



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CO042Jul21

In the matter between:

The Competition Commission of South Africa

Applicant

And

M Meyer Surgical Sales CC T/A Intermed

Respondent

| | |
|-----------------------|--|
| Panel: | AW Wessels (Presiding Member) E Daniels (Tribunal Member) Y Carrim (Tribunal Member) |
| Heard on: | 07 September 2021 |
| Last submission date: | 16 September 2021 |
| Decided on: | 16 September 2021 |

Order: Consent Agreement

The Competition Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and M Meyer Surgical Sales CC T/A Intermed annexed hereto, including the addendum to the agreement dated 16 September 2021, annexed hereto.

Andreas Wessel Wessels

**Presiding Member
Mr Andreas Wessels**

**16 September 2021
Date**

Concurring: Mr Enver Daniels and Ms Yasmin Carrim

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CO042Jul21

CC CASE NO: 2019SEP0024

In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And


M MEYER SURGICAL SALES CC T/A INTERMED

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 M MEYER SURGICAL SALES CC T/A
INTERMED, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE
COMPETITION ACT 89 OF 1998

Preamble

The Competition Commission ("Commission") and M Meyer Surgical Sales CC t/a
Intermed ("Intermed") 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


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Signed by King Tembinkosi
Bonakele,

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)(iii) 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. **"Intermed"** means a close corporation duly registered in accordance with the laws of the Republic of South Africa, with its registered place of business situated at Unit 10 Victoria Junction, 57 Prestwich Street, Greenpoint, Cape Town 8001;
- 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 Intermed;
- 1.6. **"Department of Health Western Cape"** means a department of the

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Government of Western Cape, responsible for providing public healthcare to the people of Western Cape, with its principal place of business situated at 4 Dorp Street, Provincial Building, Tower Block, Cape Town.

- 1.7. **"DOHWC Tender"** means tender issued by the Department of Health Western Cape under tender number: WCGHCC007/2017 for the provision of diagnostic sets to all hospitals / institutions.
- 1.8. **"Parties"** means the Commission and Intermed.
- 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. COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1. On 18 September 2019, the Commission received a complaint from the Department of Health Western Cape ("DOHWC") in terms of section 49B(2)(b) of the Competition Act 89 of 1998, as amended ("the Act"). The DOHWC alleged that Intermed and BMS Medical CC being firms in a horizontal relationship colluded when tendering for the DOHWC Tender.
- 2.2. The DOHWC Tender was for the supply diagnostic sets to all hospitals / health institutions under the control of the DOHWC. The diagnostic sets are toolsets



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which assist clinicians to perform a comprehensive physical examination of patients' eyes, ears, nose, and throats.

- 2.3. This complaint was investigated under case number 2019SEP0024.
- 2.4. The Commission's investigation found that on or about June 2018, Intermed and BMS Medical CC assisted each other when completing tender documents for DOHWC Tender.
- 2.5. The conduct between Intermed and BMS Medical amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION

- 3.1. Intermed does not admit that it has acted in contravention section 4(1)(b)(iii) of the Act as described in paragraph 2 above.

4. CO-OPERATION

- 4.1. Intermed has provided full and expeditious co-operation to the Commission concerning the prohibited practice.

5. AGREEMENT REGARDING FUTURE CONDUCT

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



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5.2. Intermed will develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all its members and board of directors do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection and monitoring and detection of any contraventions of the Act.

5.3. Intermed shall circulate a statement summarising the contents of this Consent Agreement to all its members and board of directors within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

6. ADMINISTRATIVE PENALTY


6.1. Intermed agrees that it is liable to pay an administrative penalty of R50 000 (**Fifty Thousand Rand**). This amount does not exceed 10% of Intermed's annual turnover for the financial year ending February 2020.

6.2. Intermed will pay R50 000 (**Fifty Thousand Rand**) to the Commission within 90 days of the confirmation of the Consent Agreement as an order of the Tribunal.

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

Bank name:

Absa Bank


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Branch name: Pretoria
Account holder: Competition Commission Fees Account
Account number: 4087641778
Account type: Current Account
Branch Code: 632005
Reference: 2019SEP0024/INTERMED

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

7. MONITORING

7.1. Intermed undertakes to submit a copy of the compliance programme referred to in clause 5.2 to the Commission within 60 calendar days of the date of confirmation of this Consent Agreement as an order to the Tribunal.

7.2. 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



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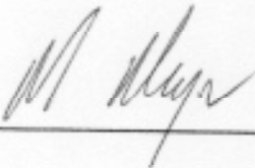
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8.1. This Consent Agreement is entered into in full and final settlement of the



Commission's investigation under Case No's. 2019SEP0024 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Intermed relating to the conduct that is the subject of the Commission's investigation under Case No's. 2019SEP0024.

FOR INTERMED:



Dated and signed at CAPE TOWN on the 23 day of JULY 2021.

FOR THE COMMISSION:



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26/07/2021 12:10:44 (UTC+02:00)
Signed by King Tembinkosi
Bonakele,

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TEMBINKOSI BONAKELE

Commissioner

Dated and signed at _____ on the ___ day of _____ 2021.

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

CT Case No. CO042Jul21

CC Case No: 2019SEP0024

In the matter between

COMPETITION COMMISSION

APPLICANT

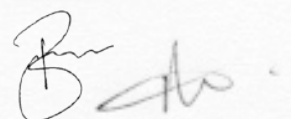
and

M MEYER SURGICAL SALES CC T/A INTERMED

RESPONDENT

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED 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 M MEYER SURGICAL SALES CC T/A INTERMED, IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT, 1998.

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and M Meyer Surgical Sales CC t/a Intermed ("Intermed"), filed on 06 August 2021, and presented for confirmation by the Competition Tribunal on 07 September 2021 be supplemented as recorded below.



1. **AD PARAGRAPH 3**

Clause 3.2 is inserted as follows:

3.2 The Commission has agreed to enter into the Consent Agreement without an admission of liability by Intermed based on a combination of the following factors:

3.2.1 Intermed is a small firm;


3.2.2 The size of the tender was small size being an estimated R1 million for 3 years;

3.2.3 Intermed's business is to a significant extent dependent on bidding for government tenders where blacklisting could potentially result Intermed exiting the market;

3.2.4 Intermed did not win the tender in question; and

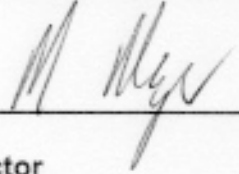
3.2.5 Intermed is a first-time offender, it has never contravened the Act before.

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning ascribed to them in the Consent Agreement.

A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal line and a vertical stroke.

For Intermed

Dated and signed at CAPE TOWN on the 9 day of SEPTEMBER 2021.

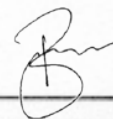


Director

Name in Full: MATTHYS MEYER

For the Commission

Dated and signed at PRETORIA on the 16 day of SEPTEMBER 2021.



TEMBINKOSI BONAKELE
COMMISSIONER