



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 020065

In the matter between:

The Competition Commission

Applicant

and

Giuricich Coastal Projects (Pty) Ltd

Respondent

Panel : A Wessels (Presiding Member)
A Roskam (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 03 December 2014

Decided on : 03 December 2014

Order

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Giuricich Coastal Projects (Pty) Ltd, annexed hereto marked "A".



Presiding Member
Mr. A Wessels

03 December 2014
Date

Concurring: Mr. A Roskam and Prof. F Tregenna

"A"

12

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

CT CASE NO:35/CR/Jul10

CC CASE NO: 2009May4443

In the matter between:

THE COMPETITION COMMISSION

and

GIURICICH COASTAL PROJECTS (PTY) LTD

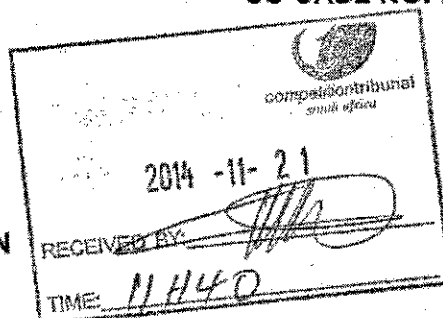
In re:

THE COMPETITION COMMISSION

and

GIURICICH COASTAL PROJECTS (PTY) LTD

GRINAKE-LTA (PTY) LTD



Applicant

Respondent

Applicant

First Respondent

Second Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 27(1)(d), READ WITH
SECTIONS 58(1)(a)(iii) OF THE COMPETITION ACT, NO. 89 OF 1998, AS
AMENDED, BETWEEN THE COMPETITION COMMISSION AND GIURICICH
COASTAL PROJECTS (PTY) LTD, IN RESPECT OF CONTRAVENTION OF
SECTION 4(1)(b)(iii) OF THE COMPETITION ACT, 1998.

R

Q

Preamble

The Competition Commission ("the Commission") and Giuricich Coastal Projects (Pty) Ltd ("Giuricich") hereby agree that an application be made to the Competition Tribunal ("the Tribunal") for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 27(1)(d) as read with section 58(1)(a)(iii) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of a contravention of section 4(1)(b)(iii) of the Act, on the terms set out below:

1. Definitions

For the purposes of this agreement the following definitions shall apply:

- 1.1. "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2. "CLP" means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);
- 1.3. "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;
- 1.4. "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5. "Complaint" means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case number 2009May4443;



- 1.6. **"Cover Price"** means generally, a price that is provided by a firm that wishes to win a tender to a firm that does not wish to do so, in order for the firm that does not wish to win the tender, to submit a higher price; or alternatively a price that is provided by a firm that does not wish to win a tender to a firm that wishes to win that tender to enable the firm that wishes to win the tender to submit a lower price;
- 1.7. **"Giuricich"** means Giuricich Coastal Projects (Pty) Ltd, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at 130 Sheptone Road, New Germany, Kwa-Zulu Natal, South Africa. Giuricich is involved in the construction industry as turn-key property developers and building contractors;
- 1.8. **"Grinaker-LTA"** means Grinaker-LTA (Pty) Ltd, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Block A, Grinaker Park, Jurgens Street, Jet Park, Boksburg, South Africa. Grinaker-LTA is a subsidiary of Aveng Limited, which holds 75% of its shares;
- 1.9. **"Parties"** means the Commission and Giuricich;
- 1.10. **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and Giuricich;
- 1.11. **"Respondent"** means Giuricich;
- 1.12. **"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 building (Block C), the dtl Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

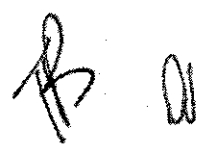
2. The Commission's investigation and findings

- 2.1. On 9 March 2009, the Commission received an application for leniency



from Grinaker-LTA in terms of the Commission's CLP. In its leniency application, Grinaker-LTA implicated itself and Giuricich in a collusive conduct relating to the construction of a parking garage lot for Unilever South Africa.

- 2.2. Pursuant to the leniency application, on 26 May 2009 the Commissioner initiated the Complaint against Grinaker-LTA and Giuricich for engaging in collusive tendering in relation to the construction of a parking garage lot in contravention of section 4(1)(b)(iii) of the Act.
- 2.3. The Commission duly conducted an investigation into the complaint and found that Giuricich and Grinaker-LTA had engaged in the following prohibited practice:
 - 2.3.1. On 18 March 2008, MLC Quantity Surveyors (Pty) Ltd, acting on behalf of Unilever South Africa, invited construction firms, to submit tenders for the construction of a parking garage at the premises of Unilever South Africa, at Umhlanga, North of Durban ("the Unilever project"). The value of the project was estimated at R25 million. The closing date for the tender to be submitted was 2 April 2008.
 - 2.3.2. On or about 2 April 2008, Giuricich and Grinaker-LTA discussed and agreed to a cover price arrangement prior to the submission of their respective tenders in respect of the Unilever project. The collusive agreement was reached through Grinaker-LTA requesting and receiving a cover price from Giuricich to enable Grinaker-LTA to show an expression of interest to MLC Quantity Surveyors. MLC Quantity Surveyors were the quantity surveyors that had been commissioned by Unilever South Africa. The bid by Grinaker-LTA was therefore not competitive with that of Giuricich.
 - 2.3.3. The firms that were invited to tender for the project and who submitted bids were Grinaker-LTA, Giuricich Coastal Projects, Stefanutti &



Bressan (Pty) Ltd, Construction ID, Ross Construction and Stocks Building KZN. The tender was won by Stefanutti Stocks Holdings Limited.

- 2.4. The conduct engaged into by Giuricich and Grinaker-LTA in respect of the Unilever project is a contravention of section 4(1)(b)(iii) of the Act.

3. Complaint referral and settlement discussions

- 3.1. In light of its findings, the Commission referred the complaint to the Tribunal on 7 July 2010 for determination.
- 3.2. Soon after the Commission's referral, on 6 October 2010, Giuricich filed an answering affidavit admitting to the conduct. Pursuant to this affidavit, the Commission invited Giuricich to settle the matter. The settlement negotiations were, however, put on hold pending the conclusion of the construction fast track consent agreements. At the time, the parties were also not able to reach agreement on an appropriate penalty.

4. Admission

Giuricich admits that it entered into the agreement detailed in paragraph 2 above with its competitor Grinaker-LTA, in contravention of section 4(1)(b) (iii) of the Act.

5. Future conduct

Giuricich agrees and undertakes to:

- 5.1. prepare and circulate a statement summarizing the contents of this Settlement Agreement to its employees, managers and directors within fourteen (14) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;

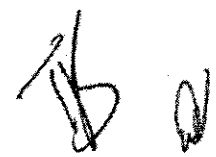
- 5.2. refrain from engaging in collusive tendering in contravention of section 4(1)(b)(iii) of the Act, and from engaging in any prohibited practice under the Act in future;
- 5.3. develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 5.4. submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order by the Tribunal; and
- 5.5. undertake henceforth to engage in competitive bidding.

6. Administrative penalty

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. Giuricich agrees that it is liable to pay an administrative penalty of **R149 429.31 (One Hundred and Forty Nine Thousand Four Hundred and Twenty Nine and Thirty One Cents)**, which represents 1.25% of Giuricich's annual turnover in the **General Building** subsector of the construction industry in terms of Schedule 3 of the Construction Industry Development Board (CIDB) regulation, in the Republic and its exports from the Republic for the 2010 financial year.

7. Terms of payment

- 7.1. Giuricich shall pay the above amount to the Commission in six (6) equal monthly instalments of R 24 904.89 (Twenty four thousand nine hundred and four, eighty nine cents). The first monthly payment shall be payable



within 30 days from the date of confirmation of this Settlement Agreement as an order of the Tribunal and thereafter within 30 days of each of the succeeding five months.

- 7.2. This payment shall be made 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: 4050778576

Account type: Current Account

Branch Code: 323 345

Reference: Case number 2009May4443/Giuricich Coastal Projects

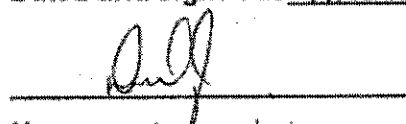
- 7.3 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

8. Full and final settlement

This agreement is entered into in full and final settlement of the conduct set out in paragraph 3 of this Settlement Agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Giuricich in respect of this conduct only.

For Giuricich Coastal Projects (Pty) Ltd

Dated and signed at Pietermaritzburg on the 7 day of November 2014

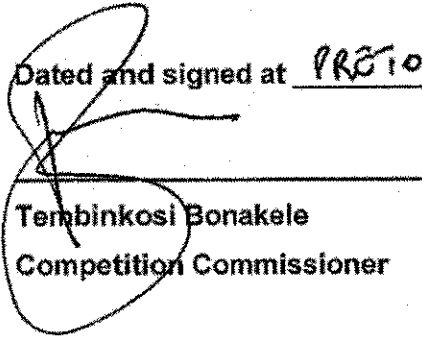


Name: VDG VAN WYK

Designation: MANAGING DIRECTOR

For the Commission

Dated and signed at PRETORIA on the 13 day of NOVEMBER 2014



Tembinkosi Bonakele
Competition Commissioner