



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR143Nov14/SA104Jun18

In the matter between:

The Competition Commission

Applicant

And

Edilcon Construction (Pty) Ltd

Respondent

Panel : A Ndoni (Presiding Member)
F Tregenna (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 01 August 2018

Decided on : 01 August 2018

Settlement Agreement

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

**Presiding Member
Ms Andiswa Ndoni**

01 August 2018
Date

Concurring: Prof. Fiona Tregenna and Prof. Imraan Valodia

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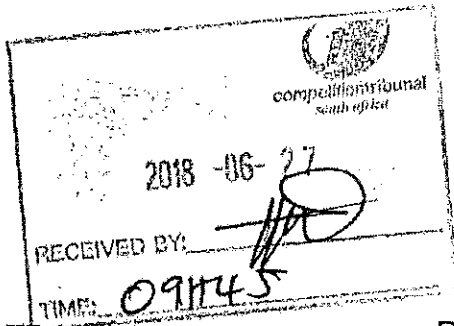
**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CR143NOV14/SA104 Jun 18

CT CASE NO: ~~020113~~
CC CASE NO: 2009Sep4641

In the matter between:

THE COMPETITION COMMISSION



Applicant

And

EDILCON CONSTRUCTION (PTY) LTD

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 EDILCON CONSTRUCTION (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (i) (ii) and (iii) OF THE COMPETITION ACT, 1998

Preamble

The Competition Commission and Edilcon Construction (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) (i) (ii) and (iii).

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 **"BEE Company"** means a company which meet the criteria set out in the Broad Based Black Economic Empowerment Act, 53 of 2003 and the codes of good practice thereunder;
- 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 Edilcon;
- 1.5 **"Days"** mean business days;
- 1.6 **"Edilcon"** means Edilcon Constructions (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 18 Radio Street, Alberton North, 1449;
- 1.7 **"Giuricich"** means Giuricich Brothers (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 Cedarwood Office Park, Mount Lebanon Road, Off Western Service Road, Woodmead, Sandton;

- 1.8 **"Government Client Sub-Contract Work"** means Sub-Contract Work from all spheres of government work of the Republic of South Africa, state owned enterprises, parastatals and any other government institution;
- 1.9 **"Parties"** means the Commission and Edilcon collectively;
- 1.10 **"Private Client Sub-Contract Work"** means Sub-Contract Work other than Government Client Sub-Contract Work;
- 1.11 **"Skills"** means but not limited to tendering skills, technical skills and project management skills;
- 1.12 **"Sub-Contract Work"** means that portion of construction work awarded to Edilcon that it is contractually able to sub-contract to a third party and that Edilcon is not contractually prevented from sub-contracting to a third party or is not contractually obliged to sub-contract to a third party identified by the party who awards that particular contract;

1.13 **"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 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

1.14 **"Vlaming"** means Vlaming Construction (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa under registration number 98/04016/07, with its principal place of business at 19 Wild Peach Avenue, Fourways Gardens, Gauteng, South Africa.

2. INVESTIGATION AND FINDINGS OF THE COMMISSION

2.1. On 01 September 2009, the Commissioner initiated a complaint against firms in the construction industry for collusive practices in the construction industry as regards price fixing, market division and collusive tendering in contravention of section 4(1)(b) (i), (ii) and (iii) of the Act.

2.2. Where appropriate Edilcon, Giuricich and Vlaming shall be referred to as "the Respondents".

2.3. The Commission's investigation under Case No. 2009Sept4641 revealed that between November 2006 and December 2008 Edilcon entered into bilateral agreements with Vlaming and Giuricich respectively. The

respondents agreed to tender collusively for various separate tenders during this period. This conduct is in contravention of section 4(1)(b)(i) (ii) and (iii) of the Act. More specifically the investigation found that:

2.3.1. During August 2006, Vlaming provided a cover price to Edilcon in respect of a tender for in relation to certain alterations and additions to the Rivonia showroom of Imperial Motors (Pty) Ltd relating to its Volkswagen brand ("**VW Rivonia Project**") and, in return, during December 2006, Vlaming paid Edilcon a losers fee;

2.3.2. During November 2006, Giuricich provided a cover price to Edilcon in respect of a tender issued in relation to the construction of a new distribution depot for British American Tobacco South Africa ("**BATSA Project**") and, in return, on 10 August 2007 Guiricich paid Edilcon a losers fee;

2.3.3. During November 2006, Edilcon provided a cover price to Giuricich in relation to a tender for the construction of the Mercedes Benz New Lifestyle Centre ("**Mercedes Centre Project**");

2.3.4. During November 2007, Edilcon provided Giuricich with a cover price in relation a tender for to the construction of a new warehouse and offices for Bell Equipment ("**Bell Equipment Project**");

2.3.5. During October 2008 Edilcon provided Giuricich with a cover price in relation to a tender for the construction of a new church chapel for the Elvira Rota Village ("**Elvira Village Project**"); and

2.3.6. During December 2008, Edilcon provided a cover price to Vlaming in relation to a tender for the extension of the Edgars branch, as well as the refurbishment of the cinema, at the Centurion Mall ("**Centurion Mall Project**").

3. **ADMISSION**

Edilcon admits that it engaged in the conduct set out in clause 2 above in contravention of section 4(1)(b)(i)(ii) and (iii) of the Act.

4. **CO-OPERATION**

Edilcon confirms that it has ceased engaging in the conduct set out in clause 2 above.

5. **ADMINISTRATIVE PENALTY**

5.1. Edilcon agrees that it is liable to pay an administrative penalty in the sum of R10 510 680 (ten million five hundred and ten thousand six hundred and eighty rand). This amount is less than 10% of its annual turnover for the financial year ended 28 February 2018.

5.2. Edilcon shall pay the abovementioned amount to the Commission in two instalments. The first instalment of R5 000 000 (five million rand) will be paid within 30 days of the confirmation of the consent agreement as a consent order by the Tribunal and the second instalment of R5 510 680 (five million five hundred and ten thousand six hundred and eighty rand) will be paid within 6 months of confirmation of the consent agreement as a consent order by the Tribunal.

5.3. The payments shall be made 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: Case Number: 2009Sep4641/Edilcon

5.4. 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. AGREEMENT REGARDING FUTURE CONDUCT

6.1. Edilcon undertakes to refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future.

6.2. Edilcon shall 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.

6.3. As regards the competition law compliance programme referred to above, Edilcon undertakes to submit to the Commission a copy thereof within 90 days of confirmation of the Settlement Agreement as an Order of the Tribunal.

6.4. Edilcon shall circulate a statement summarising the contents of this Consent Agreement to its managers and directors within 20 days from the date of confirmation of this Consent Agreement by the Tribunal.

7. BEHAVIOURAL REMEDIES

7.1. In addition to Edilcon paying the administrative penalty, Edilcon has agreed to the following behavioural remedy:

7.1.1. Edilcon undertakes to subcontract 25% of its Private Client Sub-Contract Work to at least two separate BEE Companies over a period of 7 (seven) years. This undertaking also involves continuous skills development and transfer for a period of 7 (seven) years.

7.1.2. Edilcon undertakes to subcontract 25% of its Government Client Sub-Contract Work to at least two separate BEE Companies over a period of 7 (seven) years over and above the client subcontract requirement.

7.1.3. Edilcon also undertakes to continuously develop and transfer Skills to the selected BEE companies for the duration of these remedies.

8. MONITORING AND REPORTING MECHANISM

8.1. Edilcon shall submit to the Commission a report at the anniversary date of this consent agreement being made an order of the Tribunal. The report shall detail the following information:

8.1.1. All contracts concluded between Edilcon and its clients from the date of this consent agreement being made an order of the Tribunal, including the contracts that were not sub-contracted in accordance with clause 7, above;

8.1.2. The name, contact details, registration and shareholding details as per CIPC registration of the selected BEE companies;

8.1.3. The contract(s) and/or details of the work subcontracted to the companies;

8.1.4. The value and duration of the contract(s); and

8.1.5. A detailed description of the type of skills transferred and training opportunities offered to the selected BEE companies.

8.2. The report referred to in clause 8.1, above, shall be accompanied by an affidavit from the Managing Director, alternatively, a duly authorised senior representative of Edilcon, confirming that the report is correct and true.

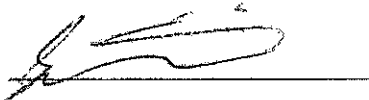
8.3. The reporting obligation imposed on Edilcon shall endure for a period of 7 (seven) years from the date the consent agreement is made an order of the Competition Tribunal.

8.4. Edilcon shall inform the Commission by way of a letter when the obligation to report ends. Pursuant to the provision of such a letter, Edilcon will be absolved from the reporting obligation set out in clause 8.1 above.

8.5. It is recorded that the Commission retains the right to request, within its reasonable discretion, additional information to substantiate the content of the report.

9. FULL AND FINAL SETTLEMENT


This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2009Sep4641 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Edilcon relating to the conduct that is the subject of the Commission's investigation under Case No. 2009Sep4641.



Riccardo Altini
Managing Director
ON BEHALF OF EDILCON

Dated and signed at ALBERTON on the 01 day of JUNE 2018

For the Commission



TEMBINKOSI BONAKELE
Commissioner

Dated and signed at PRETORIA on the 20th day of JUNE 2018