



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR024May15/SA073Jul20

In the matter between:

The Competition Commission

Applicant

And

Life Wise (Pty) Ltd t/a Eldan Auto Body

Respondent

Panel : AW Wessels (Presiding Member)
: M Mazwai (Tribunal Member)
: E Daniels (Tribunal Member)

Heard on : 05 August 2020

Additional submission
received on : 07 August 2020

Addendum received on : 09 August 2020

Decided on : 12 August 2020

Settlement Agreement

The Tribunal hereby confirms the settlement agreement between the Competition Commission and Life Wise (Pty) Ltd t/a Eldan Auto Body dated 21 July 2020 as well as the addendum to the settlement agreement dated 07 August 2020 as annexed hereto.

**Presiding Member
Mr Andreas Wessels**

**12 August 2020
Date**

Concurring: Ms Mondo Mazwai and Mr Enver Daniels

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO: CR024MAY15

CC CASE NO: 2014JUN0269

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

LIFE WISE (PTY) LTD trading as ELDAN AUTO BODY

Respondent

FILING NOTICE

TAKE NOTICE that the Applicant herewith files the following documents:

1. CT6 Form; and
2. Consent agreement between the Competition Commission and Life Wise (Pty) Ltd t/a Eldan Auto Body.

SIGNED AND DATED AT **PRETORIA** ON THE **21** DAY OF **JULY** 2020.

F.E Mudimeli

FHATUWANI MUDIMELI
COMPETITION COMMISSION
Travenna Campus, Block 2A (3rd
Floor)
55 Meintjies Street
Sunnyside

Pretoria
Tel: (012) 762 6965
Ref: Mr F Mudimeli
Email: ElphusM@compcom.co.za

To: The Registrar
Competition Tribunal
DTI Campus
77 Meintjies Street
Sunnyside
Pretoria
Tel: (012) 394 3354
Fax: (012) 394 0169
E-mail: SibongileM@comptrib.co.za

And to:

ELDAN AUTO BODY
141 Lloyd Street
Pretoria West Street
Tel: (012) 386 0040/ 1979
Fax: (012) 386 6143/ 3470
Ref: Vinay Singh
E-Mail: vinaysingh@eldanautobody.com.



Form CT 6

About this Form

- This Form is issued in terms of the Competition Tribunal Rules.
- Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.
- If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: _____ File # _____

To: **The registrar of the Competition Tribunal**

Concerning the matter between:

_____ (Applicant)

and

_____ (Respondent)

**Take notice that the _____
intends to apply to the Tribunal for the following order:**

Name and Title of person authorised to sign:

Authorised Signature:

Date:



**For Office
Use Only:**

Tribunal file number:

Date filed:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT Case No: CR024MAY15

CC Case no. 2014JUN0269

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

LIFE WISE (PTY) LTD trading as ELDAN AUTO BODY Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND LIFE WISE (PTY) LTD trading as ELDAN AUTO BODY IN RESPECT OF ALLEGED CONTRAVENTION OF SECTION 4 (1)(b)(i), (ii) and (iii) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

Preamble


The Competition Commission and Life Wise (Pty) Ltd trading as Eldan Auto Body ("Eldan Auto") hereby agree that application be made to the Competition Tribunal for confirmation of this Consent agreement as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, in respect of alleged contravention 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, 1998 (Act No. 89 of 1998), as amended;
- 1.2 **"Cover quote"** is exchanged by firms that agreed among themselves about which firm should win a tender and which firm(s) should lose a tender. Cover quote is a disguised quotation (a façade), which is usually a higher price that is submitted by a firm that does not wish to win a tender. It is meant to give a false impression that the firm that eventually wins a tender is cheaper.
- 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 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B of the Act under case number 2015Jul0407;
- 1.6 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Eldan Auto;
- 1.7 **"Eldan Auto"** means Life Wise (Pty) Ltd trading as Eldan Auto Body (**"Eldan Auto"**), registration number 2013/236 543/07;
- 1.8 **"Precision"** means Precision & Sons (Pty) Ltd (**"Precision"**), registration number 1996/014718/07;
- 1.9 **"Parties"** means the Commission and Eldan Auto;
- 1.10 **"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 3rd Floor, Mulayo Building (Block C), the dti Campus, 77



Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 THE COMPLAINT AND COMPLAINT INVESTIGATION

2.1 05 June 2014, the Commissioner, acting in terms of section 49B(1) of the Act, initiated a complaint under case number 2015JUN0269 against Life Wise (Pty) Ltd trading as Eldan Auto Body ("Eldan Auto") and Precision & Sons (Pty) Ltd ("Precision") for alleged price fixing, market division and collusive tendering in the provision of auto body repair services in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

2.2 The allegation against Eldan Auto and Precision is that they discussed and agreed on the exchange of cover quotes.

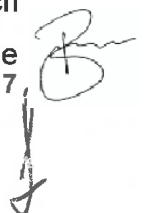
2.3 The Commission's investigation revealed that:

2.3.1 From 2011, Eldan Auto and Precision were a party to an agreement, alternatively a concerted practice in terms of which they fixed the prices, divided the markets by allocating customers and tendered collusively in respect of the provision of auto body repair services. The arrangement between Eldan Auto and Precision was implemented through the exchange of cover quotes.

2.3.2 Eldan Auto and Precision also coordinated their collusive arrangement through Vehicle Accident Assessment Centre ("VAAC"). VAAC is an assessment centre which renders vehicle assessment services to customers of both Eldan Auto and Precision. The communications happened directly between employees of the two firms or through VAAC where some vehicles aimed for repair by the respondents were sometimes assessed.

2.3.3 The representatives of Eldan Auto and Precision also held meetings and had discussions on how to collaborate when providing quotations to clients. The meetings also discussed prices to be charged for auto body repair services, which include panel beating and spray painting.

2.3.4 The employees of Eldan Auto and Precision regularly contacted each other to request cover quotes from each other and this was often done



through email communication.

3 ADMISSION

Eldan Auto admits that it engaged in the conduct set out in clause 2.3.1 to 2.3.4 above in contravention of section 4(1)(b)(ii) of the Act.

4 AGREEMENT CONCERNING FUTURE CONDUCT

Eldan Auto agrees to:

- 4.1 fully cooperate with the Commission in relation to the prosecution of the complaint. Without limiting the generality of the foregoing, Eldan Auto specifically agrees to:
 - 4.1.1 testify in the complaint referral (if any) in respect of alleged contraventions covered by this consent agreement; and
 - 4.1.2 to the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this consent agreement.
 - 4.1.3 desist from the conduct described above.
 - 4.1.4 develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that



its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include the following:

- 4.1.4.1 the identification by Eldan Auto of competition risks relevant to its business and the monitoring thereof; and
- 4.1.4.2 provision of specific training on aspects of competition law of particular relevance to Eldan Auto, such training to be made available to all new employees joining Eldan Auto. Furthermore, Eldan Auto will update such training annually on an ongoing basis.
- 4.2 to submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the consent agreement as an order by the Competition Tribunal;
- 4.3 to circulate a statement summarising the contents of this consent agreement to all management and operational staff employed at Eldan Auto within 60 days from the date of confirmation of this consent agreement by the tribunal;

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, Eldan Auto accepts that it is liable to pay an administrative penalty.
- 5.2 The parties have agreed that Eldan Auto will pay an administrative penalty in the amount of R750 000.00 (**Seven Hundred and Fifty Thousand Rand**).
- 5.3 This amount is less than 10% of Eldan Auto's annual turnover of R38 143 053 (**Thirty-Eight Million One Hundred and Forty-Three Thousand and Fifty-Three Rand**) in the Republic and its exports from the Republic for the financial year ending on 30 June 2019.



6 TERMS OF PAYMENT

- 6.1 Eldan Auto will pay the amount set out above [in paragraph 5.2] to the Commission over a period of one (1) year from the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.2 No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 10,5%.
- 6.3 The penalty will be paid into the Commission's bank account which is as follows:

Bank name: Absa Bank
Branch name: Pretoria
Account holder: Competition Commission Fees Account
Account number: 4087641778
Account type: Current Account
Branch Code: 632005
Reference: Case Number: 2014JUN0269 Eldan Auto

- 6.4 The 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.

7 MONITORING

- 7.1 All reports in relation to conditions set out in this agreement, including but not limited to Compliance programmes, Proof of payment(s) etc. shall be submitted to the Commission at CartelSettlements@compcom.co.za



8 FULL AND FINAL SETTLEMENT

8.1 This Consent Agreement is concluded in full and final settlement of the Commission's investigation under Case No. 2014JuN0269 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Eldan Auto relating to the conduct that is the subject of the Commission's investigation under Case No. 2014Jun0269.

Dated and signed at PTA WEST on the 17th day of July
2020

For Life Wise (Pty) Ltd trading as Eldan Auto Body

Vinay Singh

[FILL IN NAME AND POSITION OF PERSON THAT IS SIGNING]

Dated and signed at PRETORIA on the 21ST day of JULY
2020

For the Commission:

[Signature]

Tembinkosi Bonakele
Commissioner

[Signature]

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT Case No: CR024MAY15

CC Case no. 2014JUN0269

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

LIFE WISE (PTY) LTD trading as ELDAN AUTO BODY Respondent

ADDENDUM TO THE CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND LIFE WISE (PTY) LTD trading as ELDAN AUTO BODY IN RESPECT OF ALLEGED CONTRAVENTION OF SECTION 4 (1)(b)(i), (ii) and (iii) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

3. Admission of Liability

Eldan Auto admits that it engaged in the conduct set out in clause 2.3.1 to 2.3.4 above in contravention of sections 4(1)(b)(i),(ii) and (iii) of the Act.

Dated and signed at Pretoria West on the 7th day of August

2020

For Life Wise (Pty) Ltd trading as Eldan Auto Body:



Vinay Singh . General Manager

[FILL IN NAME AND POSITION OF PERSON THAT IS SIGNING]

Dated and signed at PRETORIA on the 7TH day of AUGUST
2020

For the Commission:



Tembinkosi Bonakele
Commissioner

