

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 018036, 018028

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

LAMBDA TEST EQUIPMENT CC

1st Respondent

AZTEC COMPONENTS CC

2nd Respondent

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

Heard on : 28 November 2013

Last submission : 09 December 2013

Decided on : 10 December 2013

Order

The Tribunal Hereby confirms as an order in terms of section 58(1)(a) of the Competition Act, 1998 (Act No.89 of 1998) the settlement agreement reached between the Competition Commission and the Respondent, annexed hereto marked "A".



Presiding Member
N Manoim

Concurring: A Wessels and Y Carrim

"ANNEXUREA"

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

CT CASE NO:

CC CASE NO: 2011Aug0218

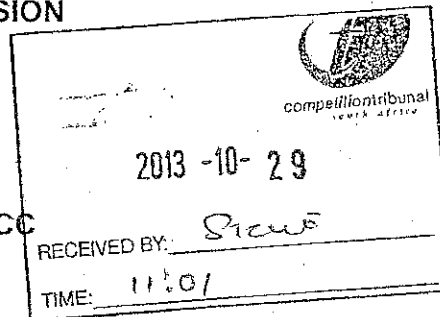
In the matter between:

THE COMPETITION COMMISSION

and

LAMBDA TEST EQUIPMENT CC

AZTEC COMPONENTS CC



Applicant

1st Respondent

2nd Respondent

SETTLEMENT AGREEMENTS

BE PLEASED TO TAKE NOTICE that the applicant files the following settlement agreements:

1. Aztec Components CC Settlement Agreement and;
2. Lambda Test Equipment CC Settlement Agreement.

DATED AT PRETORIA ON THIS 28 DAY OF OCTOBER 2013.

Competition Commission

Building C, DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394 3198

Fax: (012) 394 4196

Ref: Mr N Moropene

E-mail:ngoakom@compcom.co.za

TO: THE REGISTRAR

Competition Tribunal, 3rd Floor, Mulayo

The DTI Campus, 77 Meintjies Street

Sunnyside

Pretoria

Tel: 012 394 3300/55

Fax: 012 394 0169

E-mail:leratom@comptrib.co.za

AND TO: FLUXMANS INC

First Respondent's Attorneys

11 Biermann Avenue, Rosebank

Johannesburg, 2196,

South Africa

Tel: 011 328 1700

Fax: 011 880 2261

Ref: IGS/hhb/148029_3/00115645_1

E-mail:ishapiro@fluxmans.com

AND TO: FLUXMANS INC

Second Respondent's Attorneys

11 Biermann Avenue, Rosebank

Johannesburg, 2196,

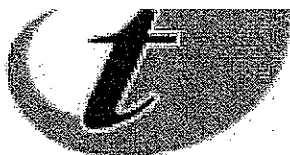
South Africa

Tel: 011 328 1700

Fax: 011 880 2261

Ref: IGS/hhb/148029_3/00115645_1

E-mail: ishapiro@fluxmans.com



competitiontribunal south africa

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Form continues on Page 2.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

Date: 28 October 2013

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

Lambda Test Equipment CC

Concerning:

(Complaint name and Commission file number:)

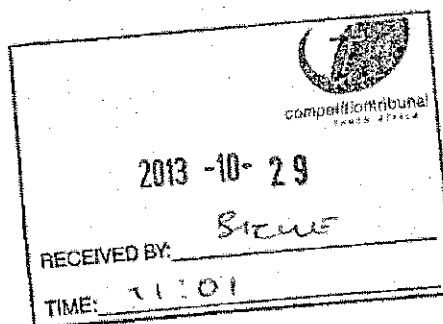
CC v Lambda Test Equipment cc & Aztec Components cc:2011Aug0218

From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(iii) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

See attached Settlement Agreement.





competitiontribunal south africa

Form CT1(1) Page 2 About this Form

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This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

See attached Settlement Agreement.

☒ This referral is to proceed as a consent proceeding.

☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

Ms Wendy Mkwanzani: Chief Legal Counsel

Authorised Signature:

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

CT CASE NO. 105/CR/Nov12 (016014)

CC CASE NO. 2011Aug0218

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

LAMBDA TEST EQUIPMENT CC

Respondent

In re:

COMPETITION COMMISSION

Applicant

and

LAMBDA TEST EQUIPMENT CC

1st Respondent

AZTEC COMPONENTS CC

2nd Respondents

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
LAMBDA TEST EQUIPMENT CC ("LAMBDA") IN REGARD TO ALLEGED
CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89 OF
1998, AS AMENDED.**

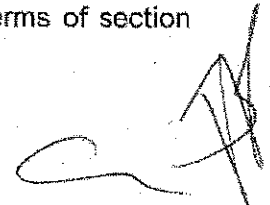
The *Commission* and Lambda hereby agree that application be made to the Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with section 58 (1)(b) and 59(1)(a) of the Act on the terms set out below.

1. DEFINITIONS



For the purposes of this Settlement 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 Building C, Mulayo Building, the 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 submitted by Broadband Infraco ("Infraco") in terms of section 49B(2)(b) of the Act under case number: 2011Aug0218;
- 1.5 "**Settlement Agreement**" means this settlement agreement duly signed and concluded between the Commission and Lambda;
- 1.6 "**Lambda**" means a close corporation duly registered in accordance with the laws of the Republic of South Africa, with its main place of business at Apex Corporate Park, Block F, Quintin Brand Street, Persequor, Techno Park, Pretoria, 0020.
- 1.7 "**Parties**" means the Commission and Lambda;
- 1.8 "**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 Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa.

- 1.9 **"Respondents"** means all the firms that are cited as the respondents in the Commission's complaint referral filed under Competition Tribunal Case number: 105/CR/NOV12 respectively, namely: Lambda Test Equipment CC and Aztec Components CC.

2. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

- 2.1 On 19 July 2011, the Commission received a complaint from Infraco in terms of which Lambda and Aztec were alleged to have contravened section 4(1)(b)(iii) of the Act, in that whilst being competitors in the market for the supply of production equipment that measures and tests links on long distance network during commissioning, network repairs, maintenance and upgrades, they met to discuss prices and shared commercially sensitive information relating to Tender number: INFTEN0086, being a tender which was advertised on the 14th July 2010 by Infraco. It was alleged in the alternative, that during August 2010, the respondents whilst being parties in a vertical relationship were involved in a restrictive vertical practice in contravention of section 5(2) of the Act, in that Lambda, a supplier of test and production equipment to Aztec, imposed a price at which Aztec should bid for the above mentioned tender.
- 2.2 The Commission investigated the alleged conduct and found that the respondents had a multiple contacts with each other regarding the tender as follows:

A handwritten signature in black ink, appearing to be 'ZB' or similar, located at the bottom right of the page.

2.2.1 On or about 8 August 2010, a representative of Lambda and a representative of Aztec, held a meeting to discuss the tender. The aforesaid meeting was convened at Lambda's offices and preceded by telephonic discussions between Nel and Marcus about/concerning the tender;

2.2.2 Subsequent to the above discussions, both Lambda and Aztec reached an agreement, understanding or an arrangement to each submit bids in response to the tender in question,

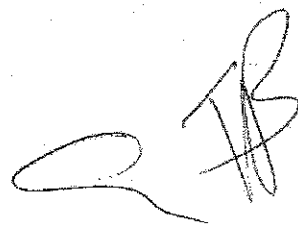
2.2.3 They agreed that each would provide the required technical solutions in their bids and the nature of the technical solutions to be submitted by both respondents. The technical solutions in their respective bids comprised of a combination of products supplied by both respondents;

2.2.4 They further agreed on the pricing for products associated with their respective bids and the final bid prices.

2.3 Pursuant to this agreement Lambda and Aztec submitted bids to Infracore which were similar in material respects.

3. THE COMMISSION'S REFERRAL

3.1 Following its investigation, the Commission concluded that the conduct by Lambda and Aztec constituted a contravention of section 4(1)(b)(iii) of the Act, in that they engaged in the conduct referred to in paragraph 2 above.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a vertical line and a large 'B'.

- 3.2 In light of its findings, the Commission decided to refer the complaint on 29 November 2012 to the Tribunal for determination.

4. AGREEMENTS

4.1 Admissions

- 4.1.1 Lambda admits that it has contravened section 4(1)(b)(iii) of the Act.

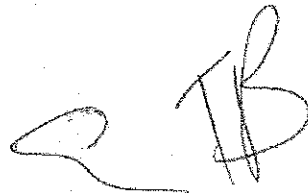
4.2. Future Conduct

- 4.2.1 Lambda agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents who are the subject of its investigations and referral to the Tribunal. Without limiting the generality of the foregoing, Lambda specifically agrees to:

- 4.2.1.1 Testify before the Tribunal regarding the conduct and events forming the factual basis of the Commission's referral affidavit and which are covered by this Settlement Agreement; and

- 4.2.1.2 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions set out in the Commission's referral affidavit.

- 4.2.1.3 Desist from engaging in the conduct complained of.

A handwritten signature, possibly reading 'TB', is located in the bottom right corner of the page.

4.2.2 Lambda agrees that it will in future refrain from participating in meeting(s) aimed at engaging in a cartel conduct which may lead to a possible contraventions of section 4(1)(b) of the Act.

4.2.3 Lambda agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that its employees, management, directors and agents do not engage in conduct in contravention of section 4(1)(b) of the Act, details of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this agreement as an order of the Tribunal

4.2.4 Lambda will ensure that such training materials will be made available to all new employees joining Lambda.

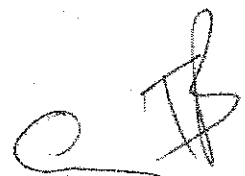
4.2.5 Furthermore, Lambda will update and repeat such training materials annually to ensure on an ongoing basis that its employees, management, directors and agents do not engage in any future contraventions of the Act.

5. Administrative Penalty

5.1 In accordance with the provisions of section 58(1)(a)(iii) as read with 59(1)(a), 59(2) and 59(3) of the Act, Lambda agrees to pay an administrative penalty in the sum of R100 000.00 (One Hundred Thousand Rand).

5.2 This payment shall be made into the Commission's bank account, details of which are as follows:

Name:	Competition Commission Fee Account
Bank:	ABSA Bank, Pretoria



Account no: 4050778576
Branch code: 323 345
Ref: CC2011Aug (Lambda)

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

6. Terms of Payment

Payment of the amount referred to in paragraph 5.1 above will be made within 90 days of the date of confirmation of this agreement as an order of the Tribunal.

7. Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Lambda relating to any alleged contravention by the respondents of the Act that is the subject of the Commission's investigation (CC Case no. 2011AUG0218).

Dated and signed at *Pretoria* on this the *11* day of *October* 2013

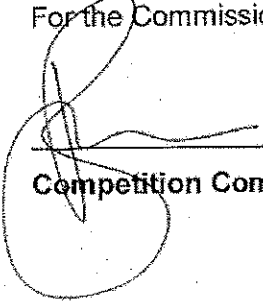
For Lambda


[title] *CHRIS NEL*
MEMBER - PRODUCT MANAGER
DULY AUTHORISED
Robert Whang



Dated and signed at ^{PRETORIA} ~~28th~~ ₁₈ on this the 25th day of October 2013

For the Commission



Competition Commissioner



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

CT CASE NO:

CC CASE NO: 2011Aug0218

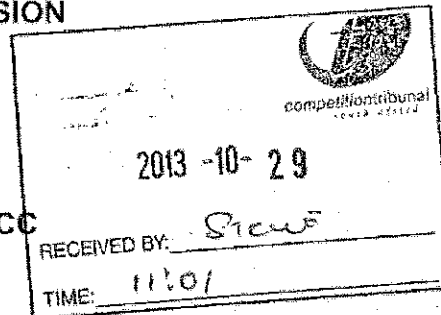
In the matter between:

THE COMPETITION COMMISSION

Applicant

and

LAMBDA TEST EQUIPMENT CC
AZTEC COMPONENTS CC



1st Respondent

2nd Respondent

SETTLEMENT AGREEMENTS

BE PLEASED TO TAKE NOTICE that the applicant files the following settlement agreements:

1. Aztec Components CC Settlement Agreement and;
2. Lambda Test Equipment CC Settlement Agreement.

DATED AT PRETORIA ON THIS 28 DAY OF OCTOBER 2013.

Competition Commission

Building C, DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394 3198

Fax: (012) 394 4196

Ref: Mr N Moropene

E-mail:ngoakom@compcom.co.za

TO: THE REGISTRAR

Competition Tribunal, 3rd Floor, Mulayo

The DTI Campus, 77 Meintjies Street

Sunnyside

Pretoria

Tel: 012 394 3300/55

Fax: 012 394 0169

E-mail:leratom@comptrib.co.za

AND TO: FLUXMANS INC

First Respondent's Attorneys

11 Biermann Avenue, Rosebank

Johannesburg, 2196,

South Africa

Tel: 011 328 1700

Fax: 011 880 2261

Ref: IGS/hhb/148029_3/00115645_1

E-mail:ishapiro@fluxmans.com

AND TO: FLUXMANS INC

Second Respondent's Attorneys

11 Biermann Avenue, Rosebank

Johannesburg, 2196,

South Africa

Tel: 011 328 1700

Fax: 011 880 2261

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competitiontribunal south africa

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Form continues on Page 2.

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Private Bag X24
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0132
Republic of South Africa
tel: 27 12 394 3300
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e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

Date: 28 October 2013

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

Aztec Components CC

Concerning:

(Complaint name and Commission file number:)

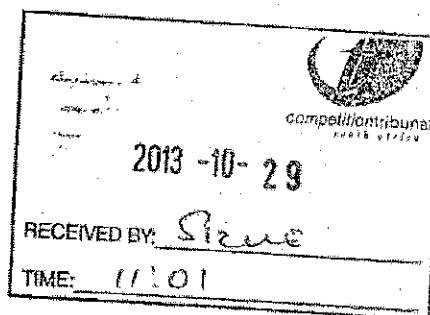
CC v Lambda Test Equipment cc & Aztec Components cc:2011Aug0218

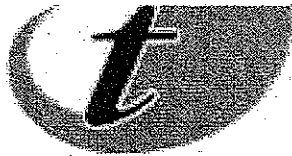
From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(iii) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

See attached Settlement Agreement.





competitiontribunal south africa

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Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

See attached Settlement Agreement.

☒ This referral is to proceed as a consent proceeding.

☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

Ms Wendy Mkwanzizi: Chief Legal Counsel

Authorised Signature:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO. 105/CR/Nov12 (016014)

CC CASE NO. 2011Aug0218

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

AZTEC COMPONENTS CC

Respondent

In re:

COMPETITION COMMISSION

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LAMBDA TEST EQUIPMENT CC

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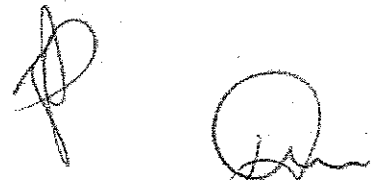
AZTEC COMPONENTS CC

2nd Respondents

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
AZTEC COMPONENTS CC ("AZTEC") IN REGARD TO ALLEGED
CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89 OF
1998, AS AMENDED.

The *Commission* and Aztec hereby agree that application be made to the Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with section 58 (1)(b) and 59(1)(a) of the Act on the terms set out below.

1. DEFINITIONS



For the purposes of this Settlement Agreement the following definitions shall apply;

- 1.1 "**Act**" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
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- 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 Broadband Infraco ("Infraco") in terms of section 49B(2)(b) of the Act under case number: 2011Aug0218;
- 1.5 "**Settlement Agreement**" means this settlement agreement duly signed and concluded between the Commission and Aztec;
- 1.6 "**Aztec**" means a close corporation duly registered in accordance with the laws of the Republic of South Africa, with its main place of business at Aztec House, 65 Serenade Road, Elandsfontein, Germiston, Gauteng.
- 1.7 "**Parties**" means the Commission and Aztec;
- 1.8 "**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



Building C, Mulayo Building, the DTI Campus, 77
Meintjies Street, Sunnyside, Pretoria, South Africa.

- 1.9 **"Respondents"** means all the firms that are cited as the respondents in the Commission's complaint referral filed under Competition Tribunal Case number: 105/CR/NOV12 respectively, namely: Aztec Components CC and Lambda Test Equipment CC.

2. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

- 2.1 On 19 July 2011, the Commission received a complaint from Infraco in terms of which Lambda and Aztec were alleged to have contravened section 4(1)(b)(iii) of the Act, in that whilst being competitors in the market for the supply of production equipment that measures and tests links on long distance network during commissioning, network repairs, maintenance and upgrades, they met to discuss prices and shared commercially sensitive information relating to Tender number: INFTEN0086, being a tender which was advertised on the 14th July 2010 by Infraco. It was alleged in the alternative, that during August 2010, the respondents whilst being parties in a vertical relationship were involved in a restrictive vertical practice in contravention of section 5(2) of the Act, in that Lambda, a supplier of test and production equipment to Aztec, imposed a price at which Aztec should bid for the above mentioned tender.

- 2.2 The Commission investigated the alleged conduct and found that the respondents had a multiple contacts with each other regarding the tender as follows:

- 2.2.1 On or about 8 August 2010, a representative of Lambda and a representative of Aztec, held a meeting to discuss



the tender. The aforesaid meeting was convened at Lambda's offices and preceded by telephonic discussions between Nel and Marcus about/concerning the tender;

2.2.2 Subsequent to the above discussions, both Lambda and Aztec reached an agreement, understanding or an arrangement to each submit bids in response to the tender in question;

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2.2.4 They further agreed on the pricing for products associated with their respective bids and the final bid prices.

2.3 Pursuant to this agreement Lambda and Aztec submitted bids to Infraco which were similar in material respects.

3. THE COMMISSION'S REFERRAL

3.1 Following its investigation, the Commission concluded that the conduct by Lambda and Aztec constituted a contravention of section 4(1)(b)(iii) of the Act, in that they engaged in the conduct referred to in paragraph 2 above.

3.2 In light of its findings, the Commission decided to refer the complaint on 29 November 2012 to the Tribunal for determination.



4. AGREEMENTS

4.1 Admissions

4.1.1 Aztec admits that it has contravened section 4(1)(b)(iii) of the Act.

4.2 Future Conduct

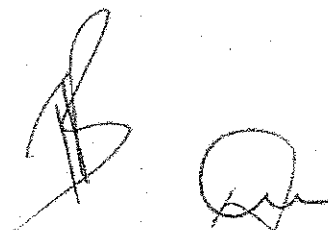
4.2.1 Aztec agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents who are the subject of its investigations and referral to the Tribunal. Without limiting the generality of the foregoing, Aztec specifically agrees to:

4.2.1.1 Testify before the Tribunal regarding the conduct and events forming the factual basis of the Commission's referral affidavit and which are covered by this Settlement Agreement; and

4.2.1.2 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions set out in the Commission's referral affidavit.

4.2.1.3 Desist from engaging in the conduct complained of.

4.2.2 Aztec agrees that it will in future refrain from participating in meeting(s) aimed at engaging in a cartel conduct which may lead to a possible contraventions of section 4(1)(b) of the Act.



4.2.3 Aztec agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that its employees, management, directors and agents do not engage in conduct in contravention of section 4(1)(b) of the Act, details of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this agreement as an order of the Tribunal

4.2.4 Aztec will ensure that such training materials will be made available to all new employees joining Aztec.

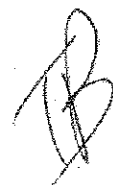
4.2.5 Furthermore, Aztec will update and repeat such training materials annually to ensure on an ongoing basis that its employees, management, directors and agents do not engage in any future contraventions of the Act.

5. Administrative Penalty

5.1 In accordance with the provisions of section 58(1)(a)(iii) as read with 59(1)(a), 59(2) and 59(3) of the Act, Aztec agrees to pay an administrative penalty in the sum of R100 000.00 (One Hundred Thousand Rand).

5.2 This payment shall be made into the Commission's bank account, details of which are as follows:

Name:	Competition Commission Fee Account
Bank:	ABSA Bank, Pretoria
Account no:	4050778576
Branch code:	323 345
Ref:	CC2011Aug0218 (Aztec)



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

6. Terms of Payment

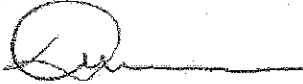
Payment of the amount referred to in paragraph 5.1 above will be made within 90 days of the date of confirmation of this agreement as an order of the Tribunal.

7. Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Aztec relating to any alleged contravention by the respondents of the Act that is the subject of the Commission's investigation (CC Case no. 2011AUG0218).

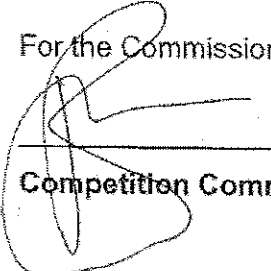
Dated and signed at GERMISTON on this the 7th day of OCTOBER 2013

For Aztec


 [title] MANAGING MEMBER -
 DEAN MARCUS
 FULLY AUTHORISED.

Dated and signed at PRETORIA on this the 25th day of October 2013

For the Commission


 Competition Commissioner

