



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO054Jun15

In the matter between:

The Competition Commission

Applicant

and

Nippon Yusen Kabushiki Kaisha Ltd

Respondent

Panel	:	Mr. A Wessels (Presiding Member) Mr. A Roskam (Tribunal Member) Ms. A Ndoni (Tribunal Member)
Heard on	:	12 August 2015
Addendum received on	:	27 August 2015
Further information received on	:	4 September 2015
Decided on	:	8 September 2015

Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Nippon Yusen Kabushiki Kaisha Ltd, annexed hereto marked "A" and addendum annexed hereto marked "B".

**Tribunal Member
Mr. A Wessels**

8 September 2015
Date

Concurring: Mr A Roskam and Ms A Ndoni

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CT Case No.

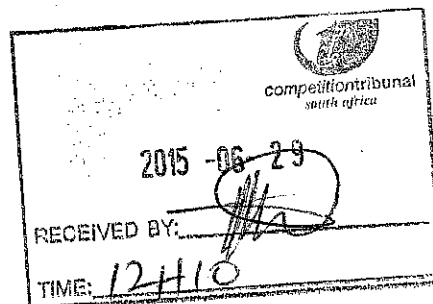
CC Case No: 2012Sep0544 and 2013Aug0401

In the matter between

COMPETITION COMMISSION

And

NIPPON YUSEN KABUSHIKI KAISHA LTD



Applicant

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 NIPPON YUSEN KABUSHIKI KAISHA LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i), (ii) AND (iii) OF THE COMPETITION ACT, 1998.

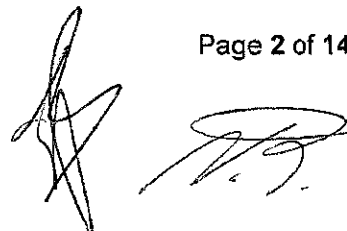
Preamble

The Competition Commission and Nippon Yusen Kabushiki Kaisha 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)(a)(iii) and 58(1)(b) of the Competition Act, Act No. 89 of 1998, as amended (the Act), in respect of contraventions 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:

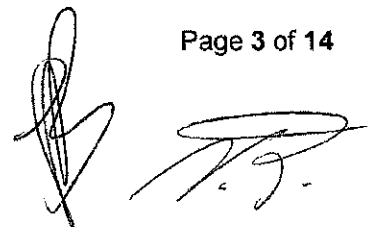
- 1.1 **"Act"** means the Competition Act, Act No. 89 of 1998, as amended;
- 1.2 **"Carriers"** means any of Mitsui O.S.K Lines Limited, Nippon Yusen Kabushiki Kaisha, Kawasaki Kisen Kaisha Ltd, Compania Sud Americana de Vapores, Hoegh Autoliners Holdings AS, Wallenius Wilhelmsen Logistics and Eukor 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 Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(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 Nippon Yusen Kabushiki Kaisha Ltd;
- 1.7 **"NYK"** means, a company duly registered and incorporated under the laws of Japan with its principal place of business at 3-2 Marunouchi 2 Chome, Chiyoda-ku, Tokyo, 100-0005, Japan;
- 1.8 **"Parties"** means the Commission and NYK;
- 1.9 **"RFQ"** means Request for Quotation;



- 1.10 "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. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 11 September 2012, the Commission initiated a complaint in terms of section 49(B)(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"), Compania Sud Americana de Vapores ("CSAV"), Hoegh Autoliners Holdings AS ("Hoegh"), Wallenius Wilhelmsen Logistics ("WWL") and Eukor Car Carriers Inc. ("Eukor").
- 2.2 On 20 August 2013, the Commission amended its complaint to include collusive tendering practices in contravention of section 4(1)(b)(iii) of the Act against the firms set out in paragraph 2.1 above.
- 2.3 The firms set out in paragraph 2.1 above shall hereinafter be referred to as the Respondents.
- 2.4 The Commission's investigation revealed the following:
- 2.4.1 During or about the period 1999 up to and including September 2012, the Respondents, 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, agreed to fix prices, divide markets and collude on certain tenders issued by vehicle, equipment, rolling construction and agricultural machinery manufacturers.

- 2.4.2 The Respondents agreed to fix prices, divide markets and collude on certain tenders issued by vehicle, equipment, rolling construction and agricultural machinery manufacturers, which include, but are not limited to, Toyota Motor Corporation and Toyota South Africa Motors (Pty) Ltd ("Toyota"), Daimler AG ("Daimler"), Volkswagen AG and Volkswagen of South Africa (Pty) Ltd ("VW"), Nissan Motor Corporation ("Nissan") through its Renault-Nissan Purchasing Organization ("RNPO"), Daihatsu Motor Co Ltd ("Daihatsu"), Honda Motor Company Ltd ("Honda"), BMW South Africa (Pty) Ltd ("BMW") and Auto Alliance (Thailand) Co. Ltd ("Auto Alliance Thailand").

3. PROHIBITED PRACTICES ENGAGED IN BY NYK

- 3.1 The Commission's investigation revealed that pursuant to the agreements set out above, NYK, together with its competitors, engaged in fourteen (14) instances of prohibited practices in relation to various vehicle manufacturers as follows:

3.1.1 Toyota 2002 agreement (Japan to South Africa)

During or about 2002 NYK concluded an agreement with MOL that NYK would not transport Japanese new vehicles into East African countries such as Madagascar, Tanzania, Mauritius and Kenya. In terms of the agreement, East African routes were allocated to MOL in exchange for NYK transporting Toyota vehicles from Japan to South Africa without competition from MOL.

3.1.2 Toyota 2008-2010 contract (South Africa to Europe)

During or about 2007 Toyota issued a RFQ for the shipment of Toyota Corollas and Toyota Hiluxes (IMVs) from South Africa to Europe. NYK, MOL, K-Line and

WWL agreed that MOL would take 50% of the business and that NYK, K-Line and WWL would share the remaining 50% equally. In response to the RFQ, the carriers tendered in such a way that the tender was awarded in line with the agreement.



3.1.3 Toyota 2011-2013 contract (South Africa to Europe)

During or about September 2008, NYK, MOL, K-Line and WWL, met and discussed how they were to respond to Toyota's price decrease requests. The carriers agreed that instead they were to seek a price increase in 2009. At the time of the negotiations the carriers were charging Toyota \$47/cbm. The carriers agreed in the September 2008 meeting that they would not charge less than \$51/cbm. There was, however, a global recession in 2009 and thus the agreement between the carriers was not implemented.

3.1.4 During or about 2010, Toyota issued a RFQ for the shipment of Toyota vehicles from South Africa to Europe and North Africa. On or about 9 December 2010, NYK, MOL, NYK, K-Line and WWL met at MOL's office and agreed that they would seek to achieve a set rate. Further, Toyota wanted the contract to run for two years instead of a year-on-year basis. The carriers eventually acceded to Toyota's request for a two year contract. Toyota eventually awarded the contract for a two year contract plus BAF to NYK, WWL, MOL and K-Line.

3.1.5 VW 2009-2012 contract (South Africa to Europe)

During or about 2008 VW issued a RFQ for the shipment of VW vehicles from South Africa to Europe and vice versa. At the time of the issuing of the RFQ, WWL held 100% of VW's business for this route. WWL contacted MOL, NYK and K-Line requesting them not to offer lower rates than WWL was offering. Further, MOL and WWL agreed that if WWL was awarded the contract it would sublet 50% of the cargo to MOL and WWL, NYK and K-Line would share the remaining 50% equally. The tender was eventually awarded and shared as agreed between



the carriers (50% of the cargo was serviced by MOL and the remaining 50% was shared equally between WWL, NYK and K Line).

3.1.6 Nissan 2009-2011 contract (South Africa to Europe and North Africa)

During or about 2008 RNPO issued a RFQ for the shipment of Nissan vehicles from South Africa to Europe and North Africa. NYK, MOL, WWL and K-Line were invited to tender by RNPO. MOL contacted NYK, WWL and K-Line to request them to respect these trade routes by either tendering at a high price or not tendering at all. In response to the request NYK, WWL and K-Line agreed to respect MOL on the basis that for a very long time, MOL held 100% of the shipment of Nissan's vehicles from South Africa to Europe and North Africa. As a result of the collusive arrangement between the carriers, MOL maintained 100% of the business.

3.1.7 Nissan 2011-2013 contract (South Africa to Europe and North Africa)

During or about 2011 RNPO issued a RFQ for the shipment of Nissan vehicles from South Africa to Europe and North Africa. MOL agreed with NYK, WWL and K-Line that they would respect the RNPO business as MOL's. NYK agreed to quote a high price and undertook to sublet the business to MOL in case RNPO awarded the business to it. WWL and K-Line also agreed to show high prices. MOL was awarded the business and maintained it.

3.1.8 BMW 2008-2013 (South Africa to North America)

From about 2001, MOL held 100% of BMW's business for the shipment of BMW vehicles from South Africa to North America. During or about 2008, MOL negotiated with BMW for a price increase. When the negotiations failed BMW issued a RFQ to MOL, NYK, K-Line and WWL. During or about April 2008 MOL met with WWL at MOL's offices and agreed that MOL would respect WWL's business for the shipment of BMW vehicles out of Europe to North America in return for WWL respecting MOL's business for the shipment of BMW and

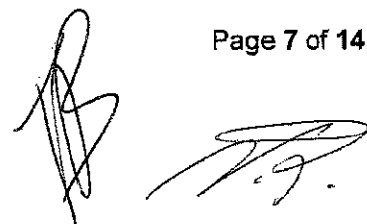
Daimler vehicles from South Africa to North America. MOL requested NYK and K-Line not to bid by indicating that they did not offer shipment services on the route or show a high price. NYK, K-Line and WWL agreed not to tender or to show a high price. The business was awarded to MOL in line with the arrangement.

3.1.9 Daimler 2008-2013 (South Africa to North America)

Daimler's business from South Africa to North America started in October 2007. MOL held 100% of the business. In 2008 Daimler issued a RFQ to NYK, K-Line, WWL and Hoegh. MOL contacted NYK, K-Line, WWL and Hoegh requesting them to respect it in respect of this business. The carriers agreed to stay away from MOL's Daimler business from South Africa to North America. The results of the tender were in line with the arrangement between the carriers.

3.1.10 Ford 2011-2012 contract (South Africa to Europe and Mediterranean)

Ford started exporting its vehicles from South Africa to Europe and Mediterranean from about October 2011. During or about 2009 Ford issued a RFQ for the shipment of Ford vehicles out of South Africa to MOL, NYK, K-Line, CSAV and Hoegh. CSAV and Hoegh were not serving the route from South Africa to Europe and Mediterranean at the time. During or about 2009 MOL contacted NYK and K-Line and requested them not to show low prices in response to the RFQ issued by Ford and that they were to use Toyota rates as a benchmark. NYK and K-Line agreed not to show low prices. Ford contacted MOL, NYK and K-Line to indicate to them that it had received a low price from one of the carriers. The carriers contacted each other and confirmed to each other that they did not show low prices. K-Line indicated to MOL that it was Hoegh and CSAV that were showing low prices. The carriers decided not to match CSAV and Hoegh's prices because they were not serving the route at the time. Ford awarded business from South Africa to Europe to Hoegh and business from South Africa to the Mediterranean to CSAV.



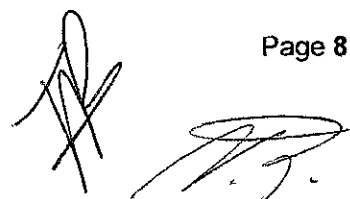
Since Hoegh and CSAV were not servicing the routes for which they were awarded the business, they contacted MOL and requested MOL to transport the cargo on their behalf. MOL agreed to transport the cargo on behalf of Hoegh and CSAV on condition that they would not tender for the same business when Ford issued another tender in 2012. CSAV and Hoegh were requested to withdraw from the South Africa to Europe and Mediterranean trade routes as their entry into these trade routes was seen as a disruption to the market. CSAV and Hoegh agreed to withdraw from these trade routes. As a punishment for disrupting the market, MOL told CSAV and Hoegh that it would not carry the cargo at the price of (\$45/cbm) at which they had won the business, which according to the rest of the carriers was a low price. MOL charged CSAV and Hoegh about \$52/cbm which was the Toyota rate.

3.1.11 Suzuki 2012-2013 contract (Japan to South Africa)

During or about 2010 NYK and MOL agreed that NYK would not participate in a Suzuki tender in line with an agreement concluded between them in 2002. At the same time K-Line and MOL agreed with each other to maintain their 50/50 split of the Suzuki business. Suzuki awarded the business to MOL and K-Line in line with the arrangement.

3.1.12 Honda 2011-2012 contract (Thailand to South Africa)

During or about 2010, Honda invited NYK, MOL, WWL and K-Line to bid for the shipment of Honda vehicles from Thailand to South Africa. MOL held 70% of the Honda business and K-Line held the remaining 30%. MOL requested NYK, K-Line and WWL to bid at a higher price or not tender at all. NYK agreed to withdraw from the tender process. WWL also withdrew. K-Line and MOL then agreed not to undercut each other. The contract was for a limited period and it was awarded to K-Line.



3.1.13 Daihatsu 2012 contract (Japan and Indonesia to South Africa)

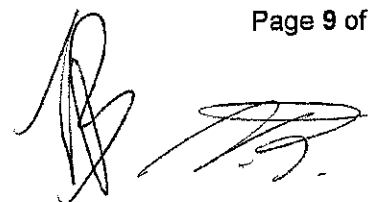
MOL held 100% of Daihatsu's business for the shipment of vehicles from Japan and Indonesia to South Africa. During or about 2011 Daihatsu invited NYK, MOL, WWL, and K-Line to submit bids for the shipment of its vehicles from Japan and Indonesia to South Africa. MOL requested and agreed with WWL, K-Line and NYK that they were to bid at a higher price than MOL. In line with the arrangement, MOL maintained its 100% share of the Daihatsu business.

3.1.14 Mitsubishi 2011-2012 contract (Japan to South Africa)

Mitsubishi requested NYK, MOL, and K-Line to submit quotes for the shipment of vehicles from Japan to South Africa. At the time of the request MOL held 100% share of the Mitsubishi business from Japan to South Africa. MOL requested NYK and K-Line to respect the fact that it held 100% of this business. NYK agreed to respect MOL. However, K-Line saw the business as a new business. K-Line submitted a lower price and MOL was asked by Mitsubishi to match K-Line's price. MOL then enquired from K-Line if that was the price that K-Line had submitted to Mitsubishi and K Line confirmed that indeed it was the price it submitted to Mitsubishi. MOL then submitted a revised price, similar to the one submitted by K-Line. Both K-Line and MOL were awarded the business.

3.1.15 Auto Alliance Thailand 1999-2012 contract (Thailand to South Africa)

In or around 1997 Mazda enquired about vehicle shipment rates for the shipment of vehicles from various shipping companies. Shipments were to be made to various destinations which included Europe, the Mediterranean, Australia and South Africa. The carriers met and discussed amongst themselves how much they would charge for the shipments to various destinations including South Africa and how they would share the business. NYK held discussions with MOL, K-Line, Höegh and WWL. As regards shipments to South Africa, NYK and MOL agreed that NYK would not present an offer to ship vehicles to South Africa through the South African trade lane. MOL also concluded an agreement with K-

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Line to offer specific rates. MOL also concluded an agreement with WWL that WWL would offer to serve the South African trade lane via Europe. MOL was awarded 100% of the Auto Alliance Thailand business from Thailand to South Africa.

3.2 The agreements concluded by NYK and its competitors constitute price fixing, market division and collusive tendering which contravene section 4(1)(b) (i),(ii) and (iii) of the Act.

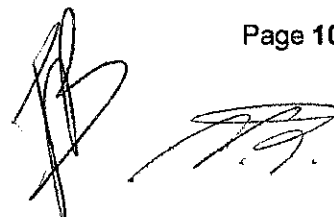
4. ADMISSION

NYK admits that it engaged in the prohibited practices set out in paragraph 3 above in contravention of section 4(1)(b) (i),(ii) and (iii) of the Act.

5. CO-OPERATION

NYK 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 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of NYK or under NYK's control, concerning the alleged prohibited practices set out in this Consent Agreement.
- 5.2 Testifying during the hearing of the complaint, if any, in respect of the prohibited practices set out in this Consent Agreement.



6. FUTURE CONDUCT

NYK agrees to:

- 6.1 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;
- 6.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 6.3 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;
- 6.4 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
- 6.5 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, NYK is liable to pay an administrative penalty.
- 7.2 NYK agrees and undertakes to pay a cumulative administrative penalty in the amount of R103 977 927.00 (One Hundred and Three million, Nine Hundred and Seventy Seven Thousand, Nine Hundred and Twenty Seven Rand).

Annexed hereto marked "A" is a **confidential** table depicting the penalty amount levied in respect of each contravention.

- 7.3 This cumulative administrative penalty represents the total penalty levied against each of the fourteen (14) incidences of prohibited practice. The administrative penalty, individually and in respect of each incidence of prohibited practice, does not exceed 10% of NYK's annual turnover in the Republic of South Africa for the financial year ended March 2012.
- 7.4 NYK 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: 4050778576

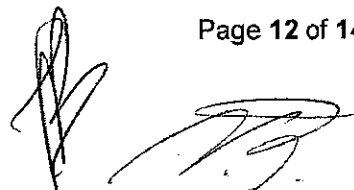
Branch Code: 323 345

Ref: 2012Sep0544/ NYK

- 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

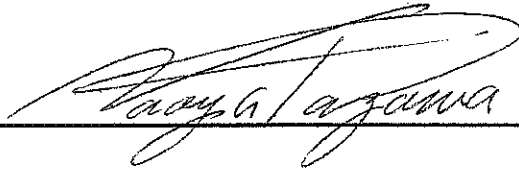
This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of the prohibited practices engaged in by NYK and its competitors as set out in paragraph 3 above and in respect of conduct spanning from the period 1999 up to



and including September 2012 that forms the subject of the investigation by the Commission under case numbers 2012Sep0544 and 2013Aug0401. No further action shall be taken against NYK for any conduct that was or could have been part of the investigation leading to the foregoing listed cases.

Dated and signed at Tokyo on the 22nd day of May 2015

For Nippon Yusen Kabushiki Kaisha Ltd



Naoya Tazawa

Representative Director

Dated and signed at PRETORIA on the 9th day of June 2015

For the Commission



Tembinkosi Bonakele

Competition Commissioner



Non-Confidential

Annexure "A"

No	Affected tender	Penalty as % of annual turnover	Penalty value (ZAR)	Annual turnover
1	TOYOTA 2002- 2012			
2	TOYOTA 2008- 2010			
3	TOYOTA 2011-2013			
4	VW 2009- 2012			
5	NISSAN 2009- 2011			
6	NISSAN 2011- 2013			
7	BMW 2008- 2013			
8	DAIMLER 2008- 2013			
9	FORD 2011- 2012			
10	SUZUKI 2012- 2013			
11	HONDA 2011- 2012			
12	DAIHATSU 2012			
13	MITSUBISHI 2011- 2012			
14	AUTO ALLIANCE THAILAND 1999- 2012			
Total penalty			R103 977 927	

"B"

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CT Case No.

CC Case No: 2012Sep0544 and 2013Aug0401

In the matter between

THE COMPETITION COMMISSION

Applicant

And

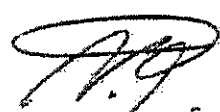

NIPPON YUSEN KABUSHIKI KAISHA LTD

Respondent

FIRST ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED 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 NIPPON YUSEN KABUSHIKI KAISHA LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (I), (II) AND (III) OF THE COMPETITION ACT, NO 89 OF 1998 AS AMENDED

This amendment to the consent agreement, which was concluded between the Competition Commission and Nippon Yusen Kabushiki Kaisha Ltd signed on 22 May and 9 June 2015 and presented for confirmation by the Competition Tribunal on 12 August 2015, sets out the terms on which the parties to the consent agreement have agreed to amend the consent agreement:

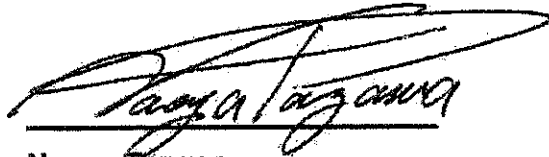
Clause 1.7 of the Consent Agreement is deleted and replaced with the following clause:

  Page 1 of 2

"1.7 "NYK" means Nippon Yusen Kabushiki Kaisha Ltd, a company duly registered and incorporated under the laws of Japan with its principal place of business at 3-2 Marunouchi 2 Chome, Chiyoda-ku, Tokyo, 100-0005, Japan."

Dated and signed at Tokyo on the 17th day of August 2015

For and on behalf of Nippon Yusen Kabushiki Kaisha Ltd who warrants that he is duly authorised to sign as such

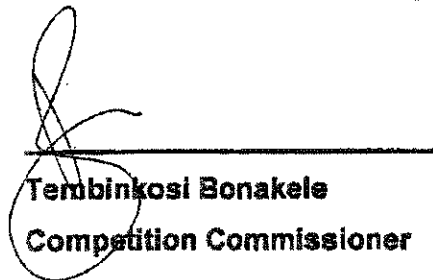


Naoya Tazawa

Representative Director

Dated and signed at PRETORIA on the 24th day of August 2015

For and on behalf of the Competition Commission



Tembinkosi Bonakele

Competition Commissioner

