



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR195Dec15/SA087Jun18

In the matter between:

The Competition Commission

Applicant

And

Baxter International Movers CC

Respondent

Panel	:	M Mokuena (Presiding Member) A Ndoni (Tribunal Member) F Tregenna (Tribunal Member)
Heard on	:	27 June 2018
Addendum submitted on	:	16 July 2018
Decided on	:	19 July 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Baxter International Movers CC annexed hereto marked "A" together with the addendum to the settlement agreement marked "A1".



Presiding Member
Mrs M Mokuena

19 July 2018
Date

Concurring: Ms A Ndoni and Prof. Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: GR195DEC15/SA087Jun18

CC CASE NO: 2010Nov5447, 2011Jun0069 and 2013Jun0275

In the matter between:

COMPETITION COMMISSION OF SA

And

BAXTER INTERNATIONAL MOVERS CC

Applicant

competition tribunal
south africa

2013-05-18

RECEIVED BY: *S. 70*

TIME: 10:22

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 BAXTER INTERNATIONAL MOVERS CC, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) & (iii) OF THE COMPETITION ACT 89 OF 1998

Preamble

The Competition Commission and Baxter International Movers CC (Baxter International) 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

[Handwritten signatures]

section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b) (i), (ii) 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, No. 89 of 1998, as amended;
- 1.2 "Baxter International" means Baxter international Movers CC, a company duly Incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 15 Rudolph Street, Centurion
- 1.3 "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;
- 1.4 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2010Nov5447, 2011June0069 and 2013Jun0275;
- 1.6 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Baxter International;
- 1.7 "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 in order that the firm that wishes to win the tender may submit a lower price;

- 1.8. "JH Retief" means JH Retief Transport CC, a close corporation duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 39 Willow Road, Stikland Industry, Belville, Western Cape;
- 1.9. "Parties" means the Commission and Baxter International;
- 1.10. "RFQ" means Request for Quotation;
- 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. BACKGROUND TO 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, Patrick Removals (Pty) Ltd (Patrick Removals), Cape Express Removals (Pty) Ltd (Cape Express), Sifikile Transport CC (Sifikile), Gloway Transport CC (Gloway), De Wet Human CC t/a Viking Furniture (Viking furniture), Stuttford Van Lines (Pty) Ltd (Stuttford) and Pro-Pack Removals.
- 2.2 On 1 June 2011, the Commission amended its complaint initiation to include other furniture removal firms as respondents in the complaint on the basis of further

information obtained in the investigation of the complaint. These 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, Majorshelf, Matthee Removals, North Western Transport CC, Pickfords Removals (Pty) Ltd, Pulse International Removals, Stanley's Removals CC, Transfreight International CC, Western Transport Services CC, JNK Transport Services, Trapezium Removals, Elite International, City to City Transport, Wiets Removals, H&M Removals, AGS, and all present members of the Professional Movers Association.

- 2.3 On 13 June 2013, the Commission further amended its complaint initiation to include other furniture removal firms as respondents in the complaint on the basis of further information obtained in 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 2008, Baxter International and JH Retief colluded on a tender issued by Eskom in respect of transportation of furniture belonging to Mr. B Skhosana.
- 2.5.2 Baxter International requested JH Retief to submit a cover price of R8500 in order for Baxter International to win the tender. JH Retief agreed to submit

a cover price. JH Retief submitted a tender price of R8500 to Eskom. Baxter International submitted a tender price of R7600 to Eskom.

- 2.6. This conduct constitutes collusive tendering which contravenes section 4(1)(b)(i) and/or 4(b)(ii) and/or 4(b)(iii) of the Act.

3. ADMISSION

Baxter International admits that it engaged in 1 instance of cover pricing in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

4. FUTURE CONDUCT

Baxter International agrees to:

- 4.1 prepare and circulate a statement summarizing the contents of this Consent 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;
- 4.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 4.3 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;
- 4.4 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and

4.5 Undertakes henceforth to engage in competitive practices.

5. ADMINISTRATIVE PENALTY

5.1 Baxter International agrees that it is liable to pay an administrative penalty of **R24 506.64 (Twenty-four thousand, five hundred and six rand and sixty-four cents)**. This amount does not exceed 10% of Baxter International's annual turnover for the financial year ended February 2013.

5.2 Baxter International will pay the amount set out in paragraph 6.1 above to the Commission within thirty (30) Days of the confirmation of this Consent Agreement as an order of the Tribunal.

5.3 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name:	The Competition Commission Fees Account
Bank:	Absa Bank, Pretoria
Account Number:	4087641778
Account type:	Current Account
Branch Code:	632005
Ref:	2013Jun0275/ Baxter International

5.4 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.

6. Full and Final Settlement

This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2010Nov5447, 2011Jun0069 and 2013Jun0275 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Baxter International.

Dated and signed at Centurion on the 31 day of May 2018

For Baxter International Movers CC

Member

Name in Full:

P B BRAUTSCH

Dated and signed at PRETORIA on the 13 day of JUNE 2018

For the Commission

Tempinkosi Bonakele
Competition Commissioner

"A₁"

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

CT Case No: CR195Dec15

CC Case No: 2010Nov5447, 2011Jun0069 & 2013Jun0275

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

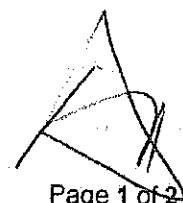
BAXTER INTERNATIONAL MOVERS CC

Respondent

FIRST ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND BAXTER INTERNATIONAL MOVERS CC, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

This amendment to the consent agreement, which was concluded between the Competition Commission and Baxter International Movers CC signed on 31 May 2018 and 13 June 2018 and be presented for confirmation by the Competition Tribunal on 27 June 2018, sets out the terms on which the parties to the consent agreement have agreed to amend the consent agreement:

Clause 4 of the consent agreement is deleted in its entirety.



Clause 5.2 of the consent agreement is deleted and replaced with the following clause:

5.2 Baxter International has already paid the amount set out in paragraph 5.1 of the consent agreement into the Commission's bank account.

Dated and signed at Gauteng on the 5 day of July 2018

For Baxter International Movers CC

Member

Name in Full:

P B BRAYTESITH

Dated and signed at PRETORIA on the 13 day of JULY 2018

For the Commission

Tembinkosi Bonakele
Competition Commissioner