

Date: 08 December 2021

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR010APR19 CC

CASE NO: 2016MAR0077

In the matter between:

COMPETITION COMMISSION OF SA Applicant

And

K.F COMPUTERS CC 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 K.F COMPUTERS CC, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89 OF 1998

Preamble

The Competition Commission ("Commission") and K.F Computers CC ("K.F Computers") 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 ("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. "K.F Computers CC" 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 23 Le Mistral, Woodburn Road, Morningside, Sandton.

1.3. "SAAB Grintek Defense (Pty) Ltd" means a private company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, with its principal place of business at No. 1 Shelanti Avenue, Lyttelton Office Park, Sandton.

1.4. "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.

1.5. "Commissioner" means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act.

1.6. "Consent Agreement" means this agreement duly signed and concluded between the Commission and K.F Computers.

1.7. "State Information Technology Agency" means a state-owned company duly registered in terms of the South African Company Laws, with its principal place of business at 459 Tsitsa Street, Erasmuskloof, Pretoria.

1.8. "SITA Tender" means tender issued by the State Information Technology Agency under tender number: RFB1366/2015 for the provision of services in support

of the South African Air Force's Ground Command Control System and the Current Intelligence System.

1.9. "Parties" means the Commission and K.F Computers.

1.10. "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 4 March 2016, the Commission received a complaint from the State Information Technology Agency ("SITA") in terms of section 49B(2)(b) of the Competition Act 89 of 1998, as amended ("the Act"). The SITA alleged that K.F Computers and SAAB colluded when tendering for the Ground Command and Control System ("GCCS") and the Current Intelligence System ("CURIS") Tender.

2.2. The SITA Tender was for the provision of services in support of the South African Air Force's ("SAAF") GCCS and CURIS.

2.3. This complaint was investigated under case number 2016MAR0077.

2.4. The Commission's investigation found that on or about January 2016, SAAB assisted K.F Computers in completing its tender documents and in turn SAAB's pricing for the tender was higher than K.F Computers in order to ensure that K.F Computers wins the tender.

2.5. The conduct between K.F Computers and SAAB amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

3. ADMISSION

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

3.2. The Commission has agreed to enter into the Consent Agreement without admission of liability with K.F Computers based on the following factors:

3.2.1 K.F Computers is a small firm;

3.2.2 Given the small size of K.F Computers as well as the small size of the tender, the Commission does not consider it worthy to engage in protracted and costly litigation with K.F Computers;

3.2.3 K.F Computers has never contravened the Act before.

4. CO-OPERATION

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

5. AGREEMENT REGARDING FUTURE CONDUCT

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

5.2. K.F Computers 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. K.F Computers 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

6. ADMINISTRATIVE PENALTY

6.1. K.F Computers agrees that it is liable to pay an administrative penalty of R32 135 (Thirty-Two Thousand, One Hundred and Thirty-Five Rand). This amount does not exceed 10% of K.F Computer's annual turnover for the financial year ending February 2016

6.2. K.F Computers will pay R32 135 (Thirty-Two Thousand, One Hundred and Thirty-Five Rand) to the Commission in two (2) equal monthly instalments after 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:	[....]
Branch name:	[....]
Account holder:	[....]
Account number:	[....]
Account type:	[....]
Branch Code:	[....]
Reference:	[....]

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. K.F Computers 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

8.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under case number: 2016MAR0077 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and K.F Computers relating to the conduct that is the subject of the Commission's investigation under case number: 2016MAR0077.

Tembinkosi Bonakele
Commissioner

Dated and signed at PRETORIA on the 03 Day of December 2021