



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

**Case No's: CR218Mar15/SA035May19;
CR217Mar15/SA034May19;
CR219Mar15/SA033May19.**

In the matter between:

The Competition Commission

Applicant

And

GVK-Siya Zama Building Contractors (Cape)
(Pty) Ltd

Respondent

Panel : AW Wessels (Presiding Member)
: A Ndoni (Tribunal Member)
: F Tregenna (Tribunal Member)

Heard on : 19 June 2019

Decided on : 19 June 2019

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and GVK-Siya Zama Building Contractors (Cape) (Pty) Ltd annexed hereto marked "A".



**Presiding Member
Mr AW Wessels**

19 June 2019

Date

Concurring: Ms Andiswa Ndoni and Prof Fiona Tregenna

"ANNEXURE A"


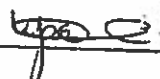
**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CT CASE NO: [REDACTED]
CC CASE NO: 2009Sep4641

In the matter between:

THE COMPETITION COMMISSION

and

	
2019-05-27	
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Applicant

GVK-SIYA ZAMA BUILDING CONTRACTORS (CAPE) (PTY) LTD Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND GVK-SIYA ZAMA BUILDING CONTRACTORS (CAPE) (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (i) (ii) and (iii) OF THE COMPETITION ACT, 1998

Preamble


The Competition Commission and GVK-Siya Zama Building Contractors (Cape) (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act No. 89 of 1998, as amended, in respect of a contravention of section 4(1)(b) (i) (ii) and (iii).



1. DEFINITIONS

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

- 1.1 **"Act"** means the Competition 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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and GVK;
- 1.4 **"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);
- 1.5 **"GVK"** means GVK-Siya Zama (Cape) (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at 182 Sir Lowry Road, Cape Town;
- 1.6 **"Group Five"** means Group Five Limited, a private company duly

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registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at No.9 Country Estate Drive, Waterfall Business Estate, Jukskei View, Johannesburg, Gauteng Province;

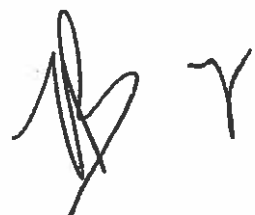
1.7 "NMC" means Neil Muller Construction (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at 1 Link Close Montague Gardens, Cape Town.

1.8 "Parties" means the Commission and GVK collectively;

1.9 "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 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1. On 01 September 2009, the Commissioner initiated a complaint against firms in the construction industry for collusive practices in the construction industry as regards price fixing, market division and collusive tendering in contravention of section 4(1)(b) (i), (ii) and (iii) of the Act. GVK, Group Five and NMC are amongst the respondents in this complaint.

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- 2.2. On 03 March 2015 the Commission filed three separate complaint referrals against GVK, to the Tribunal, under case number 2009Sep4641.
- 2.3. In respect of each of these complaints the Commission's alleges that its investigation revealed the following:
- 2.3.1 **First Referral:** During or about February 2008 GVK entered into an agreement with Group Five to tender collusively in respect of the tender issued by Mediclinic group. More specifically, that Group Five provided a cover price to GVK in respect of a tender for the construction of a hospital for Cape-Gate Mediclinic in Brackenfell, Cape Town. The closing date for the tender was 08 February 2010.
- 2.3.2 **Second Referral:** During or about July 2010, GVK entered into an agreement with NMC to tender collusively in relation to the Tygervalley shopping mall. In particular, that NMC provided a cover price to GVK in respect of the tender for the minor alterations and extensions at the Tygervalley shopping mall. The closing date for the tender was 28 July 2010.
- 2.3.3 **Third Referral:** On or about 01 December 2010, GVK entered into an agreement with NMC to tender collusively with regard to the tender issued by Akila Trading. More specifically, that NMC provided a cover price to GVK in relation to the tender for the construction of a new

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warehouse and office buildings project for Akila Trading. The closing date for the tender was 01 December 2010.

- 2.4. The Commission submits that this conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

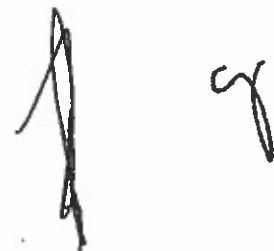
3. ADMISSION

GVK admits that it engaged in the conduct set out in clause 2.3.1 to 2.3.3 above in contravention of section 4(1)(b)(i)(ii) and (iii) of the Act.

4. CO-OPERATION

Insofar as the Commission is aware, GVK:

- 4.1. has provided the Commission with truthful and timely disclosure, including information in its possession or under its control, relating to the prohibited practice;
- 4.2. has ceased engaging in the prohibited conduct set out in clause 2 above;
- 4.3. has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practice; and
- 4.4. has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

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5. FUTURE CONDUCT

GVK agrees and undertakes to:

- 5.1. refrain from engaging in conduct in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;
- 5.2. circulate a statement summarising the contents of this Consent Agreement to its managers and directors within 30 days (thirty) from the date of confirmation of this Consent Agreement by the Tribunal;
- 5.3. 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;
- 5.4. with regard the competition law compliance programme referred to above, GVK undertakes to submit to the Commission a copy thereof within 90 days of confirmation of the Settlement Agreement as an Order of the Tribunal.

6. ADMINISTRATIVE PENALTY

- 6.1. Having regard to the provision of section 58(1)(a)(iii) as read with section 59(1)(a), 59(2) and 59(3) of the Act, GVK is liable to pay an

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administrative penalty.

6.2. GVK agrees and undertakes to pay an administrative penalty in the amount of R6 038 852.00 (Six million, Thirty-Eight thousand and Eight hundred and Fifty-Two Rands). This amount is less than 10% of GVK's annual turnover in the Republic of South Africa for the financial year ended 2016.

6.3. GVK shall pay the abovementioned amount to the Commission in 2 (two) instalments. The first instalment equal to 30% of the administrative penalty in the amount of R2 000 000 (two million ~~two hundred thousand~~ rand) shall be paid within 30 days from the date of confirmation of this consent agreement as an order of the Tribunal.

6.4. The remaining instalment equal to 70% of the administrative penalty in the amount of R4 038 852 (four million thirty eight thousand eight hundred fifty two rand) shall be paid in full on the anniversary of the confirmation date of this consent agreement as an order of the Tribunal.

6.5. No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section

80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 10,5%.

- 6.6. The administrative penalty 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
Reference: Case Number: 2009Sep4641/GVK

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

7. MONITORING

- 7.1. 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

8. FULL AND FINAL SETTLEMENT

8.1. This Consent Agreement is concluded in full and final settlement of the Commission's investigation under Case No. 2009Sep4641 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and GVK relating to the conduct that is the subject of the Commission's investigation under Case No. 2009Sep4641, including the complaint referral under Competition Tribunal Case No. CR217Mar15, CR218Mar15 and CR219Mar15.

FOR GVK SIYA ZAMA (CAPE) (PTY) LTD

Dated and signed at CAPE TOWN on the 4th day of APRIL 2019.



Full names: Christopher John Vaughan

Designation: Managing Director

FOR THE COMMISSION

Dated and signed at Tstiwane on the 17th day of April 2019.



TEMBINKOSI BONAKELE

Commissioner