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**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR133Sep15/SA218Nov18

In the matter between:

The Competition Commission

Applicant

And

Casalinga Investments CC Trading as Waste Rite

Respondent

Panel N Manoim (Presiding Member)
 A Ndoni (Tribunal Member)
 F Tregenna (Tribunal Member)

Heard on 28 November 2018

Decided on 28 November 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Casalinga Investments CC Trading as Waste Rite annexed hereto marked "A".

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Presiding Member

Mr Norman Manoim

28 November 2018

Date

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR133SEPT15/SA218NOV18

CC CASE NO. 2014MAR0087

In the matter between:

COMPETITION-COMMISSION OF-SA

Applicant

And

CASALINGA INVESTMENTS CC T/A WASTERITE

Respondent

CONSENT AGREEMENT IN TERMS OF-SECTION 490 READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND CASALINGA INVESTMENTS CC T/A WASTERITE, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) AND (iii) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

PREAMBLE

The Competition Commission ("Commission") and Casalinga Investments CC t/a

Wasterite ("Wasterite") hereby agree that an application b 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)(b) of the Competition Act no. 89 of 1998, as amended ("the Act") in respect of a contravention of section 4(1)(b)(i) and (iii) 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 1st Floor, Mulayo Building {Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"Commissioner"** means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act;
- 1.4 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Wasterite
- 1.5 **"Crossmoor"** means X-moor Transport T/A Crossmoor Transport (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa. Crossmoor has its principal place of business at no.3 Newton Road, Pinetown, Kwa-Zulu Natal.
- 1.6 **"Lillian Naicker"** Is the sole member of Casalinga Investments CC t/a Wasterite;
- 1.7 **"Parties"** means the Commission and Wastrite;
- 1.8 **"Respondents"** means Casalinga Investments CC T/A Wasterite and X-Moor Transport (Pty) Ltd T/A Crossmoor Transport;
- 1.9 **"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 the 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside) Pretoria, Gauteng.
- 1.10 **"Wasterfte"** means Casalinga Investments CC t/a Wasterite, a close corporation duly incorporated in accordance with the Company Laws of the Republic of South Africa with its principal place of business situated at 109 Club Street, Links Field, Johannesburg, Gauteng.

2. INVESTIGATION AND FINDINGS OF THE COMMISSION

2.1 On 06 March 2014, the Commission received a complaint in terms of section 498(2) of the Act, whereby it was alleged that Wasterite and X-Moor Transport CC t/a Crossmoor Transport ("Crossmoor Transport") entered into an agreement to tender collusively and to fix tender prices when bidding for a Pikitup tender. The Respondents are alleged to have collusively tendered in respect of tender number: PU 298/2012, issued by Pikitup for the supply, operation and maintenance of plant and equipment at designated landfill, garden sites and depots around Johannesburg.

2.1.1 This conduct was in contravention of section 4(1)(b)(i) and (iii) of the Act.

2.1.2 The Commission's investigation under Case No's. 2014MAR0087 revealed the following:

2.1.3 Crossmoor and Wasterite agreed on how to price variable and fixed costs as well as hourly rates in their pricing schedule which they submitted when bidding for Pikitup tender number PU 298/2012.

2.1.4 As a result, Crossmoor and Wasterite submitted a pricing schedule to Pikitup which contained prices for all nine items of which their fixed costs were exactly the same for three consecutive years.

2.1.5 The nine items involved were Landfill Compactor, Bull Dozer, Excavator, Front End Loader, Articulated Dump Truck, Grader, Tractor Loader Backhoe, Water Tanker and Tipper Truck.

3. ADMISSION

3.1 Wasterite admits that it tendered collusively and fixed tender prices when bidding for a Pikitup tender. This conduct was in contravention of section 4(1)(b)(i) and (lii) of the Act.

4. CESSATION AND CO-OPERATION

4.1 Wasterite ceased trading in mid-2014. Ms Lillian Naicker, the sole member of Wasterite, undertook not to engage in any collusion in future on behalf of Wasterite.

4.2 In addition, Ms Lillian Naicker will assist the Commission in prosecuting the

matter against Crossmoor Transport.

5. ADMINISTRATIVE PENALTY

5.1 Wasterite has agreed that It will be liable to pay an administrative penalty of R225 690 (Two Hundred and Twenty-Five Thousand Six Hundred and Ninety Rand). This amount is less than 10% of Wasterite 1s annual turnover for the financial year ended 2015.

5.2 Ms Lillian Naicker will pay, on behalf of Wasterite, the full amount of the administrative penalty, being R225 690 (Two Hundred and Twenty Five Thousand Six Hundred and Ninety Rand) to the Commission within 30 days of the confirmation of the Consent Agreement as an order of the Tribunal.

5.3 The payment shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	[...]
Account type:	Current Account
Branch Code:	632005
Reference:	2014MAR0087 / WASTERITE_PIKITUP

5.4 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6. FULL AND FINAL SETTLEMENT

6.1 This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No: 2014MARD087 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Wasterite relating to the collusive conduct as admitted in paragraph 3 above.

FOR WASTERITE:

Dated and signed at JHB on the 1st day of 11 2018.

LILLIAN NAICKER:

Dated and signed at JHB on the 1st day of 11 2018.

FOR THE COMMISSION:

Dated and signed at PRETORIA on the 13TH day of 12 2018.