



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO248Dec17

In the matter between:

The Competition Commission

Applicant

And

Motseng Trading (Pty) Ltd

Respondent

Panel	:	Y Carrim (Presiding Member) F Tregenna (Tribunal Member) M Mokuena (Tribunal Member)
Heard on	:	14 March 2018
Last submission	:	03 April 2018
Decided on	:	03 April 2018

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Motseng Trading (Pty) Ltd annexed hereto marked "A" together with the attached addendum annexed "A1".

**Presiding Member
Ms Yasmin Carrim**

**03 April 2018
Date**

Concurring: Prof. Fiona Tregenna and Mrs Medi Mokuena

11 A

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

CT Case No.

CC Case No: 2013SEP0452

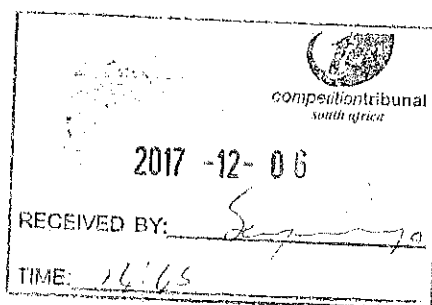
2014MAR0104

In the matter between

COMPETITION COMMISSION

And

MOTSENG TRADING (PTY) LTD



Applicant

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 MOTSENG TRADING (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (iii) OF THE COMPETITION ACT 89 OF 1998.

Preamble

The Competition Commission ("Commission") and Motseng Trading (Pty) Ltd ("Motseng Trading") 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 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, Act No. 89 of 1998, as amended ("the Act"), in respect of contraventions of section 4(1)(b) (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, 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 "Complaints" means the complaints initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2013Sep0452 and 2014Mar0104 in respect of tenders issued by the department of National Treasury and the Armaments Corporation South Africa SOC;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Motseng Trading;
- 1.6 "Motseng Trading" means Motseng Trading (Pty) Ltd, a company incorporated in South Africa with its principal place of business at 204 Rivonia Road, Block B, Morningside.
- 1.7 "Parties" means the Commission and Motseng Trading;
- 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 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

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2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 16 September 2013, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against The Good Hope Textile Corporation (Pty) Ltd trading as Da Gama Textiles ("Da Gama Textiles"), Monoge Mining Contractors & Supply Services CC ("Monoge Mining") and Motseng Trading for allegedly colluding when bidding for tender RT60-2012T issued by the National Treasury in contravention of section 4(1)(b)(iii) of the Act.
- 2.2 On 20 March 2014, the Commissioner initiated another complaint in terms of section 49B(1) on the Act against Da Gama Textiles, Monoge Mining and Motseng Trading for allegedly colluding when bidding for tenders RT60-1-2011T, RT60-2011T, RT60-2010T, RT60-2009T, ESDS/2011/259, RT60-2008T, ESDS/2011/197, ESDS/2011/171, ESDS/2011/158, ESDS/2010/156, ESDS/2009/455, ESDS/2009/415.
- 2.3 These tenders were issued by department of National Treasury and the Armaments Corporation South Africa SOC for the supply of fabric used in the manufacture of uniforms to the Department of Correctional Services, the South African Air Force, the South African Military Health Services and the South African Army.
- 2.4 The Commission's investigation revealed that:
- 2.4.1 Da Gama Textiles concluded bilateral agreements with Motseng Trading and Monoge Mining in terms of which they discussed the tenders and agreed on prices that each of them would quote in their bids submitted in response to the tenders. These agreements constitute collusive tendering which contravene section 4(1)(b)(iii) of the Act.



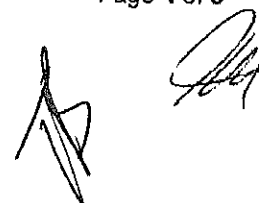

3. ADMISSION

- 3.1 Motseng Trading admits that it engaged in the prohibited practices set out in paragraph 2 above in contravention of section 4(1)(b) (iii) of the Act.

4. ADMINISTRATIVE PENALTY

- 4.1 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, Motseng Trading is liable to pay an administrative penalty.
- 4.2 Motseng Trading agrees and undertakes to pay an administrative penalty in the amount of **R200 000.00 (Two Hundred Thousand Rand Only)**. This administrative penalty represents 3.2% of Motseng Trading's annual turnover for 2015 financial year.
- 4.3 Motseng Trading will pay the amount set out in paragraph 4.2 above to the Commission within Sixty (60) days of the confirmation of this Consent Agreement as an order of the Tribunal.
- 4.4 The administrative penalty must be paid into the Commission's bank account which is as follows:

Bank Name: Absa Bank
Branch Name: Pretoria
Account Holder: The Competition Commission Fee Account
Account Number: 4087641778
Account Type: Current Account
Branch Code: 632005



Reference: 2013SEP0452&2014MAR0104 / Motseng Trading (Pty) Ltd

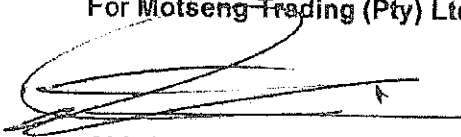
4.5 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

5. Full and Final Settlement

5.1 This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of the prohibited practices engaged in by Motseng Trading and Da Gama Textiles as set out in paragraph 2 above and concludes all proceedings between the Commission and Motseng Trading in this regard.

Dated and signed at Midrand on the 29th day of November 2017

For Motseng Trading (Pty) Ltd


Chief Executive Officer

Name in Full: IPELEENG MKHARI

Dated and signed at PRETORIA on the 4th day of DECEMBER 2017

For the Commission


Tembinkosi Bonakele
Competition Commissioner

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: CO248DEC17

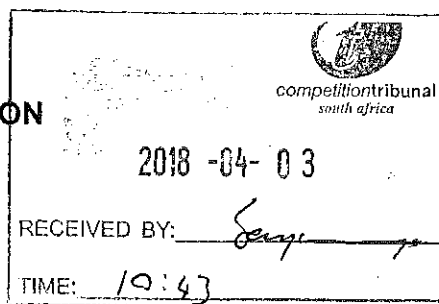
CC Case No: 2013SEP0452
2014MAR0105

In the matter between:

THE COMPETITION COMMISSION

and

MOTSENG TRADING (PTY) LTD



APPLICANT

RESPONDENT

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND MOTSENG TRADING (PTY) LTD

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and Motseng Trading (Pty) Ltd signed on 04 December 2017, and presented for confirmation by the Competition Tribunal on 14 March 2018 be supplemented as recorded below.

1. The following Paragraph –is inserted as paragraph 1.9

1.9 “Motseng Investment Holdings” means Motseng Investment Holdings (Pty) Ltd, being Motseng Trading’s parent company, with its principal place of business situated at Midrand Business Park, Block 5, 563 Old Pretoria Main Road.

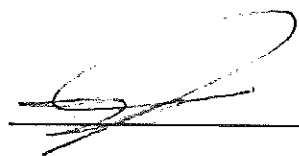
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2. Paragraph 4.1 is amended as follows:

- 4.1 Having regard to the provisions of section 58(1)(a)(iii) as read with sections 59((1)(a), 59(2) and 59(3) of the Act, Motseng Investment Holdings agrees that it is liable to pay an administrative penalty on behalf of Motseng Trading.
- 4.2 Motseng Investment Holdings, being Motseng Trading's parent company, undertakes to pay an administrative penalty in the amount of R200 000 (Two Hundred Thousand Rand Only). This administrative penalty represents 3.2% of Motseng Trading's annual turnover for the financial year ended February 2015.
- 4.3 Motseng Investment Holdings will pay the amount set out in paragraph 4.2 above to the Commission within 60 days of the confirmation of this Consent Agreement as an order of the Tribunal.
3. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning as defined in the Consent Agreement.

For Motseng Trading & Motseng Investment Holdings

Signed and Dated at MIDRAND on the 19 day of MARCH
2018.



Name in Full: IPELENG MKHARI

Designation: CEO



For the Competition Commission

Signed and Dated at PRETORIA on the 29th day of MARCH 2018.

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Name in Full: TEMBINKOSI BONAKELE

Designation: COMMISSIONER OF THE COMPETITION COMMISSION