



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CR166Dec14/SA117Oct19**

In the matter between:

The Competition Commission

**Applicant**

And

Haw and Inglis Civil Engineering (Pty)  
Ltd

**Respondent**

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Panel : M Mazwai (Presiding Member)  
: E Daniels (Tribunal Member)  
: I Valodia (Tribunal Member)

Heard on : 24 June 2020

Decided on : 24 June 2020

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**Settlement Agreement**

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The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Haw and Inglis Civil Engineering (Pty) Ltd annexed hereto.

  
\_\_\_\_\_  
Presiding Member  
Ms Mondo Mazwai

**24 June 2020**  
\_\_\_\_\_  
Date

**Concurring: Mr Enver Daniels and Prof. Imraan Valodia**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD IN PRETORIA

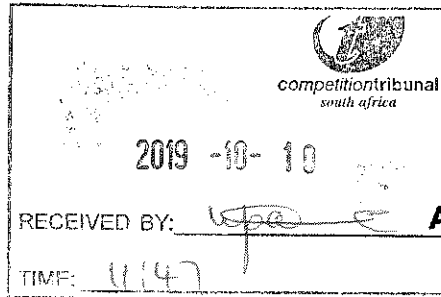
CT CASE NO: CR166Dec14/SA1706619

In the matter between:

**THE COMPETITION COMMISSION**

And

**HAW AND INGLIS CIVIL ENGINEERING (PTY) LIMITED**



**APPLICANT**

**RESPONDENT**

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**SETTLEMENT AGREEMENT**

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The above parties agree that application be made to the Competition Tribunal for the confirmation of this Settlement 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.

**1 DEFINITIONS**

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

- 1.1 **"Act"**: the Competition Act 89 of 1998, as amended;
- 1.2 **"Commission"**: Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its offices at 1<sup>st</sup> Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"H&I"**: Haw and Inglis Civil Engineering (Pty) Limited, a company duly

incorporated and registered in terms of the company laws of the Republic of South Africa, with its principal place of business at Hillcrest Estate, Racecourse Road, Durbanville;

- 1.4 **"Parties"**: Commission and H&I;
- 1.5 **"Power (West Cape)"**: Power Construction (West Cape) Pty Ltd with registration number: 1995/009237/07, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa with its principal place of business situated at 27<sup>th</sup> Floor, One Thibault Square, Cape Town;
- 1.6 **"Settlement Agreement"**: This agreement concluded between the Parties; and
- 1.7 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its offices at 3<sup>rd</sup> Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

## 2 BACKGROUND

- 2.1 On 1 February 2011, the Commission issued an invitation to firms in the construction industry to engage with it regarding suspected contraventions of the Act.



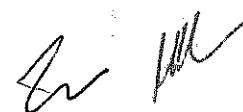
- 2.2 H&I responded to this invitation and informed the Commission of the collusive conduct described below. H&I was granted conditional immunity from a fine for being the first to inform the Commission of this collusive conduct.
- 2.3 On 17 December 2014, the Commission referred its findings of collusive bidding involving Power (West Cape) and H&I to the Tribunal for adjudication.
- 2.4 On 11 September 2019, the Tribunal confirmed a settlement agreement between the Commission and Power (West Cape) as a consent order.<sup>1</sup> This leaves H&I as the only remaining respondent in the matter.
- 2.5 This settlement agreement seeks to finalize the matter by confirming H&I's conduct as a contravention of the Act and to complete its immunity from a fine.

### 3 CONDUCT IN CONTRAVENTION OF THE ACT

- 3.1 In April 2006, SANRAL invited tenders for the periodic maintenance (overlay and re-seal) of National Route N1 Section 4 from Touws River to Laingsburg.

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<sup>1</sup> This agreement also cites Power Construction (Pty) Ltd as it agreed to pay the settlement amount on behalf of Power (West Cape).

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- 3.2 On 3 May 2006, H&I asked Power (West Cape) to submit a cover bid for the aforesaid tender. H&I requested Power (West Cape) to submit a bid higher than its own as it was concerned that SANRAL may cancel the tender owing to insufficient bidders.
- 3.3 Power (West Cape) agreed to provide a cover bid and submitted the agreed bid of R99,980,000 to facilitate the tender being awarded to H&I.
- 3.4 On 28 July 2006, the tender was awarded to H&I.
- 3.5 The Commission found that the above conduct contravened section 4(1)(b)(iii) of the Act.

#### 4 ADMISSION

- 4.1 H&I admits that it engaged in the above collusive conduct, which is in contravention of section 4(1)(b)(iii) of the Act.

#### 5 FUTURE CONDUCT

The H&I agrees to:

- 5.1 prepare and circulate a statement summarising the content of this agreement to its managers and directors within 14 (fourteen) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal; and



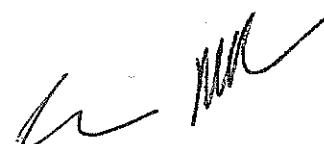
- 5.2 if not already doing so, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the Act. This programme will be submitted to the Commission within thirty days of this Settlement Agreement being confirmed by the Tribunal.

## 6 MONITORING


- 6.1 All reports in relation to conditions set out in this Settlement 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)

## 7 FULL AND FINAL SETTLEMENT

- 7.1 This Settlement Agreement is entered into in full and final settlement of the conduct set out under clause 3 and, upon confirmation by the Tribunal, concludes all proceedings between the Commission and H&I in respect of the matter under Tribunal case number CR166Dec14.



For H&I

Dated and signed at  on the 16<sup>th</sup> day of SEPTEMBER 2019

A. A. Robinson

Name:

Designation: DIRECTOR

For the Commission

Dated and signed at ISHWANE on the 3<sup>rd</sup> day of October 2019

  
TEMBINKOSI BONAKELE

Commissioner

