

competition commission south africa

Notice CC 8

About this Notice

This notice is issued in terms of section 50 of the Competition Act.

The complainant may refer the complaint directly to the Competition Tribunal in Form CT 1(2), within 20 business days after the date of this notice. Please refer to Competition Tribunal Rules 14 to 17.

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
tel: 27 012 394 3200
fax: 27 012 394 4200
e-mail: ccsa@compcom.co.za

Notice of Non-referral of Complaint

Date: 14/12/2007

Concerning:

(Name and file number of complaint:)

Keith Julian Levenstein
vs.
Association of BEE Verification Agencies
Case No: 20007Oct3317

The Competition Commission received a complaint against the above named respondent on: 31/10/2007

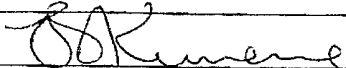
Having completed its investigation, or the time having expired for referring the complaint to the Tribunal in terms of section 50(2) of the Competition Act, the Competition Commission gives notice that:

- The Commission will not refer any part of the complaint to the Competition Tribunal.
- The Commission will not refer to the Competition Tribunal the particulars of the complaint listed on the attached sheet, but will refer the remaining particulars of the complaint.

Name and Title of person authorised to sign on behalf of the Competition Commission:

Mr. Thulani Kunene, Divisional Manager: Enforcement & Exemptions

Authorised Signature:





Block C, the dti Campus
77 Meintjies Street
Sunnyside, Pretoria
Private Bag X23, Lynnwood Ridge 0040
Tel: +27 (12) 394 3462
E-mail: mlulekim@compcom.co.za
Website: <http://www.compcom.co.za>

competitioncommission
south africa

Enquiries: Mluleki Matomane

Our Reference: 2007Oct3317
13 December 2007

Mr. Keith Levenstein
P O Box 41439
Craighall
2024

By Facsimile (011) 483 1195

Dear Mr Levenstein

KEITH JULIAN LEVENSTEIN vs. ASSOCIATION OF VERIFICATION AGENCIES (ABVA): CASE NUMBER: 2007OCT3317.

We refer to the above complaint you filed with the Competition Commission ("the Commission") on 31 Oct 2007, in which you alleged that:

- ABVA requires that when its members consider certificates for calculating procurement points, to only accept certificates from verification agencies that have applied to SANAS for accreditation.
- You further alleged that through this practice ABVA is denying all other companies the opportunity of producing a BEE scorecard, through self-rating or self-assessment which verifies them as BEE companies and also denies an opportunity for independent verification agencies who have not applied for accreditation.
- ABVA's conduct constitutes a prohibited practice and is in contravention of section 4(1)(a) and 4(1)(b) of the Competition Act 89 of 1998, as amended ("the Act").

The Commission evaluated the complaint and on the basis of the information at its disposal, decided not to refer the complaint to the Competition Tribunal ("the Tribunal") for determination. The reasons for this conclusion are as follows:

- Currently, the dti does not make the use of a verification agency mandatory but the decision whether to accept or reject scorecards

produced by independent verification agencies or through self-rating/self assessment rests on the procurer of goods/services.

- ABVA **recommends** that its verification agency members apply to SANAS for accreditation and that it is not a requisite to use an ABVA member for verification purposes.
- ABVA has undertaken to raise awareness among its members regarding the concerns raised in the complaint to ensure that if the practice exists among its members, it is not condoned.

Accordingly, please find attached hereto a Form CC8, which is the Commission's Notice of Non-Referral.

Please note that, should you disagree with the Commission's decision, you may in terms of section 51(1) of the Act, refer the matter to the Competition Tribunal for consideration. Furthermore, in terms of Rule 14(1)(b) of the Rules for the Conduct of Proceedings in the Competition Tribunal, you have twenty (20) business days after the Commission has issued a Notice of Non-Referral, to refer the complaint to the Tribunal, on Form CT1, which may be accessed from the Tribunal's website, which is at www.comptrib.co.za.

The Commission therefore considers the matter finalized.

Yours faithfully


MLULEKI MATOMANE
ENFORCEMENT AND EXEMPTION