is reasonably possible to ensure, on an ongoing basis, that its employees, management, directors and agents do not engage in any future contraventions of the Act.

5. Administrative Penalty

5.1 In accordance with the provisions of section 58(1)(a)(iii) as read with 59(1)(a) and 59(2), Shekinah will pay an administrative penalty in the sum of R143 143.69.00 (One Hundred and Forty Three Thousand One Hundred and Forty Three Rand Sixty Nine Cents), which is equivalent to 4% of it's affected turnover for the financial year ending February 2012 (i.e R3 578 592,15-Three Million Five Hundred and Seventy Eight Thousand Five Hundred and Ninety Two Rand Fifteen Cents).

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:	4050778576
Branch code:	323 345

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

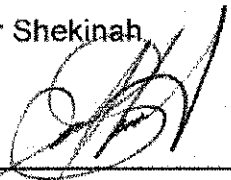
6.1 Payment of the amount referred to in paragraph 5.1 above will be made as follows: 50% of the penalty will be payable within 60 days of the Tribunal's order and the remaining balance (i.e 50%) payable within 12 months of the Tribunal's order.

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 Shekinah relating to any alleged contravention by Shekinah of the Act that is the subject of the Commission's investigation (CC Case no. 2011NOV0370).

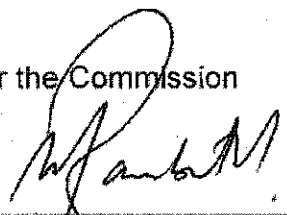
Dated and signed at JHB on this the 7 day of JUNE 2013

For Shekinah



Dated and signed at Pretoria on this the 12 day of June 2013

For the Commission



Competition Commissioner


ADDENDUM TO SETTLEMENT AGREEMENT BETWEEN SHEKINAH MEDICAL AND DISPOSABLES CC AND THE COMPETITION COMMISSION

The parties agree that the clause set out hereunder shall replace Clause 4.2.3 of the attached settlement agreement signed by the Competition Commissioner dated 12 June 2013.

4.2.3 Shekinah agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that its employees, management, directors and agents do not engage in conduct in contraventions of section 4(1)(b) of the Act, details of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this agreement as an order of the Tribunal.


Dated and signed on this the 16th day of July 2013

For: the Commission



Competition Commissioner

For: Shekinah



Managing Director