



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO067May18

In the matter between:

The Competition Commission

Applicant

And

AdvTech Ltd

Respondent

Panel : E Daniels (Presiding Member)
M Mazwai (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 26 February 2019

Decided on : 27 February 2019

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and AdvTech Ltd annexed hereto marked "A".


Presiding Member
Mr Enver Daniels

27 February 2019
Date

Concurring: Ms Mondo Mazwai and Prof. Fiona Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO: CO067May18

CC CASE NO: 2017JAN0035

competitiontribunal
south africa

2019 -02- 25

RECEIVED BY:

Malone

TIME:

11:40

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

ADVTECH LTD

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
ADVTECH LTD IN RESPECT OF THE ALLEGED CONTRAVENTION OF SECTIONS
5(1) AND/OR 8(c) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

1. The Competition Commission and ADVTECH 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)(b) of the Competition Act 89 of 1998, as amended, on the terms set out below:

2. DEFINITIONS

- 2.1. For the purposes of this Consent Agreement the following definitions shall apply:

2.1.1. "Act" means the Competition Act 89 of 1998, as amended;

2.1.2. "ADVTECH" means ADVTECH Ltd, a company incorporated under the laws of the Republic of South Africa with its principal place of business at ADVTECH House, Inanda Greens, 54 Wierda Road West, Sandton in Gauteng including its subsidiaries ;

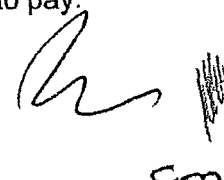
[Signature]
cm

- 2.1.3. "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;
- 2.1.4. "Commissioner" means the Commissioner of the Commission, appointed in terms of section 22 of the Competition Act;
- 2.1.5. "Competitive bidding process" means a transparent procurement method in which bids from competing suppliers, distributors or retailers are invited by openly advertising the scope, specifications, and terms and conditions of the proposed contract, as well as the criteria by which the bids will be evaluated. A competitive bidding process is aimed at obtaining goods and services at the lowest prices by stimulating competition and by preventing favouritism.
- 2.1.6. "Complaint" means the complaint initiated by the Commissioner in terms of section 49B of the Competition Act No. 89 of 1998, as amended under case number 2017Jan0035, and a complaint filed with the Commission under case number 2017Feb0019.
- 2.1.7. "Consent Agreement" means this agreement duly signed and concluded between the Commission and ADvTECH Ltd;
- 2.1.8. "Generic" (with reference to school uniform items) means not specific to a particular school and not having only one particular brand name;
- 2.1.9. "Parties" or "Party" means the Commission and ADvTECH Ltd;
- 2.1.10. "Parent" means the legal guardian of a learner attending a school owned and/or managed by ADvTECH Ltd;
- 2.1.11. "School uniform items" mean clothing items that form part of a school uniform including, but not limited to, blazers, shirts, pants, etc.;
- 2.1.12. "Supplier" includes a reference to a retailer or distributor;
- 2.1.13. "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;
- 2.1.14. "Unique" (with reference to school uniform items) means belonging to or connected to one particular school.



3. BACKGROUND AND CONTEXT

- 3.1. Prior to 2015, the Competition Commission received a large number of complaints from parents and school uniform suppliers regarding inter alia the high cost of school uniforms and exclusive agreements preventing suppliers from entering the market.
- 3.2. The Commission undertook advocacy initiatives to address the aforementioned concerns, including engagements with various schools and school groups and the National Department of Basic Education ("DBE").
- 3.3. Engagements with the DBE resulted in the Commission drafting a circular relating to the procurement of school uniforms, which was intended to ensure that school uniforms are affordable for all learners.
- 3.4. In May 2015, the DBE addressed this circular to all Members of the Executive Councils of Provincial Education Departments, Heads of Departments of Provincial Education Departments, District Managers of Provincial Education Departments, Provincial School Governing Body Associations and school principals ("The Circular").
- 3.5. The Circular, in particular, deals with the existence of exclusive agreements between schools and school uniform manufacturers or retailers and sets out the following measures, which is recommended to all public schools, former model C schools, and private schools, in order to address the potential anti-competitive effect of exclusive agreements viz.-
 - 3.5.1. School uniform items should be as generic as possible, so that they can be obtained from many suppliers. Where school uniforms consist of more generic items, which parents can buy from general retailers, at lower prices, the potential harm resulting from exclusive agreements may be lessened, since parents will have more choices in respect of where to shop for these items and to decide what price they are willing to pay.



Handwritten signature and initials, possibly 'cm', located at the bottom right of the page.

- 3.5.2. The number of unique/branded school uniform items that form part of the basic school uniform (excluding optional additions) should be limited to only a few items. This principle of limiting the uniqueness of school uniform items should also apply to sport uniforms. Even where there are school uniform items that are unique to a particular school, parents ought to be able to substitute some items with generic versions.
- 3.5.3. Schools should contract with school uniform suppliers following a competitive bidding process, so that all potential school uniform suppliers get the opportunity to compete to supply school uniform items to a school.
- 3.5.4. Where reasonably possible schools should use more than one supplier. The use of more than one supplier will provide parents with more choices and reduce the incentive of the supplier to charge very high prices.
- 3.5.5. Any contract entered into to supply school uniform items to a school should be for a limited duration, of 3 to 5 years. At the end of the contract period, a new bidding process should be embarked upon. This procurement process can also be done by way of advertising, where schools invite potential school uniform suppliers to bid.

4. THE COMPLAINT

- 4.1. On 27 January 2017, the Commissioner initiated a complaint against a number of schools, including ADvTECH, school uniform manufacturers and suppliers for potential contraventions of section 5(1), section 8(a) and/or section 8(c) of the Act pursuant to a number of complaints received from parents and school uniform suppliers.
- 4.2. The parents complained that they could only purchase school uniform items for their children from a particular, specifically identified school uniform supplier

Handwritten signature and initials in the bottom right corner of the page.

without any other options being available to them. They consequently pay high prices for school uniform items.

- 4.3. School uniform suppliers complained that some schools have entered into contracts with certain school uniform suppliers, giving these suppliers the exclusive right to sell the school uniform items of that particular school. Consequently, potential or new school uniform suppliers cannot enter the school uniform market to compete with suppliers benefitting from exclusive agreements.

5. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 5.1. The Commission investigated the Complaint and concluded that the existence of exclusive supply agreements concluded by suppliers and various schools may substantially prevent or lessen competition in the market by excluding potential and existing school uniform suppliers from entering or growing in the relevant market.
- 5.2. Exclusive agreements are particularly problematic when they are of a long duration and where they enable a firm to extract higher prices from customers or prevent other firms from competing for the customers and entering the market or growing their market share. Exclusive agreements can deprive customers of choices and disincentive firms to innovate.
- 5.3. When schools enter into exclusive agreements with school uniform suppliers, it means that the supplier is the only source from which parents can buy branded/unique school uniform items for a particular school. Parents do not have a choice to shop elsewhere and they essentially become a captured market as far as the supplier is concerned. This creates a risk that the supplier may charge excessive prices, as the supplier does not face competition and the risk of losing market share to other suppliers.
- 5.4. The Commission investigated and found the following in respect of ADvTECH:

Handwritten signature and initials in black ink, located at the bottom right of the page.

5.4.1. There are approximately 50 registered private schools falling under ADvTECH in South Africa (a list of the schools is attached hereto marked as "Annexure A"), most of which have supply agreements with exclusively appointed uniform suppliers for the sourcing and retailing of each school's respective school uniform. Further, none of these retailers have been appointed through a competitive bidding process. A list of the suppliers of the schools falling under the ADvTECH is attached hereto marked as " Annexure B"

5.4.2. The Commission concluded that the exclusive agreement between each of the schools falling under the ADvTECH Group and their respective uniform suppliers has resulted in significant competition concerns in contravention of section 5(1) and/or 8(c) of the Act.

6. ADVTECH'S CO-OPERATION

6.1. Prior to the Circular in May 2015, all of ADvTECH's supply agreements were for an indefinite period and only contained a twelve (12) month notice termination clause. Following the afore-mentioned Circular, ADvTECH has taken pro-active steps by negotiating with each of their appointed suppliers and amending all of their contracts down to being limited to a five year duration from 01 January 2016 to 31 December 2020 - instead of being of unlimited duration, as originally concluded. Furthermore, the agreements provide for a 12 month termination clause.

6.2. Despite the above, no new competitive process was undertaken in the appointment of the supplier, there was just a re-appointment of the old suppliers that were subject to the original supply agreements, which currently remains in place until 31 December 2020.

6.3. In addition, ADvTECH has also shown very keen interest in determining which school uniforms it could change and standardize to becoming more generic to

Handwritten signature and initials in the bottom right corner of the page.

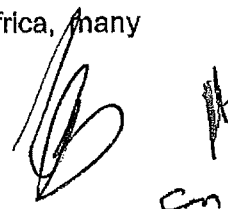
enable parents of learners of their schools to purchase school uniform from general retailers. This included a letter to parents of learners across its various schools on 07 February 2018 to update them on the Commission's investigation as well as set out some of the commitments that ADvTECH has agreed to, in the interest of cooperating with the Commission.

7. SETTLEMENT

- 7.1. The Commission has engaged with various schools and school groups, school uniform manufacturers, distributors and other relevant stakeholders, in order to bring change to the practices taking place in the supply of school uniforms so that the price of school uniform items becomes reasonable and affordable for parents.
- 7.2. In particular, the Commission engaged with schools in order to solicit firm commitments to change future conduct. In this regard the Commission engaged with ADvTECH, whose co-operation with the Commission and/or willingness to comply with the Circular is noted in Section 9 below and which engagement has resulted in this Agreement.
- 7.3. The Commission further notes that ADvTECH has expressed a high degree of willingness to enter into a consent order agreement with the Commission on the basis that the agreement is in line with the principles set out in the Circular.

8. THE PURPOSE OF THE CONSENT AGREEMENT

- 8.1. The purpose of this Consent Agreement is to settle the Complaint and to provide clarity in relation to the Commission's views in respect of the competition concerns arising from the Complaint.
- 8.2. The Commission considered the benefits to the public interest if the cost of school uniform items could be reduced. The cost of school uniform items represent a significant part of the cost of schooling. In South Africa, many



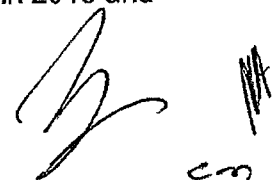
Handwritten signature and initials, possibly 'cm'.

parents struggle to afford schooling for their children. The Commission concluded that the interests of consumers and competitors in the relevant market would be better served by not proceeding any further with a complaint referral and by rather obtaining undertakings from the Respondents as to future conduct.

- 8.3. ADvTECH does not make any admission of liability of any kind whatsoever in relation to any prohibited conduct under the Act arising from the conduct described in the Complaint, because it contends that it was not engaged in any unlawful conduct in contravention of sections 5(1) or 8(c) of the Act.

9. AGREEMENT CONCERNING ADVTECH'S FUTURE CONDUCT

- 9.1. Contracting with school uniform suppliers must be concluded following a competitive bidding process to enable any potential school uniform suppliers to have the reasonable opportunity to compete for the supply of school uniform items to a school.
- 9.2. Any contract entered into to supply school uniform items to ADvTECH schools must be for a limited duration of not more than 5 years. At the end of the contract period, a new competitive bidding process must be embarked upon, that complies with the guidance contained herein.
- 9.3. ADvTECH undertakes to adhere to the code of conduct containing best practices which are in line with the DBE Circular referred to hereinabove, and which are attached herewith and marked "Addendum A".
- 9.4. ADvTECH will implement innovative measures to manage the cost of uniforms which will include, but not be limited to, the establishment of second hand uniform shops at the schools or in the vicinity of the schools.
- 9.5. ADvTECH has conducted a review of its uniform for all its schools in 2018 and

Handwritten signature and initials in the bottom right corner of the page.

is in the process of implementing the necessary changes in the immediate, medium to long term; depending on the scope and potential impact of the changes on schools, learners and parents of learners of their schools. ADvTECH intends to comply with all the requirements of the Commission by the end of 2020.

- 9.6. ADvTECH agrees and undertakes to prepare and circulate a statement, in a form it deems appropriate, summarising the content of this Consent Agreement to its schools management, the relevant employees responsible for procurement at its head office and to the parents of learners of their respective schools.
- 9.7. In addition, the parties agree that should ADvTECH fail to adhere to the undertakings contained in Addendum A then the Commission is entitled to prosecute ADvTECH before the Tribunal.

10. MONITORING

- 10.1. The Commission may request, at any time, but not more than once annually, that ADvTECH submit a report to the Commission confirming compliance with this Consent Agreement.
- 10.2. Following receipt of such a report, the Commission may request copies of, or access to, any documents related to compliance with the terms of this Consent Agreement.

11. VARIATION

- 11.1. ADvTECH shall be entitled to apply to the Commission for a waiver, relaxation or modification of any of the terms of this Consent Agreement. In the event of the Commission and ADvTECH agreeing upon the waiver, relaxation or modification of this Consent Agreement, the Commission and ADvTECH shall apply to the Tribunal for confirmation by it of such waiver, relaxation, or

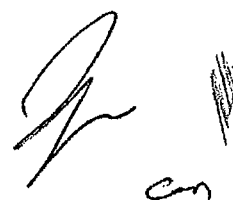
Handwritten signature and initials in the bottom right corner of the page.

modification.

- 11.2. In the event of the Commission not agreeing to the waiver, relaxation or modification of this Consent Agreement, ADvTECH shall be entitled to apply to the Tribunal for an order waiving, relaxing, or modifying of this Consent Agreement. The Commission shall be entitled to oppose such application, with good reason.

12. CONCLUSION

- 12.1. This Consent Agreement is in full and final settlement of all complaints against ADvTECH arising from the Complaint under the Commission case number 2017Jan0035 and 2017Feb0019.
- 12.2. The undertakings in respect of future conduct contained in this Consent Agreement shall apply for a period of ten years, or at least a minimum of three bidding cycles from the date that this Settlement Agreement is made an order of the Tribunal.
- 12.3. This Consent Agreement may be signed in counterparts.

Handwritten signature and initials, possibly "Jen" and "en".

FOR THE COMMISSION

DATED AND SIGNED AT Pretoria ON THE 22nd DAY OF
Feb 2019



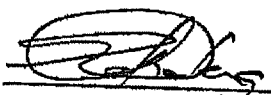
TEMBINKOSI BONAKELE
COMPETITION COMMISSIONER

FOR ADVTECH

DATED AND SIGNED AT SANDTON ON THE 21 DAY OF
FEBRUARY 2019



MIKE AITKEN
CEO – SCHOOLS DIVISION
ADVTECH LTD



CHAILE MAKALENG
MANAGER – NATIONAL ADMIN. AND OPERATIONS
ADVTECH LTD

ADDENDUM A

UNDERTAKINGS IN LINE WITH THE DBE CIRCULAR

1. ADvTECH undertakes that it will not, within 12 months of the signature of this Consent Agreement, be party to any agreement, or practice pursuant to which school uniforms would be designed, manufactured or sold, save as provided for in this Consent Agreement and Undertaking.
2. Any design, manufacture or sale of school uniform items must be made in accordance with the guidelines as set out in the Circular. The guidelines are expanded below:

The Design of School Uniform

3. School uniform must be as generic as possible so that it can be obtained from many suppliers. Where school uniforms consist of more generic items, which parents can buy from general retailers, at lower prices, the potential harm resulting from exclusive agreements may be lessened, since parents will have more choices in respect of where to shop for these items and to decide what price they are willing to pay.
4. Where this is not possible, exclusivity should be limited to such items that the school regards as being necessary to get from the pre-selected supplier. In other words, the number of unique school uniform items and unique sport uniform items that form part of the basic compulsory school uniform should be limited.

Contracting with Suppliers

5. ADvTECH shall engage in a competitive bidding process when sourcing a supplier of their school uniform. This will give all potential school uniform suppliers the opportunity to compete to supply schools with school uniforms.
6. Where reasonably possible, ADvTECH shall make use of more than one



supplier of school uniform items. The use of more than one supplier will provide parents with more choices, reduce the incentive of the supplier to charge very high prices and prevent the total elimination of competition during the duration of the contract.

7. Any contract entered into to supply school uniform items by ADvTECH must be for a limited duration of not more than 5 years. At the end of the contract period, a new competitive bidding process must be embarked upon, that complies with the guidance contained herein.



ANNEXURE A - SUMMARY OF ADVTECH SCHOOL DIVISION AS AT 15/3/2017**1. Schools****Abbotts Colleges:**

Century Gate – Century City, Cape Town, Western Cape (before 2000, as Milnerton, moved, changed 2008)

Claremont – Claremont, Cape Town, Western Cape (before 2000)

Northcliff – Randburg, Gauteng (2004)

Johannesburg South – Johannesburg Sout, Gauteng (2010)

Centrion – Centurion, Tshwane, Gauteng (2014)

Pretoria East – Pretoria, Tsheane, Gauteng (2006)

ADvTECH Academies:

Kathstan College, Preparatory, Preprimary – Benoni, Ekuruleni, Gauteng (2015)

Gaborone International School – Gaborone (2015)

Foundershill College, Preparatory, Preprimary – Modderfontein, Ekurhuleni, Gauteng (2016)

Summit College, Preparatory, Prepreparatory – Kyalami, Midrand, Gauteng (2016)

Copperleaf College, Preparatory, Preprimary – Centurion, Tshwane, Gauteng (2017)

Crawford Schools

Sandton College (1993-Killarney), Preparatory, Preprimary – Sandton, Gauteng, (1996)

Lonehill College, Preparatory, Preprimary – Lonehill, Sandton, Gauteng

Pretoria College, Preparatory, Preprimary – Pretoria, Gauteng

La Lucia College, Preparatory, Preprimary – Durban North, KZN

North Coast College, Preparatory, Preprimary- Tongaat, KZN

Fourways, Preparatory, Preprimary- Fourways, Sandton, Gauteng

Italla Preparatory, Preprimary – Bedornview, Ekurhuleni, Gauteng, (2014)

Village Preprimary – Rivonia, Sandton, Gauteng (2003)


cm

Junior Colleges (Preprimary):

Luthuli – Durban, eThekweni, KZN
 Castillian – Meyersdale, Ekurhuleni, Gauteng
 Fourways – Fourways, Sandton, Gauteng
 Gardens – Fourways, Sandton, Gauteng
 Snuggles – Radiokop, Roodepoort, Gauteng (2014)
 Sunninghill – Sunninghill, Sandton, Gauteng
 Tiny Town, Sandton Central, Gauteng (2014)
 Sandton – Bryanston, Sandton, Gauteng

Margon (Acquisition November 2014 – Integration still in progress):

Charterhouse Preparatory, Preprimary – Radiokop, Roodepoort, Gauteng
 Olympys High school, Primary, Preprimary – Olympus A H, Tshwane, Gauteng
 Avanto Primary – Preprimary- Muldersdrift, Krugersdorp, Gauteng
 Ruimsig – Ruimsig, Roodepoort, Gauteng
 Raslouw Preprimary – Venturion, Tshwane, Gauteng
 Edenvale – Pretoria – was managed by Advtech up to 2016, now an Independent School, not part of Advtech anymore

Trinityhouse:

Randpark Ridge High School, Preparatory, Preprimary – Randpark Ridge, Roodepoort, Gauteng (2008)
 Little Falls Hills School, Preparatory, Preprimary – Little Falls, Roodepoort, Gauteng (2012)
 Heritage Hill Preparatory, Preprimary – Centurion, Tshwane, Gauteng (2014)
 Palm Lakes High School (2014), Preparatory, Preprimary – Tinley Manor, Dolphin Coast, KZN (2013)
 Northriding Preparatory, Preprimary – Northriding, Roodepoort, Gauteng (2015)
 Glenwoodhouse – George, Western Cape (2017)



2. Uniform of different brands

With multiples suppliers, one stands to lose the integrity of the colours represented in the logos. That is the reason we limit suppliers. Abbotts Colleges and Crawford Schools were the first two brands under Advtech.

Abbotts Colleges never has a uniform and started from Grade 10 to Grade 12 only. Now there are a few that has student from Grade 8 to Grade 12, but they do not consider a uniform as yet.

Crawford schools uniform is known for the quality, look and feel of all items. All the Crawford schools have the same uniforms with a slight difference in the materials used in KwaZulu Natal to compensate for the weather.

The College colours are red, black and white while the Preparatory and Preprimary are burgundy, green and tartan.

Crawford College has a high quality blazer, the only one in the country, consisting of % Polyester and % wool. Because of the price increases it was decided to change to the high quality 100% Polyester blazers.

The step-out clothes (black trouser and belt, white shirt, black shoes for the boys and black pants/skirts /blouse and black shoes for girls) can be bought anywhere although the uniform suppliers do have stock available.

All footwear can also be bought anywhere as long as it is black shoes, black sandals (girls) and black, white or black and white takkies

To accommodate outlying schools and parents, the supplier in Gauteng agreed to supply the uniform on consignment to Crawford Pretoria and Italia, while the supplier in KwaZulu Natal has a room at Crawford North Coast for the uniforms.

The Trinity schools have the same uniforms and also excellent quality and durability. The High School's honours blazer is white, while the Preparatory has a navy honours

Handwritten signature and initials in the bottom right corner of the page.

blazer, both of high quality.

We are awaiting approval from the Competition Commission regarding Glenwood House in George. The parents buy the uniform from an outfitter in George and there is no contract.

Junior Colleges and Trinity Pre-Primaries buy stock from suppliers and sell to the parents.

All the Centurus Colleges and ADvTech Academies consist of individual schools, with their own individual logos, uniform items and colours.

Kathstan College (ADVTECH Academies) parents buy their uniforms from Rynfield Drapers and there is no contract.

Sports gear (including uniforms) and suppliers, especially for 1st teams, differ from school to school.

Handwritten signature and initials in the bottom right corner of the page.

ANNEXURE B - SUPPLIERS PER SCHOOL**Crawford School**

Gauteng	McCullagh and Bothwell
KwaZulu Natal	Eduform

Junior Colleges

Gauteng	Ekurhuleni Industrial Suppliers (School purchase & sell)
KwaZulu	Ingear Promotions (School purchase & Sell)

Trinityhouse

Gauteng	Student Schoolwear & Sport Honeydew Schoolwear (previously Honeydew Drapers) Ashdean Agencies (school purchase & Sell)
KwaZulu Natal	Eduform

Centurus

Pecanwood	Kerrin Bain – Rsewall Clothing
Southdowns	Fatima Mohamed
Tyger Valley	Frans Huismen

Maragon

Maragon Schools	Kerrin /Grant Bain – Rosewall Clothing
Charterhouse	McCullagh and Bothwell School & Leisure Student Schoolwear & Sport

Advtech Academies

Kathstan	Rynfield Drapers
Foudershill	McCullagh and Bothwell (Consignment)
Summit College	McCullagh and Bothwell
Copperleaf	McCullagh and Bothwell (Consignment)

