



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO154Aug17

In the matter between:

The Competition Commission

Applicant

And

Rand Refinery (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member)
A Ndoni (Tribunal Member)
A Roskam (Tribunal Member)

Heard on : 13 September 2017

Decided on : 13 September 2017

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Rand Refinery (Pty) Ltd annexed hereto marked "A".

**Presiding Member
Ms Yasmin Carrim**

13 September 2017
Date

Concurring: Ms Andiswa Ndoni and Mr Anton Roskam

"A"

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

CT CASE NO: CO154Aug17

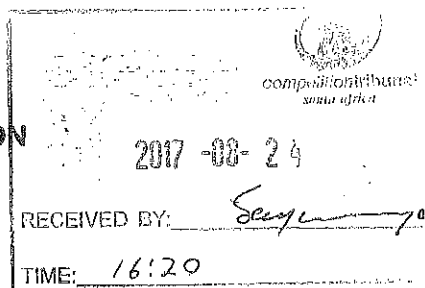
CC CASE NO: 2017Apr0008

In the matter between:

THE COMPETITION COMMISSION

AND

RAND REFINERY (PTY) LTD



Applicant

Respondent

**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
RAND REFINERY (PTY) LTD**

The Competition Commission and Rand Refinery (Pty) Ltd in the above matter hereby agree that application be made to the Competition Tribunal for an order in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), on the terms set out more fully below.


1 DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (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

[Handwritten initials]

principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

- 1.3 "Complaint" means the complaint submitted by Edward Mokhoanatshe, in his capacity as owner of Emporium for Development of Global Enterprises, in terms of section 49B(2)(b) under Commission case number 2017Apr0008.
- 1.4 "Complainant" means Edward Mokhoanatshe.
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Rand Refinery.
- 1.6 "FICA" means Financial Intelligence Centre Act, 38 of 2001
- 1.7 "Rand Refinery" means Rand Refinery (Pty) Ltd.
- 1.8 "SAAND" means South African Association of Numismatic Dealers which is a voluntary association in the South African coins industry.
- 1.9 "SA Mint" means South African Mint Company.
- 1.10 "SAPS" means South African Police Service.
- 1.11 "SARB" means South African Reserve Bank.
- 1.12 "SARS" means South African Revenues Service.
- 1.13 "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 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
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2 THE COMPLAINT AND COMPLAINT INVESTIGATION

- 2.1 On 3 April 2017, the Commission received the Complaint and decided to investigate the Complaint in terms of section 49B(3) of the Act.
- 2.2 In terms of the Complaint, the Complainant alleges that Rand Refinery makes it a condition for anyone who wishes to be appointed as a dealer of bullion Krugerrands to be a member of SAAND. The Complainant alleges that this requirement for SAAND membership is exclusionary as it prevents prospective dealers of bullion Krugerrand from being appointed as dealers in the South African numismatic industry.

Background

- 2.3 Krugerrands are South African gold coins first issued in 1967. The Krugerrand bullion coin, is linked to the daily international gold price while the proof Krugerrand is available in limited quantities with a yearly fixed price. A proof coin is punched three times and the bullion coin only once. The imagery on the proof coin is frosted whereas the bullion imagery is of the same finish as the rest of the coin. Therefore, in practice proof coins have become collectors' items whereas bullion Krugerrands are used as investment assets and as a store of wealth by consumers and other entities as their price changes is directly linked to the gold price.
- 2.4 Rand Refinery and the South African Mint jointly manage the business of the bullion Krugerrand through an incorporated joint venture named "Prestige Bullion (Pty) Ltd". Rand Refinery is tasked, by Prestige Bullion, to manage the sales and marketing of the bullion Krugerrand. To this end, Rand Refinery, on behalf of Prestige Bullion, is the sole supplier of bullion Krugerrands to primary dealers in South Africa and abroad. Proof Krugerrands are minted exclusively by the SA Mint.
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2.5 The Rand Refinery does not sell Krugerrands direct to the public but rather distributes Krugerrands through authorised primary dealers who on sell to the public. Primary Krugerrand dealers are independent firms that are not affiliated with the SARB, SA Mint or the Rand Refinery. Primary dealers range from banks and financial service providers to jewellery shops and coin dealers. Dealers wishing to purchase directly from Rand Refinery are required to tender an application with the Rand Refinery. The Rand Refinery then rejects or approves an application based on whether it is of the view that the applicant is capable of acting as a primary dealer of bullion Krugerrands.

2.6 SAAND is a voluntary association of numismatic¹ dealers. Its mandate as seen in its constitution is "the co-ordination, furtherance and promotion of the development of the Numismatic trade in South Africa, encouragement of related scientific research and the building of constructive relationships with professional numismatists internationally".² SAAND members are required to maintain high standards of integrity, guarantee authenticity of items sold and promote just and ethical practices within the Numismatic Trade

2.7 The Commission assessed the alleged conduct in terms of the section 8(c) of the Act and found the following:

2.7.1 Rand Refinery, on behalf of Prestige Bullion, as the sole supplier of bullion Krugerrands makes it a requirement for existing and/or prospective coin dealers, wishing to become primary bullion Krugerrands dealers to be members of SAAND. Rand Refinery

¹ Numismatics is defined as the study or collection of coins, tokens, paper money and related objects such as medals.

² Refer to SAAND Constitution



indicated that the requirement for SAAND membership is one of the tools that it uses to ensure that existing and prospective coin dealers are reputable businesses that have been peer-vetted by the SAAND industry association. Rand Refinery also submitted that it is important to ensure the trustworthiness of all its dealers as bullion Krugerrands are a legal tender.

- 2.7.2 The Commission found that the constitution of SAAND allows incumbent association members to frustrate new membership. This is facilitated in clause 4.1.2 of SAAND's constitution, which states:

"All applications for full membership shall be both proposed and seconded by two member firms in good standing."

- 2.7.3 In addition, this constitution allows for SAAND to deny membership to any prospective dealer of bullion Krugerrands without giving reasons as stated in clause 4.6, which reads:

"SAAND or its Executive Committee is under no obligation to disclose reasons for membership application decisions."

- 2.8 The above clauses create a barrier to entry for any new prospective dealers who might not wish to be members of SAAND or are denied membership of SAAND. In addition, the Commission found that currently there are sufficient existing legal requirements which cater for determining the authenticity of prospective dealers of bullion Krugerrands. The legal requirements that are in place for any prospective dealer to be appointed to trade in bullion Krugerrands in the numismatic industry include the following: FICA certificate; SARS registration; and SAPS clearance.

- 2.9 In all, the Commission found that the practice by Rand Refinery created



artificial barriers to entry into the primary dealers market. The Commission has found that the legal requirements are sufficient in addressing the authenticity of the dealers without requiring SAAND membership.

3 CO-OPERATION

3.1 Rand Refinery confirms that it has:

- 3.1.1** Provided the Commission with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the alleged conduct.
- 3.1.2** Ceased to engage in, and will not in future engage in, any form of prohibited practice.
- 3.1.3** That it has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts or otherwise acted dishonestly.

4 UNDERTAKINGS

- 4.1** Rand Refinery undertakes that it will remove all clauses on its application forms as well as the wording on its website that makes reference to the requirement for SAAND membership.
- 4.2** Rand Refinery undertakes that it will not, including in the future, require SAAND membership for its existing and/or prospective dealers of bullion Krugerrands.

5 GENERAL



- 5.1 Rand Refinery makes no admission of liability of any kind whatsoever for any prohibited conduct under the Act on its part.
- 5.2 This agreement, upon confirmation as an order by the Tribunal, is in settlement of and concludes the complaint between the Commission and Rand Refinery relating to the alleged contravention by Rand Refinery of sections 8(c) of the Act that is the subject of or was investigated under the Commission case number 2017APR0008.

For Rand Refinery (Pty) Ltd

Dated and signed at Germiston on the 18th day of August 2017



MR. PRAVEEN BAIJNATH (Duly Authorized)
CHIEF EXECUTIVE OFFICER – RAND REFINERY

For the Commission

Dated and signed at PRETORIA on the 23rd day of August 2017



TEMBINKOSI BONAKELE
COMMISSIONER - THE COMPETITION COMMISSION