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The Dynamics of Industry Associations and Anti-Competitive Behaviour

**Competition Commission of South Africa *versus*
Contractors Plant Hire Association and Others**

Industry associations play a vital role in fostering collaboration and innovation, setting industry benchmarks and norms as well as championing the collective, the interests of their members. Yet, within this collaborative spirit lies a potential minefield for members of these associations where their cooperation can cross into anti-competitive territory, raising legal issues. The recent settlement involving Hard Hat Equipment Hire and the Contractors Plant Hire Association (“CPHA”) highlights how these dynamics can unfold and the importance of associations implementing measures to prevent anti-competitive practices.

In 2017, the Competition Commissioner (“*the Commissioner*”) initiated a complaint against the CPHA and its members for contravening Section 4(1)(b)(i) of the Competition Act, 89 of 1998 (“*the Act*”), which prohibits price fixing. In its complaint, the Commissioner alleged that the prohibited practice was taking place in the broader market for the rental of plant machinery. The Commissioner has subsequently referred to the complaint to the Competition Tribunal for prosecution in terms of section 50(2) of the Act.

In the matter before the Competition Tribunal, the Competition Commission contends that the CPHA, which is an association of plant hire firms, and its members took decisions which fixed the member’s rental rates and trading conditions in contravention of section 4(1)(b)(i) of the Act. The members of the CPHA are alleged to have done this by entering into agreements for the purpose of fixing their prices and trading conditions, alternatively, by engaging in concerted practice, ie. co-operation between the members without an agreement, to fix their rental rates and/or trading conditions.

On 12 June 2024, the Competition Tribunal confirmed that one of the Respondents, Hard Hat Equipment Hire, had entered into settlement with the Competition Commission which included an order of a R480 000.00 administrative penalty.

The Thin Line Between Collaboration and Collusion:

The recent case involving the CPHA highlights how industry associations can inadvertently or deliberately facilitate anti-competitive behaviour. This can happen inadvertently when associations provide platforms for members to discuss pricing strategies or operational practices, which can lead to informal agreements or understandings that restrict competition. Associations might also deliberately coordinate efforts among members to fix prices or divide markets to stabilize or increase profits.

The Competition Commission's investigation revealed that CPHA and its members allegedly engaged in a concerted practice to fix prices and trading conditions for plant hire equipment. This included publishing of a Rates Guide which sets out minimum hourly rental rates and terms for all of its members, which undermined competition and harmed consumers. The matter is currently before the Tribunal who are required to determine whether the CPHA and its members fixed prices, though the publication of the Rates Guide, in contravention of section 4(1)(b)(i) of the Act.

Price fixing is prohibited under the Competition Act, which aims to promote fair competition and prevent practices that restrict market dynamics. Price fixing and market allocation are among the most serious violations of competition law because they can lead to higher prices, reduced innovation, and decreased consumer choice. These practices undermine the competitive process, harming both consumers and the overall economy.

Preventative Measures:

To avoid crossing the line into anti-competitive behaviour, industry associations can take the following preventative measures and practices:

- Develop Comprehensive Compliance Programmes: Keep detailed compliance manuals outlining acceptable and prohibited practices under the Competition Act. Regularly update the manuals to reflect changes in legislation and industry standards. The manuals will serve as a reference point for the association in their discussions relating to the various issues affecting their members and the potential solutions.
- Independent Monitoring: Implement regular audits to review association policies, pricing strategies, agreements and memorandums of understanding, and communications among members to ensure compliance with competition laws.
- Training and Awareness: Conduct regular educational events and mandatory training sessions for all members, focussing on identifying and avoiding anti-competitive practices. This can include industry experts presenting on case studies and real-life examples to highlight potential pitfalls.
- Governance Structures: Form independent compliance committees within the organisation to oversee adherence to competition laws and report any suspicious activities. This could include establishing a panel of competition law attorneys to review and approve any collective decisions or agreements amongst members.
- Building a Relationship with the Competition Authorities: Engage in regular and robust dialogue with competition authorities to seek guidance on compliant practices and staying informed about regulatory expectations.

Conclusion:

The Hard Hat Equipment Hire case serves as a stark reminder of the potential pitfalls that industry associations face in maintaining fair competition. By understanding the legal boundaries and implementing effective preventive measures, industry associations can fulfil their role of promoting industry interests without compromising the principles of fair competition. Ensuring compliance with competition law is not just a legal obligation but also a crucial aspect of maintaining the trust and integrity of the market. By adhering to these guidelines, industry organizations can navigate the complex landscape of collaboration and competition, fostering an environment that benefits both their members and the broader economy.

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