



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 019380

In the matter between:

The Competition Commission

Applicant

and

The South African Veterinary Council

Respondent

Panel	:	N Manoim	(Presiding Member)
		Y Carrim	(Tribunal Member)
		I Valodia	(Tribunal Member)

Heard on : 20 August 2014

Last Submission Received : 09 September 2014

Decided on : 10 September 2014

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and South African Veterinary Council, annexed hereto marked "Annexure A" and an Addendum marked "Annexure B".



Presiding Member
N Manoim

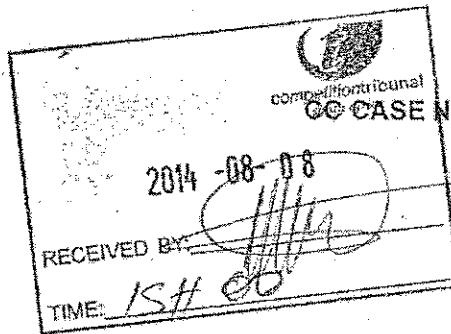
10 September 2014
Date

Concurring: Y Carrim and I Valodia

ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD AT PRETORIA)



CT CASE NO:

CT CASE NO: 2012MAR0150

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

THE SOUTH AFRICAN VETERINARY COUNCIL

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D 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 THE SOUTH AFRICAN VETERINARY COUNCIL IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED.

The Competition Commission ("the Commission") and the South African Veterinary Council ("SAVC") hereby agree that an application be made to the Competition Tribunal ("the Tribunal") for the confirmation of this Consent Agreement as an Order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and (b) as well as section 59(1)(a) of the Competition Act, No. 89 of 1998 as amended, in respect of a contravention of section 4(1)(b)(i) 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 No. 89 of 1998, as amended.
- 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 Building C, Mulayo Building, DTI Campus, 77 Mentjies Street, Sunnyside, Pretoria, Gauteng.
- 1.3. **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act.
- 1.4. **"Complaint"** means the complaint lodged by Dr Abraham Pieter De Villiers against the South Africa Veterinary Council ("SAVC") on 27 March 2012 under case number 2012Mar0150.
- 1.5. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and SAVC.
- 1.6. **"Parties"** means, collectively, the Commission and SAVC.
- 1.7. **"Respondent"** means "SAVC" the South African Veterinary Council, a statutory body established in terms section 2 of the Veterinary and Para-Veterinary Professions Act No. 19 of 1982, as amended from time to time to regulate the veterinary and para-veterinary practice in South Africa, with its principal place of business at 26 Victoria Link Street, Route 21 Corporate Office Park, Nellmapius Drive, Irene, Pretoria, Gauteng.
- 1.8. **"Tariff Guideline"** means a guideline of tariffs for services of veterinarians, published by SAVC from 2004 to 2013.
- 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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
- 1.10. **"Vets Act"** means the Veterinary and Para-Veterinary Professions Act No. 19 of 1982, as amended.

2. BACKGROUND

- 2.1. On 27 March 2012, the Commission received a complaint of price fixing, in alleged contravention of section 4(1)(b)(i) of the Act, against the SAVC and its

members. The complaint was lodged by Dr Abraham Pieter De Villiers, a practising veterinarian registered with the SAVC.

- 2.2. The SAVC as a statutory body derives its mandate from the Vets Act. Section 30(1) of the Vets Act, which entitles the SAVC to make rules to regulate the veterinary and para-veterinary practice in South Africa. In particular, Rule 7 of the SAVC rules prohibits a veterinary professional from canvassing or touting for work, and states that:

"7.(1) Nothing in these rules shall be construed as authorising a veterinary professional to canvass or tout, directly or indirectly, for work commonly performed by a veterinary professional.

(2) For purposes of rule 7(1) a veterinary professional will be deemed to be canvassing or touting for work, but not limited thereto, if he/she -

(a) approaches a person who is not a client with a view to persuade such a person to make use of his/her professional services;

(b) solicits custom or work directly from any person;

(c) with a view to attract clients, grants or undertakes to grant any person, firm, association or other body, a discount on the fee usually charged for a service;

(d) makes unsolicited visits or telephone calls or sends unsolicited letters or printed material to any person, with a view to establishing a professional relationship with such a person; or

(e) enters into an arrangement with any person, whether employee or not, for the introduction of a client to his/her practice; but this will not apply to any arrangement between a veterinary professional and another veterinary professional for the referral of work in the normal course of either's practice.

(3) the provisions of rule 7(1) and 7(2) shall however not be construed so as to prohibit a veterinary professional -

(a) from directing letters or printed material to a person to whom he/she has rendered professional services during the preceding three years, or to colleagues in the profession; Provided that such letters or printed material shall be contained in an envelope on which the names and addresses of persons to whom it is directed appears; and

(b) from delivering a lecture or speech or publishing any report, interview or article or permitting the publication thereof in a bona fide attempt to save animals in a specific area during an emergency situation."

- 2.3. In terms of the complaint, it was alleged that the SAVC annually compiles and publishes a Tariff Guideline that prescribes minimum and maximum fees to be charged for veterinary services across the country, and obliges members to comply with it. In this regard, the SAVC takes disciplinary actions against veterinarians who deviate from pricing in terms of the Tariff Guideline. It was alleged that veterinarians who charge below the Tariff Guideline were charged for canvassing and touting.

3. THE COMMISSION'S INVESTIGATION AND FINDINGS

The Commission duly investigated the complaint and found that:

- 3.1. The SAVC is an association whose members are all engaged in the provision of veterinary services. The members are therefore firms in a horizontal relationship as contemplated in section 4(1) of the Act;
- 3.2. the SAVC prohibits the charging by veterinarians of fees for their services which are below those contained in the Tariff Guideline. In this regard, the SAVC is thus facilitating the fixing of a minimum tariff of fees for their services by competitors (veterinarians);
- 3.3. the SAVC charges its members who deviate from pricing in terms of the Tariff Guideline with the offence of canvassing and touting in terms of Rule 7 of the SAVC rules. Members who advertise their services and discount or offer specials on the services they render are also charged with the offence of canvassing and touting by the SAVC. The SAVC takes disciplinary actions against members who are found guilty, and they are cautioned, warned or fined and ordered to comply with the Tariff Guideline;
- 3.4. Nothing in the Vets Act empowers the SAVC to determine and impose a tariff. The Commission therefore found that SAVC was acting outside its statutory mandate to regulate economic activity of its members.

4. SETTLEMENT DISCUSSIONS

- 4.1. On 18 November 2013, the Commission informed the SAVC of its decision to refer the complaint and invited the SAVC to engage in settlement discussions.
- 4.2. On 12 December 2013, the SAVC accepted the Commission's invitation to settle and tendered its settlement proposal to the Commission. Subsequent to the SAVC's settlement proposal, the Commission and the SAVC engaged in settlement negotiations resulting in this Consent Agreement.

5. ADMISSION OF LIABILITY

SAVC admits that:

- 5.1. It published Rule 7 of the SAVC Rules, which prohibits the granting of a discount, canvassing and touting; and/or advertising; and
- 5.2. It published, annually, from 2004 to 2013 a Tariff Guideline setting out the minimum and maximum fees for veterinary services charged by veterinarians;
- 5.3. The conduct set out in clause 5.1 and 5.2 contravenes section 4(1)(b)(i) of the Act.

6. FUTURE CONDUCT

The SAVC agrees to:

- 6.1. reverse all sanctions imposed on its members in terms of Rule 7 of the SAVC relating to canvassing and touting for charging a discounted fee for a service or advertising from 2004 to 2013;
- 6.2. refrain from engaging in the conduct described above in contravention of section 4(1)(b)(i) of the Act;
- 6.3. put in place corrective measures regarding future conduct to ensure compliance with the Act. In terms of such measures, the SAVC agrees to amend Rule 7 to be consistent with the Act, mainly to:
 - 6.3.1. suspend any pending disciplinary inquiries in respect of charges against its members related to canvassing and touting, and/or advertising;

- 6.3.2. revise Rule 7 as related to canvassing and touting, and/or advertising to make it less restrictive;
- 6.3.3. not publish a Tariff Guideline, and in particular undertakes to desist from the practice of prescribing a minimum fee;
- 6.3.4. prepare and circulate a statement summarising the content of this agreement to all its registered veterinarians within 14 days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.3.5. establish a review committee to deal with amendments of all the SAVC Rules, Regulations and the Vets Act as well as other protocols and codes of conduct to ensure compliance with the Competition Act;
- 6.3.6. conduct seminars or workshops or lectures to educate veterinarians in respect of the requirements of the Act in relation to the Rules, among other, issues related to veterinary profession;
- 6.3.7. engage with the Commission on the amendment of the relevant Rules, the Regulations and the Vets Act; and
- 6.3.8. submit within 60 days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal, a programme of action with timelines for all the corrective measures that will be undertaken in future.

7. ADMINISTRATIVE PENALTY

In terms of section 58(1)(a)(iii) read with sections 59(1)(a), 59(2) and 59(3) of the Act, the SAVC agrees that it is liable to pay an administrative penalty in the sum of R1 (One Rand).

8. TERMS OF PAYMENT

- 8.1. The SAVC will pay the administrative penalty in full to the Commission into the following account:

NAME: COMPETITION COMMISSION FEE ACCOUNT

BANK: ABSA BANK, PRETORIA

ACCOUNT TYPE: CURRENT

ACCOUNT NO: 405 077 8576

BRANCH CODE: 323345

REFERENCE: Case no. 2012Mar0150

- 8.2. the SAVC will pay the administrative penalty within 7 (seven) days from the date of the confirmation of this Consent Agreement as order of the Tribunal;
- 8.3. The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

9. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of the specific conduct mentioned in paragraph 3 of this Consent Agreement. Upon confirmation as a Consent Order by the Tribunal, the Consent Agreement concludes all proceedings between the Commission and the SAVC in respect of the Commission's investigation under case number 2012Mar0150.

FOR THE SOUTH AFRICAN VETERINARY COUNCIL:

Dated and signed at Pretoria on the ^{29th} ~~28th~~ day of July 2014.



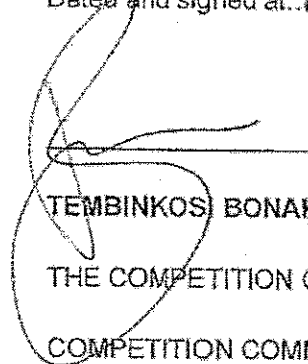
BOITSHOKO NTSHABELE

PRESIDENT OF THE SOUTH AFRICAN VETERINARY COUNCIL

THE SOUTH AFRICAN VETERINARY COUNCIL

FOR THE COMMISSION:

Dated and signed at PRETORIA on the 6th day of AUGUST, 2014.



TEMBINKOSI BONAKELE

THE COMPETITION COMMISSIONER

COMPETITION COMMISSION OF SOUTH AFRICA

ADDENDUM

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD AT PRETORIA)

CT CASE NO:

CC CASE NO: 2012MAR0150

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

THE SOUTH AFRICAN VETERINARY COUNCIL

Respondent

ADDENDUM TO THE CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND THE SOUTH AFRICAN VETERINARY COUNCIL IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED.

1. Introduction

This is an addendum to the Consent Agreement concluded between the Competition Commission ("Commission") and the South African Veterinary

Council ("SAVC") (collectively referred to as "the parties"), on 6 August 2014 in respect of a contravention of section 4(1)(b)(i) of the Competition Act no. 89 of 1998, as amended ("the Act").

2. Recordal

2.1. On 8 August 2014 the Commission filed an application to the Competition Tribunal ("the Tribunal") for an order confirming the Consent Agreement referred to above.

2.2. On 20 August 2013, the Tribunal heard the matter, through oral submissions made by the parties. The Tribunal subsequently issued a directive recommending that the administrative penalty of R1 be removed from the Consent Agreement.

3. Clauses 7 and 8 of the Consent Agreement

3.1. The parties considered the Tribunal's directive and have agreed to this addendum as follows:

3.1.1. In respect of Clauses 7 and 8 of the Consent Agreement concluded on 6 August 2014, the parties hereby agree that the SAVC will not be liable to pay an administrative penalty.

3.1.2. In this regard:

3.1.2.1. **Clause 7** is hereby replaced with the following wording: "The SAVC will not be liable to pay an administrative penalty."

3.1.2.2. **Clause 8** is hereby removed in its entirety from the Consent Agreement.

FOR THE SOUTH AFRICAN VETERINARY COUNCIL:

Dated and signed at Pretoria on the 02 day of September 2014.



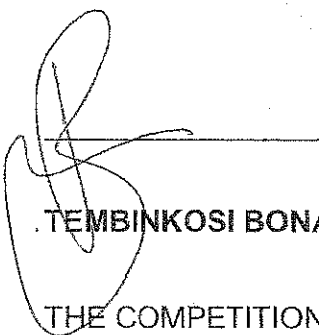
BOITSHOKO NTSHABELE

PRESIDENT OF THE SOUTH AFRICAN VETERINARY COUNCIL

THE SOUTH AFRICAN VETERINARY COUNCIL

FOR THE COMMISSION:

Dated and signed at PRETORIA on the 9th day of SEPT 2014.



TEMBINKOSI BONAKELE

THE COMPETITION COMMISSIONER

COMPETITION COMMISSION OF SOUTH AFRICA