

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 129/CR/Dec08

In the matter between:

The Competition Commission

Applicant

and

Rooibos Ltd

Respondent

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

Heard on : 17 November 2010

Decided on : 17 November 2010

Order

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



N Manoim
Presiding Member

Concurring: Y Carrim and A Wessels

"A"

competitiontribunal
south africa

2010 -10- 28

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11/11/20

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 129/CR/Dec08.

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

ROOIBOS LIMITED

Respondent

In re:

THE COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

ROOIBOS LIMITED

First Respondent

NATIONAL BRANDS LIMITED

Second Respondent

COFFEE TEA AND CHOCOLATE COMPANY (PROPRIETARY) LIMITED

Third Respondent

UNILEVER SOUTH AFRICA (PROPRIETARY) LIMITED

Fourth Respondent

JOEKELS TEA PACKERS CC

Fifth Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND THE RESPONDENT IN REGARD TO ALLEGED CONTRAVENTIONS OF SECTION 8 (c) and (d) OF THE COMPETITION ACT NO. 89 OF 1998

The Commission and the Respondent in the above matter hereby agree that application be made to the Competition Tribunal for an order in terms of section 58(1)(b) of the Competition Act No. 89 of 1998 on the terms set out more fully below.

NGT

WR

1 DEFINITIONS

For the purpose of this consent order, the following definitions apply:—

- 1.1 "Act" means the Competition Act No. 89 of 1998;
- 1.2 "Commission" 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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 "Complainant" means Coetzee & Coetzee (Proprietary) Limited;
- 1.5 "Respondent" means Roobos Limited;
- 1.6 "Four Respondents" means four of the respondents in the complaint: referral proceedings being, National Brands Limited; Coffee Tea and Chocolate Company (Proprietary) Limited; Unilever South Africa (Proprietary) Limited and Jockels Tea Packers CC;
- 1.7 "Second Respondent" means National Brands Limited
- 1.8 "Fourth Respondent" means Unilever South Africa (Proprietary) Limited;
- 1.9 "Parties" means the Commission and the Respondent;
- 1.10 "Tribunal" means the Competition Tribunal of South, a statutory body, established in terms of section 26 of the Act, with its principal place of business at Building C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 THE COMPLAINT, THE COMMISSION'S INVESTIGATION AND THE COMPLAINT REFERRAL PROCESS

2.1 Pursuant to receiving a complaint from the Complainant, on 12 August 2005, the Commission initiated an investigation into alleged contraventions of section 8(c) or 8 (d)(i) or 5(1) on the part of the Respondent. In particular, the Complainant alleged that:

2.1.1 Respondent had concluded exclusive supply agreements with the four main roobos packers, i.e. NBL, CTC, Joekels and Unifoods which precluded the packers from obtaining supplies of bulk processed roobos from other firms other than the Respondent.

2.1.2 Respondent utilised a system of volume discounts, based on targets, thereby inducing packers to not deal with the Respondent's competitors.

2.2 Respondent cooperated fully with the Commission during its investigation and provided answers and information, amongst others,

2.2.1 on its business;

2.2.2 its relationship with its customers;

2.2.3 its customers' supply requirements;

2.2.4 the roobos market, new entrants thereto, its growth and competition therein.

2.3 Pursuant to its investigation, the Commission found that:

2.3.1 Respondent had concluded exclusive supply agreements with the Four Respondents in 2000 and in 2001, which were amended and/or replaced with new supply agreements in 2006;

2.3.2 the exclusive supply agreements obliged the parties to obtain all (or a substantial amount) of their supplies of bulk

processed rooibos from the Respondent;

2.3.3 the Respondent is dominant in the relevant upstream market for the processing and supply of bulk rooibos to packers;

2.3.4 the exclusive supply agreements with downstream customers (the Four Respondents) have the effect of foreclosing the Respondent's rivals from the upstream market and these agreements therefore entrench the Respondent's dominance in the upstream market;

2.3.5 Respondent also utilised a system of volume discounts, based on targets, which had the effect of inducing customers to not deal with the Respondent's competitors.

2.4 On 12 December 2008 the Commission filed a complaint referral with the Tribunal against the Respondent and the Four Respondents, in which it sought, amongst others, an order declaring that:

2.4.1 the Respondent abused its dominance in contravention of section 8(d)(i) alternatively 8(c) of the Act, alternatively;

2.4.2 that the Respondent committed a prohibited practice in contravention of section 5(1) of the Act;

2.4.3 that the whole or such parts of the supply agreements still in force between the Respondent and the Four Respondents are void; and

2.4.5 required the imposition of an administrative penalty on the Respondent equal to 10% of the Respondent's annual turnover for the preceding year.

2.5 Answers to the Commission's complaint referral were filed by the Respondent, the Second Respondent and the Fourth Respondent that, amongst others:

2.5.1 explain the relationships between Respondent and the Four Respondents;

2.5.2 describe the purchasing decisions made by Second and Fourth Respondents as regards rooibos supplies;

2.5.3 discuss the new entrants into the rooibos market, their growth, marketing strategies and relationships with rooibos customers; and

2.5.4 discuss competition in the rooibos market.

2.6 Pursuant to the filing of the Respondent's answer, the Commission and the Respondent have concluded this agreement in settlement of the complaint referral, and the Second and Fourth Respondent notified thereof.

3. UNDERTAKINGS

The Respondent undertakes that it will –

3.1 Not require any firm to purchase all of its rooibos supply only from the Respondent;

3.2 Not offer discounts or rebates to rooibos customers on volumes of rooibos purchased, if:

3.2.1 such discounts or rebates are not available on equivalent terms to all customers; or

3.2.2 such rebates or discounts are determined on individualised targets; or

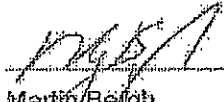
3.2.3 such rebates or discounts on sales above a pre-determined threshold are calculated such that they include sales below the threshold; or

3.2.4 the net price for the incremental sales, after such discounts and rebates are taken into account, will be below the average variable cost within the meaning of section 8(d)(iv) of the Competition Act.

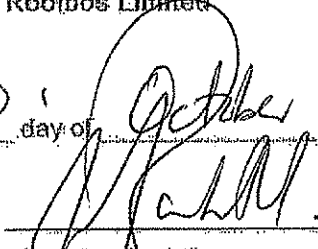
4 GENERAL

- 4.1 The Respondent makes no admission of liability of any kind whatsoever for any prohibited conduct under the Act on its part.
- 4.2 The Parties agree, on the basis of the undertakings made herein, that no administrative penalty shall be paid by the Respondent or any of the Four Respondents.
- 4.3 This agreement, upon confirmation as an order by the Tribunal, is in settlement of and concludes the complaint referral between the Commission and the Respondent and the Four Respondents relating to the alleged contravention by the Respondent of sections 8(c), 8(d)(i) and 5(1) of the Act that is the subject of or was investigated under the Commission's case number 2005AUG1775.

Signed at Amstelveen on the 13 day of October 2010


Martin Beigh
Director
Rooibos Limited

Signed at Pretoria on the 20 day of October 2010


Shan Ramapurath
The Commissioner
Competition Commission