

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**HELD IN PRETORIA**

**CC CASE NO: 2017JAN0035**

**CT CASE NO: CO086Jun18**

In the matter between:

**THE COMPETITION COMMISSION**


and

**CURRO HOLDINGS LTD**

First Respondent

**GRIT PROCUREMENT SOLUTIONS (PTY) LTD**

Second Respondent

 competitiontribunal south africa	
2019 -02- 25	
RECEIVED BY:	<i>M. L. M.</i>
TIME:	13:50 Applicant

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**FILING SHEET**

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Documents Filed:

1. Consent agreement.

Dated at **PRETORIA** on this the **25th** day of **FEBRUARY 2019**.

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**THE COMPETITION COMMISSION**

The DTI Campus, Block C: Mulayo

77 Meintjies Street

Sunnyside, Pretoria

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**TO: THE REGISTRAR**

Competition Tribunal

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TIME:	13:50

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2019 -02- 25	
RECEIVED BY:	<i>Malom</i>
TIME:	11:40

Applicant

In the matter between:

**THE COMPETITION COMMISSION**

and

**CURRO HOLDINGS LTD**

Respondent

**GRIT PROCUREMENT SOLUTIONS (PTY) LTD**

Respondent

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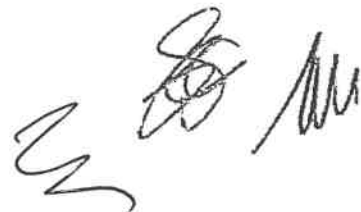
**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION, CURRO HOLDINGS LTD AND GRIT PROCUREMENT SOLUTIONS (PTY) LTD IN RESPECT OF THE ALLEGED CONTRAVENTION OF SECTIONS 5(1), 8(c) AND 8(a) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED**

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1. The Competition Commission, Curro Holdings Ltd and Grit Procurement Solutions (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act 89 of 1998, as amended, on the terms set out below:

**2. DEFINITIONS**

2.1. For the purposes of this Consent Agreement, the following definitions shall apply:



- 2.1.1. "Act" means the Competition Act 89 of 1998, as amended;
- 2.1.2. "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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 2.1.3. "Commissioner" means the Commissioner of the Commission, appointed in terms of section 22 of the Competition Act;
- 2.1.4. "Competitive bidding process" means a transparent procurement method in which bids from competing suppliers, distributors or retailers are invited by openly advertising the scope, specifications, and terms and conditions of the proposed contract, as well as the criteria by which the bids will be evaluated. A Competitive bidding process is aimed at obtaining goods and services of requisite quality at the lowest prices by stimulating competition and by preventing favouritism;
- 2.1.5. "Complaint" means the complaint initiated by the Commissioner in terms of section 49B of the Competition Act No. 89 of 1998, as amended under case number 2017Jan0035, and as well as the complaints filed by certain third parties under case numbers 2017Jan0041, 2017Mar0125 and 2018Feb0016;
- 2.1.6. "Consent Agreement" means this agreement duly signed and concluded between the Commission, Curro and Grit;
- 2.1.7. "Curro" means Curro Holdings Ltd, a company incorporated under the laws of the Republic of South Africa with its principal place of business being 38 Oxford Street, Durbanville, Cape Town, 7550 and its subsidiaries and schools in South Africa;
- 2.1.8. "generic" (with reference to school uniform items) means not specific to a particular school and not having only one particular brand name;
- 2.1.9. "Grit" means Grit Procurement Solutions (Pty) Ltd, a company incorporated under the laws of the Republic of South Africa with its principal place of business being 70 Banghoek Crescent, Gateway Landing, N4 Gateway Park, Willow Park Manor in Gauteng;
- 2.1.10. "Parties" or "Party" means the Commission, Curro and/or Grit;



- 2.1.11. "parent" means the legal guardian of a learner attending a school owned and/or managed by Curro;
- 2.1.12. "school uniform items" mean clothing items that form part of a school uniform including, but not limited to, blazers, shirts, pants, etc.;
- 2.1.13. "supplier" includes a reference to a wholesaler, retailer or distributor;
- 2.1.14. "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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 2.1.15. "unique" (with reference to school uniform items) means belonging to or connected to one particular school.

### **3. BACKGROUND AND CONTEXT**

- 3.1. Prior to 2015, the Competition Commission received a large number of complaints from parents and school uniform suppliers regarding inter alia the high cost of school uniforms and exclusive agreements preventing suppliers from entering the market.
- 3.2. The Commission undertook advocacy initiatives to address the aforementioned concerns, including engagements with various schools and school groups and the National Department of Basic Education ("DBE").
- 3.3. Engagements with the DBE resulted in the Commission drafting a circular relating to the procurement of school uniforms, which was intended to ensure that school uniforms are affordable for all learners.
- 3.4. In May 2015, the DBE addressed this circular to all Members of the Executive Councils of Provincial Education Departments, Heads of Departments of Provincial Education Departments, District Managers of Provincial Education Departments, Provincial School Governing Body Associations and school principals ("The Circular").

The image shows two handwritten signatures in black ink. The signature on the left is a stylized, cursive name, possibly 'Z'. The signature on the right is a more complex, cursive name, possibly 'M'. Both signatures are written in a fluid, handwritten style.

3.5. The Circular, in particular, deals with the existence of exclusive agreements between schools and school uniform manufacturers or retailers and sets out the following measures, which is recommended to all public schools, former model C schools, and private schools, in order to address the potential anti-competitive effect of exclusive agreements viz.-

3.5.1. School uniform items should be as generic as possible, so that it can be obtained from many suppliers. Where school uniforms consist of more generic items, which parents can buy from general retailers, at lower prices, the potential harm resulting from exclusive agreements may be lessened, since parents will have more choices in respect of where to shop for these items and to decide what price they are willing to pay.

3.5.2. The number of unique school uniform items that form part of the basic school uniform (excluding optional additions) should be limited to only a few items. This principle of limiting the uniqueness of school uniform items should also apply to sport uniforms. Even where there are school uniform items that are unique to a particular school, parents ought to be able to substitute some items with generic versions.

3.5.3. Schools should contract with school uniform suppliers following a Competitive bidding process, so that all potential school uniform suppliers get the opportunity to compete to supply school uniform items to a school.

3.5.4. Where reasonably possible schools should use more than one supplier. The use of more than one supplier will provide parents with more choices and reduce the incentive of the supplier to charge very high prices.



3.5.5. Any contract entered into to supply school uniform items to a school should be for a limited duration, of 3 to 5 years. At the end of the contract period, a new bidding process should be embarked upon. This procurement process can also be done by way of advertising, where schools invite potential school uniform suppliers to bid.

#### 4. THE COMPLAINT

- 4.1. On 27 January 2017, the Commissioner initiated a complaint against a number of schools, including Curro, school uniform manufacturers and suppliers, including Grit, for potential contraventions of section 5(1), section 8(a) and/or section 8(c) of the Act pursuant to a number of complaints received from parents and school uniform suppliers.
- 4.2. Some parents complained that they could only purchase school uniform items for their children from a particular, specifically identified school uniform supplier without any other options being available to them. They therefore contend that they have consequently been paying high prices for school uniform items.
- 4.3. Some school uniform suppliers complained that some schools have entered into contracts with certain school uniform suppliers, giving these suppliers the exclusive right to sell the school uniform items of that particular school. Consequently, it is therefore alleged that potential or new school uniform suppliers cannot enter the school uniform market to compete with suppliers benefitting from exclusive agreements.

#### 5. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 5.1. The Commission investigated the Complaint and concluded that the existence of exclusive supply agreements concluded by suppliers and various schools may substantially prevent or lessen competition in the market by excluding potential and existing school uniform suppliers from entering or growing in the



relevant market.

- 5.2. Exclusive agreements may be problematic particularly when they are of a long duration and if they enable a firm to extract higher prices from customers, prevent other firms from entering the market, competing for customers and/or growing their market share. Exclusive agreements can also potentially deprive customers of choices and/or create a disincentive for firms to innovate.
- 5.3. When schools enter into exclusive agreements with school uniform suppliers, it means that the supplier becomes the only source from which parents can buy unique school uniform items for that particular school. Parents do not have a choice to shop elsewhere for such unique school uniform items and they essentially become a captured market as far as that supplier is concerned. This can create a risk that the supplier may charge excessive prices, as the supplier does not face competition and does not risk of losing market share to any other suppliers.
- 5.4. The Commission investigated and found the following in respect of Curro and Grit:
- 5.4.1. There are more than 100 schools falling under Curro in South Africa, with most (but not all) of these schools being exclusively supplied by Grit in respect of their respective unique school uniform requirements (a current list of those schools to which Grit is the sole supplier is attached hereto marked as "Annexure A").
- 5.4.2. Furthermore, the Commission found that there exists an exclusive agreement between Curro and Grit in terms of which Grit has been the sole supplier of Curro's unique schools' uniform items since 2012. This agreement was set to expire on 31 December 2017, but was subsequently extended until September 2018, pending finalisation of the Commission's investigation.





5.4.3. Subsequently, in light of the fact that the Commission's investigation had not been concluded by the end of September 2018, it was necessary for Grit to acquire a substantial amount of stock to meet the anticipated demand in order to ensure that it has sufficient stock to avoid any interruption in the supply of school uniform items. This, in turn, necessitated an extension of the abovementioned agreement between Curro and Grit so as to expire in December 2021.

5.4.4. Grit was not appointed through a Competitive bidding process, but its suppliers have been, as set out in this Consent Agreement.

5.4.5. The Commission has concluded that the exclusive agreement between each of the schools falling under Curro and Grit is likely to have contravened sections 5(1), 8(a) and/or 8(c) of the Act, but notes that this is disputed by Curro and Grit.

## 6. CURRO AND GRIT CO-OPERATION

6.1. Curro began operating in 1998 as a single entity school in Durbanville in the Western Cape. This school identified a specific uniform as their prescribed dress code. Over the years, the number of schools increased resulting in a standard school uniform being accepted at new Curro schools.

6.2. Curro's original supplier of school uniform items was an integrated manufacturer and retailer, who was able to and did adjust its prices for school uniform items without regard to Curro. This was not acceptable to Curro, furthermore, Curro's original supplier was also too expensive.

6.3. Curro was of the view that this model did not serve, and could not accommodate, its rapid growth and the accompanying demand for school uniform items. Curro also experienced supply and quality problems and was in

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the process of opening numerous additional schools. It was then decided that a new approach be investigated and, if viable, implemented.

- 6.4. Accordingly, in October 2012, Grit, in which Curro had a 40% share interest, was created as a new supplier and appointed under a 5-year exclusive agreement. Grit was established as an entirely new distributor of school uniform items in the market.
- 6.5. Grit operates in a very different, unique and innovative way than most other retailers or distributors of school uniform items in South Africa by permitting parents to use an e-commerce platform to order school uniform items online and then have them delivered to their door (or to their school) within 24 hours.
- 6.6. According to Curro the cost of school uniforms at Curro schools has decreased under this model. The new model also curtailed the prices and cost increases of Curro school uniforms. Other benefits of appointing Grit included permitting Curro to centrally monitor and manage the cost of school uniform items by monitoring prices and ensuring minimal mark-up to parents by Grit, ensuring a consistent quality of school uniforms across Curro's growing umbrella of schools and a reduction in the cost of stockholding per site.
- 6.7. Following the Circular and the subsequent advocacy work undertaken by the Commission at the time, Curro and Grit took various pro-active steps in order to better comply with the afore-mentioned Circular, including, but not limited to:
  - 6.7.1. Cancelling its long term exclusive agreement with its original supplier, a school uniform manufacturer who used to supply certain unique school uniform items directly to parents of learners attending Curro's schools on an exclusive basis;
  - 6.7.2. Grit procuring Curro school uniform items from various manufacturers and/or suppliers rather than from a single manufacturer, as it did



previously. In addition, manufacturers and/or suppliers to Grit are appointed through a competitive tender process. In this regard, it is recorded that Grit already ran a tender process during 2017 and has tied various manufacturers and/or suppliers in for the next 3 to 5 years;

- 6.7.3. Standardising Curro's unique school uniform items to make them similar across different schools within the Curro group and continuing to engage in an ongoing basis in this regard;
- 6.7.4. Rationalising the number of Curro unique school uniform items to make its school uniform items as generic as reasonably possible such that these items can now be bought at general clothing retailers. These include school uniform items like blue shirts, white shirts, chino pants, gray pants, socks, belts, blazers, skirts, shorts and shoes;
- 6.7.5. All of Curro's Academy Schools are such that they all now have a basic compulsory uniform that comprises mostly generic school uniform items. Most school uniform items in this regard can be purchased from general clothing retailers, in addition to Grit.

## **7. SETTLEMENT**

- 7.1. The Commission has engaged with various schools and school groups, school uniform manufacturers, distributors and other relevant stakeholders, in order to bring change to the practices taking place in the supply of school uniforms so that the price of school uniform items becomes more reasonable and affordable for parents.
- 7.2. In particular, the Commission engaged with schools in order to solicit firm commitments regarding future conduct. In this regard the Commission engaged with Curro and Grit, whose co-operation with the Commission and/or willingness to comply with the Circular (to the extent that it may not already



comply and/or to continue to comply with the Circular) is noted in this Agreement and which engagement has resulted in this Agreement.

- 7.3. The Commission further notes that Curro and Grit have expressed a high degree of willingness to enter into a consent order agreement with the Commission on the basis that the agreement is in line with the principles set out in the Circular.

## 8. THE PURPOSE OF THE CONSENT AGREEMENT

- 8.1. The purpose of this Consent Agreement is to settle the Complaint and to provide clarity in relation to the Commission's views in respect of the competition concerns arising from the Complaint and its views on how best to stimulate competition in the school clothing sector.
- 8.2. The Commission considered the benefits to the public interest if the cost of school uniform items could be reduced. At many schools, the cost of school uniform items represents a significant part of the cost of schooling. In South Africa, many parents struggle to afford schooling for their children. The Commission concluded that the interests of consumers and competitors in the relevant market would be better served by not proceeding any further with a complaint referral and by rather obtaining undertakings from the Respondents as to future conduct.
- 8.3. Curro and Grit do not make any admission of liability of any kind whatsoever in relation to any prohibited conduct under the Act arising from the conduct described in the Complaint, because they contend that they were not engaged in any unlawful conduct in contravention of sections 5(1), 8(a) and/or 8(c) of the Act.



**9. AGREEMENT CONCERNING THE RESPONDENTS' FUTURE CONDUCT**

- 9.1. Contracting with school uniform suppliers must be concluded following a Competitive bidding process to enable any potential school uniform suppliers to have the reasonable opportunity to compete for the supply of school uniform items in relation to Curro schools. For the avoidance of doubt,
- 9.1.1. This Consent Agreement does not require Curro or Grit, as the case may be, to follow a contracting or bidding process in respect of general clothing retailers who sell generic school clothing items to the general public; and
- 9.1.2. Curro or Grit will be entitled to follow a Competitive bidding process for the supply of school uniform items in respect of one or multiple schools. By way of example, following a Competitive bidding process, a single bid could be awarded in respect of one or more or all schools in a Curro schooling category, in any province or other geographic area, or nationally.
- 9.2. Any contract entered into to supply school uniform items by Curro or Grit must be for a limited duration of not more than 5 years. At the end of the contract period, a new Competitive bidding process must be embarked upon, that complies with the guidance contained herein.
- 9.3. Curro and Grit undertake to adhere to the code of conduct containing best practices which are in line with the DBE Circular referred to in paragraph 3 above, and which is attached herewith and marked "Annexure B". For the avoidance of doubt, the provisions in Annexure B do not relate to school clothing items that are optional or to items that are introduced at a school as an initiative by the parents of children at that school.
- 9.4. Curro will continue to seek to implement innovative measures to manage the

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cost of uniforms. As part of this process, Curro has already established second hand uniform shops at most of its schools or in the vicinity of those schools. In order to assist parents and provide them with additional options when purchasing Curro school uniform items, Curro is also considering the introduction of additional locations in large centres where parents could purchase such items. To this end, Curro has already entered into a 5-year agreement with an independent black-owned party, operating a store in Pretoria at which Curro school uniform items will be sold to parents.

- 9.5. In line with its previous commitment to the Commission, Curro has recently disposed of its entire 40% shareholding in Grit in order to minimize any incentive, or any other preferential treatment, with regard to the appointment of Grit as the sole supplier of Curro unique school uniform items in the future.
- 9.6. Curro agrees and undertakes to prepare and publish a statement summarising the content of this Consent Agreement to its employees and to the parents of learners of its schools, which will be displayed on notice boards at schools or as a notification on Curro's website.
- 9.7. The Parties agree that should a Respondent fail to adhere to the code of conduct contained in Annexure B, the Commission will be entitled to prosecute such Respondent before the Tribunal for failure to adhere to the terms of this Consent Agreement.

#### 10. MONITORING

- 10.1. The Commission may request, at any time, but not more than once annually, that Curro and Grit submit a report to the Commission confirming compliance with this Consent Agreement.
- 10.2. Following receipt of such a report, the Commission may request copies of, or access to, any documents related to compliance with the terms of this Consent Agreement.

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**11. VARIATION**

- 11.1. Curro and/or Grit shall be entitled to apply to the Commission for a waiver, relaxation or modification of any of the terms of this Consent Agreement. In the event of the Commission, Curro and/or Grit agreeing upon the waiver, relaxation or modification of this Consent Agreement, the Commission, Curro and/or Grit shall apply to the Tribunal for confirmation by it of such waiver, relaxation, or modification.
- 11.2. In the event of the Commission not agreeing to the waiver, relaxation or modification of this Consent Agreement, Curro and/or Grit shall be entitled to apply to the Tribunal for an order waiving, relaxing, or modifying of this Consent Agreement. The Commission shall be entitled to oppose such application, with good reason.

**12. GENERAL**


- 12.1. This Consent Agreement is in full and final settlement of all complaints against Curro and/or Grit arising from the Complaint under the Commission case number 2017Jan0035, as well as case numbers 2017Jan0041, 2017Mar0125 and 2018Feb0016.
- 12.2. This Agreement supersedes and replaces any and all agreements between the Parties and undertakings given to or on behalf of the Parties in relation to the subject matter hereof. Without derogating from the generality of the foregoing, this Agreement supersedes and replaces the consent agreement relating to the same complaint, as concluded between the Parties on or about 13 June 2018.
- 12.3. The undertakings in respect of future conduct contained in this Consent Agreement shall apply for a period of ten years from the date that this Settlement Agreement is made an order of the Tribunal.



12.4. This Consent Agreement may be signed in counterparts.

FOR THE COMMISSION


DATED AND SIGNED AT Pretoria ON THE 22<sup>nd</sup> DAY OF Feb 2019



TEMBINKOSI BONAKELE  
COMPETITION COMMISSIONER

FOR CURRO

DATED AND SIGNED AT Durbanville ON THE 15 DAY OF February 2019



ANDRIES GREYLING  
CHIEF EXECUTIVE OFFICER  
CURRO HOLDINGS LIMITED

FOR GRIT

DATED AND SIGNED AT Pretoria ON THE 15 DAY OF February 2019



FRANS NEL  
CHIEF EXECUTIVE OFFICER  
GRIT PROCUREMENT SOLUTIONS (PTY) LTD



**"ANNEXURE A"**

**LIST OF SCHOOLS**

**E-commerce and shops**

<b>CURRO E-COMMERCE</b> AND SELECTED ITEM SALES (POS)	<b>CURRO SHOPS</b>	<b>MERIDIAN E-COMMERCE</b> AND SELECTED ITEM SALES (POS)	<b>ACADEMY E-COMMERCE</b> AND SELECTED ITEM SALES (POS)	<b>OTHER SHOPS</b>
Curro Atron	Curro Woodhill	Meridian Casino City	Academy Clayville	Garsfontein High
Curro Helderwyk	Curro Waterstone	Meridian Rustenburg	Academy Wilgehoew	Garsfontein Primary
Curro Serengeti		Meridian Newcastle	Academy Riverside	
Curro Krugerdom		Meridian Karoo	Academy Pretoria	
Curro Rivonia		Meridian Pletzer	Academy Soshanguve	
Curro Waterfall			Academy Mamelodi	
Curro Monaghan			Academy Midrand	
Curro Rooderpoort			Academy Sandton	
Curro Hazeldean				
Curro Duetshof				
Curro Kleindorp				
Curro Kotho				
Curro Bloubaai				
Curro Hillcrest				
Curro Mount Richmond				
Curro Embury				
Curro Nelspruit				
Curro Brakweld				
Curro Secunda				
Curro Heuwelkruin				
Curro Langheuwel				
Curro Durbanville				
Curro Hermanns				
Curro Mostelbos				
Curro Century City				
Curro Westbrook				
Curro Braekensdal				
Curro Sifiso				

**Shops**

<b>CURRO SHOPS</b>	<b>OTHER SHOPS</b>	<b>BULK ORDERS &amp; DELIVERY</b>
Curro Woodhill	Garsfontein High	Northern Academy
Curro Waterstone	Garsfontein Primary	

"ANNEXURE B"

CODE OF CONDUCT IN LINE WITH THE DBE CIRCULAR

1. The Respondents undertake that they will not, following 12 months of the signature of this Consent Agreement, be party to any agreement or practice pursuant to which school uniforms would be designed, manufactured or sold in breach of the Consent Agreement and the guidelines of this Annexure B, the latter being detailed below. For the avoidance of doubt, the extension referred to in clause 5.4.3 does not breach this undertaking.

The Design of School Uniform

2. School uniform items must be as generic as reasonably possible so that they can be obtained from multiple suppliers. Where school uniforms consist of more generic items, which parents can buy from general retailers, at lower prices, the potential harm resulting from exclusive agreements may be lessened, since parents will have more choices in respect of where to shop for these items and to decide what price they are willing to pay.
3. Where this is not reasonably possible, exclusivity should be limited to such items that the school regards as being necessary to get from the pre-selected supplier. In other words, the number of unique school uniform items and unique sport uniform items that form part of the basic compulsory school uniform should be limited.

Contracting with Suppliers

4. Curro or, where applicable, Grit shall engage in a Competitive bidding process when sourcing a supplier of Curro school uniform items. This will give any potential school uniform suppliers the opportunity to bid to supply schools with school uniforms with the aim of stimulating competition.

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5. Where reasonably possible, Curro or, where applicable, Grit shall have more than one supplier of school uniform items. The use of more than one supplier should provide parents with more choices, reduce the incentive of the supplier to charge very high prices and prevent the total elimination of competition during the duration of the contract. The aim is to stimulate competition but keep prices as low as reasonably possible.
6. Any contract entered into to supply school uniform items by Curro or, where applicable, by Grit must be for a limited duration of not more than 5 years. At the end of the contract period, a new Competitive bidding process must be embarked upon, that complies with the guidance contained herein.

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