

SOUTH AFRICA / JUDGMENT

Competition Commission v SAAB Grintek Defence (Pty) Ltd (CR010Apr19; SA138Dec21) [2021] ZACT 104 (8 December 2021) [2021] ZACT 104

COURT

Competition Tribunal

BEFORE

Y Carrim, E Daniels, I Valodia

CASE / FILE NUMBER

CR010Apr19/SA138Dec21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR010Apr19/SA138Dec21

In the matter between:

The Competition Commission

Applicant

And

SAAB Grintek Defence (Pty) Ltd

Respondent

Panel: Y Carrim (Presiding Member)

E Daniels (Tribunal Member)

I Valodia (Tribunal Member)

Heard on: 08 December 2021

Decided on: 08 December 2021

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission And SAAB Grintek Defence (Pty) Ltd annexed hereto.

Presiding Member Ms Yasmin Carrim

Concurring: Mr Enver Daniels and Mr Imraan Valodia

Date 08 December 2021

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO: CR010APR19

CC CASE NO: 2016MAR0077

THE COMPETITION COMMISSION

Applicant

and

SAAB GRINTEK DEFENCE (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 SAAB GRINTEK DEFENCE (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89 OF 1998

Preamble

The Competition Commission ("Commission") and SAAB Grintek Defence (Pty) Ltd ("SAAB") hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of a contravention of section 4(1)(b)(iii) of the Act.

1. DEFINITIONS

For the purposes of this Consent Agreement the following definitions shall apply:

1.1. "Act" means the Competition Act, No. 89 of 1998, as amended;

1.2. "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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.3. "Complainant" means the State Information Technology Agency of South Africa SOC Ltd, a state owned company;

1.4. “Complaint” means the complaint lodged by SITA to the Commission on 04 March 2016 in terms of section 49B(2) of the Act against the Respondent and K F Computers CC, for alleged contravention of section 4(1)(b)(iii) of the Act;

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

1.6. “C2” means Command and Control Unit, which was a division of SAAB at the time of the Complaint. SAAB has since sold C2 and is now referred to as Global Command & Control Technologies (Pty) Ltd;

1.7. “Enterprise and Supplier Development Programme” means supplier development and enterprise development initiatives intended to assist and accelerate the growth and sustainability of Black Enterprises, as set out in the Defence Sector B-BBEE Code of Good Practice;

1.8. “K F Computers” means K F Computers CC, a close corporation duly incorporated in accordance with the company laws of South Africa having its registered offices at 17 Philirene Avenue, Swartkop, Verwoerdburg;

1.9. “SAAB” means Saab Grintek Defence (Pty) Ltd, a company duly incorporated in accordance with the company laws of South Africa having its

registered offices at 185 Witch-Hazel Avenue, Highveld Technopark, Centurion, Gauteng;

1.10. “SAAF” means the South African Air Force, a unit of the South African Defence Force.

1.11. “SITA” means the State Information Technology Agency of South Africa SOC Ltd, a state owned company, with principal place of business at 459 Tsitsa Street, Erasmuskloof, Pretoria, Gauteng; and

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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION’S INVESTIGATION AND FINDINGS

2.1. On 4 March 2016, the Commission received a complaint from the SITA in terms of section 49B(2)(b) of the Act. The SITA alleged that K.F Computers and SAAB colluded when tendering for the Ground Command and Control System (“GCCS”) and the Current Intelligence System (“CURIS”) Tender.

2.2. The SITA Tender was for the provision of services in support of the SAAF’s GCCS and CURIS.

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

2.4. The Commission’s investigation found that on or about January 2016, K.F Computers and SAAB assisted each other when completing tender documents for the RFB1366/2015 tender.

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

3. ADMISSION

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

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

3.2.1 SAAB has since divested its C2 division;

3.2.2 SAAB's business is now mainly focussed on exports;

3.2.3 SAAB is a first-time offender and has never contravened the Act before; and

3.2.4 SAAB has undertaken to substantially increase its Enterprise and Supplier Development Programme.

4. CO-OPERATION

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

5. AGREEMENT REGARDING FUTURE CONDUCT

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

5.2. SAAB will continue to implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all its members and board of directors do not engage in contraventions of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection and monitoring and detection of any contraventions of the Act.

5.3. SAAB shall make available a statement summarising the contents of this Consent Agreement to all its employees and directors within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

6. ENTERPRISE DEVELOPMENT

6.1. Whereas SAAB is already committed to current B-BBEE initiatives through its Enterprise and Supplier Development Programme and its Socio Economic Development Programme.

6.2. Whereas SAAB is expected to spend [...] on its Enterprise and Supplier Development Programme and approximately [...] on its Socio Economic Development Programme in the financial year ending on 31 December 2021.

6.3. SAAB undertakes:

To increase its Enterprise and Supplier Development Programme by no less than R350 000.00 in the next financial year commencing on 1 January 2022 (i.e., to [...]), and not to reduce its Enterprise and Supplier Development expenditure for at least 5 (five) years (“the Increase”)

6.3.1. To utilise the increase mentioned in paragraph 6.3.1 in procurement of goods or services from firm(s) owned by historically disadvantaged individuals from which it does not currently procure goods or services.

6.4. SAAB shall within 60 days of confirmation of the Consent Agreement identify firm(s) owned by historically disadvantaged individuals that will be included in the Enterprise and Supplier Development Programme.

6.5. The Increase shall continue to be part of SAAB’s annual Enterprise and Supplier Development and Socio-Economic Development Programme for at least 5 (five) years.

7. ADMINISTRATIVE PENALTY

7.1. SAAB agrees that it is liable to pay an administrative penalty of R2 000 000 (Two- Million Rand). This amount does not exceed 2.1% of SAAB’s annual turnover for the financial year ending December 2016.

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

Bank name: [...]

Branch name: [...]

Account holder: [...]

Account number: [...]

Account type: [...]

Branch Code: [...]

Reference: [...]

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

8. MONITORING

8.1. SAAB undertakes to submit a copy of the compliance programme referred to in clause 5.2 to the Commission within 60 calendar days of the date of confirmation of this Consent Agreement as an order to the Tribunal.

8.2. SAAB shall for the next 5 (five) years submit a report to the Commission setting out the amount that was spent in the previous financial year on the Enterprise and Supplier Development Programme..

8.3. 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.

9. FULL AND FINAL SETTLEMENT

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

SIGNED at CENTURION on this the 8th day of DECEMBER 2021.

(ANDERS LINDGREN)

Duly authorised signatory SAAB Grintek Defence (Pty) Ltd

SIGNED at PRETORIA on this the 08 day of DECEMBER 2021.

Tembinkosi Bonakele

The Commissioner, Competition Commission

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