



Press Statement

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION AND CONSUMER AUTHORITY AND GABORONE CONTAINER TERMINAL (PTY) LTD IN RESPECT OF CONTRAVENTION OF SECTION 31 OF THE COMPETITION ACT OF 2018

The Competition and Consumer Authority Tribunal has made a decision (order) in the matter between the Competition and Consumer Authority (CCA) and Gaborone Container Terminal (Pty) Ltd ("GABCON"). The two parties have been engaged in an application in which the CCA alleged that GABCON had engaged in an abuse of dominance through refusal to deal and excessive pricing behaviour. The Authority posited that their investigation had turned up evidence that private haulier trucks that collect containers from GABCON facilities were subjected to a number anti-competitive requirements including paying excessive access fees and other restrictions that effectively pushed the private hauliers out of business.

While this matter was before the Tribunal for adjudication, the two parties decided to enter into a settlement agreement and the Tribunal has since issued an order in terms of the agreement. According to the order signed by the Presiding Officer, and Vice President of the Tribunal, Tendekani Malebeswa, GABCON has admitted to have abused its dominance in the container haulage market through refusal to deal and further acknowledged that this conduct is anti-competitive.

The organisation has as a result committed to desist from such conduct in future and that it will among other things consult the Private Hauliers regarding any increase in access fees within a reasonable period before such increments are operational; it will revise its policy on the registration of trucks, trailers and drivers to ensure that the same is compliant with prevailing competition laws; it will cease and desist from imposing the 75/25% restriction and implement a policy which is compliant with prevailing competition laws; it will develop, implement, and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees and agents do not engage in future contraventions of the Act, and it will submit a copy of a compliance programme to the Authority within

30 days of the date of confirmation of the Settlement Agreement as an order by the Tribunal.

Furthermore, the order permits the Authority to avail its staff members to facilitate training on competition matters to GABCON management, at a date to be suggested by GABCON no later than 60 days post the confirmation of the Settlement Agreement by the Tribunal.

Concerning costs, the tribunal ordered that each party will pay its cost.

The settlement agreement, and indeed the Tribunal Order, follows a complaint that was launched by the private hauliers who alleged that GABCON had imposed restrictions which prevented them from efficiently serving their customers. Specifically the substance of the complaint was that rail imports come in containers which are hired from Shipping Lines such as Mediterranean Shipping Company and Maersk Shipping Lines this would arrive at GABCON bonded facilities in Gaborone, Palapye and Francistown before they be cleared for customs and then be collected by trucks (including private hauliers and GABCON trucks) to importers. In March 2017, GABCON Management altered the transport and delivery policies and demanded that all transporters accessing the GABCON bonded facility were required to apply for a permit and they were further required to pay an entry fee of P2800 in addition to submitting their business profiles.