**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CT CASE NO: 76/CR/NOV09**

In the matter between:

| | |
|---|---|
| **COMPETITION COMMISSION** | Applicant |
| and | |
| **GEOMATIC QUARRY SALES (PTY) LTD t/a Quarry Co** | 1st Respondent |
| **DERBY CONCRETE (PTY) LTD t/a Denron** | 2nd Respondent |
| **ROBBERG QUARRY CC t/a Robberg Quarry** | 3rd Respondent |
| **DENRON QUARRIES (PTY) LTD t/a Denron Quarries** | 4th Respondent |

| | | |
|---|---|---|
| Panel | : | Yasmin Carrim (Presiding Member), Andreas Wessels (Tribunal Member), and Takalani Madima (Tribunal Member) |
| Heard on | : | 6 June 2011 |
| Decided on | : | 7 June 2011 |

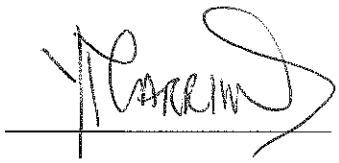
**ORDER: PRESCRIPTION POINT IN LIMINE**

**HAVING HEARD** legal submissions by the parties' legal representatives and having read the documents filed of record:

**IT IS ORDERED THAT**

1. The applicant's complaint referral against the second, third and fourth respondents to the Competition Tribunal on or about 06 November 2009, under sections 4(1)(b)(i), 4(1)(b)(ii), and 5(2) of the Competition Act 89 of 1998, is set aside on the grounds that the one year time period contemplated in s50(2) had not been extended in terms of s50(4)(a).

2. There is no order as to costs.



**Ms Yasmin Carrim**

Tribunal Member

**Concurring:** Mr A Wessels and Dr T Madima

## Tebogo Mputle

**From:** Lerato Motaung
**Sent:** Tuesday, June 07, 2011 12:47 PM
**To:** Alicia Hlafane; 'Rudolph Labuschagne'; Khotso Modise
**Cc:** Lerato Motaung; Thabani Ngilande; 'Richard@smmd.co.za'; 'Richard@seaqual.co.za'
**Subject:** RE: Commission v Geomatic Quarry Sales & Three Others (76/CR/Nov09)
**Attachments:** 20110607123628905.tif

Dear Sirs

Please see attached order and kindly confirm receipt.

Regards

Tebogo Mputle

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**From:** Alicia Hlafane
**Sent:** Tuesday, June 07, 2011 11:01 AM
**To:** Rudolph Labuschagne; Khotso Modise
**Cc:** Lerato Motaung; Thabani Ngilande; Richard@smmd.co.za; Richard@seaqual.co.za
**Subject:** RE: Commission v Geomatic Quarry Sales & Three Others (76/CR/Nov09)

Dear all

I refer to the hearing and the order, in relation to the point in limine, earlier this morning.

Please note that the reasons in the above matter will follow at a later stage.

**Regards**


***Tebogo Hlafane***
***Competition* Tribunal South Africa**
Block C, 3rd Floor, Mulayo Building
The dti Campus, 77 Meintjies Street
Sunnyside, Pretoria
Tel: +27 (12) 394 3343
Fax: +27 (12) 394 0169
Email: Aliciah@comptrib.co.za
Web: www.comptrib.co.za

contents thereof are as they purport to be. If this is not the case could kindly indicate the documents whose authenticity you wish to challenge and on what grounds.

2. As regards the Commission Witness Statement can we come to the agreement that the contents thereof (safe for parts where the Commission witness seeks to provide meaning or interpretation to the documents) are common cause between the parties. These facts, include the fact of the Commission investigation, that the respondents submitted information to the Commission and that documents referred to in the statements are the same as those submitted by the Respondents.

3. This statement takes care of the Commission's case in chief and may as we have pointed out before obviate the need to call the Commission witness. As indicated in the last prehearing the Commission Witness will only be testifying as to their personal knowledge of the Commission investigation into the matter and may be of no cross-examination value to the respondents. This leaves only the respondents witnesses to provide their evidence and then argument. In our view this would greatly curtail the proceeding to benefit of all parties involved.

4. The Commission is open to discuss any other issues that are common course between the parties which the parties can then submit to the Tribunal so that the Tribunal can take care of only those matters of dispute. Interpretation of what the documents mean seems largely a matter of argument.

Kindly advise by close business tomorrow if this is in order.

Kind regards

Khotso.

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**From:** Rudolph Labuschagne [mailto:r.labuschagne@bowman.co.za]
**Sent:** Tuesday, May 31, 2011 12:26 PM
**To:** Khotso Modise
**Cc:** Temosho Sekgobela; Lerato Motaung; Richard Sohn; ThabaniN@comptrib.co.za; AliciaH@comptrib.co.za
**Subject:** RE: Commission v Geomatic Quarry Sales & Three Others (76/CR/Nov09)


Dear Khotso

Further to my e-mail of yesterday, please take note that the Second and Fourth Respondents intend to argue the following four points in limine at the commencement of proceedings:

- The time period for the Commission's investigation has lapsed, as the extensions granted to the Commission attached as Annexure "FA2" to the complaint referral do not comply with the prescribed requirements.

- No complaint was submitted against the Second and Fourth respondents. Only the First Respondent was cited in the Form CC 1 as the firm whose conduct is the subject of the complaint.

- The description of the complaint refers only to price fixing. Market allocation in contravention of section 4(1)(b)(ii) of the Act was not part of the complaint and may therefore not be included in the Commission's complaint referral.

- The Fourth Respondent was not a party to the agreement attached as Annexure "FA3" to the Commission's complaint referral and should not be cited as a Respondent in these proceedings.

Bowman Gilfillan
Attorneys

SA Reserve Bank Building, 60 St George's Mall, Cape Town
P O Box 248, Cape Town, 8000
South Africa

T: +27 21 480 7800 | D: +27 21 480 7908
F: +27 21 480 3263 | M: +27 82 940 1200
E: r.labuschagne@bowman.co.za
W: www.bowman.co.za



**Tracking:**