



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 018853

In the matter between:

The Competition Commission

Applicant

and

Premier Fishing SA (Pty) Ltd

Respondent

Panel : T Madima (Presiding Member)
A Roskam (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 04 June 2014 (Last submissions received 25 June 2014)

Decided on : 09 July 2014

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".

Presiding Member
T Madima

09 July 2014
Date

Concurring: A Roskam and F Tregenna

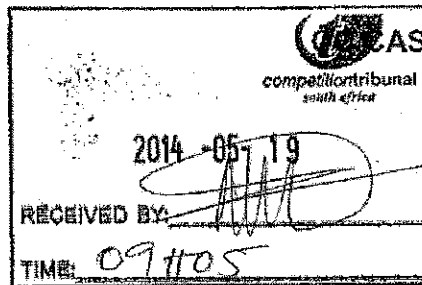
ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: _____

CASE NO: 2008JUL3827

In the matter between:



THE COMPETITION COMMISSION

Applicant

And

PREMIER FISHING SA (PTY) LTD

Respondent

FILING NOTICE

TAKE NOTICE that the Applicant herewith files the following documents:

1. CT 6 Notice of Motion and;
2. Consent Agreement between the Competition Commission and Premier Fishing SA (Pty) Ltd

DATED at PRETORIA on this the 16th day of May 2014

COMPETITION COMMISSION

Block C Dti Campus

Mulayo Building

77 Meintjies Street

Sunnyside, Pretoria

Ref: R Kariga/M Swart

Tel: 012 394 3231

Fax: 012 394 4231

romeok@compcom.co.za

MayaS@compcom.co.za

TO:

The Registrar
Competition Commission
Block C Dti Campus
Mulayo Building
Meintjies Street
Sunnyside, Pretoria
Ref: Lerato Motaung
E-mail: leratom@comptrib.co.za

AND TO:

Cliffe Dekker Hofmeyr Inc
Attorneys for the Respondent
1 Protea Place
Sandton
Andries Le Grange
Tel: 011 562 1092
E-mail: andries.legrange@dlacdh.com



competitiontribunal south africa

Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: 16-May-2014 File # CC: 2008JUL3827; CT:

To: The registrar of the Competition Tribunal

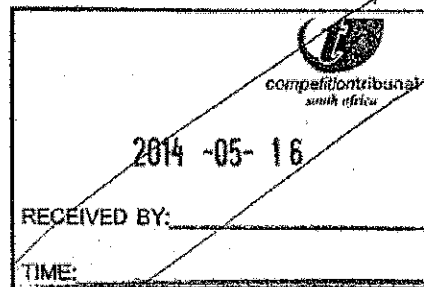
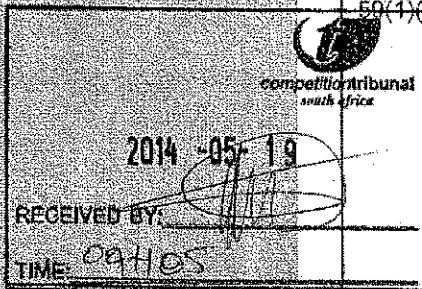
Concerning the matter between:

Competition Commission (Applicant)

and Premier Fishing SA (Pty) Ltd (Respondent)

Take notice that the Applicant intends to apply to the Tribunal for the following order:

Confirmation of the attached settlement agreement concluded between the Applicant and the Respondent as a Consent Order of the Competition Tribunal in terms of Section 49D, read with Section 58(1)(b) and Section 59(1)(a) of the Competition Act 89 of 1998, as amended.



Name and Title of person authorised to sign:

Wendy Mkwanzani - Chief Legal Counsel

Authorised Signature:

Date:

[Signature]

19/05/2014

For Office
Use Only:

Tribunal file number:

Date filed:

018853

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: _

CC Case No.: 2008JUL3827

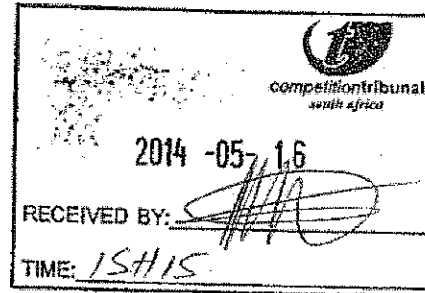
In the matter between:

COMPETITION COMMISSION

and

PREMIER FISHING SA PTY LTD

Applicant



Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND PREMIER FISHING SA PTY LTD IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTIONS 4(1)(b)(i) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

The Competition Commission ("**Commission**") and Premier Fishing SA Pty Ltd ("**Premier Fishing**") hereby agree that application be made to the Competition Tribunal ("**Tribunal**") for confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D as read with sections 58(1)(b) and section 59(1)(a) of the Competition Act 1998 (Act No. 89 of 1998), as amended, on the terms set out 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 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 Commission, appointed in terms of section 22 of the Act;
- 1.4 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B of the Act under case number 2008Jul3827 (as extended);
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Premier;
- 1.6 **"Oceana"** means Oceana Group Limited and its wholly owned subsidiary, Oceana Brands;
- 1.7 **"Oceana Brands"** means Oceana Brands Limited, a wholly owned subsidiary of Oceana, a company duly incorporated and registered in terms of the company laws of South Africa, with its principal place of business at 7th Floor, Oceana House, 25 Jan Smuts Street Foreshore, Cape Town 8001;
- 1.8 **"Parties"** means the Commission and Premier Fishing;
- 1.9 **"Premier"** means Premier Fishing SA (Pty) Ltd a company duly registered in accordance with the laws of the Republic of South Africa, with its main place of business at Quay 7, East Pier, Victoria & Alfred Waterfront, Cape Town 8000.
- 1.10 **"Respondents"** means the firms against whom an investigation was initiated, being Oceana, Foodcorp (Pty) Ltd ("Foodcorp"), Premier Fishing SA (Pty) Ltd ("Premier Fishing"), Gansbaai Marine (Pty) Ltd ("Gansbaai Marine"), the South African Pelagic Fish Processors Association ("SAPFPA") and the South African Pelagic Fishing Industry Association ("SAPFIA"), Pioneer Fishing (Pty) Ltd ("Pioneer Fishing"), Saldanha Bay Canning Co (Pty) Ltd ("Saldanha Bay Canning"), Saldanha Foods (Pty) Ltd, Westpoint Processors, Saldanha Fishing,

SA Vismeelbemarkings Maatskappy (Pty) Ltd ("SAVM"), South African Deep Sea Trawling Association and Sea Harvest Corporation (Pty) Ltd ("Sea Harvest").

2. The Complaint and Complaint Investigation

2.1 On 8 July 2008 the Commissioner initiated an investigation against Oceana, Foodcorp, Premier Fishing, Gansbaai Marine, SAPFPA and SAPFIA in respect of allegations that the above mentioned entities engaged in price fixing and/or the fixing of trading conditions and/or market allocation in contravention of section 4(1)(b) of the Act in respect of pelagic fish. Pelagic fish comprises three species of fish namely anchovy, pilchards and red eye.

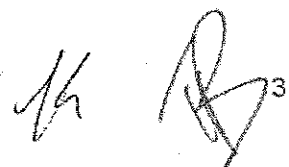
2.2 On 19 January 2010, the Commission extended the Complaint to include additional respondents, namely Pioneer Fishing, Saldanha Bay Canning, SAVM, SA Deep Sea Trawling Association and Sea Harvest. The Commission also supplemented its complaint with allegations that the Respondents had entered into exclusive supply agreements with trawlers for the supply of pelagic fish, in contravention of sections 5(1), 8(c) and 8(d)(i) of the Act as well as with an allegation of market allocation involving Oceana Group and Sea Harvest.

2.3 On 23 March 2012 the Commission extended the Complaint to include additional respondents, namely Saldanha Foods (Pty) Ltd, Westpoint Processors and Saldanha Fishing.

2.4 At the conclusion of its investigation of the above complaints, the Commission found that:

2.4.1 Raw fish price formula

2.4.1.1 There has been a longstanding practice within the small pelagic fish industry for factory owners, vessel owners / operators, skippers and crew (all acting through their respective representative bodies) to agree to an industry wide formula, linking the payment of boat owners, skippers and crew to an average annual fishmeal price achieved within the industry ("the raw fish price formula").

Handwritten signature and initials, possibly "K" and "R", with a superscript "3" next to the "R".

2.4.1.2 Oceana Brands, Foodcorp, Premier Fishing SA, Gansbaai Marine, Pioneer Fishing and Saldanha Bay Canning were at the relevant times all active in the market for processing pelagic fish into canned fish and/or fish meal and are therefore in a horizontal relationship in terms of the Act.

2.4.1.3 Oceana Brands, Foodcorp, Premier Fishing, Pioneer Fishing and Saldanha Bay Canning were at the relevant times vertically integrated and they also competed in the upstream market for catching pelagic fish.

2.4.1.4 The above firms are members of SAPFPA. During 1999 to 2010 they, in meetings of SAPFPA and through correspondence distributed by SAPFPA to its members, took decisions to implement the historical raw fish price formula (as had been agreed with vessel owners / operators, skippers and crew) as payment for the service of catching raw pelagic fish as follows:

2.4.1.4.1 SAVM calculates the average fish meal price achieved during the preceding calendar year and circulates it annually to SAPFPA and its members.

2.4.1.4.2 The raw fish price is calculated by SAVM and comprises an amount equal to 11% of the average fish meal price achieved during a calendar year and the result of the calculation is provided to SAPFPA and communicated to its members and to the representative bodies for vessel owners, skippers and crew.

2.4.1.4.3 This 11% formula comprises the following basic elements:

2.4.1.4.3.1 4.8825% for basic payment to the skipper and crew of a vessel and;

2.4.1.4.3.2 6.1175% for payment to boat owners;



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2.4.1.5 A premium was paid based on a sliding scale according to yield, known as the canning premium, in respect of pilchards of canning quality. All the market participants used the 11% raw fish price formula in respect of payment for the service of catching pelagic fish during the period of 1999 to 2010 whether they attended the SAPFPA meetings or not.

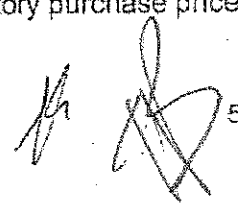
2.4.1.6 In addition to the fixing of the raw fish price formula, the factory owners, vessel owners / operators, skippers and crew (all acting through their respective representative bodies) also agreed to associated trading conditions, namely the so-called "voorskot" and "agterskot" payments. In effect these were agreements in respect of advance and catch up payments, which were also published by SAPFPA and that a canned fish bonus would be payable. This, however, differed from processor to processor.

2.4.1.7 In the course of the SAPFPA meetings and negotiations with the representative bodies of vessel owners, skippers and crew, competitively sensitive information was exchanged. This facilitated agreement in respect of the raw fish price formula and its implementation.

2.4.1.8 The above conduct amounts to a contravention of section 4(1)(b)(i) in that the respondents agreed to fix the prices payable to vessel owners/operators, skippers and crew for the services provided by each in the catching of pelagic fish. This was accomplished by continuing to implement the raw fish price formula as a basis for determining the amounts payable for the services rendered by the vessel owners/operators, skippers and crew.

2.4.2 Fixing of Prices for Canned Fish

2.4.2.1 This conduct took place in the context of processing agreements between Premier and its competitors in terms of which Premier would process fish and sell it to its competitors. The ex-factory purchase price



was linked to the list price for the sale of the canned product downstream.

2.4.2.2 As a consequence of this pricing mechanism Premier exchanged competitively sensitive information regarding output, market conditions, the list price for its products and the dates for effective list and purchase price increases with its competitors in the market for processing canned fish.

2.4.2.3 These arrangements over time resulted in price rigidity in the downstream canned pilchard market. The purchase of canned pilchard using this mechanism took place between 2002 and 2006 and amounts to a contravention of section 4(1)(b)(i) in that the agreements between the parties and the subsequent sharing of sensitive information gave rise to an indirect fixing of the price of canned fish.

2.4.3 Status of the conduct

Premier Fishing's conduct in relation to the canned fish complaint, described in 2.4.2 above, and its conduct in relation to the raw fish price formula complaint ceased in 2006 and 2010, respectively.

3. Admissions by Premier Fishing

3.1 Premier Fishing admits it was party to the conduct described in 2.4.1 and 2.4.2 and that its involvement therein contravened section 4(1)(b)(i) of the Act.

4. Administrative penalty

4.1 Premier Fishing is liable for and has agreed to pay an administrative penalty sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, in the amount of R2 121 400.00. The administrative penalty represents 2% of the total of Premier's 2006 turnover with regards to canning of fish and its 2008 turnover with regards to the processing of fishmeal.

4.2 Premier Fishing will pay an amount of R 200 000.00 (two hundred thousand Rand) within 5 business days after the confirmation of this consent agreement as

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an order of the Tribunal and the balance will be paid in equal monthly instalments over 5 (five) months, commencing one month after the first payment of R200 000.00 has been made.

- 4.3 These payments shall be made to 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: 4050778576
ACCOUNT TYPE: CURRENT ACCOUNT
BRANCH CODE: 323 345
REF: 2008JUL3827 PREMIER**

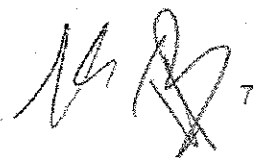
- 4.4 The payments above will be paid by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

5. Agreement concerning future conduct

- 5.1 Premier Fishing agrees to fully cooperate with the Commission in relation to the prosecution of the Complaint upon referral. Without limiting the generality of the foregoing, Premier Fishing specifically agrees, subject to the availability of evidence and witnesses, to:

- 5.1.1 testify in the complaint referral in respect of alleged contraventions covered by this Consent Agreement; and
- 5.1.2 provide witnesses to testify in the complaint referral (if any) in respect of alleged contraventions covered by this Consent Agreement; and
- 5.1.3 to the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement.

- 5.2 Premier Fishing records that it has ceased its participation in the conduct as described herein and agrees that it will in future refrain from conduct that may give rise to a contravention of section 4(1)(b) of the Act.

A handwritten signature in dark ink, appearing to be 'N. R.' followed by a stylized flourish, located in the bottom right corner of the page.

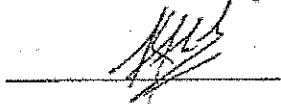
- 5.3 For this purpose, Premier Fishing shall develop and implement a comprehensive competition law compliance and training programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act.
- 5.4 Premier Fishing will submit a copy of its compliance programme to the Commission within 30 (thirty) days of the date of confirmation of the Consent Agreement by the Tribunal.

6. Full and Final Settlement

This Consent Agreement, upon confirmation as an order by the Tribunal, is in full and final settlement, between the Commission and Premier Fishing, of all proceedings investigated by the Commission under case number 2008JUL3827 (as amended or extended).

Dated and signed at ^{Cape}
Town on the 30th day of April 2014.

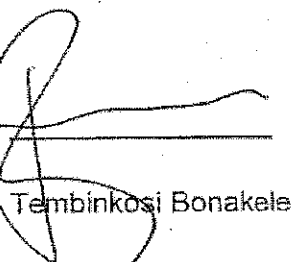
For Premier Fishing



Chief Executive Officer - Premier Fishing

Dated and signed at PRETORIA on the 8th day of May 2014.

For the Commission



Tembinkosi Bonakele

Acting Competition Commissioner