

21 December 2017

Smart Farm Technologies Limited
Attn: Simon Thompson

By email

Dear Mr Thompson

Commerce Act 1986: Warning

1. As you aware, the Commission has been investigating Smart Farm Technologies Limited (Smart Farm) concerning allegations that it agreed prices with GEA Milfos International Limited (Milfos) for milk sensors, ancillary parts and installation services.

Commission's view

2. The Commission considers Smart Farm is likely to have breached the price fixing prohibition in the Commerce Act 1986 (the Act) by entering into an agreement with Milfos on pricing for CellSense and YieldSense milk sensors (plus parts needed to install the sensors, the Identity herd management system and installation services).
3. The Commission has exercised its enforcement discretion to issue a warning to Smart Farm rather than to commence proceedings. In making a decision to warn, we have taken into account the extent of Smart Farm's involvement in the conduct.

Price fixing conduct prohibited by the Commerce Act

4. Section 27 via section 30 of the Commerce Act (the Act) prohibits contracts, arrangements or understandings between competitors containing provisions that have the purpose or effect of fixing, controlling or maintaining the prices charged for goods or services.¹
5. A contract, arrangement, or understanding need not be formal, written, or signed. All that is required is for the parties to reach a consensus and a mutual expectation as to how at least one of them will act, or not act.

¹ Note that this warning relates to conduct that occurred before the passage of the Commerce (Cartels and Other Matters) Amendment Act 2017 (which came into force in August 2017). We have accordingly assessed Smart Farm's conduct under the 'former' Section 30.

Basis for the Commission's view

6. The Commission is of the view that Smart Farm entered into an agreement with Milfos in breach of section 27, via section 30, of the Act.
7. The terms of that agreement included Smart Farm and Milfos agreeing on installed prices for CellSense and YieldSense (iINTESENSE and iINTELAB) sensors and that a quote specification (or, quote calculator) would be revised to meet those prices.
8. Milfos subsequently revised the quote calculator, with input from Smart Farm, and it was distributed to sales teams at both companies. The evidence suggests that both sales teams used the quote calculator as a basis for quoting retail jobs to customers.

Commission guidance

9. 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.
10. To avoid breaching the Act in future, we recommend that Smart Farm's employees are mindful of the Act when attending meetings and/or otherwise interacting with competitors, particularly in circumstances where the conduct involved may interfere with any party's independent decision about a price, component of price, or any other matter relating to prices, such as a discount. This same care is required when attending industry or professional association meetings where competitors or potential competitors are involved.
11. If in doubt, you should seek legal advice from a lawyer experienced in dealing with the Act.

Further action by the Commission and other parties

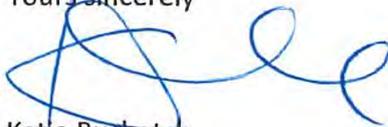
12. Only the courts can decide whether the Act has been breached or not. This warning letter does not represent a ruling of law.
13. The court can impose penalties where it finds the law has been broken. An individual can be fined a maximum of \$500,000 and/or be prohibited from being a company director 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 (if this cannot be easily established, 10% of turnover). Every separate breach of the Act may incur a penalty.
14. While the Commission does not intend to take any further action against Smart Farm 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.

15. We may draw this warning to the attention of a court in any future proceedings brought by the Commission against Smart Farm 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.
16. This warning letter to Smart Farm will be published on our website. We also intend to refer to this warning letter in a media release that will be published.

Further information

17. We have published a series of fact sheets and other resources to help businesses comply with the Commerce Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
18. You can also view the Commerce Act and other legislation at www.legislation.govt.nz.
19. Thank you for your assistance with this investigation. Please contact me on (04) 924 3830 or by email at katie.rusbatch@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Katie Rusbatch
Head of Competition

Copy to: