



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 018689

In the matter between:

Competition Commission

Applicant

and

Dunlop Industrial Products (Pty) Ltd

1st Respondent

and

Rema Tip Top Holdings South Africa (Pty) Ltd,
Formerly, Nenana Management Services (Pty) Ltd

2nd Respondent

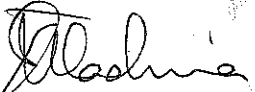
Panel : T Madima (Presiding Member)
F Tregenna (Tribunal Member)
A Roskam (Tribunal Member)

Heard on : 04 June 2014

Decided on : 09 July 2014

ORDER

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondents attached hereto marked Annexure "A".


Presiding Member
T Madima

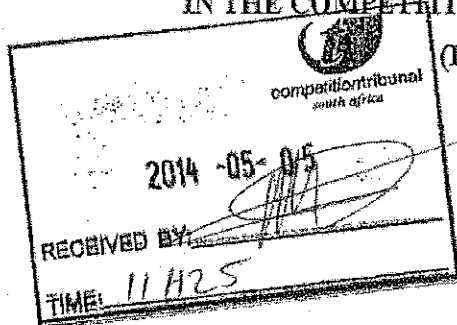
09 July 2014
Date

Concurring: F Tregenna and A Roskam

ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)



CT CASE NO:

CC CASE NO: 2010Sept5377

In the matter between:

COMPETITION COMMISSION

Applicant

and

DUNLOP INDUSTRIAL PRODUCTS (PTY) LTD

First Respondent

REMA TIP TOP HOLDINGS SOUTH AFRICA (PTY) LTD,

FORMERLY NENANA MANAGEMENT

SERVICES (PTY) LTD

Second Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND DUNLOP INDUSTRIAL PRODUCTS (PTY) LTD AND REMA TIP TOP HOLDINGS SOUTH AFRICA (PTY) LTD, FORMERLY NENANA MANAGEMENT SERVICES (PTY) LTD IN RESPECT OF A CONTRAVENTION OF SECTION 13 A (3) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

The Competition Commission and Dunlop Industrial Products (Pty) Ltd and Rema Tip Top Holdings South Africa (Pty) Ltd, formerly Nenana Management Services (Pty) Ltd hereby agree that application be made to the Competition Tribunal ("Tribunal") for confirmation of this Consent Agreement as an Order of the Tribunal in terms of section 49D read with sections 58 (b) and 59(1) (d) (iv) of the Competition Act No.89 of 1998, as amended, on the terms set out below:

[Handwritten signature]

1. DEFINITIONS

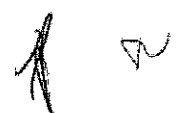
In this Consent Agreement, unless the context indicates otherwise, the following definitions shall apply:

- 1.1 *'the Act'* means the Competition Act No. 89 of 1998, as amended;
- 1.2 *'Consent Agreement'* means this written consent agreement duly signed and concluded between the Commission, Dunlop Industrial Products (Pty)Ltd and Nenana Management (Pty) Ltd;
- 1.3 *'Commission'* means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act as a juristic person, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 1.4 *'Commissioner'* means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;
- 1.5 *'Dunlop Industrial Products (Pty) Ltd'* ("DIP") and its subsidiaries, means a company registered and incorporated in accordance with the laws of South Africa under registration number 2001/004023/07, and with its principal place of business at Lincoln Road, Nedstadt Industrial Sites, Benoni, Johannesburg.
- 1.6 *'Rema Tip Top Holdings South Africa (Pty) Ltd, formerly Nenana Management Services (Pty) Ltd'* ("Nenana"), a company registered and incorporated in accordance with the laws of South Africa under registration number 1980/009786/07, with its principal business at 2 Uranium Road, Vulcania, Brakpan, Johannesburg.
- 1.7 *'Parties'* means the Commission and the Respondents;

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- 1.8 *'Merging Parties'* means D I P and Nenana collectively.
- 1.9 *'Tribunal'* means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act as a Tribunal of record, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.

2. BACKGROUND FACTS

- 2.1 On 28 September 2010, the merging parties filed a merger with the Commission in terms of which Nenana intended to acquire:
- 2.1.1. the business of Dunlop and its related subsidiaries, namely Dunlop Mixing and Technical (Pty) Ltd ("DMT"); Dunlop Rubber Moulding (Pty) Ltd ("DRM"), Dunlop Belting (Pty) Ltd and Dunlop Industrial Hose (Pty) Ltd ("DIH").
- 2.1.2. Shareholding in properties related to Dunlop such as Induna Properties (Pty) Ltd.
- 2.2 The above transaction was preceded by three separate but related transactions that have taken place between September 2009 and January 2010.
- 2.3 Nenana is ultimately controlled by Stahlgruber Otto Gruber AG ("Stahlgruber Holdings") a German company. Stahlgruber is a financial and management holding company of the Stahlgruber group of companies. Stahlgruber Holdings wholly owns Stahlgruber GmbH ("Stahlgruber" and Rema Tip Top GmbH ("Rema Tip Top"). In South Africa, Nenana is the investment holding company of Rema Tip Top.
- 2.4 The acquisition of Dunlop by Nenana as described in paragraph 2.1 above involved the increase in shareholding by Nenana of its interest in DP from 10% to 51%. This will be followed by further
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increase in shareholding of Nenana in Dunlop to 63.75% preceded by an option in Imbani Rubber (Pty) Ltd.

2.5. In its the investigation of the transaction, the Commission concluded that the increase in shareholding by Nenana in DIP which confers it with sole control is likely to raise competition concerns. This was informed by the presence of alternative suppliers in the upstream market such as National Rubber and Natal Rubber Compounders. Further, reputable competitors such as Fenner and Veyance / Goodyear are also active in the market for conveyor belt manufacturing. With respect to customer foreclosure, mines usually contract multiple contractors as service providers in the downstream maintenance market. Barriers to enter the market to manufacture and supply conveyor belts were found to be relatively high given the capital expenditure requirement.

2.6 The said merger was conditionally approved by the Commission on the 17 December 2010. During the investigation of the merger, the Commission established that the parties had de facto implemented the merger without the requisite approval in contravention of section 13 A (3) of the Act. The Commission engaged the merging parties about its concerns.

3. COMMISSION'S INVESTIGATION AND FINDINGS

3.1 The Commission investigated the alleged contravention and found that the respondents implemented the transaction without the prior approval from the Competition Authorities in contravention of section 13 A (3) of the Act. Section 13 A(1) makes it peremptory that parties to an intermediate merger must notify and get approval of the Commission before a merger is implemented as such section 13 (3) prohibits implementation of an intermediate merger without the requisite approval by the Competition authorities;

3.1.2 The Commission found *inter alia* that the Respondents:



- 3.1.2.1 The CEO of Nenana was part of the day-to-day operations of DIP as early as 2010 and was part of the team that was taking strategic decisions for DIP;
- 3.1.2.2 Between March 2009 and November 2010 Nenana's Marketing and Sales Manager was appointed as DIP Head of Marketing and Sales and has been involved in the operations of DIP;
- 3.1.2.3 The acquiring firm and the target firm moved into the same premises;
- 3.1.2.4 Both firms marketed themselves as one merged entity.

4. ADMISSIONS

- 4.1. The Respondents admit that the transaction constituted a notifiable intermediate merger as defined in section 11(5)(b) of the Act;
- 4.2 The Respondents further admit that the merger was implemented prior to notification and approval of the Commission in contravention of section 13A (3) of the Act.
- 4.3 The Respondents further admit that they were both responsible for notifying the Commission of the transaction under the Act;

5. COMPLIANCE WITH THE ACT

- 5.1 The Respondents agree and undertake:
 - 5.1.1 To refrain from engaging in prior implementation of notifiable mergers in contravention of section 13A(3) of the Act;
 - 5.1.2. Develop and implement a compliance programme designed to ensure that its employees, management and directors do not engage in any conduct which constitutes a contravention of the

Act, a copy of which shall be submitted to the Commission within 60 days of the date of confirmation of this consent agreement as an order of the Tribunal.

6. ADMINISTRATIVE PENALTY

6.1 The Respondents agree that they are jointly and several liable to pay an administrative penalty in terms of section 58(1)(a)(iii) read with sections 59(1)(d)(iv), 59(2) and 59(3) of the Act.

6.1 The Respondents agree that they are jointly and several liable to pay an administrative penalty of R500 000.00 (Five hundred thousand Rands), one paying in full, the other to be absolved.

6.2 The administrative penalty imposed on the Respondents is less than 10% of the total turnover of the Respondent as stipulated in section 59 (2) of the Act.

6.3 The Respondents shall pay the administrative penalty within (7) days of confirmation of this *Consent Agreement* as an Order of the Tribunal, into the following bank account whose:

NAME OF THE ACCOUNT: COMPETITION

COMMISSION

BANK : ABSA BANK, PRETORIA

ACCOUNT NUMBER : 4050778576

BRANCH CODE : 323 345

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

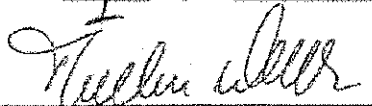
7. FULL AND FINAL SETTLEMENT

This Consent Agreement, upon confirmation thereof as a consent order by the Tribunal, concludes all proceedings between the Commission and the

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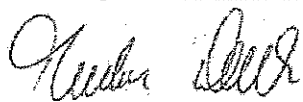
Respondents in relation to the contravention of section 13A(3) of the Act,
investigated under the Commission's case number: 2010Sept5377.

Signed at Benoni on the 1st day of 04 2014



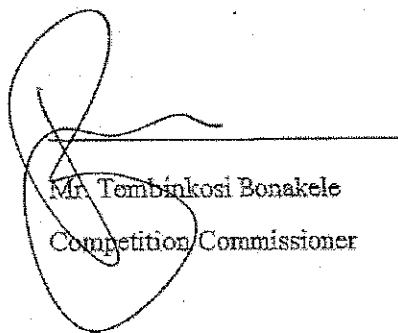
Mr Thorsten Wach
Managing Director
Dunlop Industrial Products (Pty) Ltd

Signed at Benoni on the 1st day of 04 2014



Mr. Thorsten Wach
Managing Director
Nenana Management Services (Pty) Ltd

Signed at PRETORIA on the 29th day of APRIL 2014



Mr. Tembinkosi Bonakele
Competition Commissioner