



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR146Dec23/SA042Jun24

In the matter between:

The Competition Commission

Applicant

And

Victron Energy B.V

Respondent

Panel : L Mncube (Presiding Member)
: G Budlender (Tribunal Member)
: T Vilakazi (Tribunal Member)

Heard on : 26 July 2024

Decided on : 26 July 2024

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Victron Energy B.V annexed hereto.

Signed by Liberty Mncube
Signed at 2024-07-26 11:11:42 +02:00
Reason: Withdrawing Liberty Mncube
L.Mncube

**Presiding Member
Prof. Liberty Mncube**

26 July 2024

Date

Concurring: Adv. Geoff Budlender and Prof. Thando Vilakazi

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

CT CASE NUMBER:

CC CASE NUMBER: **2022JAN0030**

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

VICTRON ENERGY B.V.

Respondent

SETTLEMENT 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 VICTRON IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTION 5(2), OF THE COMPETITION ACT, 1998, AS AMENDED REFERRED TO THE TRIBUNAL UNDER CASE NUMBER CR146Dec23.

PREAMBLE

The Competition Commission ("Commission") and Victron Energy B.V. ("Respondent") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Settlement 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, ("the Act") in respect of alleged contraventions of section 5(2) of the Act, referred to the Tribunal under case number CR146Dec23, on the terms set out below.

1. DEFINITIONS

For the purposes of this Settlement 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 Commission, appointed in terms of section 22 of the Act.
- 1.4. **"Complaint"** means the complaint submitted by Mr Mzingaye Michael Taffa, acting in his personal capacity, on 11 January 2022, to the Commission in terms of section 49B(2)(b) of the Act under case number 2022JAN0030.
- 1.5. **"Complaint Referral"** means the complaint referral filed with the Tribunal, by the Commission, in terms of section 50(1) and 50(2)(a) of the Act (read with rule 14(1)(a) of the Rules for the Conduct of Proceedings in the Tribunal) against the Respondent and five others under Tribunal case number CR146Dec23.

- 1.6. **“Distributor(s)”** means the direct customers of the Respondent. The Respondent sells Victron Products to distributors like Get Off Grid, Segen, Innomatic and I-G3N. The Distributors, in turn, sell Victron Products to online stores like LiveStainable and Sunstore, who then sell to end customers.
- 1.7. **“Respondent”** means Victron Energy B.V., a company incorporated in the Netherlands, with its main place of business at De Paarl 35, 1351 JG Almere, the Netherlands. To address VAT, import-export licencing, and other regulatory requirements, Victron has listed 21 Petunia Street, Welgedacht, Bellville 7530 as an address in South Africa.
- 1.8. **“Settlement Agreement”** means this agreement duly signed and concluded between the Commission and the Respondent.
- 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.
- 1.10. **“Victron Products”** means the Respondent’s electric power conversion products for mobile and other off-grid applications.

2. THE COMPLAINT AND COMPLAINT INVESTIGATION FINDINGS

2.1 On 11 January 2022, the Commission received a complaint from Mr Mzingaye Michael Taffa, acting in his personal capacity, wherein he alleged that Livestainable (Pty) Ltd and Victron SA may be engaging in price fixing. The complaint was received in terms of section 49B(2)(b) of the Act.

2.2 Mr. Taffa’s complaint was directed against two persons:



- 2.2.1 Livestainable (Pty) Ltd ("LiveStainable"), represented by its Managing Director; and
- 2.2.2 Victron SA, later correctly identified as Victron Energy B.V. ("the Respondent"), represented by its Sales Manager.
- 2.3 Mr. Taffa alleged that, when LiveStainable was dissatisfied that a competitor (of LiveStainable) was offering a solar inverter at a lower price, LiveStainable subsequently indicated via email correspondence to Mr. Taffa that it would approach the Respondent (the supplier of product in question) through its Sales Manager to "align the prices". Mr. Taffa alleged that LiveStainable seemed willing to reconsider its price during the initial discussion but there was a change of heart after his discussion with the Respondent's Sales Manager. Mr. Taffa requested that the Commission investigate what was discussed as it may amount to price fixing.
- 2.4 On the basis of this complaint, the Commission accordingly commenced an investigation in terms of section 49B(3) of the Competition Act.
- 2.5 The Commission characterised the conduct as a potential contravention of section 5(2) of the Competition Act, which prohibits the practice of minimum resale price maintenance.
- 2.6 For the sake of completeness and avoidance of all doubt, the Commission also initiated a complaint against the Respondent and its Sales Manager.
- 2.9 The complaints were consolidated under a common investigation in terms of Commission Rule 17(2).

2.10 Pursuant to its investigation of the complaints, the Commission concluded that a prohibited practice of minimum resale price maintenance, in contravention of section 5(2) of the Act, had been established on the part of the Respondent.

3. THE COMPLAINT REFERRAL

3.1 On 11 December 2023, the Commission referred the above complaints to the Tribunal. The subject matter of this Complaint Referral concerns the alleged unlawful practice of minimum resale price maintenance in contravention of section 5(2) of the Act by the Respondent, in respect of Victron Products sold by online stores to end users in South Africa.

3.2 The Commission alleged *inter alia* the following in the Complaint Referral:

3.2.1 The Respondent largely relied on its Distributors, some of whom comprise Get Off Grid, Segen, Innomatic and I-G3N, to implement and to enforce the practice of minimum resale price maintenance.

3.2.2 The Respondent published a recommended retail price list on its website from time to time and updated pricelists are provided to its Distributors on a quarterly basis. Although the list indicated that it was a recommended price, the Respondent, in practice, insisted on a maximum discount of 10-15% from its recommended retail price list when the Victron Products were sold to end customers by online stores.

3.2.3 The recommended retail price as published on the Respondent's website, or distributed to its Distributors, less a 10-15% discount, constituted the resale price that was the subject matter of the practice of minimum resale price maintenance in the Complaint Referral.

3.2.4 The Respondent had implemented the minimum resale price maintenance practice and ensured adherence by online stores to the maximum discount price with the assistance of its Distributors who supply the online stores.

3.2.5 The Respondent instructed its Distributors to ensure that its online store customers comply with the maximum discount practice by threatening to either lower the discount provided to the Distributor by the Respondent or by stopping supply to the Distributor.

3.2.6 The Distributor would then in turn use similar threats of either lowering the discount provided to the online store by the Distributor or by stopping supply to its online store customer to ensure compliance. The Respondent had in some instances contacted the online store directly and threatened termination of supply to the Distributor servicing the online store.

3.2.7 The conduct spanned the period from March 2020 until at least the end of 2022.

3.3 The Respondent has not yet filed its answering affidavit in the Complaint Referral. However, the Respondent has asserted that the principal objective of the pricing discussions was to address the issue of end customers being sold Victron products without being provided with the appropriate after-sales and technical support.

3.4 In terms of the Complaint Referral, the Commission did not seek any relief against the third to sixth respondents who were merely cited for their interest in the matter. The Commission only sought relief against the second respondent in the alternative to the main pleadings.

4. ADMISSION

The Respondent does not admit that it contravened section 5(2) of the Act.



5. FUTURE CONDUCT

The Respondent agrees to:

- 5.1 Desist from the conduct described above.
- 5.2 Develop, implement, and monitor a competition law compliance programme incorporating corporate governance designed to ensure that any of its employees, management, directors and agents who are involved in any commercial activities in South Africa do not engage in future contraventions of the Act. In particular, such compliance programme will include the following:
 - 5.2.1 A competition policy to be drafted and implemented by the Respondent;
 - 5.2.2 Provide specific training on competition law aspects particularly relevant to the prohibited practice of minimum resale price maintenance;
 - 5.2.3 Ensure that such training will be made available to all new employees joining the Respondent. Furthermore, the Respondent will update such training annually to ensure on an on-going basis that it and its members cannot engage in any anti-competitive activities.

6. ADMINISTRATIVE PENALTY

- 6.1 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, the Respondent undertakes to pay an administrative penalty.
- 6.2 The parties have agreed that the Respondent will pay an administrative penalty in the amount of R 14,232,581.00 (fourteen million two hundred and thirty-two thousand five hundred and eighty-one Rand).



- 6.3 This amount does not exceed 10% of the Respondent's total annual income in the Republic and its exports from the Republic for its 2022 financial year.
- 6.4 The Respondent will pay the amount set out in paragraph 6.2 above to the Commission within 90 days from the date of confirmation of this Settlement Agreement by the Tribunal.
- 6.5 The penalty must be paid into the Commission's bank account which is as follows:

NAME: THE COMPETITION COMMISSION FEE ACCOUNT
BANK: ABSA BANK, PRETORIA
ACCOUNT NUMBER: 4087641778
BRANCH CODE: 323 345

- 6.6 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. COMPLIANCE

All documents relating to this matter shall be forwarded to the Commission at ccsa@compcom.co.za with the Commission case number of this matter (i.e. 2022JAN0030) as the reference.

8. FULL AND FINAL SETTLEMENT

This Settlement Agreement is entered into in full and final settlement in respect of all conduct which is (i) the subject matter of the Commission's investigation under the Complaint, and (ii) the subject matter of the Complaint Referral, and, upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and the Respondent, and the five others cited as respondents in the Complaint Referral, in respect of all such conduct.

Dated and signed at Groningen on the 28th day of May 2024.

Duly authorised to sign for Victron Energy B.V

M. Vader

Name in Full: Matthijs Vader

Position: CEO

Dated and signed at Pretoria on the 06th day of June 2024.

For the **Competition Commission**

Doris Tshepe

Doris Tshepe
Commissioner

