

SOUTH AFRICA / JUDGMENT

Competition Commission of South Africa v Jasco Security and Fire Solutions (Pty) Ltd (CR086Aug19; SA044Jul21) [2021] ZACT 95 (16 September 2021)

[2021] ZACT 95

COURT

Competition Tribunal

BEFORE

AW Wessels, E Daniels, Y Carrim

CASE / FILE NUMBER

CR086Aug19/SA044Jul21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR086Aug19/SA044Jul21

In the matter between:

The Competition Commission of South Africa Applicant

And

Jasco Security and Fire Solutions (Pty) Ltd Respondent

Panel: AW Wessels (Presiding Member)

E Daniels (Tribunal Member)

Y Carrim (Tribunal Member)

Heard on: 07

September 2021

Addendum filed on: 16 September 2021

Decided on: 16

September 2021

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Jasco Security and Fire Solutions (Pty) Ltd annexed hereto; including the addendum to the agreement of 15 September 2021, as annexed hereto.

Presiding Member Mr Andreas Wessels

Date: 16 September 2021

Concurring: Mr Enver Daniels and Ms Yasmin Carrim

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR086 AUG 19 CC

CASE NO: 2017JUL0013

COMPETITION COMMISSION OF SOUTH AFRICA Applicant

JASCO SECURITY AND FIRE SOLUTIONS (PTY) LTD Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND JASCO SECURITY AND FIRE (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(ii) OF THE COMPETITION ACT 89 OF 1998

Preamble

Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended, in respect of a contravention of section 4(1)(b)(ii) of the Act.

1. DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply

1.1 “Act” means the Competition Act No. 89 of 1998, as amended.

1.2 “ASIB” Automatic Sprinkler Inspection Bureau (Pty) Ltd a private company duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 1407 Cnr Louis Botha and Tudhope Avenue, Houghton Estate, Johannesburg.

1.3 “Commission” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.4 “Commissioner” means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act;

1.5 “Consent Agreement” means this agreement duly signed and concluded between the Commission and Jasco Fire.

1.6 “Jasco Fire” means Jasco Security and Fire Solutions (Pty) Ltd a private company duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at Cnr Alexandra Avenue and 2nd Street, Halfway House, Midrand.

1.7 “Investigation” means the investigation initiated on 05 July 2017, being investigated under case number 2017Jul0013.

1.8 “Parties” means the Commission and Jasco Fire.

1.9 “Tribunal” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at the 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

2. THE COMMISSION INVESTIGATION AND FINDINGS

2.1 On 05 July 2017, the Commissioner initiated a complaint in terms of section 49B of the Act against all sprinkler installers registered with ASIB ("Listed Installers"). This complaint was investigated under case number 2017Jul0013.

2.2 On 03 August 2017, the Commission conducted a search and seizure operation at the premises of ASIB and 22 of its Listed Installers, including the premises of Jasco Fire, and seized documents and electronic data from these premises.

2.3 On 16 August 2019, the Commission referred a case against certain Listed Installers to the Competition Tribunal for adjudication.

2.4 The allegations against ASIB and its Listed Installers are that they agreed to allocate to each other specific services in terms of which ASIB would provide inspection services while the Listed Installers would provide automatic sprinkler installation services.

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

2.6 Following the Investigation, the Commission found that:

2.6.1 On becoming a Listed Installer of ASIB, each of the Listed Installers agreed to adhere to ASIB rules which entailed that inspection services would be performed by ASIB only whilst installation services would be provided by the Listed Installers only.

2.6.2 The ASIB rules enabled Listed Installers to divide the market by allocating territories in that Listed Installers agreed not to provide installation services in another area where they are not registered in competition with other Listed Installers who are registered in those areas. In other words, the area of registration or listing determined the area of operation.

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

3. ADMISSION

3.1. Jasco Fire does not admit that it has acted in contravention of section 4(1)(b) of the Act as described in clause 2 above.

4. AGREEMENT REGARDING FUTURE CONDUCT

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

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

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

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

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

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

5. ADMINISTRATIVE PENALTY

5.1. In order to bring the matter to conclusion, Jasco Fire agrees to pay an administrative penalty in the amount of R300 000 (Three Hundred Thousand Rand). This amount does not exceed 10% of Jasco Fire's annual financial year ended June 2020.

5.2. Jasco Fire agrees to pay the administrative penalty as stipulated in the above paragraph over a period of 12 months starting 30 calendar days from the date of confirmation of this Consent Agreement by the Tribunal.

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

Bank name: Absa Bank

Branch name: Pretoria

Account holder: Competition Commission Fees Account

Account number: 4[....]8

Account type: Current Account

Branch Code: 632005

Reference: 2017JUL0031JASCOFIRE

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

6. MONITORING

6.1. Jasco Fire undertakes to submit a copy of the compliance programme referred to in clause 4.4 to the Commission within 60 calendar days of the date of confirmation of this Consent Agreement as an order to the Tribunal.

6.2. All reports in relation to conditions set out in this agreement, including but not limited to compliance programmes, proof of payment(s) etc. shall be submitted to the Commission at CartelSettlements@compcom.co.za.

7. FULL AND FINAL SETTLEMENT

7.1. This Consent Agreement is entered into in full and final settlement of the confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Jasco Fire relating to the conduct that is the subject of the

commission investigation defined in the definitions clause.

For Jasco Security and Fire Solutions (Pty) Ltd

Signed and dated at _Midra_n_d on the _2_1 day of _J_u_l_y 2021.

Name in Full: Cedric Douglas Boltman

Designation: _Ma_n_a_g_i_n_g_D_i_re_c_to_r

For the Competition Commission

Signed and dated at PRETORIA on the 15 day of September 2021.

Name in Full: TEMBINKOSI BONAKELE

Designation: COMMISSIONER OF THE COMPETITION COMMISSION

(HELD IN PRETORIA)

CT Case No: CR086Aug19/CA044Jul21 CC

Case No: 2017JUL0013

In the matter between

COMPETITION COMMISSION APPLICANT

and

JASCO SECURITY AND FIRE SOLUTIONS (PTY) LTD RESPONDENT

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1) (b) OF THE COMPETITION ACT, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND JASCO SECURITY AND FIRE SOLUTIONS (PTY) LTD, IN RESPECT OF CONTRAVENTION OF

SECTION 4(1)(b)(ii) OF THE COMPETITION ACT, 1998.

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and Jasco Security and Fire Solutions (Pty) Ltd ("Jasco Fire"), filed on 13 July 2021, and presented for confirmation by the Competition Tribunal on 07 September 2021 be supplemented as recorded below.

1. AD PARAGRAPH 3

Clause 3.2 is inserted as follows:

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

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

3.2.2 Jasco Fire is a small player in the affected market, and

3.2.3 Jasco Fire has not been found to have contravened the Act before.

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

Name in Full: _Cedric Douglas Boltman

Dated and signed at _PRETORIA on the 15 day of _SEPTEMBER 2021.

TEMBINKOSI BONAKELE COMMISSIONER

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