



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR067May17/SA103Jun18

In the matter between:

The Competition Commission **Applicant**

And

Thembekile Maritime Services (Pty) Ltd **Respondent**


Panel : N Manoim (Presiding Member)
Y Carrim (Tribunal Member)
E Daniels (Tribunal Member)

Heard on : 27 June 2018

Decided on : 27 June 2018

Settlement Agreement

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



**Presiding Member
Mr Norman Manoim**

27 June 2018
Date

Concurring: Ms Yasmin Carrim and Mr Enver Daniels

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR067MAY17

CC CASE NO: 2016JUN0263

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

THEMBEKILE MARITIME SERVICES (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 THEMBEKILE MARITIME SERVICES (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) & (iii) OF THE COMPETITION ACT 89 OF 1998 AS AMENDED

Preamble

The Competition Commission and Thembekile Maritime Services (Pty) Ltd ("TMS") 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

Page 1 of 7

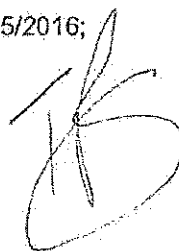


section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of a contravention of section 4(1)(b)(i) and (iii) of the Act, on the terms set out below.

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 submitted by RIM to the Commission on 02 June 2016 in terms of section 49B(2)(b) of the Act;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Thembekile Maritime Services;
- 1.6 "TMS" means TMS, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Shop 7, Quay 5, V&A Waterfront, Cape Town;
- 1.7. "Parties" means the Commission and TMS;
- 1.8 "RIM" means Robben Island Museum;
- 1.9 "Tender" means tender number: RIM FER-01-2015/2016;



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; and

2. COMPLAINT INVESTIGATION AND FINDINGS

2.1 On 02 June 2016, RIM submitted a complaint to the Commission in terms of section 49B(2)(b) of the Act against TMS, Silverbuckle Trade 21 CC t/a Yacoob Yachts, Nautical Charters (Pty) Ltd, Ferry Charters (Pty) Ltd and Heritage Charters CC t/a Tigger 2 Charters for allegedly colluding when bidding for tender number: 01/2015-2016 issued by RIM to ferry passengers from V & A Waterfront to Robben Island and back in contravention of section 4(1)(b)(i) and (iii) of the Act.

2.2 The Commission's investigation found that,

2.2.1 In or around 22 September 2015, the Respondents met at a coffee shop after attending RIM's compulsory briefing session. During the above meeting the Respondents discussed and agreed to increase their prices when bidding for the tender issued by RIM. This conduct is in contravention of section 4(1)(b)(i) and (iii) of the Act.

2.2.2 The tender was for being listed in the database of RIM as preferred service providers to ferry passengers from V & A Waterfront to Robben Island and from Robben Island to V & A Waterfront for a period of twelve (12) months.

2.2.3 Following the coffee shop meeting, TMS and Nautical Charters increased their prices to R18 000 per trip for 140 passengers. Ferry Charters did not alter its price of R18 000 per trip for 140 passengers. This resulted in TMS, Nautical Charters and Ferry Charters quoting the same price of R18 000 for a trip of 140 passengers.

- 2.2.4 In addition to agreeing to increase their prices to R18 000 per trip of 140 passengers, Nautical Charters and TMS agreed to charge R80 per person for additional passengers as their vessels can take more than 140 passengers.
- 2.2.5 Silverbuckle and Tigger 2 Charters agreed to increase their prices, but did not increase to the level of the other Respondents as their vessels are smaller. Silverbuckle increased its price from R7 750 to R8 775 for a 65 passenger vessel per trip while Tigger 2 Charters increased its price from R11 500 to R12 650 for a 65 passenger vessel per trip.
- 2.2.6 On 30 May 2017, the Commission referred the complaint to the Tribunal for adjudication.
- 2.2.7 This conduct constitutes price fixing and collusive tendering which contravenes section 4(1)(b)(i) and (iii) of the Act.

3. ADMISSION

TMS admits that it engaged in price fixing and collusive tendering in contravention of section 4(1)(b)(i) and (iii) of the Act.

4. FUTURE CONDUCT

TMS agrees to:

- 4.1 share a copy of this Consent Agreement with its directors within fourteen (14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal (it should be noted that TMS does not currently employ any employees);
- 4.2 refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in

future;

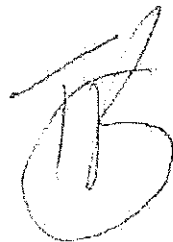
- 4.3 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its directors and any future agents or employees do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 4.4 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and
- 4.5 Undertakes henceforth to engage in competitive practices.

5. ADMINISTRATIVE PENALTY

- 5.1 TMS agrees that it is liable to pay an administrative penalty of **R350 000.00 (Three Hundred and Fifty Thousand Rand)**. This amount does not exceed 10% of TMS annual turnover for the financial year ended February 2017.
- 5.2 This amount will be paid in seven (7) instalments of **R50 000.00 (Fifty Thousand Rand)**. The first instalment will be paid within 30 days of the confirmation of this Consent Agreement as an order of the Tribunal and subsequent equal instalments will be paid on or before the end of each successive months.
- 5.3 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fees Account

Bank: Absa Bank, Pretoria



Account Number: 4050778576

Branch Code: 632005

Ref: 2016Jun0263/ Thembekile Maritime Services

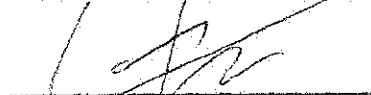
5.4 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

6. Full and Final Settlement

This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2016Jun0263 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and TMS.

Dated and signed at Richard Kasteel on the 26 day of June 2018

For Thembekile Maritime Services



Shareholder and director

Name in Full: James Matthew Price Bayce

Dated and signed at Richard Kasteel on the 26th day of June 2018

For the Commission





Tembinkosi Bonakele
Commissioner