

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 07/CR/Mar10

In the matter between:

The Competition Commission

Applicant

and

Anix Trading 799 CC

Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and A Wessels (Tribunal Member)

Heard on : 9 June 2010 and 7 July 2010

Decided on : 7 July 2010

Order

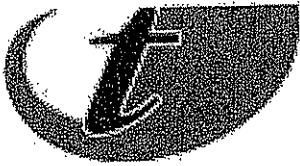
The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



N Manoim

Y Carrim and A Wessels concurring

"A"



competitiontribunal south africa

Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunrise
0132
Republic of South Africa
tel. 27 12 393 3300

Notice of Motion

Date: 1-Jun-2010 **File #** 07/CR/Mar/10

To: The registrar of the Competition Tribunal

Concerning the matter between:

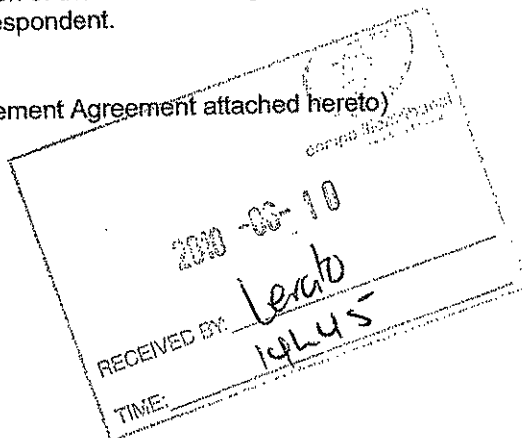
Competition Commission (Applicant)

and Anix Trading 739 cc (Respondent)

Take notice that the Competition Commission intends to apply to the Tribunal for the following order:

Confirmation of the Settlement Agreement signed to by the Commission and the Respondent.

(See Settlement Agreement attached hereto)



Name and Title of person authorised to sign:

Wendy Mkhwananzi - Chief Legal Counsel

Authorised Signature:

Date:

1-Jun-2010

For Office
Use Only:

Tribunal file number:

Date filed:

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

**CT CASE NO: 07/CR/Mar10
CC CASE NO: 2009Mar4335**

In the matter between:

COMPETITION COMMISSION

Applicant

and

ANIX TRADING 739 CC

1st Respondent

ZEDEX TRADING 799 CC

2nd Respondent

In re:

COMPETITION COMMISSION

Applicant

and

ANIX TRADING 739 CC


1st Respondent

ZEDEX TRADING 799 CC

2nd Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
ANIX TRADING 739 CC IN RESPECT OF CONTRAVENTIONS OF SECTION
4(1)(b) OF THE COMPETITION ACT NO 89 OF 1998**

The Competition Commission and Anix Trading 739 CC ("Anix") hereby agree that application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of sections 58(1)(a)(iii) and 59(1)(a) of the Competition Act No.89 of 1998, as amended, on the terms set out below:



1. Definitions

In this Settlement Agreement, unless the context indicates otherwise, the following definitions shall apply:

- 1.1 **"Anix" or "Respondent"** means Anix Trading 739 cc, a close corporation duly registered in terms of the company laws of the Republic of South Africa, with its principal place of business at Fo-Kuang Road, Cultura Park, Bronkhorspruit ("Anix").
- 1.2 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act as a juristic person, with its principal place of business at Building C, Mulayo Building, 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 lodged by Mesele Thulare in terms of section 49 B of the Act against Anix and Zedex for alleged contravention of section 4(1)(b)(iii) of the Act under case number 2009Mar4335;
- 1.5 **"Respondents"** means Zedex and Anix.
- 1.6 **"Settlement Agreement"** means this settlement agreement duly signed and concluded between the Commission and Anix;
- 1.7 **"the Act"** means the Competition Act No. 89 of 1998, as amended;

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

1.9 "**Zedex**" means Zedex Trading 799 cc, a close corporation duly registered in terms of the company laws of the Republic of South Africa, with its principal place of business at number 79 Simonsberg, Bosendal Street, Equestria.

2. Complaint investigation and findings

2.1 During March 2009, the Commission received a complaint from the National Treasury concerning allegations of collusive tendering against the Respondents. Following from this, the Commission summoned and interviewed those alleged to be involved in the alleged conduct. Of those summoned, Mrs Reineth Masemola of Anix Trading provided evidence of the alleged collusion. She confirmed that Anix and Zedek had had discussions on pricing relating to their tender submissions for State Tender RT11-2009 R, for the supply and delivery of animal feed to the state for the period 01 May 2009 to 30 April 2011.

2.2 The Commission's investigation established that:

(i) the Respondents discussed the cost price of the goods that were the subject of the tender as well as their respective tender prices.

(ii) this conduct had persisted for a considerable period of time as the respondents normally discussed their respective tender prices whenever they responded to an invitation to tender.

2.3 The Commission referred its findings to the Tribunal on 8 March 2010.

3. Settlement discussions


Shortly after receiving the referral papers, Anix's representative approached the Commission with the view of settling the matter. She indicated that Anix has no defence to the Commission's allegations and that it had contravened the Act in ignorance as the Respondents did not know that their conduct amounted to a contravention and that it would not be putting up a defence or an answer to the referral.

4. Admissions

Anix admits that it has contravened section 4(1)(b)(iii) of the Act in that it and Zedex discussed with each other their respective bids and prices in respect of Government tender number RT11-2009R for the supply and delivery of animal feed to all nine provinces of the Republic.

5. Agreement concerning future conduct

Anix agrees and undertakes to refrain from engaging in collusive tendering in contravention of section 4(1)(b)(iii) of the Act.



6. Administrative penalty

6.1 Anix agrees that it is liable for an administrative penalty in terms of sections 58(1)(a)(iii), 59(2) and (3) of the Act. Anix shall pay an amount of R 20 000.00 within 90 days of the confirmation of this agreement as an order of the Tribunal.

6.2 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

This Settlement Agreement, upon confirmation thereof as a consent order by the Tribunal, concludes all proceedings between the Commission and Anix in relation to the contravention of section 4(1)(b)(iii) of the Act, investigated under the Commission's case number: 2009Mar4335.

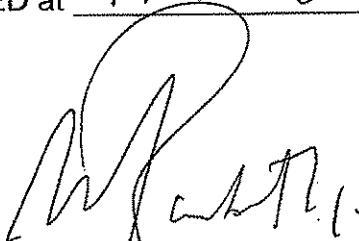
DATED at PRETORIA on this the 31 day of MAY 2010.



MASEMOLA REINETH LEKAKE

Duly authorised signatory of Anix

DATED at Pretoria on this the 27 day of May 2010.



Shan Ramburuth
Commissioner, Competition Commission