



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO168Aug18

In the matter between:

The Competition Commission

Applicant

And

Karan Beef (Pty) Ltd

Respondent

Panel : M Mazwai (Presiding Member)
M Mokuena (Tribunal Member)
A Roskam (Tribunal Member)

Heard on : 26 September 2018

Decided on : 26 September 2018

Consent Agreement

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


Presiding Member
Ms Mondo Mazwai

26 September 2018
Date

Concurring: Mrs Medi Mokuena and Mr Anton Roskam

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

2018-08-31
RECEIVED BY: *Mq Lente*
TIME: *11:35*

competition tribunal of south africa

CT CASE NO: C0168Aug18

CC CASE NO: 2017SEP0027

In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And

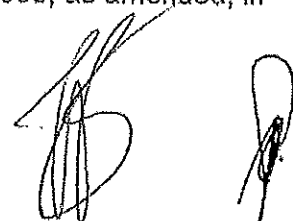
KARAN BEEF (PTY) LTD

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 KARAN BEEF, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(ii) OF THE COMPETITION ACT 89 OF 1998

Preamble

The Competition Commission ("Commission") and Karan Beef (Pty) Ltd, ("Karan Beef") 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)(b) of the Competition Act no. 89 of 1998, as amended, in respect of a contravention of section 4(1)(b)(ii) of the Act.



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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 "Commissioner" means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act;
- 1.4 "I&J" means Irvin & Johnson Limited, a company duly registered in accordance with the laws of the Republic of South Africa with its principal place of business at 1 Davidson St, Woodstock, Cape Town, 7925, Western Cape.
- 1.5 "Karan Beef" means Karan Beef (Pty) Ltd, a company duly registered in accordance with the laws of the Republic of South Africa with its principal place of business at 1 Mury Street, Balfour, 2410, Mpumalanga.
- 1.6 "I&J Investigation" means the investigation initiated on 12 September 2017, being investigated under case number 2017SEP0027 and which is the subject of this consent agreement.
- 1.7 "Respondents" means Karan Beef (Pty) Ltd and Irvin & Johnson Limited, being Respondents in the I&J Investigation.



- 1.8 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Karan Beef.
- 1.9 "Contract products" means the various products produced by Karan Beef for I & J and products which Karan Beef was required to cease to produce in terms of the Manufacturing Agreement.
- 1.10 "Feedlots Investigation" means the investigation initiated on 20 February 2018, being investigated under case number 2013Feb0069.
- 1.11 "Manufacturing Agreement" means manufacturing agreement entered into by Karan Beef and I&J, including all amendments pertaining thereto.
- 1.12 "Parties" means the Commission and Karan Beef.
- 1.13 "SAFA" means the South African Feedlot Association, a voluntary association established with the aim and objective of ensuring standards and the use of good husbandry practices of animals in all types of feedlots.
- 1.14 "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 the 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

2. RECORDAL OF INVESTIGATION AND FINDINGS OF THE COMMISSION



- 2.1 On 20 February 2013, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against SAFA and certain feedlots for possible contravention of section 4(1)(b)(i) of the Act. This investigation is being investigated under case number 2013Feb0069. Karan Beef is one of the Respondents in the Feedlots Investigation.
- 2.2 On 14 June 2017, the Commission conducted a search and seizure operation at the premises of a number of feedlots in the Feedlots Investigation including the premises of Karan Beef.
- 2.3 On 12 September 2017, the Commissioner initiated another complaint in terms of section 49B(1) of the Act against the Respondents for allegedly entering into an agreement and / or engaging in a concerted practice to divide the market by allocating customers and specific types of goods in contravention of section 4(1)(b)(ii) of the Act.
- 2.4 The decision to initiate the I&J Investigation was based on information obtained during the search and seizure conducted during the Feedlots Investigation. The case is being investigated under case number 2017SEP0027.
- 2.5 The I&J Investigation revealed the following:

- 2.5.1 On 26 June 2000, the Respondents concluded a Manufacturing Agreement. In terms of this Manufacturing Agreement, Karan

Beef undertook to cease the manufacture of processed beef products for its own account and to instead utilise its skills in the manufacture of processed beef products on behalf of I&J.

2.5.2 The Respondents agreed to amend the Manufacturing Agreement entered into in 2002. In terms of the Amended Manufacturing Agreement, Karan Beef will not manufacture, market or produce any products that are the same or similar to the contract products or any other processed beef products that it manufactures for I&J.

2.5.3 Further, the Amended Manufacturing Agreement states that Karan Beef will manufacture certain products that are similar to contract products but of different recipes which it will only supply to restaurants, delicatessens, fast food outlets and caterers.

2.5.4 This agreement amounts to market division by allocation of customers and specific types of goods in contravention of section 4(1)(b)(ii) of the Act.

3. ADMISSION

Karan Beef admits that it has acted in contravention of section 4(1)(b)(ii) of the Act as described in part 2 above.



4. ADMINISTRATIVE PENALTY

4.1. Karan Beef agrees that it is liable to pay an administrative penalty of R2 700 000 (Two Million Seven Hundred Thousand Rands) . This amount does not exceed 10% of Karan Beef's annual turnover for the financial year ended July 2015.

4.2. Karan Beef agrees to pay the administrative penalty as stipulated in the above paragraph, 30 days from the date of confirmation of this Consent Agreement by the Tribunal.

4.3. The payment shall be made into the Commission's bank account, details which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4087641778
Account type:	Current Account
Branch Code:	632005
Reference:	2017SEP0027KARAN BEEF

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

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1. Karan Beef undertakes to refrain from engaging in any anti-competitive conduct



In contravention of the Act in future.

- 5.2. Karan Beef will develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all employees, members and management do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection and monitoring and detection of any contraventions of the Act.
- 5.3. Karan Beef shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed by Karan Beef within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.
- 5.4. Karan Beef undertakes to submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of this Consent Agreement as an order to the Tribunal.
- 5.5. Karan Beef hereby commits itself to competitive practices.

6. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of the Commission's investigations defined in the definitions clause and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Karan Beef relating to the conduct that is the subject of the Commission's investigations defined in the definitions clause.

For KARAN BEEF

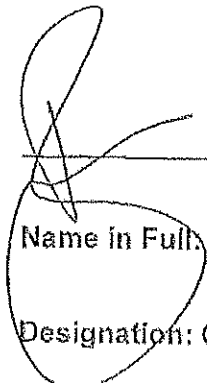

Signed and Dated at Lilly Reef on the 27 day of July 2018.

Name in Full: Arnold Francois Pistorius

Designation: C.E.O. Karan Beef

For the Competition Commission

Signed and Dated at PRETORIA on the 22 day of August 2018.


Name in Full: **TEMBINKOSI BONAKELE**

Designation: **COMMISSIONER OF THE COMPETITION COMMISSION**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: *CD167Aug18*
CC CASE NO: 2017SEP0027

In the matter between:

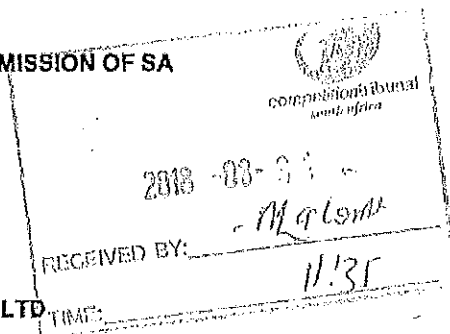
COMPETITION COMMISSION OF SA

Applicant

And

KARAN BEEF (PTY) LTD

Respondent



ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND KARAN BEEF (PTY) LTD DATED 27 JULY 2018.

Preamble

It is hereby recorded, by agreement between the parties that the Consent Agreement concluded between the Competition Commission ("Commission") and which Karan Beef (Pty) (Ltd) signed on 27 July 2018, be supplemented as recorded below.

1. In respect of Paragraph 4.2 is recorded as follows:

4.2. Karan Beef has paid the amount as stipulated in paragraph 4.1 above on the day on which Karan Beef signed the Consent Agreement.

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement concluded between the Commission and Karan Beef and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning as defined in the Consent Agreement.

For KARAN BEEF



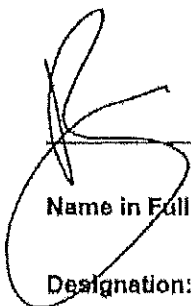
Signed and Dated at City Deep on the 28 day of August 2018.

Name in Full: Arnold Francois Pretorius

Designation: C.E.O.

For the Competition Commission

Signed and Dated at PRETORIA on the 24th day of August 2018.



Name in Full: TEMBINKOSI BONAKELE

Designation: COMMISSIONER OF THE COMPETITION COMMISSION