

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

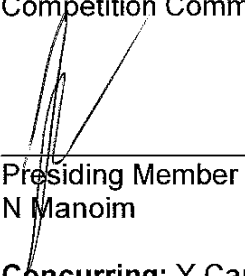
Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member) and A Wessels (Tribunal Member)

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

"A"

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


CT Case No:

CC Case No: 2008Jan3474

In the matter between:

THE COMPETITION COMMISSION

And

 competition tribunal south africa	
2012 -04- 19	
RECEIVED BY: <i>Malom</i>	Applicant
TIME: 14 H 50	

SOUTH AFRICAN AIRWAYS LIMITED (PROPRIETARY) LIMITED **First Respondent**

SINGAPORE AIRLINES LIMITED **Second Respondent**

MALAYSIAN AIRLINES **Third 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 Meintjies Street, Sunnyside,
Pretoria

Tel: 012 394 3281

Fax: 012 394 4281

E-mail: KhotsoM@compcom.co.za

Ref: Khotso Modise

**TO: THE REGISTRAR OF
THE COMPETITION TRIBUNAL**

3rd Floor, Mulayo (Block C)

The Dti Campus

77 Meintjies Street

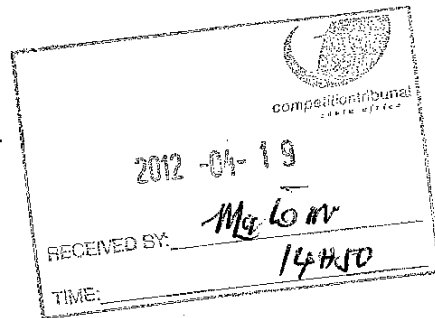
Sunnyside

Pretoria

Tel: 012 394 3355

Fax: 012 394 0169

E-mail: Leratom@comptrib.co.za/ ctsa@comptrib.co.za



**AND TO: Norton Rose South Africa
Attorneys for the Second Respondent**

15 Alice Lane

Sandton

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2196

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competitiontribunal south africa

Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0112
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: etsa@comtrib.co.za

Notice of Motion

Date: 19-Apr-2012 File # _____

To: The registrar of the Competition Tribunal

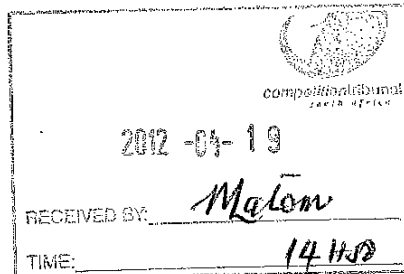
Concerning the matter between:

The Competition Commission (Applicant)

and Singapore Airlines Limited (Respondent)

Take notice that the Applicant intends to apply to the Tribunal for the following order:

Confirmation of the Attached settlement agreement concluded between the Applicant and the Respondent as a consent order of the Competition Tribunal in terms of section 49D Read with Section 58 (1) of the Competition Act, No.89 of 1998, as amended.



Name and Title of person authorised to sign:

Authorised Signature:

Date:

19-Apr-2012

For Office
Use Only:

Tribunal file number:

Date filed:

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) LIMITED

First 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*.

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a smaller, less distinct mark.

- 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.

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- 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.

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- 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:

A handwritten signature in black ink, appearing to be 'MR' followed by a stylized flourish and the letters 'bi'.

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.

FOR SINGAPORE AIRLINES LIMITED:

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


Signature

Name: LOOI TEIN PO

Capacity: GENERAL MANAGER, CENTRAL AND SOUTHERN AFRICA

FOR THE COMMISSION:

Dated and signed at Pretoria on this the 15 day of March 2012.


Shan Ramburuth

Commissioner

Competition Commission of South Africa