



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR228Dec18/SA042May22

In the matter between:

Competition Commission of South Africa

Applicant

And

Computicket (Pty) Ltd

First Respondent

Shoprite Checkers (Pty) Ltd

Second Respondent

Panel: Y Carrim (Presiding Member)
I Valodia (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 02 June 2022

Decided on: 02 June 2022

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Computicket (Pty) Ltd; Shoprite Checkers (Pty) Ltd annexed hereto.

Signed by: Yasmin Tayob Carrim
Signed at: 2022-06-02 15:18:34 +02:00
Reason: I approve this document

Yasmin Tayob Carrim

**Presiding Member
Ms Yasmin Carrim**

02 June 2022

Date

Concurring: Prof. Imraan Valodia and Ms Andiswa Ndoni

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By Themba Chauke at 5:18 pm, May 26, 2022

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR228DEC18

CC CASE NO: 2015Jan0007

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

COMPUTICKET PROPRIETARY LIMITED

First Respondent

SHOPRITE CHECKERS PROPRIETARY LIMITED

Second 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, COMPUTICKET PROPRIETARY LIMITED AND
SHOPRITE CHECKERS PROPRIETARY LIMITED**

INTRODUCTION

The Competition Commission and the above Respondents hereby agree that an application be made for the confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act No. 89 of 1998, as amended.



1. DEFINITIONS

For the purposes of this 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 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"Confirmation Date"** means the date of confirmation of the Consent Agreement as an order of the Tribunal;
- 1.4 **"Computicket"** means Computicket Proprietary Limited, a private company incorporated in terms of the laws of the Republic of South Africa, having its principal place of business at Computicket House, Greenacres Office Park, c/o Rustenburg and Victoria Road, Victoria Park, 2090 (the First Respondent);
- 1.5 **"Consent Agreement"** means this agreement signed by and concluded between the Commission and the Respondents;
- 1.6 **"Days"** means any day other than a Saturday, Sunday or Public Holiday;
- 1.7 **"OTS"** means outsourced ticket distribution services;
- 1.8 **"Parties"** means the Commission, Computicket and Shoprite Checkers;
- 1.9 **"Referral"** means the complaint referral by the Commission against the Respondents under Tribunal Case number CR228DEC18;
- 1.10 **"Respondents"** means Computicket and Shoprite Checkers;
- 1.11 **"Shoprite Checkers"** means Shoprite Checkers Proprietary Limited, a private company incorporated in terms of the laws of the Republic of South

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Africa, having its principal place of business at c/o William Dabbs and Old Paarl Roads, Brackenfell, 7561 (the Second Respondent); 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 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 RECORDAL

The complaint, investigation and Referral

- 2.1 The Commission's investigation commenced in June 2013 upon receipt of a complaint which was subsequently withdrawn. The Commission continued its investigation under its own initiation in terms of section 49B (1) of the Act which was subsequently referred to the Tribunal on 18 December 2018 under case number CR228DEC18.
- 2.2 Pursuant to its investigation, the Commission found that the Respondents:
- 2.2.1 had contravened section 8(d)(i) and alternatively section 8(c) of the Act; and
 - 2.2.2 had entered into exclusive agreements with inventory providers in the entertainment industry during the period January 2013 to 23 October 2019, which had the effect of foreclosing other firms in the market for outsourced ticket distribution services.
- 2.3 The Referral sought an order -
- 2.3.1 declaring Computicket and Shoprite Checkers to constitute a single economic entity and therefore a firm for the purposes of the conduct forming the subject matter of the complaint referral;

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- 2.3.2 declaring that the single economic entity consisting of Computicket and Shoprite Checkers contravened section 8(d)(i), alternatively section 8(c) of the Act during the period 2013 to the date of the complaint referral;
 - 2.3.3 the exclusivity provisions in Computicket's agreements with inventory providers during the period 2013 to date contravene section 8(d)(i), alternatively section 8(c), of the Act;
 - 2.3.4 requiring Computicket and Shoprite Checkers to pay an administrative penalty, in terms of section 58(a)(iii) read with section 59 of the Act, in the sum of 10% of each of their respective annual turnovers in the Republic and their exports from the Republic during the preceding financial year, jointly and severally the one paying the other to be absolved;
 - 2.3.5 declaring that all the exclusivity clauses contained in the agreements concluded by Computicket with inventory providers are void and of no force or effect; and
 - 2.3.6 An order interdicting the Respondents from entering into any further exclusive agreements with inventory providers in the relevant market.
- 2.4 The Respondents deny that they have contravened the Act as alleged by the Commission.
- 2.5 The Referral was followed by litigation before the Tribunal, the Competition Appeal Court and an application for leave to appeal before the Constitutional Court.

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- 2.6 On 23 September 2021 the Respondents submitted an application for dismissal of the Referral, which the Commission has answered. This application for dismissal has not been enrolled for hearing before the Tribunal.

Circumstances giving rise to the settlement

- 2.7 The parties have agreed to enter into the Consent Agreement taking, *inter alia*, into account the following factors:

- 2.7.1 from 23 October 2019, Computicket terminated all impugned exclusivity provisions in its OTS contracts for events;
- 2.7.2 the impact of the COVID-19 pandemic lockdowns on the travel, events and entertainment sectors and, accordingly, on Computicket's business;
- 2.7.3 the lapse of time since the initiation of the investigation, the likely extended trajectory of the litigation, related costs and risks and the changes in the events sector;
- 2.7.4 the need to avoid protracted litigation; and
- 2.7.5 it is in the interest of justice and efficiency that the Referral is finalised without further litigation.

- 2.8 The Commission and the Respondents have therefore agreed to settle the Referral on the following terms:

3 ADMISSION

- 3.1 The Respondents do not admit that they-

- 3.1.1 constitute a single economic entity as alleged by the Commission in the Referral; and

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3.1.2 contravened the Act, as described in paragraph 2 above, in the Referral, or at all.

4 ADMINISTRATIVE PENALTY

4.1 Computicket shall pay an administrative penalty of R11,317,000.00 (eleven million, three hundred and seventeen thousand Rands), being [REDACTED] of Computicket's annual turnover in, into or from South Africa for its most recent financial year ended 30 June 2021.

4.2 Computicket will pay the administrative penalty into the Commission's bank account by not later than 15 June 2022.

4.3 The Commission's bank account, details are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4087641778
Account type:	Current Account
Branch Code:	632005
Reference:	Computicket/CR228DEC18

4.4 The Commission will pay the administrative penalty to the National Revenue Fund in accordance with section 59(4) of the Act.

5 FUTURE CONDUCT

5.1 Computicket agrees and undertakes to develop and implement a competition law compliance programme which is designed to ensure that its employees, management and directors do not contravene the Act. In particular, such



compliance programme will include mechanisms for the identification, prevention, detection, and monitoring of any contravention of the Act.

- 5.2 Computicket agrees and undertakes to submit a copy of such compliance programme to the Commission within 60 Days of the date of confirmation of this Consent Agreement as an order by the Tribunal.

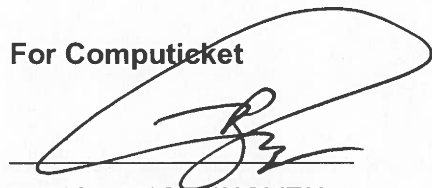
6 MONITORING

All correspondence in relation to this Consent Agreement, including but not limited to the competition law compliance programme and the proof of payment(s) of the administrative penalty, shall be emailed to the Commission at ccsa@compcom.co.za.

7 FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. CR228DEC18 and, upon confirmation as an order of the Tribunal, concludes the Referral and all proceedings between the Commission and the Respondents under Case No. CR228DEC18 and any other investigations in regard to the impugned exclusivity provisions in Computicket's OTS contracts for events which were terminated in 2019.

For Computicket



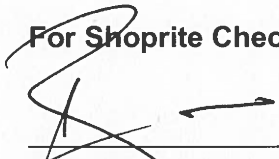
RENÉ LANGENHOVEN

Duly Authorised

Dated and signed at Brackenfell on the 25 day of May 2022



For Shoprite Checkers


ANTON DE BRUYN

Director

Dated and signed at Johannesburg on the 25 day of May 2022

For the Commission


TEMBINKOSI BONAKELE

Commissioner

Dated and signed at Johannesburg on the 25th day of May 2022

