



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR125Sep20/SA145Dec21

In the matter between:

The Competition Commission

Applicant

And

Aludar Holdings (Pty) Ltd

Respondent

Panel: AW Wessels (Presiding Member)
F Tregenna (Tribunal Member)
H Cheadle (Tribunal Member)

Heard on: 23 December 2021

Decided on: 23 December 2021

Settlement Agreement

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

Presiding Member
Mr Andreas Wessels

23 December 2021
Date

Concurring: Prof. Fiona Tregenna and Mr Halton Cheadle

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR125SEP20

CC CASE NO: 2019SEP0024

In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And

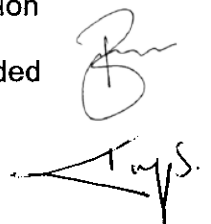
ALUDAR HOLDINGS (PTY) LTD

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 ALUDAR HOLDINGS (PTY) LTD, IN RESPECT
OF A CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89
OF 1998**

Preamble

The Competition Commission ("Commission") and Aludar Holdings (Pty) Ltd ("Aludar") 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)(b) of the Competition Act no. 89 of 1998, as amended

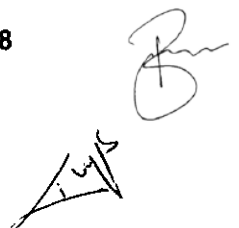
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("the Act"), in respect of a contravention of section 4(1)(b)(iii) of the Act.

1. DEFINITIONS

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

- 1.1. "**Act**" means the Competition Act No. 89 of 1998, as amended;
- 1.2. "**Aludar**" means a company duly incorporated and registered in accordance with the laws of the Republic of South Africa, with its registered place of business situated at 401 Krisant Street, Silverton, Pretoria, 0184;
- 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. "**Commissioner**" means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act;
- 1.5. "**Consent Agreement**" means this agreement duly signed and concluded between the Commission and Aludar;
- 1.6. "**Department of National Treasury**" means a government department that manages national economic policy, prepares the South African government's annual budget and manages the government's finances, with its principal place

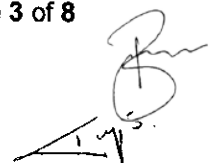
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of business situated at 240 Madiba St, Pretoria Central, Pretoria, 0002.

- 1.7. **“National Treasury Tender”** means tender issued by the Department National Treasury under tender number: RT11/2016 for the supply, delivery and off-loading of animal feed to the State.
- 1.8. **“Parties”** means the Commission and Aludar.
- 1.9. **“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 the 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION’S INVESTIGATION AND FINDINGS

- 2.1. On 29 March 2019, the Commission received a complaint from the Department of National Treasury (“National Treasury”) in terms of section 49B(2)(b) of the Competition Act 89 of 1998, as amended (“the Act”). National Treasury alleged that Aludar and Ikemele Egg Production CC (“Ikemele”) being firms in a horizontal relationship colluded when tendering for the National Treasury Tender.
- 2.2. The National Treasury Tender was for the supply, delivery and off-loading of animal feed to the State for the period 1 October 2016 to 30 September 2019.
- 2.3. This complaint was investigated under case number 2019Mar0051.

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2.4. The Commission's investigation found that on or about April 2016, Aludar and Ikemele assisted each other when completing tender documents for the National Treasury Tender. In this regard, the investigation revealed that the sole member of Aludar Holdings (Pty) Ltd is the son of the sole member of Ikemele and that the two members coordinated their bids when tendering for the National Treasury Tender as evidenced by various similarities in their bid documents.

2.5. The conduct between Aludar and Ikemele amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION


3.1. Aludar does not admit that it has acted in contravention of section 4(1)(b)(iii) of the Act as described in paragraph 2 above.

3.2. The Commission has agreed to enter into the Consent Agreement without admission of liability with Aludar based on the following factors:

3.2.1 Aludar is a small firm;

3.2.2 Given the small size of Aludar as well as the small size of the tender, the Commission does not consider it worthy to engage in protracted and costly litigation with Aludar;

3.2.3 Aludar has not won the tender in question; and

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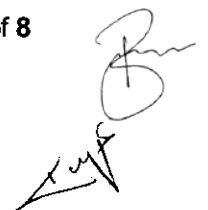
3.2.4 Aludar is a first-time offender, it has never contravened the Act before.

4. AGREEMENT REGARDING FUTURE CONDUCT

- 4.1. Aludar undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act in future.
- 4.2. Aludar will develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all its members and board of directors do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection and monitoring and detection of any contraventions of the Act.
- 4.3. Aludar shall circulate a statement summarising the contents of this Consent Agreement to all its members and board of directors within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

5. ADMINISTRATIVE PENALTY

- 5.1. Aludar agrees that it is liable to pay an administrative penalty of R30 000 (**Thirty Thousand Rand**). This amount does not exceed 10% of Aludar's annual turnover for the financial year ending February 2020.
- 5.2. Aludar will pay R30 000 (**Thirty Thousand Rand**) to the Commission in 1 (**one**) instalment payable within sixty (60) days after the confirmation of the Consent

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Agreement as an order of the Tribunal.

- 5.3. The payment 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:	2019Mar0051/lkemele Egg Production CC

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

6. MONITORING

- 6.1. Aludar undertakes to submit a copy of the compliance programme referred to in clause 4.2 to the Commission within 60 calendar days of the date of confirmation of this Consent Agreement as an order to the Tribunal.

- 6.2. All reports in relation to conditions set out in this agreement, including but not

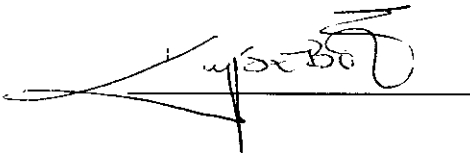


limited to compliance programmes, proof of payment(s) etc, shall be submitted to the Commission at CartelSettlements@compcom.co.za.

7. FULL AND FINAL SETTLEMENT


7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No's. 2019Mar0051 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Aludar relating to the conduct that is the subject of the Commission's investigation under Case No's. 2019Mar0051.

FOR Aludar Holdings (Pty) Ltd:



Dated and signed at PRETORIA on the 4th day of DECEMBER 2021.

FOR THE COMMISSION:


TEMBINKOSI BONAKELE
Commissioner



Dated and signed at PRETORIA **on the** 14 **day of** DECEMBER **2021.**