

SOUTH AFRICA / JUDGMENT

Competition Commission v The Dorper Sheep Breeders Society of South Africa (017301) [2013] ZACT 82 (31 July 2013)

[2013] ZACT 82

COURT

Competition Tribunal

BEFORE

A Wessels, A Ndoni, A Roskam

CASE / FILE NUMBER

017301

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 017301

In the matter between:

The Competition Commission Applicant

And

The Dorper Sheep Breeders Society of South Africa Respondent

Panel: A Wessels (Presiding Member)

A Ndoni (Tribunal Member)

A Roskam (Tribunal Member)

Heard on: 31 July 2013

Decided on: 31 July 2013

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the Respondent, attached hereto as “Annexure A”, to be read with the addendum to the Settlement Agreement, attached hereto as “Annexure B”.

A Wessels

Presiding Member

Concurring: A Ndoni and A Roskam

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CC Case No: 2010Aug5303/2011 July01 31

in the matter between:

THE COMPETITION COMMISSION Applicant

THE DORPER SHEEP BREEDERS SOCIETY OF SOUTH AFRICA Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND THE DORPER SHEEP BREEDERS SOCIETY OF SOUTH AFRICA IN REGARD TO THE ALLEGED

CONTRAVENTION OF SECTIONS 4 (1) (b)(1) AND (ii) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED

The Competition Commission and The Dorper Sheep Breeders Society of South Africa hereby agree that application be made to the Competition Tribunal ("the Tribunal") for an order confirming this Consent Agreement as an Order of the Tribunal in terms of section 49D read with section 58(l)(a)(tii) and

(b) as well as section 59(1)(a) of the Competition Act, No. 89 of 1998 as amended, on the terms set out more below.

1. Definitions

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

1.1. "the Act" means the Competition 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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside* Pretoria, Gauteng.

1.4. "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act.

1.5. "Complaints" means the complaint lodged on 12 August 2010 by three dorper sheep farmers namely John Deli, Mickey Phillips and Leroy Phillips, and the complaint initiated by the Commissioner against the Society on 07 July 2011 under case numbers 201 OAug5303 and 2011 July0131

respectively.

1.6. "Consent Agreement" means this consent agreement duly signed and concluded between the Commission and the Society.

1.7. "Days" means calendar days.

1.8. "Parties" means, collectively, the Commission and the Society.

1.9. "Prohibited Practice*" means a practice prohibited in terms of Chapter 2 of the Act.

1.10. "Society" means The Dorper Sheep Breeders Society of South Africa a nonprofit organisation registered in terms of section 8(7)(a)(ii) of the Animal Improvement Act No. 62 of 1998 (the Animal Improvement Act) under registration number: 62/98/B18.

1.11. "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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. The Complaint investigation

2.1. On 12 August 2010, the Commission received a complaint in terms of section 49B(2)(b) of the Act from three members of the Society ("the third party complaint"). The complaint concerned Rule C of Rules of Sale issued by the Society. Rule C restricted members of the Society to conduct private sales of dorper sheep only within the province or region in which that member resides or that member's farm is situated. In terms of Rule C, members of the Society were required request permission from the Society before they could conduct private sales of dorper sheep outside the province or region in which they reside or their farms are located. This conduct was investigated by the Commission as an alleged contravention of section 4(1)(b)(ii) of the Act

2.2. During the Investigation of the third party complaint, the Commission established that the Society's Rules of Sale contained another rule, Rule 7.1, which stipulated that the minimum sale price of rams is two thousand five hundred rand (R2500) and the minimum price for ewe is seven hundred and fifty rand (R750). Consequently, on 07 July 2011 Commissioner initiated a complaint in terms of section 49B(1) against the Society for contravening the provisions of section 4(1)(b)(i) of the Act ("the initiated complaint").

2.3. The Commission investigated the complaints and found that:

2.3.1. Rule 7.1 of the Society's Rules of Sale contravened section 4(1)(b)(i) of the Act; and

2.3.2. Rule C of the Society's Rules of Sale contravened section 4(1)(b)(ii) of the Act.

3. Admission

3.1. The Society admits that Rule 7.1 of the Society's Rules of Sale contravenes section 4(1)(b)(i) of the Act

3.3. The Society admits that Rule C of the Society's Rules of Sale contravenes section 4(1)(b)(ii) of the Act.

4. Agreement Concerning Future Conduct

4.1. The Society confirms that it has amended its Rules of Sale and has removed Rule C and 7.1 of its Rules of Sale.

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2. The Society agrees and undertakes to refrain from engaging in price fixing, fixing of trading conditions, market division in

contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act.

4.3. Within six (6) months from the date of confirmation of this Consent Agreement, the Society agrees to develop, implement, monitor and enforce a competition law compliance programme in order to ensure that its employees, management, members and agents do not engage in future contraventions of the Act.

4.4. The Society undertakes not to engage in any conduct which constitutes a prohibited practice in contravention of chapter 2 of the Act,

5. Administrative Penalty

5.1. In terms of section 5B(1)(a)(iii) read with sections 59(1)(a), 59(2) and 59(3) of the Act, the Society accepts that is liable pay an administrative penalty.

5.2. The Society agrees and undertakes to pay an administrative penalty in the sum of twenty four thousand one hundred and seventy one rand and thirty cents (R24} 171.30), being 2.5% of the total sales attributable to commissions payable to the Society.

5.3. The Society shall remit payment of the administrative penalty into the following bank account:

NAME: COMPETITION COMMISSION FEE ACCOUNT

BANK: ABSABANK, PRETORIA

ACCOUNT NO: 405 077 8576

BRANCH CODE: 323345

5.4. The Commission will pay the administrative penalty received from the Society into the National Revenue Fund as contemplated by section 59(4) of the Act.

6. Full and Final Settlement

This Consent Agreement is entered into in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and the Society relating to any alleged contraventions by the Society and Us members of section 4(1)(b)(i) and 00 of the Act that are the subject of the Commission's Investigation under case numbers 2010Aug5303 and 2011 July0131.

Dated and signed in on this the day of 2013.

SIGNED at MIDDELBURG on this the 25th day of JUNE 2013

Duly authorized signatory

The Dorper Sheep Breeders Society of South Africa

SIGNED at PRETORIA on this the 8th day of JULY 2013

Shan Ramburuth

Competition Commissioner

CT Case No: 017301

CC Case No: 2010Feb4941

THE COMPETITION COMMISSION Applicant

ADDENDUM TO CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND THE DORPER SHEEP BREEDERS SOCIETY OF SOUTH AFRICA IN REGARD TO THE ALLEGED CONTRAVENTION OF SECTIONS 4(1)(b)(i) AND (ii) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED

The Competition Commission ("the Commission") and the Dorper Sheep Breeders Society of South Africa ("the society")

hereby agree to amend the Consent Agreement concluded on 08 July 2013 by substituting the existing clause 2.1 and 4.3 with the following:

"2.1. On 12 August 2010, the Commission received a complaint in terms of section 49(2)(B) of the Act from three members of the Society ("the third party complaint". The complaint concerned Rule C of the Rules of Sale issued by the Society, Rule C restricted members of the Society to conduct private sales of dorper sheep only within the

province or region in which that member resides or that member's farm is situated. In terms of Rule C, members of the Society were required to request permission from the Society before they could conduct private sales of dorper sheep outside the province or region in which they reside or their farms are located. This conduct was investigated by the Commission as an alleged contravention of section 4(1)(b)(ii) of the Act.

4.3. The Society agrees to develop, implement, monitor and enforce a competition law compliance programme in order to ensure that its employees, management, members and agents do not engage in future contraventions of the Act. The Society shall submit a copy of its compliance programme to the Commission within six (6) months of the date confirmation of this Consent Agreement by the Tribunal."

Dated and signed 31 July on this the day of JULY 2013.

SIGNED at PRETORIA on this the 31st day of JULY 2013

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