



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR326Mar18/SA090Aug19

In the matter between:

The Competition Commission

Applicant

And

Stuart Graham Furnishing Fabrics CC

Respondent

Panel : Y Carrim (Presiding Member)
: T Vilakazi (Tribunal Member)
: F Tregenna (Tribunal Member)

Heard on : 04 December 2019

Decided on : 04 December 2019

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Stuart Graham Furnishing Fabrics CC annexed hereto marked "A".

**Presiding Member
Ms Yasmin Carrim**

**04 December 2019
Date**

Concurring: Dr Thando Vilakazi and Prof. Fiona Tregenna

"A"

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

CT Case No. CR326Mar18/SA090Aug19

CC Case No. 2015NOV0606

In the matter between

COMPETITION COMMISSION

competitiontribunal
south africa

2019-08-27

RECEIVED BY: *[Signature]*

TIME: 12:14

Applicant

and

STUART GRAHAM FURNISHING FABRICS CC

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND STUART
GRAHAM FABRICS CC IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 5(2)
OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

PREAMBLE

The Competition Commission ("the Commission") and Stuart Graham Fabrics CC
("Stuart Fabrics") hereby agree that an application be made to the Competition Tribunal
for the confirmation of this Settlement Agreement as an order of the Competition Tribunal
in terms of section 27(1)(d) read with section 58(1)(a)(iii) of the Competition Act, 1998
(Act No. 89 of 1998), as amended, on the terms set out below:

[Signature] *[Signature]* 1

1. DEFINITIONS

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

1.1 "Act" means the Competition Act 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 1st Floor, 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 lodged by Sandton Fabrics (Pty) Ltd t/a Fabrics Superstore ("Sandton Fabrics") in terms of section 49(2)B of the Act under case number 2015Nov0606;

1.5 "Complainant" means Sandton Fabrics (Pty) Ltd t/a Fabrics Superstore ("Sandton Fabrics"), a company duly incorporated in terms of the laws of South Africa with its principal place of business in Cape Town, Western Cape Province.

1.6 "Consent Agreement" means this agreement duly signed and concluded between



the Commission and Stuart Fabrics.

1.7 **"Parties"** means the Commission and Stuart Fabric;

1.8 **"New Purchaser"** means Home Fabrics (Pty) Ltd, a company duly incorporated in accordance with the laws of the Republic of South Africa. The New Purchaser has bought the entire business of Stuart Fabrics as a going concern.

1.9 **"Stuart Fabrics"** means the Respondent, being Stuart Graham Fabrics CC, a company duly incorporated in accordance with the laws of the Republic of South Africa. Stuart Fabrics operates as an independent supplier of fabrics to decor and furnishing retailers across South Africa. Stuart Fabrics has showrooms in Johannesburg, Pretoria, Cape Town, Durban and Bloemfontein. Its principal place of business is located at 1 Sidon Street, North End, Port Elizabeth, Eastern Cape Province. Stuart Fabrics is currently not trading but holds certain investment assets; and;

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 3rd Floor, Mulayo buiding (Block C), the DTI Campus, 77 Mentjies Street, Sunnyside Pretoria, Gauteng.

2. BACKGROUND

2.1 On 03 November 2015, Sandton Fabrics filed the Complaint against Stuart Fabrics with the Commission. In the Complaint, Sandton Fabrics alleged, *inter alia*, that Stuart Fabrics has demanded that Sandton Fabric's mark up their fabrics by 50% of the wholesale plus Value Added Tax ("VAT") and must charge for transport or their account would be terminated. In October 2014 Stuart Fabrics terminated the account of Sandton Fabrics when it did not comply with this pricing policy.

2.2 The Commission conducted an investigation into the Respondent's alleged conduct and found the following:

Stuart Fabrics, being a firm in a vertical relationship with its retailer network and in particular Sandton Fabrics, engaged in the practice of minimum resale price maintenance in contravention of section 5(2) of the Act. Stuart Fabrics contravened section 5(2) of the Act by requiring Sandton Fabrics to adhere to its pricing policy in terms of which it was required to on-sell its products with at least a 50% mark-up on the wholesale price, plus VAT and transport costs, during the period from February 2013 to at least October 2014.

2.3 The matter was referred to the Competition Tribunal in terms of sections 50(2) and 49B(1) of the Act read with rules 14(1)(a) and 15 of the Rules for the Conduct of

Proceedings in the Competition Tribunal on 8 March 2018 under case number
CR326Mar18.

2.4 The Parties subsequently entered into settlement negotiations which resulted in
this Consent Agreement.

3. ADMISSION

Stuart Fabrics admits that it has engaged in the conduct of minimum resale price
maintenance in contravention of section 5(2) of the Act during the period of February
Proceedings in the Competition Tribunal on 8 March 2018 under case number
2013 to at least October 2014.
CR326Mar18

4. AGREEMENT CONCERNING THE RESPONDENT'S FUTURE CONDUCT

this Consent Agreement.

5. Stuart Fabrics agrees :

5. ADMISSION

5.1 To desist from the conduct described above;

5.2 To 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 a mechanism for the

monitoring and detection of any contravention of the Act;

5.3 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 Tribunal; and

5.4 To circulate a statement summarizing the contents of this Consent Agreement to all management and operational staff employed at Stuart Fabrics within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.

6. ADMINISTRATIVE PENALTY

6.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, Stuart Fabrics accepts that it is liable to pay an administrative penalty.

6.2 Stuart Fabrics undertakes to pay an administrative penalty in the amount of **R150 000.00** (One Hundred and Fifty Thousand Rand).

6.3 This amount does not exceed 10% of Stuart Fabrics total annual turnover in the Republic of South Africa during Stuart Fabric's preceding financial year.

6.4 Stuart Fabric will pay the amount set out above to the Commission within 30 days (thirty) from the date of confirmation of this Consent Agreement by the Tribunal.

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

NAME: THE COMPETITION COMMISSION

BANK: ABSA BANK BUSINESS BANK

ACCOUNT NUMBER: 40-8764-1778

BRANCH CODE: 632005

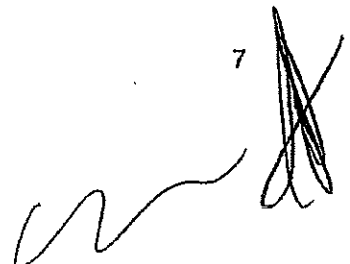
PAYMENT REF: 2015NOV0606/STUART FABRICS

6.6 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.

7. FULL AND FINAL SETTLEMENT

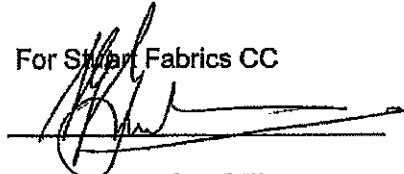
7.1 This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Stuart Fabrics relating to any alleged contravention of the Act that is the subject of the Commission's investigation under Commission Case No. 2015NOV0606

7



Dated and signed at Port Elizabeth on the 30th day July 2019

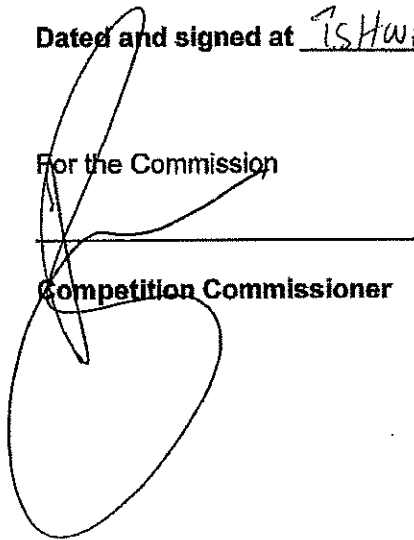
For Stuart Fabrics CC



Chief Executive Officer

Dated and signed at IsHwamb on the 26th day of August 2019

For the Commission



Competition Commissioner