



Decision of the Competition Commission

CCM/DS/0036

Non-Confidential

Possible collusive agreement by '*Komité Van Lekol*' for the supply of the service of 'contract bus for the conveyance of students'

18 September 2019

Competition Commission

Decision of the Competition Commission (the 'Commission') on the investigation into the supply of the service of 'contract bus for the conveyance of students' by 'Komité Van Lekol' (KVL)

THE COMMISSION –

Mr A. Mariette	-	Vice-Chairperson
Mrs M. Rajabally	-	Commissioner,
Mr. C. Seebaluck	-	Commissioner,
Mrs. V. Bikhoo	-	Commissioner,

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to a report of the Executive Director of the Commission dated 11 June 2019 on the investigation into the supply of the service of 'contract bus for the conveyance of students' by 'Komité Van Lekol' (KVL)

We, Commissioners, decide as follows:

Introduction

- 1.0 Local press have reported between the years 2012 to 2014 several interviews of Mr Nazhir Junggee ('Mr Junggee') , President and Mr Arshad Aumeer, Secretary of the Komité Van Lekol ('KVL'), an association of around 200 contract bus owners ('operators') holding 'Public Service Vehicle (Contract Bus) Licence' issued by the National Transport Authority (NTA) for the conveyance of children attending pre-primary, primary and secondary schools. A monthly fix fee is paid directly to the operator by the parents whose children travel by these school minibuses ('*van lekol*').
- 2.0 The Executive Director of the Commission (the 'Executive Director') on the 14 January 2014 opened an investigation under section 51 of the Competition Act ('the Act') into a possible restrictive business practice by KVL and its members in relation to the supply of transport to school children. The crux of the investigation was whether KVL, on its 'acts and doings' has breached section 41 of the Competition Act 2007.
- 3.0 On 11 June 2019, the Executive Director submitted his report (the 'Report') on the investigation (INV026) to the Commission for its determination.

The law

4.0 It is apposite, here, to reproduce section 41 in its entirety to clearly identify the elements of the possible infringement by KVL -

4.1 "Horizontal agreements

(1) *For the purposes of this section, an agreement, or a provision of such agreement, shall be collusive if –*

(a) *it exists between enterprises that supply goods or services of the same description, or acquire goods or services of the same description;*

(b) *it has the object or effect of, in any way –*

(i) *fixing the selling or purchasing prices of goods or services;*

(ii) *sharing markets or sources of the supply of the goods or services; or*

(iii) *restricting the supply of the goods or services to, or the acquisition of them from, any person; and*

(c) *significantly prevents, restricts or distorts competition.*

(2) *Any agreement, or provision of such agreement, which is collusive under this section shall be prohibited and void".*

(underlining is ours)

5.0 Therefore the law requires that, for the matter in hand, the Commission must be satisfied that there is a decision by KVL to fix the selling prices of services provided by its members and this act of KVL of price fixing significantly restricts competition so as to conclude that KVL has infringed section 41 of the Act.

6.0 Similarly, it is the Executive Director's view that the elements of an infringement under section 41 of the Act are:-

6.1 an agreement between enterprises or a decision by an association of enterprises;

6.2 the enterprises supply services of the same description (the horizontal aspect of the agreement);

6.3 whether agreement aims at fixing the selling price of the 'service' offered by members of KVL; and

6.4 whether the agreement significantly prevents, restricts or distorts competition.

- 7.0 Under section 59 of the Act, the Commission “may, in relation to a restrictive agreement falling within the scope of section 41, in addition to, or instead of, giving a direction, make an order imposing a financial penalty on the enterprise” but such penalty shall only be imposed if “it is satisfied that the breach of the prohibition was committed intentionally or negligently”.

Facts

- 8.0 KVL is registered to the Registrar of Associations since 17 March 2006. The main object of KVL is to bring all licensed proprietors of school minibuses under one umbrella, protect their interest as operators in the transport industry and to act as an advisory body for its members on any transport-related issue.
- 9.0 The legal representative of KVL has, on 22 June 2017, written to the Executive Director to inform that KVL is “no more active inasmuch as no meeting has been held since more than three years and no activities are contemplated in the future. The objective of the said van Lekol is *en désuétude*”.
- 10.0 From relevant extracts of press articles published between the years 2012 to 2014, as referred to by the Executive Director in his Report, it is evident that KVL had, following the decision of the National Transport Authority not to authorise its members to operate after school hours by putting their transport services to other commuters, instructed its members to impose an increase of 10% to 20% of their monthly fees to meet their operating costs which have been increasing steadily over the years.
- 11.0 We need, at this juncture, to draw a distinction between ‘van lekol’ and ‘bis lekol’ to better understand the service provided by KVL. ‘Van lekol’ are minibuses with seating capacity which varies from 14 to 30 seats and are owned by members of KVL. They are licensed by the NTA and their services are hired by parents for the transportation of their children from their places of residence to their respective schools and from these schools back to their respective residential addresses. ‘Bis lekol’ are 60-seater buses, owned by bus companies, which transport children attending secondary schools. Each bus transports students of a specific college and unlike school children travelling by ‘van lekol’, no fee is claimed by these operators as the service is funded by the Government under its policy of free transport to students.

Investigation and findings

- 12.0 Pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV026) whether the reported conduct of KVL may amount to an infringement of section 41 of the Act.
- 13.0 The Executive Director submitted his Report on the matter to the Commission on 11th June 2019. The Report contains the findings of the Executive Director and his recommendations.
- 14.0 We note that the Executive Director had difficulties in determining who are the members of KVL, the existence of a decision of KVL and any sharing of

information on price between members of KVL. Thus, we can safely infer that no concrete evidence of price fixing could be found during the investigation initiated by the Executive Director and upon which the Commission could rely to determine this matter.

Executive Director's recommendations

- 15.0 The Executive Director has submitted that no finding of breach of section 41 of the Act could be sustained as –
- 15.1 KVL has ceased to exist;
 - 15.2 there is no evidence to prove the elements of an infringement of price fixing under section 41 of the Act;
 - 15.3 no more press interviews are undertaken by KVL or its members that could keep the initial competition concern live; and
 - 15.4 there exists no entity on which could be imposed the implementation of the undertakings given by the President of KVL.
- 16.0 The Executive Director, therefore, recommends that the Commission bases itself on the findings set out in his Report and determines that KVL has not infringed section 41 of the Act.
- 17.0 The Executive Director has indicated that he is not precluded from launching a fresh investigation should the need arise.

Determination

- 18.0. We hasten to say that the standard of proof is the civil standard of proof for determination in matters referred to the Commission. We are comforted in our view by referring to the extract of the decision of the UK Competition Appeal Tribunal (the 'Tribunal') in *Napp v Director General of Fair Trading* [2002] Comp AR 13, where it was emphasized that "the standard of proof in proceedings under the Act involving penalties is the civil standard of proof, but that standard is to be applied bearing in mind that infringements of the Act are serious matters attracting severe financial penalties. It is for the Director to satisfy us in each case, on the basis of strong and compelling evidence, taking into account of the seriousness of what is alleged (underlining is ours), that the infringement is duly proved..."
- 19.0 It is apparent that there is insufficient evidence to substantiate the possibility of or an alleged infringement of section 41 of the Act by KVL. Press articles referred to by the Executive Director are likely to give credence to suggestions that statements therein in respect of fees imposed by licensed proprietors of school minibuses were made by Mr Jungghee on a personal basis and did not bind KVL in any manner whatsoever.
- 20.0 As regards the legal status of KVL, we do not support the findings of the Executive Director that KVL has ceased to exist or is no more a legal entity on

which the implementation of the undertakings given by its President could be imposed. Nor are we convinced by the contents of the letters issued by the legal representative of KVL on 22 June 2017 and 28 May 2019 respectively inviting the Executive Director to set aside the undertakings given by its President on grounds that KVL is *en "desuetude"* and informing the Executive Director that KVL "is not operating". We have consulted the Registrar of Associations on the current status of KVL and as per records at the Registry of Associations, KVL is still a registered association and as such, is a legal entity which can sue and be sued in its own name.

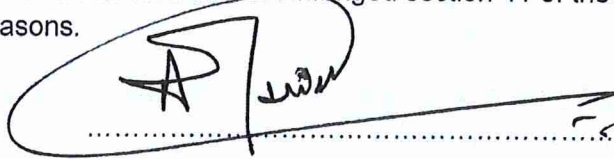
- 21.0 We observe that the undertakings given by the President of KVL have not been included in the Report as an annexure. We feel duty bound to remind the Executive Director that undertakings given voluntarily or otherwise by parties to investigations shall be reproduced or disclosed in his reports so that the Commission may draw inferences it deems appropriate and makes decision without omission of important materials communicated by parties.

Decision

- 22.0 The Commission therefore decides as follows:

- 22.1 We find that KVL has not infringed section 41 of the Act for the aforesaid reasons.

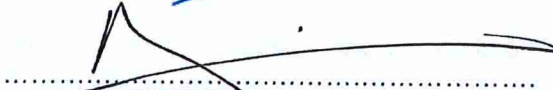
Mr A. Mariette
(Vice-Chairperson)

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Mr. C. Seebaluck
(Commissioner)

A handwritten signature in blue ink, written over a dotted line.

Mrs. M. B. Rajabally
(Commissioner)

A handwritten signature in black ink, written over a dotted line.

Mrs. V. Bikhoo
(Commissioner)

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18 September 2019