



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR073Aug16/SA107Jun18

In the matter between:

The Competition Commission

Applicant

And

Berg River Textiles, a division of Sargas (Pty) Ltd

Respondent

Panel	:	E Daniels (Presiding Member) A Ndoni (Tribunal Member) F Tregenna (Tribunal Member)
Heard on	:	25 July 2018
Addendum submitted on	:	07 August 2018
Decided on	:	16 August 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Berg River Textiles, a division of Sargas (Pty) Ltd annexed hereto marked "A" together with the addendum to the settlement agreement annexed "A1".


Presiding Member
Mr Enver Daniels

16 August 2018
Date

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

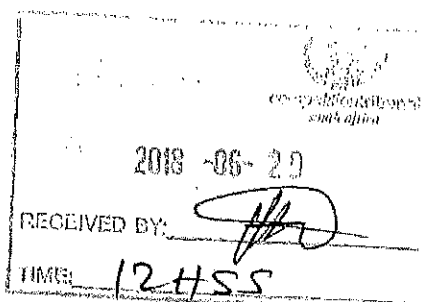
CT Case No. CR073 Aug 6 / SA107 Jun 18
CC Case No: 2014APR0163
2015MAR0138

In the matter between

COMPETITION COMMISSION

And

BERG RIVER TEXTILES, A DIVISION OF SARGAS (PTY) LTD



Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND BERG RIVER TEXTILES, A DIVISION OF SARGAS (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89 OF 1998.

Preamble

The Competition Commission ("Commission") and Berg River Textiles ("Berg River Textiles"), a Division of Sargas (Pty) Ltd ("Sargas") hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act No. 89 of 1998, as amended ("the Act"), in respect of contravention of section 4(1)(b)(iii) of the Act, on the terms set out below.

Handwritten initials or signature.

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 "Complaints" means the complaints initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers: 2014Apr0163 and 2015Mar0138 in respect of tenders issued by the department of National Treasury;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Berg River Textiles;
- 1.6 "Berg River Textiles" means Berg River Textiles, formally a division of Sargas (Pty) Ltd which, after a group restructure, now resides under Winelands Textiles (Pty) Ltd.
- 1.7 "Parties" means the Commission and Berg River Textiles;

- 1.8 **"Respondents"** means Sargas T/A Berg River Textiles and Eye Way Trading (Pty) Ltd ("Eye Way");
- 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 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
- 1.10 **"Winelands Textiles Proprietary Limited"** means the Winelands Textiles operations which houses Berg River Textiles with its principal place of business at Raymond Pollet Drive, Worcester.

2. BACKGROUND TO THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 29 April 2014, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Berg River Textiles and Eye Way for allegedly colluding when bidding for tender RT60-2012T issued by the Department of National Treasury in contravention of section 4(1)(b)(iii) of the Act.
- 2.2 On 27 March 2015, the Commissioner initiated another complaint in terms of section 49B(1) on the Act against Berg River Textiles and Eye Way for allegedly colluding when bidding for tender RT60-2011T.

2.3 These tenders were issued by department of National Treasury 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").

2.4 The Commission's investigation under case numbers: 2014Apr0163 and 2015Mar0138 revealed that:

2.4.1 The respondents have agreed to tender collusively in respect of tender number RT60-2012T and tender number RT60-2011T issued by National Treasury for the supply and delivery of fabric used to manufacture uniforms for DCS, SAAF and SAMHS.

2.4.2 This agreement amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION

3.1 Berg River Textiles admits that it engaged in the prohibited practices set out in paragraph 2 above in contravention of section 4(1)(b) (iii) of the Act.

4. CO-OPERATION

4.1 Berg River Textiles confirms that it has ceased engaging in the conduct set out in clause 2.4 above.

4.2 Berg River Textiles agrees to fully cooperate with the Commission in its investigation of the matter. This cooperation includes, but is not limited to:

4.2.1 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of Berg River Textiles or under Berg River Textiles' control (excluding the work product of external counsel), concerning the alleged contravention of section 4(1)(b) as set out in this Consent Agreement.

4.2.2 Using its best endeavours, to the extent that it may be necessary, to procure the attendance at any Tribunal hearing of any current employee or former employee of Berg River Textiles who may be required to testify during the hearing of the complaint (subject to their rights against self-incrimination), if any, in respect of the contravention of section 4(1)(b) as set out in this Consent Agreement.

5 ADMINISTRATIVE PENALTY

5.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with section 59(1)(a), 59(2) and 59(3) of the Act, Winelands agrees that it is liable to pay an administrative penalty on behalf of Berg River Textiles.

5.2 Winelands undertakes to pay an administrative penalty in the amount of **R6 170 045.00 (Six Million One Hundred and Seventy Thousand and Forty-Five Rand)**. This administrative penalty represents 3.5% of Berg River Textiles' annual turnover

for financial year ending 31 March 2017.

5.3 Winelands will pay the amount set out in paragraph 5.2 above to the Commission over the period of three (3) years in three (3) equal instalments of **R 2 056 682 (Two Million Fifty-Six Thousand Six and Eighty-One Rand)**. The first payment being made within thirty (30) of the confirmation of the Consent Agreement as an order of the Tribunal.

5.4 The second and third instalments will thereafter each be paid on the anniversary of the confirmation of the Consent Agreement as an order of the Tribunal.

5.5 No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 10,25%.

5.6 The administrative penalty must be paid into the Commission's bank account which is as follows:

Bank Name: Absa Bank

Branch Name: Pretoria



Account Holder: The Competition Commission Fee Account
Account Number: 4087641778
Account Type: Current Account
Branch Code: 632005
Reference: 2014APR0163 & 2015MAR0138/ Berg River Textiles

- 5.7 The administrative 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 Berg River Textiles undertakes to refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future.
- 6.2 Berg River 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 contravention of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 6.3 Berg River Textiles shall prepare and circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Berg River Textiles within 60 (sixty) business days from the date of



confirmation of this Consent Agreement by the Tribunal, and

- 6.4 Berg River Textiles agrees 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 Competition Tribunal.

7. Full and Final Settlement

- 7.1 This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of the prohibited practices engaged in by Berg River Textiles and Eye Way as set out in paragraph 2 above and concludes all proceedings between the Commission and Berg River Textiles in this regard.

Dated and signed at CAPE TOWN on the 21st day of JUNE 2018

For Berg River Textiles

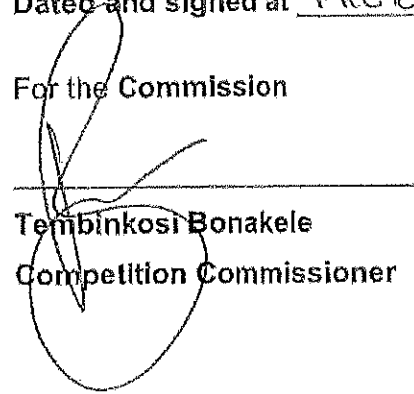


Chief Executive Officer

Name In Full: PETRUS JOHANNES VAN WYK

Dated and signed at PRETORIA on the 26th day of JUNE 2018

For the Commission



Tembinkosi Bonakele

Competition Commissioner

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: CR073AUG16
SA107JUN18

CC CASE NO: 2014APR0163
2015MAR0138

In the matter between:

THE COMPETITION COMMISSION

APPLICANT

and

BERG RIVER TEXTILES, A DIVISION OF SARGAS (PTY) LTD RESPONDENT

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND BERG RIVER TEXTILES, A DIVISION OF
SARGAS (PTY) LTD

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission ("Commission") and Berg River Textiles, a division of Sargas (Pty) Ltd ("Berg River Textiles") signed on 26 June 2018, and presented for confirmation by the Competition Tribunal on 25 July 2018 be supplemented as recorded below.

1. Paragraph 5.3 is amended as follows:

5.3 Winelands will pay the amount set out in paragraph 5.2 above to the Commission over the period of three (3) years in three (3) equal instalments of R 2 056 682 (Two Million Fifty-Six

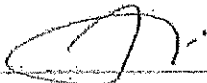


Thousand Six Hundred and Eighty Two Rand). The first payment will be made within thirty (30) business days of the confirmation of the Consent Agreement as an order of the Tribunal.

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement concluded between the Commission and Berg River Textiles and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning as defined in the Consent Agreement.

For Berg River Textiles, a division of Sargaz (Pty) Ltd

Signed and Dated at PAARL on the 26 day of July 2018.




Name in Full: Petrus Johannes van Wyk

Designation: CEO

For the Competition Commission

Signed and Dated at PRETORIA on the 06 day of August 2018.



Name in Full: TEMBINKOSI BONAKELE

Designation: COMMISSIONER OF THE COMPETITION COMMISSION