

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CR245Mar17/EXC070Jun17

In the matter between:

The Competition Commission

Applicant

and

Afrion Property Services CC

First Respondent

Belfa Fire (Pty) Ltd

Second Respondent

Cross Fire Management (Pty) Ltd

Third Respondent

Fire Protection Systems (Pty) Ltd

Fourth Respondent

Fireco (Pty) Ltd

Fifth Respondent

Fireco Gauteng (Pty) Ltd

Now Known as KRS Fire (Pty) Ltd

Sixth Respondent

Tshwane Fire Sprinklers CC

Seventh Respondent

Panel : Y Carrim (Presiding Member)
E Daniels (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 10 August 2017

Decided on : 16 August 2017

ORDER: Fifth Respondent

Following an agreement reached by the Competition Commission ("Commission") and Fireco (Pty) Ltd ("Fireco"), on 10 August 2017, the Competition Tribunal, orders as follows with respect to the exception application filed by Fireco:

1. It is recorded that the Commission has now indicated that the only complaint against Fireco involves an allegation of market division with the Sixth Respondent. The complaint against Fireco is thus limited to the complaint in paragraph 21.4 of the founding affidavit.

2. It is also recorded that the Commission has now clarified that:
 - 2.1. The Fifth Respondent is not covered by the reference to “*the respondents*” in paragraphs 19, 20, 22, 23 and 25, or the opening sentence of paragraph 21, of the founding affidavit; and
 - 2.2. The declaratory order sought against Fireco in paragraph 26.1 of the founding affidavit is merely an order that Fireco has contravened section 4(1)(b)(ii) of the Act.
3. By agreement between the parties, the Commission will file a supplementary affidavit within 20 business days of the date of this Order in which it:
 - 3.1. Confirms that the complaint against Fireco is restricted to what is recorded in paragraph 1 above, and that it is consequently only contending that Fireco contravened section 4(1)(b)(ii) of the Act; and
 - 3.2. Provides the following clarity and further particularity in respect of paragraph 21.4 of the founding affidavit:
 - 3.2.1. Regarding subparagraph 21.4.1:
 - 3.2.1.1. Insofar as the Commission relies on an *agreement*: (a) when precisely any such agreement was concluded, and whether there was supposedly one agreement covering the period May 2012 to May 2015, or more than one agreement during that timeframe; (b) when and where such agreement, or agreements were concluded, and who represented the parties; and (c) what form the agreement (or agreements) took, and more particularly whether any agreement was written or oral, and what its material terms were;

3.2.1.2. Insofar as the Commission relies on a *concerted practice*: (a) on what the Commission relies for this allegation; (b) what the concerted practice entailed; and (c) when any discussions relied on by the Commission took place and who participated therein;

3.2.2. Regarding subparagraph 21.4.2:

3.2.2.1. Whether it is the Commission's case that the conduct alleged herein constituted a violation of section 4(1)(b)(ii) of the Act;

3.2.2.2. If the alleged conduct is not considered to be a violation of section 4(1)(b)(ii), what the relevance is of this subparagraph;

3.2.2.3. If the allegations in this subparagraph are considered relevant to a prohibited practice, on what basis this is so; when and where the agreement (or agreements) was concluded; and what form any such agreement took.

4. Fireco will file its answering affidavit within 20 business days after receiving the Commission's supplementary affidavit.

5. The Commission will file its replying affidavit within 10 business days after receiving the answering affidavit of Fireco.

6. There is no order as to costs.



 **Presiding Member
Ms Yasmin Carrim**

16 August 2017
Date

Concurring: Mr Enver Daniels and Ms Mondo Mazwai