



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR155Nov16/SA005Apr18

In the matter between:

The Competition Commission

Applicant

And

Elingo (Pty) Ltd

Respondent

Panel : AW Wessels (Presiding Member)
E Daniels (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 09 May 2018

Decided on : 09 May 2018

Consent Agreement

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



Presiding Member
Mr Andreas Wessels

09 May 2018

Date

Concurring: Mr Enver Daniels and Prof Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO: CR155NOV16/SA005 April 18

CC CASE NO: 2015JUN0306

In the matter between:

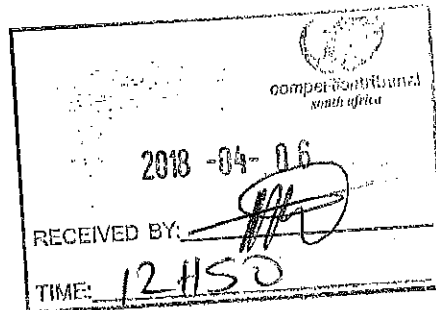
COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

ELINGO (PTY) LTD

Respondent



FILING NOTICE

TAKE NOTICE that the Applicant hereby files the following documents:

1. CT1 (1)
2. CT1 (1) Page 2
3. Consent Agreement between the Competition Commission and the Respondent

DATED and SIGNED at PRETORIA on 04 APRIL 2018.



COMPETITION COMMISSION

APPLICANT

DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394-5519

Fax: (012) 394 - 0166

Ref: Elingo_2015JUN0306

E-mail: ThandiN@compcom.co.za

E-mail: MfundoN@compcom.co.za

TO: THE REGISTRAR

The Competition Tribunal

3rd Floor Mulayo Building

The DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394 3300/55/Fax: (012) 394 0169

E-mail: leratom@comptrib.co.za

AND TO: ELINGO (PTY) LTD

Respondent

Whitby Manor Office Estate

Elingo Building 167

14th Road

Noordwyk

Midrand

Tel/Fax: (011) 206-2924

E-mail: Ian.Goss-Ross@elingo.co.za

E-mail: henning.lange@elingo.co.za



CR155NOV16/SA005Apr18

competition tribunal south africa

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Form continues on Page 2

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

Referral of Complaint by Commission

Date: 04 April 2018

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

Elingo (Pty) Ltd

Concerning:

(Complaint name and Commission file number:)

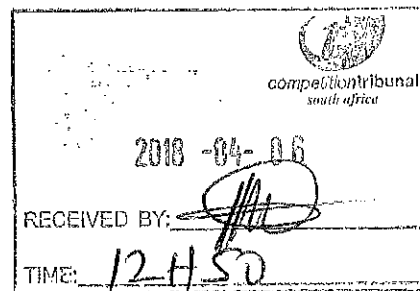
Elingo (Pty) Ltd - 2015JUN0306

From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(i)&(ii) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

Confirmation of the attached Consent Agreement between the Applicant and the Respondent as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act 89 of 1998, as amended ("the Act") in respect of a contravention of section 4(1)(b)(i) and (ii) of the Act.



CR155 NOV16/SA005 APR18



competition tribunal south africa

Form CT1(1) Page 2 About this Form

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This form is to be used only for a referral by the Competition Commission.

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- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Contacting the Tribunal

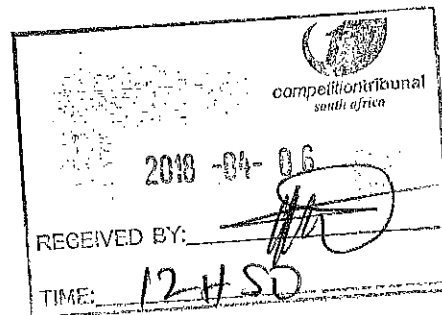
The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

Confirmation of the attached Consent Agreement between the Applicant and the Respondent as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act 89 of 1998, as amended ("the Act") in respect of a contravention of section 4(1)(b)(i) and (ii) of the Act.



This referral is to proceed as a consent proceeding.

This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

BUKHOSIBAKHE MAJENGE; CHIEF LEGAL COUNSEL (LSD)

Authorised Signature:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR155NOV16/SAC005Apr 18
CC CASE NO: 2015JUN0306

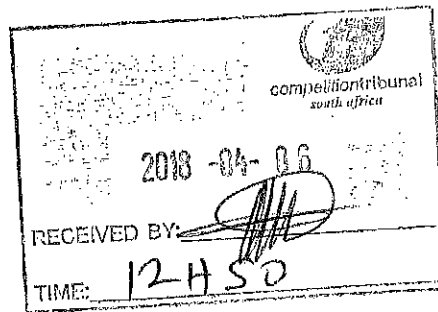
In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And

ELINGO (PTY) LTD



Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND ELINGO (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) AND (ii) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

Preamble

The Competition Commission ("Commission") and Elingo (Pty) Ltd ("Elingo") hereby agree that an 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 no. 89 of 1998, as amended ("the Act") in respect of a contravention of section 4(1)(b)(i) and (ii) of the Act.

1. DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply

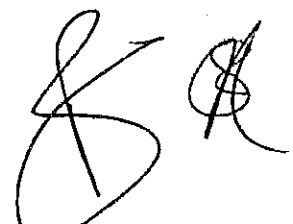
- 1.1 **"Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **"Business Solutions"** means Elingo Business Solutions (Pty) Ltd a private company duly registered in accordance with the Company Laws of the Republic of South Africa with its principal place of business situated at Whitby Manor Office Estate, Mekan Building, 167, 14th Road, Noordwyk, Midrand;
- 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 (the Commissioner) in terms of section 24(1) of the Act;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Elingo;
- 1.6 **"Elingo"** means Elingo (Pty) Ltd, a private company duly registered in accordance with the Company Laws of the Republic of South Africa with its principal place of business at Whitby Manor Office Estate, Elingo Building, 167, 14th Road, Noordwyk, Midrand.



- 1.7 **"Parties"** means the Commission and Elingo;
- 1.8 **"Respondents"** means Elingo (Pty) Ltd and Elingo Business Solutions (Pty) Ltd 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 the 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. INVESTIGATION AND FINDINGS OF THE COMMISSION

- 2.1. On 04 June 2015, the Commissioner initiated a complaint in terms of section 49B(1) of the Act, whereby it is alleged that the Respondents entered into an agreement to fix the selling price of contact centre software services and divide the market by allocating products and customers amongst each other in contravention of section 4(1)(b)(i) and (ii) of the Act.
- 2.2. The Commission's investigation under Case No's. 2015JUN0306 revealed the following:
- 2.2.1. In terms of the price fixing agreement, the Respondents agreed that they will charge R750 to maintenance customers and R950 to non-maintenance customers.
- 2.2.2. Maintenance customers are customers who have entered into

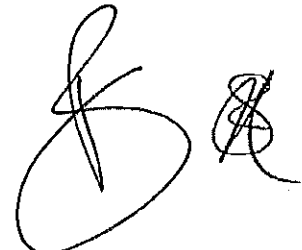
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maintenance agreements with the Respondents after purchasing their products. These agreements give customers the comfort of having a service provider that will fix any problems that a maintenance customer may have with a product. Non-maintenance customers are customers who just call in once to request assistance with a product.

2.2.3. In terms of the market division agreement, the Respondents agreed that Elingo will offer products under the licences of Shoretel and Interactive Intelligence, while Business Solutions will offer products under the licences of Verint, Broadsoft and Genesys to customers of contact centre software services.

2.2.4. These are software products that make up the technology that is used in call centres. The varying services that these products provide include call distribution, voice recording, process automation, computer telephone integration and work force management. The kind of technology that a customer receives, is dependent on the product that a customer buys. Some products require equipment to be installed at a customer's premises, and some do not. With some products, customers just need to connect to a cloud to be able to use the product.

2.2.5. The Respondents also agreed that whenever Business Solutions



wished to approach a potential customer, a discussion with Elingo had to first take place in order to establish if the customer belongs to Elingo. Once a determination was made, a decision would be taken whether Business Solutions should go ahead and approach such a customer.

3. ADMISSION

3.1. Elingo admits that it entered into an agreement with Business Solutions to fix the price charged to maintenance and non-maintenance customers in contravention of section 4(1)(b)(i) of the Act.

3.2. Elingo also admits that it divided markets by allocating products and customers in contravention of section 4(1)(b)(ii) of the Act.

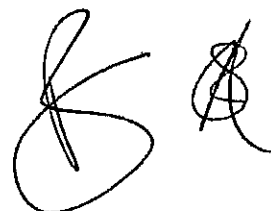
4. CESSATION

4.1. Elingo confirms that it has ceased engaging in the conduct set out in clause 2.2 above.

4.2. The Respondents were the only parties to this agreement.

5. ADMINISTRATIVE PENALTY

5.1. Elingo agrees that it is liable to pay an administrative penalty of R512 400 (Five Hundred and Twelve Thousand and Four Hundred Rand). This



amount is less than 10% of Elingo's annual turnover for the financial year ended 2014.

5.2. Elingo will pay a lump sum of R128 100 (One Hundred and Twenty-Eight Thousand and Hundred Rand) to the Commission within 30 days of the confirmation of the Consent Agreement as an order of the Tribunal. Thereafter the remaining R384 300 (Three Hundred and Eighty-Four Thousand and Three Hundred) will be paid over a 3 month period, in three equal instalments as follows:

5.3. The first instalment of R128 100 on or before 31 May 2018.

5.4. The second instalment of R128 100 on or before 30 June 2018.

5.5. The third instalment of R128 100 on or before 31 July 2018.

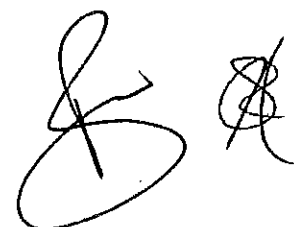
5.6. The payment shall be made into the Commission's bank account, details of which are as follows:

Bank name: Absa Bank

Branch name: Pretoria

Account holder: Competition Commission Fees Account

Account number: 4087641778



Account type: Current Account

Branch Code: 632005

Reference: 2015JUN0306 / ELINGO

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

6. AGREEMENT REGARDING FUTURE CONDUCT

6.1. Elingo undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act in future.

6.2. Elingo will 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 mechanisms for the monitoring and detection of any contraventions of the Act.

6.3. Elingo will provide the Commission with a copy of the competition law compliance programme within 60 days after confirmation of the Consent Agreement as an order by the Competition Tribunal.

6.4. Elingo shall circulate a statement summarising the contents of this Consent

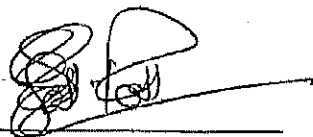


Agreement to all management and operational staff employed at Elingo within 60 (sixty) business days from the date of confirmation of this Consent Agreement as an order by the Tribunal.

7. FULL AND FINAL SETTLEMENT

7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No: 2015JUN0306 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Elingo relating to the collusive conduct as admitted in paragraph 3 above.

FOR ELINGO:



Dated and signed at Nidrand on the 15th day of March 2018.

FOR THE COMMISSION:



TEMBINKOSI BONAKELE
Commissioner

Dated and signed at PRETORIA on the 29th day of March 2018.