



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR245Mar17/SA085Jun17

In the matter between:

The Competition Commission

Applicant

and

Afrion Property Services CC

Respondent

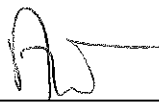
Panel : AW Wessels (Presiding Member)
I Valodia (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 19 July 2017

Decided on : 19 July 2017

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Afrion Property Services CC annexed hereto marked "A".



Presiding Member
Mr AW Wessels

19 July 2017
Date

Concurring: Prof. Imraan Valodia and Mrs Medi Mokuena

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

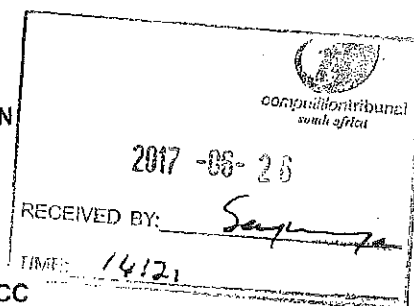
CT Case No: CR245MAR17/SA085Jun17
CC Case No: 2015MAR0119

In the matter between:

THE COMPETITION COMMISSION

And

AFRION PROPERTY SERVICES CC



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 AFRION PROPERTY SERVICES CC, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Afrion Property Services CC 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 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2015Mar0119;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Afrion;
- 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 **"Afrion"** means Afrion Property Services CC, a close corporations duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 150 Queensberry Street, Norton Home Estate, Benoni, Gauteng;
- 1.8 **"Parties"** means the Commission and Afrion; 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 The firms listed in paragraphs 2.1 and 2.2 above shall hereinafter be referred to as the Respondents.
- 2.4 The Commission's investigation revealed the following:
- 2.4.1 During or about 2007 and 2012, Afrion, together with Independent Fire Protection Services CC (Independent Fire) fixed prices, divided markets and tendered collusively in the market for the supply, installation and maintenance of fire control and protection systems.

2.4.2 Afrion and Independent Fire 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.

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

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

3. ADMISSION

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

4. FUTURE CONDUCT

Afrion 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 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.

5. ADMINISTRATIVE PENALTY

5.1 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, Afrion is liable to pay an administrative penalty.

5.2 Afrion agrees and undertakes to pay a cumulative administrative penalty in the amount of R327 201.85 (**Three hundred and twenty-seven thousand, two hundred and one rand and eighty five cents**) This amount does not exceed 10% of Afrion's annual turnover in the Republic of South Africa for the financial year ended February 2012.

5.3 Afrion shall pay the above-mentioned in 4 (four) equal quarterly payments of R 81 800.46 (**Eighty one thousand eight hundred and forty six cents**), with the first payment to be within 90 (ninety) days from date of confirmation of this Consent Agreement as a consent order by the Tribunal and then quarterly thereafter.

5.4 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/ Afrion

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'B' or similar character. The second signature is more complex, featuring a large, bold 'B' with additional flourishes and a checkmark-like element.

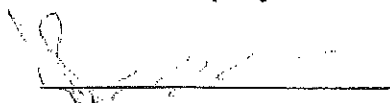
5.5 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

6. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of the Commission's investigations under Case No. 2015Mar0119 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Afrion relating to the conduct that is the subject of the Commission's investigations under Case No. 2015Mar0119.

Dated and signed at Pretoria on the 7th day of June 2017

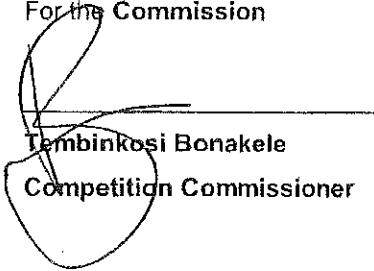
For Afrion Property Services CC


Chief Executive Officer

Name in Full: Diederick Brouwer

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

For the Commission


Tembinkosi Bonakele

Competition Commissioner