

SOUTH AFRICA / JUDGMENT

Competition Commission v Mix Telematics International (Pty) Ltd (CR011Apr19/SA010Apr24) [2024] ZACT 22 (27 June 2024)

[2024] ZACT 22

COURT

Competition Tribunal

BEFORE

M Mazwai, A Ndoni, G Budlender

CASE / FILE NUMBER

CR011Apr19/SA010Apr24

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: CR011Apr19/SA010Apr24

In the matter between: The Competition Commission Applicant And Mix Telematics International (Pty) Ltd Respondent

Panel

M Mazwai (Presiding Member)

A Ndoni (Tribunal Member)

G Budlender (Tribunal Member)

Heard on 27 June 2024

Decided on 27 June 2024

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Mix Telematics

International (Pty) Ltd annexed hereto marked "A".

Presiding Member

27 June 2024

Ms Mondo Mazwai

Date

Concurring: Ms Andiswa Ndoni and Adv. Geoff Budlender SC

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No: CR011APR19

CC Case No: 2016Nov0601

In the matter between COMPETITION COMMISSION APPLICANT And MIX TELEMATICA INTERNATIONAL (PTY) LTD RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND MIX TELEMATICS INTERNATIONAL PROPRIETARY LIMITED (MIX TELEMATICS), IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTION 4(1)(b)(II) OF THE COMPETITION ACT, 1998, AS AMENDED

The Competition Commission and MiX Telematics hereby agree that an application be made to the Competition Tribunal for the confirmation

of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, In respect of alleged contraventions of section 4(1)(b)(II) 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 "Act" means the Competition Act, No. 89 of 1998, as amended;

1.2. "Basic product" means the combination of black box and basic software (delivered as Software as a Service) which Is sold by MiX Telematics to the MIX Dealers. MIX Telematics manufactures and supplies vehicle tracking hardware (black box or computer box) and also develops vehicle tracking software that gives real time vehicle tracking data and performs other functions;

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 business address 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, appointed in terms of section 22 of the Act;

1.5. "Complaint" means the complaint initiated by the Commissioner in terms of section 498(1) of the Act under case number: 2016Nov0601;

1.6. "Consent Agreement" means this Agreement duly signed and concluded between the Commission and MiX Telematics in full and final settlement of Commission case number 2016Nov0601;

1.7. "Day" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.8. "MIX Dealer" means any firm that purchases the Basic product from MiX Telematics;

1.9. "MIX Telematics" means MDC Telematics International Proprietary Limited, a private company duly registered and incorporated under the laws of South Africa, with its principal place of business situated at Blaauwklip Office Park, 2 cnr Strand & Webersvalle Streets, Stellenbosch, Western Cape;

1.10. ""Parties" means the Commission and MIX Telematics;

1.11. "Value added fleet management products" means the adaptation of the Basic product (including through the addition of peripheral equipment or services), by either MIX Telematics or any MIX Dealer, into various customised fleet management packages in accordance with the specific requirements of end user customers;

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

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1 On 08 November 2016, the Commissioner of the Competition Commission initiated a complaint against MIX Telematics and various MIX Dealers for allegedly dividing the markets by allocating customers in the market for the supply of value-added fleet management solutions to the end user customers in contravention of section 4(1)(b)(li) of the Act. This complaint was investigated under case number 2016NOV0601.

2.2 The Commission investigation found that from around 1998 MiX Telematics; Fleetco SA; Carrus Information Technologies; Hyper Auto; Soltrack and Tecta Telematics ("the Respondents") agreed not to compete with each other for customers in the market for the supply of value-added fleet management solutions to the end user customers. The Commission alleged that the agreement between the Respondents entailed the following:

2.2.1 They agreed that MiX Telematics must not approach the MIX Dealers' customers;

2.2.2 They agreed on the concept of ring fencing of prospective customers. This concept entailed MIX Telematics not competing with the MIX Dealers In the negotiation of contracts with prospective customers, including an understanding that MiX Telematics shall not market its Basic product and Value added fleet management products to customers of MiX Dealers;

2.2.3 In order to achieve this, MiX Dealers were required to disclose to MIX Telematics a list of all their customers Including prospective customers. This disclosure would enable MiX Telematics to know which customers not to approach; and

2.2.4 They held regular meetings to discuss amongst others compliance with their agreement to not compete for each other's customers.

2.3 The Commission concluded that above conduct between the Respondents amounts to an agreement to divide the market by allocating

customers In contravention of section 4(1)(b)(il) of the Act. 3. ADMISSION OF LIABILITY 3.1. MIX Telematics does not admit liability in respect of the conduct described in paragraph 2 above. 4, AGREEMENT REGARDING FUTURE CONDUCT 4.1. MIX Telematics agrees and undertakes to: 4.1.1 Refrain from engaging in any conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future; 4.1.2 Specifically, MIX Telematics also agrees and undertakes to refrain from any discussions, or entering into any arrangements, with MIX Dealers, its dealers about Value added fleet management products that may be offered to customers by any MiX Dealer (or MIX Telematics as the case may be) which may, or reasonably could, result in any allocation of any Value added fleet management products to a particular MIX Dealer or MIX Telematics.

4.1.3 This undertaking excludes legitimate Interactions between MIX Telematics and MIX Dealers In regard to the provision of "secondary and tertiary level support" (this means the support provided by MIX Telematics to the MiX Deafer).

4.1.4 Prepare and circulate a statement summarising the content of this Consent Agreement to Its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.1.5 Develop, implement. and monitor a competition law compliance programme as part of Its corporate governance policy, which is designed to ensure that its employees, management, directors, and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act; and

4.1.6 Submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of this Consent Agreement as an order by the Tribunal.

5. ADMINISTRATIVE PENALTY

5.1. MIX Telematics agrees and undertakes to pay an administrative penalty In the amount of R250,000.00 (Two hundred and fifty thousand rand). This amount does not exceed 10% of MiX Telematics' annual turnover for the financial year ended 31 March 2018.

5.2. MIX Telematics will pay the amount of the administrative penalty set out in paragraph 5.1 above to the Commission within 30 (thirty) days of this Consent Agreement being confirmed as an order of the Tribunal.

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

Bank name: Absa Bank Branch name: Pretoria Account holder: Competition Commission Fees Account Account number: 4[...] Account type: Current Account Branch Code: 632005 Reference: 2016Nov0601/MIX

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

8. FULL AND FINAL SETTLEMENT

This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into In full and final settlement and concludes all proceedings between the Commission and MiX Telematics relating to the conduct that Is the subject matter of the Commission investigation under Case No. 2016Nov0601 and Tribunal case number CR011Apr19.

For MIX Telematics International (Pty) Ltd

Dated and signed at Midrand on the 23 day of April 2024

Director

MiX Telematics International (Pty) Ltd

Name in Full:

For the Commission

Dated and signed at Pretoria on the 26th day of April 2024

Doris Tshepe

Commissioner

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