

18 April 2019

Raad Al-Karbouli
Quik-Shot Limited
C/-

ATT:

By email:

Dear Mr Al-Karbouli

Commerce Act 1986: Warning

1. This letter sets out the warning that the Commission is issuing Quik-Shot Limited (Quik-Shot) and yourself.
2. As you aware, the Commission has been investigating both Quik-Shot and yourself concerning allegations of anti-competitive conduct in the pipeline maintenance and rehabilitation industry, in particular relating to a number of tenders and requests for prices for pipeline rehabilitation services.

Commission's view

3. The Commission considers that both Quik-Shot and yourself are likely to have breached the price fixing prohibitions in the Commerce Act 1986 (the Act). Our view is that Quik-Shot, acting through yourself, entered into and gave effect to an agreement with Pipeworks concerning a price submitted to a business in November 2017 for requested pipe rehabilitation services in Christchurch (the Agreement). Pipeworks is a division of The Fletcher Construction Company Limited and a competing supplier of pipeline maintenance and rehabilitation services.
4. The Commission has exercised its enforcement discretion to issue a warning to both Quik-Shot and yourself rather than to commence proceedings. In reaching a decision to warn and not commence civil proceedings, we have taken into account (amongst other things) the limited harm caused by the Agreement (as it was not successful) and the limited duration of the anti-competitive conduct.

Price fixing conduct prohibited by the Act

5. Section 30 of the Act prohibits any person from entering into or giving effect to a contract, arrangement or understanding that contains a cartel provision that has the purpose, effect or likely effect of:

5.1 fixing price;

- 5.2 restricting output; and
 - 5.3 allocating markets.¹
6. A contract, arrangement, or understanding need not be formal, written, or signed. All that is required is for the parties involved to be competitors or potential competitors, and for them to reach a shared expectation as to how at least one of them will act or refrain from acting.

Basis for the Commission's view

7. The Commission's view is that Quik-Shot, acting through yourself, entered into and gave effect to the Agreement with Pipeworks in breach of section 30 of the Act. The Agreement was formed through communications over WhatsApp with two former Pipeworks employees.
8. The communications were prompted by the business requesting prices from both Pipeworks and Quik-Shot to provide pipeline rehabilitation services based on the Cured in Place Pipe Lining (CIPP) method. Through WhatsApp, the two employees from Pipeworks advised you of the price Pipeworks intended to submit to the business and indicated the range within which Quik-Shot's submitted price should be. You confirmed receipt of this information and subsequently submitted a price for Quik-Shot within the indicated range to the business.
9. We consider that this Agreement had the purpose of fixing, controlling or maintaining the price that Quik-Shot submitted to the business.
10. The Commission considers that Quik-Shot, acting through yourself, gave effect to the Agreement by submitting a price to the business within the range indicated by Pipeworks.
11. We note that, contrary to the purpose of the Agreement, the business accepted the higher price submitted by Pipeworks. We have taken this into account in reaching our decision not to commence proceedings.

Commission guidance

12. Competition between firms typically derives from rivalry on price, quality, service, choice and other offerings. Conduct which fixes, controls, or maintains prices reduces competition and can be detrimental to consumers.
13. To avoid breaching the Act in future, we recommend that Quik-Shot (now trading as NZ Lining) and its officers and employees are mindful of the Act when interacting with competitors, particularly in circumstances where the conduct involved may

¹ Section 30A of the Act sets out the meaning of a cartel provision.

interfere with any party's independent decision about a price, component of price, or any other matter relating to prices, such as a discount or rebate.

14. If in doubt, Quik-Shot and yourself should seek legal advice from a lawyer experienced in dealing with the Act.

Further action by the Commission and other parties

15. Only the courts can decide whether the Act has been breached or not. This warning letter does not represent a ruling of law.
16. The court can impose penalties where it finds the law has been broken. An individual can be fined a maximum of \$500,000 and/or be prohibited from being a company director or a manager of a company. A body corporate can be fined the greater of \$10 million or three times the commercial gain from the breach (or if this cannot be easily established then 10% of turnover). Every separate breach of the Act may incur a penalty.
17. While the Commission does not intend to take any further action against Quik-Shot or yourself for this conduct, you should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking a private action for damages under section 82 of the Act.
18. We may draw this warning to the attention of a court in any future proceedings brought by the Commission against Quik-Shot or yourself for other conduct in breach of the Act. Previous warnings may be considered an aggravating factor in sentencing by the court for any future conduct.
19. This warning letter to Quik-Shot and yourself will be published on our website. We will also refer to this warning letter in a media release that will be published.

Further information

20. We have published a series of fact sheets and other resources to help businesses comply with the Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage Quik-Shot's officers and its relevant employees to visit our website to better understand their obligations and the Commission's role in enforcing the Act.
21. You can also view the Act and other legislation at www.legislation.govt.nz.

22. Thank you for your assistance with this investigation. Please contact me by email at katie.rusbatch@comcom.govt.nz if you have any questions about this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Katie Rusbatch', with a stylized, cursive script.

Katie Rusbatch
Head of Competition