



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO006Apr23

In the matter between:

The Competition Commission of South Africa

Applicant

And

Pacific Solar Technologies (Pty) Ltd

Respondent

Panel:	T Ngcukaitobi (Presiding Member) I Valodia (Tribunal Member) T Vilakazi (Tribunal Member)
Heard on:	23 May 2023
Decided on:	23 May 2023

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission And Pacific Solar Technologies (Pty) Ltd annexed hereto.



Presiding Member
Adv. Tembeka Ngcukaitobi SC

23 May 2023

Date

Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi

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

CT Case No:

CC Case No: 2017Oct0047 & 2022May0038

In the matter between:

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By Cyriel Mpaketsane at 9:16 am, Apr 24, 2023

THE COMPETITION COMMISSION

APPLICANT

and

PACIFIC SOLAR TECHNOLOGIES(PTY) LTD FIRST 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 PACIFIC SOLAR TECHNOLOGIES (PTY) LTD
IN RESPECT OF A CONTRAVENTION OF SECTIONS 4(1)(b)(iii) OF THE
COMPETITION ACT 89 OF 1998, AS AMENDED.

PREAMBLE


The Competition Commission and Pacific Solar Technologies (Pty) Ltd hereby agree that 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)(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)(iii) of the Act, on the terms set out below.

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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 situated 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 **“Complaints”** means the separate complaint submitted by the Council for Geoscience and Department of Mineral Resources and Energy to the Commission in terms of section 49B(2)(b) of the Act under case numbers 2021Oct0047 and 2022May0038;
- 1.5 **“Consent Agreement”** means this agreement duly signed and concluded between the Commission and Pacific Solar in full and final settlement of case numbers 2021Oct0047 and 2022May0038;
- 1.6 **“Parties”** means the Commission and Pacific Solar;
- 1.7 **“Nert Technologies”** means Nert Technologies (Pty) Ltd, a private company duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 30 San Vincenzo, 5th street Halfway Gardens, Gauteng 1685.

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- 1.8 **"Pacific Solar"** means Pacific Solar Technologies (Pty) Ltd, a private company duly incorporated in accordance with the Republic of South Africa, with its principal place of business situated at 71 Glen Austin Road, Glen Austin, Midrand;
- 1.9 **"The Council for Geoscience"** means a national science council established in terms of the Geoscience Act, Act 100 of 1993 to conduct scientific research and to provide specialised geoscientific services. The Council for Geoscience has its principal place of business situated at, 280 Pretoria Road, Silverton, Pretoria.
- 1.10 **"The DMRE"** means the Department of Mineral Resources and Energy, a government department responsible for the promotion and regulation of mineral resources and energy in South Africa with its head office at Trevenna Campus, Building 2C, C/o Meintjies and Francis Baard Street, Sunnyside, Pretoria.
- 1.11 **"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 situated at Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 The Commission investigated two separate complaints against Nert Technologies and Pacific Solar, hereinafter referred to as "the Respondents", for engaging in possible collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The first complaint was submitted by the Council for Geoscience and the second complaint was submitted by the DMRE.
- 2.2 On 27 October 2021, the Council for Geoscience submitted a complaint to the Commission alleging that the Respondents agreed or engaged in a concerted

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practice to tender collusively when responding to tender number: CGS-2021-002A. The tender issued by the Council for Geoscience was for the supply and delivery of Multi-functional Drill Rigs with service and maintenance for a period of 3 (Three) years. This complaint was investigated under case number: 2021Oct0047.

- 2.3 The Commission investigation found that the Respondents assisted each other to prepare and price their bids in response to the Council for Geoscience tender.
- 2.4 This conduct between the Respondents amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.
- 2.5 On 19 May 2022, the DMRE submitted a complaint to the Commission alleging that the Respondents agreed or engaged in a concerted practice to tender collusively in response to tender number: DOE/005/2019/20. The tender issued by the DMRE was for the appointment of the panel of non-grid service providers in relation to the supply, installation and maintenance of solar home systems for a period of 3 (Three) years. This complaint was investigated under case number: 2022May0038.
- 2.6 The Commission investigation found that the Respondents assisted each other to prepare and price their bids in response to the DMRE tender.
- 2.7 This conduct between the Respondents amounts to collusive tendering in contravention of sections 4(1)(b)(iii) of the Act.

3. ADMISSION OF LIABILITY

- 3.1 Pacific Solar does not admit liability in respect of the prohibited conduct described in paragraph 2 above.

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3.2 The Commission decided not to insist on an admission of liability based on, amongst others, the following factors:

3.2.1 Pacific Solar is a small business and has not previously been found guilty of contravening the Act;

3.2.2 Pacific Solar did not win the Council for Geoscience tender. While Pacific Solar was included in the panel of service providers in respect of the DMRE tender, Pacific Solar was subsequently removed from the panel and DMRE ceased providing them with any more work.

4. AGREEMENT REGARDING FUTURE CONDUCT

4.1 Pacific Solar agrees and undertakes to:

4.1.1 refrain from engaging in any conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;

4.1.2 prepare and circulate a statement summarizing the content of this agreement to its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.1.3 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; and

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4.1.4 submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal;

5. ADMINISTRATIVE PENALTY

- 5.1 Pacific Solar agrees and undertakes to pay an administrative penalty in the amount of **R200 000 (Two Hundred Thousand Rands)**. This amount does not exceed 10% of PacificSolar's annual turnover for the financial year ending 30 June 2021.
- 5.2 PacificSolar will pay the amount of the administrative penalty set out in paragraph 5.1 above to the Commission in 10 (Ten) instalments payable within a period of 3 (Three) years from date of the confirmation of this Consent Agreement as an order of the Tribunal.
- 5.3 Interest on the remaining capital amount shall accrue as from the first anniversary of the confirmation of the Consent Agreement as an order of the Tribunal. The interest shall be as determined in terms of section 80(1) (a) and (b) of the Public Finance Management Act 1999 (Act No.1 OF 1999).
- 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

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Branch Code : 632005
Ref : 2021Oct0047/2022May0038/Pacific Solar

5.5 The Commission will then 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 Numbers 2021Oct0047 and 2022May0038 and concludes all proceedings between the Commission and Pacific Solar relating to the conduct that is the subject of both the abovementioned two complaints.

FORPACIFIC SOLAR



[Name in Full] Ishelambilo Edward Mathe

[Position] Managing Director

Dated and signed at Midrand on the 13 day of February 2023.

FOR THE COMMISSION:



DORIS TSHEPE

Commissioner

Dated and signed at Pretoria on the 21 day of April 2023.

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