



**competitiontribunal**  
*south africa*

**COMPETITION TRIBUNAL**  
REPUBLIC OF SOUTH AFRICA

Case No: CR248Mar16/SA142Oct16

**In the matter between:**

The Competition Commission

Applicant

and

Top n Nos Services CC

Respondent

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Panel : N Manoim (Presiding Member)  
M Mokuena (Tribunal Member)  
M Mazwai (Tribunal Member)

Heard on : 23 November 2016


Decided on : 23 November 2016

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**Order**

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The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent annexed thereto marked "A".

  
\_\_\_\_\_  
Presiding Member  
Mr Norman Manoim

**Concurring:** Ms Medi Mokuena and Ms Mondo Mazwai

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO: CR248Mar16/SA142Oct16

CC CASE NO: 2014MAR0102

In the matter between

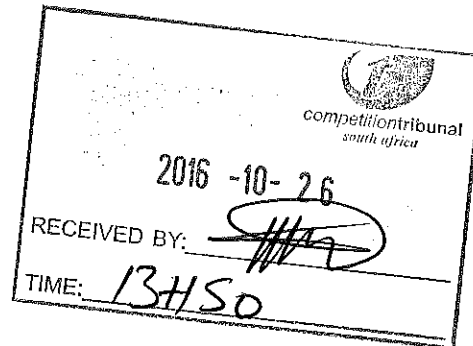
THE COMPETITION COMMISSION

Applicant

And

TOP N NOS SERVICES CC

Respondent



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FILING SHEET

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**BE PLEASED TO TAKE NOTICE** that the applicant hereby files the Consent Agreement concluded between the Competition Commission and Top N Nos Services CC.

Signed at Pretoria on the 26<sup>th</sup> day of October 2016.

Competition Commission

The Dti Campus, Building C, Mulayo

77 Meintjies Street

Tel: 012 394 5526

Fax: 012 394 4526

Email: [matodzis@compcom.co.za](mailto:matodzis@compcom.co.za)

**Ref: Matodzi Sivhaga/2014Mar0102**

**TO:**

The Registrar

**Competition Tribunal of South Africa**

77 Meintjies Street

The Dti Campus, 3<sup>rd</sup> Floor

Block C, Mulayo Building

Sunnyside, Pretoria

**Ref: Ms Lerato Motaung**

**AND TO: TOP N NOS CLEANING SERVICES CC**

171 4<sup>th</sup> Avenue

Grassy Park

Cape Town

**C/O Wayne Hufkie Attorneys**

**Attorneys for Top N Nos Services CC**

**Ref: Wayne Hufkie**

Tel: 021 715 1410

Cell 083 281 7070

By Email: [wayne@waynehufkieattorneys.co.za](mailto:wayne@waynehufkieattorneys.co.za)



# competitiontribunal south africa

## Form CT1(1) Page 2 About this Form

This form is issued in terms of section 50 of the Competition Act.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

## Contacting the Tribunal

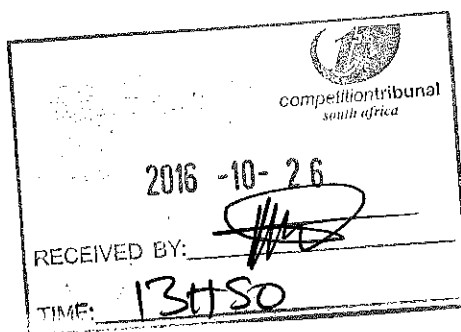
The Competition Tribunal  
Private Bag X24  
Sunnyside  
0132  
Republic of South Africa  
tel: 27 012 3943300  
fax: 27 012 3940169  
e-mail: ctsa@comptrib.co.za

## Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

Confirmation of the attached consent agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section section 58(1)(b) of the Competition Act 1998 (Act 89 of 1998) as amended ("the Act") in respect of a contravention of section 4 (1)(b)(iii) of the Act.



☒ This referral is to proceed as a consent proceeding.

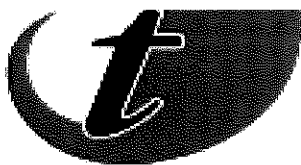
☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

**Name and Title of person authorised to sign on behalf of the Competition Commission:**

Bukhosibakhe Majenge: Manager Legal Services Division

**Authorised Signature:**

[Signature]



# competitiontribunal south africa

## Form CT1(1)

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- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Form continues on Page 2.

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
0132  
Republic of South Africa  
tel: 27 12 394 3300  
fax: 27 12 394 0169  
e-mail: ctsa@comptrib.co.za

## Referral of Complaint by Commission

**Date:** 26 October 2016

**To:** the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

Top N Nos Services CC

### Concerning:

(Complaint name and Commission file number:)

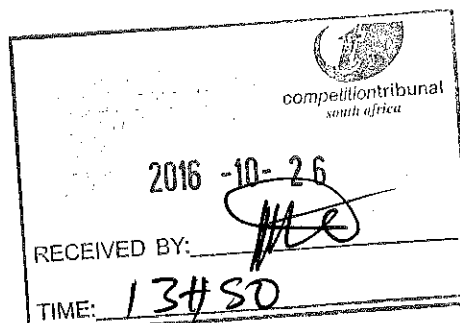
2014MAR0102

**From:** the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(iii) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

Confirmation of the attached consent agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(b) of the Competition Act 1998 (Act 89 of 1998) as amended ("the Act") in respect of a contravention of section 4(1)(b)(iii) of the Act.



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: \_\_\_\_\_

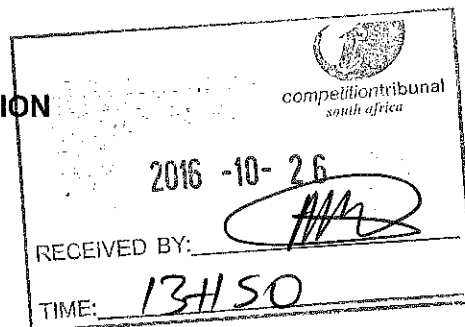
CC CASE NO: 2014MAR0102

In the matter between:

THE COMPETITION COMMISSION

and

TOP N NOS SERVICES CC



Applicant

Respondent

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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 TOP N NOS SERVICES CC, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (iii) OF THE COMPETITION ACT, 1998.

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**Preamble**

The Competition Commission ("**Commission**") and Top N Nos Services CC ("**Top N**") hereby agree that an 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, Act No. 89 of 1998, as amended (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, Act No. 89 of 1998, as amended;
- 1.2 **"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 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 submitted by FIU on behalf of WCDA in terms of section 49B(2) of the Act under case numbers 2014MAR0102 in respect of tender 800-2013/2014;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Top N;
- 1.6 **"FIU"** means Forensic Investigative Unit;

- 1.7 **"Parties"** means the Commission and Top N;
- 1.8 **"Respondent"** means Top N;
- 1.9 **"Top N"** means Top N Nos CC, a close corporation duly incorporated as such in accordance with applicable laws of the Republic of South Africa with its principal place of business at 171 4<sup>th</sup> Avenue, Grassy Park, Cape Town.
- 1.10 **"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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.11 **"WCDA"** means the Western Cape Department of Agriculture;

## **2. INVESTIGATION AND FINDINGS OF THE COMMISSION**

- 2.1 On 18 March 2014, the Commission received a complaint in terms of section 49B(2) of the Act alleging that Greystone Trading 389 CC t/a Pronto Kleen Cleaning Services, Zara Cleaning Services CC and Top N colluded when submitting tenders in response to tender number: 800-2013/2014. The tender was issued by the WCDA and was for the provision of cleaning services at the



WCDA's offices in Elsenburg, Stellenbosch. This complaint was investigated under Case No. 2014Mar0102.

2.2 The Commission's investigation revealed that the respondents agreed on how to price various items in the pricing schedule which they submitted when bidding for WCDA tender number 800-2013/2014.

2.3 On 7 March 2016 the Commission referred the complaint to the Tribunal for adjudication.

### **3. ADMISSION**

3.1 Top N admits that it engaged in the prohibited practices set out in clause 2 above in contravention of section 4(1)(b) (iii) of the Act.

### **4. CO-OPERATION**

4.1 Top N confirms that it has ceased engaging in the conduct set out in clause 2 above.

4.2 Top N agrees to fully co-operate with the Commission in its investigation and prosecution of the other participant in the alleged contravention. This co-operation includes, but is not limited to the following:

4.2.1 Provide evidence, written or otherwise, which is in its possession or under

its control, concerning the alleged contraventions contained in this Consent Agreement;

4.2.2 Testify in any complaint referral which may arise in respect of alleged contraventions covered by this Consent Agreement;

4.2.3 Availing its employees to testify as witnesses for the Commission. Where witnesses are no longer in Top N's employ, but previously were in its employ, Top N undertakes to use its best endeavours to procure the co-operation of such witnesses with the Commission in the manner aforesaid.

## **5. ADMINISTRATIVE PENALTY**

5.1 Top N agrees that it is liable to pay an administrative penalty of **R36 935.00 (Thirty-six Thousand Nine Hundred and Thirty-five Rand)**. This administrative penalty represents 1% of Top N's annual turnover for the financial year ended 28 February 2015.

5.2 Top N shall pay the abovementioned **R36 935.00 (Thirty-six Thousand Nine Hundred and Thirty-five Rand)** in 6 (six) equal instalments of **R6 155.83 (Six Thousand One Hundred and Fifty-five and Eighty-three Cents)**;

5.3 The first payment being made within 30 days of the confirmation of the Consent

Agreement as a consent order by the Tribunal. The last instalment will thereafter be paid on the sixth month following the confirmation of the Consent Agreement.

- 5.4 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:** The Competition Commission Fee Account

**Account Number:** 4050778576

**Account type:** Current Account

**Branch Code:** 323 345

**Reference:** Case Number: 2014Mar0102/Top N

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



**6. AGREEMENT REGARDING FUTURE CONDUCT**

6.1 Top N undertakes to refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future;

6.2 Top N 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 the following:

6.2.1 The identification by Top N of competition risks relevant to its business and the monitoring thereof;

6.2.2 Provision of specific training on aspects of competition law of particular relevance to Top N, such training to be made available to all new employees as mentioned in paragraph 6.2 joining Top N. Furthermore, Top N will update such training annually on an ongoing basis; and

6.2.3 To 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.

(sixty) days from the date of confirmation of this Consent Agreement by the tribunal.

**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. 2014Mar0102 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Top N relating to the conduct that is the subject of the Commission's investigation under Case No. 2014Mar0102.

Dated and signed at Plumstead on the 5 day of September 2016

For Top N Services CC



Chief Executive Officer

Name in Full: \_\_\_\_\_

Dated and signed at Pretoria on the 20<sup>th</sup> day of September 2016

For the Commission



**TEMBINKOSI BONAKELE**

Competition Commissioner

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