



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR245Mar17/SA237Jan19

In the matter between:

The Competition Commission

Applicant

And

Fireco (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member)
M Mazwai (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 06 February 2019

Decided on : 06 February 2019

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Fireco (Pty) Ltd annexed hereto marked "A".



Presiding Member
Mr Norman Manoim

06 February 2019
Date

Concurring: Ms Mondo Mazwai and Prof. Imraan Valodia

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

CT Case No: CR245MAR17


CC Case No: 2015MAR0119 & 2017Mar0018

In the matter between:

THE COMPETITION COMMISSION

And

FIRECO (PTY) LTD

 competitiontribunal south africa	
2019 -01- 17	
RECEIVED BY:	<i>Malom</i>
TIME:	15:15

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 (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (ii) OF THE COMPETITION ACT, 1998.

Preamble



The Competition Commission and Fireco (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 a contraventions of section 4(1)(b) (ii) of the Act, on the terms set out below.

[Handwritten signatures]

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 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2015Mar0119 and 2017Mar0018;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Fireco;
- 1.6 **"Fireco"** means Fireco (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 Centennial Place, 1st Floor, East Block, Century Boulevard, Century City.
- 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 has since changed its name to **KRS Fire (Pty) Ltd**;
- 1.8 **"Parties"** means the Commission and Fireco; 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 this complaint initiation under case number 2015Jun0359 to include Fireco Gauteng (Pty) Ltd, QD Fire (Pty) Ltd and Keren Kula Mechanical (Pty) Ltd as additional respondents. On 29 March 2017, the Commissioner further amended the complaint initiation, under case number: 2017Mar0149, to include Tshwane Fire Sprinklers CC as an additional respondent.
- 2.3 On 8 March 2017, the Commissioner amended the complaint, under case number: 2017Mar0018, to include an allegation against Fireco and Fireco Gauteng of market division by allocating territories and customers in the market for the supply, installation and maintenance of fire control and protection systems.
- 2.4 On 29 March 2017, the Commission referred the complaint, to the Tribunal, under case number CR245MAR17.
- 2.5 The investigation revealed the following:

- 2.5.1 During or about the period 2012 to around February 2015, Fireco and Fireco Gauteng concluded an agreement to divide markets in the market for the supply, installation and maintenance of fire control and protection systems.
- 2.5.2 In terms of that agreement, Fireco and Fireco Gauteng agreed to divide markets by allocating customers and territories, and specific types of services, among themselves; and more particularly that Fireco would not offer its services in Gauteng and that Fireco Gauteng would not offer its services in the Western Cape, and Fireco would pass on all special risk work throughout the country to Fireco Gauteng.
- 2.5.3 In implementation of that agreement both Fireco and Fireco Gauteng operated under the name "Fireco", Fireco Gauteng presented itself in the market as a branch of Fireco in Gauteng, and Fireco presented itself as the parent company with a head office in Cape Town.

2.6 This conduct contravened section 4(1)(b)(ii) of the Act.

3. ADMISSION

- 3.1 Fireco admits that it engaged in prohibited practices in contravention of section 4(1)(b) (ii) of the Act from or about September 2012 until no later than February 2015.

4. FUTURE CONDUCT

Fireco agrees to:

- 4.1 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;

- 4.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 4.3 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;
- 4.4 the compliance programme shall be submitted to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal
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- 4.5 undertakes henceforth to engage in competitive practices.

5. ADMINISTRATIVE PENALTY

- 5.1 Fireco agrees and undertakes to pay an administrative penalty in the amount of R2 200 913.85. This amount represents 3% of Fireco's affected turnover in the Republic of South Africa for the financial year ended February 2015.
- 5.2 Fireco shall pay the abovementioned amount over a period of 24 months in eight (8) equal quarterly instalments. Fireco may (in its sole discretion) choose to settle this amount over a shorter period of time, or in less than eight (8) equal quarterly instalments.
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- 5.3 The first instalment is payable by no later than 28 February 2019. The subsequent seven (7) instalments are payable on a quarterly basis in equal instalments.
- 5.4 No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter,

interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 10,25%.

- 5.5 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

- 5.6 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.

6. COMPLIANCE

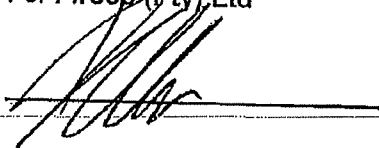
- 6.1 All compliance reports and proof of payments relating to this matter shall be forwarded to the Commission at CartelSettlements@compcom.co.za;

7. FULL AND FINAL SETTLEMENT

7.1 This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2015Mar0019 and 2017Mar0018, and concludes all proceedings between the Commission and Fireco.

Dated and signed at Centurion City on the 30 day of November 2018

For Fireco (Pty) Ltd

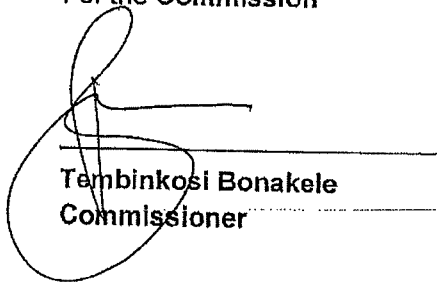


Name in Full: Brian Nicholas Vole

Position CBO

Dated and signed at _____ on the _____ day of _____ 2018

For the Commission



Tembinkosi Bonakele
Commissioner

