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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR206Mar14/SA255Mar16

In the matter between:

The Competition Commission

Applicant

and

Pioneer Fishing (Pty) Ltd

Respondent

Panel : A Wessels (Presiding Member)

A Ndoni (Tribunal Member)

M Mokuena (Tribunal Member)

Heard on : 4 May 2016

Decided on : 4 May 2016

Order

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

4 May 2016

Date

Presiding Member

Mr A Wessels

Concurring: Ms A Ndoni and Ms Medi Mokuena

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELDIN PRETORIA)

CT Case No. 018622

CC Case No. 2011Mar5719

In the matter between

COMPETITION COMMISSION

Applicant

and

PIONEER FISHING (PTY) LIMITED

First Respondent

BLUE CONTINENT PRODUCTS (PTY) LIMITED

Second Respondent

SETTLEMENT AGREEMENT

**BETWEEN THE COMPETITION COMMISSION AND PIONEER FISHING (PTY) LIMITED IN
RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(II) OF THE
COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED**

The *Competition Commission* and Pioneer Fishing (Pty) Ltd ("Pioneer Fishing") hereby agree
that application be made to the Competition Tribunal for the confirmation of this

Settlement Agreement as an order of the Competition Tribunal In terms of section 27(1)(d) read with section 58(1)(a)(ii) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, on the terms set out below.

1. Definitions

For the purposes of this *Settlement Agreement* the following definitions shall apply:

- 1.1 **"Act"** means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 **"BCP"** means Blue Continent Products (Pty) Ltd;
- 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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Melntjies Street, Sunnyside, Pretoria, Gauteng;
- 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 of the Competition Commission in terms of section 498 of the Act under case number 2011Mar5719;
- 1.6 **"Parties"** means the Commission and Pioneer Fishing;
- 1.7 **"Pioneer Fishing"** means Pioneer Fishing (Pty) Ltd;
- 1.8 **"Saco"** means Saco Fishing (Pty) Ltd, who was the holder of a long term right to undertake mid-water trawl horse mackerel fishing In terms of the Marine Living Resources Act 1998 for the period 1 January 2006 to 31 December 2015. Saco Is an Indirect subsidiary of Pioneer Fishing;
- 1.9 **"Settlement Agreement"** means this agreement duly signed and concluded between

the Commission and Pioneer Fishing;

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 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Melntjies Street, Sunnyside, Pretoria, Gauteng.

2. The Complaint and Complaint Investigation

2.1 On 29 March 2011, the Commissioner, acting in terms of section 498(1) of the Act, initiated a complaint under case number 2011Mar5719 against the respondents for a possible contravention of section 4(1)(b)(II) of the Act in the market for the supply of horse mackerel in South Africa.

2.2 The Commission's investigation relating to Pioneer Fishing revealed that:

2.2.1 On 28 August 2008 BCP and Pioneer Fishing entered into an agreement in terms of which BCP, using its vessel the Desert Diamond, would catch Saco's horse mackerel allocation for 2008 on behalf of Pioneer Fishing ('the 2008 Catching Agreement').

2.2.2 In terms of the 2008 Catching Agreement Pioneer Fishing undertook to pay BCP a catching fee and it was contemplated that the fish caught pursuant thereto would be delivered to Pioneer Fishing on arrival of the vessel at the harbour.

2.2.3 On or about 10 September 2008 BCP and Pioneer Fishing concluded a further agreement ('the Sale Agreement') setting out the basis upon which BCP would purchase the horse mackerel catch referred to in the 2008 Catching Agreement.

2.2.4 The Sale Agreement furthermore confirmed the appointment of BCP to catch the horse mackerel allocation of Saco for the 2009 and 2010 seasons, but provided

that for those seasons, ownership of all horse mackerel caught pursuant to the agreement would vest In BCP. Provision was, however, made for BCP to make available up to 20% of the catch for sale to Pioneer Fishing on an agreed basis.

2.2.5 Pioneer Fishing and BCP concluded a further catching agreement for the 2009 and 2010 seasons on 11 July 2009, the terms of which were similar to the 2008 Catching Agreement ("the 2009 Catching Agreement").

2.2.6 The Sale Agreement provided that whilst BCP agreed to purchase the whole of the horse mackerel catch, It would make available 20% of each catch to Pioneer Fishing for sale In the local market.

2.2.7 It was alleged by SCP that, during the course of negotiating the 2008 Catching Agreement and the Sale Agreement between 2 July and 10 September 2008, BCP entered Into an oral agreement with Pioneer Fishing In terms of which Pioneer Fishing agreed not to sell the 20% of the catch reserved for It pursuant to the Sale Agreement Into the same markets In South Africa where BCP or Its Namibian subsidiary was selling Its horse mackerel. These markets were the Limpopo Province, Mpumalanga and the North West Province.

2.2.8 It was alleged that the agreement continued for the duration of the 2008 Catching Agreement, the Sales Agreement and the 2009 Catching Agreement mentioned above, being until the end of the 2010 season.

2.2.9 Pioneer Fishing does not admit entering into the oral agreement alleged In clause 2.2.7 above.

2.2.10 The above conduct of the Respondents contravene section 4(1)(b)(il) of the Act In that it constitutes an agreement between parties In a horizontal relationship to divide

markets by allocating territories and or customers.

3. The Complaint Referral

The *Commission* referred the above complaint to the *Tribunal* on 19 March 2014.

4. Admission

4.1 Pioneer Fishing admits that the Sale Agreement entered Into with BCP Is In contravention of section 4(1)(b)(II) of the Act In that it constitutes an agreement between parties In a horizontal relationship to divide markets by allocating territories and/or customers, since the Sale Agreement provided that Pioneer Fishing was only entitled to sell the horse mackerel In the local market, thereby prohibiting It from selling horse mackerel In the export market.. The conduct commenced In August 2008 and continued until 31 December 2010.

5. Agreement concerning the Respondent's future conduct

5.1 Pioneer Fishing agrees to:

5.1.1 Develop, Implement and monitor a competition law compliance programme Incorporating corporate governance designed to ensure that Its employees, management, directors and agents do not engage In future contraventions of the Act. In particular, such compliance programme will Include the following:

5.1.1.1 The identification by Pioneer Fishing of competition risks relevant to Its business and the monitoring thereof;

5.1.1.2 provide specific training on competition law aspects particularly relevant to Pioneer Fishing;

5.1.1.3 ensure that such training will be made available to all new members

joining Pioneer Fishing. Furthermore, Pioneer Fishing will update such training annually to ensure on an on-going basis that It and its members cannot engage In any anti-competitive activities

5.1.2 To submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order by the Competition Tribunal;

5.1.3 To circulate a statement summarising the contents of this Settlement Agreement to all management, operational staff and members of Pioneer Fishing within 60 days from the date of confirmation of this Settlement Agreement by the Tribunal;

6. Administrative Penalty

6.1 Having regard to the provisions of sections 58(1)(a)(Ili) as read with sections 59(1)(a), 59(2) and 59(3) of the Act; Pioneer Fishing accepts that It is liable to pay an administrative penalty.

6.2 The parties have agreed that Pioneer Fishing will pay an administrative penalty In the amount of R717 960.92 (seven hundred and seventeen thousand nine hundred and sixty Rand and ninety two cents).

This amount does not exceed 10% of Pioneer Fishing's total annual turnover In the Republic and Its exports from the Republic during Pioneer Fishing's preceding financial year;

6.3 Pioneer Fishing will pay the amount set out in paragraph 6.1 above to the Commission within thirty days from the date of confirmation of this Settlement Agreement by the Tribunal.

6.4 The penalty must be paid into the Commission's bank account which Is as follows:

NAME: THE COMPETITION COMMISSION BANK: ABSA BANK BUSINESS BANK

ACCOUNT NUMBER: [.....]

BRANCH CODE: 632005

PAYMENT REF: 2011MAR5719PIONEERFISHING

7. Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, Is entered into In full and final settlement and concludes all proceedings between the Commission and Pioneer Fishing relating to any alleged contravention of the Act by the respondent that Is the subject of the Commission's investigation referred to the Tribunal under CT Case No. 018622.

Dated and signed at Cape Town on the 10th day of March 2016

For Pioneer Fishing

Chief Executive Officer

Dated and signed at Pretoria on the 16th day of March 2016

For the Commission

Competition Commissioner

