



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO066May18

In the matter between:

The Competition Commission

Applicant

And

St Andrews School for Girls NPC

First Respondent

St Andrews School Uniform Shop Trust

Second 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 St Andrews School for Girls NPC; St Andrews School Uniform Shop Trust annexed hereto marked "A".

**Presiding Member
Mr Enver Daniels**

27 February 2019
Date

Concurring: Ms Mondo Mazwai and Prof. Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO: CO066MAY18

CC CASE NO: 2017JAN0035	
<small>competition tribunal south africa</small>	
2019 -02- 25	
RECEIVED BY:	<i>Malom</i>
TIME:	11:40

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

ST ANDREW'S SCHOOL FOR GIRLS NPC

First Respondent

ST ANDREWS SCHOOL UNIFORM SHOP TRUST

Second Respondent

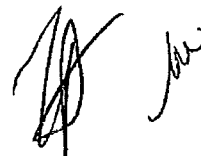
CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION, ST ANDREW'S SCHOOL FOR GIRLS NPC AND THE ST ANDREWS SCHOOL UNIFORM SHOP TRUST IN RESPECT OF THE ALLEGED CONTRAVENTION OF SECTIONS 5(1), 8(c) and 8(a) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

1. The Competition Commission, St Andrew's School for Girls NPC and the St Andrews School Uniform Shop Trust 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:

- 2.2.1. "Act" means the Competition Act 89 of 1998, as amended;
- 2.2.2. "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;
- 2.2.3. "Commissioner" means the Commissioner of the Commission, appointed in terms of section 22 of the Competition Act;
- 2.2.4. "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.
- 2.2.5. "Complaint" means the complaint initiated by the Commissioner in terms of section 49(B) of the Competition Act No. 89 of 1998, as amended under case number 2017Jan0035;
- 2.2.6. "Consent Agreement" means this agreement duly signed and concluded between the Commission and St Andrew's School for Girls NPC;
- 2.2.7. "Generic" (with reference to school uniform items) means not specific to a particular school and not having only one particular brand name;
- 2.2.8. "Parent" means the legal guardian of a learner attending St Andrew's School for Girls;
- 2.2.9. "Parties" or "Party" means the Commission and St Andrew's School for Girls NPC and St Andrews School Uniform Shop Trust;
- 2.2.10. "St Andrew's School for Girls" means St Andrew's School for Girls NPC, a company incorporated under the laws of the Republic of South Africa with its principal place of business at St Andrew's Avenue, Sender wood, Bedfordview in Gauteng;
- 2.2.11. "St Andrew's Uniform Shop Trust" means St Andrews Uniform Shop Trust, a trust incorporated under the laws of the Republic of South Africa in terms of Section 6(1) of the Trust Property Control Act, 1998 (Act 57 of 1988).
- 2.2.12. "School uniform items" means clothing items that form part of a school uniform include but are not limited to blazers, shirts, pants, etc.;



- 2.2.13. "Supplier" includes a reference to a retailer or distributor;
- 2.2.14. "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;
- 2.2.15. "Unique" (with reference to school uniform items) means belonging to or connected to one particular school.

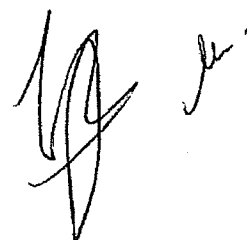
3 BACKGROUND AND CONTEXT

- 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.

- 3.3.1 School uniform items should 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.
- 3.3.2. The number of unique 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.
- 3.3.3. 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.
- 3.3.4. 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.
- 3.3.5. 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.

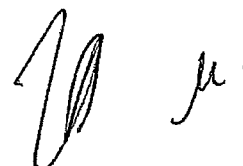


4. THE COMPLAINT

- 4.1. On 27 January 2017, the Commissioner initiated a complaint against a number of schools, including St Andrew's School for Girls and St Andrews School Uniform Shop Trust, 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 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 disincentivise firms from being innovative.

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 St Andrew's School for Girls:

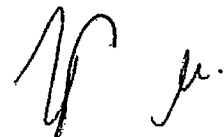
5.4.1. St Andrew's School for Girls sells its school uniform items through a shop on the school premises that is operated by a separate trust called the St Andrew's School Uniform Shop Trust, with the latter being the sole exclusive supplier of school uniform items of St Andrew's School for Girls. Further, St Andrew's School Uniform Shop Trust was not appointed through a competitive bidding process; and

5.4.2. The Commission concluded that the exclusive arrangement between St Andrew's School for Girls and the St Andrew's School Uniform Shop Trust has resulted in significant competition concerns in contravention of section 5(1) and/or 8(c) of the Act.

6. ST ANDREW'S SCHOOL FOR GIRLS' CO-OPERATION WITH THE COMMISSION'S INVESTIGATION

6.1 St Andrew's School for Girls 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 Consent Agreement.

6.2 St Andrew's School for Girls also showed in a keen interest in determining



which school uniforms it could change and standardize to becoming more generic to enable parents of learners of its school to purchase school uniform from general retailers.

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 of learners of the school.
- 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 St Andrew's School for Girls, whose co-operation with the Commission and/or willingness to comply with the Circular is noted at paragraph 9 below, and which engagement has resulted in this Agreement.
- 7.3. The Commission further notes that St Andrew's School for Girls 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 parents struggle to afford schooling for their children. The Commission

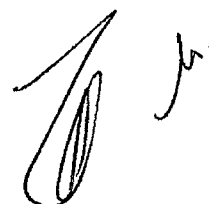


concluded that the interests of consumers and competitors in the relevant market would be better served by not proceeding any further with a complaint referral and by rather obtaining undertakings from the Respondents as to future conduct.

- 8.3. St Andrew's School for Girls 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 section 5(1) or 8(c) of the Act.

9. AGREEMENT CONCERNING ST ANDREW'S SCHOOL FOR GIRLS'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 by St Andrew's School for Girls and St Andrews School Uniform Shop Trust 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. St Andrew's School for Girls 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. St Andrew's School for Girls agrees and undertakes to prepare and circulate a statement summarising the content of this Consent Agreement to its employees and to the parents of learners of the school. This statement shall also be provided to new parents whose children attend the school for the first time.



- 9.5. In addition, the parties agree that should St Andrew's School for Girls fail to adhere to the code of conduct contained in Addendum A, the Commission will be entitled to prosecute the Respondents before the Tribunal for failure to adhere to the terms of this Consent Agreement.

10. MONITORING

- 10.1. The Commission may request, at any time, but not more than once annually, that St Andrew's School for Girls 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. St Andrew's School for Girls 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 St Andrew's School for Girls agreeing upon the waiver, relaxation or modification of this Consent Agreement, the Commission and St Andrew's School for Girls shall apply to the Tribunal for confirmation by it of such waiver, relaxation, or modification.
- 11.2. In the event of the Commission not agreeing to the waiver, relaxation or modification of this Consent Agreement, St Andrew's School for Girls 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.

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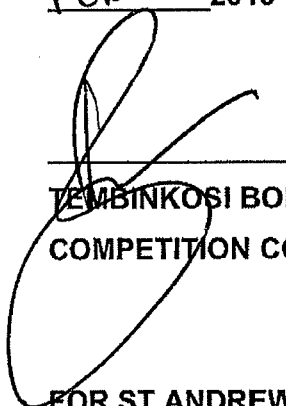
12. GENERAL

- 12.1. This Consent Agreement is in full and final settlement of all complaints against St Andrew's School for Girls and St Andrews School Uniform Shop Trust arising from the Complaint under the Commission case number 2017Jan0035.
- 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.



FOR THE COMMISSION

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



TEMBINKOSI BONAKELE
COMPETITION COMMISSIONER

FOR ST ANDREW'S SCHOOL FOR GIRLS

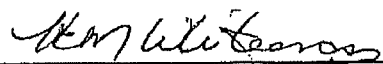
DATED AND SIGNED AT BEDFORDVIEW ON THE 6 DAY OF
FEBRUARY 2019



HELENOR WHITECROSS
BUSINESS MANAGER

ST ANDREWS SCHOOL UNIFORM SHOP TRUST

DATED AND SIGNED AT BEDFORDVIEW ON THE 6 DAY OF
FEBRUARY 2019



HELENOR WHITECROSS
BUSINESS MANAGER

ADDENDUM A

UNDERTAKINGS IN LINE WITH THE DBE CIRCULAR

1. St Andrew's School for Girls 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 the Circular.
2. Any design, manufacture or sale of school uniform items shall 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 shall 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. Alternative put, 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. St Andrew's School for Girls 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. St Andrew's School for Girls shall have more than one supplier of school uniform items unless it can demonstrate to the Commission that it is not reasonably practical to have more than one supplier. 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 St Andrew's School for Girls and St Andrews School Uniform Shop Trust 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.

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