



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO195Feb21

In the matter between:

The Competition Commission

Applicant

And

Seatrade Reefer Chartering N.V

Respondent

Panel : Y Carrim (Presiding Member)
: M Mazwai (Tribunal Member)
: E Daniels (Tribunal Member)

Heard on : 12 February 2021

Decided on : 12 February 2021

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Seatrade Reefer Chartering N.V annexed hereto.

**Presiding Member
Ms Yasmin Carrim**

**Date
12 February 2021**

Concurring: Mr Enver Daniels and Ms Mondo Mazwai

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

CT Case No.

CC Case No: 2012OCT0647

In the matter between

COMPETITION COMMISSION

Applicant

And

SEATRADE GROUP N.V. / SEATRADE REEFER CHARTERING N.V. 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 SEATRADE GROUP N.V. / SEATRADE REEFER CHARTERING N.V., IN RESPECT OF ALLEGED CONTRAVENTION OF SECTION 4(1)(b) (ii) OF THE COMPETITION ACT, NO. 89 OF 1998.

PREAMBLE

The Competition Commission (the **Commission**) and Seatrade Group N.V. / Seatrade Reefer Chartering N.V. (together, **Seatrade**) hereby agree that application be made to the Competition Tribunal (the **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 (the **Act**), in respect of alleged contravention of section 4(1)(b)(ii) 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 **"Capespan"** means Capespan Group Limited, a company incorporated in the Republic of South Africa with its principal place of business at Parc Du Cap, Misspell Road, Bellville, Western Cape;
- 1.3 **"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;
- 1.4 **"Commissioner"** means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.5 **"Complaint"** means the complaint referred to in clause 2 of this Consent Agreement;
- 1.6 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Seatrade;
- 1.7 **"Seatrade"** means Seatrade Group N.V. and its general agent, Seatrade Reefer Chartering N.V, companies incorporated in Curacao, Willemstad, Presidente R. Betancourt Boulevard 2;

- 1.8 **"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; and
- 1.9 **"WCCPF"** means the Western Cape Citrus Producers Forum, a consortium of South African citrus growers in the Citrusdal and Orange River areas, who are eligible to export citrus fruits to the United States.

2. **THE COMMISSION'S INVESTIGATION AND FINDINGS**

- 2.1 On 30 October 2012, the Commissioner initiated a complaint against Capespan and Seatrade for the alleged contravention of section 4(1)(b)(ii) of the Act in the market for the transportation of citrus fruit from South Africa to the United States of America (**USA**) by way of sea. The complaint was initiated by the Commission based on information the Commission received from Capespan in an application for immunity.
- 2.2 The Complaint was based on the allegation that Capespan and Seatrade had engaged in market division arrangements in contravention of section 4(1)(b)(ii) of the Act, in that during or about May 2012, Capespan and Seatrade had agreed that Capespan would cease transporting citrus products for the WCCPF to the USA to allow Seatrade to transport same.
- 2.3 The Commission's investigation concluded that the proposed agreement of May 2012 between Seatrade and Capespan contravened section 4(1)(b)(ii) of the Act. Although Seatrade disputes this conclusion, it is willing to enter into this Consent

Agreement without admission of liability or wrongfulness in order to bring the matter to conclusion.

3. ADMINISTRATIVE PENALTY

- 3.1 In order to bring the matter to conclusion Seatrade agrees to pay an administrative penalty in the amount of **R 373,921.33 (Three Hundred and Seventy Three Thousand Nine Hundred and Twenty One Rand and Thirty Three Cents Only)**. This amount does not exceed 10% of Seatrade's annual turnover for the financial year ended 31 December 2012.
- 3.2 Seatrade will pay the amount set out in paragraph 3.1 above to the Commission within 30 days of the confirmation of this Consent Agreement as an order of the Tribunal.
- 3.3 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:	2012OCT0647SEATRADE

3.4 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.

4. AGREEMENT REGARDING FUTURE CONDUCT

4.1 Seatrade undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act.

4.2 Seatrade will continue to implement its 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 contraventions of the Act.

5. FULL AND FINAL SETTLEMENT

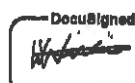
5.1 This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of the alleged conduct as set out in paragraphs 2.1 and 2.2 above and concludes all proceedings between the Commission and Seatrade in this regard.

Dated and signed at _____ on the _____ day of _____ 2020.
13-Nov-2020

For Seatrade Group N.V. / Seatrade Reefer Chartering N.V.

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Chief Executive Officer

Name in Full: Andre Atema

Dated and signed at PRETORIA on the 29TH day of JANUARY 2020.

For the Commission



Tembinkosi Bonakele
Competition Commissioner