



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO084Jul15

In the matter between:

The Competition Commission

Applicant

And

Wallenius Wilhelmsen Logistics AS

Respondent


Panel : A Wessels (Presiding Member)
A Roskam (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on : 12 August 2015

Decided on : 13 August 2015

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Wallenius Wilhelmsen Logistics AS, annexed hereto marked "A".



Presiding Member
Mr A Wessels

13 August 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

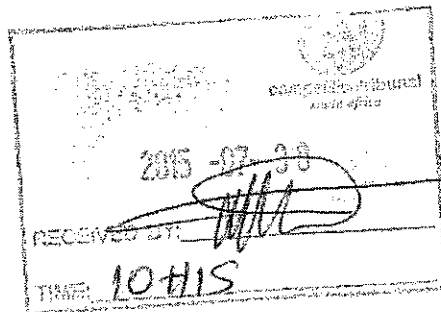
2013Aug0401

In the matter between

COMPETITION COMMISSION

And

WALLENIOUS WILHELMSSEN LOGISTICS AS



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 AND COMMISSION WALLENIOUS WILHELMSSEN LOGISTICS AS, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i),(ii) AND (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Wallenius Wilhelmsen Logistics AS 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, No. 89 of 1998, as amended, 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 Ltd, Kawasaki Kisen Kaisha Ltd, Compania Sud Americana de Vapores, Hoegh Autoliners 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 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 Wallenius Wilhelmsen Logistics AS;
- 1.7 **"Parties"** means the Commission and Wallenius Wilhelmsen Logistics AS;
- 1.8 **"RFQ"** means Request for Quotation;
- 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 DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

- 1.10 "WWL" means Wallenius Wilhelmsen Logistics AS, a company duly registered and incorporated under the laws of Norway with its principal place of business at Lysaker, Oslo, Norway.

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(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 AS ("WWL") and Eukor Car Carriers Inc. ("Eukor").
- 2.2 On 20 August 2013, the Commission amended its complaint initiation 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 Commission's investigation revealed the following:
- 2.4.1 During or about the period 1999 up to and including September 2012, the firms referred to 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, agreed 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 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, 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"), Auto Alliance (Thailand) Co. Ltd ("Auto Alliance Thailand"), Volvo Construction Equipment, Ford Motor Company of Southern Africa (Pty) Ltd, General Motors Company and Mitsubishi Motor Corporation.

3. PROHIBITED PRACTICES ENGAGED IN BY WWL

3.1. The Commission's investigation revealed that pursuant to the agreements set out above, WWL, together with its competitors, engaged in at least eleven (11) instances of prohibited practices in relation to various vehicle manufacturers as follows:

3.1.1 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. WWL, MOL, K-Line and NYK agreed that MOL would take 50% of the business and that WWL, K-Line and NYK 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 collusive arrangements.

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

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 WWL, MOL, NYK, K-Line and NYK met at MOL's offices and agreed that they would seek to achieve a rate of \$53/cbm plus BAF. 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. However, the carriers agreed that they were all to charge Toyota \$53/cbm plus BAF. Toyota eventually awarded the contract for a two year period plus BAF to WWL, NYK, MOL and K-Line.

3.1.3 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. WWL contacted MOL, NYK and K-Line and requested 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).

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

During or about September 2008 WWL and MOL met in Stockholm and agreed that MOL would respect WWL's right to ship VW's vehicles from Europe to South Africa. In line with the agreement, WWL was able to successfully tender for the shipment of VW's vehicles from Europe to South Africa without any competition from MOL. WWL was able to secure 100% of the shipment.

3.1.5 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 WWL, NYK, K-Line and MOL. During or about April 2008 WWL and MOL met 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.

3.1.6 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 WWL, NYK, K-Line and Hoegh. MOL contacted WWL, NYK, K-Line, WWL and Hoegh requesting them to respect it in respect of this business. The carriers agreed not to touch MOL's Daimler business from South Africa to North America. The results of the tender were in line with the arrangement between the carriers.

3.1.7 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. WWL, NYK, MOL and K-Line were invited to tender by RNPO. MOL contacted WWL, NYK 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 by MOL, WWL, NYK, and K-Line agreed to respect MOL on the basis that for a very long time MOL held 100% of the business for the shipment of Nissan 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.

3.1.8 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 WWL, NYK, and K-Line that they would respect the RNPO business as MOL's. NYK agreed to quote a high price. NYK also 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.

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

During or about 2010, Honda invited WWL, NYK, MOL, 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 WWL, NYK, and K-Line 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, which was for a limited period, was awarded to K-Line.

3.1.10 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 WWL, NYK, MOL, 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.

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

In 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. During or about 1999, NYK, MOL, K-Line and WWL met and discussed amongst themselves the rates they were to charge for the shipments to various destinations including South Africa and how they were to share the business. 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-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 Daihatsu business from Thailand to South Africa.

- 3.2. The agreements concluded by WWL 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

WWL 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

WWL 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 WWL or under WWL'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

WWL 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, WWL is liable to pay an administrative penalty.
- 7.2 WWL agrees and undertakes to pay a cumulative administrative penalty in the amount of **R95 695 529 (Ninety Five million, Six Hundred and Ninety Five Thousand, Five Hundred and Twenty Nine Rands)**. Annexed hereto marked "A" is a 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 eleven (11) incidences of prohibited practices. The administrative penalty, individually and in respect of each incidence of prohibited practices, does not exceed 10% of WWL's annual turnover in the Republic of South Africa for the financial year ended December 2012.
- 7.4 WWL 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/ WWL

- 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.

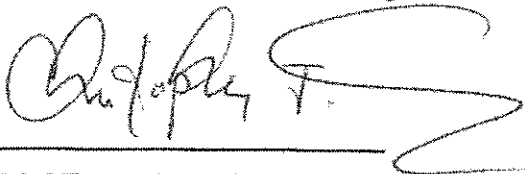
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8. Full and Final Settlement

Notwithstanding the fact that the penalty is calculated on eleven (11) incidences of prohibited practices, this agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of all prohibited practices engaged in by WWL and its competitors as set out in paragraph 3 above and concludes all proceedings between the Commission and WWL in respect of all prohibited practices spanning from the period 1999 up to and including September 2012.

Dated and signed at GLADSTONE, NJ USA on the 8 day of JULY 2015

For Wallenius Wilhelmsen Logistics AS



Chief Executive Officer

Name in Full: CHRISTOPHER J. CONNOR

Dated and signed at Pretoria on the 29th day of July 2015

For the Commission



Tembinkosi Bonakele

Competition Commissioner