

competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO016Apr19

In the matter between:

The Competition Commission

Applicant

And

Greensweep Consortium (Pty) Ltd

Respondent

Panel : E Daniels (Presiding Member)
: M Mazwai (Tribunal Member)
: F Tregenna (Tribunal Member)

Heard on : 15 May 2019

Decided on : 15 May 2019

CONSENT AGREEMENT

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



Presiding Member
Mr Enver Daniels

Date
15 May 2019

Concurring: Ms Mondo Mazwai and Prof. Fiona Tregenna

" A "

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

CT Case No: C0016Apt19
CC Case No: 2018JAN0036

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

GREENSWEEP CONSORTIUM (PTY) LTD

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
GREENSWEEP CONSORTIUM (PTY) LTD IN REGARD TO ALLEGED
CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT, 89 OF 1998,
AS AMENDED.

PREAMBLE

The Commission and Greensweep Consortium (Pty) Ltd hereby agree that application be made to the 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, No. 89 of 1998, as amended, in respect of contravention of section 4(1)(b)(iii) of the Act, on the terms set out below.

competition tribunal
south africa

2018-04-21

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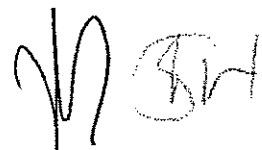
1. DEFINITIONS

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 "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 the South Africa Social Security Agency in terms of section 49B(2) of the Act under case number 2018Jan0036;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Greensweep;
- 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 that 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;

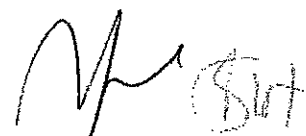
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- 1.7 "Greensweep" means Greensweep Consortium (Pty) Ltd a private company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at Unit 3, Adlo Park, 40 1st Street, Mafikeng, North West;
- 1.8 "Parties" means the Commission and Greensweep;
- 1.9 "Quintax" means Quintax 31 CC T/A Quintax Cleaning Services, a close corporation duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at Unit 2, Lubex House, 4 Ivy Road, Pinetown, KwaZulu-Natal;
- 1.10 "SASSA" means the South African Social Security Agency, a statutory body established in terms of section 2 of the South African Social Security Agency Act No. 9 of 2004, with its principal place of business at 501 Prodinsa Building, Corner Steve Biko and Pretorius Streets, Pretoria, Gauteng; and
- 1.11 "Tender" means the tender number SASSANW 14/16CS/NW, advertised by SASSA on 29 July 2016, for the provision of cleaning, sanitation, gardening, and car wash services to SASSA in the North West Province.
- 1.12 "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

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2. COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 30 January 2018, SASSA submitted a Complaint in terms of section 49(B)(2) of the Act, whereby it was alleged that the Greensweep and Quintax, collectively referred to as ("the Respondents"), entered into an agreement to fix prices and tender collusively when responding to the Tender in the North West Province in contravention of section 4(1)(b)(i) and (iii) of the Act.
- 2.2 The Commission investigated the Complaint and found that the Respondents, being in a horizontal relationship, had engaged in discussions and exchanged information with each other regarding the tender in question. In particular, the Commission's investigation revealed the following:
- 2.2.1 Greensweep did not act independently in setting its price in that it accepted a cover price from Quintax;
- 2.2.2 Greensweep agreed to submit a high bid based on the prices prepared by Quintax in order to let Quintax win the tender. The tender was awarded to Quintax;
- 2.2.3 The bid documents for both Respondents were completed by the same person;
- 2.2.4 The contingency plans for both Respondents were the same and were prepared by the same person; and
- 2.2.5 This conduct contravenes section 4(1)(b)(iii) of the Act.

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3. ADMISSION

- 3.1 Greensweep admits that it entered into an agreement with Quintax to submit a high bid in order to let Quintax win the Tender in contravention of section 4(1)(b)(iii) of the Act.

4. FUTURE CONDUCT

- 4.1 Greensweep agrees and undertakes to:

4.1.1 prepare and circulate a statement summarising the contents of this Consent Agreement to its employees, managers and directors within 14 (fourteen) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.1.2 refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in the future;

4.1.3 to implement and monitor a competition law compliance programme. Such programme shall incorporate corporate governance designed to ensure the 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; and

4.1.4 with regard to the competition law compliance programme referred to above, Greensweep undertakes to submit to the Commission a copy thereof

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within 90 days of confirmation of the Settlement Agreement as an Order of the Tribunal.

5. ADMINISTRATIVE PENALTY

5.1 Greensweep agrees to pay an administrative penalty in the sum of R40 300.59 (Forty Thousand, Three Hundred Rands and Fifty Nine Cents). This amount represents 1.25% of Greensweep's annual turnover in the Republic of South Africa for the financial year ended 28 February 2018.

5.2 Greensweep shall pay the abovementioned amount in full within 60 (sixty) days of the confirmation of the Consent Agreement as an order of the Tribunal.

5.3 This payment shall be paid 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	:	4087641778
Account type	:	Current Account
Branch Code	:	632005
Ref	:	2018Jan0036/Greensweep



5.4 The Commission will pay this sum to the National Revenue Fund in terms of section 59(4) of the Act.

6. MONITORING

6.1 All reports in relation to conditions set out in this agreement, including but not limited to Compliance programmes, Proof of payment(s) etc. shall be submitted to the Commission at CartelSettlements@compcom.co.za.

7. FULL AND FINAL SETTLEMENT

7.1 This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement of all conduct engaged in by Greensweep as set out in paragraph 2 of this Consent Agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Greensweep in this regard.

Dated and signed at Pokkware on the 11 day of April 2019

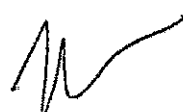
For Greensweep

Director

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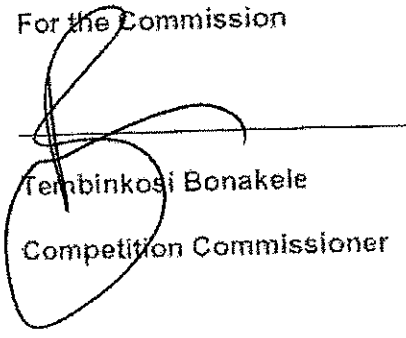
Name in Full: Beatrice Isakem Mkhambule

SMkhambule



Dated and signed at TSHWANE on the 17th day of April 2019

For the Commission



Tembinkosi Bonakele
Competition Commissioner