



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO045Jun16

In the matter between:

The Competition Commission

Applicant

And

Eukor Car Carriers Inc.

Respondent

Panel : Y Carrim (Presiding Member)
A Ndoni (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 13 July 2016

Decided on : 13 July 2016

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Eukor Car Carriers Inc. annexed hereto marked "A".

Presiding Member
Ms Y Carrim

13 July 2016
Date

Concurring: Ms A Ndoni and Prof. I Valodia

ANNEXURE "A"

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

CT Case No.

CC Case No: 2012Sep0544

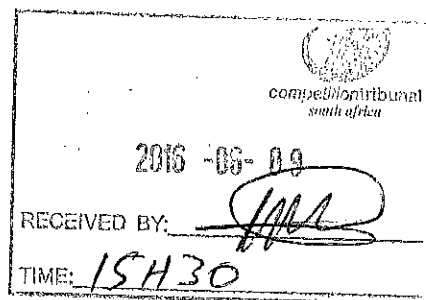
2013Aug0401

In the matter between

COMPETITION COMMISSION

And

EUKOR CAR CARRIERS INC



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 EUKOR CAR CARRIERS INC, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i),(ii) AND (iii) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Eukor Car Carriers Inc. hereby agree that 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),(ii) 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, 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 Eukor;
- 1.6 **"Eukor"** means Eukor Car Carriers Inc., a company duly registered and incorporated under the laws of Korea with its principal place of business at 24F Gangnam Finance Center, 152 Teheran-ro, Gangnam-gu, Seoul, Korea;
- 1.7 **"Parties"** means the Commission and Eukor;
- 1.8 **"RFQ"** means Request for Quotation; and
- 1.9 **"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 Commission initiated a complaint in terms of section 49(B)(1) of the Act into alleged prohibited practices relating to price fixing and market division in contravention of section 4(1)(b)(i) and (ii) of the Act, in the market for the transportation of vehicles, equipment and/or machinery (including new and used vehicles and new and used rolling construction and agricultural machinery) by sea, to and from South Africa, against Mitsui O.S.K Lines Limited ("MOL"), Nippon Yusen Kabushiki Kaisha Ltd ("NYK"), Kawasaki Kisen Kaisha Ltd ("K-Line"), Compania Sud Americana de Vapores ("CSAV"), Hoegh Autoliners Holdings AS ("Hoegh"), Wallenius Wilhelmsen Logistics AS ("WWL") and Eukor.
- 2.2 On 20 August 2013, the Commission amended its complaint initiation to include collusive tendering practices in contravention of section 4(1)(b)(iii) of the Act, against the firms set out in paragraph 2.1 above.
- 2.3 The Commission's investigation revealed the following:
- 2.3.1 During or about the period 1999 up to and including September 2012, the firms referred to in paragraph 2.1 above, being competitors in the market for the transportation of vehicles, equipment and/or machinery (including new and used vehicles and new and used rolling construction and agricultural machinery) by sea, to and from South Africa, agreed to fix prices, divide markets and collude on tenders issued by vehicle, equipment, rolling construction and agricultural machinery manufacturers.
- 2.3.2 The firms referred to in paragraph 2.1 agreed to fix prices, divide markets and collude on tenders issued by vehicle equipment, rolling construction and agricultural machinery manufacturers, which include, but are not limited to,

Toyota Motor Corporation and Toyota South Africa Motors (Pty) Ltd, Daimler AG, Daihatsu Motor Co Ltd, Hondo Motor Company Ltd, Volvo Construction Equipment ("Volvo"), BMW South Africa (Pty) Ltd ("BMW"), Volkswagen AG and Volkswagen of South Africa ("VW"), Auto Alliance (Thailand) Co. Ltd, Ford Motor Company of Southern Africa (Pty) Ltd; General Motors Company; Mitsubishi Motor Corporation and Nissan Motor Corporation ("Nissan") through its Renault-Nissan Purchasing Organization ("RNPO").

3. PROHIBITED PRACTICES ENGAGED IN BY EUKOR

3.1 The Commission's investigation revealed that pursuant to the agreements set out above, Eukor, together with its competitors, engaged in at least seven (7) instances of prohibited practices against various vehicle, equipment and rolling construction manufacturers as follows:

3.1.1 BMW 2011-2012 contract (South Africa to China)

During or about 2011 BMW issued a RFQ for the transportation of BMW vehicles from South Africa to China. At the time when BMW issued the RFQ, Eukor and MOL each held 50% of the business. Eukor and MOL agreed that they would not show low prices to BMW in order to maintain certain levels of prices in relation to all customers in that trade route. K-Line, which was not party to the arrangement, was awarded the business.

3.1.2 VW 2010-2012 contract (Argentina to South Africa)

During or about 2010 VW invited Eukor, MOL and CSAV to tender for the transportation of VW Amarok from Argentina to South Africa. This was a new business. Eukor and MOL then agreed that they would not show low prices. MOL also contacted CSAV and informed them that they were to refrain from disrupting the market by tendering for this business since they were not serving the route. CSAV and MOL agreed that CSAV would tender at high prices in order not to get

the business. VW awarded 50% of the business to CSAV and 50% to MOL. MOL transported its share of the business as well as the 50% portion of the cargo awarded to CSAV since CSAV was not serving the route.

3.1.3 Nissan 2011-2012 contract (India to South Africa)

During or about February 2010 Nissan invited MOL, Eukor, K-Line and Hoegh to submit bids for the transportation of Nissan vehicles from India to South Africa. During or about February 2010 MOL requested K-Line, Hoegh and Eukor to show higher rates for the Nissan tender from India to South Africa. Eukor agreed to cover price MOL at \$57/cbm, Hoegh and K Line agreed to cover price MOL at \$60/cbm. MOL's tender price was \$52/cbm. MOL was awarded the business in line with the arrangement.

3.1.4 Volvo Construction Equipment 2012 contract (Korea to South Africa)

During or about 2012 Volvo issued a RFQ for the transportation of Volvo Construction Equipment, which included shipments from Korea to South Africa. Prior to the issuing of the RFQ Eukor held the majority of the business for the shipment of Volvo machinery, including the Korea to South Africa trade. . During or about April 2012 MOL and Eukor had discussions in relation to the pricing of this tender. However, Eukor and MOL both lost the 2012 contract to BSG.

3.1.5 Daimler 2009-2013 contract (South America to South Africa)

A global tender was issued in 2008 which covered several trade lanes. Eukor and MOL had discussions regarding the pricing of the bids from South America to South Africa and Eukor agreed to quote at a high rate. Eukor was not awarded the business.

3.1.6 Maruti Suzuki 2010-2011 contract (India to South Africa)

During or about 2010, MOL and Eukor had discussions where it was agreed that MOL would operate the India to South Africa route and, in exchange, Eukor would operate the East and West Africa routes.

3.1.7 Volvo Construction Equipment 2007 contract (Brazil to South Africa)

Prior to the 2007 tender, EUKOR was charging US\$48/cbm and MOL was charging US\$50/cbm for the shipment of VCE from Brazil to South Africa. It was agreed between Eukor and MOL that they would both increase their prices in relation to the 2007 tender. Eukor was awarded the business on this route.

- 3.2 The agreements concluded by Eukor and its competitors constitute price fixing, market division and collusive tendering which contravene section 4(1)(b) (i),(ii) and (iii) of the Act.

4. ADMISSION

Eukor admits that it engaged in the prohibited practices set out in paragraph 3 above in contravention of section 4(1)(b) (i),(ii) and (iii) of the Act.

5. CO-OPERATION

Eukor agrees to fully cooperate with the Commission in its investigation and prosecution, if any, of the remaining respondents in the Commission's complaints. This cooperation includes, but is not limited to:

- 5.1 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of Eukor or under Eukor's control, concerning the alleged prohibited practices set out in this Consent Agreement.

5.2 Testifying during the hearing of the complaint, if any, in respect of the prohibited practices set out in this Consent Agreement.

6. FUTURE CONDUCT

Eukor 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 60 days of the date of confirmation of this Consent Agreement as an order by the Tribunal;
and
- 6.5 undertakes 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, Eukor is liable to pay an administrative penalty.
- 7.2 Eukor agrees and undertakes to pay a cumulative administrative penalty in the

amount of **R15 288 976 (fifteen million, two hundred and eighty eight thousand, nine hundred and seventy six rand)**. Annexed hereto marked "A" is a table depicting the penalty amount levied in respect of each contravention.

7.3 This cumulative administrative penalty represents the total penalty levied against each of the seven (7) incidences of prohibited practices. The administrative penalty, individually and in respect of each incidence of prohibited practices, does not exceed 10% of Eukor's annual turnover in the Republic of South Africa for the financial year ended December 2012.

7.4 Eukor will pay the amount set out in paragraph 7.2 above to the Commission within thirty (30) 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

Bank: Absa Bank, Pretoria

Account Number: 4087641778

Branch Code: 632005

Ref: 2012Sep0544/ Eukor

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

Notwithstanding the fact that the penalty is calculated on seven (7) incidences of prohibited practices, this agreement, upon confirmation as an order of the Tribunal, is

entered into in full and final settlement of all prohibited practices engaged in by Eukor and its competitors as set out in paragraph 3 above and concludes all proceedings between the Commission and Eukor in respect of all prohibited practices spanning from 1999 up to and including September 2012.

Dated and signed at SEOUL on the 19 day of MAY 2016

For Eukor Car Carriers Inc.



Chief Executive Officer

Name in Full: CRAG LOUIS JASIENSKI

Dated and signed at 8TH JNB on the 8TH day of JUNE 2016

For the Commission



Tembinkosi Bonakele

Competition Commissioner

Annexure "A"

No	Affected tender	Penalty as % of annual turnover	Penalty amount (ZAR)	Annual Turnover
1	BMW 2011- 2012	0.06%	R130 510	R217 516 401.30
2	VW 2010-2012	0.06%	R130 510	R217 516 401.30
3	Nissan 2011-2012	0.06%	R130 510	R217 516 401.30
4	Volvo Construction 2012	0.06%	R130 510	R217 516 401.30
5	Daimler 2009-2013	0.06%	R130 510	R217 516 401.30
6	Maruti Suzuki 2010-2011 (India to South Africa)	3.4%	R7 288 213	R217 516 401.30
7	Volvo Construction Equipment 2007	3.4%	R7 288 213	R217 516 401.30
Total penalty			R15 288 976	