

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CO030May19

In the matter between:

Competition Commission

Applicant

And

Sonae Arauco South Africa (Pty Ltd)

Respondent

Panel : E Daniels (Presiding Member)
: Y Carrim (Tribunal Panel Member)
: A Roskam (Tribunal Panel Member)
Heard on : 06 November 2019
Decided on : 06 November 2019

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Sonae Arauco South Africa (Pty Ltd annexed hereto marked "A".



Presiding Member
Mr Enver Daniels

06 November 2019
Date

Concurring: Ms Yasmin Carrim and Mr Anton Roskam

"A"

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


CT CASE NO: CO030May19

CC CASE NO: 2016MAR0090

In the matter between:

THE COMPETITION COMMISSION

and

 competition tribunal south africa	
2019 -05- 21	Applicant
RECEIVED BY: <u>[Signature]</u>	
TIME: <u>11:30</u>	

SONAE ARAUCO SOUTH AFRICA (PTY) LTD

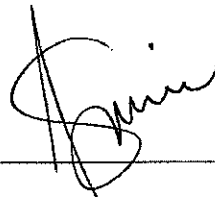
Respondent

FILING NOTICE

PLEASE TAKE NOTICE that the Applicant herewith files the following documents:

1. CT 1 (1) and 1(1) (page 2) form;
2. Consent Agreement between the Applicant and the Respondent.

SIGNED AND DATED AT **PRETORIA** ON THIS 21ST DAY OF **MAY** 2019.



COMPETITION COMMISSION

DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394 5519

Fax: (012) 394 0166

Ref: Sonae / T Nkabinde

E-mail: ThandiN@compcom.co.za

MfundoN@compcom.co.za

TO: THE REGISTRAR

Competition Tribunal

3rd Floor, Mulayo

The DTI Campus

77 Meintjies Street

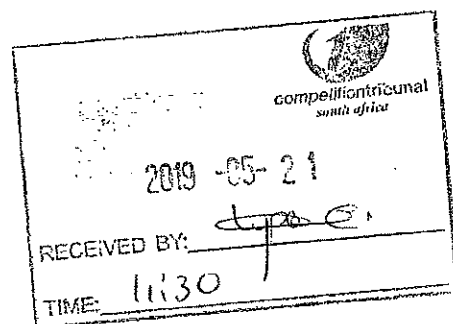
Sunnyside

Pretoria

Tel: (012) 394 3300/55

Fax: (012) 394 0169

E-mail: leratom@comptrib.co.za



AND TO: KPMG SERVICES (PTY) LTD

Respondent's Attorneys

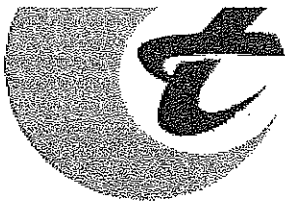
Private Bag 9

Parkview

South Africa

JOHANNESBURG

E-mail: anton.debruyn@kpmg.co.za



competitiontribunal

SOUTH AFRICA

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Form continues on Page 2.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

Date: 21 May 2019

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

Sonae Arauco South Africa (Pty) Ltd

Concerning:

(Complaint name and Commission file number:)

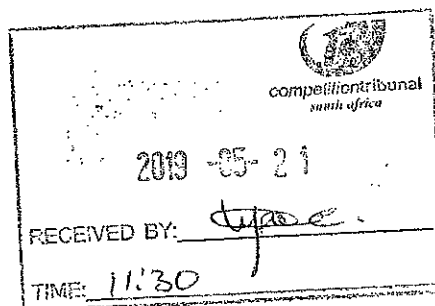
2016MAR0090

From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(i) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

Confirmation of the attached Consent Agreement between the Applicant and the Respondent as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act 89 of 1998, as amended ("the Act") in respect of a contravention of section 4(1)(b)(i) of the Act.





competitiontribunal south africa

Form CT1(1) Page 2 About this Form

- This form is issued in terms of section 50 of the Competition Act.
- This form is to be used only for a referral by the Competition Commission.
- Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.
- If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:
 - (a) a concise statement of the grounds on which the Complaint is opposed;
 - (b) the material facts or points on which the respondent relies;
 - (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.
- An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.
- Please see Competition Tribunal Rules 14 through 19.

Contacting the Tribunal

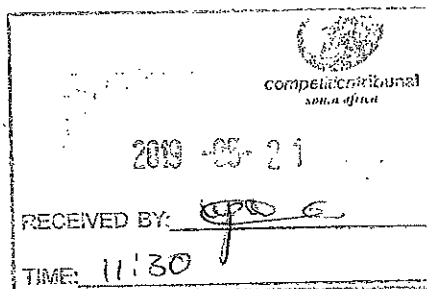
The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

Confirmation of the attached Consent Agreement between the Applicant and the Respondent as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 58(1)(b) of the Competition Act 89 of 1998, as amended ("the Act") in respect of a contravention of section 4(1)(b)(i) of the Act.



- ☒ This referral is to proceed as a consent proceeding.
- ☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

BUKHOSIBAKHE MAJENGE: CHIEF LEGAL COUNSEL (LSD)

Authorised Signature:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

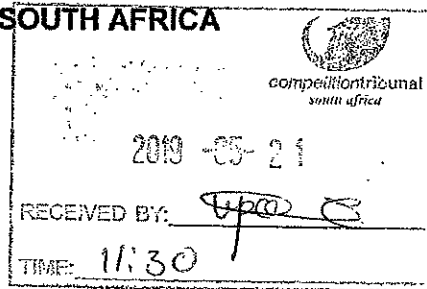
CT CASE NO: C0030May19
CC CASE NO: 2016MAR0090

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And



SONAE ARAUCO SOUTH AFRICA (PTY) LTD

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D(1) AS READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION OF SOUTH AFRICA AND SONAE ARAUCO SOUTH AFRICA (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

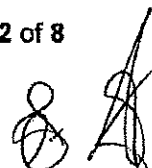
Preamble

The Competition Commission and Sonae Arauco South Africa (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D as read with section 58(1)(b) of the Act, in respect of a contravention of section 4(1)(b)(i) of the Act.

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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"Commissioner"** means the Commissioner of the Competition Commission as appointed in terms of section 22(1) of the Act;
- 1.4 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Sonae;
- 1.5 **"Parties"** means the Commission and Sonae;
- 1.6 **"PG Bison"** means PG Bison (Pty) Ltd, a private company duly registered in accordance with the Company Laws of the Republic of South Africa with its principal place of business situated at Brakpan and Lonie Roads, Boksburg, Johannesburg;
- 1.7 **"Respondents"** means Sonae and PG Bison;
- 1.8 **"Sonae"** means Sonae Arauco South Africa (Pty) Ltd, a private company duly registered in accordance with the Company Laws of the Republic of South Africa with its principal place of business at Building 18, 1st Floor Woodlands Office Park, 20 Woodlands Drive, Woodmead, Johannesburg;



and

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 the 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. INVESTIGATION AND FINDINGS OF THE COMMISSION

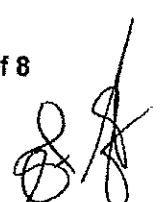
2.1. On 9 March 2016, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against the Respondents for allegedly entering into an arrangement/agreement and/or engaging in a concerted practice to fix the prices of specific wood-based panel products in contravention of section 4(1)(b)(i) of the Act.

2.2. The Commission's investigation found that:

2.2.1. Between 2009 and 2016, or parts thereof, the Respondents engaged in price fixing in respect of specific wood-based commodity products.

2.2.2. This price fixing by the Respondents affected certain price increases and prices of specific wood-based commodity products sold by the Respondents to certain customers.

2.2.3. This conduct amounts to price fixing which contravenes section 4(1)(b)(i) of the Act.



3. ADMISSION

Sonae admits that the conduct described in paragraphs 2.2.1 and 2.2.2 above is in contravention of section 4(1)(b)(i) of the Act.

4. CESSATION

Sonae confirms that it has ceased engaging in the conduct described in paragraphs 2.2.1 and 2.2.2 above.

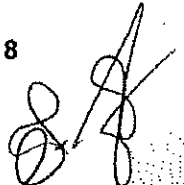
5. ADMINISTRATIVE PENALTY

5.1. Sonae agrees to pay an administrative penalty of R46 944 495 (Forty Six Million Nine Hundred and Forty-Four Thousand Four Hundred and Ninety Five Rand). This amount is less than 10% of Sonae's annual turnover for the financial year ended 2017.

5.2. Sonae will pay the abovementioned administrative penalty to the Commission in six tranches over a three year period, as follows:

5.2.1. R7 824 083 (Seven Million Eight Hundred and Twenty-Four Thousand and Eighty-Three Rand) on or before 30 June 2019;

5.2.2. R7 824 083 (Seven Million Eight Hundred and Twenty Four Thousand and Eighty Three Rand) on or before 31 December 2019;

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

- 5.2.3. R7 824 083 (Seven Million Eight Hundred and Twenty Four Thousand and Eighty Three Rand) on or before 30 June 2020;
- 5.2.4. R7 824 083 (Seven Million Eight Hundred and Twenty Four Thousand and Eighty Three Rand) on or before 31 December 2020;
- 5.2.5. R7 824 083 (Seven Million Eight Hundred and Twenty Four Thousand and Eighty Three Rand) on or before 30 June 2021; and
- 5.2.6. R7 824 080 (Seven Million Eight Hundred and Twenty Four Thousand and Eighty Rand) on or before 31 December 2021.
- 5.3. No interest will accrue on the administrative penalty set out in paragraph 5.1 for the period commencing on the date of confirmation of the Consent Agreement by the Tribunal and ending on the first anniversary of such date.
- 5.4. Thereafter, interest will be levied on the remaining outstanding balance at the prevailing interest rate as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, No 1 of 1999, as amended.
- 5.5. For the sake of clarity, notwithstanding the payment schedule set out in clause 5.2 above, Sonae may from time to time prepay the outstanding balance of the administrative penalty, in whole or in part, without advance notice to the Commission. Sonae shall furnish the Commission with proof of such prepayment or prepayments, as the case may be, at its earliest

convenience.

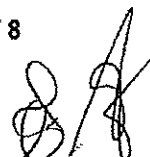
- 5.6. All payments shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4087641778
Account type:	Current Account
Branch Code:	632005
Reference:	2016MAR0090 - SONAE

- 5.7. The administrative penalty levied against Sonae will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6. CO-OPERATON

- 6.1. Sonae further undertakes to co-operate by securing the co-operation of witnesses under its control, at the Commission's request, that the Commission believes will assist it in the prosecution of this matter.
- 6.2. Such co-operation will be continuously offered by Sonae until proceedings at the Tribunal, the Competition Appeal Court, or the Constitutional Court,

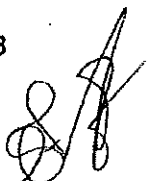


as the case may be, are completed.

- 6.3. Without derogating from the above, should Sonae encounter difficulties in securing the co-operation of any witness so requested by the Commission, which difficulties are outside of Sonae's control, Sonae will immediately inform the Commission of such difficulties to enable the Commission to take whatever legal steps may be required, in the Commission's view, to secure the cooperation of such witness.

7. AGREEMENT REGARDING FUTURE CONDUCT

- 7.1. Sonae undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act in future.
- 7.2. Sonae will implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors, and agents do not engage in contraventions of the Act in future. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act.
- 7.3. Sonae shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Sonae within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a series of loops and a final vertical stroke.

8. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of the Commission's investigation, covering all conduct investigated under, and in consequence of, the complaint initiated by the Commissioner under Case No: 2016MAR0090 against Sonae. Upon confirmation as an order of the Tribunal, this Consent Agreement concludes all proceedings between the Commission and Sonae relating to the conduct that is the subject of the Commission's investigation.

FOR SONAE:

Dated and signed at WOOBMEAD on the 13th day of MARCH 2019

FOR THE COMMISSION:


TEMBINKOSI BONAKELE
Commissioner

Dated and signed at ISITHWANE on the 28th day of MARCH 2019

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

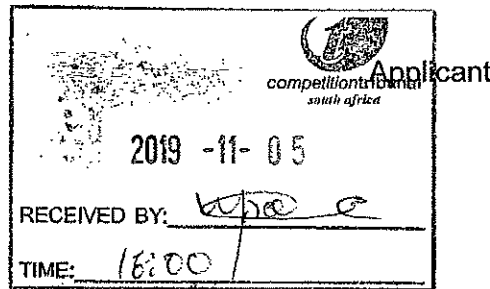
CT CASE NO: CO030MAY19

CC CASE NO: 2016MAR0090

In the matter between:

THE COMPETITION COMMISSION

and



SONAE ARAUCO SOUTH AFRICA (PTY) LTD

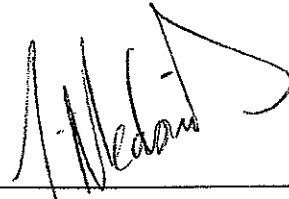
Respondent

FILING NOTICE

PLEASE TAKE NOTICE that the Applicant herewith files the following documents:

1. Addendum to Consent Agreement.

SIGNED AND DATED AT **PRETORIA** ON THIS 05th DAY OF **NOVEMBER 2019**.



COMPETITION COMMISSION

DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394 5519

Fax: (012) 394 0166

Ref: Sonae / T Nkabinde

E-mail: ThandiN@compcom.co.za

MfundoN@compcom.co.za

TO: THE REGISTRAR

Competition Tribunal

3rd Floor, Mulayo

The DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394 3300/55

Fax: (012) 394 0169

E-mail: leratom@comptrib.co.za

AND TO: KPMG SERVICES (PTY) LTD

Respondent's Attorneys

Private Bag 9

Parkview

South Africa

JOHANNESBURG

E-mail: anton.debruyn@kpmg.co.za

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: CO030MAY19
CC Case No: 2016MAR0090



In the matter between:

THE COMPETITION COMMISSION

and

SONAE ARAUCO SOUTH AFRICA (PTY) LTD

RESPONDENT

	
competition tribunal south africa	
2019 -11- 05	APPLICANT
RECEIVED BY: 	
TIME: 16:00	

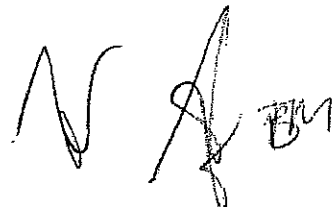
ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND SONAE ARAUCO SOUTH AFRICA (PTY)
LTD

It is hereby recorded that the Consent Agreement was concluded between the Competition Commission and Sonae Arauco South Africa (Pty) Ltd and signed on 28 March 2019. This Consent Agreement will be presented at the Competition Tribunal on 23 October 2019. The parties have agreed that the Consent Agreement be amended as follows:

1. Paragraphs 5.2.1 – 5.2.6 are amended as follows:

5.2.1 R7 824 083 (Seven Million Eight Hundred and Twenty-Four Thousand and Eighty-Three Rand) on or before 31 December 2019.

5.2.2 R7 824 083 (Seven Million Eight Hundred and Twenty-Four Thousand and Eighty-Three Rand) on or before 30 June 2020.



5.2.3 R7 824 083 (Seven Million Eight Hundred and Twenty-Four Thousand and Eighty-Three Rand) on or before **31 December 2020**.

5.2.4 R7 824 083 (Seven Million Eight Hundred and Twenty-Four Thousand and Eighty-Three Rand) on or before **30 June 2021**.

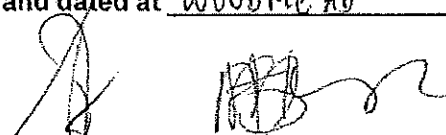
5.2.5 R7 824 083 (Seven Million Eight Hundred and Twenty-Four Thousand and Eighty-Three Rand) on or before **31 December 2021**.

5.2.6 R7 824 080 (Seven Million Eight Hundred and Twenty-Four Thousand and Eighty Rand) on or before **30 June 2022**.

2. The amounts reflected above are exclusive of the interest that would apply after a 12-month period. The provisions recorded in paragraphs 5.3 and 5.4 of the Consent Agreement will apply in this regard.
3. Save as provided above, the terms of the Consent Agreement shall remain unaltered and of full force and effect.
4. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning as defined in the Consent Agreement.

FOR SONAE ARAUCO SOUTH AFRICA (PTY) LTD

Signed and dated at WOODMEAD on the 18 day of OCTOBER 2019


Name in Full: ABILIO JORGE FERREIRA NUNES / Busisiwe Khangate

Designation: CEO / Legal manager



For the COMPETITION COMMISSION OF SOUTH AFRICA

Signed and Dated at TSHWANE on the 4th day of November 2019


Name in Full: TEMBINKOSI BONAKELE

Designation: COMMISSIONER OF THE COMPETITION COMMISSION

