



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR227Mar17/SA158Aug18

In the matter between:

The Competition Commission

Applicant

And

Kawasaki Kisen Kaisha Ltd

Respondent

Panel : N Manoim (Presiding Member)
A Ndoni (Tribunal Member)
H Cheadle (Tribunal Member)

Heard on : 10 October 2018

Decided on : 10 October 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Kawasaki Kisen Kaisha Ltd annexed hereto marked "A".



Presiding Member
Mr Norman Manoim

10 October 2018
Date

Concurring: Ms Andiswa Ndoni and Mr Halton Cheadle

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD AT PRETORIA)

CT CASE NO (CONSENT ORDER):

CC CASE NO (REFERRALS): CR227MAR17, CR014APR17, CR013APR17,
CR012APR17, CR011APR17, CR010APR17,
CR009APR17, CR008APR17, CR007APR17,
CR006APR17, CR005APR17. CR046MAY17,
CR045MAY17, CR044MAY17, CR043MAY17

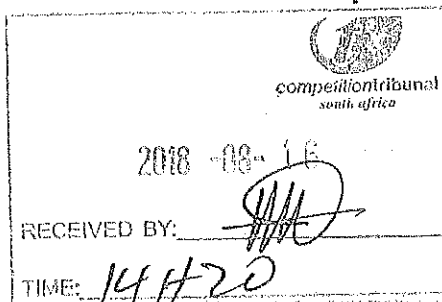
CC CASE NO: 2012Sep0544/2013Aug0401

In the matter between:

THE COMPETITION COMMISSION

and

KAWASAKI KISEN KAISHA LTD



Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND KAWASAKI KISEN KAISHA LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(i), (ii) AND (iii) OF THE COMPETITION ACT, NO. 89 OF 1998

Preamble

The Competition Commission and Kawasaki Kisen Kaisha Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D read with sections 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), (ii) and (iii) of the Competition Act, No. 89 of 1998 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 initiated by the Commissioner in terms of section 49B (1) of the Act under case numbers 2012Sep0544 and 2013Aug0401;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and K Line;
- 1.6 **"K Line"** means Kawasaki Kisen Kaisha Ltd, a company duly incorporated in Japan with its principal place of business at Iino Building, 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540;
- 1.7 **"K Line Shipping (South Africa)"** means K Line Shipping (South Africa) (Pty) Ltd, a company duly incorporated in South Africa with its principal place of business at Rennies House 1, Kingsmead Boulevard, Kingsmead Office Park, Durban;
- 1.8 **"Prohibited Practice"** means a practice prohibited in terms of Chapter 2 of the Act;
- 1.9 **"Respondents"** means a term used in this Consent Agreement, means/includes K Line, Mitsui O.S.K. Lines Ltd (**"MOL"**), Nippon Yusen Kabushiki Kaisha Ltd (**"NYK"**), Wallenius Wilhelmsen Logistics AS (**"WWL"**), Hoegh Autoliners Liners AS (**"Hoegh"**) and Eukor Car Carriers Inc (**"Eukor"**); and

- 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 11 September 2012, the Commissioner initiated a complaint against the Respondents for alleged price fixing and market division in the market for the provision of transportation services for motor vehicles, equipment and/or machinery by sea to and from South Africa, in contravention of section 4(1)(b)(i) and (ii) of the Act under case number 2012Sep0544.
- 2.2 On 20 August 2013, the Commissioner amended the complaint initiated under case number 2013Aug0401, to add various subsidiaries and agents of the Respondents in the complaint initiation as well as to add the contravention of section 4(1) (b) (iii) of the Act.
- 2.3 Following the aforesaid complaint initiation which was subsequently amended, the Commission conducted an investigation and concluded that there was pervasive anti-competitive conduct in the market for the provision of transportation services for motor vehicles, equipment and/or machinery by sea to and from South Africa, in contravention of section 4(1)(b)(i) and (ii) of the Act.
- 2.4 The Commission's investigation relates to tenders for the provision of transportation services of motor vehicles/machinery and/or equipment (including new and used vehicles and new and used rolling construction and agricultural machinery) by sea to and from South Africa, which tenders were issued, *inter alia*, by the following firms: Auto Alliance Thailand (Mazda); BMW; Daimler; Daihatsu; Ford Motor Company; Honda; Maruti Suzuki; Mitsubishi Motor Company; Nissan Motor Corporation; Nissan (Renault-Nissan Purchasing Organisation); Suzuki; Toyota Motors Asia Pacific; Toyota Motor Corporation, Toyota Tsusho and Toyota South Africa Motors.

3. REFERRALS AGAINST K LINE

- 3.1 The Commission has referred fifteen (15) separate instances of Prohibited Practices against K Line arising out of the Commission's investigations ("the

referrals"). K Line admits to have colluded in eight (8) instances of Prohibited Practices. Below these eight (8) instances of Prohibited Practices are described. K Line neither admits nor disputes the time periods indicated to be applicable to the conduct described and they are recorded as findings of the Commission's investigation:

3.1.1 HONDA (THAILAND TO SOUTH AFRICA) (Tribunal Case Number: CR007APR17)

From around August 2010 to 6 September 2012, K Line, MOL, NYK and WWL engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender in respect of a tender issued by Honda for the transportation of Honda motor vehicles from Thailand to South Africa by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) related to Honda motor vehicles.

3.1.2 SUZUKI MOTOR CORPORATION (JAPAN TO SOUTH AFRICA) (Tribunal Case Number: CR009APR17)

From around 2006 to 6 September 2012, K Line, MOL and NYK engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender collusively in respect of tenders issued by Suzuki Motor Corporation for the transportation of Suzuki motor vehicles from Japan to South Africa by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Suzuki motor vehicles.

3.1.3 MARUTI SUZUKI (INDIA TO SOUTH AFRICA) (Tribunal Case Number: CR011APR17)

From around 2011 to 6 September 2012, K Line, MOL and NYK engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender collusively in respect of tenders issued by Maruti Suzuki for the transportation of Suzuki motor vehicles from India to South Africa by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Suzuki motor vehicles.

3.1.4 NISSAN MOTOR CORPORATION (INDIA TO SOUTH AFRICA) (Tribunal Case Number: CR013APR17))

From about 2010 to 6 September 2012, K Line, MOL, NYK, Hoegh, WWL and Eukor engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender collusively in respect of tenders issued by Nissan Motor Corporation for the transportation of Nissan motor vehicles from India to South Africa) by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Nissan motor vehicles.

3.1.5 TOYOTA SOUTH AFRICA MOTORS ("TSAM") (SOUTH AFRICA TO EUROPE, NORTH AFRICA (MEDITERRANEAN COAST) AND THE CARIBBEAN ISLANDS VIA EUROPE) (Tribunal Case Number: CR277MAR17)

From around 2002 to 6 September 2012, K Line, MOL, NYK and WWL engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender collusively in respect of tenders issued by TSAM for the transportation of Toyota motor vehicles from South Africa to Europe, North Africa (Mediterranean Coast) and the Caribbean Islands via Europe, West Africa, East Africa and the Red Sea by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Toyota motor vehicles.

3.1.6 TOYOTA MOTORS ASIA PACIFIC ("TMAP") (INDIA TO SOUTH AFRICA) (Tribunal Case Number: CR006APR17)

From around 2010 to 6 September 2012, K Line, MOL and NYK engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender collusively in respect of a tender issued by TMAP for the transportation of Toyota motor vehicles from India to South Africa by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Toyota motor vehicles.

3.1.7 TOYOTA TSHUSHO (JAPAN TO SOUTH AFRICA) (Tribunal Case Number: CR043May17)

From around April 2012 to 6 September 2012, K Line and MOL engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender collusively in respect of a tender issued by Toyota Motor Corporation for the transportation of Toyota motor vehicles from Japan to South Africa by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Toyota motor vehicles.

3.1.8 TOYOTA AND FORD (JAPAN TO WEST AFRICA AND SOUTH AFRICA TO WEST AFRICA) (Tribunal Case Number: CR012APR17)

From around 2002 to 6 September 2012, K Line and MOL engaged in one (1) instance in that they agreed and/or engaged in concerted practices, as competitors, to fix prices, divide markets and tender collusively in respect of tenders issued by Toyota Motor Corporation and Ford Motor Company for the transportation of Toyota and Ford motor vehicles from Japan to West Africa and South Africa to West Africa by sea. The conduct is in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act related to Toyota motor vehicles.

4. ADMISSION

K Line admits to having engaged in the Prohibited Practices set out in 3.1.1 to 3.1.8 of this Consent Agreement, in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

5. CO-OPERATION

5.1 K Line agrees to fully cooperate with the Commission in its investigation and prosecution, if any, of the remaining Respondents in the Commission's Complaint investigations. The cooperation by K Line includes, but not limited to:

5.1.1 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of K Line or under K Line's control, concerning the alleged Prohibited Practices set out in this Consent Agreement.

5.1.2 Testifying during the hearing of the Complaint, if any, in respect of the Prohibited Practices set out in this Consent Agreement.

6 FUTURE CONDUCT

K Line agrees to:

- 6.1 prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within thirty (30) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.2 refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 6.3 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;
- 6.4 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
- 6.5 undertake henceforth to engage in competitive practices.

7 ADMINISTRATIVE PENALTY

- 7.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, K Line is liable to pay an administrative penalty.
- 7.2 K Line agrees and undertakes to pay a cumulative administrative penalty in the amount of **R98 928 170.05 (Ninety-Eight Million, Nine Hundred and Twenty-Eight Thousand, One Hundred and Seventy Rand and Five cents)**.
- 7.3 The administrative penalty, individually and in respect of each incidence of Prohibited Practice, does not exceed 10% of K Line's turnover in the Republic of South Africa for the financial year ended 2012.

7.4 K Line will pay the amount set out in paragraph 7.2 above to the Commission within thirty (30) calendar days of the confirmation of this Consent Agreement as an order of the Tribunal.

7.5 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4087641778

Branch code: 632005

Ref: 2012Sep0544/2013Aug0401 K Line

7.6 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.

8 Full and Final Settlement

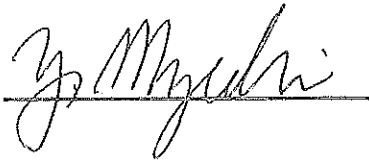
This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of all the Prohibited Practices engaged in by K Line and its competitors under the Commission's Complaint and the referrals and concludes all proceedings between the Commission and K Line, including its group entities and subsidiaries, such as K Line Shipping (South Africa), in so far as it relates to the Commission's Complaint and the referrals.

For the avoidance of any doubt, no further action shall be taken against K Line and its group entities and subsidiaries for any conduct that was or could have been part of the investigation of Commission's Complaint and the referrals.

Dated and signed at Tokyo, Japan on the 7th day of August 2018.

For Kawasaki Kisen Kaisha Ltd

Representative Director, Chief Compliance Officer:
Yukikazu Myochin



Dated and signed at PRETORIA, SOUTH AFRICA on the 15th day of August 2018.

For the Competition Commission

Commissioner:
Tembinkosi Bonakele

