



**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: 020263**

In the matter between:

The Competition Commission

**Applicant**

And

G Liviero & Son Building (Pty) Ltd

**Respondent**

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Panel : A Wessels (Presiding Member)  
A Roskam (Tribunal Member)  
F Tregenna (Tribunal Member)

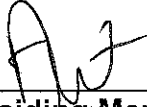
Heard on : 18 February 2015  
Addendum received on: 23 February 2015  
Decided on : 25 February 2015

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**Order**

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and G Liviero & Son Building (Pty) Ltd, annexed hereto marked "A" and addendum hereto marked "B".

  
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**Presiding Member**  
**Mr. A Wessels**

25 February 2015  
**Date**

**Concurring: Mr. A Roskam and Prof. F Tregenna**

" A "

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA  
HELD IN PRETORIA

CT CASE NO: \_\_\_\_\_

CC CASE NO: 2009Feb4279/2009Sep4641

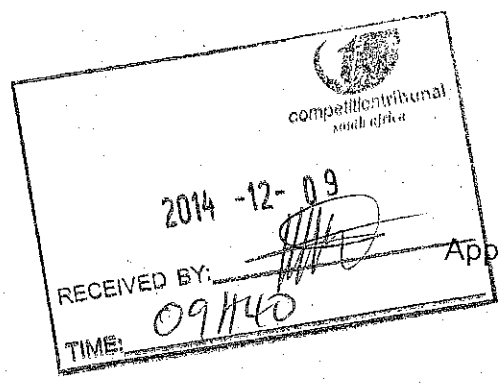
In the matter between:

THE COMPETITION COMMISSION

and

G LIVIERO & SON BUILDING (PTY) LIMITED

Respondent




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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 G.LIVIERO & SON BUILDING (PTY) LIMITED, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT

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The Competition Commission ("Commission") and G Liviero & Son Building (Pty) Limited ("G Liviero") 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.

B  
MC

## 1 DEFINITIONS

For the 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 principal place of business at 1<sup>st</sup> Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 **"Complaints"** means the complaints initiated by the Commissioner of the Competition Commission in terms of section 49B of the Act under case numbers 2009Feb4279 and 2009Sep4641;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and G Liviero;
- 1.6 **"Cover Price"** means generally, a price that is provided by a firm that wishes to win a tender to a firm that does not wish to do so, in order that the firm that does not wish to win the tender may submit a higher price; or alternatively a price that is provided by a firm that does not wish to win a tender, to a firm that does wish to win that tender so that the firm that wishes to win the tender may submit a lower price;

*B* *Wc*

- 1.7 "Edilcon" means Edilcon Construction (Pty) Ltd;
- 1.8 "Ludick Builders" means Ludick Builders Close Corporation;
- 1.9 "G Liviero " means G Liviero & Son (Pty) Limited, a company incorporated under the laws of the Republic of South Africa with its principal place of business at Corner Dutchley & Marcius Roads, Barbeque Down, Kyalami and Johannesburg;
- 1.10 "Non-prescribed prohibited practices" refers to prohibited restrictive horizontal practices relating to the construction industry that are contemplated in section 4(1)(b) of the Act and that are on-going or had not ceased three years before the complaints were initiated, as contemplated in section 67 of the Act;
- 1.11 "Parties" means the Commission and G Liviero;
- 1.12 "Prescribed prohibited practices" refers to prohibited restrictive horizontal practices relating to the construction industry that are contemplated in section 4(1)(b) of the Act and that ceased after 30 November 1998, but more than three years before the complaints were initiated
- 1.13 "Respondent" means G Liviero & Son (Pty) Limited;
- 1.14 "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 3<sup>rd</sup> Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

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## 2 BACKGROUND

- 2.1 On 10 February 2009, the Commission initiated a complaint in terms of section 49B(1) of the Act into alleged prohibited practices relating to collusive conduct in the construction of the stadiums for the 2010 FIFA Soccer World Cup against Group Five, Grinaker-LTA (the construction operating business unit of Aveng), Basil Read (Pty) Ltd, WBHO Construction (Pty) Ltd, Murray & Roberts Limited, Stefanutti Stocks Limited, Interbeton Abu Dhabi nv llc and Bouygues Construction SA.
- 2.2 In addition, 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 construction projects, by the firms listed below. The 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 Pilings 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.



- 2.3 The Commission's investigation of the above complaints, 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 apply to engage in settlement 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.
- 2.4 In response to the Invitation and in terms of the Commission's CLP, G Liviero was first to apply for leniency in respect of 3 non-prescribed prohibited practices.

### **3 CONDITIONAL IMMUNITY**

- 3.1 The Commission granted G Liviero conditional immunity from prosecution before the Tribunal for its involvement in cartel conduct described in paragraph 4 below.

TB  
ML

3.2 G Liviero agreed to co-operate with the Commission in respect of any steps that the 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**

In its CLP application, G Liviero disclosed its participation in the following prohibited practices or contraventions of section 4(1)(b)(iii) of the Act:

##### **4.1 The Sunning Hill Shopping Centre Project**

On or about 21 November 2006, G Liviero reached an agreement with Edilcon in terms of which these parties agreed on a cover price in relation to the Sunning Hill Shopping Centre project.

In terms of the agreement Edilcon provided a cover price to G Liviero in order to enable G Liviero to win the tender.

G Liviero was awarded the tender.

The project was for the Sunninghill East development which was a part office and part shopping centre development in Sunninghill. The client was RFC Development (Pty) Ltd. The project was completed around July 2009.

##### **4.2 The Mooi Rivier Mall Project**

In or about June 2006, G Liviero reached an agreement with Ludick Builders

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in terms of which the parties agreed on a cover price in relation to the Mooi Rivier Mall Project.

In terms of the agreement, Ludick Builders provided a cover price to G Liviero to ensure that G Liviero does not win the tender. The tender was, however, awarded to G.Liviero.

The project was for the construction of the Mooi Rivier Mall in Potchefstroom. The project was completed in June 2011.

#### **4.3 The Peter Mokaba Stadium, Project (Polokwane)**

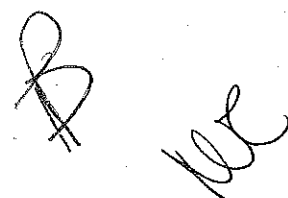
In or about 2006, G Liviero reached an agreement with Concor in terms of which these parties agreed on a cover price in relation to the Peter Mokaba Stadium project.

In terms of the agreement, Concor provided a cover price to G Liviero so that G Liviero could submit a non-competitive bid. In line with the collusive agreement, Concor submitted a lower price than G Liviero. The tender was, however, awarded to WBHO.

The project was for the construction of a new sports stadium and complex in Polokwane, for the Polokwane Municipality.

## **5 ADMISSION**

G Liviero admits that the conduct set out in paragraph 4 above is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

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## 6 CO-OPERATION

6.1 In so far as the Commission is aware, and in compliance with the requirements as set out in the CLP, G Liviero:

6.1.1 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;

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

6.1.3 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;

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

6.1.5 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.

## 7 FUTURE CONDUCT

7.1 G Liviero confirms that it no longer engages in the conduct set out in paragraph 4 above.

*JB* *MLC*

7.2 In compliance with the requirements as set out in the CLP, G Liviero 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 in the Competition Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:

7.2.1 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;

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

7.3 G.Liviero 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.

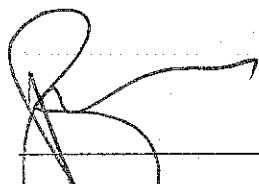
7.4 G.Liviero shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at G.Liviero within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.

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7.5 G.Liviero 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 24<sup>th</sup> day of Nov 2014



TEMBINKOSI BONAKELE

Commissioner

For G Liviero & Son (Pty) Limited

Dated and signed at KYALAMI on the 13 day of JUNE 2014



Name: NEIL VINCENT CLOETE

Capacity: DIRECTOR