



**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

Case No: CR081Aug16/SA093Jul17

In the matter between:

The Competition Commission

**Applicant**

and

Fermel (Pty) Ltd

**Respondent**

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Panel : AW Wessels (Presiding Member)  
A Roskam (Tribunal Member)  
M Mokuena (Tribunal Member)


Heard on : 11 July 2017  
Addendum received on : 25 July 2017  
Decided on : 26 July 2017

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**Consent Agreement**

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Fermel (Pty) Ltd annexed hereto marked "A", read with the Addendum marked "B".

  
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Presiding Member  
Mr AW Wessels

26 July 2017  
Date

**Concurring: Mr Anton Roskam and Mrs Medi Mokuena**

A

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR081AUG16  
CC CASE NO: 2014Feb0047/  
2015OCT0599

In the matter between:

COMPETITION COMMISSION OF SA



Applicant

And

2017 -07- 03

FERMEL (PTY) LTD

RECEIVED BY:

Respondent

TIME: 15H15

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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 FERMEL (PTY) LTD, IN RESPECT OF A  
CONTRAVENTION OF SECTION 4(1)(b)(ii) OF THE COMPETITION ACT 89 OF 1998

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Preamble

The Competition Commission ("Commission") and Fermel (Pty) Ltd 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 section  
58(1)(b) of the Competition Act no. 89 of 1998, as amended, in respect of a  
contravention of section 4(1)(b)(ii) of the Act.

## 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 "Fermel" means Fermel (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 Cnr Bergvlei and Stellenberg Road, extension 5, Wadeville, Gauteng.
- 1.3 "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;
- 1.4 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Fermel;
- 1.5 "Parties" means the Commission and Fermel;
- 1.6 "Respondents" means Fermel and Hudaco Trading (Pty) Ltd;
- 1.7 "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 the 1<sup>st</sup> Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

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## 2. INVESTIGATION AND FINDINGS OF THE COMMISSION

2.1. On 11 February 2014, the Commissioner initiated a complaint in terms of section 49B(1) of the Act, whereby it alleged that the Respondents entered into an agreement to divide markets by allocating customers in contravention of section 4(1)(b)(ii) of the Act.

2.2. The Commission's investigation under Case No's. 2014FEB0047/2015OCT0599 revealed the following:

2.2.1. During the period 1993 to 2013, the Respondents, being in a horizontal relationship, agreed or alternatively engaged in a concerted practice to divide markets by allocating customers in the market for the supply of Cassapa branded gear pumps. This contravention occurred in the market for post warranty repair and maintenance services in contravention of section 4(1)(b)(ii) of the Act.

2.2.2. In terms of the agreement, any customers of Fermel, in the market for post warranty repair and maintenance services, who wanted Cassapa branded gear pumps did not have the option to purchase them from Ernest Lowe. This position was as a result of the collusive arrangement between the Respondents.

**3. ADMISSION**

3.1. Fermel admits that it divided markets by allocating customers in contravention of section 4(1)(b)(ii) of the Act.

**4. CO-OPERATION**

4.1. Fermel confirms that it has ceased engaging in the conduct set out in clause 2.2 above.

4.2. The Respondents were the only parties to this agreement. Fermel has agreed to fully co-operate with the Commission in settling this matter.

**5. ADMINISTRATIVE PENALTY**

5.1. Fermel agrees that it is liable to pay an administrative penalty of R104 010 (One Hundred and Four Thousand and Ten Rand). This amount is less than 10% of Fermel's annual turnover for the year ended February 2014;

5.2. Fermel shall pay the abovementioned R104 010 (One Hundred and Four Thousand and Ten Rand) to the Commission within 30 days of the confirmation of the Consent Agreement as a consent order by the Tribunal.

5.3. The payment shall be made into the Commission's bank account, details of which are as follows:

A handwritten signature in black ink, consisting of a large, stylized initial 'F' followed by a smaller signature.

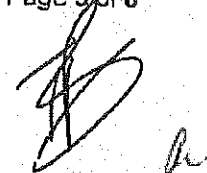
**Bank name:** Absa Bank  
**Branch name:** Pretoria  
**Account holder:** Competition Commission Fees Account  
**Account number:** 4087641778  
**Account type:** Current Account  
**Branch Code:** 632005  
**Reference:** Case Number: 2014FEB0047/FERMEL

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

**6. AGREEMENT REGARDING FUTURE CONDUCT**

6.1. Fermel undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act in future.

6.2. Fermel will 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 contraventions of the Act.



6.3. Fernel shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Fernel within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

## 7. FULL AND FINAL SETTLEMENT

7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No's. 2014FEB0047/2015OCT0599 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Fernel relating to the conduct that is the subject of the Commission's investigation under Case No's. 2014FEB0047/2015OCT0599.

FOR FERREL:

  
\_\_\_\_\_

Dated and signed at Stilbaai on the 26 day of June 2017.

FOR THE COMMISSION:

  
\_\_\_\_\_

**TEMBINKOSI BONAKELE**  
Commissioner

Dated and signed at PRETORIA on the 21<sup>st</sup> day of JUNE 2017.

B

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO: CR081Aug16/SA093Jul17

CC CASE NO: 2014FEB0047/2015OCT0599

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

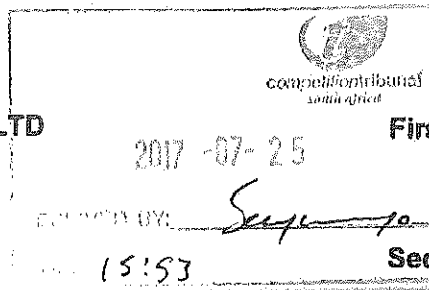
And

HUDACO TRADING (PTY) LTD

First Respondent

FERMEL (PTY) LTD

Second Respondent



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FILING NOTICE

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TAKE NOTICE that the Applicant hereby files the following document:

1. Addendum to the Consent Agreement concluded between the Competition Commission and Fermel (Pty) Ltd dated 11 July 2017.

DATED and SIGNED at PRETORIA on 03 July 2017.



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NDOBELA LAMOLA INC.

Applicant's Attorneys

972 Justice Mahomed Str

BROKLYN

Pretoria



Ref: Fermel2014Feb0047

E-mail: [yhonani@nlinc.co.za](mailto:yhonani@nlinc.co.za)

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Tel: (012) 346-6689/Fax: (012) 346-6710

**TO:** THE REGISTRAR  
The Competition Tribunal  
3<sup>rd</sup> Floor Mulayo Building  
The DTI Campus  
77 Meintjies Street  
Sunnyside  
Pretoria

Tel: (012) 394 3300/55/Fax: (012) 394 0169

E-mail: [KameelP@comptrib.co.za](mailto:KameelP@comptrib.co.za)

[leratom@comptrib.co.za](mailto:leratom@comptrib.co.za)

**AND TO:** FERMEL (PTY) LTD  
Second Respondent's Attorneys  
Weavind & Weavind  
Glenfield Office Park, Block E  
Oberon Street  
Faerie Glen  
Pretoria

Ref: F362519

Tel: (012) 346-3098/Fax: 086 242 6780

E-mail: [PatK@weavind.co.za](mailto:PatK@weavind.co.za)

E-mail: [eckaard@weavind.co.za](mailto:eckaard@weavind.co.za)

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: CR081AUG16  
SA093JUL17  
CC Case No: 2014FEB004  
2015OCT0599

In the matter between:

THE COMPETITION COMMISSION

APPLICANT

and

FERMEL (PTY) LTD

RESPONDENT

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ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE  
COMPETITION COMMISSION AND FERMEL (PTY) LTD DATED 11 JULY 2017

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It is hereby recorded, by agreement between the parties, that the consent agreement concluded between the Competition Commission and Fermel (Pty) Ltd, signed on 26 June 2017 and presented for confirmation by the Competition Tribunal on 11 July 2017 (the "Consent Agreement"), be supplemented as follows:

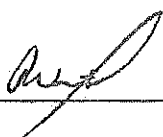
1. The following paragraph is inserted as paragraph 6.4:
  - 1.1 Fermel (Pty) Ltd will provide the Competition Commission with a copy of the competition law compliance programme within 60 days after confirmation of the consent agreement by the Competition Tribunal.
2. This addendum shall be deemed to be incorporated into and form part of the

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized, cursive signature, and the second is a shorter, more compact signature.

Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning as defined in the Consent Agreement.

For Fermel (Pty) Ltd

Signed and Dated at Wadeville on the 12 day of JULY 2017.



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Name in Full: Rolf Uenter

Designation: Financial Director

For the Competition Commission

Signed and Dated at PRETORIA on the 19 day of JULY 2017.



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Name in Full: **TEMBINKOSI BONAKELE**

Designation: **COMMISSIONER OF THE COMPETITION COMMISSION**