



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO167Aug18

In the matter between:

The Competition Commission

Applicant

And

Inspired Schools (Pty) Ltd t/a Reddam House Schools
and Reddford House Schools

First Respondent

Reddam House Shop

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 Inspired Schools (Pty) Ltd t/a Reddam House Schools and Reddford House Schools; Reddam House Shop 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: CO167AUG18

CC CASE NO: 2017JAN0035
 competitiontribunal
 south africa
 2019 -02- 25
 RECEIVED BY: *Maleni* Applicant
 TIME: 11:40

In the matter between:

THE COMPETITION COMMISSION

and

INSPIRED SCHOOLS (PTY) LIMITED trading as
REDDAM HOUSE SCHOOLS AND REDDFORD HOUSE
SCHOOLS

First Respondent

REDDAM HOUSE SHOP

Second Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION,
INSPIRED SCHOOLS (PTY) LIMITED AND REDDAM HOUSE SHOP IN RESPECT
OF THE ALLEGED CONTRAVENTION OF SECTIONS 5(1), 8(a) and 8(c) OF THE
COMPETITION ACT 89 OF 1998, AS AMENDED

1. The Competition Commission, Inspired Schools (Pty) Limited and Reddam House Shop 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 in conjunction with section 58(1)(b) of the Competition Act 89 of 1998, as amended, on the terms set out below:

2. DEFINITIONS

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

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- 2.1. "Act" means the Competition Act 89 of 1998, as amended;
- 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;
- 2.3. "Commissioner" means the Commissioner of the *Commission*, appointed in terms of section 22 of the Competition Act;
- 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 of a high level of quality at the lowest prices by stimulating competition and by preventing favouritism;
- 2.5. "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;
- 2.6. "Consent Agreement" means this agreement duly signed and concluded between the *Commission* and the *Respondents*;
- 2.7. "First Respondent" means Inspired Schools (Pty) Limited ("Inspired"), trading as Reddam House schools and Reddford House schools, a company incorporated under the laws of the Republic of South Africa with its principal place of business at Country Estate Drive, Waterfall, Johannesburg.
- 2.8. "Generic" (with reference to school uniform items) means not specific to a particular school and not having only one particular brand name;
- 2.9. "Material" when used in relation to price or costs refers to a price or cost increase, which is on average across all unique school and sport uniform items that form the basic compulsory uniform (excluding optional additions), above inflation in the clothing sector i.e. the Consumer Price Index (CPI) for clothing as reported by Statistics South Africa in its annual statistical release;
- 2.10. "Parent" means the legal guardian of a learner attending a school owned and/or managed by Inspired;
- 2.11. "Parties" or "Party" means the *Commission* and/or the *Respondents*;

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- 2.12. "*Respondents*" means the First and Second Respondents;
- 2.13. "*Second Respondent*" means Reddam House Shop, a partnership with its principal place of business at Reddam Avenue, Constantia, Cape Town;
- 2.14. "*School uniform items*" mean clothing items that form part of a school uniform, including but not limited to blazers, shirts, pants, etc.;
- 2.15. "*Supplier*" includes a reference to a wholesaler, retailer or distributor;
- 2.16. "*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; and
- 2.17. "*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").

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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 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.

3.5.2. 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.

3.5.3. 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

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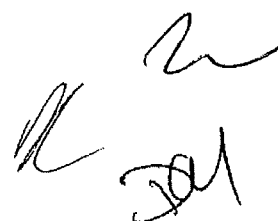
should be for a limited duration, of 3 to 5 years. At the end of the contract period, a new bidding process should be embarked upon. This procurement process can also be done by way of advertising, where schools invite potential school uniform suppliers to bid.

4. THE COMPLAINT

- 4.1. On 27 January 2017, the *Commissioner* initiated a complaint against a number of schools, including Reddam House schools, Reddford house schools and 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

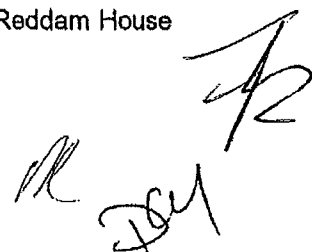
- 5.1. The Commission investigated the Complaint and concluded that the existence of exclusive supply agreements concluded by suppliers and various schools may substantially prevent or lessen competition in the market by excluding potential and existing school uniform suppliers from entering or growing in the relevant market.

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- 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 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 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 Inspired and Reddam House Shop:
- 5.4.1. Inspired operates schools under two different brands in South Africa, namely Reddam House Schools and Reddford House Schools. In essence, each Reddam House school and Reddford House school is operated as a division of Inspired. At present, there are nine Reddam House schools and three Reddford House schools in South Africa.
- 5.4.2. With particular regard to the supply of school uniforms, Inspired outsources this service to third party suppliers, who in turn supply parents of Inspired's schools. Inspired's role in the uniform supply chain therefore only consists of holding and licensing the use of the intellectual property in its schools' badges, emblems, mottos and uniform designs; appointing suppliers and negotiating the terms and conditions of supply of its schools' uniforms; determining the uniform design, policy and code, and approving the quality of uniform items to be supplied.

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- 5.4.3. Reddam House Shop operates as a retailer and a wholesaler for the supply of school uniforms with particular regard to Reddam House schools.
- 5.4.4. Until 2017, when School & Leisure was also appointed to source and supply Reddam House schools with school uniforms, Reddam House Shop was the only appointed wholesaler in respect of Reddam House schools' uniforms for close to twenty (20) years.
- 5.4.5. School & Leisure is not required to source its supplies from Reddam House Shop.
- 5.4.6. Both Reddam House Shop and School & Leisure were not appointed following a competitive bidding process.
- 5.4.7. There are currently four (out of nine) Reddam House schools that have retail shops/outlets on school premises. Reddam House Shop operates two of these retail shops, which are located at Reddam House Constantia and Reddam House Waterfall; from which it also retails school uniform items to Reddam House Atlantic Seaboard and Reddam House Somerset, which do not have shops on the school premises.
- 5.4.8. The other two retail shops/outlets on school premises of Reddam House Bedfordview and Reddam House Umhlanga, are owned and operated by independent third parties that are neither operated nor controlled by either Reddam House Shop or Inspired.
- 5.4.9. Reddam House Durbanville is supplied by School & Leisure, which also retails various school uniforms in Gauteng, including the Reddford House schools' uniform.
- 5.4.10. The third party independent retailers that supply Reddam House

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Bedfordview and Reddam House Umhlanga had no alternative but to source their school uniform inventory from Reddam House Shop on a wholesale basis. Lastly, none of these retailers, have been appointed through a competitive bidding process.

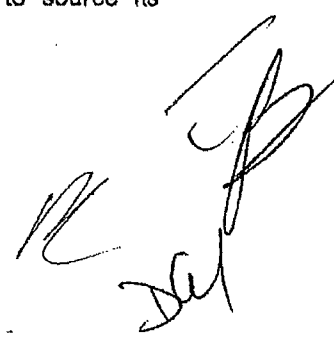
5.4.11. All of these retailers supply school uniforms directly to parents from any of the various schools that are part of Reddam House schools and do not limit sales to parents of pupils of the school on which their premises are situated.

5.4.12. In 2015, when Reddford House schools was founded, School & Leisure was appointed to supply school uniforms to Reddford House schools. School & Leisure is an independent retailer in that it is not controlled or operated by Inspired or Reddam House Shop and is not obliged to buy school uniforms from Reddam House Shop. Again, School & Leisure was not appointed through a competitive bidding process.

5.4.13. The Commission concluded that the historically exclusive nature of the arrangement between Inspired and Reddam House Shop has resulted in significant competition concerns in contravention of section 5(1) and/or 8(c) of the Act, which may have further lead to Reddam House Shop contravening section 8(a) of the Act.

6. INSPIRED AND REDDAM HOUSE SHOP'S CO-OPERATION WITH THE COMMISSION'S INVESTIGATION

6.1. Prior to 2015, all of Reddam House schools' uniform items were sourced by retailers from Reddam House Shop on a wholesale basis. However, an independent retailer, School & Leisure, was appointed to supply Reddford schools' uniform, and further, in 2017, was appointed to source and supply Reddam House schools' uniforms as well, without having to source its supplies from Reddam House Shop.



- 6.2. Inspired and Reddam House Shop expressed a high degree of willingness to cooperate with the Commission's investigation and identified with the Commission's intent to effect change in the school uniform supply market. Inspired and Reddam House Shop expressed a 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.
- 6.3. Inspired further submits that it has always attempted to reduce the burden of school uniform costs on parents, in that:
- 6.3.1. it permitted parents of pupils to purchase only certain items of the uniform range, and has not required them to purchase the entire range of school uniform;
 - 6.3.2. only one uniform was intentionally designed to cater for both winter and summer seasons; and
 - 6.3.3. to the extent possible, uniform items have been designed in a unisex fashion, which increases the possibility for siblings of pupils to be able to use "hand-me-downs", even if they are of the opposite sex, as well as to increase the size of the pool of second-hand uniform items available to pupils wishing to purchase such items.
- 6.4. Further, Reddam House Shop submits it has always sought to provide the best quality uniform at the lowest reasonable prices and it has continuously sought to achieve these outcomes since the inception of its involvement in school uniform supply.
- 6.5. Prior to engaging with the Commission, the Circular was, unfortunately, not received by Inspired and Reddam House Shop after it was circulated by the DBE in May 2015.

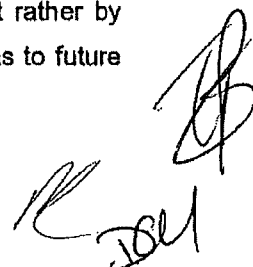
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7. SETTLEMENT

- 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 Inspired and Reddam House Shop whose significant co-operation with the Commission is noted above and which engagement has resulted in this Consent Agreement.
- 7.3. The Commission reiterates that Inspired and Reddam House Shop have expressed a 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 to seek the imposition of any administrative penalty, but rather by obtaining undertakings from Inspired and Reddam House Shop as to future

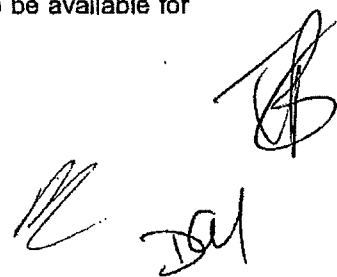
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conduct.

- 8.3. Inspired and Reddam House Shop do 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 they contend that they were not engaged in any unlawful conduct in contravention of sections 5(1), 8(a) and/or 8(c) of the Act.

9. THE AGREEMENT CONCERNING INSPIRED AND REDDAM HOUSE SHOP'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 Inspired and Reddam House Shop 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. Inspired and Reddam House Shop undertake 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 as "Addendum A".
- 9.4. Inspired agrees and undertakes to prepare and publish a statement summarising the content of this Consent Agreement to its employees and to the parents of learners of its schools, within one month of this Consent Agreement being confirmed as an order of the Tribunal, which will be displayed on notice boards at schools or as a notification on Inspired's website, for a period of 2 months. This statement shall also be available for

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viewing to new parents whose children attend a school of Inspired for the first time in the 2020 academic year.

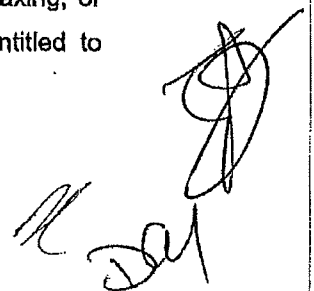
- 9.5. In the event that Inspired and Reddam House Shop fail to adhere to the code of conduct contained in Addendum A, the Commission will be entitled to institute proceedings against Inspired and Reddam House Shop before the Tribunal.

10. MONITORING

- 10.1. The Commission may request, at any time, but not more than once annually, that Inspired and Reddam House Shop 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, that are in the possession of Inspired and Reddam House Shop.

11. VARIATION


- 11.1. Inspired and Reddam House Shop shall be entitled to approach the Commission for a waiver, relaxation or modification of any of the terms of this Consent Agreement. In the event of the Commission and Inspired and Reddam House Shop agreeing upon the waiver, relaxation or modification of this Consent Agreement, the Commission and Inspired and Reddam House Shop 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, Inspired and Reddam House Shop shall be entitled to apply to the Tribunal for an order waiving, relaxing, or modifying this Consent Agreement. The Commission shall be entitled to

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oppose such application, with good reason.

12. GENERAL

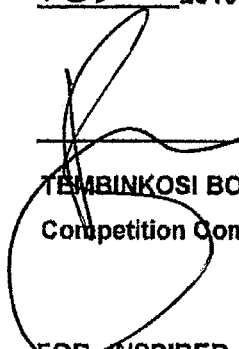
- 12.1. This Consent Agreement is in full and final settlement of all complaints against Inspired and Reddam House Shop arising from the Complaint under the Commission case number 2017Jan0035.
- 12.2. The undertakings in respect of future conduct contained in this Consent Agreement shall apply for the lesser of a period of ten years, or 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.



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FOR THE COMMISSION

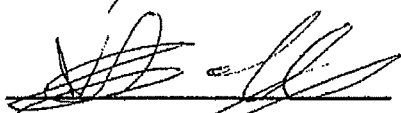
DATED AND SIGNED AT Pretoria ON THE 22nd DAY OF Feb 2019



TEMBINKOSI BONAKELE
Competition Commissioner

FOR INSPIRED SCHOOLS (PTY) LIMITED TRADING AS REDDAM HOUSE SCHOOLS AND REDDFORD HOUSE SCHOOLS

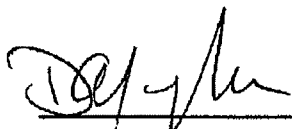
DATED AND SIGNED AT Waterfall ON THE 7th DAY OF FEBRUARY 2019



DEAN COLLEY
CHIEF FINANCIAL OFFICER AFRICA

FOR REDDAM HOUSE SHOP

DATED AND SIGNED AT Noordhoek ON THE 7 DAY OF FEBRUARY 2019



DELICIA MERRINGTON
MANAGING PARTNER



ADDENDUM A

UNDERTAKINGS IN LINE WITH THE DBE CIRCULAR

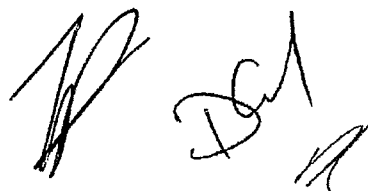
1. Inspired undertakes that it will not, within 12 months of the signature of this Consent Agreement, be party to any agreement, or practice pursuant to which school uniforms would be designed, manufactured or sold, save as provided for in this Consent Agreement and the Circular.
2. Any design, manufacture or sale of school uniform items 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. Alternatively 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. It is recommended that schools 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

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school uniforms.

6. Inspired must 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 Inspired and Reddam House Shop 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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