competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019315

In the matter between:

INVENSYS PLC	**First Applicant**
INVENSYS SYTEMS (UK) LIMITED	**Second Applicant**
EUROTHERM LIMITED	**Third Applicant**
and	
PROTEA AUTOMATION SOLUTIONS (PTY) LIMITED	**Respondent**

In re

The Complaint referral between:

PROTEA AUTOMATION SOLUTIONS (PTY) LIMITED	Applicant
and	
INVENSYS PLC	First Respondent
INVENSYS SYTEMS (UK) LIMITED	Second Respondent
EUROTHERM LIMITED	Third Respondent
EOH HOLDINGS LIMITED	Fourth Respondent
EOH MTHOMBO (PTY) LIMITED	Fifth Respondent

Panel	:	Yasmin Carrim (Presiding Member)
		Anton Roskam (Tribunal Member)
		Fiona Tregenna (Tribunal Member)
Heard on	:	05 August 2014
Order issued on	:	13 August 2014

ORDER: EXCEPTION APPLICATION

Having heard the parties in the above matter, the Competition Tribunal makes the orders set out below. For ease of convenience the Applicants are referred to as "Invensys" and the Respondent as "Protea".

1. Those points *in limine* brought by Invensys in paragraph 46 of its answering affidavit (which are in the nature of exceptions to the pleadings of Protea) are upheld.

2. Protea must amend its complaint referral under case number 016584, by filing a Supplementary Founding Affidavit within 10 business days of the date of this order.

3. The Supplementary Founding Affidavit must set out clear and concise statements of the material facts upon which Protea relies for its claims with sufficient particularity to enable the other parties to reply thereto;

4. Without limiting the generality of paragraph 3 the Supplementary Founding Affidavit must set out the following:

    4.1. the basis for the joinder of Invensys PLC as a Respondent to the main matter;

    4.2. in respect of section 4 of the Competition Act 89 of 1998 ("the Act"):

        4.2.1. the nature of the alleged horizontal relationship between Invensys and EOH Mthombo (Pty) Ltd ("EOH");

        4.2.2. the manner in which section 4 has been contravened;

4.2.3. the relevant product market in which this contravention took place;

4.2.4. the manner and extent that this alleged contravention has on competition in any relevant market or markets;

4.3. in respect of section 5 of the Act:

4.3.1. the nature of the alleged vertical relationship between Invensys and EOH;

4.3.2. the manner in which section 5 the Act has been contravened by this relationship;

4.3.3. the relevant product market in which this contravention has taken place; and

4.3.4. the manner and extent the contravention has affected competition in any relevant market or markets; and

4.4. in respect of section 8 and 9 of the Act:

4.4.1. the relevant product and geographic market or markets in which it is alleged that Invensys is dominant;

4.4.2. the basis of competition in those product and geographic markets;

4.4.3. the basis upon which the alleged dominance of Invensys is computed;

4.4.4. Invensys' and its competitors' relative market share;

4.4.5. the manner in which Invensys is alleged to have exercised its market power;

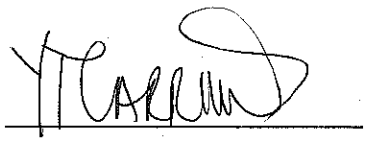
4.4.6. the manner in which Invensys has contravened sections 8 and 9 of the Act; and

4.4.7. the manner and extent that these contraventions have affected competition in any relevant market or markets.

5. Invensys and any other respondent must file its Supplementary Answering Affidavit, if any, within 10 business days of Protea having filed its Supplementary Founding Affidavit.

6. Protea must file its Supplementary Replying Affidavit, if any, within five business days of receiving any Supplementary Answering Affidavit.

7. Protea must pay Invensys's costs in respect of the points in limine, such costs to include the cost of one counsel.



13 August 2014

Ms YASMIN CARRIM **Date**

Mr Anton Roskam and Prof. Fiona Tregenna concurring.

Tribunal Researcher: Caroline Sserufusa

For the 1st -3rd Applicants: Adv A Gotz instructed by Craig Smith Incorporated

For the Respondent: Adv MJ Engelbrecht instructed by Duncan Okes Inc