



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 019539

In the matter between:

The Competition Commission

Applicant

and

Rhodes Food Group (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member)
A Ndoni (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 08 October 2014

Decided on : 08 October 2014

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
Mr. N Manoim

08 October 2014
Date

Concurring: Ms. A Ndoni and Ms. M Mokuena

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT Case No:

CC Case No:2009Aug4635

In the matter between:

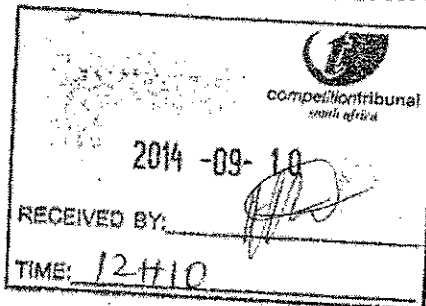
THE COMPETITION COMMISSION

and

RHODES FOOD GROUP (PTY) LTD

Applicant

Respondent



CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND RHODES FOOD GROUP (PTY) LTD IN RESPECT OF ALLEGED CONTRAVENTION OF SECTIONS 4 (1)(b)(i),(ii) and (iii) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

Preamble

The Competition Commission and Rhodes Food Group (Pty) Ltd hereby agree that application be made to the Competition Tribunal for confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, in respect of alleged contraventions of sections 4(1)(b)(i),(ii) and (iii) of the Act, on the terms set out below.

1 Definitions

For the purposes of this Consent Agreement the following definitions shall apply:

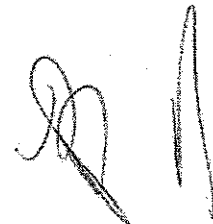
- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of

business at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

- 1.3 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B of the Act under case number 2009Aug4635;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and RFG;
- 1.6 "L&AF" means Langeberg & Ashton Foods (Pty) Ltd;
- 1.7 "Parties" means the Commission and RFG;
- 1.8 "RFG" means Rhodes Food Group (Pty) Ltd., registration number 1999-020998-07; and
- 1.9 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 3rd Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 The Complaint and Complaint Investigation

- 2.1 On 23 November 2009, the Commissioner, acting in terms of section 49B(1) of the Act, initiated a complaint under case number 2009Aug4635 against L&AF and RFG for a possible contravention of section 4(1)(b)(i),(ii) and (iii) of the Act in the market for the supply of canned and processed fruit for export.
- 2.2 The Commission's investigation revealed that:
- 2.2.1 In November 2006 L&AF and RFG concluded a broad agreement in respect of the export market for certain canned and processed fruits.
- 2.2.2 The broad agreement between RFG and L&AF entailed an agreement and / or concerted practice to fix prices, divide markets and to tender collusively in respect of certain products in specific export markets:



2.2.2.1 Far East markets and the South East Asia markets

RFG and L&AF agreed on the selling price and discounts of peaches in the Japanese market and that the price to be charged for canned fruit products in the Far East markets and South East Asia markets would be the same as the price charged in the Japanese market.

2.2.2.2 Australian Market

RFG and L&AF agreed to charge the Australian market the same price as was charged in Japan for canned apricots, peaches, pears and fruit cocktail.

2.2.2.3 European Union

RFG and L&AF agreed on the minimum price to be charged to customers for canned apricots, peaches and pears in the EU market.

2.2.2.4 United Kingdom Market

RFG and L&AF agreed on the minimum price to be charged for canned apricots, pulp apricots and peaches and co-ordinated with one another on tenders and customers in the UK market.

2.3 The above conduct is in contravention of sections 4(1)(b)(i),(ii) and (iii).

3 Admission

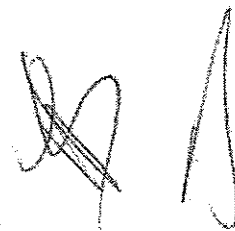
RFG admits that it entered into the agreements and or concerted practices detailed in paragraph 2.2 above with its competitor, L&AF, in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

4 Agreement concerning future conduct

RFG agrees to:

4.1.1 desist from the conduct described above;

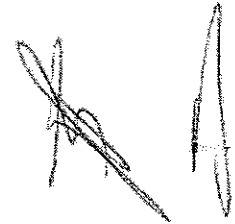
4.1.2 develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include the following:

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- 4.1.2.1 the identification by RFG of competition risks relevant to its business and the monitoring thereof; and
- 4.1.2.2 provision of specific training on aspects of competition law of particular relevance to RFG, such training to be made available to all new employees joining RFG. Furthermore, RFG will update such training as appropriate, on an ongoing basis.
- 4.2 to submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the consent agreement as an order by the Competition Tribunal; and
- 4.3 to circulate a statement summarising the contents of this consent agreement to all management and operational staff employed at RFG within 60 days from the date of confirmation of this consent agreement by the Tribunal.

5 Administrative Penalty

- 5.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, RFG accepts that it is liable to pay an administrative penalty.
- 5.2 The parties have agreed that RFG will pay an administrative penalty in the amount of R1 223 391.05 (One million two hundred and twenty-three thousand three hundred and ninety-one Rands and five cents).
- 5.3 This amount does not exceed 10% of RFG's total annual income in the Republic and its exports from the Republic for its 2013 financial year.
- 5.4 RFG shall pay the amount set out in paragraph 5.2 above to the Commission in 30 days from the date of confirmation of this Consent Agreement by the Tribunal.
- 5.5 The penalty shall be paid into the Commission's bank account which is as follows:
- NAME: THE COMPETITION COMMISSION FEE ACCOUNT
BANK: ABSA BANK, PRETORIA
ACCOUNT NUMBER: 4050778576
BRANCH CODE: 323 345
REF NO: 2009Aug4635RFG
- 5.6 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.



6 Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and RFG relating to any alleged contravention of the Act that is the subject of the Commission's investigation under Commission Case No. 2009Aug4635.

Dated and signed at Johannesburg on the 28th day of August 2014

For RHODES FOOD GROUP (PROPRIETARY) LIMITED

Duly authorised to sign on behalf of Rhodes Food Group (Pty) Ltd
Bruce Henderson
Director

Dated and signed at PRETORIA on the 9th day of SEPTEMBER 2014

For the COMPETITION COMMISSION:

Tembinkosi Bonakele
Competition Commissioner