

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

CC CASE NO: 014Apr0124

CT CASE NO: FTN200DEC15

In the matter between

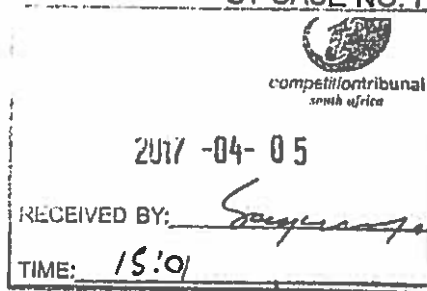
COMPETITION COMMISSION

And

BB INVESTMENT COMPANY (PTY) LTD

THE BIDVEST GROUP LIMITED

ADCOCK INGRAM HOLDINGS LIMITED



Applicant

First Respondent

Second Respondent

Third Respondent

FILING NOTICE

TAKE NOTICE THAT the applicant herewith files the following:

1. CT 6 Notice of Motion; and
2. Settlement Agreement between the Competition Commission and BB Investment Company (Pty) Ltd, the Bidvest Group Limited and Adcock Ingram Holdings Limited.

Dated at Pretoria on this the 5th day of April 2017.

[Signature]

COMPETITION COMMISSION

DTI Campus

77 Meintjies Street
Sunnyside, Pretoria
Tel: 012 394 3335
Ref: Maya Swart

Email: mayas@compcom.co.za / magdaleenv@compcom.co.za

To:

THE REGISTRAR

Competition Tribunal
3rd Floor, Mulayo
The DTI Campus
77 Meintjies Street
Sunnyside
Pretoria
Tel: 012 394 3300/55
Email: leratom@comptrib.co.za

And to:

EDWARD NATHAN SONNENBERGS

Respondents' Attorneys
150 West Street
Sandown
Sandton
T: +27 11 279 7600
Ref: M Katz / L Mendelsohn / N Lopes
Email: nlopes@ensafrica.com



competitiontribunal south africa

Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: 5-Apr-2017 File #

To: The registrar of the Competition Tribunal

Concerning the matter between:

Competition Commission (Applicant)

and BB Investment Company (Pty) Ltd and 2 others (Respondent)

Take notice that the Competition Commission intends to apply to the Tribunal for the following order:

Confirmation of the attached settlement agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 27(1)(d), read with section 49D of the Competition Act 89 of 1998 as amended ("the Act") in respect of a contravention of section 13A(3) of the Act.

competitiontribunal
south africa

2017-04-05

RECEIVED BY: *Senganga*

TIME: 15:01

Name and Title of person authorised to sign:

Bukhosibakhe Majenge: Chief Legal Counsel

Authorised Signature:

Date:

[Signature]

05/04/2017

For Office
Use Only:

Tribunal file number:

Date filed:

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

CT Case No.: FTN200DEC15

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In the matter between

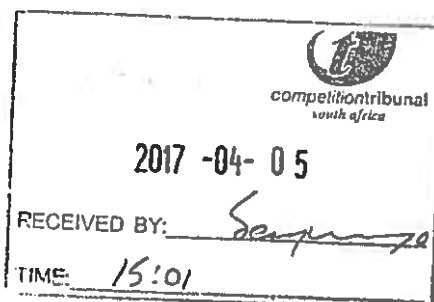
THE COMPETITION COMMISSION

and

BB INVESTMENT COMPANY (PTY) LTD

THE BIDVEST GROUP LIMITED

ADCOCK INGRAM HOLDINGS LIMITED



Applicant

First Respondent

Second Respondent

Third Respondent

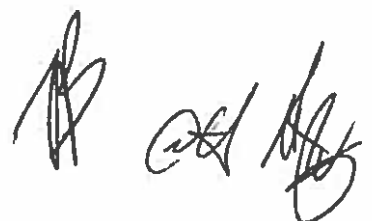
**SETTLEMENT AGREEMENT IN RESPECT OF AN ALLEGED CONTRAVENTION OF
SECTION 13A(3) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS
AMENDED**

The Competition Commission and BB Investment Company Proprietary Limited, The Bidvest Group Limited and Adcock Ingram Holdings Limited hereby agree that application be made to the Competition Tribunal for the confirmation of this *Settlement Agreement* as an order of the Competition Tribunal in terms of section 27(1)(d) read with section 49D of the Competition Act, 1998 (Act No. 89 of 1998), as amended, on the terms set out below.

1. Definitions

For the purposes of this *Settlement Agreement* the following definitions shall apply:

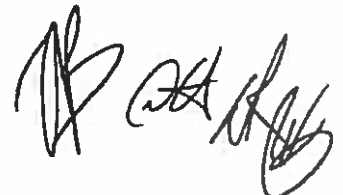
- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "Adcock" means Adcock Ingram Holdings Limited
- 1.3 "BB Investment" means BB Investment Company Proprietary Limited, a wholly owned subsidiary of The Bidvest Group Limited;
- 1.4 "Bidvest" means The Bidvest Group Limited;
- 1.5 "CIH" means Community Investments Holdings Proprietary Limited;
- 1.6 "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;
- 1.7 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.8 "Parties" means the *Commission* and the *Respondents*;
- 1.9 "Respondents" means Adcock Ingram Holdings Limited, BB Investment Company Proprietary Limited and The Bidvest Group Limited;
- 1.10 "Settlement Agreement" means this agreement duly signed and concluded between the *Commission* and the *Respondents*;



- 1.11 **"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 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
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2. Background

- 2.1 On 01 April 2014, the *Commission* was notified by *BB Investment* and *Bidvest* of its intention to acquire a controlling interest in *Adcock*. *Bidvest* envisaged acquiring control in *Adcock* through an increase in shareholding that would confer control in terms of section 12(2)(a) of the Act and/or through the acquisition of voting rights as provided for in section 12(2)(b) and or section 12(2)(c) of the Act. In the merger filing *BB Investment* did not indicate the exact size of the shareholding or voting rights it intended to acquire.
- 2.2 In the merger filing *BB Investment* submitted that it was acting on behalf of a consortium which is a joint venture between itself and *CIH*. The transaction resulted in *CIH* having an indirect non-controlling interest of approximately 10% in *Adcock*. *CIH* was however not a party to the merger as contemplated in section 1(1)(xviii) of the Act. The parties to the merger were *BB Investment* and *Bidvest* as the acquiring firms and *Adcock* as the target firm.
- 2.3 At the time of the merger notification, *Bidvest* had a shareholding of about 34.5% of *Adcock's* share capital. *Bidvest* submitted that the 34.5% shareholding comprised of a non-controlling shareholding for purposes of competition law. *Bidvest* submitted that, as it was not yet in control of *Adcock*, its strategic intention was to acquire sole control over *Adcock* in the not too distant future.
- 2.4 During the assessment of the merger by the *Commission* it became



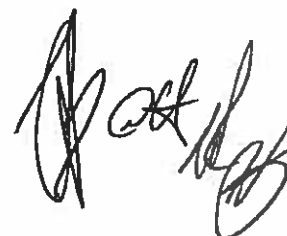
apparent to the *Commission* that, based on the information which was submitted by the merging parties, *BB Investment and Bidvest* may have acquired control over *Adcock* prior to obtaining approval from the *Tribunal* in terms of section 16(2) or the Competition Appeal Court in terms of section 17, in contravention of section 13A(3) of the Act. The *Commission* decided that the possible contravention of section 13A(3) of the Act be pursued as a separate investigation.

2.5 The *Commission* recommended that the merger be approved subject to conditions. The merger was conditionally approved by the *Tribunal* on 19 August 2014. The conditions imposed by the *Tribunal* related to the impact of the merger on employment.

2.6 In respect of the question of whether *Bidvest* had already acquired material influence over *Adcock* before the approval of the transaction, the *Tribunal* in paragraphs 51 and 53 of its reasons for the decision concluded as follows:

"We conclude that the present record shows that on a balance of probabilities, Bidvest has already acquired material influence over Adcock. Secondly, that the material influence extended to the removal of Louw and the appointment of Wakeford as a person likely to carry out Bidvest's strategy for turning around Adcock's fortunes. This conclusion is entirely consistent with what Joffe told his Acquisition Committee that Bidvest needed to do - as the minutes quoted earlier show-urgently acquire management control of Adcock.

This does not mean we have made a finding that Bidvest has already implemented the merger in contravention of the Act, which is not an issue that we are presently required to decide. Rather, the conclusion is based purely on the evidence in the current record in order to decide whether

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public interest issues that follow are merger specific in the sense they are the product of the influence of the acquiring firm."

- 2.7 The *Commission* investigated the alleged prior implementation following the *Tribunal's* decision and concluded that *BB Investment and Bidvest* may have acquired control over *Adcock* between 29 November 2013 up to 20 May 2014 and prior to obtaining approval from the Competition Tribunal in terms of section 16(2) or the Competition Appeal Court in terms of section 17, in contravention of section 13A(3) of the Act.

3. The Commission's findings:

- 3.1 After concluding its investigation the *Commission* found that through a sequence of events, in the period between 29 November 2013 up to 20 May 2014, *BB Investment and Bidvest* acquired control in terms of section 12(2)(g) of the Act prior to the approval by the *Tribunal* on 19 August 2014.
- 3.2 The *Commission* found that *BB Investment and Bidvest* established of control of *Adcock* through the sequence of events set out in paragraphs 25 to 58 of the Commission's referral.
- 3.3 The *Commission* referred the above matter to the *Tribunal* on 9 December 2015, seeking an administrative penalty against the *Respondents*, jointly and severally, for the alleged contravention of section 13A(3) of the Act. The *Respondents* contested the allegations made by the Commission and filed an answering affidavit opposing the *Commission's* referral. On 30 November 2016 the *Tribunal* convened a pre-hearing in the matter. Following the pre-hearing the parties engaged in settlement discussions which culminated in this *Settlement Agreement*.

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4. Statement of Conduct

- 4.1 *BB Investment and Bidvest* admit that the reconstituted Board of *Adcock* approved changes to *Adcock's* internal processes and structures between 29 November 2013 up to 20 May 2014.
- 4.2 *The Commission* contends that the above conduct constitutes an implementation of a merger prior to approval in contravention of section 13A(3) of the Act.

5. Agreement concerning the Respondent's future conduct

- 5.1 *The Respondents* agree to:
- 5.1.1 Undertake not to engage in any contravention of the Act;
- 5.1.2 Develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its senior management and directors do not engage in future contraventions of the Act;
- 5.1.3 To submit a copy of such compliance programme to the *Commission* within 90 days of the date of confirmation of the *Settlement Agreement* as an order by the *Tribunal*.

6. Settlement Amount

- 6.1 *Having regard to the provisions of section 49D, the Respondents* agree to pay a settlement amount on the basis of joint and several liability, the one paying, the others to be absolved.

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6.2 The parties have agreed that *Bidvest* will pay a settlement amount in the amount of R 2 000 000.00 (Two Million Rand);

6.3 *Bidvest* will pay the amount set out in paragraph 6.2 above to the Commission within 30 days from the date of confirmation of this Settlement Agreement by the Tribunal.

6.4 The settlement amount 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: 4050778576

BRANCH CODE: 323 345

REF: 2014Apr0124/FTN200DEC15

6.5 The settlement amount will be paid over by the *Commission* to the National Revenue Fund in accordance with the procedure contained in section 59(4) of the Act.

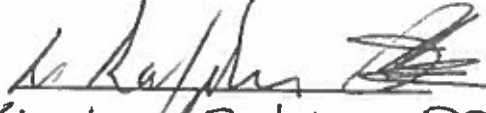
7. Full and Final Settlement

This *Settlement Agreement*, upon confirmation as an order by the *Tribunal*, is entered into in full and final settlement and concludes all proceedings between the *Commission* and the *Respondents* relating to any alleged contravention of the Act by the *Respondents*, that is the subject of the *Commission's* investigation referred to the *Tribunal* under CT Case No. FTN200DEC15.



Dated and signed at Melrose Arch on the 30th day of March 2017

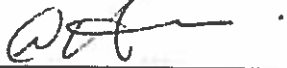
For BB Investment Company Proprietary Limited


Lindsay Ralphs Mphahlele Madisa
Executive Director Executive Director

For The Bidvest Group Limited

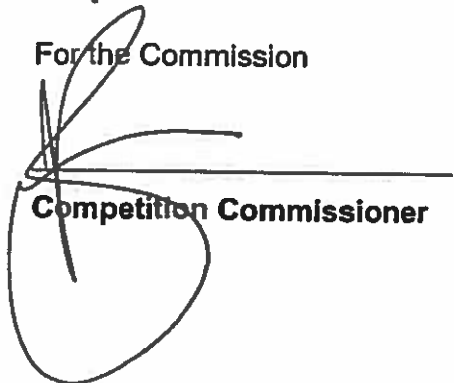
 
Lindsay Ralphs Mphahlele Madisa
Chief Executive Executive Director

For Adcock Ingram Holdings Limited


A.C. HALL (DIRECTOR)

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

For the Commission


Competition Commissioner