

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 01/CR/Jan10

In the matter between:

The Competition Commission

Applicant

and

Rainbow Farms (Pty) Ltd

Respondent

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

Heard on : 01 September 2010
Decided on : 01 September 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

Concurring: Y Carrim and A Wesseis

BEFORE THE COMPETITION TRIBUNAL OF SOUTH
AFRICA (HELD AT PRETORIA)

CT CASE NO; 01/CR/Jan2010
CC CASE HO: 2008Jul2853

In the matter between:

THE COMPETITION COMMISSION
and

APPLICANT

RAINBOW FARMS (PTY) LIMITED

RESPONDENT

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
RAINBOW FARMS (PTY) LTD IN RESPECT OF ALLEGED CONTRAVENTIONS OF
SECTION 5(2) OF THE COMPETITION ACT NO. 89 OF 1998 AS AMENDED

The Applicant and Respondent hereby agree that application be made to *the* Competition Tribunal (Tribunal") to confirm this Settlement Agreement as an order of the Tribunal in terms of section 58(1)(a)(iii) and 59(1)(a) of the Act on the terms set out below. This agreement is concluded in settlement of the allegations of minimum resale price maintenance, as further detailed herein, referred by the Competition Commission ('the Commission") to the Tribunal

1. DEFINITIONS

In this Settlement Agreement, unless the context indicates otherwise, the following definitions shall apply:

1.1 'Act' means the Competition Act, 89 of 1998, as amended.

- 1.2. 'Bagged feed' means an animal feed product, produced by Epol specifically at its mill in Berlin, Eastern Cape province;
- 1.3. 'Commission' means the Applicant, 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, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria.
- 1.4. 'Complainant' means Greg Kaiser, an employee at B D Kaiser (Pty) Limited t/a Jireh Powersave (Jireh), also known as B D Kaiser CC after 21 April 2008.
- 1.5. 'Epol' means Epol South Africa, a division of Rainbow.
- 1.6. 'Epol Berlin' means one of the mills of Epol, operating in the Berlin area of the Eastern Cape.
- 1.7. "Parties" means the Commission and Rainbow.
- 1.8. 'Rainbow' means the Respondent, Rainbow Farms (Pty) Limited, a company duly incorporated with limited liability in accordance with the laws of South Africa with its principal place of business at 1 Stanley Methven Road, Hammarsdale.
- 1.9. "Settlement Agreement" means this settlement agreement duly signed and concluded between the Commission and Rainbow.

2. THE COMPLAINT INVESTIGATION AND THE COMMISSION'S FINDINGS

- 2.1. On 16 July 2008, the Applicant received a complaint against Epol Berlin from the Complainant, an employee at Jireh. In his complaint, the Complainant alleged *that* Epol is engaged in the practice of minimum resale price maintenance in contravention of section 5(2) of the Act. The allegation was that Epol forced Jireh to sell the Respondent's products at fixed prices forcing them to be uncompetitive. The Complainant based his allegation on various letters sent to Jireh from Epol's offices.
- 2.2. The Commission conducted an investigation into the Respondent's alleged conduct and found the following:
- 2.2.1. At the times relevant to the complaint Epol was a division of the Respondent. Epol is a manufacturer and supplier of animal feed for a wide range of animal species,

it operates various feed mills countrywide, from where it supplies feed to farmers and to independent wholesalers and/or retailers, who in turn, sell the feed to their customers.

2.2.2. Epol Berlin, in the Eastern Cape, sold bagged feed directly from its premises on a cash payment basis, but in mid 2004 Epol Berlin stopped supplying bagged feed on a cash basis. However due to the demand from its customers, Rainbow appointed D L Agricultural Supplies ("DL") to take over Epol Berlin's role of supplying bagged feed for cash to customers in Berlin, Rainbow provided DL with a selling price list which resulted in DL's prices being the same as the prices at which Epol Berlin would have sold to its customers *directly* from the mill.

2.2.3. Jireh, another stockist in Berlin and a competitor of DL, demanded supply from Epol Berlin on the same terms and at the same pricing as DL. Epol Berlin accordingly supplied product to Jireh on this basis.

2.2.4. During 2006, it came to Epol Berlin's attention that Jireh was selling the bagged feed at prices below the selling price list. Accordingly, Epol Berlin addressed a letter to Jireh, requiring it to sell the bagged feed in accordance with the terms of the supply agreement, namely at Epol Berlin's prescribed selling prices.

2.2.5. Jireh complained about this conduct to Epol Berlin, and as soon as Epol's head office became aware that Epol Berlin's conduct of dictating resale prices to DL and Jireh could constitute a contravention of the Act, Epol head office immediately ordered Epol Berlin to desist from requiring DL or Jireh to sell at specified prices.

2.2.6. The Commission's investigation revealed that this conduct was confined to two stockists in the Eastern Cape and that it persisted for a period of two years, until 6 April 2006.

3. ADMISSION

3.1. Rainbow admits that it contravened section 5(2) of the Act in that Epol Berlin dictated the minimum resale price of bagged animal feed to DL and Jireh as alleged in clause 2 above.

4. AGREEMENT CONCERNING FUTURE CONDUCT

4.1 Rainbow agrees and undertakes:

4.1.1. to prepare and circulate a statement summarising the content of this Settlement Agreement to its directors and shareholders within 30 days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;

4.1.2. develop and implement a compliance programme designed to ensure that its employees, management, directors and/or subsidiaries and divisions do not engage in any conduct which constitutes a prohibited practice in terms of the Act, a copy of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this Settlement Agreement as an order of the Tribunal.

4.1.3. not to engage in the practice of minimum resale maintenance in contravention of section 5(2) of the Act and to take necessary steps to make sure that none of its divisions or subsidiaries is engaged in similar conduct or any other conduct that contravenes any of the provisions of chapter 2 of the Act;

5. ADMINISTRATIVE PENALTY

5.1 In terms of section 58(1)(a)(iB) and 59(1)(a) of the Act, the Respondent is liable to pay an administrative penalty. The parties have agreed that Rainbow shall pay a penalty in the sum of R1 000 000.00 (one million rands).

5.2. Rainbow shall pay the administrative penalty *within* ninety (90) days of the confirmation of this Settlement Agreement as an *order of the Tribunal* into the following account

NAME;	COMPETITION COMMISSION FEE ACCOUNT
BANK:	ABSA BANK, PRETORIA

ACCOUNT NO:
BRANCH CODE:

5.3. The Commission shall pay the administrative penalty to the National Revenue Fund in accordance with section 59(4) of the Act.

6. FULL AND FINAL SETTLEMENT

6.1 This agreement is entered into in full and final settlement and upon confirmation by the Tribunal concludes all proceedings between the Commission and Rainbow relating to the alleged contravention by Rainbow, and any of its divisions, of section

5(2) of the Act that is subject of the Commission's referral under CC Case Number 2008Jui2853 and CT Case Number 01 /CR/Jan2010.

Dated and signed at Westville on this the 10th day of August 2010

Group Human Resources and Legal Director
Rainbow Farms (Pty) Ltd
duly authorised

Dated and signed at Pretoria on this the 4th day of August 2010

Commissioner
Competition Commission