

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ANTITRUST BUREAU

Assurance No. 17-137

In the Matter of the

**Investigation by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York, of
Compulink Technologies, Inc. and Milenio Technology, LLC**

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation, pursuant to Section 343 of the New York General Business Law and Section 63(12) of the New York Executive Law, into bid-rigging by Compulink Technologies, Inc. (“Compulink”), its affiliate, Milenio Technology, LLC (“Milenio”) and certain other parties in connection with bids submitted to New York State governmental entities for the deployment of digital communications cloud services.

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondents Compulink and Milenio (collectively, “the Parties”). Certain parties that fully cooperated with the OAG’s investigation are not made Respondents to this Assurance of Discontinuance.

OAG’s FINDINGS

The Respondents

1. Compulink is a New York corporation with its principal offices located at 260 West 39th Street, Suite 302, New York, New York. Compulink is a reseller of IT solutions and

services to both governmental and private entities in the State of New York and elsewhere.

Compulink is a Minority-Owned Business Enterprise for the purposes of New York State government procurement procedures. The sole shareholder and Chief Executive Officer of Compulink is Rafael Arboleda.

2. At all relevant times, Milenio was a New York limited liability corporation with its registered headquarters at 875 Sixth Avenue, New York, New York. The President and sole owner of Milenio was Denise Arboleda, the wife of Rafael Arboleda. Milenio purported to offer IT solutions and services in New York and elsewhere. Milenio was dissolved on or about January 17, 2017.

Background

3. During 2015, Compulink and Milenio were resellers of GovDelivery services.

4. GovDelivery is a public sector digital communications cloud solution, developed by GovDelivery, Inc. a corporation headquartered in St. Paul, Minnesota. In late 2016, GovDelivery, Inc. was acquired and merged with Granicus, Inc.

5. During 2015, various New York State governmental entities issued requests for proposals (“RFPs”) for the procurement of GovDelivery solutions. An RFP is typically issued by an agency on behalf of the State of New York in order to solicit proposals from bidders seeking the award of a contract to deliver goods or services to the agency. An RFP typically defines a series of objectives and requirements and a scope of work that a bidder must be able to satisfy in order to be awarded a contract.

6. Under the New York State Finance Law § 163, “discretionary” state agency purchases up to certain monetary thresholds are not subject to formal competitive bidding procedures. Use of discretionary purchasing can streamline the procurement process and may

improve opportunities for minority or women-owned vendors and small businesses to obtain contracts with the State of New York. When utilizing a discretionary bid process, New York governmental entities are required to document and justify the selection of the vendor and to demonstrate the reasonableness of the price paid. In order to justify vendor selection and demonstrate reasonable prices, agencies typically seek bids from at least three competitors in a discretionary bid process. Many agencies also have internal procurement policies that apply to discretionary purchases and that require more than one bid to be obtained prior to award.

7. Under Section 139-D of the New York State Finance law, a submission of a bid to a New York State entity in response to an RFP requires a Non-Collusive Bidding Certification. This certification requires a bidder to attest, under penalty of perjury, that bid prices were arrived at independently and without collusion with any other bidder or competitor.

Irregularities Affecting Certain State Agency Discretionary Purchases

8. During the end of 2014 and the beginning of 2015, GovDelivery negotiated directly with various New York State governmental entities to provide those entities with GovDelivery solutions. Those governmental entities indicated an interest in obtaining GovDelivery services, and GovDelivery provided price quotes for its services directly to the state entities. However, because of the time period and administrative steps required by ordinary New York State procurement procedures, the governmental entities elected to purchase GovDelivery solutions through expedited discretionary procurement from a state authorized Minority-Owned Business Enterprise. Compulink was identified as such an enterprise. Thereafter, in late January 2015, GovDelivery contacted Compulink. Compulink had not previously done business with GovDelivery.

9. During 2015, GovDelivery requested that Compulink submit proposals with respect to various New York state government entity procurement opportunities. Compulink agreed to do so. Compulink's proposals included a customary reseller price mark up of 4%-10%. Subsequently, with respect to three of those procurement opportunities, representatives of the state entities informed GovDelivery that the entities needed a total of three bids in order to satisfy their internal requirements for using a discretionary procurement process, and requested that GovDelivery obtain those additional bids.

10. GovDelivery in turn passed those requests on to Compulink. In response, with respect to two of the bidding opportunities, Milenio (which was owned by Denise Arboleda, who is the wife of the owner of Compulink and is an employee of Compulink) submitted bids to resell the same GovDelivery services at a higher price than that offered by Compulink in its bid. The same name, Denise Arboleda, and corporate address appeared on the cover pages that accompanied the proposals from Compulink and Milenio. The bids were identical except for the corporate identity of the bidder and the prices quoted. In each case, the bids submitted from Milenio were not genuine bids that Milenio expected to be awarded, but were submitted only to satisfy the state entities' requests for multiple bids.

11. In addition, with respect to three of the procurement opportunities, Compulink asked another reseller to submit bids to resell the same GovDelivery services but at a price that was higher than the bids submitted by Compulink. Compulink asked the other reseller to do so as a "favor" and the other reseller agreed. Compulink then forwarded draft bid submissions to the other reseller and asked that they be printed and submitted to the state entities on the other reseller's own letterhead. The other reseller did as asked and submitted the higher bids as "cover" bids. After receiving these additional bids, two of the three proposals in which

Compulink had coordinated pricing were accepted and the final contracts were awarded to Compulink.

12. In sum, during 2015, Compulink, Milenio and another reseller, each submitted bids for the provision of GovDelivery solutions in response to the New York state government procurement opportunities. In each of these bidding situations, in response to requests to obtain additional bids, Compulink, Milenio and another reseller participated in an agreement, combination and conspiracy to subvert the bidding process by submitting sham bids. These sham bids satisfied a prerequisite for the ultimate award of a contract to Compulink as the lowest among multiple bids submitted.

Violations

13. The OAG finds that Respondents and others agreed and conspired to submit sham bids and fix prices on bids submitted to the aforementioned state entities in violation of state antitrust laws. Bid-rigging and price-fixing are per se violations of Section 340 of the General Business Law of the State of New York, which prohibits contracts, agreements, arrangements or combinations whereby competition in the conduct of any business, trade or commerce or in the furnishing of any service in the state is or may be restrained.

14. Although the OAG finds that Respondents violated Section 340 of the General Business Law, the OAG also found that Respondents' conduct was intended for Respondents to win these state contracts as the lowest bidder and to satisfy the requirements for an expedited procurement process, rather than to secure significant financial benefits for themselves. The OAG's investigation did not find that the New York state entities paid higher prices for GovDelivery solutions as a result of Respondents' conduct.

15. Respondents admit the truth of the facts set forth in the OAG's Findings 1-12 above and neither admit nor deny that their actions violated Section 340 of the General Business Law of the State of New York.

16. Respondents have offered this Assurance in settlement of the violations alleged above and to avoid the time, expense, and distraction of litigation.

17. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15) in lieu of commencing a statutory proceeding for violations of Section 340 of the General Business Law of the State of New York that occurred during 2015.

RELIEF

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

18. Respondents will comply with the provisions of all applicable laws, including but not limited to Section 340 of the General Business Law of the State of New York.

19. Compulink and Milenio may not hold themselves out as separate companies for the purpose of submitting bids on any contracts put out to bid by any New York State governmental or private entity. Compulink and Milenio may not communicate with any competing Resellers of any software products or services, concerning the submission of any bids on contracts put out for bid by any New York State governmental or private entity.

- a. Within thirty (30) calendar days of execution of this Assurance, Compulink shall communicate with all its personnel to (i) inform them that Compulink has executed this Assurance and (ii) outline the conduct prohibited by this Assurance.

- b. Within sixty (60) calendar days of execution of this Assurance, Compulink shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a compliance officer and to discharge the duties set forth below. The person designated as the compliance officer shall be responsible for developing, implementing, and administering an antitrust compliance plan and ensuring that Compulink complies with the terms and conditions of the compliance plan and this Assurance.
 - c. Respondents expressly agree and acknowledge that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the OAG thereafter may commence the civil action proceeding contemplated in paragraph 17, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 17, pursuant to Executive Law § 63(15).
20. Oversight/Monitoring
- a. Compulink shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance.
 - b. Respondents shall retain all records relating to its obligations under this Assurance, including copies of all correspondence, emails, and memoranda communicating to all its personnel its obligations pursuant to this Assurance. Respondents shall, upon thirty (30) days written notice from the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
21. Monetary Relief

- a. Respondents shall pay the State of New York \$75,000 in civil penalties.
- b. Payment of the settlement amount shall be made in full by wire transfer within 10 business days of the effective date of this Assurance.
- c. Any payments and all correspondence related to this Assurance must reference Assurance No. 17-137.

MISCELLANEOUS

Subsequent Proceedings

22. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 28, the Respondents expressly agree and acknowledge:

- a. that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. that the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the effective date of this Assurance;
- c. that courts of the State of New York must adjudicate the matter, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.

23. If a court of competent jurisdiction determines that the Respondents have violated the Assurance, the Respondents shall pay to OAG the reasonable cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

24. This Assurance is not intended for use by any third party in any other proceeding.

25. This Assurance shall be binding on and inure to the benefit of the Parties and their respective successors and assigns, provided that no party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

26. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

Communications:

27. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Compulink/Milenio, to: Jonathan Streeter, Esq.
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036

If to the OAG, to: Chief, Antitrust Bureau
New York State Office of the Attorney General
120 Broadway, 26th Floor
New York, NY 10271

Representations and Warranties:

28. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Respondents and their counsel and OAG's own factual investigation as set forth in Findings (1) – (12) above. Respondents represent and warrant that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be

inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

29. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondents in agreeing to this Assurance.

30. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondents' (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Respondents.

General Principles:

31. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring.

32. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violate the Assurance after its effective date.

33. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

34. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or

unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

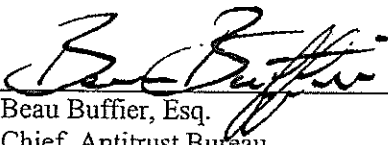
35. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles, and its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

36. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

37. The effective date of this Assurance shall be July 28, 2017.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on this 28th day of July, 2017.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway, 26th Floor
New York, NY 10271

By: 
Beau Buffier, Esq.
Chief, Antitrust Bureau

COMPULINK TECHNOLOGIES, INC.

By: *Rafael Arboleda*
Rafael Arboleda
President

STATE OF NY)
COUNTY OF NY)

ss.:

On this 9th day of July, 2018, [Respondent Representative], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned, a notary public in and for the State of NY, and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

[Signature]
NOTARY PUBLIC

AMI SASSON
Notary Public, State of New York
No. 015A6118400
Qualified in New York County
Commission Expires Nov. 8, 2020
[Signature]

MILENIO TECHNOLOGY, LLC

By: Denise Arboleda
Denise Arboleda
President

STATE OF NY)
COUNTY OF NY) ss.:

On this 9th day of July, 2019, [Respondent Representative], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned, a notary public in and for the State of NY, and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

[Signature]
NOTARY PUBLIC

AMI SASSON
Notary Public, State of New York
No. 015A6118400
Qualified in New York County
Commission Expires Nov. 8, 2020
[Signature]