



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR245Mar17/SA159Aug18

In the matter between:

The Competition Commission

Applicant

And

Fire Protection Systems (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member)
A Ndoni (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 12 September 2018

Decided on : 12 September 2018

Settlement Agreement

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



Presiding Member
Mr Norman Manoim

12 September 2018
Date

Concurring: Ms Andiswa Ndoni and Mrs Medi Mokuena

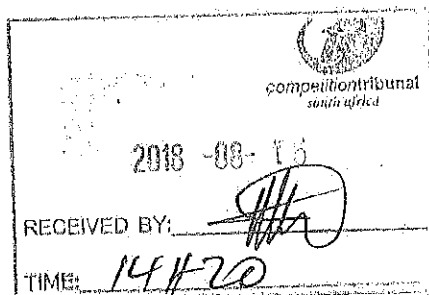
IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No: CR245MAR17

CC Case No: 2015MAR0119

In the matter between:

THE COMPETITION COMMISSION



Applicant

and

FIRE PROTECTION SYSTEMS (PTY) LTD

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 FIRE PROTECTION SYSTEMS (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Fire Protection Systems (Pty) Ltd 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) (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 FPS;
- 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;

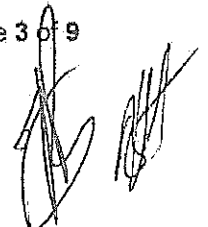
1.7 "FPS" means Fire Protection Systems (Pty) Ltd, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 117 Elgin Road, Van Riebeeck Park Ext. 1, Kempton Park;

1.8 "Parties" means the Commission and FPS; 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, FPS, 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.

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2.2 On 26 June 2015, the Commissioner amended the complaint 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 the 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 the period 1999 to at least 2014, FPS, together with some of the respondents, 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 FPS, together with some of the respondents 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 This conduct contravened section 4(1)(b) (iii) of the Act.



3. ADMISSION

3.1 FPS admits that it engaged in prohibited practices in contravention of section 4(1)(b) (iii) of the Act.

4. CO-OPERATION

4.1 FPS agrees to fully cooperate with the Commission in its prosecution of the remaining respondents in the Commission's complaint referral. This cooperation includes, but is not limited to:

4.1.2 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of FPS or under FPS' control, concerning the alleged prohibited practices set out in this Consent Agreement; and

4.1.3 Testifying, to the extent necessary, during the hearing of the complaint referral, in respect of the prohibited practices set out in this Consent Agreement.

4.2 FPS records that it has provided the Commission with any and/or all evidence, written or otherwise, which is in its possession and/or under its control, concerning the alleged prohibited practices set out in section 4(1)(b) of the Act and insofar as the alleged prohibited practices relates to the respondents.

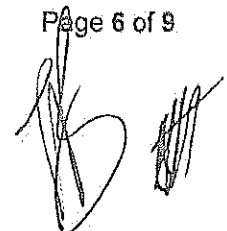
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5. FUTURE CONDUCT

5.1 FPS agrees to:

- 5.1.1 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; and
- 5.1.2 henceforth engage in competitive practices;
- 5.1.3 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;
- 5.1.4 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;

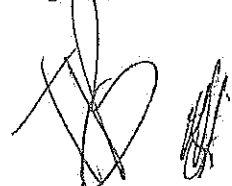
5.2 FPS records that prior to the conclusion of this Consent Agreement and before FPS's knowledge of the contraventions within the industry were

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detected, FPS had of its own accord refrained from engaging in conduct in contravention of section 4 (1)(b) of the Act and shall continue to refrain from doing so in future.

6. ADMINISTRATIVE PENALTY

- 6.1 FPS agrees and undertakes to pay an administrative penalty in the amount of R500 000 (Five hundred thousand rands). This amount represents 3.55% of FPS' annual turnover in the Republic of South Africa for the financial year ended February 2018.
- 6.2 FPS shall pay the abovementioned amount over a period of 24 months in eight (8) equal quarterly instalments of R62 500.
- 6.3 The first instalment of R62 500 is payable on or before 30 September 2018. The subsequent seven (7) instalments are payable on a quarterly basis in equal instalment.
- 6.4 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 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

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10,25%.

- 6.5 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission

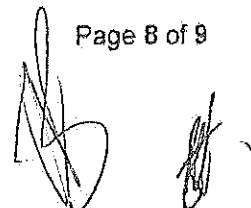
Bank: Absa Bank, Pretoria

Account Number: 4087641778

Branch Code: 632005

Ref: 2015Mar0119/ FPS

- 6.6 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.

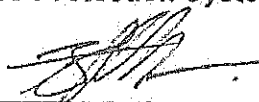
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7. FULL AND FINAL SETTLEMENT

7.1 This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2015Mar0019, and concludes all proceedings between the Commission and FPS.

Dated and signed at Kempton Park on the 13 day of AUGUST 2018

For Fire Protection Systems (Pty) Ltd



Name in Full: BRUCE THOMAS

Position DIRECTOR

Dated and signed at PRETORIA on the 15 day of AUGUST 2018

For the Commission



Tembinkosi Bonakele
Commissioner