

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: 016931**

**In the matter between:**

The Competition Commission

Applicant

and

Aveng (Africa) Ltd

Respondent

Panel:

N Manoim (Presiding Member), Y Carrim  
(Tribunal Member) and T Madima (Tribunal  
Member)

Heard on:

17 July 2013

Decided on:


23 July 2013

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**Order**

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The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A" and the addendum thereto marked "B".



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Presiding Member  
N Manoim

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**Concurring:** Y Carrim and T Madima

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA  
HELD IN PRETORIA

CT Case No.

CC Case No. 2009Feb4279/2009Sep4641


Application for confirmation of a consent agreement

In the matter between:

THE COMPETITION COMMISSION

and

AVENG (AFRICA) LIMITED

 competition tribunal south africa	
2013 -06- 24	
RECEIVED BY:	-Malow
TIME:	9:30

Applicant

Respondent

**CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1)(a)(iii) AS READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND AVENG (AFRICA) LIMITED ("AVENG"), IN REGARD TO CONTRAVENTIONS OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT, 1998**

**PREAMBLE**

**WHEREAS** the Competition Commission is empowered to, *inter alia*, investigate alleged contraventions of the Competition Act, 1998;

**WHEREAS** the Competition Commission is empowered to, *inter alia*, conclude consent agreements in terms of section 49D of the Competition Act, 1998;

**WHEREAS** the Competition Commission has invited firms in the construction industry to engage in settlement of contraventions of the Competition Act, 1998;

**WHEREAS** Aveng (Africa) Ltd has accepted this invitation and has agreed to settle in

accordance with the terms of the Invitation;

**NOW THEREFORE** the Competition Commission and Aveng (Africa) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this consent agreement as an order of the Competition Tribunal in terms of section 49D as read with sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act, 1998.

## **1. Definitions**

For the purposes of this consent agreement the following definitions shall apply:

1.1 **"Act"** means the Competition Act, 1998 (Act No. 89 of 1998), as amended;

1.2 **"Aveng"** means Aveng (Africa) Ltd, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at 204 Rivonia Road Morningside, 2057, South Africa;

1.3 **"CIDB"** means the Construction Industry Development Board;

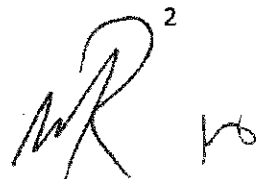
1.4 **"CIDB Regulations"** refers to the Construction Industry Development Regulations, 2004 (as amended) (Government Notice No. 692 of 9 June 2004, published in Government Gazette No. 26427 of 9 June 2004);

1.5 **"CLP"** means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);

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 1<sup>st</sup> 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 **"Complaints"** means the complaints initiated by the Commissioner of the

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Competition Commission in terms of section 49B of the Act under case numbers 2009Feb4279 and 2009Sep4641;

1.9 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Aveng (Africa) Ltd;

1.10 **"Cover Price"** means generally, a price that is provided by a firm that wishes to win a tender to a firm that does not wish to do so, in order that the firm that does not wish to win the tender may submit a higher price; or alternatively a price that is provided by a firm that does not wish to win a tender to a firm that does wish to win that tender in order that the firm that wishes to win the tender may submit a lower price.

1.11 **"Grinaker-LTA"** means an operating business unit of Aveng. Grinaker-LTA is a multi-disciplinary construction and engineering unit of Aveng, anchored in South Africa and focused on selected infrastructure, energy and mining opportunities in Africa.


1.12 **"Invitation"** means the Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Competition Act, as published on the website of the Commission on 1 February 2011;

1.13 **"Non-prescribed prohibited practices"** refers to prohibited restrictive horizontal practices relating to the construction industry that are contemplated in section 4(1)(b) of the Act and that are on-going or had not ceased three years before the Complaints were initiated, as contemplated in section 67 of the Act;

1.14 **"Parties"** means the Commission and Aveng;

1.15 **"Prescribed prohibited practices"** refers to prohibited restrictive horizontal practices relating to the construction industry that are contemplated in section 4(1)(b) of the Act and that ceased after 30 November 1998, but more than three years before the complaints were initiated;

1.16 **"Respondent"** means Aveng;

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1.17 **"Settlement"** refers to settlement in terms of the Invitation and the procedures detailed therein;


1.18 **"Sub-sector of the construction industry"** refers to the classes of construction work defined in Schedule 3 of the CIDB Regulations, substituted by Government Notice No. 8986 of 14 November 2008, published in Government Gazette No. 31603 of 14 November 2008; and

1.19 **"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 3<sup>rd</sup> Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

## 2. The Complaint

2.1 On 10 February 2009 the Commission initiated a complaint in terms of section 49B(1) of the Act into alleged prohibited practices relating to collusive conduct in the construction of the stadiums for the 2010 FIFA Soccer World Cup against Grinaker-LTA, Group Five Limited, Basil Read (Pty) Ltd, WBHO Construction (Pty) Ltd, Murray & Roberts Limited, Stefanutti Stocks Limited, Interbeton Abu Dhabi nv llc and Bouygues Construction SA.

2.2. In addition, on 01 September 2009, following the receipt of applications for immunity in terms of the CLP, the Commission initiated a complaint in terms of section 49B(1) of the Act into particular prohibited practices relating to conduct in construction projects, by the firms listed below. The complaint concerned alleged contraventions of section 4(1)(b) of the Act as regards price fixing, market allocation and collusive tendering. The investigation was initiated against the following firms: Aveng, Stefanutti Stocks Holdings Ltd, Group Five Ltd, Murray & Roberts, Concor Ltd, G. Liviero & Son Building (Pty) Ltd, Giuricich Coastal Projects (Pty) Ltd, Hochtief Construction AG, Dura Soletanche-Bachy (Pty) Ltd, Nishimatsu Construction Co Ltd, Esorfranki Ltd, VNA Pilings CC, Rodio Geotechnics (Pty) Ltd, Diabor Ltd, Gauteng Piling (Pty) Ltd, Fairbrother Geotechnical CC, Geomechanics CC, Wilson Bayly Holmes-Ovcon Ltd and other construction firms, including joint ventures.

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### 3. The Invitation to Firms in the Construction Industry to Engage in Settlement of Contraventions of the Act

3.1 The Commission's investigation of the complaints, as well as several other of the Commission's investigations in the construction industry, led the Commission to believe that there was widespread collusion in contravention of section 4(1)(b)(iii) of the Act in the construction industry.

3.2 Section 4(1)(b) provides-

*"4. Restrictive horizontal practices prohibited*

*(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if -*

*(a) it has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect; or*

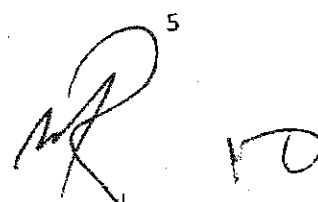
*(b) it involves any of the following restrictive horizontal practices:*

*(i) directly or indirectly fixing a purchase or selling price or any other trading condition;*

*(ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or*

*(iii) collusive tendering.*"

3.3 The collusive conduct engaged in, in the context of the Invitation and this Consent Agreement, was collusive tendering or "bid-rigging". Collusive tendering involves particular conduct by firms whereby as competitors they collude regarding a tender resulting in the tender process being distorted. The bid prices and the bid submissions by these competitors as well as the outcome of the tender process is not the result of competition on the merits. "Cover pricing" in this context occurs when conspiring firms agree that one or more of them will submit a bid that is not intended to win the contract. The agreement is reached in such a way that among the colluding firms, one firm wishes to win the tender and the others agree to submit non-competitive bids with prices that would be higher than the bid of the designated winner, or the price will be too high to be accepted, or the bid contains special terms that are known to be unacceptable to

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the client. Collusive tendering therefore applies to agreements or concerted practices which have as their object or effect the prevention, lessening, restriction and distortion of competition in South Africa.


- 3.4 In terms of section 2 of the Act, two of the key objects of the Act are to promote the efficiency, adaptability and development of the economy, and to provide consumers with competitive prices and product choices. Section 217 of the Constitution, 1996 calls for a procurement or tender system which is fair, equitable, transparent, competitive and cost-effective.
- 3.5 In addition, the Commission is required in terms of section 21(1) of the Act, *inter alia*, to implement measures to increase market transparency, to investigate and evaluate alleged contraventions of Chapter 2 of the Act, and to negotiate and conclude consent agreements in terms of section 49D for confirmation as an order of the Competition Tribunal in terms of section 58(1)(b) of the Act.
- 3.6 Therefore, in the interest of transparency, efficiency, disrupting cartels and incentivising competitive behaviour in the construction industry and a cost-effective, comprehensive and speedy resolution of the investigations referred to above, the Commission decided to fast track these investigations and their resolution by inviting firms that were involved in collusive tendering in the form of bid-rigging of projects in the construction industry, to apply to engage in settlement on the terms set out in the Invitation.
- 3.7 On 1 February 2011 the Commission issued a media release about the Invitation and published same on its website. In the Invitation, hereto attached and marked as **Annexure A**, the Commission offered firms the opportunity to settle alleged contraventions of the Act, if they would:
- 3.7.1 submit an application in terms of PART 2 of the Invitation;
- 3.7.2 agree to pay an administrative penalty or penalties determined by the Commission as envisaged in paragraph 10.2 read with paragraphs 19-28 of the Invitation; and
- 3.7.3 comply with the requirements of the Settlement as set out in PART 1 and

### PART 3 of the Invitation.

- 3.8 This agreement sets out the details of the non-prescribed prohibited practices only, which the respondent is liable to settle regard being had to the provisions of section 67(2) of the Act and the penalty is calculated taking into account only the said non-prescribed prohibited practices.
- 3.9 Applying firms were required to *inter alia* provide the Commission with truthful and timely disclosure of information and documents relating to the prohibited practices and to provide full and expeditious co-operation to the Commission concerning the prohibited practices.
- 3.10 An applying firm could request the Commission to consider its application in terms of the Invitation as an application for a marker or as an application for immunity under the CLP. Firms could also apply for a marker or for immunity under the CLP before making an application in terms of the Invitation.
- 3.11 The deadline to apply for a Settlement in terms of the Invitation was 12h00 on Friday 15 April 2011.

#### 4. Applications by Aveng

- 4.1. Aveng applied for leniency and Settlement in terms of the Invitation, on behalf of Grinaker-LTA, its operating business unit. Grinaker-LTA is a multi-disciplinary construction and engineering entity, conducting business principally in South Africa and focused on selected infrastructure, energy and mining opportunities in Africa.
- 4.2. Aveng applied on 15 April 2011 and disclosed fifty seven (57) prohibited practices. Twenty one (21) of these are prescribed prohibited practices and thirty six (36) are non-prescribed prohibited practices.
- 4.3. Out of the thirty six (36) non-prescribed prohibited practices, Aveng is first to apply in respect of twenty six (26) non-prescribed prohibited practices for Conditional Immunity in terms of the CLP.

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4.4. In respect of the ten (10) (i.e. 36 less 26) non-prescribed prohibited practices where Aveng is not first to apply, seven (7) non-prescribed prohibited practices (6 projects and 1 meeting) are in the Civil Engineering sub-sector and three (3) non-prescribed prohibited practices (2 projects and 1 meeting) are in the General Building sub-sector.

4.5. Furthermore, Aveng is implicated in seven (7) non-prescribed prohibited practices which it was unable to disclose. Aveng has agreed to settle these.

4.6 The seventeen (17) (i.e. 10 plus 7) prohibited practices or contraventions by Aveng of section 4(1)(b)(iii) of the Act which are the subject of this Consent Agreement, are set out below.



## **5. Disclosed Projects**

### **5.1. Braamhoek Quarry Dam (Tender no. CED0022/EM)**

Grinaker-LTA reached an agreement with Blasting & Excavation International ("B&E International") on or about 16 February 2007 in respect of the Braamhoek Quarry Dam tender. In terms of the agreement, Grinaker-LTA received a cover price from B&E International and also discussed tender qualifications with it in 2007. The purpose of the cover price was to ensure that Grinaker-LTA loses the tender and B&E International wins it. In line with the collusive arrangement, the project was awarded to B&E International. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The Braamhoek Quarry Dam project was for civil works for the Braamhoek pumped storage scheme. The client for the project was Eskom Holdings Limited.

### **5.2 SANRAL tender: Mount Frere (Tender no. SCMU10-06/07-0043)**

Grinaker-LTA reached an agreement with WBHO Construction (Pty) Ltd ("WBHO") on or about 14 August 2006 in respect of the SANRAL tender: Mount Frere, in that, Grinaker-LTA provided a cover price to WBHO at the latter's request to enable WBHO to win the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The project was a two month project for the rehabilitation of the district gravel road N2 to the R56 T-junction Section 1 in Mount Frere, which included earthworks, paving, structure and drainage. The client for the project was the Eastern Cape Department of Roads

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and Transport. The project was awarded to WBHO and was completed 14 June 2010.

**5.3 Tati Activox Area 1 and 2 (Tender no. CC002 & CC004)**

Grinaker-LTA reached an agreement with Stefanutti Stocks Limited ("Stefanutti") (whilst Grinaker-LTA was a joint venture partner to Stefanutti), Murray & Roberts Limited ("Murray & Roberts") and Basil Read (Pty) Ltd ("Basil Read") on or about 18 June 2007 in respect of the Tati Activox Area 1 and 2 project, in that, the Stefanutti/Grinaker-LTA joint venture provided cover prices to Murray & Roberts and Basil Read to enable Stefanutti/Grinaker-LTA joint venture to win the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. This project was for the construction of Area 1 and Area 2 at a refinery mine in Botswana. The client for the project was Botswana Metal Refinery (Pty) Ltd, a subsidiary of LionOre Mining International Ltd. The project was awarded to the Stefanutti/Grinaker-LTA joint venture and the tender was completed in September 2008.

**5.4 Tati Nickel DMS (Tender no. C2585/7/010)**

Grinaker-LTA in joint venture with Stefanutti reached agreement with Murray & Roberts and Basil Read, on or about February 2007, in that they agreed on a cover price in relation to this project. In terms of the agreement, Grinaker LTA/Stefanutti joint venture gave a cover price to Murray & Roberts and Basil Read so that Murray & Roberts can win the tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. This project was for the DMS civil works at Tati near Francistown in Botswana for Tati Mining Company. The tender was awarded to Murray & Roberts and the closing date for the project was 1 February 2007.

**5.5 Soccer City Stadium (Tender no. SR 262)**

Grinaker LTA reached agreement with Stefanutti in that they agreed on a cover price in respect of this project. In terms of the agreement Grinaker LTA gave a cover price to Stefanutti to enable Grinaker LTA to win the tender. The tender was awarded to Grinaker LTA in line with the cover price arrangement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. This project involved the provision of general building and related works at

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Soccer City Stadium for the City of Johannesburg. The project was completed on 30 April 2009.

**5.6. Sappi Amakhulu Project (Tender no. 06/48 & 06/53)**

Grinaker LTA reached an agreement with the Stefanutti/Group Five joint venture on or about 2006, in respect of the Sappi Amakhulu Project. In terms of the agreement, Grinaker LTA provided a cover price to the joint venture of Stefanutti and Group Five to enable the Stefanutti/Group Five joint venture to win. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The project was for the expansion of the SAPPI plant. The client was SAPPI SAICCOR. The tender was awarded to Stefanutti/Group Five joint venture but was executed by the three firms, namely Grinaker LTA, Stefanutti and Group Five at the request of the client. The project was completed in April 2008.

**5.7. Coega Office Block Development (Tender no. 03754)**

Grinaker LTA reached an agreement with WBHO on or about July 2005 in respect of the Coega Office Block Development project, in that, Grinaker LTA provided a cover price to WBHO to enable Grinaker LTA to win. Grinaker LTA and WBHO further agreed to add 0,75% to their respective tender amounts, which amount would then be paid to the unsuccessful bidder as a loser's fee. Grinaker LTA, as the winner of the tender, paid WBHO the loser's fee in two instalments on 07 March 2007 and 31 October 2007. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The project was for the construction of a multi-tenanted office block for Coega Development Corporation. The client was the Coega Development Corporation. The tender was completed on 01 March 2008.

**5.8. UCT Ladies Residence Project (unknown Tender no.)**

This is one of the projects that were subjected to an overarching collusive arrangement in the Western Cape known as the Western Cape Building Market or the Cape Club Meetings. In respect of this project, Grinaker LTA reached an agreement with Group Five and Stefanutti on or about July 2005 in that they agreed on a cover price. In terms of the agreement, Grinaker LTA provided a

cover price to Group Five to enable Group Five to win the tender. In line with the collusive arrangement, the tender was awarded to Group Five. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The project was for the construction of the Ladies Residence at University of Cape Town called Graca Machel Ladies Residence. The client was the University of Cape Town. The tender was awarded to Group Five and was completed in 2007.

#### **5.9. 2006 Road Contractors Meetings**

Grinaker LTA reached an agreement with Basil Read, Concor, WBHO, Raubex and Haw & Inglis, on or about 2006 at the Road Contractors Meetings. In terms of the agreement, the firms that attended the meetings agreed to allocate tenders for the construction of roads. The firms further agreed that firms which were not interested in winning a tender or were not allocated a project would submit cover bids to cover those that were interested in winning a particular tender. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

### **6. Non-disclosed Projects**

#### **6.1. 2010 FIFA World Cup Stadia Agreement**

During or about 2006, Grinaker LTA, WBHO, Murray & Roberts, Group Five, Concor, Basil Read and Stefanutti met twice and reached an agreement in respect of the construction of the 2010 FIFA World Cup Stadia, in terms of which these firms agreed to allocate the Mbombela, Peter Mokaba, Moses Mabhida, Soccer City, Nelson Mandela Bay and the Greenpoint stadia tenders among themselves and to exchange cover prices. They further agreed that they should all aim to obtain 17.5% profit margin in all the 2010 FIFA World Cup stadia projects. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

**6.2 PPC Dwaalboom Expansion Project – Coal Raw Mill Line 2 (Tender no. DB09)**

Grinaker LTA reached an agreement on or about 17 September 2006 with Concor/Stefanutti joint venture in respect of the PPC Dwaalboom Expansion Project – Coal Raw Mill Line 2 in terms of which, the Concor/Stefanutti joint venture provided Grinaker LTA with a cover price to enable the joint venture to win the tender. The tender was awarded to the Concor/Stefanutti joint venture in line with the cover price arrangement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The project was for the building of a kiln line and related infrastructure at the Pretoria Portland Cement cement factory. The client was PPC. The tender was completed on 17 August 2009.

**6.3. PPC Dwaalboom Pre-Heater Project (Tender no. DB 05)**

Grinaker LTA reached an agreement on or about 19 July 2006 with Stefanutti and Concor in respect of the PPC Dwaalboom Pre-Heater Project, in that Concor, gave a cover price to Grinaker-LTA and Stefanutti in order for it to win the tender. The tender was awarded to Concor in line with the cover price arrangement. This conduct is collusive tendering in contravention of section 4(1)(b) (iii) of the Act. This project was one of a number of contracts that were advertised for the PPC Cement Plant Expansion project, which was divided into different packages/contracts. This tender was for the construction of a pre-heater tower at Dwaalboom. The client was PPC. The tender closing date was 19 July 2006.

**6.4. Northern Waste Water Treatment Works Contract (Tender no. JW 4052)**

Grinaker LTA reached an agreement on or about 12 May 2006 with Group Five in respect of the Northern Waste Water Treatment Works Contract project, in that, Group Five gave a cover price to Grinaker LTA so that it can win the tender. The project was awarded to Group Five in line with the cover price arrangement. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The tender was for the extension and upgrading of the Johannesburg Northern Wastewater Treatment Works. The client was the Johannesburg Water Department. The project was completed in 2009.

**6.5. Relocation of In Pit Crusher Contract (Sishen) (Tender no. QJS09040)**


Grinaker LTA reached an agreement on or about 13 March 2009 with Group Five and Tubular Technical Construction, in respect of the Relocation of the In Pit crusher Contract (Sishen) project, in that, the parties discussed with each other what price each was going to submit in their respective tenders, with the objective of not undercutting each other or over-pricing or under-pricing the contract. Whilst each firm's budget was priced independently of the other, they discussed their budget prices with each other to ensure that their prices were within 5% to 6% of each other. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The tender was for the relocation of in-pit primary crusher at the Sishen Mine. The client was Kumba Resources and the project was completed on 13 March 2009.

**6.6. International Convention Centre, Durban ICC (2007) (Tender no. CSA 0936)**

Grinaker LTA reached an agreement on or about 29 October 2004 with Group Five, WBHO and Stefanutti in respect of the International Convention Centre, Durban ICC (2007) project. In terms of the agreement, Grinaker-LTA (which was in a joint venture with Sivukile), reached a cover price and loser's fee agreement with Group Five, WBHO and Stefanutti. Group Five and WBHO were in a joint venture known as Masinya JV and Stefanutti was in a joint venture with Fikile Construction known as Stocks Fikile L&R JV. Group Five acting on behalf of the Masinya JV requested a cover price from Grinaker-LTA to enable Grinaker LTA to win the tender. It was agreed between the parties that a tender fee of R750 000 should be included in the tender price as part of compensation payment to the losing bidders. The tender was, however, awarded to Masinya JV. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

**6.7. New Board Factory at Ugie PG Bison (Tender no. E05/586)**

Grinaker LTA, whilst in joint venture with Concor and Trencon, reached an agreement on or about 28 April 2006 with WBHO in respect of the New Board Factory at Ugie PG Bison project. In terms of the agreement WBHO requested a cover price from Grinaker-LTA to enable the joint venture to win the project. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act. The project was for the structural building of the board plant, warehouse and administrative buildings. The tender closing date was 28 April 2006. The project was awarded to the Concor/GLTA/Trencon JV.

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**6.8 PPRust North Expansion Infrastructure Project (Tender no. 07/14 )**

Grinaker LTA reached an agreement on or about 04 June 2007 with WBHO in respect of the PPRust North Expansion Infrastructure Project, in that WBHO gave a cover price to Grinaker-LTA so that WBHO can win the tender. The project was awarded to WBHO in line with the cover price arrangement. This conduct is collusive tendering in contravention of section 4(1)(b) (iii) of the Act. The project was for the construction of terraces, infrastructure and civil building work to workshops and change houses. The client was Anglo Platinum. The tender closing date was on 4 June 2007. The project was completed in June 2009.

**7. Admission**

Aveng admits that it entered into the agreements detailed in paragraphs 5.1 to 5.9 and 6.1 to 6.8 above with its competitors in contravention of section 4(1)(b)(iii) of the Act.

**8. Co-operation**

In so far as the Commission is aware, and in compliance with the requirements as set out in the Invitation, Aveng:

8.1 has provided the Commission with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the prohibited practices. This included assisting the Commission in respect of obtaining evidence from former employees, wherever possible;

8.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practices;

8.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in the future engage in, any form of prohibited practice;

8.4 has confirmed that it has not destroyed, falsified or concealed information,

evidence and documents relating to the prohibited practices;

- 8.5 has confirmed that it has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

## **9. Agreement Concerning Future Conduct**

- 9.1 In compliance with the requirements as set out in the Invitation, Aveng agrees and undertakes to provide the Commission with full and expeditious co-operation from the time that this Consent Agreement is concluded until the subsequent proceedings in the Competition Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:

9.1.1 to the extent that it is in existence and has not yet been provided, providing (further) evidence, written or otherwise, which is in its possession or under its control, concerning the contraventions contained in this Consent Agreement;

9.1.2 availing its employees and, to the extent reasonably possible, former employees to testify as witnesses for the Commission in any cases regarding the contraventions contained in this Consent Agreement.

- 9.2 Aveng shall continue to implement and monitor its competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the Act.

- 9.3 Aveng shall submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal.

- 9.4 Aveng shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Aveng within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.



9.5 Aveng will not in the future engage in any form of prohibited conduct and will not engage in collusive tendering which will distort the outcome of tender processes but undertakes to engage in competitive bidding.

## **10. Administrative Penalty**

10.1 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, and as envisaged in paragraph 10.2 read with paragraphs 19-28 of the Invitation, Aveng accepts that it is liable to pay an administrative penalty ("penalty").

10.2 According to the Invitation, the level of the penalty is to be set on the basis of a percentage of the annual turnover of Aveng in the relevant subsector in the Republic and its exports from the Republic for the financial year preceding the date of the Invitation.

10.3 The meetings and projects described herein fall under the Civil Engineering and General Building CIDB sub-sectors.

10.4 Accordingly, Aveng is liable for and has agreed to pay an administrative penalty in the sum of R306 576 143 (Three hundred and six million five hundred and seventy six thousand one hundred and forty three rand) which penalty is calculated in accordance with the Invitation.

## **11. Terms of payment**

11.1 Aveng shall pay the amount set out above in paragraph 10.4 to the Commission in three equal payments, the first such payment of R 102 192 047 on 1 July 2013 or within 30 days from the date of confirmation of this Consent Agreement as an order of the Tribunal, whichever is the later.

11.2 Aveng will make the second payment of R 102 192 047 on or before 1 July 2014.

11.3 Aveng will make the third payment of R 102 192 047 on or before 1 July 2015.

11.4 This payment shall be made into the Commission's bank account, details of

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which are as follows:

Bank name: Absa Bank  
Branch name: Pretoria  
Account holder: Competition Commission Fees Account  
Account number: 4050778576  
Account type: Current Account  
Branch Code: 323 345

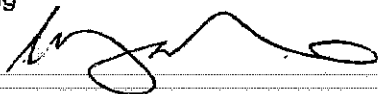
11.5 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

## 12. Full and Final Settlement

This Consent Agreement is entered into in full and final settlement of the conduct listed in paragraphs 5.1-5.9 and 6.1-6.8 of this Consent agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Aveng in respect of this conduct only.

Dated and signed at PRETORIA on the 16<sup>th</sup> day of MAY 2013.

For Aveng



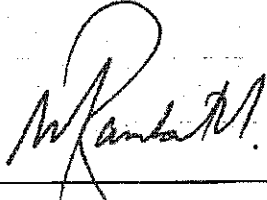
WILLIAM ROGER JASSINE

[FILL IN NAME AND POSITION OF PERSON THAT IS SIGNING]



Dated and signed at Peterson on the 21 day of June 2013.

For the Commission



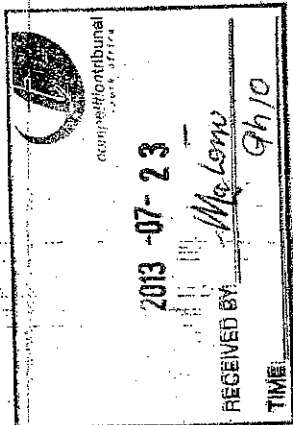
**Shan Ramburuth**  
**Commissioner**



"B"

**ADDENDUM TO THE CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND AVENG (AFRICA) LIMITED**

The parties agree that clauses: 4.2; 4.3; 4.4; 4.5; 4.6 and 6.1 of the consent agreement be deleted and replaced with the following:



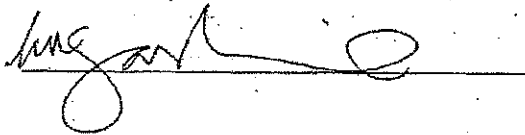
- 4.2 Aveng applied on 15 April 2011 and disclosed fifty seven (57) prohibited practices. Twenty two (22) of these are prescribed prohibited practices and thirty five (35) are non-prescribed prohibited practices.
- 4.3 Out of the thirty five (35) non-prescribed practices, Aveng is first to apply in respect of twenty six (26) non-prescribed prohibited practices for Conditional Immunity in terms of the CLP.
- 4.4 In respect of the nine (9) (i.e. 35 less 26) non-prescribed prohibited practices where Aveng is not first to apply, seven (7) non-prescribed prohibited practices (6 projects and 1 meeting) are in the Civil Engineering sub-sector and two (2) non-prescribed prohibited practices (2 projects) are in the General Building sub-sector.
- 4.5 Furthermore, Aveng is implicated in eight (8) non-prescribed prohibited practices which it was unable to disclose. Aveng has agreed to settle these.
- 4.6 The seventeen 17 (i.e. 9 plus 8) prohibited practices or contraventions by Aveng of section 4(1)(b)(iii) of the Act which are the subject of this Consent Agreement, are set out below.
- 6.1 2010 FIFA World Cup Stadia Agreement**
- During or about 2006, Grinaker LTA, WHBO, Murray & Roberts, Group Five, Concor and Basil Read met twice and reached an agreement in respect of the construction of the 2010 FIFA World Cup Stadia, in terms of which these firms agreed to allocate the Mbombela, Peter Mokaba, Moses Mabhida, Soccer City, Nelson Mandela Bay and the Greenpoint stadia tenders among themselves

*MR* *18*

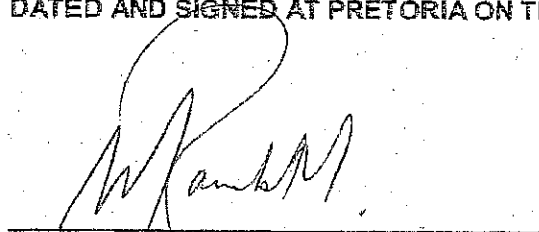
and to exchange cover prices. They further agreed that they should all aim to obtain 17.5% profit margin in all the 2010 FIFA World Cup stadia projects. This conduct is collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

DATED AND SIGNED AT PRETORIA ON THE \_\_\_\_\_ DAY OF JULY 2013

AVENG (AFRICA) LIMITED AUTHORISED SIGNATORY



DATED AND SIGNED AT PRETORIA ON THE 22 DAY OF JULY 2013



Shan Ramburuth

Competition Commissioner