



competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CR209Feb17/EXC055May17

In the Exception application between:

TOURVEST HOLDINGS (PTY) LTD

Excipient (First Respondent)

and

COMPETITION COMMISSION

And

Case No.: CR209Feb17/EXC236Mar17

In the Exception application between:

TRIGON TRAVEL (PTY) LTD

Excipient (Second Respondent)

and

COMPETITION COMMISSION

In Re:

The Complaint referral between:

COMPETITION COMMISSION

Applicant

and

TOURVEST HOLDINGS (PTY) LTD

First Respondent

Panel : Norman Manoim (Presiding Member)
Enver Daniels (Tribunal Member)
Anton Roskam (Tribunal Member)

Heard on : 12 June 2017

Order issued on : 12 June 2017

Reasons issued on : 12 July 2017

EXCEPTION APPLICATIONS

Introduction

[1] On 12 June 2017, the Competition Tribunal ("the Tribunal") heard two exception applications brought by Tourvest Holdings (Pty) Ltd ("Tourvest") and Trigon Travel (Pty) Ltd ("Trigon") against the Competition Commission's ("the Commission") complaint referral. Tourvest and Trigon sought an order from the Tribunal to either dismiss the Commission's complaint referral, or alternatively provide it with an opportunity to amend its referral, so as to enable Trigon and Tourvest to properly answer the case brought against them. The Tribunal issued orders directing the Commission to amend its complaint referral within fifteen business days of the orders.

Background

[2] On 14 February 2017, the Commission referred a complaint to the Tribunal wherein it alleged that Tourvest and Trigon, as parties in a horizontal relationship, entered into an agreement and/or engaged in a concerted practice to fix the price and tender collusively when bidding for a tender issued by the Parliament of South Africa ("Parliament"). The tender was in relation to the supply of administrative and management services of domestic flight tickets and accommodation for members of Parliament. Tourvest and Trigon's bids were amongst sixteen that were received by

Parliament. The Commission alleges that the two bids contained the following similarities:

- Both contained an identical single bundled transaction fee;
- Both bids reflected an identical Black Business Economic Empowerment (“BBEE”) status and procurement recognition level;
- Both bids were submitted on 14 May 2015; and
- Both Tourvest and Trigon are affiliated through the Travel Assignment Group (“TAG Group”).

[3] In its referral the Commission submitted that due to the above-mentioned similarities between Tourvest and Trigon’s tender documents, an inference could be drawn, that Tourvest and Trigon colluded and fixed prices when submitting their tender bids, thus contravening sections 4(1)(b)(i) and (ii) of the Competition Act (“the Act”).¹

Applications

[4] Tourvest and Trigon submitted that the Commission’s referral ought to be dismissed as the Commission did not disclose a valid complaint, the allegations set out in the referral were insufficiently pleaded to disclose a cause of action, were vague and embarrassing and thus caused severe prejudice to Tourvest and Trigon.

[5] They also argued that if the case concerned bid rigging it was difficult to understand why the firms would submit the same price in response to the tender.

[6] The Commission did not file answers to either application, but made oral submissions contained in its written heads of argument. Although the Commission initially argued that it had made sufficient allegations from which an inference could be drawn, following questions from the Tribunal as to whether the investigation had yielded more information it correctly changed its position. The Commission indicated it had further information that would indicate that the pricing was only nominally the same, as

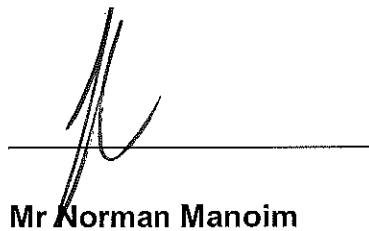
¹ Act 89 of 1998, as amended.

between Tourvest and Trigon, one of them put in a price inclusive of VAT and the other a price exclusive of VAT. The Commission gave us an indication during the hearing that it had more information in its possession concerning the relationship of the two firms to TAG, and if it were to be given an opportunity to amend, such information would be brought to light. Based on this, we decided not to dismiss the referral but to give the Commission an opportunity to amend its complaint referral as per our directions in the orders attached hereto.

[7] There is no order as to costs.

ORDER

See orders attached hereto as "Annexure A".



Mr Norman Manoim

12 July 2017

Date

Mr Anton Roskam and Mr Enver Daniels concurring

Tribunal Researcher: Caroline Sserufusa

For the 1st Respondent: PMP Ngongo instructed by Cliffe Dekker Hofmeyr

For the 2nd Respondent: GD Marriot instructed by Nortons Inc.

For the Commission: T Motloenya instructed by Morare Thobejane Inc.

ANNEXURE A



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First Respondent

TRIGON TRAVEL (PTY) LTD

Second Respondent

Panel : Norman Manoim (Presiding Member)
Enver Daniels (Tribunal Member)
Anton Roskam (Tribunal Member)

Heard on : 12 June 2017

Order issued on : 12 June 2017

ORDER - SECOND RESPONDENT'S EXCEPTION APPLICATION

KINDLY TAKE NOTICE that after having heard the parties in the above matter the Competition Tribunal orders as follows:

1. The second respondent's exception to the Competition Commission's ("the Commission") complaint referral is upheld;
2. The Commission is hereby given an opportunity to supplement its complaint referral by filing a supplementary affidavit within 15 business days from date of this order, failing which the complaint referral, insofar as it relates to the second respondent, will be deemed to have been dismissed;
3. The supplementary affidavit must allege all the facts on which the Commission seeks to rely to draw the inference that the second respondent has engaged in an agreement or alternatively a concerted practice to contravene section 4(1)(b)(i) and/ or section 4(1)(b)(iii) of the Competition Act, 89 of 1998; and
4. There is no order as to costs.



Presiding Member
Mr Norman Manoim

12 June 2017

Date:

Concurring: Mr Enver Daniels and Mr Anton Roskam



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TRIGON TRAVEL (PTY) LTD

Second Respondent

Panel : Norman Manoim (Presiding Member)

Enver Daniels (Tribunal Member)

Anton Roskam (Tribunal Member)

Heard on : 12 June 2017

Order issued on : 12 June 2017

ORDER - FIRST RESPONDENT'S EXCEPTION APPLICATION

KINDLY TAKE NOTICE that after having heard the parties in the above matter the Competition Tribunal orders as follows:

1. The first respondent's exception to the Competition Commission's ("the Commission") complaint referral is upheld;
2. The Commission is hereby given an opportunity to supplement its complaint referral by filing a supplementary affidavit within 15 business days from date of this order, failing which the complaint referral, insofar as it relates to the first respondent, will be deemed to have been dismissed;
3. The supplementary affidavit must allege all the facts on which the Commission seeks to rely to draw the inference that the first respondent has engaged in an agreement or alternatively a concerted practice to contravene section 4(1)(b)(i) and/ or section 4(1)(b)(iii) of the Competition Act, 89 of 1998; and
4. There is no order as to costs.



Presiding Member
Mr Norman Manoim

12 June 2017

Date:

Concurring: Mr Enver Daniels and Mr Anton Roskam