

SOUTH AFRICA / JUDGMENT

Competition Commission v Siyavuma Sports Group (Pty) Ltd (CR190Oct17; SA071Aug23) [2023] ZACT 41; [2023] 3 CPLR 48 (CT) (15 September 2023)

[2023] ZACT 41

COURT

Competition Tribunal

BEFORE

S Goga, F Tregenna, A Ndoni

CASE / FILE NUMBER

CR190Oct17/SA071Aug23

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COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CR190Oct17/SA071Aug23

In the matter between:

The Competition Commission Applicant

And

Siyavuma Sports Group (Pty) Ltd Respondent

Panel: S Goga (Presiding Member)

F Tregenna (Tribunal Member)

A Ndoni (Tribunal Member)

Heard on: 15

September 2023

Decided on: 15

September 2023

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Siyavuma Sports Group (Pty) Ltd annexed hereto.

Presiding Member Ms Shaista Goga

Concurring: Professor Fiona Tregenna and Ms Andiswa Ndoni

Date: 15 September 2023

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA HELD IN PRETORIA

CT CASE NO. CR190OCT17 CC

CASE NO. 2015DEC0705

THE COMPETITION COMMISSION Applicant

and

SIYAVUMA SPORTS GROUP (PTY) LTD Respondent

In re:

COMPETITION COMMISSION Applicant

SOUTH AFRICAN FOOTBALL INTERMEDIARIES

ASSOCIATION AND 36 OTHERS Respondents

CONSENT AGREEMENT 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 SIYAVUMA SPORTS GROUP (PTY) LTD, IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b){i} OF THE COMPETITION ACT, 89 OF 1998 AS AMENDED

PREAMBLE

The Competition Commission ("Commission") and Siyavuma Sports Group (Pty) Ltd ("Siyavuma Sports") hereby agree that an application be made to the Competition Tribunal ("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, ("the Act") in respect of contravention

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 "Siyavuma Sports" means Siyavuma Sports Group (Pty) Ltd, a private company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at, Monvoni, Granite Crescent, 12 Cayenne Street, Centurion, Pretoria, Gauteng.

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, TT Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.4 "Commi98ioner" means the Commissioner of the Competition Commission, appointed In terms of section 22 of the Act.

1.5 "Complaints" means the complaints initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case numbers 2015Dec0705;

1.6 "Consent Agreement" means this Agreement duly signed and concluded between the Commission and Siyavuma Sports.

1.7 "SAFIA" means South African Football Intermediaries Association, an association whose members are football players' agents, coaches and clubs and has its principal place of business situated at 93 Protea Road, Chislehurst, Sandton, Gauteng.

1.8 "Respondents" means all the firms that are cited as the respondents (including Siyavuma Sports) in the Commission's complaint referral filed under

Competition Tribunal Case number: CR190Oct17.

1.9 "Parties" means the Commission and Siyavuma Sports.

1.10 "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 INVESTIGATIONS AND FINDINGS

2.1 On 14 December 2015, the Commission initiated a complaint in terms of section 49(8)(1) of the Act against SAFIA, and its thirty-five members including Siyavuma Sports, hereinafter collectively referred to as ("the respondents"). This complaint was investigated under case number 2015Dec0705.

2.2 The allegations against the respondents are that:

2.2.1 From at least 2003 to date, the respondents agreed and I or engaged in a concerted practice to fix the price and/or trading conditions for the services of negotiating contracts with football clubs on behalf of football players.

2.2.2 The respondents agreed to charge football players a 10% commission for the services of negotiating new contracts, transfer contracts and renewal contracts with football clubs.

2.2.3 The respondents also fixed the commission charged to football players and coaches at 20% for negotiating commercial contracts on their behalf.

2.2.4 The Commission found that the above-mentioned practices by the respondents gave rise to a restriction of competition amongst the respondents who are competitors in that they did not independently determine the commission charged to their respective clients. These amounts to price fixing and the fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act.

3. ADMISSION OF LIABILITY

3.1 Siyavuma Sports does not admit that it engaged in the conduct set out in clause 2 above in contravention of section 4(1)(b)(i) of the Act.

4. ADMINISTRATIVE PENALTY

4.1 Siyavuma Sports agrees to pay an administrative penalty in the sum of R90 000, 00 (Ninety Thousand rands). This amount is less than 10% of its annual turnover for the financial year ending in February 2021

4.2 Siyavuma Sports shall pay the abovementioned amount to the Commission in two equal installments. The first installment of R45 000,00 (Forty-five thousand rands) shall be paid within 30 (thirty) days of the confirmation of this consent agreement as a consent order by the Tribunal and the balance of R45 000,00 (Forty-five thousand rands) by 30 September 2023.

4.3 This payment shall be paid into the Commission's bank account, details of which are as follows:

Name:

The Competition Commission Fee Account

Bank:

Absa Bank, Pretoria

Account Number: [...]

Branch Code: 323 345

Ref:

2015Dec0705/Siyavuma Sports Group

4.4 The Commission will pay this sum to the National Revenue Fund in terms of section 59(4) of the Act.

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1 Siyavuma Sports agrees and undertakes to fully co-operate with the Commission in relation to the prosecution of any other respondent who is the subject of its investigations and referral to the Tribunal. Without limiting the generality of the foregoing, Siyavuma Sports specifically agrees to:

5.1.1 Testify before the Tribunal regarding the conduct and events forming the factual basis of the Commission's referral affidavit and which are covered by this Consent Agreement.

5.1.2 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions set out in the Commission's referral affidavit.

5.1.3 Desist from engaging in the conduct complained of.

5.1.4 Siyavuma Sports agrees that it will in future refrain from engaging in a cartel conduct which may lead to a possible contravention of section 4(1)(b) of the Act.

5.1.5 Siyavuma Sports will attend a competition law compliance training programme incorporating corporate governance to be provided by the Commission and designed to ensure that its employees, management, directors, and agents does not engage in future contravention of the Act.

5.1.6 Siyavuma Sports will ensure that such training materials will be made available to all new employees joining Siyavuma Sports.

5.1.7 Furthermore, Siyavuma Sports will update and repeat such training materials annually to ensure on an ongoing basis that its employees,

management, directors, and agents do not engage in any future contraventions of the Act.

6. FULL AND FINAL SETTLEMENT

6.1 This 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 Siyavuma Sports relating to any alleged contravention of the Act that is the subject of the Commission's investigation by Siyavuma Sports (under CC Case number: 2015Dec0705).

For Siyavuma Sports Group (Pty) Ltd

Date and signed at Cape Town on the 3rd day of July 2023.

Name in full: Keegan Wasserfall

Designation: Director

For the Commission

Date and signed at Johannesburg on the 11th day of August 2023.

Doris Tshepe

COMMISSIONER

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