

competitiontribunal

COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: CR031Jun15

In the matter between:

The Competition Commission

Applicant

And

Global Sustainable Risk Control Management (Pty) Ltd

First Respondent

Panel : Y Carrim (Presiding Member)
M Mazwai (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 04 October 2016

Decided on : 04 October 2016

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Global Sustainable Risk Control Management (Pty) Ltd annexed hereto marked "A".

04 October 2016

Date

Presiding Member

Ms Yasmin Carrim

Concurring: Ms Mondo Mazwai and Ms Medi Mokuena

ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No. CR031Jun15

CC Case No: 2014Jul0405

In the matter between:

COMPETITION COMMISSION

Applicant

And

GLOBAL SUSTAINABLE RISK CONTROL

MANAGEMENT (PTY) LTD

First

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)

(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED,

BETWEEN THE COMPETITION COMMISSION AND GLOBAL SUSTAINABLE RISK CONTROL MANAGEMENT (PTY) LTD IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Global Sustainable Risk Control Management (Pty) Ltd ("GSRCM") hereby agree that the application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 490 read with 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) 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 **"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 Competition Commission, appointed in terms of section 22 of the Act;

1.4 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2014JUL0405.

1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and GSRCM;

1.6 **"GSRCM"** means a private company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 232 Curie Boulevard, Vanderbijlpark.

1.7 **"Parties"** means the Commission and GSRCM;

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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1 On 28 July 2014, the Commission initiated a complaint in terms of section 49(8)(1) of the Act into alleged prohibited practices relating to price-fixing in the market for Safety Health Environmental Risk Quality ("SHERQ") services against Global Sustainable Risk Control Management (Pty) Ltd ("GSRCM") and Real Tree Trading 1 (Pty) Ltd ("Real Tree Trading"). These services include safety induction training.

2.2 GSRCM and Real Tree Trading shall collectively be referred to as the Respondents.

2.3 The Commission's investigation revealed the following:

2.3.1 During the period 2013, the Respondents agreed to fix the price of safety induction training services.

2.3.2 In terms of the agreement, the Respondents agreed to match each other's price at R200 per person for the safety induction training services.

3. ADMISSION

3.1 **GSRCM admits the following:**

3.1.1 During October 2013 it engaged in discussion, with the representatives of the Second respondent, concerning the unit price to be charged in respect of health and safety induction training services. The discussions are captured in the e-mail dated 25 October 2013, annexed hereto as Annexure "A".

3.1.2 The Second Respondent advised the First Respondent that it would charge the unit price of R200 per learner for the aforementioned training.

3.1.3 Based on this advice, the First Respondent decided not to pursue a complaint lodged against the Second Respondent pertaining to its alleged abuse of dominance.

3.1.4 The aforementioned conduct constitutes an infringement of section 4(1)(b)(i) of the Act.

4. FUTURE CONDUCT

4.1 GSRCM agrees to:

4.1.1 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.

4.1.2 Refrain from engaging in conduct in contravention of section 4(1)(b) of the Act.

4.1.3 Undertakes henceforth to engage in competitive pricing.

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, GSRCM is liable to pay an administrative penalty.

5.2 GSRCM agrees and undertakes to pay an administrative penalty in the amount of **R393, 626.40c (Three Hundred and Ninety Three Thousand, Six Hundred and Twenty**

Six Rand and Forty Cents). This amounts to 5% of its annual turnover for the financial year 2013.

5.3 The administrative penalty does not exceed 10% of GSRCM's annual turnover in the Republic of South Africa for the financial year ended February 2013.

5.4 GSRCM will pay the administrative penalty set out in paragraph 5.2 above to the Commission over a 12 month period, in four tranches, as follows:-

5.4.1 The first instalment of R98, 406.60 on or before 31 December 2016.

5.4.2 The second instalment of R98, 406.60 on or before 31 March 2017.

5.4.3 The third instalment of R98, 406.60 on or before 30 June 2017.

5.4.4 The last instalment of R98, 406.60 on or before 30 September 2017.

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

Name: The Competition Commission

Bank: Absa Bank, Pretoria

Account Number: [4...]

Branch Code: 632005

Ref: 2014JUL0405/ GSRCM

5.6 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

6.1 This agreement, upon confirmation as an order of the Tribunal, is entered into in full

and final settlement of the prohibited practice engaged in by GSRCM and its competitor as set out in paragraph 2.3 above and concludes all proceedings between the Commission and GSRCM under case number **2014JUL0405**.

Dated and signed at SUNNYSIDE on the 4 day of OCTOBER 2016

For **Global Sustainable Risk Control Management (Pty) Ltd**

Chief Executive Officer

Name in Full: CHRISTOPHER TARBOTON

Dated and signed at **PRETORIA** on the **4th** day of **OCTOBER** **2016**

For the **Commission**

Thembinkosi Bonakele

Competition Commissioner

From: Christopher Tarboton <christopher@gsrsrcrsk.co.za>

Sent: 25 October 2013 12:55 PM

To: Mamontshi Keleme

Subject: RE: Complaint Withdrawal against Real Tree Trading

Good Afternoon

Further to our above complaint, management at GSRC Management have met with management of RealTree Trading and we have been assured that they will adjust their pricing to bring it into line with our pricing model hence our reason for wanting to withdraw this complaint against them.

This is for Safety Induction Training at the ArcelorMittal Vanderbijlpark Steel Plant and we, GSRC, have been the sole provider for the last four years. In this field of supplying that training to ArcelorMittal Steel Vanderbijlpark.

As of the 4th October 2013, Real Tree Trading were given the opportunity of also providing the same training to contractors going into ArcelorMittal Steel premises and they initially made their pricing at R200/person as opposed to our pricing of R250-00/person. We then dropped our price to meet them on R200-00/person but they then dropped their pricing again to R180-00/person, a price that we cannot meet as they have dominance in the market of being a Non-Profit Organisation with the backing of ArcelorMittal Steel and numerous commercial enterprises that generate cash flow for them.

It was because of this that we approached the competition commission but after our latest meeting of Tuesday 22 October they have advised us that they are going to drop their prices to meet ours at R200-00/person so we do not need to take the complaint further.

I hope that this is sufficient, but please feel free to contact me for anything further.

Best regards

Christopher Tarboton

General Manager

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Cell: 076 845 7923

Fax: 016 931 3664

Web: www.gsrrisk.co.za

**DEVELOPING ACCOUNTABLE PARTNERSHIPS WITH OUR CLIENTS INSTEAD OF FINANCIAL
RELATIONSHIPS**