



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CO145Jan20

In the matter between:

The Competition Commission

Applicant

and

Timrite (Pty) Ltd

First Respondent

Tufbag (Pty) Ltd

Second Respondent

Panel : Y Carrim (Presiding Member)
: AW Wessels (Tribunal Panel Member)
: F Tregenna (Tribunal Panel Member)
Heard on : 19 February 2020
Decided on : 26 February 2020

Consent Agreement

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

Ms Yasmin Carrim
Presiding Member

26 February 2020

Date

Concurring: Mr Andreas Wessels and Prof. Fiona Tregenna

"A"

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

CT CASE NO:
CC CASE NO: 2017Jul0012

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

TIMRITE (PTY) LTD

First Respondent

TUFBAG (PTY) LTD

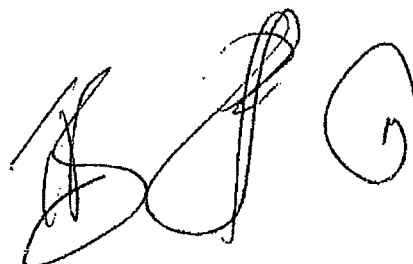
Second Respondent

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, TIMRITE (PTY) LTD AND TUFBAG (PTY) LTD.

Preamble

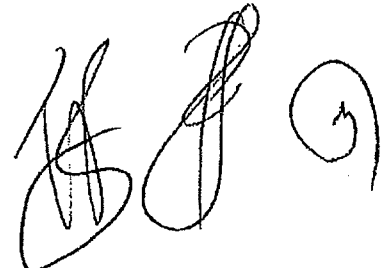
The Competition Commission and Timrite (Pty) Ltd Tufbag (Pty) Ltd hereby agree that an application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act No. 89 of 1998, as amended, in respect of the conduct outline herein on the terms set out below:

1. DEFINITIONS

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For the purposes of this consent agreement, the following definitions shall apply:

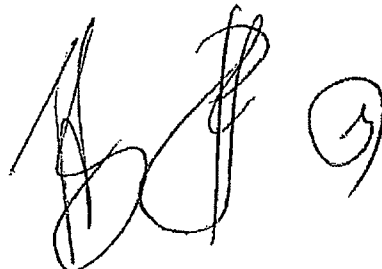
- 1.1 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.2 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 "Consent Agreement" means this agreement duly signed and concluded between the Commission, Timrite (Pty) Ltd and Tufbag (Pty) Ltd;
- 1.4 "Timrite" means Timrite (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at Block D, Palms Office Court, Kudu Street, Allens Nek, Roodepoort, Gauteng Province.
- 1.5 "Tufbag" means Tufbag (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at 21 uMzimkhulu Drive, Lamercy, Durban, KwaZulu Natal Province;
- 1.6 "BBM" means Brits Bag Manufacturers (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at 35 Piet Rautenbach Street, Industrial Area, Brits, North West.

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- 1.7 "Polystar" means Polystar Tape and Fabric (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at 13 Piet Rautenbach Street, Industrial Area, Brits, North West.
- 1.8 "Parties" means the Commission and Timrite and Tufbag collectively;
- 1.9 "PSA" means the Product Supply Agreement entered into by and between Timrite and Tufbag on or about 2009.
- 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 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1. On 05 July 2017, the Commissioner initiated a complaint against Timrite, Tufbag, BBM and Polystar for allegedly dividing markets by allocating specific types of goods or services in the market for the manufacture and supply of cementitious polypropylene-based mining bags in contravention of section 4(1)(b) (ii) of the Act. .
- 2.2. It is alleged that on or about 2009, Timrite and Tufbag concluded a PSA in terms of which Tufbag has an exclusive right to manufacture cementitious polypropylene-based mining bags and Timrite has also an exclusive right to distribute and on-sell polypropylene-based mining bags manufactured by Tufbag.

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- 2.3. The investigation revealed that during or about 2009, Timrite and Tufbag concluded an agreement pursuant to a jointly owned intellectual property, in terms of which Tufbag is only permitted to manufacture cementitious polypropylene-based mining bags and sell them to Timrite while Timrite, on the other hand, is also only permitted to distribute and on-sell these products.
- 2.4. The above conduct may amount to market division by allocating specific type of services in contravention of section 4(1)(b) (ii) of the Act.

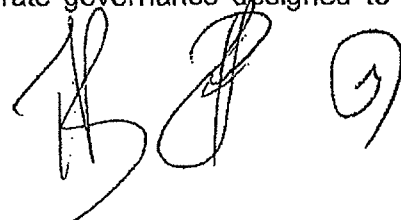
3. ADMISSION

- 3.1. Timrite and Tufbag do not admit that the conduct described in 2 above, amount to market division by allocating specific type of services in contravention of section 4(1)(b) (ii) of the Act.

4. FUTURE CONDUCT

Timrite and Tufbag agree and undertake to:

- 4.1. refrain from engaging in any conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;
- 4.2. circulate a statement summarising the contents of this Consent Agreement to its managers and directors within 30 days (thirty) from the date of confirmation of this Consent Agreement by the Tribunal;
- 4.3. to implement and monitor a competition law compliance programme. Such programme shall incorporate corporate governance designed to

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ensure the employees, management, directors and agents do not engage in future contraventions of the Act. Such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act;

4.4. with regard the competition law compliance programme referred to above, Timrite and Tufbag undertake to submit to the Commission a copy thereof within 90 days of confirmation of the Settlement Agreement as an Order of the Tribunal.

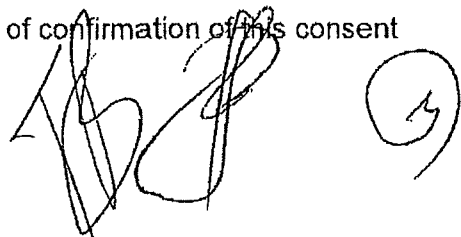
4.5. The Commission acknowledges that Timrite and Tufbag have received approval for the merger of their respective operations. In the circumstances, the Commission confirms that Timrite and Tufbag need not take any further action in relation to the PSA.

5. ADMINISTRATIVE PENALTY

5.1. Having regard to the provision of section 58(1)(a)(iii) as read with section 59(1)(a), 59(2) and 59(3) of the Act, Timrite and Tufbag agree to pay, without prejudice, an administrative penalty in the amount of R1 000 000 (One Million Rands only).

5.2. This amount does not exceed 10% of Timrite and Tufbag annual turnover separately and combined in the Republic of South Africa for the financial year ended 2018

5.3. Timrite and Tufbag shall pay the abovementioned amount to the Commission within 30 days from the date of confirmation of this consent

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agreement as an order of the Tribunal.

- 5.4. The administrative penalty 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

Reference: 2017Jul0012/TIMRITE & TUF BAG

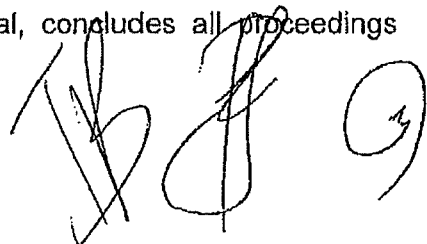
- 5.5. The penalty will then be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

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 Consent Agreement is concluded in full and final settlement of the Commission's investigation under Case No. 2017Jul0012 and upon confirmation as an order of the Tribunal, concludes all proceedings

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between the Commission and Timrite and Tufbag relating to the conduct that is the subject of the Commission's investigation under Case No. 2017Jul0012.

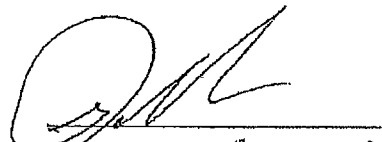
FOR TIMRITE (PTY) LTD

Dated and signed at AULENS NEK on the 26 day of NOVEMBER 2019.


Full names: Jacques de Wet
Designation: Director Timrite

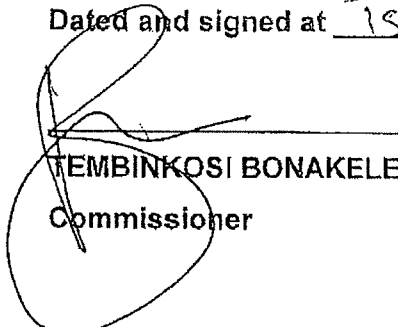
FOR TUF BAG (PTY) LTD

Dated and signed at AULENS NEK on the 26 day of NOVEMBER 2019.


Full names: CAROLEE BRYDON SOLOMON
Designation: MANAGING DIRECTOR

FOR THE COMMISSION

Dated and signed at TSHWANE on the 18th day of DECEMBER 2019.


TEMBINKOSI BONAKELE
Commissioner

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