

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No:
CO002Apr15/021170

In the matter between:

The Competition Commission

Applicant

and

A and B Movers CC

Respondent

Panel : M Mokuena (Presiding Member)
A Ndoni (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 06 May 2015

Decided on : 06 May 2015

Order

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



Presiding Member
M Mokuena

Concurring: A Ndoni and F Tregenna

021170

"A"

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

CC CASE NO: 2011Jun0069

CT CASE NO:

In the matter between

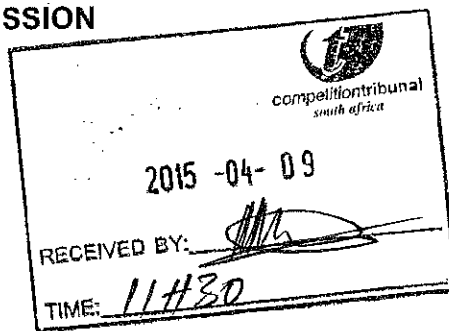
THE COMPETITION COMMISSION

Applicant

And

A & B MOVERS CC

Respondent

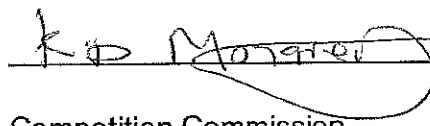


FILING SHEET

BE PLEASED TO TAKE NOTICE that the applicant hereby files the settlement agreement concluded between the Competition Commission and the following respondent:

1. A & B Movers CC

Signed at PRETORIA on the 9th day of APRIL 2015



Competition Commission

The Dti Campus, Building C, Mulayo

77 Meintjies Street

Tel: 012 394 3264

Fax: 012 394 4264

Ref: Katlego Monareng/2011Jun0069

TO:

The Registrar

Competition Tribunal South Africa

77 Meintjies Street

The Dti Campus, 3rd Floor

Block C, Mulayo Building

Sunnyside, Pretoria

Ref: Ms Lerato Motaung

AND TO:

Ms Maria Costa

Member

A & B Movers CC

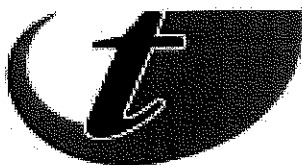
42 Garfield Road

Alrode

Johannesburg

Email: maria@abmovers.co.za

Tel: 012 908 3900



competitiontribunal south africa

Form CT1(1) Page 2 About this Form

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

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

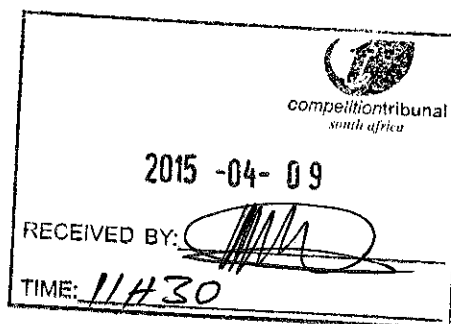
The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

Confirmation of the attached consent agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act 1998 (Act 89 of 1998) as amended ("the Act") in respect of a contravention of section 4 (1)(b)(iii) of the Act.



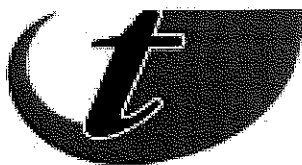
- ☒ This referral is to proceed as a consent proceeding.
- ☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule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

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

Bukhosibakhe Majenge: Manager Legal Services Division

Authorised Signature:

[Signature]



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Form CT1(1)

About this Form

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- (b) the material facts or points on which the respondent relies;
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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: 9 April 2015

To: the Registrar of the Competition Tribunal, and:

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

A & B Movers CC

Concerning:

(Complaint name and Commission file number:)

2011Jun0069

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:)

Confirmation of the attached consent agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act 1998 (Act 89 of 1998) as amended ("the Act") in respect of a contravention of section 4(1)(b)(iii) of the Act.

	
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2015 -04- 09	
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TIME:	11H30

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

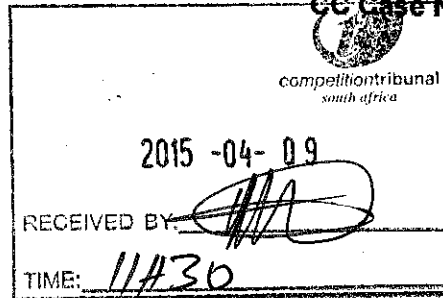
CT Case No.

CC Case No: 2011Jun0069

In the matter between

COMPETITION COMMISSION
and

A & B MOVERS CC



Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, ACT NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND A & B MOVERS CC SERVICES, IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b) (iii) OF THE COMPETITION ACT, NO. 89 OF 1998 AS AMENDED.

Preamble

The Competition Commission and A & B Movers CC 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, Act No. 89 of 1998, as amended (the Act), in respect of contraventions of section 4(1)(b) (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, No. 89 of 1998, as amended;
- 1.2 "A & B Movers" means A & B Movers CC, a close corporation incorporated under the Close Corporations laws of the Republic of South Africa with its principal place of business situated at 42 Garfield Road, Alrode, Johannesburg;
- 1.3 "CLP" means the Competition Commission's Corporate Leniency Policy (Government Gazette Notice no. 628 of 23 May 2008) published in Government Gazette no. 31064 of 23 May 2008;
- 1.4 "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;
- 1.5 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2011Jun0069;
- 1.7 "Consent Agreement" means this agreement duly signed and concluded between the Commission and A & B Movers;
- 1.8 "Cover Price" means generally, a price that is provided by a firm that wishes to win a tender to a firm that does not wish to do so, in order that the firm that does not wish to win the tender may submit a higher price; or alternatively a price that is provided by a firm that does not wish to win a tender to a firm that does wish to

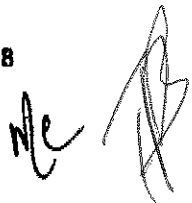
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win that tender in order that the firm that wishes to win the tender may submit a lower price;

- 1.9 **"Parties"** means the Commission and A & B Movers; and
- 1.10 **"PFMA"** means the Public Finance Management Act, No. 1 of 1999, as amended;
- 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 at Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 3 November 2010, the Commission initiated a complaint in terms of section 49(B)(1) of the Act into alleged prohibited practices relating to collusive tendering in the market for the provision of furniture removal services in South Africa against J.H Retief Transport CC, Patrick Removals (Pty) Ltd, Cape Express Removals (Pty) Ltd, Sifikile Transport CC, Gloway Transport CC, De Wet Human CC t/a Viking Furniture, Stuttaford Van Lines (Pty) Ltd and Pro-Pack Removals CC.
- 2.2 On 1 June 2011, the Commission amended its complaint to include other furniture removal firms as respondents in the complaint on the basis of further information obtained in the course of the investigation of the complaint. These furniture removal firms are A & B Movers CC; Advance Transport (Pty) Ltd; African Palletized Storage; Afriworld Furniture Removals CC; Core Relocations (Pty) Ltd; Crown Relocations (Pty) Ltd; De Lange Transport (Pty) Ltd; Elliot International CC; Execu-Move CC; Joel Transport (Pty) Ltd; Langs Furniture Removals; Lowe Lines CC; Majorsheff; Matthee Removals; North Western



Transport CC; Pickfords Removals (Pty) Ltd; Pulse International Removals; Stanley's Removals CC; Transfreight International CC; Western Transport Services; JNK Transport Services; Trapezium Removals; Elite International; City to City Transport; Wiets Removals; H&M Removals; AGS Frasers International (Pty) Ltd; and all then present members of the Professional Movers Association.

- 2.3 On 13 June 2013, the Commission further amended its complaint to include other furniture removal firms as respondents in the complaint on the basis of further information obtained in the course of the investigation of the complaint. These firms are Easy Moves CC; Reliable Removals CC; Deon Nel Sole Proprietorship t/a AD Transport; Bear Transport (Pty) Ltd; J&H Removals (Pty) Ltd; Mini Maxi Movers CC; Baxter International Movers CC; Louis du Preez Sole Proprietorship t/a Removals 4 Less; A to Z Relocation Services t/a The Moving Company; and AKA Loading & Transport CC.
- 2.4 The firms listed in paragraphs 2.1, 2.2 and 2.3 above shall hereinafter be referred to as the Respondents.
- 2.5 The Commission's investigation revealed the following:
- 2.5.1 During or about the period 2007 to at least December 2012, the firms identified in paragraphs 2.1, 2.2, and 2.3 above, being competitors in the market for the provision of furniture removal services agreed to tender collusively in relation to the provision of furniture removal services.
- 2.5.2 In terms of the agreement a firm that was contacted first regarding a request for quotation for furniture removal services would offer to source two or more quotations on behalf of the customer, and would then contact two or more of its competitors and request the competitors to submit cover prices.
- 2.5.3 The cover prices would either be sent directly to the customer or to the



competitor wishing to win the tender for onward submission to the customer.

2.5.4 The Respondents arranged to collude on tenders issued by various government departments, including but not limited to, the South African National Defence Force (SANDF), South African Police Services, as well as tenders issued by large corporates such as Eskom, Pretoria Portland Cement and Department of Health.

2.5.5 A & B Movers colluded with JH Retief and Cape Express on tenders issued by the Department of Health and SANDF.

2.5.6 The Commission further found that, pursuant to the arrangement set out above, A & B Movers engaged in 4 instances of cover pricing.

2.5.7 This conduct constitutes collusive tendering in contravention of section 4(1)(b) (iii) of the Act.

3. ADMISSION

A & B Movers admits that it engaged in the prohibited practices set out in paragraph 2.5 above in contravention of section 4(1)(b) (iii) of the Act.

4. CO-OPERATION

A & B Movers agrees to fully cooperate with the Commission in its investigation and prosecution of the remaining respondents in the complaint. This cooperation includes, but is not limited to:

4.1. To the extent that it is in existence, the provision of evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement.



- 4.2. Testifying in the complaint referral (if any) in respect of the contraventions set out in this Consent Agreement.

5. FUTURE CONDUCT

A & B Movers agrees to:

- 5.1. prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within fourteen (14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 5.2. refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 5.3. 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;
- 5.4. submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Tribunal; and
- 5.5. henceforth engage in competitive bidding.

W/C



6. ADMINISTRATIVE PENALTY

- 6.1. 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, A & B Movers is liable to pay an administrative penalty.
- 6.2. A & B Movers agrees and undertakes to pay an administrative penalty in the amount of R199 301 (**One Hundred and Ninety-Nine Thousand Three Hundred and One Rands only**). This administrative penalty represents 4% of A & B Movers' annual turnover for the financial year ended February 2013.
- 6.3. A & B Movers will pay the amount set out in paragraph 6.2 above to the Commission in eight equal quarterly instalments of R24 912.62 (**Twenty Four Thousand Nine Hundred and Twelve Rand and Sixty-Two Cents**) over a period of 24 months. The first payment shall be made within 30 (thirty) days of the confirmation of this Consent Agreement as an order of the Tribunal.
- 6.4. A & B Movers will thereafter pay the balance of the amount set out above in seven equal quarterly Installments.
- 6.5. A & B Movers will also pay interest at the rate of 9.25%/per annum on the balance outstanding with effect from the 13th months following confirmation of this consent agreement as an order of the Tribunal.
- 6.6. The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345



Ref: 2011Jun0069/ A & B Movers

- 6.7. The administrative 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 agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement of the prohibited practices engaged in by A & B Movers as set out in paragraph 2.5 above and concludes all proceedings between the Commission and A & B Movers in respect of those prohibited practices only.

Dated and signed at Albenton on the 11 day of March 2015

For A & B Movers CC

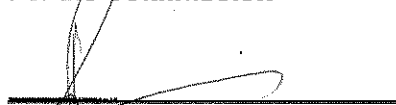


Member

Name in Full: MARIA LISELE COSTA

Dated and signed at PRETORIA on the 13 day of February 2015

For the Commission



Tembinkosi Bonakele

Competition Commissioner

Ref: 2011Jun0069/ A & B Movers

- 6.7. The administrative 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 agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement of the prohibited practices engaged in by A & B Movers as set out in paragraph 2.5 above and concludes all proceedings between the Commission and A & B Movers in respect of those prohibited practices only.

Dated and signed at Albenton on the 11 day of March 2015

For A & B Movers CC

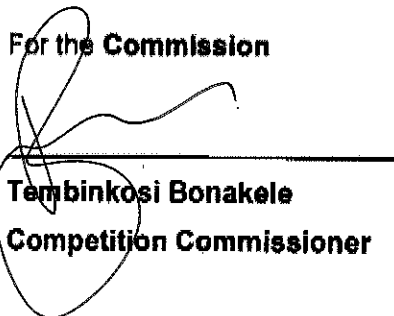


Member

Name in Full: MARIA LISEK COSTA

Dated and signed at Pretoria on the 13 day of March 2015

For the Commission



Tembinkosi Bonakele

Competition Commissioner

Annexure "A"

PENALTY GUIDELINES

Categories	Number of contraventions	Fining percentage ranges
A	1-10	4%
B	11-25	5%
C	26-50	6%
D	51-100	7%
E	101-300	8%
F	301-500	9%
G	501 upwards	10%