

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 99/CR/Nov04

In the matter between:

The Competition Commission

Applicant

and


The Institute of Estate Agents of South Africa

Respondent

Order

Further to the application of the Competition Commission in terms of Section 49D, in the above matter -

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent.


David Lewis

08 December 2004
Date

Concurring: **N. Manoim, Medi Mokuena**

In the Competition Tribunal of South Africa

Held at Pretoria

CT Case No:

CC Case No: 2004 MAY 998

In the matter between:

The Competition Commission

Applicant

and

The Institute of Estate Agents of South Africa

Respondent

Consent Order, regarding violation of section 4(1)(b)(i) of the Competition Act, 1998 (Act No. 89 of 1998), as amended

The Applicant and the Respondent in the above matter hereby agree to conclude a consent order in terms of section 49D of the Competition Act No. 89 of 1998 as amended, on the terms set out more fully below.

1. Definitions

For the purposes of this *Consent Order* the following definitions shall apply:

- 1.1 The "Act" means the Competition Act, 1998 (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, Building C, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1  

- 1.3 "Competition 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, Building C, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
- 1.4 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act and filed at the Commission under case number 2004 MAY 998.
- 1.5 "Consent Order" means this agreement in its duly signed form by both the Commission and the Respondent.
- 1.6 "Days" means calendar days.
- 1.7 "Respondent" means the Institute of Estate Agents of South Africa (hereinafter referred to as IEASA). IEASA consists of nine separate Section 21 companies¹ and their individual estate agent members. Eight of these companies operate as regional professional institutes, supporting their individual members in the various regions of the country, while the ninth, IEASA (National), co-ordinates them.

-
- o ¹ THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (NATIONAL)
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (WESTERN CAPE)
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (NORTH)
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (PIETERMARITZBURG AND INTERIOR)
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (CENTRAL)
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (BORDER)
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (KWAZULU NATAL COAST)
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (FREE STATE AND NORTHERN CAPE) *SOUTHERN REGION*
 - o THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA (SOUTH EASTERN CAPE)

2 *HR MS*

2. Background

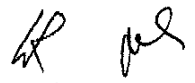
2.1. The Commissioner initiated a complaint into the activities of IEASA in respect of their " Tariff Book: Recommended Professional Fees and Commissions for Estate Agents" (hereinafter referred to as the "Tariff Book"), on 13 May 2004. It was believed that the publication of the Tariff Book might amount to the indirect fixing of a selling price of estate agents' services by IEASA.

2.2. During the investigation, the investigation team established that IEASA recommends a commission on "sales of houses, semi-detached units, residential sectional title and share-block units" at 7,5 % of the sale price of the properties concerned by publishing the Tariff Book. It was further established that the respondent lays down recommended professional fees and commissions for most estate agents' services.

2.3. The investigation team further established the following facts during the investigation:

2.3.1 In terms of article 66.2 of its Articles of Association, IEASA (National) has the power to publish recommended tariffs of professional fees and commissions, which are determined by the regional institutes. Since 1999, IEASA (National)) exercised this power by publishing the regional tariffs in the following books:

- o 1999 - Real Estate Year Book 1999
- o 2000 - Real Estate Year Book 2000
- o 2001 – Real Estate Year Book 2001
- o 2002 - Tariff Book 2002.



2.3.2 In terms of the Articles of Association of the Regional Institutes, their respective Boards: "shall from time to time on the recommendation of the specialist committees referred to in Article 54.3 frame and publish in such form as it may determine a recommended tariff of professional fees and commissions". As indicated earlier, these member institutes do not publish the recommended tariffs themselves, but provide IEASA (National) with the tariffs, which are then published by IEASA (National).

2.3.3 IEASA (National) did not publish any tariffs during 2003. In April 2004, its Board of Directors passed a resolution to cease publishing tariffs after becoming aware of the Commission's position regarding these practices. The last tariffs were therefore published by IEASA (National) in 2002.

2.3.4 The 2002 Tariff Book published recommended fees, hourly rates and sales commissions to be charged by estate agents who are IEASA members for (1) property administration services, (2) for sales of immovable property, (3) for sales of businesses, partnerships and shares in a company, (4) procuring and negotiating leases, (5) administration of Sectional Title Developments and Share-block Company Buildings etc.

3. Commission's findings

3.1. The Commission views the published recommended tariffs as a guide which aids estate agents in deciding how much commission to charge for property sales and other services. The tariffs also provide an

Handwritten initials/signature

indication to estate agents as to how much commission their competitors (other estate agents) would charge for property sales and other services. The estate agents are thus discouraged from negotiating individualized fees. The Commission concluded that the prices at which estate agents' services are available are determined or influenced by the tariffs contained in the recommended professional fees and commissions for estate agents published in the books referred to in paragraph 2.3.1.

- 3.2. The publication of the books referred to in paragraph 2.3.1 therefore resulted in the indirect fixing of selling prices for estate agents' services in the different regions in contravention of section 4(1)(b)(i) of the Act.

4. Statement of conduct

- 4.1. The Respondent admits that it is an association of estate agents and that it has issued the recommended tariffs for estate agent services as published in the Tariff Book and previously in the Real Estate Year Books.
- 4.2. The Respondent admits that the publication of the recommended tariffs constituted a contravention of section 4(1)(b)(i) of the Act in that the guidelines were used, by the members of the Respondent as well as other estate agents, as an indication of reasonable charges for their services, thereby leading indirectly to price fixing.
- 4.3. IEASA did not publish any tariffs during 2003, and in April 2004, after becoming aware of the Commission's position regarding these practices, passed a resolution to cease publishing tariffs again. The last tariff was therefore published in 2002.

- 4.4. The Respondents at all times fully co-operated with the Commission in all respects.

5. Agreement concerning a Compliance Programme

IEASA agrees that it shall:

- 5.1. Cease, and encourage its members to desist from engaging in anti-competitive conduct involving the direct or indirect fixing of a purchase or selling price.
- 5.2. Refrain from any distribution of "The Tariff Book" with immediate effect and all existing copies in possession of the Institute must be destroyed.
- 5.3. An affidavit confirming compliance by the respondent ^{TO THE BEST OF OUR ABILITY} with this requirement must be submitted to the Commission within 15 days of signing of this consent order by both parties.
- 5.4. Take prompt and effective action in ensuring that its members terminate their role in implementing the anti-competitive conduct:
- 5.4.1. IEASA shall send a letter to each of its members, informing them that IEASA will no longer engage in the practice of recommending any tariff for estate agent services, and that it is withdrawing the recommendations made through the publication; and
- 5.4.2. a copy of this letter and an affidavit confirming the sending of the letter to all members, must be submitted to the Commission within 15 days of signing of this consent order by both parties. ^{TO THE BEST OF OUR ABILITY.}

6

5.5. Within one year from the date of this order, IEASA will implement a compliance programme designed to ensure that its members are informed about IEASA's obligations under competition law.

6. Administrative penalty

- 6.1. In accordance with the provisions of section 58(1)(a)(iii) read with section 59(1)(a), 59(2) and (3) of the Act, IEASA is liable for an administrative penalty.
- 6.2. IEASA (National) confirms that it is authorized to conclude this consent order on behalf of all IEASA's regional institutes and their individual members.
- 6.3. An administrative penalty in the amount of R 522 400.00 (five hundred and twenty two thousand, four hundred rand) is hereby imposed against IEASA, in accordance with section 59 of the Act, for contravening section 4(1)(b)(i) of the Act. This penalty amount does not exceed 10% of the total turnover during the preceding financial year for IEASA(National), IEASA's regional institutes and their individual estate agent members.
- 6.4. In view of the number of individual members of IEASA (5224 at the time when the resolution was passed to discontinue publication of the recommended tariff), IEASA (National) assumes the liability to effect payment of the whole of the said administrative penalty.
- 6.5. IEASA (National) is therefore liable for and agrees to pay an administrative penalty in the amount of R 522 400.00 (five hundred and twenty two thousand, four hundred rand) over six equal monthly instalments, the first instalment to be payable on the first day of the month following the date of confirmation of this consent order by the Competition

7 HP MS


Tribunal. The remaining five instalments to be payable on the first day of each following month.

- 6.6. The said amount is payable to the *Commission*, whose banking details are as follows:

Bank: ABSA
Name of Account: The Competition Commission Fees
Branch Name: Pretoria
Branch Code: 323345
Account Number: 4050778576

- 6.7. The Commission will pay over the penalty amount to the National Revenue Fund, referred to in section 59(4) of the Act.

Dated and signed at *Rondebosch* on this the *19* day of November 2004.



Mr Bill Rawson
National President
Institute of Estate Agents of South Africa (National)
As duly authorized representative of IEASA



Dated and signed at *Pretoria* on this the *22nd* day of November 2004.



Adv. Menzi Simelane
The Commissioner:
Competition Commission of South Africa