



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR086Aug19/SA015Apr22

In the matter between:

Competition Commission of South Africa

Applicant

And

Whip Fire Projects (Pty) Ltd

Respondent

Panel: Y Carrim (Presiding Member)
I Valodia (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 20 May 2022

Decided on: 20 May 2022

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Whip Fire Projects (Pty) Ltd annexed hereto.

**Presiding Member
Ms Yasmin Carrim**

20 May 2022

Date

Concurring: Prof Imraan Valodia and Ms Andiswa Ndoni

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

CT CASE NO: CR086 AUG 19

CC CASE NO: 2017JUL0013

In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And

WHIP FIRE PROJECTS (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 WHIP FIRE PROJECTS (PTY) LTD, IN
RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(ii) OF THE COMPETITION
ACT 89 OF 1998**

Preamble

The Competition Commission ("Commission") and Whip Fire Projects (Pty) Ltd ("Whip Fire") 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, in respect of a contravention of section 4(1)(b)(ii) of the Act.

A handwritten signature in black ink, consisting of a stylized 'B' followed by a long vertical stroke that curves at the bottom.

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 **“ASIB”** Automatic Sprinkler Inspection Bureau (Pty) Ltd a private company duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 1407 Cnr Louis Botha and Tudhope Avenue, Houghton Estate, Johannesburg.
- 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 **“Investigation”** means investigation of the Complaint.
- 1.6 **“Complaint”** means the complaint initiated by the Commissioner on 5 July 2017 in terms of section 49B(1) of the Act under case number 2017Jul0013.
- 1.7 **“Complaint Referral”** means the complaint referred by the Commission to the Tribunal under case number CR086Aug19.
- 1.8 **“Consent Agreement”** means this agreement duly signed and concluded between the Commission and Whip Fire.
- 1.9 **“Whip Fire”** means Whip Fire Projects (Pty) Ltd, a Private Company, duly incorporated in accordance with the laws of the Republic of South Africa, with



its registered office situated at 33 Industria Road, Brackenfell, Cape Town, Western Cape.

- 1.10 **“Parties”** means the Commission and Whip Fire.
- 1.11 **“Listed Installers”** means fire protection service providers registered with ASIB.
- 1.12 **“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. THE COMMISSION’S INVESTIGATION AND FINDINGS

- 2.1 On 05 July 2017, the Commissioner initiated a complaint in terms of section 49B of the Act against Automatic Sprinkler Inspection Bureau (“ASIB”) and all sprinkler installers registered with ASIB. This complaint is being investigated under case number 2017Jul0013.
- 2.2 On 03 August 2017, the Commission conducted a search and seizure operation at the premises of ASIB and 22 of its Listed Installers, including the premises of Whip Fire, and seized documents and electronic data from these premises.
- 2.3 On 16 August 2019, the Commission made the Complaint Referral, citing certain Listed Installers as respondents. Whip Fire was cited as the 18th Respondent.
- 2.4 The allegations against ASIB and its Listed Installers, including Whip Fire are that they agreed to allocate to each other specific services in terms of which ASIB would provide inspection and certification services while the



Listed Installers, including Whip Fire would provide automatic sprinkler installation services.

2.5 It is further alleged that the Listed Installers agreed and were prohibited from conducting business in territories (provinces/regions) which they are not listed and that they should only conduct business in territories (provinces/regions) where they are listed / registered.

2.6 The Investigation revealed the following:

2.6.1 ASIB is a private company which has an arrangement with other private companies that are installers of fire sprinklers in terms of which ASIB is fashioned as an association and the installers of fire sprinklers are fashioned as members of ASIB.

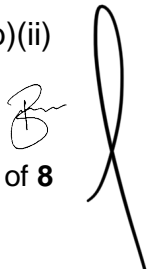
2.6.2 The arrangement further entails that on becoming a Listed Installer of ASIB, each of the Listed Installers agreed to adhere to ASIB rules which entailed that inspection services would be performed by ASIB only whilst the Listed Installers would be provide installation services only.

2.6.3 The ASIB rules enabled Listed Installers to divide the market by allocating territories in that a Listed Installer registered in a particular area is limited to render its service in its registered area.

2.6.4 This conduct between ASIB and Listed Installers amounts to market division by allocation of specific types of services and territories in contravention of section 4(1)(b)(ii) of the Act.

3. ADMISSION

3.1. Whip Fire does not admit that it has acted in contravention of section 4(1)(b)(ii)



of the Act as described in part 2 above.

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

3.2.1. The Commission is incentivising Whip Fire to discontinue from adhering to any ASIB rules that divide the markets, as part of its strategy to end the anticompetitive conduct occasioned by these rules in the market for installation and inspection of automatic fire sprinklers;

3.2.2. Whip Fire has not been found to have contravened the Act before.

4. AGREEMENT REGARDING FUTURE CONDUCT

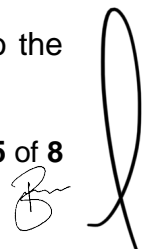
4.1. Whip Fire undertakes not to agree or adhere to any ASIB rule which would preclude it from operating in any geographic region.

4.2. Should Whip Fire determine that it wishes to enter the market for the provision of inspection services, which is reserved for ASIB. Whip Fire undertakes not to restrict its right to do so by agreeing with any actual or potential competitors in that market, or with ASIB, to restrict such activities.

4.3. Whip Fire undertakes not to restrict its sourcing of inspection services from only ASIB, provided it is commercially viable to do so.

4.4. Whip Fire will develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all employees, members and management do not engage in contraventions of the Act. Such compliance programme will include mechanisms for the identification and prevention of any contraventions of the Act.

4.5. Whip Fire undertakes to submit a copy of such compliance programme to the



Commission within 60 days of the date of confirmation of this Consent Agreement as an order to the Tribunal.

4.6. Whip Fire shall circulate a statement summarizing the contents of this Consent Agreement to all management and operation staff employed by Whip Fire within 60 (sixty) calendar days from the date of confirmation of this Consent Agreement by the Tribunal.

4.7. Whip Fire hereby commits itself to competitive practices and refraining from engaging in any anti-competitive conduct in contravention of the Act.

5. ADMINISTRATIVE PENALTY

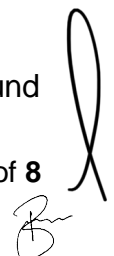
5.1. In order to bring the matter to conclusion, Whip Fire agrees to pay an administrative penalty in the amount of R 378 182. 53 (Three Hundred and Seventy-Eight Thousand and One Hundred and Eighty-Two Rands and Fifty-Three Cents). This amount does not exceed 10% of Whip Fire's annual turnover for the financial year ended February 2021.

5.2. Whip Fire agrees to pay the administrative penalty as stipulated in the above paragraph immediately upon confirmation of this Consent Agreement by the Tribunal.

5.3. The payment shall be made into the Commission's bank account, details 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: | 2017JUL0013 WHIP FIRE |

5.4. The penalty will be paid over by the Commission to the National Revenue Fund



in accordance with section 59(4) of the Act.


6. MONITORING

6.1. 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.

7. FULL AND FINAL SETTLEMENT

7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigations defined in the definitions' clause and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Whip Fire relating to the conduct that is the subject of the Commission's investigation defined in the definitions' clause.

Whip Fire Projects (Pty) Ltd



Signed and dated at Mamabius on the 19th day of April 2022.

Name in Full: Alan Watt

Designation: CEO.

For the Competition Commission

Signed and dated at PRETORIA on the 26 day of APRIL 2022.





Name in Full: TEMBINKOSI BONAKELE

Designation: COMMISSIONER OF THE COMPETITION COMMISSION

