



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 020271

In the matter between:

The Competition Commission

Applicant

And

Giuricich Bros Construction (Pty) Ltd

Respondent

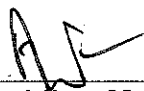
Panel : A Wessels (Presiding Member)
A Roskam (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 18 February 2015

Decided on : 18 February 2015

Order

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



Presiding Member
Mr. A Wessels

18 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: 2009Sep4641

In the matter between:

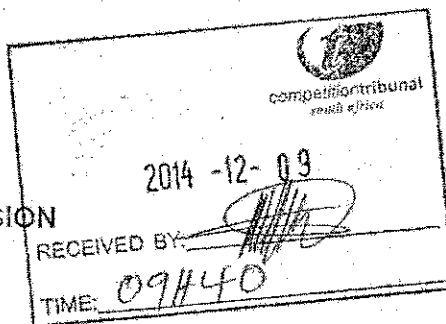
THE COMPETITION COMMISSION

and

GIURICICH BROS CONSTRUCTION (PTY) LIMITED

Applicant

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 GIURICICH BROS CONSTRUCTION (PTY) LIMITED, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT

The Competition Commission ("Commission") and Giuricich Bros Construction (Pty) Limited ("Giuricich Bros") 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.

1. DEFINITIONS

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

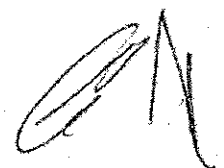
- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "CLP" means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);
- 1.3 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 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 Guiricich Bros;
- 1.5 "Edilcon Construction" means Edilcon Construction (Pty) Ltd
- 1.6 "Giuricich Bros" means Giuricich Bros Construction (Pty) Limited, a company incorporated under the laws of the Republic of South Africa with its principal place of business at Cedarwood office park, Woodmead, Sandton 2052;
- 1.7 "Invitation" means the 'Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Competition Act' dated February 2011;



- 1.8 "Parties" means the Commission and Guiricich Bros;
- 1.9 "Stocks Building " means Stefanutti Stocks Holding Limited is situated at Protec Park, corner Zuurfontein Avenue and Oeranjervier drive, Chlookop Kempton Park, East Rand.
- 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 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.11 "Vlaming" means Vlaming (Pty) Ltd.

2 BACKGROUND

- 2.1 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 numerous construction projects, by the firms listed below. This 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



Pillings 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.

2.2 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 settle with the Commission on favourable terms. This 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.

2.3 In response to the Invitation and in terms of the Commission's CLP, Guiricich Bros was first to apply for leniency in respect of the conduct described in paragraph 4.

3 **CONDITIONAL IMMUNITY**

3.1 The Commission granted Guiricich Bros conditional immunity from



prosecution before the Tribunal for its involvement in cartel conduct described in paragraph 4 below.

- 3.2 In exchange for conditional immunity, Giuricich Bros, *inter alia*, 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

Giuricich Bros disclosed its participation in the following prohibited practices in contraventions of section 4(1)(b)(iii) of the Act:

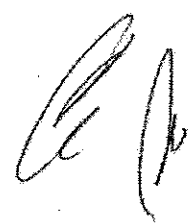
4.1 The Kempton City Mall Project

On or about 17 September 2008 Giuricich Bros reached an agreement with Vlaming in terms of which these parties agreed on the submission of a cover price in relation to the Kempton City Mall Project.

In terms of the agreement, Vlaming provided a cover price to Giuricich Bros as Giuricich Bros was not interested in winning the tender.

The tender was awarded to Tristar.

4.2 The Nicol Apartments Project



In or about November 2006 Giuricich Bros reached an agreement with Vlaming in terms of which these parties agreed on the submission of a cover price in relation to the Nicol Apartments Project.

In terms of the agreement, Vlaming provided a cover price to Giuricich Bros to ensure that Vlaming won the tender as Giuricich Bros was not interested in winning the tender.

Vlaming was awarded the tender.

4.3 The New Tuks Residence Village Project

In or about 2006 Giuricich Bros reached an agreement with Stocks Building in terms of which these parties agreed on the submission of a cover price in relation to the New Tuks Residence Village Project.

In terms of the agreement, Stocks Building gave a cover price to Giuricich Bros.

Stocks Building was awarded the tender.

5 ADMISSION

- 5.1 Giuricich Bros admits that the conduct set out in paragraph 4 above is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

A handwritten signature or set of initials, possibly 'C. H.', located in the bottom right corner of the page.

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, Giuricich Bros:

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;

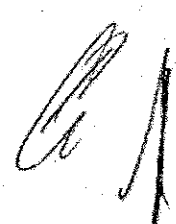
6.1.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in future engage in, any form of prohibited practice;

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 Giuricich Bros confirms that it no longer engages in the conduct set out in paragraph 4 above.



- 7.2 In compliance with the requirements as set out in the CLP, Giuricich Bros 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, if any, 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 Giuricich Bros 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 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 Giuricich Bros shall submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal.
- 7.5 Giuricich Bros shall circulate a statement summarising the contents of



this Consent Agreement to all management and operational staff employed at Giuricich Bros within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.

- 7.6 Giuricich Bros 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 3rd day of December 2014



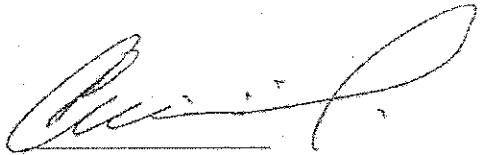
TEMBINKOSI BONAKELE

Commissioner

For Giuricich

Dated and signed at CAPE TOWN on the 1st day of DECEMBER 2014



A handwritten signature in black ink, appearing to read 'L.P. Giuricich', written in a cursive style.

Name: L.P. GIURICICH

Managing Director