



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR066Aug21/SA175Feb24

In the matter between:

The Competition Commission

Applicant

And

Hard Hat Equipment (Pty) Ltd

Respondent

Panel : L Mncube (Presiding Member)
: T Vilakazi (Tribunal Member)
: A Ndoni (Tribunal Member)

Heard on : 04 June 2024
Decided on : 04 June 2024

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Hard Hat Equipment (Pty) Ltd annexed hereto.

Presiding Member
Prof. Liberty Mncube

04 June 2024
Date

Prof. Thando Vilakazi and Ms Andiswa Ndoni concurring

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

**CT Case No: CR066AUG21
CC Case Nos: 2017FEB0056 and 2017NOV0053**

In the matter between

COMPETITION COMMISSION

APPLICANT

and

HARD HAT EQUIPMENT (PTY) LTD

RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND HARD HAT EQUIPMENT (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(I) OF THE COMPETITION ACT, 1998, AS AMENDED

The Competition Commission and Hard Hat Equipment Hire (Pty) Ltd hereby agree that an application be made to the Competition 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, in respect of contraventions of section 4(1)(b)(i) 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, No. 89 of 1998, as amended.
- 1.2. **"Commisslon"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 1st Floor, 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 initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers: **2017Feb0056** and **2017Nov0053**.
- 1.5. **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Hard Hat Equipment (Pty) Ltd in full and final settlement of Tribunal Case Number: **CR066Aug21**.
- 1.6. **"Contractors Plant Hire Association" ("CPHA")** means a non-profit company with registration number 2009/021870/08, with its registered address at 366 Kent Avenue, Ferndale, 2194. It is the trade/industry association for the plant hire industry.
- 1.7. **"Hard Hat"** means Hard Hat Equipment Hire (Pty) Ltd, a private company duly registered and incorporated under the laws of South Africa with its principal place of business situated at Unit 5 Bosco Park, Corner Terrace Road and Andries Pretorius, Eastleigh, Gauteng.
- 1.8. **"Parties"** means the Commission and Hard Hat.



- 1.9. **"Referral"** means the Commission complaint referral against fifty-four firms (including Hard Hat) filed under Competition Tribunal case number: **CR066Aug21**.
- 1.10. **"Respondents"** means fifty-four firms that are cited as respondents (including Hard Hat) in the Commission's complaint referral filed under Competition Tribunal case number: **CR066Aug21**.
- 1.11. **"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.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1. On 21 February 2017 and 24 November 2017, the Commissioner initiated a complaint in terms of section 49(B)(1) of the Act against **CPHA** and its members (including **Hard Hat**), collectively referred to as ("**the Respondents**"). On 22 August 2023, the Commissioner amended the initial complaint. This complaint was investigated under case numbers 2017Feb0056 and 2017Nov0053.
- 2.2. The allegations against the Respondents are that they agreed and/or engaged in a concerted practice to fix prices and/or trading conditions when renting out plant hire equipment.
- 2.3. On 25 August 2021, the Commission referred the matter against the Respondents the Tribunal for adjudication.
- 2.4. The Commission's investigation of the Complaint revealed the following:
- 2.4.1. The Respondents fixed the minimum hourly, daily, weekly and monthly rental rates as well as weekend rental rates charged when renting out plant hire equipment.



2.4.2. The Respondents also agreed to fix the trading conditions for the rental of plant hire equipment such as minimum number of days for hire.

2.5. The above conduct amounts to price fixing and/or fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act.

3. ADMISSION OF LIABILITY

3.1. Hard Hat does not admit to a contravention of the Act in respect of the alleged conduct described in paragraph 2 above.

4. COOPERATION

4.1. Hard Hat will assist the Commission in providing general insights into the workings of the plant hire industry.

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1. Hard Hat agrees and undertakes to:

5.1.1 refrain from engaging in any conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;

5.1.2 prepare and circulate a statement summarizing the contents of this Settlement Agreement to its employees, managers and directors within 45 (forty-five) days from the date of confirmation of this Settlement Agreement as an order of the Tribunal;

5.1.3 develop, implement, and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors, and agents do not engage in future contraventions of the Act. In particular, such compliance



programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act; and

5.1.4 submit a copy of such compliance programme to the Commission within 60 (sixty) days from the date of confirmation of the Settlement Agreement as an order by the Tribunal.

6. ADMINISTRATIVE PENALTY

6.1. Hard Hat agrees and undertakes to pay an administrative penalty in the amount of R480 000,00 (**Four Hundred and Eighty Thousand Rands only**). This amount does not exceed 10% of Hard Hat's annual turnover for the financial year ending 31 March 2023.

6.2. Hard Hat will pay the amount of administrative penalty set out in paragraph 6.1 above to the Commission within 1 (one) year in equal monthly instalments of R40 000 starting 45 days from date of the confirmation of this Consent Agreement as an order of the Tribunal.

6.3. The payments shall be made 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
Reference:	2017Feb0056/Hard Hat

6.4. The administrative penalty will then be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.



7. MONITORING

7.1. All reports and proof of payments in relation to the conditions set out in this agreement, including but not limited to Compliance Programmes, Statement to employees, Proof of Payments etc. shall be submitted to the Commission at CartelSettlements@compcom.co.za.

8. FULL AND FINAL SETTLEMENT

8.1. This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Hard Hat relating to the conduct that comprises the Commission's investigation under Case Numbers. **2017Feb0056** and **2017Nov0053**. Upon confirmation as an order of the Tribunal, no further action will be brought by the Commission and against Hard Hat with respect to the conduct that is the subject of the Commission's complaint referral under Tribunal case number: **CR066Aug21**.

For Hard Hat Equipment (Pty) Ltd

Dated and signed at BENONI on the 20TH day of DECEMBER 2023.

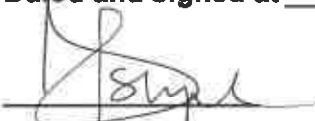


Name in Full: ROGER PIKE

Designation: Director

For the Commission

Dated and signed at Pretoria on the 23 day of February 2024.



Doris Tshepe

Commissioner

