

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 115/CR/Dec05

In the matter between:

The Competition Commission

Applicant

and

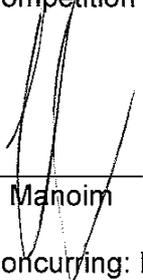
Boundless Trade 154 (Pty) Ltd trading as
Citroën South Africa

1st 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 respondent.



N Manoin

22 December 2005
Date

Concurring: L Reyburn, M Mokuena

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Held at Pretoria

CT Case No.:
CC Case No.:2004Apr951

In the matter between:

The Competition Commission

Applicant

and

Boundless Trade 154 (Pty) Ltd, trading as Citroën SA

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 ("Commission") and Boundless Trade 154 (Pty) Ltd, trading as Citroën South Africa ("Citroën"), being the Respondent in Competition Commission Case No. 2004Apr951 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.

1. DEFINITIONS

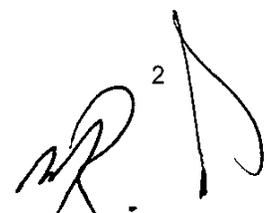
For the purposes of this agreement and any consent order pursuant hereto, the following definitions shall apply unless otherwise stated or the context otherwise requires:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;

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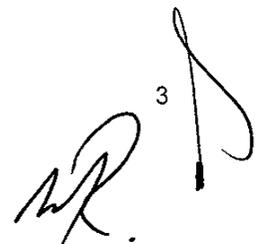
- 1.2 “*Commission*” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 “*Tribunal*” means 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;
- 1.4 “*Complaint*” means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B of the Act under case number 2004Apr951;
- 1.5 “*Consent Order Agreement*” means this agreement duly signed and concluded between the Commission and the Respondent;
- 1.6 “*Respondent*” means Boundless Trade 154 (Pty) Ltd, trading as Citroën South Africa, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its main place of business at 47 New Market Drive, North Riding

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2. BACKGROUND

- 2.1 During April 2004, following an investigation by the Commission in respect of alleged resale price maintenance, Toyota South African Motors (Pty) Ltd ("Toyota") and the Commission concluded a consent order agreement whereby Toyota, *inter alia*, agreed to pay an administrative penalty of R12 million.
- 2.2 Thereafter and during April 2004, the Commission commenced an industry-wide investigation in the motor industry to ascertain whether certain prohibited practices were taking place. The Commission summonsed Citroën and certain of its dealers to provide it with certain documentation and to appear in person.
- 2.3 The Commission's investigation under case number 2005Apr951 encompassed the following:
 - 2.3.1 The fixing of prices and/or trading conditions by manufacturers / importers and/or dealers, a contravention of section 4(1)(b) of the Act;
 - 2.3.2 Agreements between manufacturers / importers and their dealers containing restrictions that have the effect of substantially lessening or preventing competition in the market, a contravention of section 5(1) of the Act;
 - 2.3.3 Minimum resale price maintenance imposed by resale price maintenance by agreement between the manufacturers / importers and their dealers, a contravention of section 5(2) of the Act; and
 - 2.3.4 Excessive pricing by manufacturers / importers which are dominant in their respective markets, a contravention of

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section 8(a) of the Act

- 2.4 As a result of the Commission's complaint, Citroën undertook a comprehensive audit of all of its agreements, practices and procedures that may have been affected by the provisions of the Act.

3. COMMISSION'S INVESTIGATION

Pursuant to its investigation the Commission arrived at the following conclusions:

- 3.1 Citroën sells its new motor vehicles through a network of approximately 20-franchised dealerships countrywide in South Africa and Botswana.
- 3.2 Of these dealerships, 5 are independent dealerships; the respondent owns or has control in 7 dealerships; and a further 11 are owned or under the control of Associated Motor Holdings ("AMH"), with one of these 11 being a joint venture between AMH and another party in Botswana.
- 3.3 A vertical relationship as contemplated in section 1 of the Act exists between Citroën and its independent dealerships and those owned by AMH.
- 3.4 The relationship between Citroën and its dealers is governed by, amongst others, agreements in terms of which Citroën grants individual dealers a non-exclusive franchise to conduct a Citroën dealership within a geographical territory.

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- 3.5 Citroen from time to time publishes and circulates to its dealers a "recommended price list" or price structure in relation to various models of Citroën motor vehicles.
- 3.6 In March 2004 Citroën advised its dealers that it had received complaints from various dealers about other dealers' alleged discounting of the C2 model and that it (Citroën) had decided to embark on an auditing campaign in terms of which it would be visiting the various dealerships to audit their C2 transactions prior to the allocation of future C2 stock.
- 3.7 Citroën stopped the above conduct in about May 2004, as soon as it became aware that the *Commission* was of the view that its conduct contravened the Act.

4. RELEVANT PROVISIONS OF THE ACT

Section 5(2) prohibits the practice of minimum resale price maintenance. Section 5 of the Act states:

"5. Restrictive Vertical Practices Prohibited:

- (1) *An agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive, gain resulting from that agreement outweighs that effect.*
- (2) *The practice of resale price maintenance is prohibited*

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(3) *Despite subsection (2), a supplier or producer may recommend a minimum resale price to the reseller of a good or service provided –*

(a) the supplier or producer makes it clear to the reseller that the recommendation is not binding;

and

(b) if the product has its price stated on it, the words "recommended price" appear next to the stated price"

5. COMMISSION'S FINDINGS

5.1 The Commission is of the view that conduct referred to in paragraph 3 above amounts to minimum resale price maintenance prohibited by section 5(2) of the Act in that:

5.1.1. there was an understanding regarding the price(s) at which Citroën dealers would on-sell the C2;

5.1.2. the understanding was monitored by Citroën and its dealership network; and

5.1.3. the understanding was enforced by threat of sanction by Citroën for non-compliance.

5.2 In regards to the other possible contraventions of the Act which were the subject of investigation, the Commission has decided not to proceed with any referral to the Tribunal.

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6. AGREEMENT CONCERNING CONDUCT

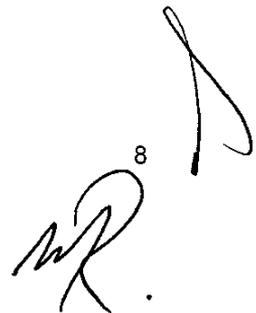
It is recorded that Citroën does not admit having contravened the Act. Nevertheless, Citroën has taken steps to bring to an end the conduct regarded by the Commission as a contravention of the Act

The Commission and Citroën agree that Citroën shall:

- 6.1 not impose a maximum discount structure on the C2 or any Citroën products;
- 6.2 take all reasonable steps to procure that the Citroën dealers terminate their part in implementing the alleged anti-competitive conduct.
- 6.3 not itself or through any officer or employee of Citroën or any person authorised to act on behalf of Citroën notify to dealers, or otherwise publish in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the resale of any Citroën products, and shall not recommend any minimum resale price for such products other than as expressly provided for in section 5(3) of the Act.
- 6.4 refrain in the future from engaging in any alleged unlawful conduct in its dealing with its dealers.
- 6.5 circulate to all its dealers within one month from the date of this agreement being confirmed as a consent order by the Tribunal, a statement conveying the substance of the consent order and advising them:
 - 6.5.1 that they are free to sell and display for sale of goods supplied by Citroën at whatever price they may choose;

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- 6.5.2 that Citroën does not in any way condone and positively discourages agreement between dealers as to the prices to be charged or quoted for goods supplied by Citroën
- 6.5.3 that Citroën will not be party to, or in any way support agreement between dealers as to the prices to be charged or quoted by the dealers for goods supplied by Citroën.
- 6.6 provide copies of this consent order to each of its present directors and during the five-year period following the confirmation of the order provide a copy to any future director on his or her appointment and in each case draw the attention of the director to the content of the order.
- 6.7 institute, within twelve months from the date of this order, a compliance programme designed to ensure that employees and dealers are informed about Citroën's obligations under competition law and the existence and substance of this consent order.
- 6.8 submit its compliance programme to the Commission, which programme will include, but not be limited to establishing a mechanism for dealers and/or consumers to report any contraventions of the Act.
- 6.9 require its employees to comply with the substance of this consent order and take appropriate disciplinary action against any employee who fails to do so.

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7. ADMINISTRATIVE PENALTY

- 7.1 In accordance with the provisions of section 58(1)(a)(iii) read with section 59(1)(a), 59(2) and (3) of the *Act*, Citroën has agreed to pay an administrative penalty in the amount of R150 000.00 (ONE HUNDRED AND FIFTY THOUSAND RANDS) in settlement of any contravention of section 5(2) of the *Act* in relation to the period from 1 September 1999 to date of signature hereof. Citroën records that the amount does not exceed 10% of its annual turnover during the preceding financial year.
- 7.2 The administrative penalty will be paid not later than thirty (30) business days after the confirmation of this agreement as a Consent Order by the Tribunal
- 7.3 The penalty amount is to be paid 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
- 7.4 The Commission will pay over the penalty amount to the National Revenue Fund, referred to in section 59(4) of the *Act*.

8. FULL AND FINAL SETTLEMENT

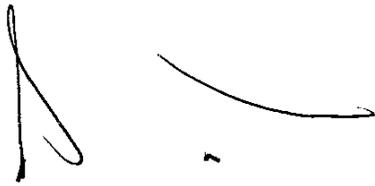
This Agreement, upon confirmation by the Competition Tribunal, concludes proceedings between the Commission and Citroën under Commission Case Number 2004Apr951.

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9. VARIATION

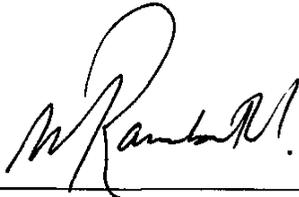
No contract varying, adding to, deleting from or canceling this agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

Dated and signed at *North Riding* on the *29* day of November 2005.



Derek Bromfield
Managing Director
Boundless Trade 154 (Pty) Ltd
t/a Citroën South Africa

Dated and signed at Pretoria on the *7th* day of *December* *MR* 2005.



Shan Ramburuth
Acting Commissioner
Competition Commission