

COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO141Dec24

In the matter between:

The Competition Commission

Applicant

And

Vermont Sales (Pty) Ltd

Respondent

Panel: AW Wessels (Presiding Member)
A Ndoni (Tribunal Member)
G Budlender (Tribunal Member)

Heard on: 04 March 2025

Decided on: 04 March 2025

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Vermont Sales (Pty) Ltd annexed hereto.

Presiding Member

04 March 2025

Mr Andreas Wessels

Date

Concurring: Ms Andiswa Ndoni and Adv. Geoff Budlender SC

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

**CT CASE NUMBER:
CC CASE NUMBER: 2023Jul0001**

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

VERMONT SALES (PTY) LTD

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, 89 OF 1998¹ AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND VERMONT SALES (PTY) LTD IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTION 5(2), OF THE COMPETITION ACT, 1998, AS AMENDED

PREAMBLE

The Competition Commission and Vermont Sales (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 in respect of alleged contraventions of section 5(2) of the Act.

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. **"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(1) of the Act.

1.4. **"Complaint"** means the complaint which was initiated by the Commissioner on 13 June 2023 against the Respondent in terms of Section 498(1) of the Act for an alleged contravention of section 5(2) of the Act.

1.5. **"Confirmation Date"** means the date of confirmation of the Consent Agreement as an order of the Tribunal.

1.6. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Respondent.

1.7. **"Festool"** means the premium brand of power tools and accessories distributed by the Respondent in South Africa.

1.8. **"Parties"** means the Commission and the Respondent.

1.9. **"Respondent"** means Vermont Sales (Pty) Ltd, a company duly registered in accordance with the laws of the Republic of South Africa, with its principal place of business at 192 Tsessebe Crescent, Corporate Park South, Old Pretoria Rd, Randjespark, Midrand, South Africa.

1.10. **"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 COMPLAINT INVESTIGATION FINDINGS

2.1 On 14 March 2023, Integrity Tools (Pty) Ltd ("Integrity Tools") lodged a complaint alleging that the Respondent had a trading policy which required dealers who did not physically hold stock of Festool products to not advertise

Festool products at a discount to the recommended list price. Pursuant to Integrity Tools withdrawing its complaint, the Commissioner initiated a complaint against the Respondent on 13 June 2023 in terms of section 498(1) of the Act for allegedly engaging in the practice of minimum resale price maintenance in contravention of section 5(2) of the Act.

2.2 The Commission investigated the complaint including allegations that the Respondent required dealers to offer customers a maximum of 15% discount in respect of Festool products.

2.3 During the course of the investigation, the Respondent approached the Commission with a view to resolving the matter amicably. The Parties agreed to settle the complaint in the terms of this Consent Agreement.

3. ADMISSION

The Respondent does not admit that it contravened section 5(2) of the Act.

4. FUTURE CONDUCT

The Respondent agrees to:

4.1 Desist from conduct in contravention of section 5(2) of the Act.

4.2 Develop, implement, and monitor a competition law compliance programme incorporating corporate governance designed to ensure that none of its employees, management, directors and agents who are involved in any commercial activities in South Africa engage in future contraventions of the Act. In particular, such compliance programme will include the following:

4.2.1 A competition policy to be drafted and implemented by the Respondent;

4.2.2 Specific training on competition law aspects particularly relevant to

the prohibited practice of minimum resale price maintenance, which training has already commenced; and

4.2.3 Ensure that such training will be made available to all new employees joining the Respondent. Furthermore, the Respondent will update such training annually to ensure on an on-going basis that it and its members cannot engage in any anti-competitive activities.

5. ADMINISTRATIVE PENALTY

5.1 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, the Respondent undertakes to pay an administrative penalty.

5.2 The Parties have agreed that the Respondent will pay an administrative penalty in the amount of R900 000.00 (Nine hundred thousand Rand).

5.3 This amount does not exceed 10% of the Respondent's total annual income in the Republic and its exports from the Republic for its 2022 financial year.

5.4 The Respondent will pay the amount set out in 5.2 above to the Commission in three equal instalments within 90 days after the Confirmation Date.

5.5 The 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 4087641778

BRANCH CODE: 323 345

PAYMENT REFERENCE: 2023Jul0001

5.6 The 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. MONITORING AND COMPLIANCE

6.1 The Respondent shall provide the Commission with an affidavit attested to by a senior official from the Respondent within 60 days of the Confirmation Date, confirming compliance with the undertakings in 4 above.

6.2 The compliance affidavit and other documents relating to this matter shall be forwarded to the Commission at ccsa@compcom.co.za with the Commission case number of this matter (i.e. 2023Jul0001) as the reference.

7. FULL AND FINAL SETTLEMENT

This Settlement Agreement is entered into in full and final settlement in respect of all conduct which is the subject matter of the Commission's investigation under the Complaint, and, upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and the Respondent in respect of all such conduct.

Dated and signed at MIDRAND on the 12th day of NOVEMBER 2024

Duly authorised to sign for Vermont Sales (Pty) Ltd

Name in Full: ROLAND HUMT

Position: DIRECTOR -

Dated and signed at Pretoria on the 4th day of December 2024

For the Competition Commissioner

Doris Tshepe

Commissioner