



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO068Jul15

In the matter between:

The Competition Commission

Applicant

And

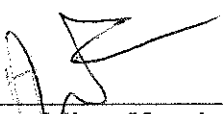
Nippon Yusen Kabushiki Kaisha

Respondent

Panel	:	Mr A Wessels (Presiding Member) Mr A Roskam (Tribunal Member) Ms A Ndoni (Tribunal Member)
Heard on	:	12 August 2015
Addendum received on	:	27 August 2015
Decided on	:	31 August 2015

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Nippon Yusen Kabushiki Kaisha, annexed hereto marked "A" and addendum annexed hereto marked "B".



Presiding Member
Mr A Wessels

31 August 2015
Date

Concurring: Mr A Roskam and Ms A Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT Case No.

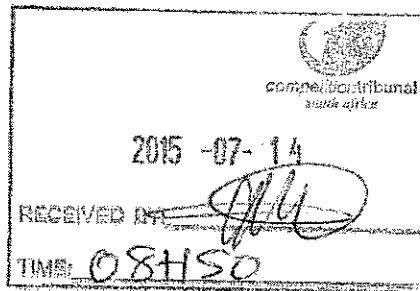
CC Case No. 2013AUG0364

In the matter between:

THE COMPETITION COMMISSION

Applicant

and



NIPPON YUSEN KABUSHIKI KAISHA

First Respondent

**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
NIPPON YUSEN KABUSHIKI KAISHA IN RESPECT OF A CONTRAVENTION OF
SECTION 4(1)(b)(ii) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED**

PREAMBLE

The Competition Commission ("Commission") and Nippon Yusen Kabushiki Kaisha ("NYK") hereby agree that application be made to the Competition Tribunal

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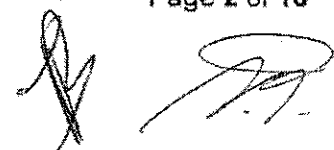
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("Tribunal") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D as read with sections 58(1)(a)(iii), 58(1)(b) and 59(1)(a) of the Competition Act 89 of 1998, as amended ("the Act") on the terms set out below.

DEFINITIONS

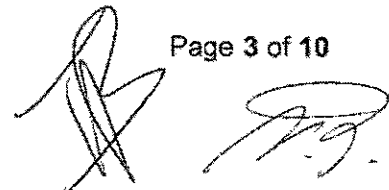
For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1 **"the Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **"BLG"** means BLG Leads Logistics of South Africa (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Ground Floor, Walmer Park House, 16th Avenue, Walmer, Port Elizabeth. BLG holds 49% of the shares in NYK Logistics;
- 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;
- 1.4 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 **"Complaint"** means the complaint initiated by the Commissioner in terms of



section 49B of the Act under case number 2013Aug0364;

- 1.6 **"JV Agreement"** means the shareholders' agreement entered into by NYK and BLG on 25 March 2005 in terms of which the joint venture NYK Logistics was established;
- 1.7 **"Logistics Services"** means the inland transportation of motor vehicle production parts; the warehousing of motor vehicle production parts; the cross-docking of motor vehicle production parts; customs brokerage and clearance services in respect of imported motor vehicle production parts within South Africa; and forwarding services for the export of completely knocked-down motor vehicles.
- 1.8 **"NYK"** means Nippon Yusen Kabushiki Kaisha, a Japanese company with its principal place of business at 3 -2 Marunouchi 2 Chome, Chiyoda-Ku, Tokyo, 100 - 0005, Japan. NYK holds 51% of the shares in NYK Logistics;
- 1.9 **"NYK Logistics"** means NYK Logistics & BLL (NLB) of South Africa (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of South Africa, with its principal place of business at Ground Floor, Walmer Park House, 16th Avenue, Walmer, Port Elizabeth. NYK Logistics is a joint venture established by NYK and BLG. NYK holds 51% and BLG holds 49% of the shares in NYK Logistics;
- 1.10 **"Parties"** means the Commission and NYK;



1.11 "Respondents" means NYK, BLG and NYK Logistics; and

1.12 "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 3rd Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria.

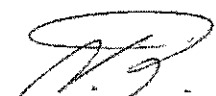
2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1 Pursuant to a marker application received by the Commission on 01 August 2013, the Commission initiated a complaint in terms of section 49B(1) of the Act against the Respondents.

2.2 NYK and BLG agreed, in terms of clauses 20 and 21 of the JV Agreement, to divide markets by allocating customers and territories in the market for the supply of Logistic Services, through NYK Logistics, in contravention of section 4(1)(b)(ii) of the Act.

2.3 The case was investigated under Commission case number 2013Aug0364.

2.4 The Commission's investigation found that clause 20.1.2 of the JV Agreement provides that NYK shall not compete, directly or indirectly, with BLG in providing Logistics Services to German automotive manufacturers in South Africa, without obtaining BLG's prior written consent.



- 2.5 The Commission further found that clause 20.1.3 of the JV Agreement provides that BLG shall not compete, directly or indirectly, with NYK in providing Logistics Services to Japanese automotive manufacturers in South Africa, without obtaining NYK's prior written consent.
- 2.6 Accordingly, clause 20.1.2 of the JV Agreement precludes NYK from competing with BLG in the provision of Logistics Services to German Automotive Manufacturers in South Africa, while clause 20.1.3 precludes BLG from competing with NYK in the provision of Logistics Services to Japanese Automotive Manufacturers in South Africa.
- 2.7 The Commission found that the inclusion of clauses 20.1.2 and 20.1.3 of the JV Agreement constituted collusion between NYK and BLG, through NYK Logistics.
- 2.8 The Commission found that the inclusion of clauses 21.2.1, 21.2.2 and 21.2.3 preclude NYK and BLG from competing with NYK Logistics in South Africa.
- 2.9 The Commission also found NYK and BLG have access to each other's commercially sensitive information as a result of cross-shareholding and/or common directorships in NYK Logistics.
- 2.10 Following its investigation, the Commission concluded that the abovementioned conduct constitutes a contravention of section 4(1)(b)(ii) of the Act in that NYK and BLG both agreed, through clauses 21.2.1, 21.2.2 and 21.2.3 of the JV

Agreement, to divide the market by allocating customers through NYK Logistics.

2.11 As a result of the Commission's findings, on 5 September 2013, the Respondents approached the Commission to enter into a Consent Agreement.

3. AGREEMENTS

3.1 ADMISSION

NYK admits that it contravened section 4(1)(b)(ii) of the Act in the manner set out in clause 2 above.

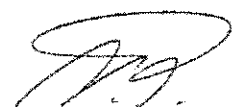
3.2 FUTURE CONDUCT

NYK agrees to:

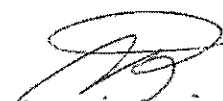
3.2.1 refrain from entering into any agreements which may lead to possible contraventions of the Act;

3.2.2 prepare and circulate a statement summarizing the content 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;

3.2.3 procure the deletion of clauses 20, 21.2.1, 21.2.2 and 21.2.3 of the JV Agreement;



- 3.2.4 procure the resignation of any director, employee, or shareholder of NYK that is a board member of or sits on the board of directors of NYK Logistics and NYK, it being the intention of the Parties and Respondents that no member of the board of directors of NYK Logistics may be a member of or sit on the board of directors of NYK, and vice versa;
- 3.2.5 ensure that no employee, director or shareholder who serves on the board of directors of NYK attends any board meetings of NYK Logistics and/or holds any management position or directorship in NYK Logistics, it being the intention of the Parties and the Respondents that no employee, director or shareholder who attends board meetings of NYK shall attend any board meetings of the directors of NYK Logistics, and vice versa;
- 3.2.6 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme shall include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;
- 3.2.7 submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of the Consent Agreement as an Order of the Tribunal; and



3.2.8 conduct business in a competitive manner in future.


4. ADMINISTRATIVE PENALTY

4.1 In accordance with the provisions of section 58(1)(a)(iii) read with sections 59(1)(a), 59(2) and 59(3) of the Act, NYK agrees to pay an administrative penalty in the amount of **R966 196.33 (NINE HUNDRED AND SIXTY SIX THOUSAND AND ONE HUNDRED AND NINETY SIX RAND AND THIRTY THREE CENTS).**

4.2 The abovementioned amount is 51% of R1 894 502.61 (**ONE MILLION EIGHT HUNDRED AND NINETY FOUR THOUSAND FIVE HUNDRED AND TWO RAND AND SIXTY ONE CENTS**). The 51% is proportionate to NYK's shareholding in NYK Logistics and the amount of R1 894 502.61 (**ONE MILLION EIGHT HUNDRED AND NINETY FOUR THOUSAND FIVE HUNDRED AND TWO RAND AND SIXTY ONE CENTS**) constitutes 3.5% of the annual turnover of NYK Logistics for the financial year ending December 2012.

5. TERMS OF PAYMENT

5.1 NYK shall pay the amount set out in paragraph 4.1 above to the Commission within thirty (30) days from the date of confirmation of this Consent Agreement as an order of the Tribunal.



5.2 This payment shall be made into the Commission's bank account, details of which are as follows:

Bank name: Absa Bank

Branch name: Pretoria

Account holder: Competition Commission Fees Account

Account number: 4050778576

Account type: Current Account

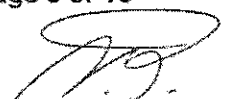
Branch Code: 323 345

Reference: 2013Aug0364 NYK

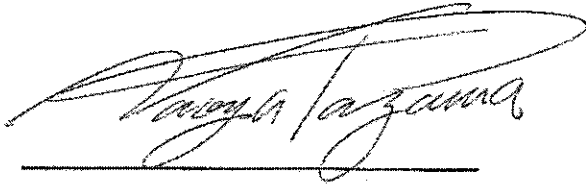
5.3 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6. Full and Final Settlement

This Consent Agreement, is in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the Parties, relating to the alleged contravention by NYK of section 4(1)(b)(ii) of the Act, that is the subject of the Commission's investigation under Commission Case No: 2013Aug0364.



For NIPPON YUSEN KABUSHIKI KAISHA

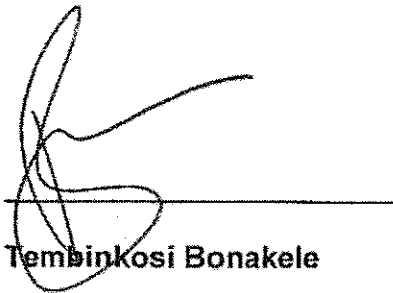


[NAOYA TAZAWA,

Representative Director, Executive Vice-President Corporate Officer]

Dated and signed at Tokyo, Japan on the 24 day of
June 2015.

For the Competition Commission



Tembinkosi Bonakele

Competition Commissioner

Dated and signed at PRETORIA on the 09th day of
July 2015.

"B"

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

CT Case No.

CC Case No: 2013Aug0364

In the matter between

THE COMPETITION COMMISSION

Applicant

And

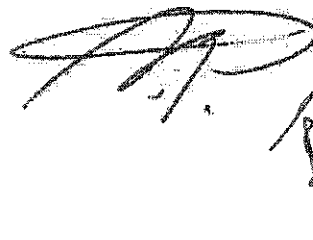
NIPPON YUSEN KABUSHIKI KAISHA LTD

Respondent

**FIRST ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED 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 NIPPON YUSEN KABUSHIKI KAISHA LTD, IN
RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i), (ii) AND (iii) OF THE
COMPETITION ACT, NO 89 OF 1998 AS AMENDED**

This amendment to the consent agreement, which was concluded between the Competition Commission and Nippon Yusen Kabushiki Kaisha Ltd signed on 24 June and 9 July 2015 and presented for confirmation by the Competition Tribunal on 12 August 2015, sets out the terms on which the parties to the consent agreement have agreed to amend the consent agreement:

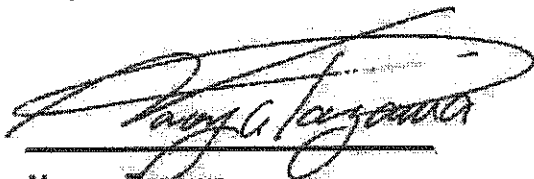
Clause 3.2.3 of the Consent Agreement is deleted and replaced with the following clause:

A large, stylized handwritten signature, possibly 'A.P.', is written over a smaller signature or set of initials that appear to be 'B'.

"3.2.3 procure the deletion of clauses 20, 21.2.1, 21.2.2, 21.2.3 and 21.2.6 of the JV agreement."

Dated and signed at Tokyo on the 17th day of August 2015

For and on behalf of Nippon Yusen Kabushiki Kaisha Ltd who warrants that he is duly authorised to sign as such



Naoya Tazawa

Representative Director, Executive Vice- President Corporate Officer

Dated and signed at PRETORIA on the 24th day of August 2015

For and on behalf of the Competition Commission



Tembinkosi Bonakele

Competition Commissioner

