

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR124Nov14/SA187Mar25

In the matter between:

The Competition Commission

Applicant

And

Group Five Construction (Pty) Ltd (In Business Rescue)

First Respondent

Group Five Limited (In Business Rescue)

Second Respondent

Panel: I Valodia (Presiding Member)
: G Budlender (Tribunal Member)
: A Ndoni (Tribunal Member)

Heard on: 03 April 2025

Decided on: 03 April 2025

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Group Five Construction (Pty) Ltd (In Business Rescue) and Group Five Ltd (In Business Rescue) annexed hereto.

Signed by: Imraan

Signed at: 2025-04-03 13:37:24 +02:00

Reason: Witnessing Imraan

Presiding Member
Prof. Imraan Valodia

03 April 2025
Date

Concurring: Adv. Geoff Budlender SC and Ms Andiswa Ndoni

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

CT Case No:
CC Case No: 2009Feb4279/
2009Sep4641

In the matter between:

THE COMPETITION COMMISSION

APPLICANT

And

GROUP FIVE CONSTRUCTION (PTY) LTD
(IN BUSINESS RESCUE)

FIRST RESPONDENT

GROUP FIVE LIMITED
(IN BUSINESS RESCUE)

SECOND RESPONDENT

SETTLEMENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1) (b) OF THE COMPETITION ACT 89 OF 1998 ("THE ACT"), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND GROUP FIVE CONSTRUCTION (PTY) LTD (IN BUSINESS RESCUE) AND GROUP FIVE LIMITED (IN BUSINESS RESCUE), IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i), (ii) AND (iii) OF THE ACT.

Preamble

The Competition Commission and Group Five Construction Proprietary Limited and Group Five Limited hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D read with 58(1)(b) of the Competition Act No. 89 of 1998 ("the Act"), 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 Settlement Agreement, the following definitions shall apply:

1.1. **"Act"** means the Competition 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 Commission, appointed in terms of **section 22** of the Act;

1.4. **"Group Five Construction"** means Group Five Construction Proprietary Limited (in business rescue), a private company duly registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 2 Eglin Road, Sunninghill, 2191;

1.5. **"Group Five Limited"** means Group Five Limited (in business rescue), a public company duly registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 2 Eglin Road, Sunninghill, 2191;

1.6. **"Group Five"** means Group Five Construction and Group Five Limited;

1.7. **"Litigation"** means the proceedings instituted by Group Five Construction against the Commission in the High Court of South Africa, Gauteng Division, Pretoria under case number 75995/17, including all ancillary and/or interlocutory proceedings under the same case number;

1.8. **"Parties"** means the Commission and Group Five;

1.9. **"Referrals"** means the complaint referrals by the Commission to the Tribunal of the Senekal complaint and the Stadia complaint against each Group Five firm, including all ancillary and/or interlocutory proceedings under the same Tribunal case numbers;

1.10. **"Respondents"** means Group Five Construction and Group Five Limited;

1.11. **"Senekal complaint"** means the complaint initiated by the Commissioner in terms of section 498(1) of the Act under case number 2009Sep4641, which was referred to the Tribunal under case number CR229MAR 15;

1.12. **"Stadia complaint"** means the complaint initiated by the Commissioner in terms of section 498(1) of the Act under case number 2009Feb4279, which was referred to the Tribunal under case number 019950;

1.13. **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and Group Five.

1.14. **"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 INVESTIGATION

Stadia complaint

2.1. On 10 February 2009, the Commissioner initiated a complaint in terms of section 498(1) of the Act against construction firms, including Murray & Roberts Limited, WBHO Construction (Pty) Ltd, Basil Read (Pty) Ltd, Group Five Construction, Grinaker-LTA (Pty) Ltd, Stefanutti Stocks Limited, Interbeton and Buoygues Construction (collectively referred to as "the implicated firms") for possible collusion when bidding for tenders for the construction and refurbishment of 2010 FIFA World Cup stadia in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

Senekal complaint

2.2. On 1 September 2009, the Commissioner initiated another complaint in terms of section 498(1) of the Act against the construction firms, including Group Five Limited, Grinaker-LTA, Concor Ltd, G. Liviero & Son Building (Pty) Ltd, Stefanutti Stocks Holdings Ltd, Wilson Bayly Holmes-Ovcon Ltd, Murray & Roberts, Aveng (Africa) Ltd, Giuricich Coastal Projects (Pty) Ltd, Hochtief Construction Co Ltd, Dura Soletache-Bachy (Pty) Ltd, Nishimatsu Construction Co Ltd, Esorfranki Ltd, VNA Pilings CC, Rodio Geotechnics (Pty) Ltd, Diabor (Pty) Ltd, Gauteng Piling (Pty) Ltd, Fairbrother Geotechnical CC, Geomechanics CC (collectively referred to as "the implicated firms") for possible collusion on construction projects in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

2.3. On 01 February 2011, the Commission launched an Invitation to Firms in the Construction Sector to Settle Bid Rigging Cases. Following the Invitation to Settle, Group Five and a few others elected not to settle, and the Commission referred two cases against Group Five, namely, the Stadia complaint and the Senekal complaint to the Tribunal for adjudication ("the Referrals").

2.4. This settlement agreement concerns the Stadia complaint, the Senekal complaint, the Referrals and the Litigation between the parties.

3. THE COMMISSION'S INVESTIGATION AND FINDINGS

Stadia complaint

3.1. The allegations against Group Five Construction and the other implicated firms are that they entered into an agreement or engaged in a concerted practice, in respect of the construction and/or refurbishment of stadia for the 2010 FIFA World Cup, to tender collusively and/or to fix prices and divide the market by allocating suppliers. The complaint was investigated under case number: 2009Feb4279. The case number allocated by the Tribunal is CT019950.

3.2. The Commission's investigation found that:

3.2.1. On or about September 2006, Group Five Construction and the other implicated firms entered into a collusive agreement in relation to the construction and refurbishment of stadia for the 2010 FIFA World Cup,

3.2.2. Group Five Construction and the other implicated firms met regularly to discuss and allocate, among themselves, projects to build the various stadia, and

3.2.3. Group Five Construction and the other implicated firms further discussed and agreed which construction firms would submit a tender for which stadia, and which construction firm will submit cover price for which stadia.

3.2.5 Group Five was represented by Mr. Mike Lomas ("Mr Lomas"), who was the Chief Executive Officer of Group Five Limited at the relevant time and participated in the discussions with representatives of other construction firms relating to the construction and refurbishment of the 2010 FIFA World Cup stadia (the "Discussions").

3.3. The Commission concluded that this conduct constitutes price fixing, dividing the markets by allocating customers and collusive tendering in contravention of sections 4(1)(b)(i), (ii) and (iii) of the Act.

Senekal complaint

3.4. The allegations against Group Five Limited and the other implicated firms are that they entered into an agreement and/or engaged in a concerted practice to fix prices, divide markets and tender collusively in response to a tender for the rehabilitation of National route 5, Section 4, between Senekal and Vaalpenspruit. The tender was issued by South African National Roads Agency ("SANRAL"). The complaint was investigated under case number: 2009Sep4641. The case number allocated by the Tribunal is CR229MAR15.

3.5. The Commission's investigation found that:

3.5.1. In or about November 2006, SANRAL invited bids for the Rehabilitation of National Route 5, Section 4 between Senekal and Vaalpenspruit.

3.5.2. WBHO, Murray & Roberts, Group Five Limited, Blacktop Surfaces (Pty) Ltd, Globul Roads (Pty) Ltd submitted bids for the tender.

3.5.3. Group Five Limited colluded with WBHO and Murray Roberts to exchange cover quote. In terms of the collusive arrangement, Group Five Limited requested cover quote from WBHO and Murray & Roberts in order to ensure that Group Five Limited price lower to win the tender.

3.6. This conduct amounts to price fixing, dividing the markets by allocating customers and collusive tendering in contravention of sections 4(1)(b)(i), (ii) and (iii) of the Act.

4. ADMISSION OF LIABILITY

4.1. Group Five admits that it engaged in the conduct described paragraph 3.1 and 3.2 above relating to the Stadia Complaint in contravention of sections 4(1)(b)(i), (ii) and (iii) of the Act.

4.2. Group Five does not admit liability in regard to the Senekal complaint.

5. ADMINISTRATIVE PENALTY

5.1. Group Five agrees and undertakes to pay an administrative penalty of R1 000 000.00 (One Million Rand) in full and final settlement of both complaints. The R1 000 000 comprises of R500 000.00 (five hundred thousand Rand) for the Stadia complaint and R500 000.00 (five hundred thousand Rand) for the Senekal complaint. This amount does not exceed 10% (ten percent) of Group Five's annual turnover in the Republic of South Africa for the financial year ended 2019.

5.2. Group Five shall pay the amount set out above within 30 (thirty) days from the date of confirmation of this Settlement Agreement as an order of the Tribunal-.

5.3. The administrative penalty shall be paid into the Commission's bank account, details of which are as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4087641778

Branch Code: 323 345

Ref: 2009Feb4279/2009Sep4641 Group Five

5.4. The Commission shall pay the amount over to the National Revenue Fund in accordance with section 59(4) of the Act.

6. FULL AND FINAL SETTLEMENT

6.1. This Settlement Agreement is entered into in full and final settlement of the Commission's investigations of the Stadia and Senekal complaints, the Referral and the Litigation. Upon confirmation as an order of the Tribunal, this settlement agreement concludes all proceedings between the Commission and Group Five relating to the conduct that is the subject of the Commission's investigations under case numbers 2009Feb4279 and 2009Sep464, including the Referrals, and any other investigations in regard to the alleged conduct of Group Five referred to in this Settlement Agreement.

6.2. The parties further agreed that each party will bear its own legal costs arising out of and relating to the Stadia complaint, the Senekal complaint, the Referrals and the Litigation.

6.3. Group Five Construction shall serve and file a notice of withdrawal of the Litigation to the Commission within five (5) days of the date of confirmation of the Settlement Agreement as an order of the Tribunal.

Dated and signed at Hermanus on the 6th day of March 2025

For Group Five

Name in Full: D.A.C. Lake

Position: Business Rescue Practitioner

Dated and signed at Pretoria on the 11th day of March 2025

For the Commission

DORIS TSHEPE

COMMISSIONER