

SOUTH AFRICA / JUDGMENT

Competition Commission v Singapore Airlines Ltd (45/CR/Apr12) [2012] ZACT 38; [2012] 2 CPLR 245 (CT) (15 May 2012)

[2012] ZACT 38

COURT

Competition Tribunal

BEFORE

N Manoim, Y Carrim, A Wessels

CASE / FILE NUMBER

45/CR/Apr12

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 45/CR/Apr12 014977

In the matter between:

The Competition Commission

.....Applicant

And

Singapore Airlines Ltd

.....Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member) and A Wessels (Tribunal Member)

Heard on: 15 May 2012

Decided on: 15 May 2012

Order The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A". Presiding Member N Manoim
Concurring: Y Carrim and A Wessels

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".

Presiding Member

N Manoim

Concurring: Y Carrim and A Wessels

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA (HELD IN PRETORIA) CT Case No: CC

Case No: 2008Jan3474 In the matter between: THE COMPETITION COMMISSION

.....Applicant And SOUTH AFRICAN AIRWAYS

LIMITED (PROPRIETARY) LIMITEDFirst Respondent SINGAPORE AIRLINES

LIMITEDSecond Respondent MALAYSIAN

AIRLINESThird Respondent

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

CT Case No:

CC Case No: 2008Jan3474

In the matter between:

THE COMPETITION COMMISSIONApplicant

SOUTH AFRICAN AIRWAYS LIMITED (PROPRIETARY) LIMITEDFirst Respondent

SINGAPORE AIRLINES LIMITEDSecond
Respondent

MALAYSIAN AIRLINESThird
Respondent

FILING SHEET DOCUMENT FILED: 1. SETTLEMENT AGREEMENT BETWEEN COMPETITION
COMMISSION AND SINGAPORE AIRLINES DATED at PRETORIA on this 19th Day of April 2012.

Competition Commission 1st Floor, Mulayo, the Dti Campus, 77 Melntjies Street, Sunnyside,

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FILING SHEET

DOCUMENT FILED:

1. SETTLEMENT AGREEMENT BETWEEN COMPETITION COMMISSION AND SINGAPORE
AIRLINES

DATED at PRETORIA on this 19th Day of April 2012.

Competition Commission

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IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA HELD AT PRETORIA CT Case No: CC Case No. 2008Jan3474 In the matter between: THE COMPETITION COMMISSION

.....Applicant and SOUTH AFRICAN AIRWAYS (PROPRIETARY)

LIMITEDFirst Respondent SINGAPORE AIRLINES LIMITED

.....Second Respondent MALAYSIAN AIRLINES

.....Third Respondent AGREEMENT BETWEEN THE

COMPETITION COMMISSION AND SINGAPORE AIRLINES ON THE TERMS OF AN APPROPRIATE ORDER IN TERMS OF SECTION 49D OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED

The Commission and Singapore Airlines hereby agree that application be made to the Tribunal to have this Agreement confirmed as a consent order as provided for in terms of section 58(1)(b) as read with section 49D of the Act. 1. Definitions 1.1. For the purposes of this agreement the following definitions shall apply: 1.1.1. "Act" means the Competition Act No. 89 of 1998, as amended. 1.1.2. "this Agreement" means the agreement set out herein, duly signed by the Commissioner and Singapore Airlines. 1.1.3. "Singapore Airlines" means Singapore Airlines

Limited, a company incorporated in accordance with the laws of Singapore with its registered South African office at 257 Oxford Road, Illovo, Johannesburg 1.1.4. "CLP" means the Commission's Corporate Leniency Policy. 1.1.5. "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 Meintjies Street, Sunnyside, Pretoria, Gauteng. 1.1.6. "Commissioner" means the Competition Commissioner of South Africa, the Chief Executive Officer of the Commission appointed by the Minister of Trade and Industry in terms of section 22 of the Act. 1.1.7. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act. 1.1.8. "Complaint" means the complaint initiated by the Commissioner under case number 2008Jan3474 in relation to a possible contravention of section 4(1)(b)(i) of the Act. 1.1.9. "the Republic" means the Republic of South Africa.

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CC Case No. 2008Jan3474

THE COMPETITION COMMISSIONApplicant

and

SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITEDFirst Respondent

SINGAPORE AIRLINES LIMITEDSecond Respondent

MALAYSIAN AIRLINESThird Respondent

AGREEMENT BETWEEN THE COMPETITION COMMISSION AND SINGAPORE AIRLINES ON THE TERMS OF AN APPROPRIATE ORDER IN TERMS OF SECTION 49D OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED

The Commission and Singapore Airlines hereby agree that application be made to the Tribunal to have this Agreement confirmed as a consent order as provided for in terms of section 58(1)(b) as read with section 49D of the Act.

1. Definitions

1.1. For the purposes of this agreement the following definitions shall apply:

1.1.1. "Act" means the Competition Act No. 89 of 1998, as amended.

1.1.2. "this Agreement" means the agreement set out herein, duly signed by the Commissioner and Singapore Airlines.

1.1.3. "Singapore Airlines" means Singapore Airlines Limited, a company incorporated in accordance with the laws of Singapore with its registered South African office at 257 Oxford Road, Illovo, Johannesburg

1.1.4. "CLP" means the Commission's Corporate Leniency Policy.

1.1.5. "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 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.1.6. "Commissioner" means the Competition Commissioner of South Africa, the Chief Executive Officer of the Commission appointed by the Minister of Trade and Industry in terms of section 22 of the Act.

1.1.7. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

1.1.8. "Complaint" means the complaint initiated by the Commissioner under case number 2008Jan3474 in relation to a possible contravention of section 4(1)(b)(i) of the Act.

1.1.9. "the Republic" means the Republic of South Africa.

2.

Background

2.1. On the 16 January 2008 the Commissioner initiated a complaint against SAA, Singapore Airlines and Malaysian Airlines for their involvement with Cathay Pacific in a cartel to fix air fare increases on both economy and business class flights into and out of South Africa to the Far East Asia. 2.2. The Commission has concluded its investigation and a decision has been taken that the matter be referred to the Tribunal for adjudication. 2.3. Singapore Airlines has engaged the Commission in settlement negotiations which have culminated in this settlement agreement. 3. Commission's findings Upon completion of its investigation into the Complaint, the Commission found that local representatives of Singapore Airlines in South Africa had engaged in the following conduct: 3.1. Engaged in discussions regarding air fare rates or prices in South Africa with Cathay Pacific, Malaysian Airlines and South African Airways on occasions during 2004, 2005 and ending February 2006. 3.2. The discussions related to market fare levels and increases on certain market fares for flights out of South Africa to South East Asia, Hong Kong and China. 3.3. Local representatives of Singapore Airlines in South Africa relied on the content of these discussions among other considerations to determine fares and gain knowledge on competitor activities and price movements in the above stated routes. 3.4. This conduct is in contravention of section 4(1)(b)(i) of the Act. 4. Admission of Liability Local representatives of the Respondent engaged in market fare discussions which the Respondent admits contravened section 4(1)(b)(i) of the Act, as set out in the Commission's Findings in paragraph 3 above. 5. Agreement concerning future conduct 5.1. Singapore Airlines has cooperated with the Commission in its investigation of the matter and has provided information that significantly assisted the Commission in concluding its investigation. Singapore Airlines has also undertaken to provide the Commission with witnesses, evidence and assist in the referral proceedings against other respondents that the Commission elects to prosecute. 5.2. The conduct that is the subject of this

investigation has ceased and Singapore Airlines undertakes that it will in future refrain from engaging in conduct which may contravene section 4(1)(b)(i) of the Act 5.3. Singapore Airlines already has a competition (aw compliance programme in place that dates from late 2005 / early 2006, and which it is in the process of reviewing. Singapore undertakes to ensure that this compliance programme incorporates corporate governance which is designed to ensure that all employees, managers and directors of Singapore Airlines do not engage in any contraventions of the Act and in particular section 4(1)(b)(i) of the Act. 5.4. Singapore Airlines undertakes to deliver a copy of this compliance programme to the Commission within a period of 60 days after this settlement agreement with the Commission is confirmed by the Tribunal. 6, Administrative penalty 6.1. In terms of section 58(1)(a)(iii) of the Act read with section 59(1)(a), 59(2) and (3) of the Act, and in order to settle the matter Singapore Airlines agrees to pay an administrative penalty in the amount of R25 106 692-00 (Twenty-Five Million One Hundred and Six Thousand, Six Hundred and Ninety-Two Rand). 6.2. The above amount is equivalent to 7.56 % of Singapore Airlines' passenger turnover out of South Africa during the financial year 2009/2010 and does not exceed 10% of Singapore Airlines' annual turnover out of South Africa in the same year. 6.3. Singapore Airlines will pay the amount set out in paragraph 6.1 above to the Commission within 30 calendar days from the date of confirmation of this Agreement by the Tribunal. 6.4. The penalty amount is to be paid into the bank account of the Commission. The Commission's banking details are as follows: Bank: ABSA Bank Name of Account: The Competition Commission Fees Branch Name: Pretoria Branch Code: 323345 Account Number: 4050778576

2.

Background

2.1. On the 16 January 2008 the Commissioner initiated a complaint against SAA, Singapore Airlines and Malaysian Airlines for their involvement with Cathay Pacific in a cartel to fix air fare increases on both economy and business class flights into and out of South Africa to the Far East Asia.

2.2. The Commission has concluded its investigation and a decision has been taken that the matter be referred to the Tribunal for adjudication.

2.3. Singapore Airlines has engaged the Commission in settlement negotiations which have culminated in this settlement agreement.

3. Commission's findings

Upon completion of its investigation into the Complaint, the Commission found that local representatives of Singapore Airlines in South Africa had engaged in the following conduct:

3.1. Engaged in discussions regarding air fare rates or prices in South Africa with Cathay Pacific, Malaysian Airlines and South African Airways on occasions during 2004, 2005 and ending February 2006.

3.2. The discussions related to market fare levels and increases on certain market fares for flights out of South Africa to South East Asia, Hong Kong and China.

3.3. Local representatives of Singapore Airlines in South Africa relied on the content of these discussions among other considerations to determine fares and gain knowledge on competitor activities and price movements in the above stated routes.

3.4. This conduct is in contravention of section 4(1)(b)(i) of the Act.

4. Admission of Liability

Local representatives of the Respondent engaged in market fare discussions which the Respondent admits contravened section 4(1)(b)(i) of the Act, as set out in the Commission's Findings in paragraph 3 above.

5. Agreement concerning future conduct

5.1. Singapore Airlines has cooperated with the Commission in its investigation of the matter and has provided information that significantly assisted the Commission in concluding its investigation. Singapore Airlines has also undertaken to provide the Commission with witnesses, evidence and assist in the referral proceedings against other respondents that the Commission elects to prosecute.

5.2. The conduct that is the subject of this investigation has ceased and Singapore Airlines undertakes that it will in future refrain from engaging in conduct which may contravene section 4(1)(b)(i) of the Act

5.3. Singapore Airlines already has a competition (law) compliance programme in place that dates from late 2005 / early 2006, and which it is in the process of reviewing. Singapore undertakes to ensure that this compliance programme incorporates corporate governance which is designed to ensure that all employees, managers and directors of Singapore Airlines do not engage in any contraventions of the Act and in particular section 4(1)(b)(i) of the Act.

5.4. Singapore Airlines undertakes to deliver a copy of this compliance programme to the Commission within a period of 60 days after this settlement agreement with the Commission is confirmed by the Tribunal.

6. Administrative penalty

6.1. In terms of section 58(1)(a)(iii) of the Act read with section 59(1)(a), 59(2) and (3) of the Act, and in order to settle the matter Singapore Airlines agrees to pay an administrative penalty in the amount of R25 106 692-00 (Twenty-Five Million One Hundred and Six Thousand, Six Hundred and Ninety-Two Rand).

6.2. The above amount is equivalent to 7.56 % of Singapore Airlines' passenger turnover out of South Africa during the financial year 2009/2010 and does not exceed 10% of Singapore Airlines' annual turnover out of South Africa in the same year.

6.3. Singapore Airlines will pay the amount set out in paragraph 6.1 above to the Commission within 30 calendar days from the date of confirmation of this Agreement by the Tribunal.

6.4. The penalty amount is to be paid into the bank account of the Commission. The Commission's banking details are as follows:

Bank: ABSA Bank

Name of Account: The Competition Commission Fees

Branch Name: Pretoria

Branch Code: 323345

Account Number: 4050778576

6.5. The Commission will pay the penalty amount into the National Revenue Fund in compliance with section 59(4) of the Act 7. Full and final settlement This Agreement is entered into in full and final settlement and upon confirmation thereof as a consent order by the Tribunal concludes all proceedings between the Commission and Singapore Airlines relating to Singapore's involvement in the conduct that is the subject of the Commission's investigation under case number:

2008Jan3474. Dated and signed at ILLOVO on this the 12 day of MARCH 2012 Signature Name:

Capacity: FOR THE COMMISSION Dated and signed at PRETORIA on this the 15 day of MARCH 2012 Shan Ramburuth Commissioner Competition Commission of South Africa

6.5. The Commission will pay the penalty amount into the National Revenue Fund in compliance with section 59(4) of the Act

7. Full and final settlement

This Agreement is entered into in full and final settlement and upon confirmation thereof as a consent order by the Tribunal concludes all proceedings between the Commission and Singapore Airlines relating to Singapore's involvement in the conduct that is the subject of the Commission's investigation under case number: 2008Jan3474.

Dated and signed at ILLOVO on this the 12 day of MARCH 2012

Signature

Name:

Capacity:

FOR THE COMMISSION

Dated and signed at PRETORIA on this the 15 day of MARCH 2012

Shan Ramburuth

Commissioner

Competition Commission of South Africa

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