



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR032Jun21/SA034Jun23

In the matter between:

The Competition Commission

Applicant

And

Cromico Trading (Pty) Ltd

Respondent

Panel : T Ngcukaitobi (Presiding Member)
: I Valodia (Tribunal Member)
: T Vilakazi (Tribunal Member)

Heard on : 24 July 2023

Decided on : 24 July 2023

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Cromico Trading (Pty) Ltd annexed hereto.

Presiding Member
Adv. Tembeka Ngcukaitobi
SC

24 July 2023

Date

Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi

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By Themba Chauke at 5:04 pm, Jun 20, 2023

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

CT Case No: CR032JUN21

CC Case No: 2019DEC0015

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

CROMICO TRADING (PTY) LTD

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTIONS 58(1)(a)(III) AND 58(1)(b) OF THE COMPETITION ACT 89 OF 1998 ("THE ACT") AS AMENDEND BETWEEN THE COMPETITION COMMISSION AND CROMICO TRADING (PTY) LTD IN RESPECT CONTRAVENTIONS OF SECTION 4(1)(b)(I) AND (III) OF THE ACT.

PREAMBLE

The Commission and Cromico hereby agree that application be made to the Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended ("the Act"), in respect of contravention of section 4(1)(b)(i) and (iii) of the Act, on the terms set out below.

1. DEFINITIONS

For the purposes of this Consent 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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 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 City Power Johannesburg (SOC) Ltd with the Commission in terms of section 49B(2) of the Act under case number 2019DEC0015;
- 1.5 **“Consent Agreement”** means this agreement duly signed and concluded between the Commission and Cromico;
- 1.6 **“Cromico Trading (Pty) Ltd”** means a private company duly registered in accordance with the laws of the Republic of South Africa, with its principal place of business at 736 Dame Street, Roodepoort.
- 1.7 **“Parties”** means the Commission and Cromico;

- 1.8 **“City Power Johannesburg (SOC) Ltd”** means a private company duly registered in accordance with the laws of the Republic of South Africa, with its principal place of business at, 40 Heronmere Road Johannesburg.
- 1.9 **“City Power Tender”** means the tender number 2285S, advertised by City Power Johannesburg on or about June 2018, for the appointment of labor contractors for installation, maintenance of medium and low voltage infrastructure including public lighting and major capex projects.
- 1.10 **“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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 10 December 2019, City Power submitted the Complaint in terms of section 49(B)(2) of the Act, whereby it was alleged that Cromico Trading (Pty) Ltd (“Cromico”) and Maziya General Services CC (“Maziya”) being firms in a horizontal relationship, entered into an agreement to fix prices and tender collusively when responding to the City Power tender number: 2285S, in contravention of section 4(1)(b)(i) and (iii) of the Act.
- 2.2 The Commission investigated this Complaint under Case Number 2019Dec0015.
- 2.3 The investigation found that Maziya and Cromico agreed on prices to submit to

City Power in response to the above mentioned tender. Maziya and Cromico agreed that Maziya would submit prices that were lower than those of Cromico by 2.4% across all line items. The line items being amongst others supply of ready mix concrete, laying of cable, replacement of jumpers etc.

2.4 This conduct contravenes section 4(1)(b) (i) and (iii) of the Act.

3. ADMISSION OF LIABILITY

3.1 Cromico does not admit liability in respect of the conduct described in paragraph 2 above.

4. FUTURE CONDUCT

4.1 Cromico agrees and undertakes to:

4.1.1 prepare and circulate a statement summarising the contents of this Consent Agreement to its employees, managers and directors within 14 (fourteen) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.1.2 refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in the future;

4.1.3 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; and

4.1.4 with regard the competition law compliance programme referred to above, Cromico undertakes to submit to the Commission a copy thereof within 90 days of confirmation of the Settlement Agreement as an Order of the Tribunal.

5. ADMINISTRATIVE PENALTY

5.1 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, Cromico is liable to pay an administrative penalty.

5.2 Cromico agrees and undertakes to pay an administrative penalty in the amount of **R100 000 (One Hundred Thousand Rands)** without admission of liability. This amount does not exceed 10% of Cromico's annual turnover in financial year 2017/2018, being the year in which the alleged misconduct occurred.

5.3 Cromico will pay the amount of the administrative penalty set out in paragraph 5.2 above to the Commission within 30 (Thirty) days of the confirmation of the Consent Agreement as an order of the Tribunal.

5.4 The payments 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**
Ref : **2019Dec0015/Cromlco**

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

6. MONITORING

6.1. 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.

7. FULL AND FINAL SETTLEMENT

7.1 This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2019Dec0015 and concludes all proceedings between the Commission and

Cromico relating to the conduct that is the subject of the Commission's investigation under Case No. 2019Dec0015 as described in clause 2 above.

Dated and signed at Johannesburg on the 22 day of MAY 2023

For Cromico



[Position]

Name In Full: ROBYN HAZEL DELPORT

Dated and signed at Pretoria on the 15 day of JUNE 2023

For the Commission



Doris Tshepe

Competition Commissioner