IN THE NATIONAL CONSUMER TRIBUNAL HELD AT CENTURION

Case Number: NCT/93829/2017/56(1)

In the matter between:

BMW FINANCIAL SERVICES (SA) (PTY) LTD APPLICANT

And

THE NATIONAL CREDIT REGULATOR FIRST RESPONDENT

VOLKSWAGEN FINANCIAL SERVICES (SA) (PTY) LTD SECOND RESPONDENT

In re: Tribunal case number NCT/93829/2017/56(1):

BMW FINANCIAL SERVICES (SA) (PTY) LTD APPLICANT

And

THE NATIONAL CREDIT REGULATOR RESPONDENT

And in re: Tribunal case number NCT/94937/2017/56(1)

VOLKSWAGEN FINANCIAL SERVICES (SA) (PTY) LTD APPLICANT

And

THE NATIONAL CREDIT REGULATOR RESPONDENT

Coram:

Dr. MC Peenze - Presiding Member
Ms D Terblanche - Tribunal Member
Mr A Potwana - Tribunal Member
Date of the hearing: - 15 May 2018

JUDGMENT AND REASONS

The Parties

THE APPLICANT

1. The Applicant in this matter is **BMW Financial Services (SA) (Pty) Ltd,** hereinafter referred to as "**BMWFS**", a company duly registered as such in accordance with the company laws of South Africa, with registration no 1990/00470/07. The Applicant is a registered credit provider with its principal place of business situated at 1 Bavaria Avenue, Randjespark, Midrand.

2. At the hearing of this matter, the Applicant was represented by Mr WHJ van Reenen as external legal counsel for the Applicant.

THE RESPONDENTS

3. The First Respondent is the **National Credit Regulator,** hereinafter referred to as **"NCR"**, an organ of state and a juristic person within the public administration established in terms of Section 12 of the National Credit Act 34 of 2005 ("the NCA" or "the Act"), having its principal address at 127 Fifteenth Road, Randjespark, Midrand, Gauteng.

4. At the hearing of this matter, the First Respondent was represented by Ms AJ Lapan as external legal counsel for the First Respondent.

5. The Second Respondent is **Volkswagen Financial Services SA (Pty) Ltd**, hereinafter referred to as **"VWFS",** a company duly incorporated in terms of the company laws of South Africa, with registration no 2013/133698/07. The Applicant is a registered credit provider with its principal place of business situated at 135 Patricia Road, Freestone Office Park, Sandton.

6. At the hearing of this matter, the Second Respondent was represented by Mr Nkobeni from Volkswagen Financial Services SA (Pty) Ltd, who chose not to come on record, indicating that his presence was only intended to observe the proceedings. The Second Respondent is not opposing the application.

APPLICATION TYPE

7. This is a Rule 16A[1] Consolidation Application to the Tribunal, seeking to consolidate the referral brought by the Applicant under case number NCT/93829/2017/56(1) and the referral brought by the Second Respondent under case number NCT/94937/2017/56(1), with the intention of hearing these matters together and to file all further notices by any party under case number NCT/93829/2017/56(1).

8. The Consolidation Application is opposed by the First Respondent (NCR). The Second Respondent (VWFS) did not oppose the matter.

JURISDICTION

9. The Applicant brought this consolidation application in terms of Rule 16 of the Tribunal Rules.

10. Rule 16 outlines as follows:

> *"16 Joinder or substitution of parties*
> *(1) The Tribunal may of its own accord or on application by a party combine any number of persons, either jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their rights to relief depend on the determination of substantially the same questions of law or fact."*[2]

11. Although the Applicant made the application in terms of Section 16, jurisdiction in this matter is explained in Section 16A of the Tribunal Rules, which outlines as follows:

[1] Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer Tribunal published under GN 789 in GG 30225 of 28 August 2007 as amended by GenN 428 in GG 34405 of 29 June 2011.
[2] Subrule (1) amended by GN 203 of 13 March 2015

"16A Consolidation of Matters

(1) Where separate applications have been instituted the Tribunal may, if it appears convenient to do so, consolidate such applications alternatively, upon the application of any party thereto and having served on all interested parties, make an order consolidating such applications, whereupon:-

(a) the said applications shall proceed as one;

(b) *the Tribunal may make any order which it deems appropriate with regard to the further procedure, and may give one judgement disposing of all matters in dispute in the said application."*[3]

12. The Tribunal has jurisdiction to hear this matter as one lodged under Rule 16A of the Rules of Tribunal.

BACKGROUND

13. The First Respondent (NCR) issued Compliance Notices to both the Applicant and Second Respondent in terms of section 55 of the NCA. The Compliance Notice to the Applicant was issued on 4 October 2017 and the Compliance Notice to the Second Respondent was issued on 23 October 2017.

14. In terms of the Compliance Notices issued, the NCR had conducted investigations into the lending practices of the particular credit providers and the investigations revealed that the credit providers had contravened certain provisions of the Act as set out in the Compliance Notices.

15. Although the Compliance Notices to "the Applicant and the Second Respondent", BMWFS and VWFS, or "the two credit providers" are similar, they are not identical. The two Compliance Notices both refer to the unlawful charging of an "on the road fee/cost, administration fee and handling fee."[4] With regard to the VWFS, the Compliance Notice also states that the VWFS

[3] Rule 16A inserted by GN 203 of 13 March 2016

[4] The Compliance Notice to BMWFS states the following:

- The investigation conducted by the Regulator has revealed that BMWFS has charged consumers an "on the road fee/cost";
- This fee/cost is a credit fee or charge prohibited by section 100(1)(a) of the Act;

had "disguised and/or inaccurately disclosed as service and delivery" these fees in its credit agreements.[5]

16. In particular, with regard to VWFS, the Compliance Notice refers to the contravention of section 89(2)(c) of the NCA, which provides that, subject to subsections (3) and (4), a credit agreement is unlawful if it is a supplementary agreement or document prohibited by section 91(a) of the Act. The Compliance Notice continues to confirm that, in terms of section 90(1) of the NCA, a credit agreement must not contain an unlawful provision. In VWFS's case, the Compliance Notice further outlines that the disguised and/or inaccurately disclosed fee is in contravention of the NCA in that: -

"(i) The dealer invoices containing the on the road fee, admin fee and handling fee are supplementary agreements or documents that contain provisions relating to these fees prohibited by sections 100(1)(a), 101(1), 102(1) and (2)(a) of the Act;

(ii) The on the road fee, admin fee and handling fee are disguised or inaccurately disclosed as service and delivery in credit agreements in contravention of section 3(e) read with section 92(2) of the Act."[6]

- The fee/cost is not a credit fee or charge permitted to be charged on a credit agreement in terms of section 101(1) of the Act;
- The "on the road fee/cost" is not a credit fee or charge that can be included in the principal debt deferred of an instalment agreement in terms of section 102(1) of the Act; and
- BMWFS has charged consumers the fee despite not having been chosen to act as an agent for the consumers to arrange the service for which the "on the road fee/cost" was charged.

[5] The Compliance Notice to VWFS states that VWFS charged consumers an on the road fee, administration fee and a handling fee on credit agreements, which are disguised and/or inaccurately disclosed as service and delivery on credit agreements, in contravention of section 3(e), 89(2)(c), 90(1), 90(2)(b)(iv)(aa), 90(2)(e), 90(2)(f), 91(2), 92(2), 100(1)(a), 101(1), 102(1) and 102(2)(a) of the NCA, in that:

- The on the road fee, admin fee and handling fee are credit fees or charges prohibited by section 100(1)(a) of the Act;
- The on the road fee, admin fee and handling fee are not credit fees or charges permitted to be charged on a credit agreement in terms of section 101(1) of the Act;
- The on the road fee, admin fee and handling fee are not credit fees or charges that can be included in the principal debt deferred of an instalment agreement or a lease in terms of section 102(1) of the Act;
- The dealer invoices containing the on the road fee are supplementary agreements or documents that contain provisions relating to these fees prohibited by sections 100(1)(a), 101(1), 102(1) and (2)(a) of the Act;
- The on the road fee, admin fee and handling fee are disguised or inaccurately disclosed as service and delivery in credit agreements in contravention of section 36 read with section 92() of the Act.
- VWFS was not chosen by consumers to act as the consumers' agent to arrange the services for which these fees were charged to consumers as required in section 102(2)(a) of the Act.

17. Although the Compliance Notices to BMWFS and VWFS are also similar with regard to the required steps to be taken,[7] differences exist with regard to the manner in which the two companies allegedly circumvented compliance with the NCA.

18. The outcomes requested by both BMWFS and VWFS in their separate filings, include a request to the Tribunal to review the compliance notices issued by the NCR in their totality. Both parties deny each and every allegation of having contravened the NCA as set out in their respective compliance notices.

19. In this application to consolidate, the Tribunal will therefore consider whether there is good cause to combine proceedings where credit providers are seeking the setting aside of two different Compliance Notices by the NCR based primarily on the legal interpretation and application of the law that they assume will be the same in the two matters.

LEGAL PRINCIPLES

20. It is convenient to set out the relevant statutory and regulatory provisions as well as the case law governing the consolidation of matters.

21. In terms of Rule 16A of the Rules for the Conduct of matters before the Tribunal[8], the key issue is whether the Tribunal believes that it appears convenient to consolidate two pending applications.

---

[6] VWFS compliance notice as issued by the NCR, p 3, paragraph 3(d) and (3e).

[7] The Compliance Notice to both BMWFS and FWFS demands that the following steps be taken:

- It has to confirm in writing that it has ceased "the practice and/or conduct of charging consumers the 'on the road fee/cost' on credit agreements".
- It has to provide a list of all consumers who were charged the "on the road fee/cost" on credit agreements, setting out, inter alia:
  - The number of consumers who were charged the fee/cost;
  - The total amount charged to all consumers;
  - It has to "refund" all consumers who were charged the fee/cost the amount thereof, together with a report by an independent auditor setting out:
    - The number of consumers who were charged the fee;
    - The number of consumers refunded;
    - The total amount refunded to consumers.

[8] As quoted above

22. Since the provisions of Rule 16A are similar to those of rule 11 of the uniform rules of court, consideration is given to the authorities dealing with rule 11.

23. In *Mpotsha v Road Accident Fund*[9] the paramount test for consolidation has been confirmed as convenience. In the exercise of the court's discretion to order consolidation, within the context of convenience, considerations such as similarity of the factual and legal issues, expedience, fairness to the parties, absence of prejudice and the saving of costs are all taken into account.[10]

24. As to what factors inform the consideration of convenience and what must be taken into account in determining whether it is appropriate to grant a consolidation, Satchwell J[11] outlined as follows:

"The test for consolidation in terms of Rule 11 is that of "convenience" to the parties, witnesses and to the court. The approach of our courts to "convenience" appears to be similar in questions of joinder of parties or actions, separation of issues or consolidation. Convenience, broadly and widely understood connotes "not only facility or expedience or ease, but a/so appropriateness in the sense that procedure would be convenient if in all the circumstances of the case, it appears to be fitting and fair to the parties concerned ..."

25. It follows therefore that the principle of appropriateness is relevant in the sense that the procedure would be convenient if, in all the circumstances, it appears to be fitting and fair to all the parties, including the witnesses and the Court, to consolidate actions.[12]

26. In an application in terms of the said rule, the Court has a discretion whether or not to grant the application. In New Zealand Insurance Co Ltd v Stone and Others[13], Corbett, AJ stated the following at 69A-C:

[9] 2000 (4) SA 696(c) at 700I-J

[10] Qwelane v Minister of Justice and Constitutional Development and Others 2015 (2) SA 493 (GJ) para 7.

[11] Placecol (Ply) Ltd v Absa Bank Ltd and SARS & Absa Bank Ltd v Mounties 2012 SA (GSJ) ZAGPJHC 193 (4 October 2012)

[12] Erasmus Superior Court Practice, 2nd edition, 2015, DE van Loggerenberg, B1-98A. Also see Mabotwane Security Services CC v Pikitup Soc (Pty) Limited & Fidelity Security Services (Pty) Limited & Imvula Quality Protection (Pty) Limited, Gauteng Division, Case Number 89232/2015, unreported, 19 May 2017.

[13] 1963 (3) SA 63 (C)

"In such an application for consolidation the Court, it would seem, has a discretion whether or not to order consolidation, but in exercising that discretion the Court will not order a consolidation of trials unless satisfied that such a course is favoured by the balance of convenience and that there is no possibility of prejudice being suffered by any party. By prejudice in this context it seems to me is meant substantial prejudice sufficient to cause the Court to refuse a consolidation of actions, even though the balance of convenience would favour it. The authorities also appear to establish that the onus is upon the party applying to Court for a consolidation to satisfy the Court upon these points."[14]

27. The purpose of a consolidation of matters under Rule 16A should therefore be to ensure that issues which are essentially the same are heard and determined in one trial so as to avoid a multiplicity of actions with the concomitant disadvantages and prejudice. The paramount test of convenience would usually dictate that a multiplicity of actions and the costs incidental thereto should be avoided.[15]

28. Consolidation of matters had been refused in the high court where:

(i) The defendant would have been prejudiced by the trial together of actions which the plaintiff instituted separately;[16]

(ii) Plaintiffs would have been prejudiced in the conduct of their separate cases by being forced to join as co-plaintiffs in circumstances where their interests did not align, but were conflicted;[17]

(iii) There was a possibility of conflict developing between plaintiffs;[18]

(iv) It would result in considerable delay;[19] and

(v) Where the actions sought to be consolidated stemmed from statutory backgrounds which were completely foreign to one another.[20]

[14] Also see International Tobacco Company of SA Ltd v United Tobacco Companies (South) Ltd, 1953 (1) SA 241 (W)
[15] See Nel v Silicon Smelters (Edms) Bpk 1981 (4) Sa 792 (A) at 802B-C. See also Jacobs v Deetlefs Transport BK 1994 (2) SA 313 (O) At 320A-B; Commissioner Of Customs And Excise v Randles, Brothers And Hudson Ltd 1941 AD 369 At 381; Bird v Lawclaims (Pty) Ltd 1976 (4) SA 726 (D) at 728F.
[16] International Tobacco Company of SA Ltd v United Tobacco Companies (South) Ltd supra
[17] London v Lancashire Insurance Co Ltd v Dennis no 1962(4) SA 640(d) at 645B-E
[18] Beier v Thornycroft Cartage Company 1961 (4) SA 187 (N)
[19] Belford v Belford 1980 (2) SA 843(c) at 846B-F
[20] Belford v Belford supra

LEGAL ARGUMENTS

29. The Applicant contented that it is convenient that the two matters be heard together for the following reasons:

    (i) The Compliance Notices issued by the NCR to VWFS and BMWFS are similar;
    (ii) VWFS and BMWFS are accused of charging fees to consumers on credit agreements, in contravention of the same sections of the NCA;
    (iii) The nature and extent of the investigations conducted by the NCR in regard to both VWFS and BMWFS were the same;
    (iv) The process followed by the NCR in relation to both VWFS and BMWFS, prior to it issuing the Compliance Notices, was the same; and
    (v) VWFS and BMWFS seek to have the Compliance Notices set aside for the same reasons, save for one ground raised by VWFS which is not contained in the referral by BMWFS.

30. During argument, the Applicant also highlighted that the two applications are the same in relation to the issue to be decided, namely whether "on the road fees" as included into the deferred amount as financed by both VWFS and BMWFS constitutes an administrative charge in contravention of the NCA. The Applicant contended that the Tribunal's finding on this issue will dictate whether or not the compliance notices should be set aside.

31. The Applicant further argued that deciding whether or not the NCR is interpreting the NCA correctly with regard to reference to "on the road fees" in credit agreements, is of great importance to the vehicle finance market, of which both BMWFS and VWFS form part of.

32. The Applicant indicated that a consolidation of the two matters will prevent the possibility of conflicting judgments. The argument was put that two different Tribunal panels may come to different conclusions on whether or not the NCR is interpreting and applying the NCA correctly, and that the likelihood of such an inconsistency will not be to the benefit of the motor finance industry.

33. The Applicant confirmed that neither BMWFS nor the VWFS had been mandated to litigate on behalf of the motor finance industry, nor do they intend to bring a class action in this matter. Their motivation for the application for consolidation is purely on the grounds of convenience.

34. The First Respondent contended that the consolidation should not be granted as it would not be in the best interests of, or beneficial to, the parties. The reasons outlined for opposing the application include the following:

(i) The Applicant (BMWFS) and the second respondent (VWFS) are separate entities with their own consumers;
(ii) Any redress ordered by the Tribunal will be directed at each entity;
(iii) Each party must be held accountable for its own contraventions and should raise its own defences; and
(iv) Each matter must be decided on its own merits.

35. In argument, the First Respondent raised the concern that the effect of consolidating the two matters may include, *inter alia,* factual scrutiny of the investigation processes followed, the various lending practises of the two credit providers, the specific processes between the dealers and their credit providers, the actual wording of credit agreements, expectations and disclosures to individual consumers, and the alleged intention to disguise non-compliance with the NCA.

36. The First Respondent also contended that the consolidation would not be convenient or in the best interests of the parties, in that:

(a) The Applicant incorrectly contended that a ruling is required on only one issue, namely, whether the financing of a fee charged by a dealer, reflected on its invoice to a financier, amounts to the charging of a fee as envisaged in sections 100 – 102 of the NCA;
(b) The evidence regarding the two matters is peculiar to each company and its affected consumers. Therefore, the factual evidence to be led will be different in each matter and it will not be convenient or appropriate to have one hearing relating to different evidence on different issues concerning the conduct of two different companies. In

order to determine whether BMWFS and VWFS contravened the provisions of the NCA by charging the "on the road fee" to their respective consumers, consideration must be given to various factual practises, including:

i) Whether each company knew what the "on the road fee" related to when they included such fee in the relevant credit agreements;
ii) Whether the relevant consumer chose such company to arrange the services for which the "on the road fee" was charged; and
iii) Whether the relevant company actually rendered the services to the consumer in return for charging the "on the road fee".

37. According to the First Respondent, a consolidation of matters will affect the two different hearings in that different factual issues will be heard together and the Tribunal will adjudicate on different factual scenarios within one hearing. The First Respondent's argument was that evidence on the two cases and the application of the NCA to the two different companies may be different. As a result of a consolidation of matters, all the evidence of the investigation processes will be presented in one hearing and all the legal arguments to be advanced, will be confined to one hearing.

CONSIDERATION OF THE MERITS

38. The two prerequisites that must be satisfied before consolidation of actions can be ordered, are the balance of convenience and the certainty that the consolidation will not substantially prejudice any of the parties or consumers. If the balance of convenience does not favour consolidation or there is substantial prejudice to any of the parties or consumers, the Tribunal will not order consolidation.

39. The nexus between the two actions is the nature of the contravention of the NCA and the similarities in the Compliance Notices as issued by the NCR following an investigation into the lending practices of the Applicant and the Second Respondent respectively. Two different compliance notices had been issued on two different dates.

40. In their respective applications for the review of the compliance notices BMWFS and VWFS seem to disagree with the NCR's application and interpretation of sections 100 – 102 of the NCA, namely that a fee charged by a dealer, reflected on its invoice to a financier, amounts to the "charging of a fee" and accordingly prohibited by the NCA. It is this interpretation and application of the NCA that formed the basis on which the NCR issued the two compliance notices to the VWFS and BMWFS respectively.

41. This disagreement between the parties in the main application, namely the interpretation and application of the provisions of the NCA to their alleged conduct, is in the view of the Tribunal, not to be considered in this application.

42. The Tribunal will only analyze the interpretation and application of the provisions of the NCA to the parties' alleged conduct, to the extent that it is necessary to determine convenience for the parties, the Tribunal and consumers to be affected by such consolidation.

43. The Applicant further contends that the referrals by BMWFS and VWFS require a ruling on exactly the same matters of fact and issue of law – *"does the financing of a fee charged by a motor vehicle dealer, reflected on its invoice issued to a financier, amount to the 'charging' of such fee as envisaged in section 100 to 102 of the NCA?"*[21] This contention, namely that the only ruling that is required from the Tribunal is a ruling giving clarity on the NCR's application and interpretation of the mentioned sections of the NCA, is not correct, in that:

    (i) The consolidation of matters will imply that the complete Tribunal Applications of the two credit providers, as presently contained in two separate case files, will be consolidated into one application and the application will then proceed as one. The result thereof is that the pleadings before the Tribunal and the requested relief, namely review of the two separate compliance notices, will remain the same;

    (ii) No revised joint application has been filed, requesting the Tribunal to limit remedial relief to the provision of a declaratory order relating to the financing of a deferred amount that includes a fee charged by a dealer; and

[21] Applicant's Heads of Argument, page 28.

(iii) The Tribunal will have to consider the factual circumstances and applications of both credit providers in one application if the matters are to be consolidated.

44. The alleged unlawful financing, directly or indirectly, of the *"on the road"* fee of the dealer, is common to both referrals by BMWFS and VWFS. However, the VWFS's referral also concerns the issue of deceit and whether or not VWFS unlawfully disguised the *"on the road fee"* as being an "admin fee" or a "handling fee", as envisaged in section 89(2)(c) and various subsections in sections 90 to 92.

45. The Second Respondent, VWFS, also raised constitutional and administrative issues as grounds for reviewing and setting aside the compliance notice. These arguments have not been raised in the Applicant's matter and it is not convincingly clear that these arguments may be applicable to the Second Respondent's matter. It is therefore not indicative of convenience for one hearing to determine all of the factual issues, as different evidence will be led on each of the alleged contraventions.

46. The possibility is real that a consolidated hearing may result in one protracted hearing, while the evidence concerning the alleged disguised fee and the constitutional and administrative law issues exclusive to the VWFS matter, will unnecessarily delay the finalisation of the BMWFS matter.

47. In order to confirm whether or not the two credit providers *de facto* contravened the NCA, the Tribunal will be tasked with hearing evidence concerning the different practices employed by BMWFS and VWFS respectively, in order to determine what transpired between each company and the relevant consumers in relation to the relevant credit agreements. As a result, one hearing will be unnecessarily protracted and will require the parties to be detained for longer than necessary until both hearings have been finalised.

48. The expectation that the application of the law in various instances of transgression should be the same, is indeed correct. However, in principle, depending on the nature of the circumstances leading to a transgression, the issuing of any compliance notice by the NCR should be considered on the applicable practices and circumstances of every individual case.

49. The Tribunal therefore finds that it will not be convenient to hear the evidence in both matters in one hearing, based on:

(i) The risk that evidence to be provided could reveal commercially sensitive information concerning the practice of each company, which may require separate or closed hearings for the handling of the witnesses and/or the treatment of such information;

(ii) The delays that may be experienced in relation to one matter that could prevent the finalisation of the other matter in circumstances where the issue giving rise to the delay does not concern the other matter; and

(iii) The additional statutory contraventions alleged in the VWFS matter that could give rise to further evidence being led that will unnecessarily delay finalisation of the BMWFS matter.

50. The possibility of conflicting findings should not be raised as a matter that will necessitate a consolidation of matters from a point of convenience. In fact, the possibility of conflicting judgements cannot arise where each matter is determined on its own merits.

51. Section 3 of the NCA provides that the purpose of the Act includes the protection of consumers. Also, specifically with regard to VWFS, section 3(e)(iii), which provides that the Act's purposes are achieved through "*addressing and correcting imbalances in negotiating power between consumers and credit providers by…(iii) providing consumers with protection from deception, and from unfair or fraudulent conduct by credit providers and credit bureaux",* is relevant.

52. The NCA is aimed at advancing the best interests of consumers and protecting consumers. In the present matter, the different evidence to be led in relation to the conclusion of the various credit agreements by BMWFS and VWFS, and the additional issues to be resolved in the VWFS application, indicate that one hearing will not be convenient, but could lead to protracted litigation.

53. The Tribunal finds that that a consolidation of the two matters will delay the finalisation of the two respective applications requested to be consolidated.

54. The Tribunal further believes that it is imperative to obtain finalisation of either matter as expeditiously as possible.

CONCLUSION

55. The Applicant did not satisfy the Tribunal that the balance of convenience favours consolidation and that there is no possibility of prejudice being suffered by any party sufficient to cause the Tribunal to refuse consolidation.

56. The Tribunal is of the view that consumers that are presently affected by credit agreements implicated by the NCR's Compliance Notices to BMWFS and VWFS respectively, are all interested parties to this consolidation application. In terms of Rule 16A of the Tribunal, "the Tribunal may, if it appears convenient to do so, consolidate such applications **alternatively, upon the application of any party thereto and having served on all interested parties,** make an order consolidating such applications."

57. From the papers before the Tribunal, it is clear that the application to consolidate has not been served on any consumers affected by the credit agreements that were targeted by the compliance notice of the NCR.

58. Based on the above, in the absence of convenience and the presence of a real prejudice to be suffered by interested parties other that the Applicant and Respondent, the Tribunal cannot grant consolidation of the two respective applications instituted separately by BMWFS and VWFS.

ORDER

59. The Tribunal accordingly makes the following orders:

59.1 The Application to consolidate the application under case number NCT/93829/2017/56(1) and the application under case number NCT/94937/2017/56(1) is refused;

59.2 The two separate applications will be heard separately; and

59.3 There is no order as to costs.

Thus done and handed down in Centurion this 5th day of June 2018.

[signed]

DR. MC PEENZE

Presiding Member

Ms. D Terblanche (Tribunal Member) and Mr. A Potwana (Tribunal Member) concurring.