

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 67/CR/Jul05

In the matter between:

The Competition Commission

Applicant

and

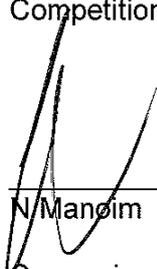
The USA Citrus Alliance

Respondent

Order

Further to the application of the Competition Commission in terms of Section 49D, in the above matter -

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondents.



N Manojim

03 August 2005
Date

Concurring: Y Carrim, M Mokuena

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Held at Pretoria

CC Case No. 2004MAY975

CT Case No.

In the matter between

The Competition Commission

Applicant

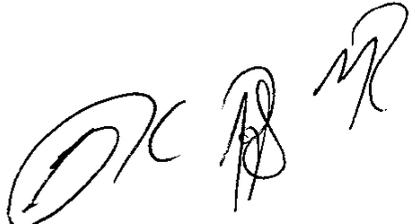
and

THE USA CITRUS ALLIANCE

Respondent

**AGREEMENT BETWEEN THE COMPETITION COMMISSION AND THE
RESPONDENT ON THE TERMS OF AN APPROPRIATE CONSENT ORDER
IN TERMS OF SECTION 49D OF THE COMPETITION ACT, 1998
(ACT NO. 89 OF 1998), AS AMENDED**

The Competition Commission ("the Commission") and the Respondent hereby agree that application be made by the Commission to the Competition Tribunal for a consent order in terms of section 49D of the Competition Act No. 89 of 1998, as amended, on the terms set out below.

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1. Definitions

For the purposes of this order the following definitions shall apply unless otherwise stated or the context otherwise requires:

- 1.1 The "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 principal place of business at Block C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 "*Competition 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 Block C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 "*Complainants*" means Diversified Citrus Marketing;
- 1.5 "*Complaint*" means the complaint lodged with the Commission by Diversified Citrus Marketing in terms of section 49B of the Act and filed with the Commission under case 2004May975;
- 1.6 "*Consent order agreement*" means this agreement duly concluded between the Commission and the Respondent by signature duly made on its behalf by its authorised representative;
- 1.7 "*Respondent*" means the USA Citrus Alliance, a voluntary association of entities/persons with its place of business at Voortrekker Street, Citrusdal, Western Cape, 7340;
- 1.8 "*USA* " means the United State of America.

2. The Complaint

- 2.1 The complainants lodged a complaint with the Commission during May 2004. In its complaint the complainants alleged that the Respondent are colluding by indirectly fixing the selling price of the citrus fruit in the USA



market, restricting the volume of citrus fruit that may be exported to the USA market, regulating the importers with whom the Respondent's members may contract and obliging the Respondent's members to use particular shipping services, fixing trading conditions and dividing a market in contravention of section 4 of the Act.

- 2.2 Following the submission of the complaint, the Commission undertook an investigation into the alleged prohibited practices of the Respondent in terms of sections 21(1)(c) and 49B of the Act.

3. The Commission's Investigation

- 3.1 The demand for citrus fruit in the USA market is very large and South African producers and exporters regard that market as a lucrative one. The USA imports citrus fruit from the other parts of the world, in particular, Southern Hemisphere countries, when citrus fruit is out of season in the USA.
- 3.2 Until 1998, South Africa did not have access to the USA citrus market, and Australia was the only Southern Hemisphere country having access to that market.
- 3.3 On gaining access to the USA market, the Western Cape Province was the only region in South Africa identified by the US Department of Agriculture as an exporter of citrus fruit to the USA as it is classified as a pest and disease free zone.
- 3.4 After entering the USA market, the South African producers and exporters of citrus fruit were not as successful as the Australians and were not achieving the expected returns. Some South African producers therefore studied the American market and discovered that their lack of success was due to the fact that South African citrus fruit was not conforming to the quality standards required by the USA market and the fact that they were competing amongst themselves and not only with the Australians. It was also discovered that some South African producers were on occasion exporting inferior quality fruit, which negatively affected the image of South African citrus fruit as a whole and placed the South African producers at the risk of losing the USA market to their competitors.
- 3.5 The stiff competition faced by South African producers of citrus fruit in the USA market prompted the formation of the Respondent to promote the common interests of its members as citrus fruit producers and exporters of citrus fruit.

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- 3.6 The main objective of the Respondent is to co-ordinate the USA market for citrus fruit, to ensure that the correct quality of citrus fruit is exported, to ensure that favourable prices are obtained, that the correct volumes are exported during certain periods for sale into the USA and to co-ordinate the demand from the USA and the supply from South Africa.
- 3.7 In order to achieve favourable prices, certain committee(s) of the Respondent discussed selling prices of citrus fruit in the USA and thereafter made recommendations to members of the Respondent, which prices such members would be expected to follow, agreed on price ranges for purposes of negotiating with importers in the USA and published indicated prices.
- 3.8 Further, in order to ensure that the correct volumes were exported during certain periods for sale into the USA and to co-ordinate the demand from the USA and the supply from South Africa, the Respondent determined the quality and volumes of citrus fruit to be exported to the USA market for its members and the members were expected to adhere to these determinations.

4. Commission's Findings

- 4.1 The Commission has concluded that the conduct of the Respondent referred to in 3.7 above constituted an agreement or concerted practice by an association of firms in a horizontal relationship which involves the direct or indirect fixing of a selling price in contravention of section 4(1)(b)(i) of the Act.
- 4.2 The Commission has further concluded that the conduct of the Respondent referred to in 3.8 above constituted an agreement or concerted practice by an association of firms in a horizontal relationship which involves the fixing of a trading condition in contravention of section 4(1)(b)(i) of the Act.
- 4.3 At the time of the Commission reaching a decision to refer this matter to the Tribunal, viz, 30 March 2004 the conduct of the Respondent was still continuing.
- 4.4 In the view of the Commission, inasmuch as the Respondent is an unincorporated association of firms and/or persons, its actions constitute the collective actions of its members for which they together bear responsibility.
- 4.5 Regarding the effect of the conduct, the Commission found that the conduct referred to in 4.1 and 4.2 above did not have the effect of substantially lessening competition in any market in South Africa.

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5. The Respondent's position

The Respondent has:

- 5.1. persistently denied any contravention of Chapter 2 of the Act;
- 5.2. taken cognizance of the Commission's opinion;
- 5.3. has conceded that it has made the cost of producing, packing, freight and overseas costs known to producers as a benchmark of what they should achieve in the USA market as a minimum;
- 5.4. agreed, without any admission of liability, and for economical reasons, to the payment of an administrative penalty and reached a settlement by means of a consent order provided for in section 49D of the Act.

6. Agreement Concerning Conduct

The Respondent:

- 6.1. has confirmed that it will refrain from any anti-competitive conduct, including, but not limited to, the conduct set out in paragraphs 3.7, 3.8 and 5.3 above.;
- 6.2. has confirmed that it will refrain from determining the volumes of citrus fruit to be exported to the USA market for its members and the members will no longer be expected to adhere to these determinations;
- 6.3. will circulate to all its members, within 1 (one) month from the date of the confirmation of this consent order, a statement conveying the substance of the order and confirming that the members are free to sell citrus fruit in the USA market at whatever price and in whatever quantities as may be acceptable to them.

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7. Full and Final Settlement

This Agreement concludes proceedings between the Competition Commission and the Respondent before the Tribunal under the Commission's case number 2004May975.

8. Claims for damages

It is recorded that ---

The complainant has been informed of the terms of this consent order agreement and does not waive any rights it may have to pursue any claim of civil damages arising out of the complaint referred to the Competition Tribunal for adjudication in this matter. The Respondent is not prepared to tender any payment of alleged damages to the complainant.

9. Administrative penalty in terms of section 59 of the Act

9.1. The Commission and the Respondent have agreed to the payment by the Respondent of the aggregate amount of R400 000,00 (Four Hundred Thousand Rand) as an administrative penalty. The penalty does not exceed 10% combined annual turnover of the Respondent for the preceding financial year.

9.2. The administrative penalty will be paid by means of 2 (two) installments of R200 000,00 (Two Hundred Thousand Rand) each, the first to be paid by the 30th July 2005 and the following installment by 30 November 2005.

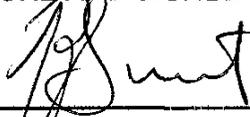
9.3. The penalty amount is payable to the Commission, whose banking details are as follows:

Bank:	ABSA
Name of Account:	The Competition Commission Fees
Branch Name:	Pretoria
Branch Code:	323345
Account Number:	4050778576



9.4. The Commission will pay over the penalty amount to the National Revenue Fund, referred to in section 59(4) of the Act.

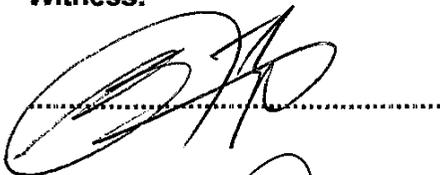
THIS DONE AND SIGNED AT CITANSON ON THIS 13 DAY OF JULY 2005.



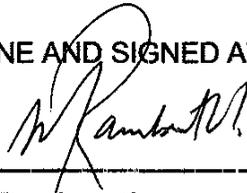
Mr. Piet Smit

As duly authorised representative of the Respondent

Witness:



THIS DONE AND SIGNED AT PRETORIA ON THIS 22nd DAY OF JULY 2005.



Mr. Shan Ramburuth

Acting Commissioner

Competition Commission

Witness:

