



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 020289

In the matter between:

The Competition Commission

Applicant

and

JT Ross (Pty) Ltd

Respondent

Panel : A Wessels (Presiding Member)
A Roskam (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 18 February 2015

Additional
submission received
from Commission on: 27 March 2015

Decided on : 9 April 2015

Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and JT Ross (Pty) Ltd, annexed hereto marked "A".

**Presiding Member
Mr. A Wessels**

**9 April 2015
Date**

Concurring: Mr. A Roskam and Prof. F Tregenna

" A "

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO: _____

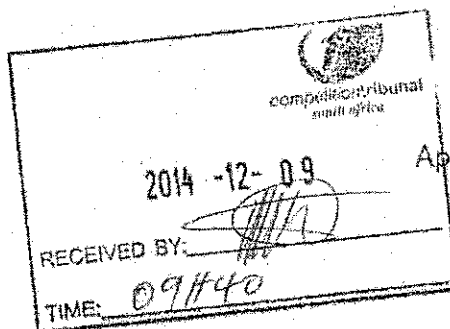
CC CASE NO: 2009Feb4279/2009Sep4641

In the matter between:

THE COMPETITION COMMISSION

and

J.T. ROSS (PTY) LIMITED



Applicant

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 J.T. ROSS (PTY) LIMITED, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT

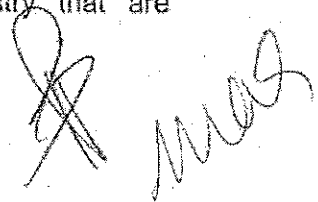
The Competition Commission ("Commission") and J.T. Ross (Pty) Limited ("J.T. Ross") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of contraventions of section 4(1)(b)(iii) of the Act.

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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 "CLP" means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);
- 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 "Complaints" means the complaints initiated by the Commissioner of the Competition Commission in terms of section 49B of the Act under case numbers 2009Feb4279 and 2009Sep4641;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and J.T. Ross;
- 1.6 "J.T. Ross" means J.T. Ross (Pty) Limited, a company incorporated under the laws of the Republic of South Africa with its principal place of business at Old Lion Match Factory 892 Umgeni Road, Durban;
- 1.7 "Non-prescribed prohibited practices" refers to prohibited restrictive horizontal practices relating to the construction industry that are

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contemplated in section 4(1)(b) of the Act and that are ongoing or had not ceased three years before the complaints were initiated, as contemplated in section 67 of the Act;

- 1.8 "Parties" means the Commission and J.T. Ross;
- 1.9 "Prescribed prohibited practices" refers to prohibited restrictive horizontal practices relating to the construction industry that are contemplated in section 4(1)(b) of the Act and that ceased after 30 November 1998, but more than three years before the complaints were initiated;
- 1.10 "Respondent" means J.T. Ross;
- 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 BACKGROUND

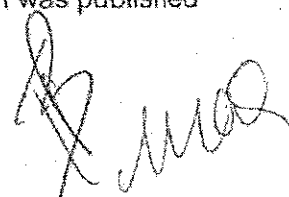
- 2.1 On 10 February 2009, the Commission initiated a complaint in terms of section 49B(1) of the Act into alleged prohibited practices relating to collusive conduct in the construction of the stadiums for the 2010 FIFA Soccer World Cup against Group Five, Grinaker-LTA (the construction operating business unit of Aveng), Basll Read (Pty) Ltd, WBHO Construction (Pty) Ltd, Murray & Roberts Limited, Stefanutti Stocks

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Limited, Interbeton Abu Dhabi nv llc and Bouygues Construction SA.

2.2 In addition, on 1 September 2009, following the receipt of applications for immunity in terms of the CLP, the Commission initiated a complaint in terms of section 49B(1) of the Act into particular prohibited practices relating to conduct in respect of construction projects, by the firms listed below. The complaint concerned alleged contraventions of section 4(1)(b) of the Act with regard to price fixing, market allocation and collusive tendering. The investigation was initiated against the following firms: Stefanutti, Aveng (Africa) Limited, Group Five Ltd, Murray & Roberts, Concor Ltd, G. Liviero & Son Building (Pty) Ltd, Giuricich Coastal Projects (Pty) Ltd, Hochtief Construction AG, Dura Soletanche-Bachy (Pty) Ltd, Nishimatsu Construction Co Ltd, Esorfranki Ltd, VNA Pilings CC, Rodio Geotechnics (Pty) Ltd, Diabor Ltd, Gauteng Piling (Pty) Ltd, Fairbrother Geotechnical CC, Geomechanics CC, Wilson Bayly Holmes-Ovcon LTD and other construction firms, including joint ventures.

2.3 The Commission's investigation of the above complaints, as well as several other of the Commission's investigations in the construction industry, led the Commission to believe that there was widespread collusion in contravention of section 4(1)(b)(iii) of the Act in the construction industry. Accordingly, in line with the purpose of the Act as well as the Commission's functions, the Commission decided to invite construction firms that were involved in collusive conduct to apply to engage in settlement on favourable terms. The invitation was published



on the Commission's website on 1 February 2011. This was also done in the interests of transparency, efficiency, adaptability and development of the construction industry, the provision of competitive prices, as well as in order to expedite finalisation of the investigations, under a fast track process. The Invitation specifically provided that it was open to firms to also apply for leniency in terms of the CLP.

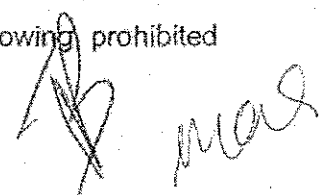
- 2.4 In response to the Invitation and in terms of the Commission's CLP, J.T. Ross was first to apply for leniency in respect of 1 non-prescribed prohibited practice set out below.

3 CONDITIONAL IMMUNITY

- 3.1 The Commission granted J.T. Ross conditional immunity from prosecution before the Tribunal for its involvement in cartel conduct described in paragraph 4 below.
- 3.2 J.T. Ross agreed to co-operate with the Commission in respect of any steps that the Commission may deem necessary to obtain an order from the Tribunal declaring the conduct set out in paragraph 4 below to be a contravention of section 4(1)(b)(iii) of the Act.

4 CONDUCT IN CONTRAVENTION OF THE ACT

In its CLP, J.T. Ross disclosed its participation in the following prohibited

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practice or contravention of section 4(1)(b)(iii) of the Act:

4.1 The Mondi Multi Fuel Boiler Project (Tender Ref No: M679736001)

In or about October 2005, J.T. Ross reached an agreement with Stefanutti in terms of which these parties agreed on payment of a loser's fee in relation to the Mondi Multi Fuel Boiler Project.

In terms of the agreement, the firm that won the tender would pay an amount of R49 950.00 to the firm that lost the tender.

Stefanutti was awarded the tender and paid the amount of R49 950.00 to J.T. Ross on or about May 2007.

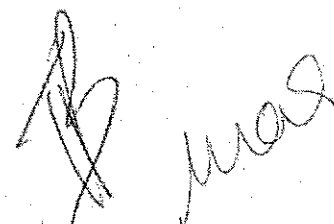
The project involved the civil works, which included foundations, channels, and minor buildings for a boiler at Mondi Paper South Africa (Pty) Ltd, in Meerbank, Durban. The Project was completed on 30 November 2006.

5 ADMISSION

5.1 J.T. Ross admits that the conduct set out in paragraph 4 above is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

6 CO-OPERATION

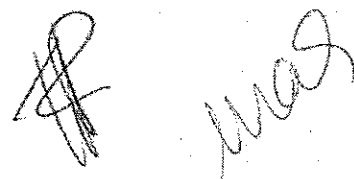
6.1 In so far as the Commission is aware, and in compliance with the requirements as set out in the CLP, J.T. Ross:



- 6.1.1 has provided the Commission with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the prohibited practices;
- 6.1.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practices;
- 6.1.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in future engage in, any form of prohibited practice;
- 6.1.4 has confirmed that it has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practices;
- 6.1.5 has confirmed that it has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

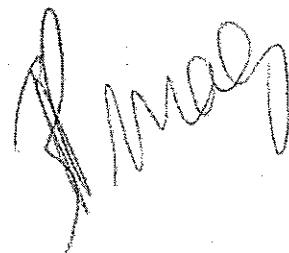
7 FUTURE CONDUCT

- 7.1 J.T. Ross confirms that it no longer engages in the conduct set out in paragraph 4 above.
- 7.2 In compliance with the requirements as set out in the CLP, J.T. Ross agrees and undertakes to provide the Commission with full and expeditious co-operation from the time that this Consent Agreement is

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concluded until the subsequent proceedings in the Competition Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:

- 7.2.1 to the extent that it is in existence and has not yet been provided, providing (further) evidence, written or otherwise, which is in its possession or under its control, concerning the contraventions contained in this Consent Agreement;
- 7.2.2 availing its employees and former employees to testify as witnesses for the Commission in any cases regarding the contravention contained in this Consent Agreement.
- 7.3 J.T. Ross shall develop, 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.
- 7.4 J.T. Ross shall submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal.
- 7.5 J.T. Ross shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at J.T. Ross within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.

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- 7.6 J.T. Ross will not in the future engage in any form of prohibited conduct and will not engage in collusive tendering which will distort the outcome of tender processes but undertakes henceforth to engage in competitive bidding.

For the Commission

Dated and signed at PRETORIA on the 24 day of Nov 2014



TEMBINKOSI BONAKELE

Commissioner

For J.T. Ross

Dated and signed at DURBAN on the 20 day of MAY 2014



Name: MELANIE GILLESPIE
FINANCIAL
Managing Director