



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR067May17/SA102Jun18

In the matter between:

The Competition Commission

Applicant

And

Nauticat Charters (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member)
Y Carrim (Tribunal Member)
E Daniels (Tribunal Member)

Heard on : 26 June 2018

Decided on : 26 June 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Nauticat Charters (Pty) Ltd annexed hereto marked "A".



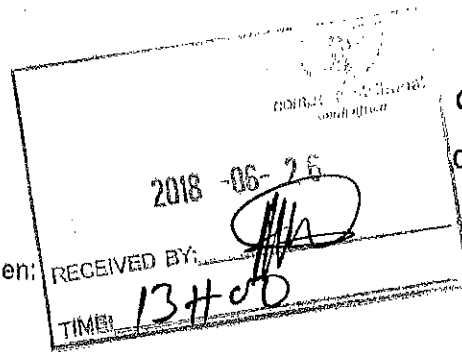
Presiding Member
Mr Norman Manoim

26 June 2018
Date

Concurring: Ms Yasmin Carrim and Mr Enver Daniels

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA



CR067May17/SA102Jun18

CT CASE NO: ~~CR070MAY17~~

CC CASE NO: 2016JUN0263

In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And

NAUTICAT CHARTERS (PTY) LTD

Respondent

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

Preamble

The Competition Commission and Nauticat Charters (Pty) Ltd ("Nauticat Charters") hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with

section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b)(i) and (iii) of the Act, on the terms set out below.

1. Definitions

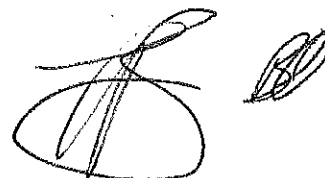
For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1 **"Act"** means the Competition Act, 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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 **"Complaint"** means the complaint submitted by RIM to the Commission on 02 June 2016 in terms of section 49B(2)(b) of the Act;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Nauticat Charters;
- 1.6 **"Nauticat Charters"** means Nauticat Charters (Pty) Ltd, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 87 Victoria Avenue, Houtbay.
- 1.7. **"Parties"** means the Commission and Nauticat Charters;
- 1.8 **"RIM"** means Robben Island Museum;
- 1.9 **"Tender"** means tender number: 01-2015/2016

- 1.10 "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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. BACKGROUND TO THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 02 June 2016, Robben Island Museum ("RIM") submitted a complaint to the Competition Commission ("Commission") in terms of section 49B(2)(b) of the Act against Thembekile Maritime Services (Pty) Ltd, Silverbuckle Trade 21 CC t/a Yacoob Yachts, Nauticat Charters (Pty) Ltd, Ferry Charters (Pty) Ltd and Heritage Charters CC t/a Tigger 2 Charters for allegedly colluding when bidding for a tender number: 01/2015-2016 issued by RIM to ferry passengers from V & A Waterfront to Robben Island and back in contravention of section 4(1)(b)(i) and (iii) of the Act.
- 2.2 The Commission's investigation found that in or around 22 September 2015, the Respondents met at Cape Town Fish Market coffee shop ("the coffee shop meeting") after attending RIM's compulsory briefing session. During the above meeting the Respondents discussed and agreed that their prices should be increased when bidding for the tender issued by RIM. This conduct is in contravention of section 4(1)(b)(i) and (iii) of the Act.
- 2.3 The tender was for being listed in the database of RIM as preferred service providers to ferry passengers from V & A Waterfront to Robben Island and from Robben Island to V & A waterfront for a period of twelve (12) months
- 2.4 Following the coffee shop meeting, Thembekile and Nauticat Charters increased their prices to R18 000 per trip for 140 passengers. Ferry Charters did not alter its price of R18 000 per trip for 140 passengers. This resulted in Thembekile, Nauticat Charters and Ferry Charters quoting the same price of R18 000 for a trip of 140 passengers.

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- 2.5 In addition to agreeing to increase their prices to R18 000 per trip of 140 passengers, Nauticat Charters and Thembekile agreed to charge R80 per person for additional passengers as their vessels can take more than 140 passengers.
- 2.6 Silverbuckle and Tigger 2 Charters agreed to increase their prices, but did not increase to the level of the other respondents as their vessels are smaller. Silverbuckle increased its price from R7 750 to R8 775 for a 65 passenger vessel per trip while Tigger 2 Charters increased its price from R11 500 to R12 650 for a 65 passenger vessel per trip.
- 2.7 On 30 May 2017, the Commission referred the complaint to the Tribunal for adjudication.
- 2.8 This conduct constitutes price fixing and collusive tendering which contravenes section 4(1)(b)(i) and (iii) of the Act.

3. ADMISSION

Nauticat Charters admits that it engaged in price fixing and collusive tendering in contravention of section 4(1)(b)(i) and (iii) of the Act.

4. FUTURE CONDUCT

Nauticat Charters agrees to:

- 4.1 prepare and circulate a statement summarizing the contents 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;
- 4.2 refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future;



- 4.3 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;
- 4.4 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and
- 4.5 Undertakes henceforth to engage in competitive practices.

5. ADMINISTRATIVE PENALTY

- 5.1 Nauticat Charters agrees that it is liable to pay an administrative penalty of **R422 083. 87 (Four Hundred, Twenty Two Thousand, Eighty Three Rand and Eighty Seven Cents)**. This amount does not exceed 10% of Nauticat Charters' annual turnover for the financial year ended February 2017.
- 5.2 This amount will be paid in twelve instalments of **R35 173.66 (Thirty Five Thousand, One Hundred and Sixty Six Cents)**.
- 5.3 The first instalment will be paid on or before 30 June 2018 and subsequent equal instalments will be paid on or before the end of each successive months.
- 5.4 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fees Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 632005

Ref: 2016Jun0263/ Nauticat Charters

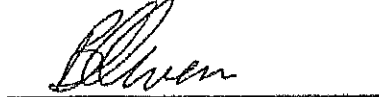
- 5.4 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

6. Full and Final Settlement

This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2016Jun0263 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Nauticat Charters.

Dated and signed at HOUT BAY on the 21ST day of JUNE 2018

For Nauticat Charters

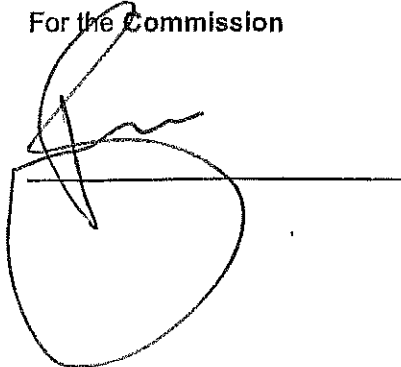


Member

Name in Full: BRENDA OWEN

Dated and signed at PRETORIA on the 26th day of June 2018

For the Commission



Tembinkosi Bonakele
Competition Commissioner



