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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: C0189Nov15

In the matter between:

The Competition Commission

Applicant

And

Compafiia Sud Americana De Vapores S.A.

Respondent

Panel : A Wessels (Presiding Member)

I Valodia (Tribunal Member)

A Ndoni (Tribunal Member)

Heard on : 09 December 2015

Decided on : 09 December 2015

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Compafiia Sud Americana De Vapores S.A. annexed hereto marked "A".

09 December 2015

Date

Presiding Member

Mr A Wessels

Concurring: Prof. IValodia and Ms A Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No.

CC Case No: 2012Sep0544 and 2013Aug0401

In the matter between

COMPETITION COMMISSION

Applicant

and

COMPANIA SUD AMERICANA DE VAPORES S.A.

Respondent

**CONSENT AGREEMENT IN TERMS OF SECTION 490 AS READ WITH SECTIONS 58(1)
(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED,
BETWEEN THE COMPETITION COMMISSION AND COMPANIA SUD AMERICANA DE
VAPORES S.A, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii)
OF THE COMPETITION ACT, 1998**

Preamble

The Competition Commission and Compania Sud Americana De Vapores S,A 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 4\JD read with section 58(1)(a)(Ili) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contravention of section 4(1)(b) (I), (Ii) and (Iii) of the Act, on the terms set out below.

1. Definitions

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

- 1.1 **"Act"** means the Competition Act, Act No. 89 of 1998, as amended
- 1.2 **"Carriers"** means any of Mitsui O.S.K Lines Limited, Nippon Yusen Kabushiki Kaisha Ltd, Kawasaki Kisen Kaisha Ltd, Compal'Ha Sud Americana de Vapores S.A, Hoegh Autollners Holdings AS, Wallenius Wilhelmsen Logistics AS and Eukor Car Carriers Inc.
- 1.3 **"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;
- 1.4 **"Commissioner"** means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.5 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 498(1) of the Act under case numbers 2012Sep0544 and 2013Aug0401 ;
- 1.6 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Compañía Sud América De Vapores S.A;
- 1.7 **"CSAV"** means Compañía Sud Americana De Vapores S.A, a company duly registered and incorporated under the laws of Chile with its principal place of business at Hundaya 60, Piso 14, Las Condes, Santiago, Chile.

1.8 **"Parties"** means the .Commission and compania Sud Americana De Vapores S.A;

1.9 **"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 OT! Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

2. BACKGROUND TO THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1 On 11 September 2012, the Commission initiated a complaint In terms of section 49(8) (1) of the Act Into alleged prohibited practices relating to price fixing and market division in contravention of section 4(1)(b)(i) and (ii) of the Act, in the market for the transportation of vehicles, equipment and/or machinery (including new and used vehicles and new and used rolling construction and agricultural machinery) by sea, to and from South Africa, against Mitsui O.S.K Lines Limited ("MOL"), Nippon Yusen Kabushiki Kaisha Ltd ("NYK"), Kawasaki Kisen Kaisha Ltd ("K-Line"), Compallla Sud Americana de Vapores S.A. ("CSAV"), Hoegh Autoliners Holdings AS ("Hoegh"), Wallenius Wiiheimsen Logistics AS ("WWL") and Eukor Car Carriers Inc. ("Eukor").

2.2 On 14 September 2012, CSAV applied to the Commission for a marker in relation to the conduct In respect of the GM tender referred to below. However, CSAV was advised that another leniency application had been received by the Commission and was under consideration at that time.

2.3 On 20 August 2013, the Commission amended Its complaint initiation to include coliusive tendering practices in contravention of section 4(1)(b)(iii) of the Act, against the firms set out in paragraph 2.1 above.

2.4 The Commission's Investigation revealed the following:

2.4.1 that during or about the period 1999 up to and including September 2012, the firms set

out in paragraph 2.1 above, being competitors in the market for the transportation of vehicles, equipment and/or machinery (including new and used vehicles and new and used rolling construction and agricultural machinery) by sea, to and from South Africa, concluded various agreements to fix prices, divide markets and collude on tenders issued by vehicle, equipment, rolling construction and agricultural machinery manufacturers.

2.4.2 The firms referred to in paragraph 2.1 above were found, through the Commission's broader investigation, to have agreed to fix prices, divide markets and collude on tenders issued by vehicle equipment, rolling construction and agricultural machinery manufacturers, which include, but are not limited to, General Motors Company ("GM"), Volvo Construction Equipment ("Volvo"), BMW South Africa (Pty) Ltd ("BMW"), Volkswagen AG ("VW") and Nissan Motor Corporation ("Nissan") through its Renault-Nissan Purchasing Organization ("RNPO"). The Commission found that CSAV had engaged in three particular contraventions.

3. PROHIBITED PRACTICES ENGAGED IN BY CSAV

3.1. The Commission's investigation revealed that pursuant to the various agreements concluded by the firms set out in paragraph 2.1 above, CSAV engaged in at least three (3) instances of prohibited practices in contravention of the Act. For the purposes of this settlement, CSAV has admitted to having engaged in one (1) instance of prohibited practices in contravention of section 4(1)(b)(i), (ii) and/or (iii) of the Act together with MOL in respect of a GM tender as follows:

GM 2010 TENDER (South Korea to South Africa)

3.2. During or about 2009 CSAV held approximately 75% of GM's vehicle shipment business from South Korea to South Africa. MOL held the remaining 25%. During or about 2010 GM issued a global tender for the shipment of motor vehicles including shipments from

South Korea to South Africa. CSAV and MOL agreed that MOL would quote a higher price than CSAV to ensure that CSAV maintained its 75% of the business and that MOL also maintained its 25% of the business. CSAV was awarded part of the contract in line with its collusive arrangement with MOL, and successfully secured its 75% of the business. MOL lost its 25% to CIDO, a company which was not a party to the collusive arrangement.

3.3. The agreement concluded by CSAV and MOL constitutes price fixing, market division and collusive tendering which contravenes section 4(1)(b) (i), (ii) and (iii) of the Act.

4. ADMISSION

4.1. CSAV admits to having engaged in one (1) instance of prohibited practices as set out in paragraph 3 above in contravention of section 4(1)(b) (i), (ii) and (iii) of the Act and disputes having engaged in the other two (2) instances uncovered by the Commission's investigation.

5. COOPERATION

5.1. CSAV agrees to fully cooperate with the Commission in its investigation and prosecution, if any, of the remaining respondents in the Commission's complaints. This cooperation includes, but is not limited to:

5.1.1. To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of CSAV or under CSAV's control, concerning the alleged prohibited practices set out in this Consent Agreement.

5.1.2. Testifying during the hearing of the complaint, if any, in respect of the prohibited practices set out in this Consent Agreement.

6. FUTURE CONDUCT

6.1. CSAV agrees to:

- 6.1.1. prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within thirty (30) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.1.2. refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future;
- 6.1.3. develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 6.1.4. submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and
- 6.1.5. undertakes henceforth to engage in competitive practices.

7. ADMINISTRATIVE PENALTY

- 7.1. Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, CSAV is liable to pay an administrative penalty.
- 7.2. CSAV agrees and undertakes to pay an administrative penalty in the amount of RB 813 227.14 (Eight Million Eight Hundred and Thirteen Thousand Two Hundred and Twenty Seven Rands and fourteen cents).
- 7.3. The administrative penalty represents 6% of the 2010 GM contract and does not exceed 10% of CSAV's annual turnover in the Republic of South Africa for the financial year ended December 2010.
- 7.4. CSAV will pay the amount set out in paragraph 7.2 above to the Commission within

thirty (30) days of the confirmation of this Consent Agreement as an order of the Tribunal.

7.5. The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fee

Account Bank: Absa Bank, Pretoria

Account Number: [...]

Branch Code: 323 345

Ref: 2012Sep0544/ CSAV

7.6. The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

8. Full and Final Settlement

8.1. This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the one (1) instance of prohibited practices in contravention of section 4(1)(b)(i), (ii) and for (iii) as set out above and admitted to by CSAV in respect of the 2010 GM contract and concludes all proceedings between the Commission and CSAV in respect of this Instance only.

Dated and signed at Santiago on the 19th day of November 2015

For **Compania Sud America De Vapores S.A**

Chief Officer

Name in Full: Oscar Eduardo Hasbun Martinez

Dated and signed at PRETORIA on the 26th of November 2015

For the **Commission**

Tembinkosi Bonakele

Competition Commissioner