



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO028Jun15

In the matter between:

The Competition Commission

Applicant

And

Haw & Inglis Civil Engineering Proprietary Limited

Respondent

Panel : N Manoim (Presiding Member)
Y Carrim (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 01 July 2015

Decided on : 01 July 2015

Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Haw & Inglis Civil Engineering Proprietary Limited, annexed hereto marked "A".



Presiding Member
Mr N Manoim

01 July 2015
Date

Concurring: Ms Y Carrim and Ms M Mokuena

ANNEXURE "A" 2

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

competition tribunal
south africa

2015-05-01

RECEIVED BY: *M. Molewa*

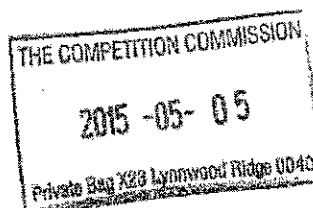
TIME: *11h45*

CT CASE NO: _____

CC CASE NO: 2009Sep4641

In the matter between:

THE COMPETITION COMMISSION



Applicant

and

HAW & INGLIS CIVIL ENGINEERING (PTY) LIMITED

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 HAW & INGLIS CIVIL ENGINEERING (PTY) LIMITED, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT, 1998

The Competition Commission ("Commission") and Haw & Inglis Civil Engineering (Pty) Limited ("Haw & Inglis") hereby agree that application be made to the Competition Tribunal ("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 ("the Act"), in respect of contraventions of section 4(1)(b)(iii) of the Act.

1 DEFINITIONS

For 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 **"CLP"** means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);
- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its offices 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 Haw & Inglis;
- 1.5 **"Haw & Inglis"** means Haw & Inglis Civil Engineering (Pty) Limited, a company incorporated under the laws of the Republic of South Africa with its principal place of business at Hillcrest Estate, Racecourse Road, Durbanville;
- 1.6 **"Invitation"** means the 'Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Competition Act' dated 1 February 2011;
- 1.7 **"Parties"** means the Commission and Haw & Inglis;

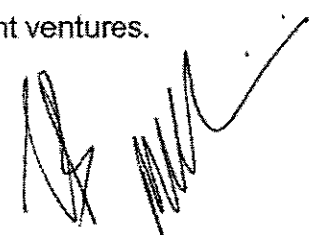


1.8 "Rumdel" means Rumdel Construction Cape (Pty) Ltd;

1.9 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its offices at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 BACKGROUND

2.1 On 1 September 2009, following the receipt of applications for immunity in terms of the CLP, the Commission initiated a complaint in terms of section 49B(1) of the Act into particular prohibited practices relating to conduct in respect of numerous construction projects, by the firms listed below. This complaint concerned alleged contraventions of section 4(1)(b) of the Act with regard to price fixing, market allocation and collusive tendering. The investigation was initiated against the following firms: Stefanutti, Aveng (Africa) Limited, Group Five Ltd, Murray & Roberts, Concor Ltd, G. Liviero & Son Building (Pty) Ltd, Giuricich Coastal Projects (Pty) Ltd, Hochtief Construction AG, Dura Soletanche-Bachy (Pty) Ltd, Nishimatsu Construction Co Ltd, Esorfranki Ltd, VNA Piling CC, Rodio Geotechnics (Pty) Ltd, Diabor Ltd, Gauteng Piling (Pty) Ltd, Fairbrother Geotechnical CC, Geomechanics CC, Wilson Bayly Holmes-Ovcon Ltd and other construction firms, including joint ventures.



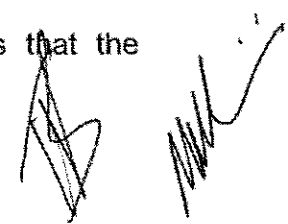
2.2 The Commission's investigation of the above complaint, as well as several other of the Commission's investigations in the construction industry, led the Commission to believe that there was widespread collusion in contravention of section 4(1)(b)(iii) of the Act in the construction industry. Accordingly, in line with the purpose of the Act, as well as the Commission's functions, the Commission decided to invite construction firms that were involved in collusive conduct to settle with the Commission on favourable terms. The Invitation was published on the Commission's website on 1 February 2011. This was also done in the interests of transparency, efficiency, adaptability and development of the construction industry, the provision of competitive prices, as well as in order to expedite finalisation of the investigations, under a fast track process. The Invitation specifically provided that it was open to firms to also apply for leniency in terms of the CLP.

2.3 In response to the Invitation and in terms of the Commission's CLP, Haw & Inglis was first to apply for leniency in respect of the conduct described in paragraph 4 below.

3 **CONDITIONAL IMMUNITY**

3.1 The Commission granted Haw & Inglis conditional immunity from prosecution before the Tribunal for its involvement in the prohibited practice described in paragraph 4 below.

3.2 In exchange for conditional immunity, Haw & Inglis, *inter alia*, agreed to co-operate with the Commission in respect of any steps that the

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized, somewhat abstract scribble. The second signature is more legible, appearing to be 'M. Inglis'.

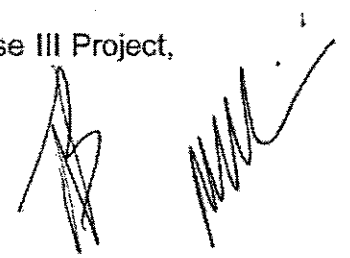
Commission may deem necessary to obtain an order from the Tribunal declaring the conduct set out in paragraph 4 below to be a contravention of section 4(1)(b)(iii) of the Act.

4 CONDUCT IN CONTRAVENTION OF THE ACT

Haw & Inglis disclosed its participation in the following prohibited practice in contravention of section 4(1)(b)(iii) of the Act:

Phase III- The Langeni Saw Mill to R61 Tender (Tender no. SCMU10-06/07-055)

- 4.1 In or about August 2006 Haw & Inglis reached an agreement with Rumdel on the submission of a cover price by Haw & Inglis in relation to the tender for the Langeni Saw Mill to R61 – Phase III Project.
- 4.2 This project was for the upgrading of the existing gravel road to a black top surface road. The client was the Department of Roads and Transport of the Eastern Cape Province, and the project was completed in July 2009.
- 4.3 In terms of the agreement, Rumdel requested Haw & Inglis to submit a cover price to enable Rumdel to be awarded the tender. Accordingly, Haw & Inglis informed Rumdel of its cover price which Rumdel confirmed as being sufficiently higher than Rumdel's proposed bid price.
- 4.4 In accordance with the above agreement, Haw & Inglis submitted the agreed cover price for the Langeni Saw Mill to R61 – Phase III Project,



as its bid price.

4.5 The tender was awarded to Rumdel.

5 ADMISSION

5.1 Haw & Inglis admits that the conduct set out in paragraph 4 above is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

6 NO ADMINISTRATIVE PENALTY

6.1 The Commission seeks no administrative penalty against Haw & Inglis as it has been granted conditional immunity for its involvement in the conduct mentioned in 4 above.

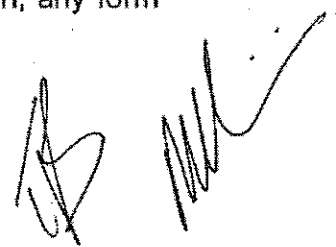
7 CO-OPERATION

7.1 In so far as the Commission is aware, and in compliance with the requirements as set out in the CLP, Haw & Inglis:

7.1.1 has provided the Commission with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the prohibited practices;

7.1.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practices;

7.1.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in future engage in, any form of prohibited practice;

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

7.1.4 has confirmed that it has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practices;

7.1.5 has confirmed that it has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

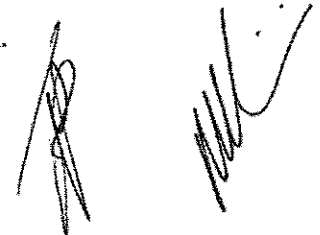
8 FUTURE CONDUCT

8.1 Haw & Inglis confirms that it no longer engages in the conduct set out in paragraph 4 above.

8.2 In compliance with the requirements as set out in the CLP, Haw & Inglis agrees and undertakes to provide the Commission with full and expeditious co-operation from the time that this Consent Agreement is concluded until the subsequent proceedings, if any, in the Competition Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:

8.2.1 to the extent that it is in existence and has not yet been provided, providing (further) evidence, written or otherwise, which is in its possession or under its control, concerning the contraventions contained in this Consent Agreement;

8.2.2 availing its employees and former employees to testify as witnesses for the Commission in any cases regarding the contraventions contained in this Consent Agreement.



8.3 Haw & Inglis shall continue to 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 contravention of the Act.

8.4 Haw & Inglis shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Haw & Inglis within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.



8.5 Haw & Inglis will not in the future engage in any form of prohibited conduct and will not engage in collusive tendering which will distort the outcome of tender processes but undertakes henceforth to engage in competitive bidding.

For the Commission

Dated and signed at PRETORIA on the 06 day of May 2015



TEMBINKOSI BONAKELE
Commissioner

For Haw & Inglis

Dated and signed at HILLCREST ESTATE on the 29th day of April 2015



Name: ADRIAN ROBINSON

Managing Director

