



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR245Mar17/SA084Jun17

In the matter between:

The Competition Commission

Applicant

and

Fireco Gauteng (Pty) Ltd
(Now KRS Fire (Pty) Ltd)

Respondent

Panel : AW Wessels (Presiding Member)
A Roskam (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 11 July 2017
Addendum received on : 20 July 2017
Decided on : 25 July 2017

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Fireco Gauteng (Pty) Ltd (Now KRS Fire (Pty) Ltd) annexed hereto marked "A", read with the First Addendum marked "B".



Presiding Member
Mr AW Wessels

25 July 2017
Date

Concurring: Mr Anton Roskam and Mrs Medi Mokuena

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

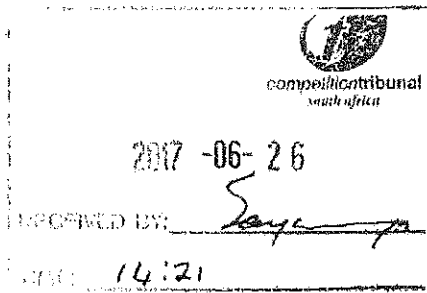
CT Case No: CR245MAR17/SA084 Jun 17
CC Case No: 2015MAR0119 & 2017MAR0008

In the matter between:

THE COMPETITION COMMISSION

And

FIRECO GAUTENG (PTY) LTD
(Now KRS FIRE (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, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND FIRECO GAUTENG (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Fireco Gauteng (Pty) Ltd hereby agree that 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, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b) (i), (ii) and (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, 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 2015Mar0119, 2015Jun0359, 2017Mar0149 and 2017Mar0008;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Fireco Gauteng;
- 1.6 **"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 in order that the firm that wishes to win the tender may submit a lower price;
- 1.7 **"Fireco Gauteng"** means Fireco Gauteng (Pty) Ltd, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Benvista Office Park, Office 20, Edgar Road, Jansen Park, Boksburg, Gauteng. Fireco Gauteng changed its name to KRS Fire

(Pty) Ltd;

- 1.8 "Parties" means the Commission and Fireco Gauteng; and
- 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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 13 March 2015, the Commission initiated a complaint against Afrion Property Services CC, Belfa Fire (Pty) Ltd, Cross Fire Management (Pty) Ltd, Fire Protection Systems (Pty) Ltd, Fireco (Pty) Ltd, Fire Control Systems (Pty) Ltd, QD Air (Pty) Ltd and Technological Fire Innovations (Pty) Ltd for allegedly fixing prices, dividing markets and tendering collusively in the market for the supply, installation and maintenance of fire control and protection systems under case number: 2015Mar0119.
- 2.2 On 26 June 2015, the Commissioner amended his complaint initiation to include Fireco Gauteng, QD Fire (Pty) Ltd and Keren Kula Mechanical (Pty) Ltd as additional respondents under case number: 2015Jun0359. On 29 March 2017, the Commissioner further amended his complaint to include Tshwane Fire Sprinklers CC as an additional respondent under case number: 2017Mar0149.
- 2.3 On 8 March 2017, the Commissioner initiated another complaint against Fireco Gauteng and Fireco for allegedly dividing markets by allocating territories and customers in the market for the supply, installation and maintenance of fire control and protection systems under case number: 2017Mar0008.
- 2.4 The firms listed in paragraphs 2.1, 2.2 and 2.3 above shall hereinafter be referred to as the Respondents.

2.5 The Commission's investigation revealed the following:

2.5.1 During or about the period 2012 to at least March 2015, Fireco Gauteng, together with some of the Respondents fixed prices, divided markets and tendered collusively in the market for the supply, installation and maintenance of fire control and protection systems.

2.5.2 Fireco Gauteng, together with some of the respondents implemented their agreement to fix prices, divide markets and tender collusively through bilateral and multilateral agreements by providing each other with cover prices. The respondents exchanged cover prices through various forms including sharing of bill of quantities, telephone calls, faxes, emails, meetings, etc.

2.5.3 The cover prices would be sent to the competitor wishing to win the tender for onward submission to the customer.

2.5.4 Further, Fireco Gauteng and Fireco agreed and/or engaged in a concerted practice to divide markets by allocating territories and customers among themselves. Fireco Gauteng and Fireco discussed and agreed that Fireco will not offer its services in Gauteng and that Fireco Gauteng will not offer its services in Western Cape. Fireco Gauteng and Fireco also agreed that they will both operate under a common name "Fireco". Fireco Gauteng was granted leniency in respect of this conduct involving Fireco.

2.5.5 This conduct contravened section 4(1)(b)(i), (ii) and (iii) of the Act.

3. ADMISSION

Fireco Gauteng admits that it engaged in prohibited practices in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

4. CO-OPERATION

Fireco Gauteng agrees to fully cooperate with the Commission in its investigation and prosecution, if any, of the remaining respondents in the Commission's complaints. This cooperation includes, but is not limited to:

- 4.1 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of Fireco Gauteng or under Fireco Gauteng's control, concerning the alleged prohibited practices set out in this Consent Agreement.
- 4.2 Testifying during the hearing of the complaint, if any, in respect of the prohibited practices set out in this Consent Agreement.

5. FUTURE CONDUCT

Fireco Gauteng agrees to:

- 5.1 prepare and circulate a statement summarising 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;
- 5.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 5.3 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 5.4 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and

5.5 engage in competitive bidding.

6. ADMINISTRATIVE PENALTY

6.1 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, Fireco Gauteng is liable to pay an administrative penalty.

6.2 Fireco Gauteng agrees and undertakes to pay a cumulative administrative penalty in the amount of R909 376.29 (**Nine hundred and nine-seven thousand, three hundred and seventy-six rand and twenty-nine cents**) This amounts does not exceed 10% of Fireco Gauteng's annual turnover in the Republic of South Africa for the financial year ended February 2014.

6.3 Fireco Gauteng shall pay the abovementioned amount within 30 days of the confirmation of the Consent Agreement as a consent order by the Tribunal.

6.4 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: 4087641778

Branch Code: 632005

Ref: 2015Mar0119/ Fireco Gauteng

6.5 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.



7. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of all prohibited practices engaged in between Fireco Gauteng and its competitors for the period 2012 to December 2015 and concludes all proceedings between the Commission and Fireco Gauteng relating to the conduct that is the subject of the Commission's investigations under Case No. 2015Mar0119/2015Jun0359/2017Mar0149 and 2017Mar0008, upon confirmation of this Consent Agreement as an order of the Tribunal.

Dated and signed at BOKSBURG on the 8 day of JUNE 2017

For Fireco Gauteng (Pty) Ltd

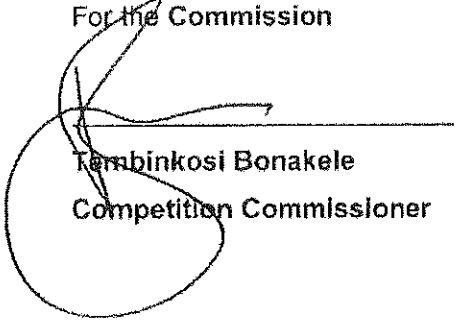


Chief Executive Officer

Name in Full: R. A. SMITH

Dated and signed at PRETORIA on the 21st day of JUNE 2017

For the Commission



Tembinkosi Bonakele
Competition Commissioner

8

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

CT Case No: CR245MAR17

CC Case No: 2015MAR0119

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

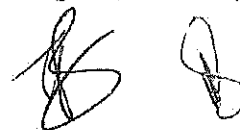
FIRECO GAUTENG (PTY) LTD
(Now KRS FIRE (PTY) LTD)

Respondent

FIRST ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND FIRECO GAUTENG (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

This amendment to the consent agreement sets out the terms on which the parties to the consent agreement have agreed to amend the consent agreement which was concluded between the Competition Commission and Fireco Gauteng (Pty) Ltd and signed on 8 June and 21 June 2017 and to presented for confirmation by the Competition Tribunal on 11 July 2017:

1. Clause 1.4 is deleted and replaced with the following clause:



1.4 **"Complaints"** means the complaints initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2015Mar0119, 2015Jun0359 and 2017Mar0149;

2. Clause 2.3 is deleted from the agreement.

3. Clause 2.4 is deleted and replaced with the following clause:

2.4 The firms listed in paragraphs 2.1 and 2.2 above shall hereinafter be referred to as the Respondents.

4. Clause 2.5.4 is deleted from the agreement.

5. Clause 6.2 of the consent agreement is deleted and replaced with the following clause:

6.2 Fireco Gauteng agrees and undertakes to pay a cumulative administrative penalty in the amount of R909 376.29 (Nine hundred and nine thousand, three hundred and seventy-six rand and twenty-nine cents). This amount does not exceed 10% of Fireco Gauteng's annual turnover in the Republic of South Africa for the financial year ended February 2014.

6. Clause 7 of the consent agreement is deleted and replaced with the following clause:

7. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of all prohibited practices engaged in between Fireco Gauteng and its competitors for the period 2012 to December 2015 and concludes all proceedings between the Commission and Fireco Gauteng relating to the conduct that is the subject of the Commission's



investigations under Case No. 2015Mar0119/2015Jun0359/2017Mar0149, upon confirmation of this Consent Agreement as an order of the Tribunal.

Dated and signed at BOKSBURG on the 13 day of July 2017

For Fireco Gauteng (Pty) Ltd



Chief Executive Officer

Name in Full: R.A. SMITH

Dated and signed at PRETORIA on the 19 day of July 2017

For the Commission



Tembinkosi Bonakele

Competition Commissioner

