



competitiontribunal
south africa

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 020313

In the matter between:

The Competition Commission

Applicant

And

Vlaming (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 Vlaming (Pty) Ltd, annexed hereto marked "A".

Presiding Member
Mr. A Wessels

18 February 2015
Date

Concurring: Mr. A Roskam and Prof. F Tregenna

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"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO: _____

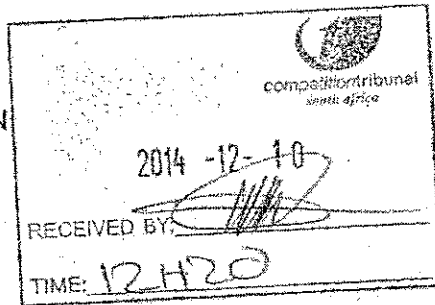
CC CASE NO: 2009Sep4641

In the matter between:

THE COMPETITION COMMISSION

and

VLAMING (PTY) LTD



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 VLAMING (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT

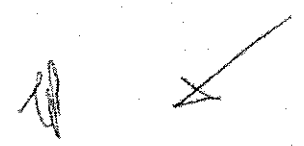
The Competition Commission ("Commission") and Vlaming (Pty) Ltd ("Vlaming") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of contraventions of section 4(1)(b)(iii) of the Act.

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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, 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 Vlaming;
- 1.5 "Invitation" means the Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Competition Act dated 1 February 2011;
- 1.6 "Parties" means the Commission and Vlaming;
- 1.7 "Rainbow" means Rainbow Construction (Pty) Ltd;
- 1.8 "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



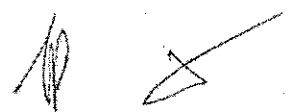
Meinijies Street, Sunnyside, Pretoria, Gauteng; and

- 1.9 "Vlaming" means Vlaming (Pty) Ltd, a company incorporated under the laws of the Republic of South Africa with its principal place of business at 19 Wild Peach Avenue, Fourways Gardens;

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 Stocks Holdings Limited, 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 Piling 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 complaint, as well as several other of the Commission's investigations in the construction industry, led the Commission to believe that there was widespread



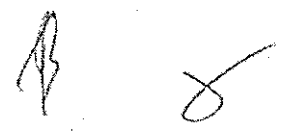
collusion in contravention of section 4(1)(b)(iii) of the Act in the construction industry. Accordingly, in line with the purpose of the Act as well as the Commission's functions, the Commission decided to invite construction firms that were involved in collusive conduct to settle with the Commission 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, Vlaming was first to apply for leniency in respect of the conduct described in paragraph 4 below.

3 **CONDITIONAL IMMUNITY**

3.1 The Commission granted Vlaming conditional immunity from prosecution before the Tribunal for its involvement in the prohibited practices described in paragraph 4 below.

3.2 In exchange for conditional immunity, Vlaming, *inter alia*, agreed to cooperate 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

Vlaming disclosed its participation in the following prohibited practice in contravention of section 4(1)(b)(iii) of the Act:

Benmore Shopping Centre tender

4.1 In or about December 2008, Vlaming reached an agreement with Rainbow in terms of which they agreed on the submission of a cover price in relation to the Benmore Gardens Shopping Centre in Sandton ("Benmore Shopping Centre project").

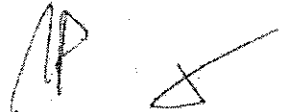
4.2 The agreement was reached following an invitation by Coffey Projects (Pty) Ltd to construction firms to tender for the construction of certain alterations and additions to the Benmore Gardens Shopping Centre in Sandton.

4.3 Following this invitation to tender, Vlaming telephoned Rainbow to request a cover price to enable it to bid but not to win the tender. During this interaction, Rainbow provided Vlaming with a cover price of R35 435 000, which Vlaming subsequently submitted as its bid price.

5 As can be seen from the above, Vlaming and Rainbow agreed that Vlaming would submit the cover price, provided by Rainbow, for the Benmore Shopping Centre Project.

6 **ADMISSION**

Vlaming admits that the conduct set out in paragraph 4 above is collusive



tendering in contravention of section 4(1)(b)(iii) of the Act.

7 CO-OPERATION

7.1 In so far as the Commission is aware, and in compliance with the requirements as set out in the CLP, Vlaming:

7.1.1 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;

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

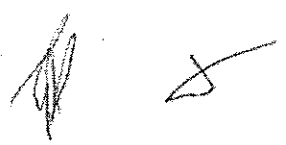
7.1.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in future engage in, any form of prohibited practice;

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

7.1.5 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.

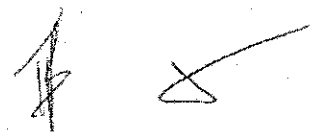
8 FUTURE CONDUCT

8.1 Vlaming confirms that it no longer engages in the conduct set out in



paragraph 4 above.

- 8.2 In compliance with the requirements as set out in the CLP, Vlaming 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:
- 8.2.1 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;
 - 8.2.2 availing its employees and former employees to testify as witnesses for the Commission in any cases regarding the contraventions contained in this Consent Agreement.
- 8.3 Vlaming 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.
- 8.4 Vlaming shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Vlaming within 60 days from the date of confirmation of this Consent

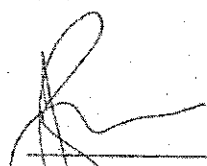


Agreement by the Tribunal.

8.5 Vlaming 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

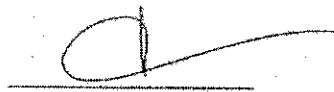
Dated and signed at PRETORIA on the 8th day of December 2014



TEMBINKOSI BONAKELE
Commissioner

For Vlaming

Dated and signed at JOHANNESBURG on the 25th day of NOVEMBER 2014

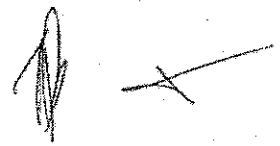


Name: S. VLAMING

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Chief Executive Officer

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