



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO055Jun15

In the matter between:

The Competition Commission

Applicant

and

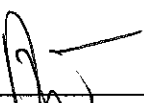
NYK Logistics & BLL (NLB) of South Africa (Pty) Ltd

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
Decided on	:	31 August 2015

Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and NYK Logistics & BLL (NLB) of South Africa (Pty) Ltd, annexed hereto marked "A" and addendum annexed hereto marked "B".



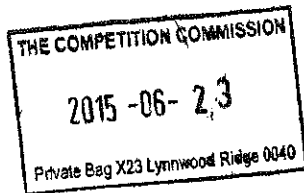
Tribunal Member
Mr. A Wessels

31 August 2015
Date

Concurring: Mr A Roskam and Ms A Ndoni

"A"

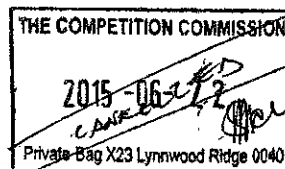
IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA



CT Case No.

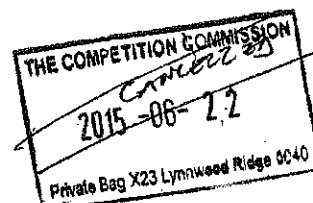
CC Case No. 2013AUG0364

In the matter between:



THE COMPETITION COMMISSION

and



Applicant

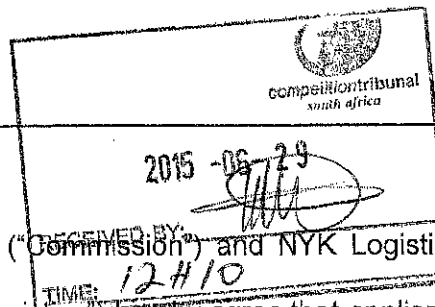
NYK LOGISTICS & BLL (NLB) OF SOUTH AFRICA
(PTY) LTD

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND NYK
LOGISTICS & BLL (NLB) OF SOUTH AFRICA (PTY) LTD IN RESPECT OF A
CONTRAVENTION OF SECTION 4(1)(b)(ii) OF THE COMPETITION ACT 89 OF
1998, AS AMENDED

PREAMBLE

The Competition Commission ("Commission") and NYK Logistics & BLL (NLB) of
South Africa (Pty) Ltd ("NYK Logistics") hereby agree that application be made to the
Competition Tribunal ("Tribunal") for the confirmation of this Consent Agreement as
an order of the Tribunal in terms of section 49D as read with sections 58(1)(a)(iii),
58(1)(b) and 59(1)(a) of the Competition Act, No 89 of 1998, as amended ("the Act")
on the terms set out below.



1. DEFINITIONS

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1 **"the Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.2 **"BLG"** means BLG Leads Logistics of South Africa (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Ground Floor, Walmer Park House, 16th Avenue, Walmer, Port Elizabeth. BLG holds 49% of the shares in NYK Logistics;
- 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;
- 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 of the Act under case number 2013Aug0364;
- 1.6 **"JV Agreement"** means the shareholders' agreement entered into by NYK and BLG on 25 March 2005 in terms of which the joint venture NYK Logistics was established;

1.7 **"Logistics Services"** means the inland transportation of motor vehicle production parts; the warehousing of motor vehicle production parts; the cross-docking of motor vehicle production parts; customs brokerage and clearance services in respect of imported motor vehicle production parts within South Africa; and forwarding services for the export of completely knocked-down motor vehicles.

1.8 **"NYK"** means Nippon Yusen Kabushiki Kaisha, a Japanese company with its principal place of business at 3 -2 Marunouchi 2 Chome, Chiyoda-Ku, Tokyo, 100 - 0005, Japan. NYK holds 51% of the shares in NYK Logistics;

1.9 **"NYK Logistics"** means NYK Logistics & BLL (NLB) of South Africa (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of South Africa, with its principal place of business at Ground Floor, Walmer Park House, 16th Avenue, Walmer, Port Elizabeth. NYK Logistics is a joint venture established by NYK and BLG. NYK holds 51% and BLG holds 49% of the shares in NYK Logistics;

1.10 **"Parties"** means the Commission and NYK Logistics;

1.11 **"Respondents"** means NYK, BLG and NYK Logistics;

1.12 **"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.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 Pursuant to a marker application received by the Commission, on 1 August 2013, the Commission initiated a complaint in terms of section 49B(1) of the Act against the Respondents.
- 2.2 NYK and BLG agreed, in terms of clauses 20 and 21 of the JV Agreement to divide markets by allocating customers and territories in the market for the supply of logistics services to German and Japanese motor vehicle and motor vehicle parts manufacturing industry, through NYK Logistics, in contravention of section 4(1)(b)(ii) of the Act.
- 2.3 The case was investigated under Commission case number 2013Aug0364.
- 2.4 The Commission's investigation found that clause 20.1.2 of the JV Agreement provides that NYK shall not compete, directly or indirectly, with BLG in providing Logistics Services to German automotive manufacturers in South Africa, without obtaining BLG's prior written consent.
- 2.5 The Commission further found that clause 20.1.3 of the JV Agreement provides that BLG shall not compete, directly or indirectly, with NYK in providing Logistics Services to Japanese automotive manufacturers in South Africa, without obtaining NYK's prior written consent.
- 2.6 Accordingly, clause 20.1.2 of the JV Agreement precludes NYK from competing



with BLG in the provision of Logistics Services to German automotive manufacturers in South Africa, while clause 20.1.3 precludes BLG from competing with NYK in the provision of Logistics Services to Japanese automotive manufacturers in South Africa.

2.7 The Commission found that the inclusion of clauses 20.1.2 and 20.1.3 in the JV Agreement constituted a collusion between NYK and BLG, through the Joint Venture.

2.8 The Commission found that the inclusion of clauses 21.2.1, 21.2.2 and 21.2.3 in the JV Agreement preclude NYK and BLG from competing with NYK Logistics in South Africa.

2.9 The Commission also found that NYK and BLG have access to each other's commercially sensitive information as a result of the cross-shareholding and/or common directorships in NYK Logistics.

2.10 Following its investigation, the Commission concluded that the abovementioned conduct constitutes a contravention of section 4(1)(b)(ii) of the Act in that NYK, BLG and NYK Logistics agreed, through clauses 20.1.2, 20.1.3, 21.2.1, 21.2.2 and 21.2.3 of the JV Agreement to divide markets by allocating customers through NYK Logistics.

2.11 As a result of the Commission's findings, on 5 September 2013, the Respondents approached the Commission to enter into a Consent Agreement.

3. AGREEMENTS

3.1 ADMISSION

NYK Logistics admits that it contravened section 4(1)(b)(ii) of the Act in the manner set out in clause 2 above.

3.2 FUTURE CONDUCT

NYK Logistics agrees to:

- 3.2.1 refrain from entering into any agreements which may lead to possible contraventions of section 4(1)(b) of the Act;
- 3.2.2 prepare and circulate a statement summarizing the content of this Consent Agreement to its employees, managers and directors within fourteen (14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 3.2.3 procure the deletion of clauses 20, 21.2.1, 21.2.2 and 21.2.3 of the JV Agreement;
- 3.2.4 procure the resignation of any director, employee, or shareholder of NYK Logistics that is a board member of or sits in the board of directors of NYK and BLG, it being the intention of the parties and Respondents that no director, employee, shareholder or member of the board of directors of NYK Logistics may be a member of or sit on the board of directors of NYK and BLG, and vice versa;
- 3.2.5 ensure that no employee, director or shareholder who serves on the

board of directors of NYK and BLG attends any board meetings of NYK Logistics and/or holds any management position or directorship in NYK Logistics, it being the intention of the parties and the Respondents that no employee, director or shareholder of NYK and BLG shall attend any board meetings of the directors of NYK Logistics, and vice versa;

- 3.2.6 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;
- 3.2.7 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of the Consent Agreement as an order of the Tribunal; and
- 3.2.8 conduct business in a competitive manner in future.



4. Full and Final Settlement

This Consent Agreement is in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the parties, relating to the alleged contravention by NYK Logistics of section 4(1)(b)(ii) of the Act, that is the subject of the Commission's investigation under Commission Case


No: 2013Aug0364.

For NYK Logistics

SHANE E. GERBER

Authorised signatory for

NYK Logistics & BLL (NLB) of South Africa (Pty) Ltd



Shane Gerber- Managing Director

OF THE SIGNATORY]

Dated and signed at PORT ELIZABETH on the 19th day of JUNE 2015.

For the Competition Commission


Tembinkosi Bonakele

Competition Commissioner

Dated and signed at PRETORIA on the 26th day of JUNE 2015.

"B"

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

CT Case No.

CC Case No: 2013Aug0364

In the matter between

THE COMPETITION COMMISSION

Applicant

And

NYK LOGISTICS & BLL (NLB) OF SOUTH AFRICA (PTY) 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 NYK LOGISTICS & BLL (NLB) OF SOUTH
AFRICA (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i),
(ii) AND (iii) OF THE COMPETITION ACT, NO 89 OF 1998 AS AMENDED**

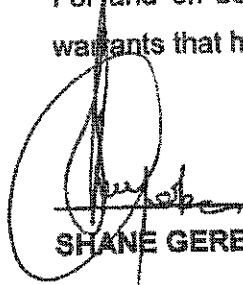
This amendment to the consent agreement, which was concluded between the Competition Commission and NYK Logistics & BLL (NLB) of South Africa (Pty) Ltd signed on 19 and 26 June 2015 and presented for confirmation by the Competition Tribunal on 12 August 2015, sets out the terms on which the parties to the consent agreement have agreed to amend the consent agreement:

Clause 3.2.3 of the Consent Agreement is deleted and replaced with the following clause:

"3.2.3 procure the deletion of clauses 20, 21.2.1, 21.2.2, 21.2.3 and 21.2.6 of the JV agreement."

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

For and on behalf of NYK Logistics & BLL (NLB) of South Africa (Pty) Ltd who warrants that he is duly authorised to sign as such.


SHANE GERBER- MANAGING 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