



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR086AUG19

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

AUTOMATIC SPRINKLER INSPECTION BUREAU (PTY) LTD	First Respondent
BELFA SOLUTIONS (PTY) LTD	Second Respondent
BUBHESI FIRE PROJECTS (PTY) LTD	Third Respondent
CENTA KZN SPRINKLERS CC	Fourth Respondent
NATIONAL SECURITY & FIRE (PTY) LTD	Fifth Respondent
COUNTRY CONTRACTS CC	Sixth Respondent
CROSS FIRE MANAGEMENT (PTY) LTD	Seventh Respondent
FIRE CHECK CC	Eighth Respondent
EAST COAST DISTRIBUTORS CC T/A FIRE KING	Ninth Respondent
FIRECO (PTY) LTD	Tenth Respondent
IBR FIRE PROTECTION CC	Eleventh Respondent
JASCO SECURITY AND FIRE SOLUTIONS (PTY) LTD	Twelfth Respondent
MULTI-NET SOLUTIONS (PTY) LTD	Thirteenth Respondent
SPECIFIRE (PTY) LTD	Fourteenth Respondent
SYLVESTER FIRE AND PIPING SERVICES (PTY) LTD	Fifteenth Respondent
TFMC (PTY) LTD	Sixteenth Respondent
TSHWANE FIRE SPRINKLERS CC	Seventeenth Respondent
WHIP FIRE PROJECTS (PTY) LTD	Eighteenth Respondent

Panel:	Ms M Mazwai (Presiding Member)
	Mr A Wessels (Tribunal Member)
	Prof L Mncube (Tribunal Member)

Heard on: 16, 17, 23, 24, 25, 26 May, 19, 20, 21 September, 26
and 28 October 2022
Order Issued on: 22 August 2025
Reasons Issued on: 22 August 2025

ORDER AND REASONS FOR DECISION

INTRODUCTION

1. Fires threaten lives and property. Statistics show that thousands of homes and businesses are affected yearly, resulting in loss of life, property damage, and financial burdens. Fire sprinkler systems are more accessible in commercial buildings and affluent homes, but it is essential to expand their availability, especially with the growing number of buildings for home and business use emerging across the country.
2. As far back as the 1970's the short-term fire insurance industry established the Automatic Sprinkler Inspection Bureau (Pty) Ltd ("ASIB"), the first respondent in the matter to develop a standard for the certification of fire sprinkler installations in the absence of a government standard regulating the fire protection industry. Since then, ASIB has filled this regulatory gap with the result that, to date, ASIB is still the *de facto* regulator of the fire protection industry. A number of parties in the fire protection industry raised complaints with the Competition Commission ("Commission"), which culminated in the referral of this complaint.
3. The fire protection industry includes two types of service providers: (i) sprinkler system installers (referred to as "installers"); and (ii) fire sprinkler system inspectors (referred to as "inspectors"). There is a vertical relationship between these services.
4. The case referred by the Commission to the Competition Tribunal ("Tribunal") concerns 18 Respondents, that allegedly entered into an agreement, or engaged in a concerted practice, to divide markets by allocating specific types of services and geographic territories in contravention of section 4(1)(b)(ii) of the Competition Act, No.

89 of 1998 as amended (“the Act”).¹ According to the ASIB played a central role in these alleged market divisions.

5. The Commission withdrew its referral against the Sixteenth Respondent, TFMC (Pty) Ltd. The Twelfth Respondent, Jasco Security & Fire Solutions (Pty) Ltd, entered into a consent agreement with the Commission and the Tribunal confirmed the consent agreement on 7 September 2021.² At the start of the hearing, certain other Respondents indicated that they would enter into settlement discussions with the Commission. Nine of these Respondents settled with the Commission, and their settlement agreements were confirmed as orders of the Tribunal.³
6. This left seven remaining Respondents in the proceedings namely: (i) ASIB; (ii) the Fifth Respondent, National Security & Fire (Pty) Ltd (“National”); (iii) the Tenth Respondent, Fireco (Pty) Ltd (“Fireco”); (iv) the Eleventh Respondent, IBR Fire Protection CC (“IBR”); (v) the Thirteenth Respondent, Multi-Net Solutions (Pty) Ltd (“Multi-Net”); (vi) the Fourteenth Respondent, Specifire (Pty) Ltd (“Specifire”); and (vii) the Seventeenth Respondent, Tshwane Fire Sprinklers CC (“Tshwane Fire”).
7. These reasons deal with the remaining seven Respondents against whom the Commission sought relief.
8. The Commission in its referral alleged that the Respondents divided the market in two ways:

8.1. Firstly, the Commission alleged that the Respondents reached an agreement in terms of which ASIB conducted fire sprinkler inspections, while the Second to Eighteenth Respondents (collectively the “installer respondents”) will exclusively

¹ Founding Affidavit at para 29.

² Case no: CR086Aug19/SA044Jul21.

³ The Respondents who settled were (i) Whip Fire Projects, case no: CR086Aug19/SA015Apr22, consent order dated 20 May 2022; (ii) Sylvester Fire & Piping Services, case no: CR086Aug19/SA021May22, consent order dated 20 May 2022; (iii) East Coast Distributors t/a Fire King, case no: CR086Aug19/SA027May22, consent order dated 20 May 2022; (iv) Fire Check, case no: CR086Aug19/SA028May22, consent order dated 20 May 2022; (v) Cross Fire Management, CR086Aug19/SA026May22, consent order dated 20 May 2022; (vi) Centa KZN Sprinklers, CR086Aug19/SA029May22, consent order dated 20 May 2022; (vii) Bhubesi Fire Projects, Case No: CR086Aug19/SA025May22, consent order dated 20 May 2022; (viii) Belfa Solutions, case no: CR086Aug19/SA020May22, consent order dated 20 May 2022; and (ix) Country Contracts CR086Aug19/SA031May22, consent order dated 24 May 2022.

provide fire sprinkler installations⁴ and not provide fire sprinkler inspection services. The Commission argues that ASIB's dominance in the upstream market for inspection services is deliberate, with the installer respondents operating downstream providing installation services. It contends that after Mr John Goring ("Mr Goring") acquired ASIB in 1995, the installers and ASIB agreed that ASIB would exclusively provide inspection services while the installer respondents would focus on installation services.⁵ By registering with ASIB and by signing the rules of ASIB ("ASIB rules"), the installer respondents agree to abide by the terms of the alleged agreement which include that they will not compete with ASIB in the provision of inspection services. This conduct is referred to as the "*services market complaint*".

8.2. Secondly, the Commission alleges that the installer respondents, upon registering with ASIB, have agreed that each of them will do business in the geographic area(s) for which they are registered with ASIB and agreed to the ASIB rules that enabled the ASIB-listed installers to divide the market geographically between them by allocating territories.⁶ This is referred to as "*the geographic market complaint*".

9. The Commission alleges that ASIB's geographic listing of installers in provinces is a so-called "hub and spoke" cartel arrangement, discouraging the installer respondents from operating in multiple provinces.⁷

10. According to the Commission, ASIB functions as the "hub" of the alleged cartel, with the installer respondents as the spokes, allegedly creating an environment that contravenes section 4(1)(b)(ii) of the Act.⁸ The installer respondents are "discouraged" from working outside their ASIB-assigned geographic territories and must have facilities to be registered in a region.

⁴ Commission's Heads of Argument ("HOA") at para 1.4.

⁵ Founding Affidavit at paras 32-33.

⁶ Commission's HOA at para 1.5.

⁷ Commission's HOA at paras 8.2.21-8.2.22.

⁸ Competition Commission v South African Breweries Limited and others [2014] 1 CPLR 265 (CT) ("SAB") at para 74.

11. Below we shall assess (i) the services market complaint; and (ii) the geographic market complaint and consider the overall evidence, as well as evidence in relation to each of the remaining seven Respondents specifically.

FACTUAL BACKGROUND

The formation of ASIB

12. Before 1970, South Africa did not have a standard or certification for fire sprinkler installations, leaving insurers, fire departments and clients without a way to assess the installers' capabilities. The only reference was the outdated Ninth Edition Rules, based on British standards from 1954,⁹ produced by the Council of Fire Insurance Companies in South Africa. This led to inconsistencies, as each insurer had its own requirements, which resulted in repeated inspections and created an inefficient, unreliable process.¹⁰

13. There was a need within the industry to have an independent and skilled body that would certify the installation of automatic sprinkler systems in South Africa according to an updated domestic standard. A further, related, reason was to protect the end-user, i.e. the owner or occupier of the building, by ensuring that they received an automatic sprinkler installation that was safe and reliable. To address this, 35 short-term fire insurers in 1970 established ASIB to independently inspect sprinkler installations before insurance was issued to building owners.

14. ASIB introduced accreditation criteria, developed the Tenth Edition Rules and provided training to standardise assessments and improve compliance.¹¹ The Tenth Edition Rules were updated periodically thereafter by reference to other internationally acceptable standards, such as British Standard EN, National Fire Protection Association ("NFPA"), Factory Mutual Global ("FM") and Loss Prevention Certification Board ("LPCB") – to accommodate modern technology and the unique South African market environment.

⁹ ASIB's witness statement at paras 2.1 - 2.3; ASIB, Fireco and Specifire's HOA at para 12.

¹⁰ ASIB, Fireco and Specifire's HOA at paras 13 -14.

¹¹ *Ibid* at paras 17-19.

ASIB sold to Mr Goring

15. According to ASIB, although ASIB was owned by short-term insurers, they provided no capital to ASIB but retained control over its operations.¹² ASIB frequently struggled financially and was eventually declared insolvent. In 1995, it was sold to Mr Goring for a nominal sum.¹³ Mr Goring, a former insurance company general manager, brought in several directors who previously held executive roles in the industry. Following the sale, ASIB underwent significant changes, which will be discussed later. Mr Goring occupied the role of managing director of ASIB until October 2017, when Ms Natasha Goring (“Ms Goring”) took over.

Tenth to Twelfth Edition Rules and the Development of SABS standards

16. It is common cause that between 1970 and 2009, the Tenth Edition Rules served as the primary standard for fire sprinkler installations in South Africa.¹⁴

17. In 1987, the South African Bureau of Standards (“SABS”), the statutory body for developing, promoting and maintaining standards in South Africa, introduced SABS 0400-1988, allowing alternative fire protection methods for buildings that fell outside the National Building Regulations Act, 103 of 1977. These alternatives were known as rational design and required supporting rules, codes or standards.¹⁵

18. In 1990, SABS developed the SABS 0287 code, halting updates to the Tenth Edition Rules. However, due to challenges with rational design and the lack of a national fire sprinkler standard, Munich Re and ASIB urged SABS to create one.¹⁶ Finalised in 1996, but only released in 2000, SABS 0287 was outdated by publication, prompting ASIB to introduce the Eleventh Edition Rules in 2009.

19. SABS later requested ASIB to draft a new fire sprinkler standard, SANS 10287, but it was never published. ASIB continued applying the Eleventh Edition Rules until 2016

¹² *Ibid* at para 18.

¹³ *Ibid* at para 18.

¹⁴ *Ibid* at para 19. See also the Commission’s HOA at para 2.2.

¹⁵ *Ibid* at paras 20-21.

¹⁶ *Ibid* at paras 19-27.

before introducing the Twelfth Edition Rules in 2017, which remain the current standard for new buildings.¹⁷

ASIB after 1995

20. According to the Commission, ASIB's business model changed after Mr Goring acquired it.¹⁸ Recall that the insurers wanted an independent inspector of sprinkler installations. Previously, according to the Commission, the fire protection service providers conducted inspections, but after the sale of the business, the installers allegedly agreed that ASIB would have exclusive rights to sprinkler inspections while the other service providers focused solely on installations.¹⁹ By registering with ASIB, the installers accepted these rules and the amended Rules for Automatic Sprinkler Installations, effectively agreeing not to compete with ASIB in the provision of installation services. These rules were formalised in the Second Amendment of the Tenth Edition Rules.

21. It is common cause that ASIB maintains a voluntary listing of installers who meet its standards for advising, designing, and installing sprinkler systems.²⁰ Firms listed with ASIB must adhere to recognised installation standards, submit project lists to ASIB, uphold workmanship quality, and refrain from conducting inspections on their own or competitors' (i.e. installers') work.

22. Installers are categorised by ASIB as follows: (i) supervising installers²¹ (employing certified and competent staff); (ii) installers²² (meeting basic competency

¹⁷ *Ibid* at para 27.

¹⁸ Founding Affidavit at para 32.

¹⁹ *Ibid* at para 32.

²⁰ ASIB, Fireco and Specifire's HOA at para 32.

²¹ This category of installer is the most substantial in terms of capacity requirements. A supervising installer has sufficient competent staff to approve sprinkler system drawings, and to subcontract services when necessary. A supervising installer must, *inter alia*: employ two or more people who hold a certificate of competency from ASIB, and two or more other draughtspersons capable of designing sprinkler installations to an approved and recognised standard.

²² This type of company complies in all respects with the requirements to be listed as a supervising installer, but is slightly smaller in terms of qualified personnel. This category of installer must, amongst other things: employ one Competent Person and one other draughtsperson capable of designing sprinkler installations to an approved and recognised standard. A "Competent Person", as defined by ASIB, is a person who has written and passed the ASIB examination of competency, and who holds a certificate of competency from ASIB.

requirements); (iii) conditional installers²³ (lacking certified staff but demonstrating capability); and (iv) provisional installers²⁴ (new or unverified companies).²⁵

COMPLAINT BACKGROUND

23. Between 2014 and 2017, the Commission received multiple complaints alleging ASIB's involvement in collusive conduct within the fire protection industry. On 5 July 2017, the Commissioner initiated a complaint against ASIB, and all fire protection service providers registered with it for a possible violation of section 4(1)(b)(ii) of the Act.²⁶
24. As part of its investigation, the Commission conducted dawn raids in August 2017 on ASIB and 24 fire protection companies.
25. The matter was referred to the Tribunal on 16 August 2019. As mentioned above, certain Respondents settled their matters. The hearing in relation to the remaining seven Respondents commenced on 16 May 2022 and was concluded on 28 October 2022.
26. The Commission seeks an order against the seven remaining Respondents declaring that:
 - 26.1. The Respondents, being parties in a horizontal relationship, engaged in market division and have contravened section 4(1)(b)(ii) of the Act;
 - 26.2. The Respondents be liable for the payment of an administrative penalty equal to 10% of their turnover in terms of section 58(1)(a)(iii), read with section 59(2) of the Act; and

²³ This type of company complies in all respects with the requirements to be listed as an installer with the following exception: it is a company that does not employ any Competent Person but has proven through installations that have been inspected and approved, or through examinations or course attendances, that it is capable of installing sprinkler systems to a minimum proven standard. Often this level of installer subcontracts its design and calculation to a third party.

²⁴ This category is reserved for newly-listed companies and companies that have failed to submit any substantive work for inspection to ASIB for a reasonable period, and have therefore failed to meet the requirements set out for their level of registration. Until such time as a proven track record is achieved, the company remains in this category. Any company listed as a provisional installer is under review by ASIB, based on the fact that it is newly listed or has failed to meet the relevant listing requirements.

²⁵ *Ibid* at paras 38-46.

²⁶ Founding Affidavit at para 28.

26.3. Granting the Commission such further and/or alternative relief.

WITNESSES

27. We heard evidence from a total of 10 factual witnesses called by the Commission and the remaining seven Respondents. The Commission led three factual witnesses, while the Respondents each called one factual witness.

Commission's witnesses

28. The Commission's first witness, Mr Des Rielander ("Mr Rielander"), previously worked for the fire department before joining ASIB as a contractor around 2003/2004, conducting fire protection system inspections for 13 years.

29. He later became the technical director of the South African Inspectorate for Fire Protection ("SAIFP"), an independent fire inspection service provider established in 2016. SAIFP operates without a membership list, conducting project-based inspections. SAIF's role remains limited as insurers continue to require inspection services by ASIB.²⁷ SAIFP, therefore is a competitor of ASIB in relation to fire protection inspection services.

30. The Commission's second witness, Mr Wynand Engelbrecht ("Mr Engelbrecht"), is an industry veteran with over 40 years' experience in the fire protection industry. Mr Engelbrecht now runs the only privately-owned fire brigade. While he played a role in establishing SAIFP, he has since resigned from the organisation.²⁸

31. The Commission's third witness was Mr Clyde Becker ("Mr Becker"), is a co-owner of Firebrand (Pty) Ltd ("Firebrand"), a company established in 2014 that conducts business in the fire protection services market.²⁹

²⁷ Transcript at p 178.

²⁸ Transcript at p 320.

²⁹ Transcript at p 505-506.

Respondents' witnesses

32. For the Respondents, the following witnesses were called:

- 32.1. Ms Goring, ASIB's former Managing Director from September 2017 to February 2020;
- 32.2. Mr Yagalingum Nanthakumaran Valloo Nair ("Mr Nair"), National's Chief Operating Officer from August 2017;
- 32.3. Mr Atish Shanker Shiba ("Mr Shiba"), Fireco's Chief Financial Officer since May 2015;
- 32.4. Mr Ivan Radmore ("Mr Radmore"), a member of IBR from 1990;
- 32.5. Mr Johan Jacobus Smith ("Mr Smith"), Multi-Net's Managing Director;
- 32.6. Mr Martin Holmes ("Mr Homes"), Specifire's Managing Director since 1995; and
- 32.7. Mr Adriaan Barend Jacobus Olivier ("Mr Olivier"), Tshwane Fire's Contracts Manager since 2009.

Legal principles

33. Section 4(1) of the Act states that: "*an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if-*

(a)

(b) it involves any of the following restrictive horizontal practices:

(i);

(ii) dividing markets by allocating market shares, customers, suppliers, territories or specific types of goods or services; or

(iii)"

34. Section 1(1) of the Act defines "*horizontal relationship*" as *a relationship between competitors.*

35. The Act defines an “*agreement*” as including “*a contract, arrangement or understanding, whether or not legally enforceable*”.³⁰

EVIDENCE AND ANALYSIS

ASIB and its membership

36. According to ASIB, it maintains, on its website, a list of sprinkler installers who have demonstrated the ability to interpret the rules and correctly advise on, design, calculate, fabricate and maintain sprinkler systems according to approved standards, and who seek listing as such.

37. The primary purpose, and benefit of the listing service, according to ASIB, is that it indicates to customers that (i) ASIB recognises, and recommends, the relevant firm as having the capability in the field in which it is listed: and (ii) such installer's work will, on completion, be inspected by ASIB for compliance with the requisite standard in order to ensure the quality of the installation and protect the client's interests (and that, in the event of non-compliance, the installer will carry out the necessary rectification work).

38. In order to be listed as an installer, ASIB will initially consider whether the company employs staff that (i) have on-site sprinkler experience, and (ii) are capable of advising on the risk and requirements of sprinkler systems in accordance with internationally acceptable and proven standards.

39. ASIB submits that there are many installation companies in the sprinkler installation industry that it does not list. If a firm does not wish to be an ASIB-approved provider of installation services, it is not required to register with ASIB and may still request to have its installations inspected by ASIB.

40. In order to be listed as an approved installer, an applicant must submit a registration form and a company curriculum vitae outlining the sprinkler installation experience of its staff. If the curriculum vitae of a company indicates that the company has capable

³⁰ Section 1(ii) of the Act.

and qualified staff, an entrance test is required to be written. The test, a 90-minute, twenty-five question open-book test on the Ninth, Tenth, Eleventh and Twelfth Edition Rules, is held approximately once every three months. If the required pass mark is achieved, then the cost of the test per person is credited to their company's account and deducted from the listing fee.

41. ASIB's conditions of listing require that installers, if they wish to be listed as ASIB-approved providers of installation services, comply with the minimum installation requirements set by ASIB and submit that work for inspection by ASIB. In particular, the general conditions of listing include that the listed company shall, *inter alia*:

41.1. *Install sprinkler systems in accordance with known and proven rules or standards which would be acceptable to any international independent third-party inspection authority;*

41.2. *Submit to ASIB, for approval purposes, a complete list of all installation work undertaken by that installer. Where an installation is performed in accordance with the FM or NFPA³¹ standard, that work may also be inspected by FM and NFPA³² inspectors, as the case may be. This enables ASIB to ensure that the installation services have been performed in accordance with the relevant minimum standards, and to certify the services as such for the benefit of the end-customer;*

41.3. *Ensure that ASIB and/or the sprinkler trade will not be brought into disrepute through poor advice, workmanship, failure to complete contractual obligations, failure to apply correct minimum standards, or for any other reason; and*

41.4. *Not undertake inspections for approval purposes, or sign off or certify (for compliance purposes) its own or a competitor's work. (underlying indicates ASIB rules that are the subject of dispute in this matter)*

42. The Commission's witnesses attested to the fact that joining ASIB is voluntary.³³ For example, Mr Becker, the Commission's third witness, who is a co-owner of Firebrand,

³¹ FM and NFPA are internationally recognised fire protection standards.

³² *Ibid.*

³³ Transcript p 186-7.

stated that Firebrand was not ASIB listed.³⁴ However, it is the Commission's case that coercive market forces compel installers to join ASIB.

43. Witnesses consistently submitted that it is either the insurance companies, customers issuing tenders or engineers who require adherence to the ASIB standards - this was confirmed by several witnesses.³⁵ The Commission's witness Mr Becker stated:³⁶

*"ADV WILSON SC: I take your point, and it's a useful correction that it's in most instances not the function of the installer to get a third-party inspection service. If one is required that would be the prerogative of the client or the insurer, whoever is calling the shots on a particular installation, is that right?
MR BECKER: Correct, ja".*

44. Multi-Net, for example testified that, it is registered with various institutions and associations to meet customer requirements and secure tender opportunities, necessitating affiliation with ASIB for bidding success.³⁷ According to Multi-Net, most tenders from government and parastatal agencies also required fire protection installations to comply with ASIB standards, with inspections mandated by ASIB.

45. Multi-Net further submitted that it did not dictate these standards or inspectorates, either independently or in collaboration with ASIB or other installer respondents. Its registrations were standard business responses to market conditions and customer requests for quotations ("RFQs"). The RFQ specifies the recognised accreditation institution that the Respondent must adhere to if third-party inspections are required.³⁸

ASIB's market position in inspection services

46. Given the history of the sector as set out above, ASIB currently enjoys a position of pre-eminence in the fire sprinkler inspection segment, where the evidence suggests that it dominates the inspection services segment.

³⁴ Transcript p 552.

³⁵ Mr Rielander Transcript at p 178-9, p 186-7; Mr Engelbrecht Transcript at p 333; Ms Goring at p 758, p 760; Mr Smith at p 981-2. Mr Homes at p 1105-6.

³⁶ Transcript at p 553.

³⁷ Multi-Net HOA at para 7.1.

³⁸ Multi-Net HOA at para 7.4.

47. It is common cause that ASIB conducts the majority of inspections in the South African fire protection services market. It is common cause, also, that the majority of insurers (and consequently building owners) continue to require ASIB inspections as a prerequisite for their provision of insurance.³⁹

Relationship between inspection and installation services

48. According to ASIB, compliance inspection services operate as a form of quality control. There is value to insurers and end-clients in having an independent third-party compliance inspectorate interpret the requirements of fixed fire protection, inspect installations, evaluate designs, and confirm the accuracy of calculations. This also assists the end-user to identify non-conformities in an installation for the installer to rectify or attend to.

49. Inspection and installation services are in a vertical relationship to each other. The installers must have their installations inspected. This is a requirement in order to, *inter alia*, get fire insurance for a particular building/premise.

50. We now turn to deal with the service market complaint.

The services market complaint

51. It is common cause that at the time the installers applied to be listed as approved installers by ASIB, ASIB was not active in the installation market, and none of the installer respondents were active in the compliance inspection market.

52. As indicated, the Commission alleges that by registering with ASIB, the installers accepted ASIB's rules, thereby effectively agreeing not to compete with ASIB in the provision of inspection services.

53. In support of its claim of what the Commission calls a structured division between installation and inspection,⁴⁰ the Commission referred, *inter alia*, to e-mail

³⁹ Commission's HOA paras 2.1, 2.5 and 2.6.

⁴⁰ Emails between Mr. Goring and Myra Kotze: Tiger Brands Sprinkler Inspection Report (Evidence Bundle Item 30). Commission's HOA at para 8.3.1. Evidence Bundle 681, Transcript 694 – 696.

correspondence to Myra Kotze of Ogon Fire Services (Pty) Ltd (“OFS”), an installer, in which Mr Goring stated, *“The agreement is clear, ASIB conducts inspections, does not install sprinklers, and doesn’t create rectification requirements.”*

54. Ms Goring was also taken to e-mails⁴¹ where, in one instance, ASIB was confirming the deregistration of an installer who had performed inspections, and in another instance, an e-mail⁴² confirming to an installation company that-

“[w]hen a company lists with the ASIB as an installer the installing company signs a contract stating all work will be submitted to the ASIB for inspection. This is a contract between the ASIB and the listed companies and a breach of this Clause will result in the removal of the ASIB list. This Clause has been in force for the last 44 years”.⁴³

55. It is also common cause that ASIB does not permit ASIB-listed installers to perform compliance inspection services. ASIB submits that this is so for three main reasons:

- 55.1. to protect the standing and credibility of the ASIB standard as well as ASIB's reputation in the compliance inspection services market;
- 55.2. to avoid the potential conflict of interest that is inherent in installers conducting compliance inspection services for other installers with whom they are in competition; and
- 55.3. it would not make commercial sense for ASIB to perform a listing service for installers if listed installers were then permitted to provide compliance inspection services themselves.

56. ASIB further submits that the reputational association that exists between it and the installers it recommends is one of the key reasons for its requirement that ASIB-listed installers do not themselves perform compliance inspection services. ASIB explained that its reputation is inextricably linked to that of the installers.

57. For example, if the listed company installs work to an unacceptable standard, the reputation of ASIB is directly affected. Consequently, ASIB spends a substantial

⁴¹ Evidence Bundle p 655 and 657, Transcript p 691- 694.

⁴² Email from Natasha Adams to John Netherlands: ASIB Conditions of listing (Evidence Bundle Item 90), Commission’s HOA at para 6.11, Evidence Bundle p 1731 - 2, Transcript p 682-685.

amount of time evaluating, vetting, and monitoring listed installers, and their staff capabilities and work, for the duration of their listing.

58. If ASIB permitted other parties to perform compliance inspection services in respect of the ASIB standard (which ASIB developed and in which it owns the intellectual property), any failures by such other inspectors would undoubtedly harm the reputation that ASIB has built, and the standard it has developed, over many years.

59. As noted above, other independent companies and bodies other than ASIB also provide compliance inspection services.

Were the parties in a potential horizontal relationship in the provision of inspection services?

60. The Commission argues that that installers face no switching costs to enter the inspection market. The work entails a visual inspection against the applicable technical standard, requiring only adequate knowledge of fire sprinkler systems.⁴⁴

61. The Commission argues that in a market division context the mere potential for competition is enough to create anti-competitive effects. This is because firms may divide markets to prevent actual competition in a relevant market, and the resulting harm remains significant regardless of prior competition.

62. The Commission points to *Nedschroef*⁴⁵, where it was held that market division does not require that both firms be competitors before the act of division. If they are *potential competitors* this will suffice.⁴⁶ Frequently, firms will divide a market before they become *de facto* competitors precisely to avoid that outcome.⁴⁷

63. In respect of the geographic market allegation, the Commission relied on the *Competition Commission of South Africa and others v United South African*

⁴⁴ Commission's HOA at para 8.2.5.

⁴⁵ *Nedschroef Johannesburg (Pty) Ltd and Teamcor Ltd Waco International Ltd CBC Fasteners (Pty) Ltd and Avlock International (Pty) Ltd* Case No: IR070Oct05 ("*Nedschroef*") at para 44.

⁴⁶ *Nedschroef Johannesburg (Pty) Ltd and Teamcor Ltd Waco International Ltd CBC Fasteners (Pty) Ltd and Avlock International (Pty) Ltd* Case No: IR070Oct05 ("*Nedschroef*") at para 44.

⁴⁷ *Ibid.*

*Pharmacies and others, where the Tribunal confirmed: “[w]hat the Act requires by the notion that parties are in a horizontal relationship is an allegation that they are in the same line of business. Neither the language of the Act nor the logic of how the section works requires that there be allegations that the respondents operate in the same geographical market in order to be considered competitors. Take, for instance, the prohibition on dividing markets by allocating territories, set out in section 4(1)(b). If the respondent’s argument is correct, such a practice could never be instituted against those who divided markets before they were ever in one another’s markets. By definition, having divided territories, they are not in the same geographic market, and indeed may never have been. It is ludicrous to suggest that for this reason they would not be competitors.”*⁴⁸

64. In their pleadings, all seven respondents deny the allegations in relation to the services market complaint. ASIB, Fireco, Specifire, National and Multi-Net argue that because their conduct falls within a vertical framework it is not automatically prohibited under section 4(1)(b)(ii). *Inter alia*, ASIB, Fireco and Specifire argue that ASIB’s rules restricting listed installers from offering compliance inspections is a vertical requirement, not a horizontal agreement.⁴⁹

65. They claim that as installers, ASIB is not their competitor, and ASIB being an inspector. They claim that the rule protects ASIB’s reputation, manages conflicts of interest, and ensures the availability of its listing service to customers. They maintain there is no evidence that they competed with ASIB when agreeing to the ASIB rules.

66. Further, National contends its conduct does not meet the criteria for automatic prohibition, while Multi-Net asserts that its ASIB accreditation was a standard market response to meet clients’ requirements, with no evidence of market division or geographic restriction in its operations.

⁴⁸ Competition Commission of South Africa and others v United South African Pharmacies and others [2003] 1 CPLR 172 (CT) at p 7 and 8.

⁴⁹ ASIB, Fireco and Specifire’s HOA at para 4.1. We note that these three Respondents were represented by the same legal counsel and filed a joint HOA.

Our assessment

67. What we have to decide in respect of the “services market” complaint is whether the installer respondents were actual or potential competitors of ASIB at the time of the installers signing up to ASIB rules.

68. We note that in the context of an alleged market division case, the parties would not be actual competitors in the relevant product and/or geographic market, as that would mean that there is no market division to speak of in the first place.

69. The evidence indicates that prior to 1995, when Mr Goring acquired ASIB (and even prior to the establishment of ASIB in 1970), installers did not provide compliance inspection services.⁵⁰

70. Prior to the establishment of ASIB, it was the insurers themselves, not installers, who provided compliance inspection services in respect of sprinkler systems installed on their respective insured premises. As explained above, one of the very reasons for the establishment of ASIB was to transfer this function from the individual insurers to an independent third-party inspectorate.

71. In his evidence, Mr Rielander seemed to suggest that installers have done inspections previously.

72. The evidence of Mr Rielander was:⁵¹

...“Adv Modisa: Ja, Mr Rielander, are the Listed ASIB Installers, are they capable of conducting inspections, through your experience?”

Mr Rielander: The listed installers on many occasions did go and issue installation certificates. In some cases the wording was more an inspection of the installation. And the supervising installer would obviously inspect sometimes the work done by a conditional installer, especially where they were taking responsibility for that installation.”

⁵⁰ ASIB’s witness statement, paras 2.1 - 2.3, ASIB, Fireco and Specifire’s HOA at para 12.

⁵¹ Transcript p 117.

73. Later, he clarified that any inspection done by a supervising installer (signing off on the work of a conditional installer) was an inspection; however, 'sign-off' on work was different from having the ability to issue a compliance certificate.⁵²

74. As indicated, the Commission submitted, regardless of whether installers have conducted inspections before, installers have the technical ability to conduct inspections.

75. Mr Rielander was cross-examined on this and he said the following:⁵³

“ADV BLUMENTHAL: ... almost all of these witnesses specifically state that in fact the work of being an installer is completely different to the function and work of an inspector and that in fact they have no competency or desire or qualification to as installers do the work of an inspector. What do you have to say to that?”

MR RIELANDER: I disagree with that, because there were inspectors employed at ASIB that came from the ranks of clients. Mike Redgate used to be a safety officer at SA Breweries and he became an inspector at ASIB. He didn't have the qualifications, didn't have the experience of being an inspector and so did other inspectors come into the fold of ASIB without formal qualifications, had experience with being an installer and they became inspectors.”

76. Mr Rielander accepted that there were differences in the skills required for an installer and an inspector. He said: “...an installer can inspect they technically know what is going on”, but “...there are masses of information out there in inspection management systems”, and depending on experience, training and various assessments, an installer could do inspections.⁵⁴

77. Mr Engelbrecht testified that it used to be the case that supervising installers could inspect the work of installers. However, when further pressed on this, he could not provide details.⁵⁵

⁵² Transcript p 131.

⁵³ Transcript p 205.

⁵⁴ Transcript p 207.

⁵⁵ Transcript p 441- 442.

78. Ms Goring admitted that installers, particularly those with competent staff and designers, would be technically capable of performing sprinkler inspections. In this regard, she said:⁵⁶

“ADV NXUMALO: So, from what you have just said, is an installer then in a position to perform an inspection?”

MS GORING: I... [intervention]

ADV NXUMALO: Is it capable of performing an inspection?

MS GORING: If they – are they capable?

ADV NXUMALO: Yes.

MS GORING: Technically of them performing an inspection? Yes, I believe that they are capable, especially installers that have competent people on their staff, designers on their staff. They do have the capabilities of performing a sprinkler inspection”.

79. The evidence indicates that, categorically, prior to the sale of ASIB, installers did not conduct inspections. After the sale, Ms Goring was adamant that this practice still did not occur. Mr Rielander and Mr Engelbrecht maintained that supervising installers could perform inspections.

80. We considered whether, even if certain installers may have had the technical expertise to conduct inspections, they could be regarded as potential competitors in providing inspection services. However, Mr Rielander testified that SAIF itself prohibits installers from conducting inspections, which undermines that possibility.⁵⁷

81. In assessing potential competition the European Court of Justice (“ECJ”) in *Generics (UK) and Others* (Case C-307/18) found that in determining whether an undertaking that is not present in the market is a potential competitor of one or more other firms that are already in the market, it must be determined whether there are “*real and concrete possibilities*” of that firm joining the market and competing with one or more firms in that market.

82. Furthermore, it found that there can be no potential competitive relationship as an inference merely from the pure hypothetical possibility of entry.⁵⁸ In this regard, Dunne

⁵⁶ Transcript p 696-697; see also p 710.

⁵⁷ Transcript p 205.

⁵⁸ Colino et al. (2017), The Lundbeck Case and the Concept of Potential Competition, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2931411.

suggests that “*entry must therefore be an economically viable strategy*”,⁵⁹ not a theoretical possibility.

83. The ECJ further found whether a potential competitor had “*a firm intention and an inherent ability to enter the market*” and whether “*the firm does not face insurmountable barriers*” were relevant considerations in assessing potential competition.

84. An OECD Potential Competition Background Note 2021⁶⁰ (“OECD Note”) on potential competition suggests some key parameters to confirm the relevance of a potential competitive constraint: i) the relevance of barriers to entry; ii) the likelihood and strength of potential competition; and iii) the time frame in which potential competition could emerge. The OECD Note recommends that when assessing barriers to entry in the context of potential competition, “*competition authorities should assess the likelihood of entry, not whether barriers are high or low in any given case.*”.

85. In assessing potential competition, we examined the barriers faced by both installers and ASIB which, absent the agreement, might have prevented them from entering each other’s markets, as well as the likelihood of either actually entering the other’s market (installation and inspection, respectively).

Barriers to entry

86. Barriers to entry vary and must be assessed per relevant market.

87. The OECD Note suggests that for competition enforcement purposes, the labelling of barriers to entry is often not informative and that the focus should be on the likelihood and timing of entry.

⁵⁹ *Ibid.*

⁶⁰ Organisation for Economic Co-operation and Development (OECD) (2021), Roundtable on the Concept of Potential Competition – Background Note, DAF/COMP(2021)3, OECD, Paris, 7 May 2021.

88. In this case, a business valuation report prepared on ASIB's behalf, which assessed the state of the industry at the time of Mr Goring's acquisition of ASIB, states the following about barriers:⁶¹

"The barrier to entry appears on the face of it to be significant, and the comfort the insurance industry feels with the business certainly makes it difficult for any new competitor to enter the market. By the same token, a significant weakening of the business, possibly due to employee exposure, could result in the industry commissioning a competitor undertaking. This would possibly be the view of any potential purchaser and needs to be dealt with."

89. When asked to explain the barriers to entry, Ms Goring responded by saying this was a reputation issue.⁶²

"Mr Wessels: "Can you explain to us what the context of that is, and why that is a barrier to entry in the inspection service?"

Ms Goring: It really comes down to the ASIB reputation. And this is what I have been stressing throughout my entire testimony. When the ASIB issues a clearance certificate is ASIB saying that that sprinkler system will work to control a fire to a certain area in that building with the fire load. In the 53 years, I think, that we've got now that the ASIB has been formed we have not lost a single building to fire that has a valid clearance certificate. That is reputation. And that is what insurers take comfort with is that when you have got an inspection company that d[o]es does approximately 6000 inspections per annum and issues clearance certificates and sticks by their word of the clearance certificate...New companies coming up that simply don't have that reputation will struggle to compete."

90. This appears to evade the question. The protection of ASIB's reputation is, however consistent with ASIB's reasons for the listing conditions. While reputation can be considered a barrier in some instances, it is not an insurmountable barrier.

⁶¹ Transcript at p 759.

⁶² Transcript at p 759-760.

91. A further barrier that is generic to all the Respondents is that of a potential conflict of interest should installers perform inspection services, and vice versa. The conflict of interest issue, in our view, is significant.⁶³
92. ASIB and the other Respondents argue that if installers performed sprinkler inspection services, this would involve a conflict of interest. For example, there is a risk that installers within the industry would not be sufficiently or overly rigorous in their evaluations of other installers' work. An installer may be too lenient in inspecting another installer's work, understanding that this may act as a *quid pro quo* when the roles are reversed.
93. This concern is all the more pronounced if installers inspect their own installations and, in so doing, effectively "mark their own homework." Conversely, there is a real risk that competitors could be overly harsh in their evaluation of competitors' installation, in order to win customers away from their competitors. This conflict of interest was raised by several of the installer witnesses.⁶⁴
94. The South African National Standards ("SANS") are technical standards developed by the South African Bureau of Standards ("SABS"), the statutory body responsible for developing, promoting and maintaining standards in South Africa.
95. According to the evidence, SANS specifies the criteria for products, services and systems to ensure quality, safety and interoperability. SANS recognises the importance of having an independent inspection body that is not subject to any potential conflict of interest.
96. For example, SANS provides that an inspection body should, amongst other aspects, be independent of all parties; not gain financially from a report; and not engage in any activities that may conflict with their independence of judgment and integrity in relation to their compliance inspection activities. (own emphasis).⁶⁵

⁶³ We note however that (Brand) reputation can constitute barrier to entry – see for example Akzo Nobel /Plascon

⁶⁴ Fireco's witness statement at para 4.2; Transcript Mr Shiba p 863; IBR's witness statement at para 20; Transcript Mr Radmore p 921, 943 and 945; Transcript Mr Smith (Thirteenth Respondent) p 1010; Specifire's witness statement at para 3.2; Transcript Mr Holmes p 1057; 1076 and 1077.

⁶⁵ ASIB, Fireco and Specifire's HOA at para 68.

97. According to Ms Goring, SANS also requires that compliance with that standard can only be verified by "*an independent third-party inspection*" and signed off by a competent person. In addition, clause 29.1.3 expressly prohibits any installers from issuing certificates of compliance in respect of SANS 10287, whether in respect of their own work or in respect of any other installer's work.⁶⁶
98. The abovementioned conflict of interest, in our view, is not an easily surmountable barrier. If one is currently an installer, then entering the market for inspection services presents an inherent conflict of interest, which is a significant barrier that would be difficult to overcome since the regulation mandates independence between the respective activities of installers and inspectors, and prevents one from conducting the services of the other.
99. For example, the evidence shows SANAS (the national body responsible for accrediting organisations involved in testing, calibration, certification, and inspection services) squarely addressing a conflict of interest that arose in an instance where SAIFP as an inspectorate body also engaged in activities that were in conflict with commercial activities downstream. SANAS was concerned with the conflict of interest and the lack of independence when an inspectorate body also operates in the same market that it regulates.⁶⁷
100. In our view, the conflict issue is a significant barrier to entry.
101. A further overarching characteristic raised by some respondents as a barrier to entry into the inspection market is that the provision of services in the compliance inspection market carries significant risk and liability, which would need to be covered by professional indemnity insurance.⁶⁸
102. We next turn to the evidence in relation to each of the remaining Respondents to determine if each is in a potential horizontal relationship with ASIB in relation to inspection services. We consider each respondent's arguments regarding its ability to

⁶⁶ Ibid at para 69.

⁶⁷ Transcript p 406 - 408

⁶⁸ Fireco's witness statement at para 4.1. Specifire's witness statement at para 3.4. Transcript Mr Holmes (Fourteenth Respondent) p 1057.

enter, barriers to entry that it faces, as well as intent. We give weight to ability and barriers since intent may change over time.

First Respondent – ASIB

103. ASIB's evidence was undisputed that it had no intention and no ability to enter the installation market, not least because there would be a clear conflict of interest between providing independent inspection services to third party installers, on the one hand, and ASIB itself performing installation services on the other and this constitutes a significant barrier to entry.⁶⁹ This suggests that entry does not therefore represent an 'economically viable strategy' for ASIB as a would-be competitor in installation services.

104. We conclude that there is no cogent evidence to find that ASIB has ever been an actual or could be a potential competitor in the sprinkler installation market. Thus, there is a lack of a horizontal relationship as required by section 4(1)(b) to find a contravention.

Fifth Respondent – National

105. It is common cause that National does not currently render any fire inspection services.

106. National argued that the true economic nature of the relationship between it and ASIB is purely vertical. But for a contractual arrangement with ASIB for the inspection of its installations no other relationship between the parties exist.

107. National raised the issue that if installers would provide inspection services that would give rise to conflicts of interest and refers to Mr Rielander conceding this, as per the following exchange between Adv Modisa and Mr Rielander:⁷⁰

⁶⁹ Transcript p 657.

⁷⁰ Transcript p 130.

“Adv Modisa - Is there a conflict of interest, Mr Rielander, if an installer inspect work of another installer?

Mr Rielander – Yes”.

108. Mr Nair of National further explained why National would not perform inspection services:

“Mr Modisa: You can proceed in arguing. So, is it another term – is it part of the terms and condition of listing with ASIB that a listed installer will not perform inspections?

Mr Nair - I just answered that question as well. We have no reason to mark our own homework. We will not, as a listed installer go on and do inspections on our work. The inspections must be done by the Regulatory Body who we pay to do the inspection and learn the code and know the code like I need anybody that the Regulated Body.”⁷¹

and

“... I said it earlier, we don’t inspect other people’s work for the simple reason that we’re installers and we need qualified people to come and inspect the work. So therefore I agree exactly with what you are saying and whether it’s ASIB, whether it’s the Government, whether it’s another organisation, people who understand the code can come in and inspect the work and give us a tick in the box. We’re very happy with that.”

and

“... as a businessman, as a company, I’m not interested in inspections that somebody else must come and inspect my work. I do the work. I do the installation. ...”⁷²

109. We conclude that there is a lack of evidence that National would be in a horizontal relationship with ASIB in relation to the provision of inspection services absent any alleged agreement between it and ASIB.

⁷¹ Transcript p 811.

⁷² Transcript p 812 - 813.

The Eleventh Respondent - IBR

110. IBR submitted that sprinkler systems can be installed in accordance with a number of recognised standards, and the ASIB standard is but one of those recognised standards; these standards are encapsulated in ASIB's various Editions of 'Rules for Automatic Sprinkler Installations', the latest being the Twelfth Edition Rules.
111. IBR further submitted that the 'person' who determines or chooses what standard a sprinkler system is to be installed in accordance with, is the installer's client (building owners etc).⁷³
112. All of the witnesses were largely *ad idem* that the ultimate and recurrent decision makers in respect of what standard is to be used for a sprinkler system, are insurance companies; and that these insurance companies (local and foreign) often insist on ASIB-compliant sprinkler systems as a prerequisite for insurance cover to be granted.⁷⁴
113. By being listed with ASIB, the respondents are not precluded from doing installations in accordance with the ASIB standard only, but could install a system in accordance with any standard the client required (if they had the skill set to do so).
114. IBR submitted that it has no interest, capacity or qualifications to perform the inspectorate function and IBR has no intention of entering the market for inspection and certification of sprinkler systems.
115. IBR, similar to National, raised the issue of conflicts of interest, should it provide inspection services. It explains that customers would likely be sceptical of an installer who also performs inspection and certification services for other installers because of the likely conflicts of interest in offering both services. In other words, a reasonable perception would be that if one installer granted lenience to a competitor installer in the inspection and certification process, that lenience would be expected in return

⁷³ *Inter alia* Transcript p 412 - 413 (Mr Engelbrecht).

⁷⁴ *Inter alia* Transcript p 410 (Mr Engelbrecht); Mr Radmore's witness statement at paras 14 - 15.

if/when the roles were reversed. It contends that the integrity of the entire independent process would be undermined.

116. As indicated above, we find the conflict of interest argument, as conceded by Mr Rielander, to be a compelling argument in this sector.

117. IBR also raises the issue of risk to the firm associated with providing inspection services. It explains that there is both a commercial and reputational risk in offering inspection and certification services because a customer may seek recourse against IBR if it produces a certificate and the property subsequently suffers fire damage. This is a risk IBR is not prepared to take. There is no evidence to contradict that these risks exist.

118. From a commercial perspective, IBR submitted that it simply does not perceive the inspection and certification market to be particularly lucrative market for it in comparison to the installation market. There is no evidence to contradict this.

119. We conclude that there is a lack of evidence that IBR would be in a horizontal relationship with ASIB in relation to the provision of inspection services, absent any alleged agreement between it and ASIB.

Thirteenth Respondent - Multi-Net

120. Multi-Net argued that it is registered with several institutions and associations, as required and requested by its customers, as end-users. In fact, it was at all relevant times a prerequisite for Multi-Net to be affiliated with ASIB in order for it to be a successful bidder in obtaining tenders.

121. It submitted further that the tender requirements of most parastatals and government agencies and departments required fire protection installers to conduct such installations in line with the so-called ASIB standards and that the inspections were to be conducted for it to be inspected by ASIB. The tender document so compiled by the customers thus provided the standard and inspectorate authority.⁷⁵

⁷⁵ Multi-Net's Answering Affidavit of paras 22 – 30.

122. Multi-Net registered with ASIB as well as other accreditation institutions as a normal commercial response to conditions prevailing in the market to which it had to comply with subject to and in accordance with the tender or Request For Quotation (“RFQ”) so issued by its customers or end users.⁷⁶ The RFQ shall determine to which recognised accreditation institution the Multi-Net should be affiliated with and adhere to (from an inspection point of view), should the tender require the fire protection installation to be subjected to inspection by a third party.⁷⁷

123. It also submitted that it mainly conducts business in other sectors, other than the fire sprinkler system sector, which makes up a minute contribution to its average annual turnover.⁷⁸ *Inter alia* due to its size in the overall fire sprinkler market, it does not have the skills and know-how on how to conduct such inspections, given its limited capacity and limitations to its own operational capability.⁷⁹

124. The Commission’s witnesses did not dispute Multi-Net’s version regarding its limited capacities in the area of inspections.

125. Mr Smith testified as follows regarding Multi-Net’s ability to do inspections:

“ADV NXUMALO: The evidence has been presented before the Tribunal and it is the Commission’s contention that a firm that does have such competent persons who are experienced is on a technical basis capable of conducting an inspection, do you agree with this?”

MR SMITH: No, not on sprinklers. Or what makes it very difficult is, to do the inspection you should be able to do the hydraulic calculations, the position of the sprinklers, and all that. So, although my team on site knows what the spacing is, the physical installation spacing, and all that, they will not be able to do the hydraulic calculation to determine your pipe sizes and your flows, and things like that. So, limited competency with the installation, but not with the design or the approval thereof.”⁸⁰

⁷⁶ Multi-Net’s witness statement at para 4.1; Multi-Net’s Answering Affidavit at para 29.

⁷⁷ Multi-Net’s Answering Affidavit at para 28; Multi-Net’s witness statement at para 41.

⁷⁸ Transcript p 974 - 975; Mr Smith witness statement at para 1.6.

⁷⁹ Transcript p 975, 989, 996 and 1015 - 1016; Mr Smith witness statement at para 5.4.

⁸⁰ Transcript p 1027 1028.

126. Furthermore, Multi-Net's fire sprinkler installations were mostly inspected by engineering consultants of the specific project in question;⁸¹ and ASIB only once inspected an installation of Multi-Net during the years and years of installations so administered by Multi-Net when it executed an installation for the Department of Public Works.⁸²

127. None of the Commission's witnesses disputed that a significant part of the fire sprinkler installations conducted by Multi-Net was inspected by consulting engineers under a different standard, other than the ASIB industry standard, namely under the SANS standard.

128. We conclude that there is a lack of evidence that Multi-Net would be in a horizontal relationship with ASIB in relation to the provision of inspection services absent the alleged agreement between it and ASIB.

Tenth Respondent – Fireco; and Fourteenth Respondent – Specifire

129. The above Respondents submitted that there are various third parties other than ASIB who provide compliance inspection services in South Africa. These include SAIFP, Independent Sprinkler Inspection Company ("ISIC"), Risk Management Solutions, Colin Edwards and Associates (now deceased), Fire Management and Design Services, FM, NFPA as well as many other rational design companies and individuals who are registered with the Engineering Council of South Africa ("ECSA") as Fire Protection Systems Practitioners.

130. Furthermore, they submit that the installers perceive that insurers and clients generally require inspection services to be provided by an independent third party, such as ASIB, rather than by a competing installer.

⁸¹ Transcript p 998 - 999; Mr Smith's witness statement at para 5.3.

⁸² Transcript p 1000.

131. They submitted that compliance inspection services are different in nature from installation services, and installers do not necessarily have the capacity or experience to provide such services in addition to their installation activities.⁸³

132. These Respondents also raise conflicts of interest issues, as already explained above and explained that they had no intention to enter the compliance inspection market.⁸⁴

133. They also raise the significant risk and liability associated with the provision of services in the compliance inspection market, as already explained above.⁸⁵

134. We conclude that there is a lack of evidence that Fireco or Specifire would be in a horizontal relationship with ASIB in relation to the provision of inspection services, absent any alleged agreement between it and ASIB.

Seventeenth Respondent - Tshwane Fire

135. Tshwane Fire argued that an installer cannot inspect its own work or the work of its peers, competitors, and colleagues due to *inter alia* conflicts of interest. It relies on the following testimony of the Commission's witnesses:

*"MR RIELANDER: I would imagine there would be a conflict of interest or I can definitely say that there would be a conflict of interest because one installer dealing with one client would obviously have confidential agreements in place with that one client. So, there's not, in my opinion, you can't have two installers or three installers entertaining conditions of the so-called work with them that they were installing a system..."*⁸⁶

and

⁸³ Transcript of Mr Shiba for Fireco p 890. Specifire's witness statement at para 3.4; Transcript of Mr Holmes for Specifire p 1080.

⁸⁴ Fireco's witness statement at para 4.1; Transcript of Mr Shiba for Fireco p 889 and 890. Specifire's witness statement at para 3.4; Transcript of Mr Holmes for Specifire p 1056, 1077 and 1078.

⁸⁵ Fireco's witness statement at para 4.1. Specifire's witness statement at para 3.4; Transcript of Mr Holmes for Specifire p 1057.

⁸⁶ Transcript p 129.

“ADV MODISA SC: ...Is there a conflict of interest, Mr Rielander, if an installer inspects the work of another installer?

MR RIELANDER: Yes, it is a conflict of interest.”

and

“MR RIELANDER: On a technical basis if one installer inspects another installer’s work there’s obviously – it’s an internal issue. But when that starts becoming a certified inspection there’s a massive problem with that.

ADV BLUMENTHAL: Okay. Why?

MR RIELANDER: If one installer inspects the work of another installer and certifies another installer’s work, you know where’s the competency lying in terms of the – who takes responsibility and liability of that installation? Is the one inspecting or the one installing taking liability? There are massive liability issues when it comes to somebody – one person installing and inspecting another’s work.”⁸⁷

136. Mr Engelbrecht testified that there are only two inspection bodies in the country at the moment inspecting sprinkler systems. That being ASIB and SAIFP and indicates that he is in competition with ASIB. He further confirmed that he was part of SAIFP and had to resign for good governance reasons but uses them for his inspections.⁸⁸

137. Tshwane Fire submitted that the use of ASIB’s services is at the instruction of their clients (building owners or managers) and is in line with the industry standards to ensure quality service in the industry and compliance with current standards. It argued that ASIB was the industry norm/standard and it had no alternative than to use ASIB.⁸⁹

⁸⁷ Transcript p 216.

⁸⁸ Transcript p 402, The basis for Mr Engelbrecht’s resignation from SAIFP was that SANAS required him to step away to maintain an arm’s-length relationship and uphold governance principles of impartiality, independence, and fair oversight. He was involved in both inspection activities (the “referee” role) and downstream commercial or operational activities in the same sector (the “player” role), a dual position SANAS deemed incompatible.

⁸⁹ Transcript p 386.

138. It has however made use of the services of Mr Rielander, who confirmed that he has been appointed by Tshwane Fire and that an inspection on Tshwane Fire's request had been completed by himself.

139. Tshwane Fire also relied on Mr Engelbrecht's evidence confirming that clients dictate the code to be used as well as the inspection required having regard to their risk exposure.⁹⁰ Mr Becker in his testimony also confirmed that the inspection arrangement or appointment is the task of the owner or facility manager.⁹¹

140. Mr Olivier of Tshwane Fire testified that the company neither conducts inspections of other installers' work nor permits others to inspect its own, as inspections are outside its business scope and it holds no insurance for such activities.⁹²

141. Tshwane Fire further asked the Tribunal to draw a very negative inference about Mr Engelbrecht's alleged axe that he has to grind with Mr Goring as opposed to his real interest in the fire protection industry.⁹³ There is no need for us to deal with these issues in these reasons.

142. We conclude that there is a lack of evidence that Tshwane Fire would be in a horizontal relationship with ASIB in relation to the provision of inspection services, absent any alleged agreement between it and ASIB.

Conclusion on whether Respondents were Potential Competitors

143. In conclusion, section 4(1) applies to an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship. In a market division context, if parties are not potential competitors in the relevant market(s) that is the end of the enquiry.

144. At best for the Commission, it may be theoretically possible for (some) installers to perform compliance inspection services. However, the Commission has not placed sufficient evidence before for us to conclude that the parties are in a horizontal

⁹⁰ Transcript p 482.

⁹¹ Transcript p 553.

⁹² Transcript p 1110 - 1111.

⁹³ Tshwane Fire's HOA at para 9.4. - 9.13.

relationship, i.e., are potential competitors of each other in either the compliance inspection market or the sprinkler installation market on a balance of probabilities. Mere technical ability does not suffice as evidence of potential competition.

145. During the hearing, ASIB and the installer Respondents provided that the listing requirements do not prevent installers from sourcing inspection services from competing firms. ASIB indicated its willingness to clarify its conditions of listing in this regard.⁹⁴

146. We note that should any installer in South Africa on its own determine that it could and wishes to (in future) enter the market for the provision of inspection services, it should be able to pursue that regardless of any ASIB rule.

147. Installers may also consider the sourcing of inspection services from any service provider in South Africa, provided it is commercially feasible and viable for it to do so.

148. We now turn to the geographic market complaint.

The geographic market complaint

149. It is common cause that (at least some of) the listed installers were actual or potential competitors of each other when they applied to ASIB to be ASIB-approved installers.⁹⁵

150. Putting aside for the time being the geographic scope of the activities of the six installer respondents, it is common cause that they are in a horizontal relationship since they are all active in the provision of fire sprinkler installation services. They are the so-called “spokes” that are in a horizontal relationship to each other, in the alleged cartel.

151. It is also common cause that ASIB, as a provider of inspection services, is in a vertical relationship with the six installer respondents.

⁹⁴ Transcript p 1263 and 1311.

⁹⁵ ASIB, Fireco and Specifire’s HOA at para 105.

152. The allegation is that the installer respondents, who are in a horizontal relationship, divided the installation market geographically through ASIB, specifically through agreeing to ASIB's listing of installers per province and the ASIB rules.

153. We note that there is no evidence that any of the installer respondents had any agreement or understanding between themselves, separately from ASIB's practices, only to operate in specified provinces. The Commission was not advancing a case that the installer respondents had an agreement, at a horizontal level, amongst themselves, separately from ASIB.

ASIB listing by provincial area

154. The Commission explained that at the core of the territorial allocation allegation is a table in an ASIB document listing operational areas for each installer.⁹⁶ This document outlines listing areas and their corresponding operations. The Commission interprets this table as defining territorial limits on competition, restricting listed installers from operating beyond their designated geographic area.

155. The Commission referred witnesses to the 2009 ASIB Listing document, which states the position regarding the alleged geographic market allocation:⁹⁷

"We do not believe a contractor can adequately service the requirements of a client outside their basic area of operation. When a company registers with ASIB it does so to conduct work in the area they originated and where they have facilities that meet accepted requirements. This is not having to employ external resources and where the company is able to comply with the requirements of the ASIB. The practice of using an installing company outside the main provinces is to be discouraged." (own emphasis)

156. Ms Goring in her witness statement states that: *"ASIB recommends that ASIB-approved installers limit the provision of the installation services to the areas where they have registered offices and which they can readily service."*⁹⁸

⁹⁶ Evidence Bundle at p 386.

⁹⁷ *Ibid.*

⁹⁸ ASIB's witness statement at para 7.4

157. She further explains that installers may obtain a listing in more than one provincial area if their offices in each relevant area have been inspected. Furthermore, that ASIB charges a fee for recognising a company on its website per area, as there are administrative costs associated with the inspection of a registered office.

158. The Commission submitted that the requirement for an installer to have facilities in a region in order to be listed creates (another) barrier to entry agreed upon with ASIB.⁹⁹ Without this agreement, installers could freely compete across South Africa.¹⁰⁰

159. The Commission submitted that the listing fees per geographic area by an installer disincentivises multiple listings by installers; and amounts to a geographic market division in a so-called “hub and spokes” cartel, and discourage installers from operating in more than one provincial area.¹⁰¹

160. We note that Ms Goring’s witness statement speaks of the listing being a ‘recommendation’ while the document itself ‘discourages’ installers from doing work outside the main provinces.

161. The Commission’s witnesses stated that, in practice, installers who did work outside their listed areas of operation would be reprimanded or face a sanction.

162. The Commission relies on the fact that agreements under section 4(1) can take various forms. In *Competition Commission v South African Breweries Limited and others* (“SAB”)¹⁰², the Tribunal recognised a “hub and spoke” arrangement as a type of agreement covered by section 4(1), where multiple firms coordinate their conduct through a central point.¹⁰³

163. Further, the Commission states that section 4(1)(b)(ii) applies broadly, as it does not require a complete prohibition of competition, any agreement that restricts

⁹⁹ Commission’s HOA at para 8.4.35.

¹⁰⁰ Commission’s HOA at para 8.4.42.

¹⁰¹ Transcript p 23.

¹⁰² *Competition Commission v South African Breweries Limited and others* [2014] 1 CPLR 265 (CT) at para 74.

¹⁰³ Commission’s HOA at para 7.2.4.

competition, even partially, falls within its scope.¹⁰⁴ Mere involvement in market division is sufficient to trigger this provision, regardless of whether competition is entirely or partially constrained. Even if exceptions exist, as long as the agreement imposes any limitation on competition, it remains prohibited under section 4(1)(b)(ii).

164. ASIB argued that the geographic market listing conditions are not an agreed-upon negotiation but a listing condition to protect its reputation and maintain commercial viability.¹⁰⁵ It further explained that an installer's listing in a specific area signals to clients that they have local offices equipped to meet ASIB's installation standards, allowing informed decision-making.¹⁰⁶

165. ASIB further argued that local presence is an especially important consideration for clients because they are dealing with life safety and property protection where timing may be critical. According to ASIB, this is necessary because the ability of an installation company to service clients in a particular area is materially assisted by having offices that have the necessary functionality to provide such services in that area.

166. As a result, the listing of an installer in a particular area indicates to clients that the relevant installer has offices in that area that have been accepted by ASIB, and that have the necessary functionality to perform installation services to the level required for ASIB approval.

167. Further, ASIB submitted that customers have the prerogative, if they so wish, to appoint an installer to provide installation services outside a provincial area in which that installer has registered offices, and as noted by certain installers, national clients, in fact, do.

168. ASIB further submitted that there was no evidence that it had ever refused to do an inspection for a company on the basis that it carried out an installation outside of its registered area.

¹⁰⁴ Commission's HOA at para 7.5.8.

¹⁰⁵ Transcript p 672.

¹⁰⁶ ASIB's HOA at para 73.

169. As indicated, the Commission's witnesses stated that in practice, installers who did work outside their listed areas of operation would be reprimanded or face a sanction.

Our assessment

170. We concur with the Commission that an agreement contemplated by section 4(1) may take many forms. For instance, the Tribunal has in the past recognised a "hub and spoke" arrangement as a form of agreement that would fall within the ambit of section 4(1), where firms that are in a horizontal relationship co-ordinate their conduct through a central point.¹⁰⁷

171. It is common cause that the installers are in a horizontal relationship to each other. The question that we have to answer is if they reached an agreement to geographically divide the market through a central point, i.e. ASIB as the hub of the alleged cartel arrangement.

172. The Commission also took witnesses to the listing condition, which provides; "*If a company conducts work in a region outside of the original registration and has failed to inform the ASIB, that company will be invoiced accordingly*".¹⁰⁸

173. Mr Engelbrecht testified that while the listing does not preclude an installer from doing work outside their area, this was "*frowned upon*" and an installer would have to get special permission to do work outside of their listed geographic area or face a reprimand and the possibility of being delisted by ASIB.¹⁰⁹

174. Mr Engelbrecht, when asked under cross-examination to name instances where an installer was reprimanded, he referred to an instance involving an installer, Itereleng.¹¹⁰

¹⁰⁷ *Competition Commission v South African Breweries Limited and others* [2014] 1 CPLR 265 (CT) para 74

¹⁰⁸ Transcript p 735.

¹⁰⁹ Transcript p 448.

¹¹⁰ Transcript p 445 -446.

175. Mr Rielander insisted that there were consequences to doing work outside of one's listed geographical location, stating that, as an inspector when he was working for ASIB, he was often questioned on why installers could not work outside of their listed geographical location. However, when pressed on this during cross-examination, he provided that it was "*a common practice that they [installers] did work in other provinces*", thus contradicting his evidence.¹¹¹
176. Mr Rielander however, cited OFS, an ASIB-listed installation company, as a company that was reprimanded for doing work outside of their listed geographic location in the Free State. He said he was informed by the CEO of OFS that OFS was not allowed to perform services in Johannesburg, even if OFS had a client whose head office was based in the Free State, and the client insisted that OFS work in Johannesburg. He was not permitted to do so.
177. Ms Goring explained the issue with this in her evidence. She said OFS was using the ASIB logo for listing and was advertising that all members of OFS were ASIB approved when OFS only had one listing but was performing services throughout the country through only one listing. This was the misrepresentation which ASIB was sanctioning.
178. Ms Goring maintained that "*all companies work outside of their jurisdiction one way or another*"¹¹² and where an installer performs work outside their listed area, ASIB invoices the customer for the inspection work it does on that installation.¹¹³ Several installers confirmed this.¹¹⁴
179. Although the practice of installers doing work outside the geographic area where they are listed with ASIB was discouraged, it appears that many of the Respondents had experience performing work outside of their listed areas:

¹¹¹ Transcript p 213.

¹¹² Transcript p 736.

¹¹³ Transcript p 731 – 732.

179.1. Mr Shiba testified that Fireco will still service a client located outside of its area of listing, particularly if there is an existing relationship with the client and it has never been prevented or penalised by ASIB for doing so.

179.2. Mr Holmes of Specifire provided evidence that he had done work all over the country despite not being registered nationally, and he would fly personnel to the extra-territorial location to perform maintenance works.

179.3. Mr Radmore provided that IBR did work outside its area of listing as “exceptions to the rule.”

179.4. Mr Smith of Multi-Net testified that he did undertake work nationwide when requested by clients.

180. Respondents, who do not perform work outside their listed areas, explained that this is not due to any restriction from ASIB, but rather reflects their own commercial considerations regarding the viability of expanding beyond their scope.

180.1. Mr. Nair of National explained that ASIB does not restrict members from operating in only one province.

180.2. Mr Olivier of Tshwane stated that he would not tender for work in areas where he lacks the capacity or is unable to operate.

181. We next turn to the submissions of and evidence regarding each of the seven Respondents.

First Respondent – ASIB

182. As indicated above, ASIB contests that its listing conditions are a “hub and spoke” agreement between it and the installers, as the Commission suggests.

183. ASIB submitted that the mere awareness of ASIB’s provincial listing practice does not prove such an agreement.

184. ASIB further submitted that there was no evidence that installers agreed to operate only in specific provinces, as they were allowed to register in multiple provinces and often worked outside their listed areas without penalty from ASIB or each other.

185. ASIB further submitted that there was no evidence that it had ever refused to do an inspection for a company on the basis that it carried out an installation outside of its registered area. On the contrary, certain witnesses testified to submitting work outside of their listed areas to ASIB for inspection without censure.¹¹⁵

Fifth Respondent – National

186. Mr Nair of National confirmed that he chose to register only in KZN and emphasised that no restrictions are preventing National from working in other provinces such as Limpopo Province, Gauteng and Cape Town¹¹⁶ He added that there was no restrictions for National to only work in one province.

The Eleventh Respondent - IBR

187. IBR submitted that it has never agreed with ASIB or any other installers of sprinkler systems to do business only in the region in which it is registered with ASIB. Furthermore, being listed with ASIB does not have the result that an installer is restricted as to the region in which it may operate, as ASIB does not prevent installers from registering in as many regions as they wish.

188. IBR has done work in areas other than Gauteng, being the area in which it is registered with ASIB. ASIB has never refused to certify these installations or insisted that IBR register in the relevant region before ASIB would certify the system.

¹¹⁵ Transcript of Mr. Holmes for Specifire p1088; Fireco's witness statement at para 5.1; Transcript of Mr. Shiba for Fireco at p867 and p868. Specifire's witness statement at para 4.3

¹¹⁶ Transcript p 831.

189. Mr Radmore of IBR has no knowledge of an occurrence where an ASIB-listed installer has been sanctioned for servicing an area outside of its address as registered with ASIB.¹¹⁷

190. From a commercial perspective, IBR argues that having offices outside of an area in which a system has been installed is simply not commercially sensible. Not only is it inconvenient for IBR to conduct work outside of the area in which its offices are situated, but sprinkler systems are high risk, and in the event that IBR needs to provide ongoing maintenance or service or attend to an issue with a system, response time is of the utmost importance in order to limit water damage and return the system to a fully operational state.

Thirteenth Respondent - Multi-Net

191. Multi-Net submitted that it never regarded itself bound nor did it implement any system, regime or tacit, implied or express conduct within which it limited its business activities only to the region in which it had its principal place of business.

192. Multi-Net provided fire sprinkler installation services countrywide.¹¹⁸ It emphasises that it has branches in multiple provinces, operates countrywide and was accredited by ASIB due to customer requirements, not any territorial restrictions.

Tenth Respondent – Fireco and Fourteenth Respondent – Specifire

193. The abovementioned Respondents refer to the fact that (i) installers were permitted to apply for registration in more than one province; and (ii) certain “installer” Respondents provide installation services outside their listed areas of operation where this is requested by their clients, and that they do so without censure from ASIB.¹¹⁹ This, they say, is clear evidence that there was no agreement to divide the installation market geographically.

¹¹⁷ Transcript p 932; IBR’s HOA at para 27.17.2.

¹¹⁸ Mr Smith’s witness statement at para 6.1; Transcript p 980.

¹¹⁹ *Inter alia* the evidence of Mr Shiba for Fireco Transcript p 893.

Seventeenth Respondent - Tshwane Fire

194. Tshwane Fire submitted that the Commission did not prove that any of the firms agreed to allocate geographical areas to avoid overlaps in the supply of services and neither did they agree not to compete in geographic markets for Tshwane Fire.

195. It submitted that it is merely advised that installers, instead of spreading themselves too thin and not being able to deliver a proper service countrywide, should consider the circumstances before accepting work where they are not based or in the situation to deliver a proper and complete installation.

196. Tshwane Fire operates across multiple areas, with ASIB being aware of this.¹²⁰

Conclusion

197. The evidence has shown that installers were permitted to apply for registration in more than one province and did so. Moreover, certain installers operated in provinces in which they were not listed without sanction from each other or from ASIB. This is inconsistent with the Commission's alleged "hub and spoke" cartel arrangement.

198. We conclude that there is insufficient evidence to conclude that the six installer respondents divided the market geographically through ASIB as the "hub".

199. We note that both the Commission and the Respondents sought to characterise the geographic market allocation complaint, relying on various cases, including *Dawn*¹²¹, *SAB*¹²² and *Tourvest*¹²³.

200. It is trite that characterisation is a part of our law. It is also trite that our Act distinguishes competitor conduct that is *per se* prohibited and conduct that is subject

¹²⁰ Transcript p 1112 to 1113.

¹²¹ *Dawn Consolidated Holdings (Pty) Ltd & Others v The Competition Commission* 55/CAC/Oct2017 [2018] ZACAC 6 (4 May 2018) ("Dawn").

¹²² *Competition Commission v South African Breweries Limited and others* [2014] 1 CPLR 265 (CT)

¹²³ *Tourvest Holding (Pty) Ltd v Competition Commission and Another* (195/CAC/Oct21) ZACAC 1 (30 June 2022). ("Tourvest").

to the rule of reason. The reasons for this are well established and we do not repeat them in these reasons.¹²⁴

201. In our view, the characterisation cases relied on by the parties appear to be misplaced on the facts of this case. On the evidence discussed above, there is no evidence of an agreement to geographically divide markets. Since there is no agreement, we see no need to assess, as the parties do, whether the listing restrictions are objectionable from a competition law perspective, if so, whether the restraint is reasonably necessary, and if so, whether it is proportionate to achieve the intended purpose.

202. During the hearing, ASIB insisted that its listing conditions on the geographic market are recommended and that it does not penalise installers who operate outside their listed areas. We note therefore that the installers that operate in this sector in South Africa should not because of any ASIB rule, consider themselves being precluded from operating in any geographic region of the country.

Advocacy

203. It is clear from the evidence that there is a regulatory lacuna in the fire protection industry.

204. We have referred to the history of ASIB's establishment in the 1970s above.

205. In short, prior to the establishment of ASIB, there was no third-party independent body that could provide compliance inspection services in the industry. According to ASIB, the Ninth Edition Rules for Automatic Sprinkler Installation (produced by the Council for Fire Insurance Companies of South Africa) were the applicable standard, and were already outdated then in 1970, since they were still based on rules established in 1954.

206. As a result, fire protection insurers were each using their individual requirements for compliance inspection. The short-term fire insurance industry then established

¹²⁴ *American Natural Soda Ash Corporation and Another v Competition Commission of South Africa* (554/2003) ZASCA 42; 2005 (6) SA 158 (SCA) (13 May 2005).

ASIB as an independent body to provide third-party compliance inspection services. Since then, ASIB has filled the regulatory gap by setting compliance standards in the absence of effective government oversight.

207. To date, the standard applicable in the industry is the one developed by ASIB, apparently at the request of the SABS in 2017, being the Twelfth Edition Rules. The Twelfth Edition Rules are generally applied to new buildings.¹²⁵

208. ASIB's dual role as both a standard-setting body and a compliance inspector¹²⁶ is not desirable. The Commission points out that legitimate industry bodies rather than ASIB, should set standards in the fire protection sector in South Africa. Various standards, including the SANS 17020: 2012 Standard ("SANS Standard"), recognise the importance of having an independent inspection body that is not subject to any potential conflict of interest.

209. Although it appears from the evidence that other compliance inspection bodies exist, such as SAIFP, ISIC, Risk Management Solutions, Colin Edwards and Associates, Fire Management and Design Services, FM, NFPA, they are either not preferred or known by insurers, engineers, government or parastatals who require inspection services.

210. For example, the SANS Standard provides that an inspection body should, amongst other aspects, be independent of all parties; not gain financially from a report; and not engage in any activities that may conflict with their independence of judgment and integrity in relation to their compliance inspection activities. ASIB's self-regulating and dual role as both a standard-setting body and a dominant compliance inspector is thus not desirable.

211. While we found no compelling evidence of market division as alleged by the Commission, it appears in the circumstances that an appropriate intervention is an advocacy role for the Commission in this sector given the importance of fire safety. As we have indicated, fires threaten lives and property.

¹²⁵ ASIB's witness statement at para 2.19

¹²⁶ National Transcript at p 833.

212. The evidence suggests that ASIB is both a player and a referee in the fire protection industry. It determines the rules for downstream sprinkler services (including installation) and conducts inspection services. As mentioned, the SANAS found similar conduct by SAIFP to be a conflict. Some witnesses indicated that the fire protection industry should be regulated by government¹²⁷.
213. Advocacy by the Commission to improve regulation of the industry could include, but not limited to engaging with the relevant body or bodies responsible for the issuing of safety standards in the fire protection industry to *inter alia* expedite the issue of the relevant updated standard. In this regard; ASIB states in the rules applicable to date, being the SANS10287, that its rule has been submitted and accepted for use and accepted and is currently being transitioned into SANS the promotion of competition in the sector including in relation to inspectorate bodies and any related regulation of the industry.
214. As also indicated, the relationship between ASIB and installers is continuing, and on the evidence, it appears that in practice the listing conditions are not adhered to/enforced. To align the conditions with the practice in the market, during the hearing, ASIB undertook to clarify its listing conditions in two respects:
- 214.1. The first was to clarify that by choosing a geographic area in which an installer intends to operate on listing, the installer is not precluded from performing work in another area where they are not listed.
- 214.2. The second is in relation to inspection services where the listing is clear that installers are restricted from providing inspection services. The listing restriction remains the case for the reasons mentioned, more especially to avoid a conflict of interest. Certain installer Respondents indicated that this did not preclude the client – be they engineers, insurance companies, or parastatals choosing a different inspectorate body to ASIB. ASIB undertook to clarify this condition of listing.

¹²⁷ Stated by Mr Nair Transcript p 784, 805 and 833; Mr Mayet Transcript p 1284.

215. Finally, both the Commission and Respondents were of the view that given that the alleged contravention is market division (which on the evidence has not been proven), an appropriate intervention would also include informing customers such as engineers of other inspectorate bodies other than ASIB.

216. These interventions would serve to clarify the listing conditions which ASIB and the Respondents allege are already the practice in the market. Further the interventions would promote competition in the compliance inspection services market as well as regionally in the installations market.

Order

217. We make the following order:

217.1. The Applicant's case against ASIB; National; Fireco; IBR; Multi-Net; Specifire; and Tshwane Fire is dismissed.

217.2. There is no order as to costs.



Ms Mondo Mazwai

22 August 2025

Date

Mr Andreas Wessels and Prof. Liberty Mncube concurring.

Tribunal case managers: Moleboheng Mhlali and Mpumi Tshabalala

For the Applicant: Adv Oupa Modisa SC, assisted by Adv Mehluli Nxumalo and Adv Nkomotane Motsepe, instructed by Mogaswa & Associates Attorneys.

For the First, Second, Tenth, and Fourteenth Respondents: Adv Jerome Wilson SC, instructed by Webber Wentzel Attorneys

For the Third Respondent: Adv Ziyaad Minty, instructed by Ooteman Attorneys

For the Fourth Respondent:	Adv Tsakane Marolen, instructed by Daly Morris Fuller Inc
For the Fifth and Ninth Respondents:	Aadil Mayet of Mayet Attorneys Incorporated
For the Sixth Respondent:	Chris Salmon of CGS Attorneys
For the Seventh Respondent:	Adv Antony Gotz, assisted by Adv Shannon Quinn, instructed by Thomson Wilks Inc
For the Eighth Respondent:	Michael Hulley of Hulley & Associates, Inc
For the Eleventh Respondent:	Adv Roxanne Blumenthal, instructed by Nicholas Van Der Berg, Attorneys
For the Thirteenth Respondent:	Johann Jacobs of JJR Inc. Attorneys
For the Fifteenth Respondent:	Adv Leigh Franck, instructed by Adams and Adams Attorneys
For the Seventeenth Respondent:	Wynanda Coetzee of Geyser And Coetzee Attorneys
For the Eighteenth Respondent:	Adv. Engelbrecht SC, instructed by Moodie & Robertson Attorneys