



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO177Nov16

In the matter between:

The Competition Commission

Applicant

And

The Good Hope Textile Corporation (Pty) Ltd t/a
Da Gama Textiles

Respondent


Panel : AW Wessels (Presiding Member)
I Valodia (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 25 January 2017

Decided on : 25 January 2017

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and The Good Hope Textile Corporation (Pty) Ltd t/a Da Gama Textiles annexed hereto marked "A".



Presiding Member
Mr Andreas Wessels

25 January 2017
Date

Concurring: Prof. I Valodia and Mrs M Mokuena

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: _____

CC CASE NO: 2013SEP0452

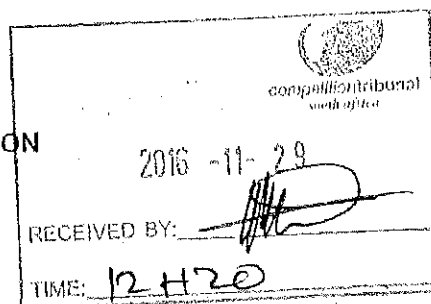
In the matter between:

THE COMPETITION COMMISSION

and

THE GOOD HOPE TEXTILE CORPORATION (PTY)

LTD T/A DA GAMA TEXTILES



Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND THE GOOD HOPE TEXTILE CORPORATION (PTY) LTD T/A DA GAMA TEXTILES, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission ("Commission") and The Good Hope Textile Corporation (Pty) Ltd t/a Da Gama Textiles ("Da Gama Textiles") hereby agree that an application be made to the Competition Tribunal ("Tribunal") for the confirmation of this

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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 initiated by the Commissioner in terms of section 49B(1) of the Act under Case No. 2013Sep0452 in respect of tender RT60-2012T;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded

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between the Commission and The Good Hope Textile Corporation (Pty) Ltd I/a Da Gama Textiles;

1.6 "Da Gama Textiles" means The Good Hope Textile Corporation (Pty) Ltd I/a Da Gama Textiles, a company incorporated in South Africa with its principal place of business at Hargreaves Avenue, Zwelitsha, Eastern Cape;

1.7 "Parties" means the Commission and Da Gama Textiles;

1.8 "Respondent" means Da Gama Textiles;

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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. INVESTIGATION AND FINDINGS OF THE COMMISSION

2.1 On 16 September 2013, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Da Gama Textiles, Monoge Mining Contractors & Supply Services CC ("Monoge Mining") and Motseng Trading (Pty) Ltd ("Motseng Trading") for allegedly colluding when bidding for tender RT60-2012T issued by the National Treasury in contravention of section 4(1)(b)(iii) of the Act.

2.2 The tender was for the supply of fabric used in the manufacture of uniforms to the Department of Correctional Services ("DCS"), the South African Air Force ("SAAF") and the South African Military Health Services ("SAMHS").

2.3 The Commission's investigation under Case No. 2013Sep0452 revealed that:

2.3.1 Da Gama Textiles concluded bilateral agreements with Monoge Mining and Motseng Trading in terms of which they agreed that Da Gama Textiles would determine the prices at which both Monoge Mining and Motseng Trading would quote when submitting in their respective bids in response the tender number: RT60-2012T. The bilateral agreements with both Monoge Mining and Motseng Trading constitute collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION

3.1 Da Gama Textiles 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 Da Gama Textiles confirms that it has ceased engaging in the conduct set out in clause 2 above.

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4.2 Da Gama Textiles agrees to fully co-operate with the Commission in its investigation and prosecution of the other participant(s) 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 Da Gama Textiles employ, but previously were in its employ, Da Gama Textiles undertakes to use its best endeavours to procure the cooperation of such witnesses with the Commission in the manner aforesaid.

5. ADMINISTRATIVE PENALTY

5.1. Da Gama Textiles agrees that it is liable to pay an administrative penalty of R2 113 335.45 (Two Million One Hundred and Thirteen Thousand Three Hundred and Thirty-five Rand and Forty-five Cents). This administrative penalty is less than 10% of Da Gama Textiles' annual turnover for the financial

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year ended 31 December 2013;

5.2 Da Gama Textiles shall pay the abovementioned R2 113 335.45 (Two Million One Hundred and Thirteen Thousand Three Hundred and Thirty-five Rand and Forty-five Cents) to the Commission in 2 (two) equal instalments of R1 056 667.73 (One Million Fifty-six Thousand Six Hundred and Sixty-seven Rand and Seventy-three Cents);


5.3 The first payment being made 12 (twelve) months from the confirmation of the Consent Agreement as a consent order by the Tribunal. The second instalment will thereafter be paid 6 (six) months from the first payment. Interest will be levied from the 13th (thirteen) months on the remaining outstanding balance at the interest on debts owing to the state prescribed by the Minister of Finance in terms of section 80(1)(a) of the Public Finance Management Act No. 1 of 1999, as amended. At the time of this Settlement Agreement the applicable rate is 10.5%.

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

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Account Number: 4050778576

Account type: Current Account

Branch Code: 323 345

Reference: Case Number: 2013SEP0452/Da Gama Textiles

- 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 Da Gama Textiles undertakes to refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future.

- 6.2 Da Gama Textiles 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 Da Gama Textiles of competition risks relevant to its

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business and the monitoring thereof;

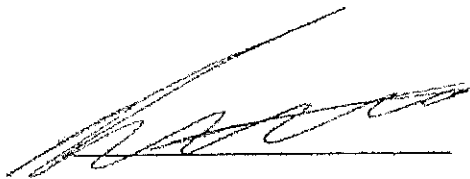
- 6.2.2 Provision of specific training on aspects of competition law of particular relevance to Da Gama Textiles, such training to be made available to all new employees joining Da Gama Textiles. Furthermore, Da Gama Textiles will update such training annually on an ongoing basis; and
- 6.2.3 To submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal.
- 6.3. Da Gama Textiles shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Da Gama Textiles within 60 (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. 2013Sep0452 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Da Gama Textiles relating to the conduct that is the subject of the Commission's investigation under Case No. 2013Sep0452.

Dated and signed at Zwelitsha on the 21st day of November 2016

For The Good Hope Textile Corporation (Pty) Ltd t/a Da Gama Textiles

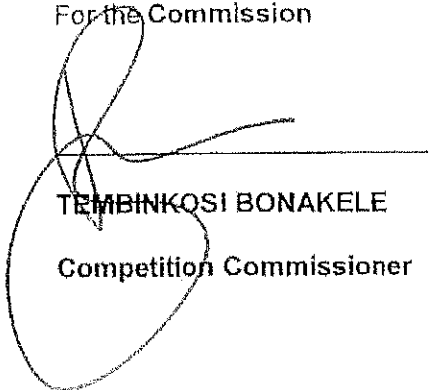


Chief Financial Officer

Name in Full: Ryan Roger Brent

Dated and signed at PRETORIA on the 23rd day of NOVEMBER 2016

For the Commission



TEMBINKOSI BONAKELE

Competition Commissioner