



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR073Aug16/SA217Nov18

In the matter between:

The Competition Commission

Applicant

And

Eye Way Trading (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member)
A Ndoni (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 28 November 2018

Decided on : 28 November 2018

Settlement Agreement

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



Presiding Member
Mr Norman Manoim

28 November 2018

Date

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

"A"

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

CT Case No. *CRO73Aug16/SA217/Nov18*

CC Case No: 2014APR0163

2015MAR0138

In the matter between

COMPETITION COMMISSION

Applicant

And

EYE WAY TRADING (PTY) LTD

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND EYE WAY TRADING (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (iii) OF THE COMPETITION ACT 89 OF 1998. AS AMENDED

Preamble

The Competition Commission ("Commission") and Eye Way Trading (Pty) Ltd ("Eye Way") 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 sections 58(a)(iii) and 58(1)(b) of the Competition Act No. 89 of 1998, as amended ("the Act"), in respect of contravention of section 4(1)(b) (iii) of the Act, on the terms set out below.

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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, 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 "Complaints" means the complaints initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers: 2014Apr0163 and 2015Mar0138 in respect of tenders issued by the department of National Treasury;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Eye Way;
- 1.6 "Eye Way" means Eye Way Trading (Pty) Ltd, a company duly registered and incorporated in accordance with the company laws of South Africa with its principal place of business at 11 Guild House, 239 Bronkhorst Street, Pretoria.
- 1.7 "Parties" means the Commission and Eye Way;

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1.8 **"Respondents"** means Eye Way and Sargas (Pty) Ltd T/A Berg River Textiles ("Berg River Textiles");

1.9 **"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. BACKGROUND TO THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1 On 29 April 2014, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Eye Way and Berg River Textiles for allegedly colluding when bidding for tender RT60-2012T issued by the Department of National Treasury in contravention of section 4(1)(b)(iii) of the Act.

2.2 On 27 March 2015, the Commissioner initiated another complaint in terms of section 49B(1) on the Act against Eye Way and Berg River Textiles for allegedly colluding when bidding for tender RT60-2011T.

2.3 These tenders were issued by department of National Treasury for the supply of fabric used in the manufacture of uniforms to the Department of Correctional Services ("DCS"), the South African Air Force ("SAAF") and the South African Military Health Services ("SAMHS").

2.4 The Commission's investigation under case numbers: 2014Apr0163 and 2015Mar0138 revealed that:

2.4.1 The respondents have agreed to tender collusively in respect of tender number RT60-2012T and tender number RT60-2011T issued by National Treasury for the supply and delivery of fabric used to manufacture uniforms for DCS, SAAF and SAMHS.

2.4.2 This agreement amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION

3.1 Eye Way admits having engaged in the prohibited practices set out in 2.1 to 2.4 of this consent agreement, in contravention of section 4(1)(b) (iii) of the Act.

4. CESSATION AND CO-OPERATION

4.1 Eye Way confirms that it has ceased engaging in the conduct set out in clause 2.4 above.

4.2 Eye Way undertook not to engage in any collusion in future.

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5. AGREEMENT REGARDING FUTURE CONDUCT

- 5.1 Eye Way undertakes to refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future.
- 5.2 Eye Way shall develop, 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 contravention of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 5.3 Eye Way shall prepare and circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Eye Way within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal, and
- 5.4 Eye Way agrees to submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal.



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6 ADMINISTRATIVE PENALTY

6.1 Eye Way agrees and undertakes to pay an administrative penalty in the R115,000.00 (One Hundred and Fifteen Thousand Rands). This administrative penalty represents 3.5% of Eye Way's annual turnover for financial year ending 29 February 2016.

6.2 Eye Way will pay the full amount set out in paragraph 6.1 above to the Commission within 30 days of the confirmation of the Consent Agreement as an order of the Tribunal.

6.3 The administrative penalty must be paid into the Commission's bank account which is as follows:

Bank Name:	Absa Bank
Branch Name:	Pretoria
Account Holder:	The Competition Commission Fee Account
Account Number:	4087641778
Account Type:	Current Account
Branch Code:	632005
Reference:	2014APR0163 & 2015MAR0138/ EYE WAY

6.4 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.

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7. Full and Final Settlement

7.1 This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of the prohibited practices engaged in by Eye Way and Berg River Textiles as set out in paragraph 2 above and concludes all proceedings between the Commission and Eye Way in this regard.

Dated and signed at Kempton Park on the 24 day of OCTOBER 2018

For Eye Way Trading (Pty) Ltd



Chief Executive Officer

Name in Full: NOMATHAMSANDA CORDELIA MASHOALA

Dated and signed at PRETORIA on the 12 day of NOVEMBER 2018

For the Commission



Tembinkosi Bonakele

Competition Commissioner

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CROT3Aug16/SADITNOU18

CC CASE NO: 2014APR0163

2015MAR0138

In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And

EYE WAY TRADING (PTY) LTD

Respondent

**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND EYE WAY TRADING (PTY) LTD**

Preamble

It is hereby recorded, by agreement between the parties that the Consent Agreement concluded between the Competition Commission ("Commission") and which Eye Way (Pty) Ltd ("Eye Way") signed on 24 October 2018, be supplemented as recorded below.



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1. This addendum seeks to replace paragraph 6.2 of the already signed Consent Agreement with the paragraph set out below:

6.2. Eye Way has already paid the amount stipulated in paragraph 6.1 of the signed Consent Agreement.

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement concluded between the Commission and Eye Way and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning as defined in the Consent Agreement.

For EYE WAY



Signed and Dated at Kempston Park on the 02 day of NOVEMBER 2018.

Name in Full: NOMATHAMSANQA CORDELIA MASHOALA

Designation: DIRECTOR

For the Competition Commission

Signed and Dated at PRETORIA on the 13 day of November 2018.



Name in Full: TEMBINKOSI BONAKELE

Designation: COMMISSIONER OF THE COMPETITION COMMISSION