

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 019943

In the matter between:

The Competition Commission

Applicant

And

Fields Wear CC
and
Camclo Clothing CC

Respondent

Panel : N Manoim (Presiding Member)
Y Carrim (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 27 November 2014

Decided on : 01 December 2014

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and Fields Wear CC, annexed hereto marked "A".



Presiding Member
Mr. N. Manoim

01 December 2014
Date

Concurring: Ms. Y Carrim and Ms. M Mazwai

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA**

CT CASE NO. 018671

CC CASE NO. 2012JUL0451

In the matter between:

THE COMPETITION COMMISSION

and

FIELDS WEAR CC

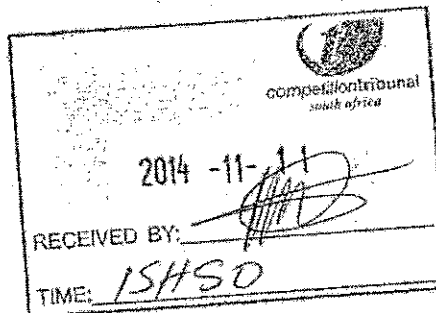
In re:

COMPETITION COMMISSION

and

FIELDS WEAR CC

CAMCLO CLOTHING CC



Applicant

Respondent

Applicant

First Respondent

Second Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
FIELDS WEAR CC IN REGARD TO ALLEGED CONTRAVENTION OF SECTION
4(1)(b)(iii) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED.**

The *Commission* and Fields Wear hereby agree that application be made to the Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with section 58 (1)(b) and 59(1)(a) of the Act on the terms set out below.

1. DEFINITIONS

For the purposes of this Settlement Agreement the following definitions

shall apply;

- 1.1 **"Act"** means the Competition Act, 1998 (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 Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 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 submitted by the South African Police Service ("SAPS") in terms of section 49B(2)(b) of the Act under case number: 2012Jul0451;
- 1.5 **"Fields Wear"** means a close corporation duly registered and incorporated in terms of the Close Corporations Act, 69 of 1984, as amended and with its principal place of business at Stand 17, Second Street, Bodirelo Industrial Area, Mogwase, Rustenburg, North West Province;
- 1.6 **"Parties"** means the Commission and Fields Wear;
- 1.7 **"Respondents"** means all the firms that are cited as the respondents in the Commission's complaint referral filed under Competition Tribunal Case number: 018671; respectively, namely Fields Wear CC ("Fields Wear") and Camclo Clothing CC ("Camclo").

1.8 **"Settlement Agreement"** means this settlement agreement duly signed and concluded between the Commission and Fields Wear;

1.9 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its place of business at Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;

2. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

2.1 On 31 July 2012, the Commission received a complaint from the Supply Chain Management of the South African Police Service against Fields Wear and Camclo, collectively referred to as ("the Respondents"), in terms of which SAPS alleged that both respondents have contravened section 4(1)(b)(iii) of the Act, in that whilst being competitors in the market for the supply and delivery of bullet-resistant vests, they tendered collusively by discussing and coordinating their bids in respect of Tender number. (19/1/9/25TT), being a tender which was advertised on 20 January 2012 by the SAPS.

2.2 The Commission investigated the alleged conduct and found that the respondents had a multiple contacts with each other regarding the tender in question. The Commission had amongst others found evidence detailing the following;

2.2.1 Identical letters from suppliers attached to the bid documents of both respondents;

2.2.2 Identical cover letters (in terms of text, format, structure and date);

2.2.3 Some sections of the bid were completed in the same handwriting;

2.2.4 The respondents had the same contact details;

2.2.5 The bid documents and tender samples for both respondents were delivered to SAPS on the closing date of the bid by a Field Wear employee;

2.2.6 Mr Elardus De Lang ("De Lang") a representative of Fields Wear completed bid documents of Fields Wear and also assisted in completing Camclo's bid documents; and

2.2.7 De Lang assisted Camclo by inserting the prices in the appropriate sections of Camclo's bid documents.

3. THE COMMISSION'S REFERRAL

3.1 Following its investigation, the Commission concluded that the conduct by Fields Wear and Camclo constituted a contravention of section 4(1)(b)(iii) of the Act, in that they engaged in a conduct referred to in paragraph 2 above.

3.2 In light of its findings, the Commission decided to refer the complaint on 14 October 2013 to the Tribunal for determination. The complaint was finally referred to the Tribunal in March 2014.

4. AGREEMENTS

4.1 Admissions

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4.1.1 Fields Wear admits that its conduct amounts to a contravention of section 4(1)(b)(iii) of the Act.

4.2. Future Conduct

4.2.1 Fields Wear agrees to fully co-operate with the Commission in relation to the prosecution of any other respondent who is the subject of its investigations and referral to the Tribunal. Without limiting the generality of the foregoing, Fields Wear specifically agrees to:

4.2.1.1 Testify before the Tribunal regarding the conduct and events forming the factual basis of the Commission's referral affidavit and which are covered by this Settlement Agreement; and

4.2.1.2 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions set out in the Commission's referral affidavit;

4.2.1.3 Desist from engaging in the conduct complained of.

4.2.2 Fields Wear agrees that it will in future refrain from engaging in a cartel conduct which may lead to a possible contravention of section 4(1)(b)(iii) of the Act.

4.2.3 Fields Wear agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that its employees, management, directors and agents do not engage in

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conduct in contravention of section 4(1)(b) of the Act, details of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this agreement as an order of the Tribunal.

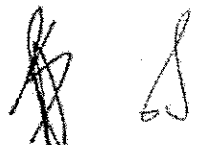
4.2.4 Fields Wear will ensure that such training materials will be made available to all new employees joining Fields Wear.

4.2.5 Furthermore, Fields Wear will update and repeat such training materials annually to ensure on an ongoing basis that its employees, management, directors and agents do not engage in any future contraventions of the Competition Act.

5. Administrative Penalty

5.1 In accordance with the provisions of section 58(1)(a)(iii) as read with 59(1)(a), 59(2) and 59(3) of the Act, Fields Wear agrees to pay an administrative penalty in the sum of R 1 264 798.00 (One Million Two Hundred and Sixty Four Thousand Seven Hundred and Ninety Eight Rand) plus interests charged at 9.25% which is the sum of R 116 993.00 (One Hundred and Sixteen Thousand Nine Hundred and Ninety Three Rand). This administrative penalty amounts to R 1 381 791.00 (One Million Three Hundred and Eighty One Thousand Seven Hundred and Ninety One Rand) and is equivalent to 1.52% of Fileds Wear's annual turnover for the financial year ended February 2013.

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

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Name: Competition Commission Fee Account
Bank: ABSA Bank, Pretoria
Account no: 4050778576
Branch code: 323 345
Ref: CC 2012Jul0451 (Fields Wear)

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

6. Terms of Payment

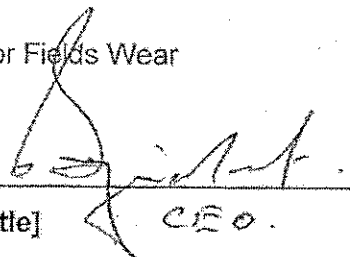
Payment of the amount referred to in paragraph 5.1 above will be made within a period of 24 months from the date of confirmation of this agreement as an order of the Tribunal.

7. Full and Final Settlement

This 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 Fields Wear relating to any alleged contravention by the respondents of the Act that is the subject of the Commission's investigation (CC Case no. 2012Jul0451).

Dated and signed at *Rustenburg* on this the *15th* day of *October* 2014

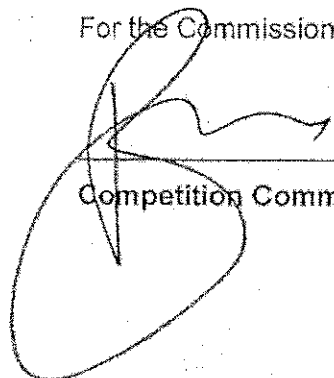
For Fields Wear


[title] *CEO.*



Dated and signed at **PRETORIA** on this the **6th** day of **NOVEMBER** 2014

For the Commission



Competition Commissioner

6.