

SOUTH AFRICA / JUDGMENT

Competition Commission v Airports Company South Africa Ltd (016725) [2013] ZACT 46 (7 June 2013)

[2013] ZACT 46

COURT

Competition Tribunal

BEFORE

N Manoim, M Mazwai, A Ndoni

CASE / FILE NUMBER

016725

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 016725

In the matter between:

The Competition CommissionApplicant
andAirports Company South Africa LtdRespondent
Panel:

N Manoim (Presiding Member), M Mazwai

(Tribunal Member) and A Ndoni (Tribunal

Member)

Heard on:

05 June 2013

Decided on:

07 June 2013 Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked “A” and the addendum thereto marked “B”.

Presiding Member

N Manoim

Concurring: M Mazwai and N Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No. 2009Mar4320

In the matter between

COMPETITION COMMISSIONApplicant

AIRPORTS COMPANY SOUTH A LTDRespondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND AIRPORT COMPANY SOUTH AFRICA LTD IN RESPECT OF CONTRAVENTION OF SECTION 5(1) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

The Competition Commission and Airports Company South Africa Ltd hereby agree that application be made to the Competition Tribunal for confirmation of this Consent Agreement as an order 3n terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, 1998 (Act No, 89 of 1998), in respect of contravention of section 5(1) of the Act, on the terms set out below.

1. Definitions

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

1.1. "ACSA" means Airports Company South Africa Limited, a company duly incorporated in accordance with the company laws of the Republic of South Africa and the Airports Company Act of 1993 as amended, with its registered office at The Maples, Riverwoods Office Park, 24 Johnson Road, Bedfordview;

1.2. "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;

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. "Commissioned" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

1.5. "Complaint" means the complaint received by the Competition Commission in terms of section 49B of the Act under case number 2009Mar4320 from Sisonke Taxi Association;

1.6. "ORTIA" means the O.R. Tambo International Airport, one of nine (9) Airports managed by ACS A which is located in Johannesburg;

1.7. "ORTIATA" means O.R. Tambo International Airport Taxi Association, a taxi association (formerly known as the Johannesburg International Airport Taxi Association "JIATA") with its main business being to provide metered taxi services to tourists and members of the public from the O.R. Tambo International Airport. ORTIATA's registered office is at Office TAMA ~ 307, A1/A2 Mezzanine Level, International Terminal, O.R. Tambo International Airport, Johannesburg;

1.8. "Respondents" means ACSA and JIATA (now known as ORTIATA);

1.9. "Settlement Agreement" means this settlement agreement duly signed and concluded between the Commission and Airports Company South Africa;

1.10. "Sisonke" means Sisonke Taxi Association, a taxi association with its main business being to provide taxi and shuttle

services to tourists and members of the public to and from the O. R. Tambo International Airport. Sisonke's registered office is at 60 Parkland Drive, Ester Park. Sisonke is the complainant in this matter

1.11. "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 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. The Complaint

2.1. On 3 March 2009, the Commission received a complaint from Sisonke in which Sisonke alleged that ACSA was engaging in a restrictive

vertical practice.

2.2. The allegations emanated from a vertical agreement believed to exist between ACSA and ORTIATA (formerly JIATA) in terms of which ORTIATA was given exclusive access to operate and offer metered taxi service at ORTIA.

2.3. It was specifically alleged that ACSA has excluded other taxi operators from operating at ORTIA by not going out on tender for metered taxi services since 2004, and not allowing shuttle operators to operate in competition with the metered taxi operators thus having the effect of substantially preventing competition in the metered taxi and shuttle services markets. This conduct was alleged to be in contravention of section 5(1) of the Act.

2.4. It was established that the relevant product market was that for metered taxi services and shuttle services. In terms of the Point of Origin and Point of Destination approach in the routes served by the transport service, the Commission concluded that the relevant geographic market is the provision of metered taxi and shuttle services to airline passengers from ORTIA to the surrounding areas including Johannesburg and Pretoria.

2.5. It was further established that metered taxi and shuttle service operators are required by law to operate for contracted services with ACSA through the authority of a permit or operating licence. Metered taxi licences for ORTIA are issued out by the Gauteng Operators¹ Licensing Board ("GOLB") (now referred to as Gauteng Provincial Regulatory Entity ("GPRE")), in line with the National Land Transport Act of 2009 and the respective National Land Transport Regulations. ACSA submitted that the exclusive arrangement with ORTIATA is also attributable to the legislative challenges in the Issuing of meter taxi licenses.

2.6. The Commission found that there was an arrangement between ACSA and ORTIATA which originated in 1999, when ACSA first went out on tender for service providers of metered taxi services. The metered taxi operators who were successful in this initial tender formed the association known as ORTIATA (formerly JIATA). In 2002 ACSA's second tender for service providers of metered taxi services was again awarded to operators who were members of ORTIATA (thus the same operator who were successful in the 1999 tender). ACSA at this stage entered into contracts with these operators for the provision of metered taxi services at ORTIA for a period of 3 years. At the expiry of the 2002 tender, ACSA was expected to put out another tender in

2005. However, this did not materialise to date as the arrangement between ACSA and ORTIATA continues and is being renewed on a monthly basis.

2.7. The Commission concluded that the exclusive agreements between ACSA and ORTIATA led to a substantially lessening and/or prevention of competition. No pro-competitive or efficiency grounds that outweighs the anti-competitive effects were shown.

3. Statement of Conduct

3.1. ACSA admits that it has contravened section 5(1) of the Act, In that it entered into an exclusive arrangement with ORTIATA for the provision of metered taxi services to the exclusion of other competing firms.

4. Agreement concerning the Respondent's future conduct

4.1. ACSA agrees to:

4.1.1. issue out a new tender or at least an invitation to tender for metered taxi operators within 6 months from the date of confirmation

of this consent agreement by the Tribunal. This six (6) month period is to provide allowance for any necessary engagement with key stakeholders regarding the tender process.

4.1.2. Introduce measures to allow shuttle services to compete directly with metered taxi services by making available facilities to shuttle service providers thereby allowing them to make their services accessible to consumers (passengers) at ORTIA. These measures as set out in Annexure A, attached hereto, must be Introduced within 30 days of the date of confirmation of this consent agreement by the Tribunal.

4.2. ACSA also agrees that it will not in future engage in prohibited conduct and undertakes henceforth to engage in a competitive tendering process.

5. Full and Final Settlement

This consent agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and ACSA relating to any alleged contravention of the Act that is the subject of the Commission's investigation under Commission Case No. 2009Mar4320.

Date and signed at BEDFORDVIEW on this the 15th day of MAY 2013

For ACSA

Bongani Maseko

Acting Managing Director

Date and signed at PRETORIA on this the 17th day of MAY 2013

Shan Ramburuth

The Commissioner, Competition Commission

Annexure A

Measures to be Implemented Pursuant to Paragraph 4.1.2 of the Consent Agreement between Competition Commission and ACSA

ACSA hereby undertakes to introduce pro-competitive measures by making available facilities to shuttle service providers thereby allowing them to make their services accessible to consumers (passengers) at ORTIA, and to allow shuttle services to compete directly with metered taxi services within the terminals of ORTIA, The measures are set out in Annexure A1 and include inter alia:

1. ACSA will ensure that the criteria and process of certification for operators at ORTIA is fair and pro-competitive;
2. a new information kiosk will be located at both domestic and International arrivals, and will be occupied by both metered taxi and shuttle service representatives to increase awareness to the public and passengers regarding availability of the services as an alternative;
3. a public transport kiosk will be situated in both domestic and international terminals at ORTIA to ensure that customers book their public transport before moving to the public area.

Shuttle Services at OR Tambo international Airport

1. Public Transport Facilities layout

Currently there are four main facilities for public transport at OR Tambo International at different facilities and locations.

1.1. Transfer and General Public Transport

GRAPHICS ON PDF

Transfers and general public transport activities take place at Bus Terminus located behind Intercontinental Hotel, The services rendered at this area include that of Shuttle and Bus services. This area is about 3987 sqm, made up by the actual building of 736sqm with 9 kiosks rented by shuttle and tour operators and 13 pick-up and drop-off bays and 19 minibus parking bays totaling to a maneuvering area of 3251 sqm.

2. Accessibility of shuttle service at OR Tambo

ACSA has allocated two seats on a new information kiosk that will be located at both domestic and International arrivals, these two seats will be occupied by both metered taxi and shuttle service representatives to ensure awareness and easy access by the public. In addition there will be more public transport kiosks in the sterile area to ensure that customers book their public transport before moving to the public area. The replacement of current information kiosk will be completed by end of May 2013,

See drawings below:

ADDENDUM TO PARAGRAPH 4,1.1 OF THE CONSENT AGREEMENT RELATING TO ACSA'S NEW TENDER

The new tender for metered taxi operators which will be issued by ACSA will be for a period of five (5) years and will be issued to individual metered taxi operators.

DATED AND SIGNED AT PRETORIA ON THE 6TH DAY OF JUNE 2013

AIRPORTS COMPANY SOUTH AFRICA LTD AUTHORISED SIGNATORY

Competition Commissioner

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