



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CO080Sep21**

In the matter between:

The Competition Commission of South Africa

**Applicant**

And

PNM Shorthauliers (Pty) Ltd

**Respondent**

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Panel: AW Wessels (Presiding Member)  
T Vilakazi (Tribunal Member)  
A Ndoini (Tribunal Member)

Heard on: 12 October 2021

Decided on: 12 October 2021

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**CONSENT AGREEMENT**

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The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and PNM Shorthauliers (Pty) Ltd annexed hereto.

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**Presiding Member  
Mr Andreas Wessels**

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**12 October 2021  
Date**

**Concurring: Dr Thando Vilakazi and Ms Andiswa Ndoni**

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

**RECEIVED**

By Themba Chauke at 3:39 pm, Sep 16, 2021

CT Case No:

CC Case No: 2016NOV0645

In the matter between:

**THE COMPETITION COMMISSION**

**Applicant**

And

**PNM SHORTHAILIERS (PTY) LTD**

**Respondent**

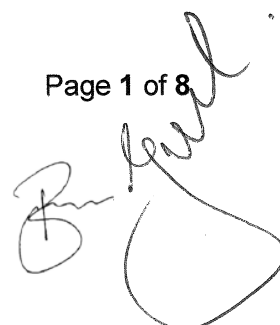
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**CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1)  
(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE  
COMPETITION COMMISSION AND PNM SHORTHAILIERS (PTY) LTD  
, IN RESPECT OF A CONTRAVENTION OF SECTIONS 4(1)(b)(ii) AND (iii) OF THE  
COMPETITION ACT 89 OF 1998.**

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**PREAMBLE**

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

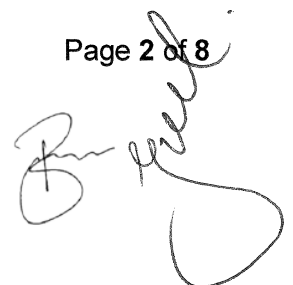


and (iii) of the Act, on the terms set out below.

## 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 **“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 situated at Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **“Commissioner”** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 **“Complaint”** means the complaint submitted by South African Forestry Company Limited (SOC) Ltd to the Commission in terms of section 49B(2) of the Act under case number 2016Nov0645;
- 1.5 **“Consent Agreement”** means this agreement duly signed and concluded between the Commission and PNM Shorthauliers;
- 1.6 **“Parties”** means the Commission and PNM Shorthauliers;
- 1.7 **“PNM Shorthauliers”** means a private company duly incorporated in accordance with the laws of the Republic of South Africa with its principal place

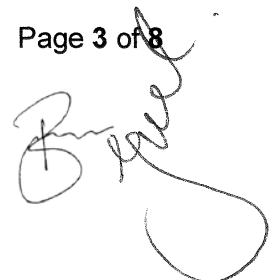
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of business situated at 1 Noordend Street, Piet Retief, Mpumalanga;

- 1.8 **“Safcol tender”** tender issued on or about June 2016 by the South African Forestry Company Limited SOC under tender number: RFT350/1 for the transportation of timber saw logs in the Komatiland Forest area;
- 1.9 **“South African Forestry Company Limited SOC”** means a state-owned forestry company in the business of timber harvesting and processing, with its principal place of business situated at, Podium at Menlyn, 43 Ingersol Road, Lynwood, Pretoria;
- 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 situated at Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

## **2. COMMISSION’S INVESTIGATION AND FINDINGS**

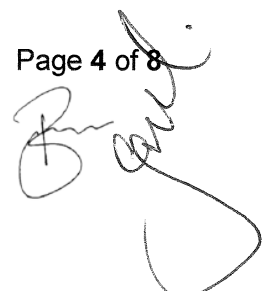
- 2.1 On 29 November 2016, the Commission received a complaint from the South African Forestry Company Limited SOC (“SAFCOL”) in terms of section 49B(2)(b) of the Competition Act 89 of 1998, as amended (“the Act”). SAFCOL alleged that PNM Shorthauliers, MM Simelane Transport CC (“Simelane Transport”) and Tingodvo Transport CC (“Tingodvo”) being firms in a horizontal relationship colluded when tendering for the SAFCOL tender. The Commission investigated this Complaint under Case Number 2016Nov0645.

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- 2.2 SAFCOL alleged that the Respondents may have entered into an agreement or engaged in a concerted practice to tender collusively when responding to tender number: RFT350/1 issued by SAFCOL in that the directors of the Respondents appeared to be the same. The SAFCOL tender was for the transportation of timber saw logs in the Komatiland Forest area. The Komatiland Forest area of operation is divided into three parts which include, North Hub (Makhado, Thathe Vondo and Tzaneen District), Central Hub (Graskop, Sabie and Nelspruit) and Highveld Hub (Mpumalanga Highveld).
- 2.3 The Commission found that PNM Shorthauliers and Simelane transport agreed that PNM Shorthailiers will only bid for the Highveld Hub area and Simelane Transport will bid for the North Hub area in the Komatiland Forest. PNM Shorthauliers also assisted Simelane Transport in the completion of its tender documents.
- 2.4 This conduct amount to market division and collusive tendering which contravene sections 4(1)(b) (ii) and (iii) of the Act.

### 3. **ADMISSION OF LIABILITY**

- 3.1 PNM Shorthauliers does not admit that it has acted in contravention of sections 4(1)(b)(ii) and (iii) of the Act as described in paragraph 2 above.
- 3.2 The Commission has agreed to enter into the Consent Agreement without an admission of liability by PNM Shorthauliers based on *inter alia* the following

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factors:

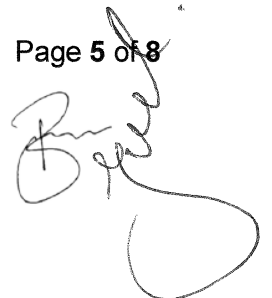
- 3.2.1 PNM Shorthauliers is a small firm;
- 3.2.2 PNM Shorthauliers' business is to a significant extent dependent on bidding for government tenders where blacklisting could potentially result PNM Shorthauliers exiting the market;
- 3.2.3 PNM Shorthauliers did not win the tender in question ;
- 3.2.4 PNM Shorthauliers is a first-time offender, it has never contravened the Act before; and
- 3.2.5 Due regard has also been given to the current financial position of PNM Shorthauliers.

#### **4. CO-OPERATION**

- 4.1 PNM Shorthauliers has provided full and expeditious co-operation to the Commission concerning the prohibited practice.

#### **5. FUTURE CONDUCT**

- 5.1 PNM Shorthauliers agrees and undertakes to:
  - 5.1.1 prepare and circulate a statement summarising the contents of this Consent Agreement to its employees, managers and directors within 14

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(fourteen) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

5.1.2 refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in the future;

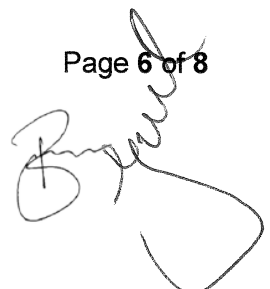
5.1.3 to implement and monitor a competition law compliance programme. Such programme shall incorporate corporate governance designed to ensure the employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act; and

5.1.4 with regard the competition law compliance programme referred to above, PNM Shorthauliers 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. ADMINISTRATIVE PENALTY

6.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, PNM Shorthauliers is liable to pay an administrative penalty.

6.2 PNM Shorthauliers agrees and undertakes to pay an administrative penalty in the amount of **R80 000 (Eighty Thousand Rands)**. This amount does not

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exceed 10% of PNM Shorthauliers annual turnover in financial year 2019.

6.3 PNM Shorthauliers will pay the amount of the administrative penalty set out in paragraph 5.2 above to the Commission within 90 (Ninety) days of the confirmation of the Consent Agreement as an order of the Tribunal.

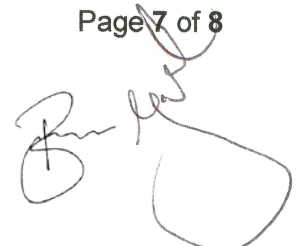
6.4 The payments shall be paid into the Commission's bank account, details of which are as follows:

**Bank name** : **Absa Bank**  
**Branch name** : **Pretoria**  
**Account holder** : **Competition Commission Fees Account**  
**Account number** : **4087641778**  
**Account type** : **Current Account**  
**Branch Code** : **632005**  
**Ref** : **2016Nov0645/PNM Shorthauliers**

6.5 The Commission will pay this sum to the National Revenue Fund in terms of section 59(4) of the Act.

## **7. MONITORING**

7.1 All reports in relation to conditions set out in this agreement, including but not limited to Compliance programmes, Proof of payment(s) etc. shall be submitted to the Commission at [CartelSettlements@compcom.co.za](mailto:CartelSettlements@compcom.co.za).

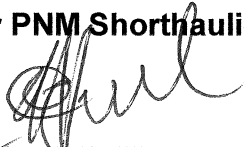
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**8. FULL AND FINAL SETTLEMENT**

8.1 This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2016Nov0645 and concludes all proceedings between the Commission and PNM Shorthauliers relating to the conduct that is the subject of the Commission's investigation under Case No. 2016Nov0645 as described in clause 2 above.

**For PNM Shorthauliers**




[Position] DIRECTOR

Name in Full: GUSTAV NIEN

Dated and signed at Emelo on the 15 day of September 2021

**FOR THE COMMISSION:**



**TEMBINKOSI BONAKELE**

**Commissioner**

Dated and signed at PRETORIA on the 16 day of SEPTEMBER 2021.