

competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO019Apr19

In the matter between:

The Competition Commission

Applicant

And

Freefall Trading CC t/a Indlovu
Enterprises

Respondent

Panel : E Daniels (Presiding Member)
: M Mazwai (Tribunal Member)

Heard on : 09 May 2019

Decided on : 09 May 2019

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Freefall Trading CC t/a Indlovu Enterprises annexed hereto marked "A".



Presiding Member
Mr Enver Daniels

09 May 2019

Date

Concurring: Ms Mondo Mazwai

"A"

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

CT Case No: C0019Apr19
CC Case No: 2016SEP0485

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

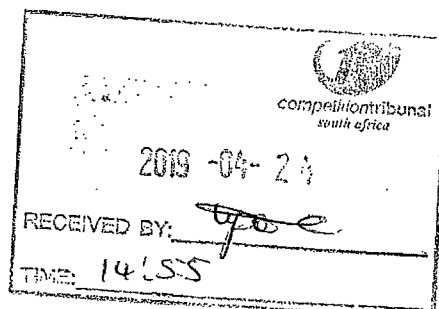
FREEFALL TRADING 1071 CC T/A INDLOVU ENTERPRISES

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
FREEFALL TRADING 1071 CC T/A INDLOVU ENTERPRISES IN REGARD TO
ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT,
89 OF 1998, AS AMENDED.

PREAMBLE

The *Commission* and *Freefall Trading 1071 CC t/a Indlovu Enterprises* hereby agree that application be made to the 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, in respect of contravention of section 4(1)(b)(iii) of the Act, on the terms set out below.

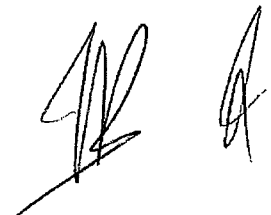


Handwritten signatures of the parties.

1. DEFINITIONS

For the purposes of this Consent Agreement, the following definitions shall apply:

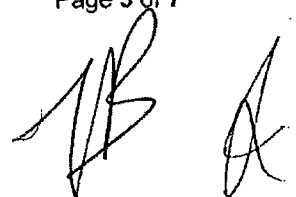
- 1.1 **"Act"** means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 **"BEE Act"** means Broad-Based Black Economic Empowerment Amendment Act of 2013
- 1.3 **"Cables for Africa"** means Cables for Africa CC, a close corporation duly registered in accordance with the laws of the Republic of South Africa, having its principal place of business at 5 Union Street, Roxton, Alberton.
- 1.4 **"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;
- 1.5 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2016Sep0485;
- 1.7 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Indlovu;



- 1.8 **"Indlovu"**, means Freefall Trading 1071 CC t/a Indlovu Enterprises, a close corporation duly registered in accordance with the laws of the Republic of South Africa, having its principal place of business at 5 Union Street, Roxton, Alberton.
- 1.9 **"Parties"** means the Commission and Indlovu;
- 1.10 **"Tender"** means the tender advertised under Bid Number: 2161S by City Power on 26 October 2016, for the provision of cable fault location service and testing on power cables belonging to City Power;
- 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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

2. COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 20 September 2016, the Commissioner initiated a complaint against four respondents, concerning allegations of market division and collusive tendering in contravention of section 4(1)(b) (ii) and (iii) of the Act. Cables for Africa and Indlovu are two of the four respondents. This relates to tenders submitted in response to the Tender.
- 2.2 The Commission's investigation established that:
- 2.2.1 Cables for Africa and Indlovu discussed and agreed on prices to submit to City Power in response to the Tender;



2.2.2 The investigation also established that Indlovu has a better BEE level rating Cables for Africa because it is 51% Black-owned. These firms have an agreement that whenever Indlovu wins a tender it must subcontract the work to Cables for Africa which is not BEE complaint. This is aimed at taking advantage of the Broad-Based Black Economic Empowerment Amendment Act of 2013 ("BEE Act");

2.2.3 This conduct is in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION

3.1 Indlovu admits that it engaged in conduct detailed in Clause 2 above in contravention of section 4(1)(b)(iii) of the Act. It indicated that it has contravened the Act in ignorance as its members did not know that their conduct amounted to a contravention in contravention of the Act.

4. FUTURE CONDUCT

4.1 Indlovu agrees and undertakes to:

4.1.1 prepare and circulate a statement summarising the contents of this Consent Agreement to its employees, managers and directors within 14 days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.1.2 refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in the future;

4.1.3 to implement and monitor a competition law compliance programme. Such

programme shall incorporate corporate governance designed to ensure the 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 contraventions of the Act; and

4.1.4 with regard to the competition law compliance programme referred to above, Indlovu undertakes to submit to the Commission a copy thereof within 90 days of confirmation of the Settlement Agreement as an Order of the Tribunal.

5. ADMINISTRATIVE PENALTY

5.1 Indlovu agrees to pay an administrative penalty in the sum of R10 724.15 (Ten Thousand, Seven Hundred and Twenty-Four Rands and Fifteen Cents). This amount represents 0.07% of Indlovu's annual turnover in the Republic of South Africa for the financial year ended 28 February 2017.

5.2 Indlovu shall pay the abovementioned amount in full within 60 days of the confirmation of the Consent Agreement as an order of the Tribunal.

5.3 This payment shall be paid into the Commission's bank account, details of which are as follows:

Bank name : **Absa Bank**

Branch name : **Pretoria**



Account holder : **Competition Commission Fees Account**
Account number : **4087641778**
Account type : **Current Account**
Branch Code : **632005**
Ref : **2016Sep0485/Indlovu**

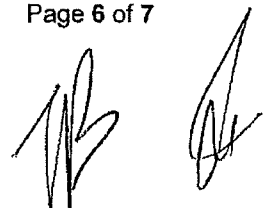
- 5.4 The Commission will pay this sum to the National Revenue Fund in terms of section 59(4) of the Act.

6. MONITORING

- 6.1. All reports in relation to conditions set out in this agreement, including but not limited to Compliance programmes, Proof of payment(s) etc. shall be submitted to the Commission at CartelSettlements@compcom.co.za.

7. FULL AND FINAL SETTLEMENT

- 7.1 This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement of all conduct engaged in by Indlovu as set out in paragraph 2 of this Consent Agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Indlovu in this regard.

Two handwritten signatures in black ink, one on the left and one on the right, positioned below the page number.

Dated and signed at Alberton on the 03 day of April 2019

For Indlovu

FREEFALL TRADING 1071 t/a
INDLOVU ENTERPRISES
PO BOX 1054
ALBERTON, 1450
Tel: 011-007-4475

Member:

[Position]

Name in Full: Jozua Francois Goosen

Dated and signed at TSHWANE on the 17th day of APRIL 2019

For the Commission


Tembinkosi Bonakele

Competition Commissioner