

SOUTH AFRICA / JUDGMENT

Competition Commission v West Rand Cycles CC (73/CR/Jul12)

[2013] ZACT 41 (30 May 2013)

[2013] ZACT 41

COURT

Competition Tribunal

BEFORE

N Manoim, M Mokuena, I Valodia

CASE / FILE NUMBER

73/CR/Jul12

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 73/CR/Jul12

016501

In the matter between:

The Competition

CommissionApplicant

and

West Rand Cycles

CCRespondent

Panel: N Manoim (Presiding Member), M Mokuena (Tribunal Member) and I Valodia (Tribunal Member)

Heard on: 29 May 2013

Decided on: 30 May 2013

Order

The Tribunal hereby confirms the following attached consent agreements, as agreed to and proposed by the Competition Commission and the Respondent:

1. The main agreement, dated 04 April 2013.

2. Annexure A thereto, dated 29 May 2013.

Presiding Member

Manoim

Concurring: M Mokuena and I Valodia

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA HELD

IN PRETORIA

CT CASE WO. 73/CR/JUL12

CC CASE NO. 2011JUL0155

THE COMPETITION

COMMISSIONRespondent

WEST RAND CYCLES

CCRespondents

In re:

COMPETITION

COMMISSIONRespondent

FRITZ PIENAAR CYCLES (PTY) LTD AND 19

OTHERSRespondents

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND WEST RAND CYCLES CC (‘WEST RAND’) IN REGARD TO ALLEGED CONTRAVENTION OF SECTION 4(1){b}{i} OF THE COMPETITION ACT 89 OF 1998, AS AMENDED.

The Commission and West Rand Cycles hereby agree that application be made to the Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with section 58 (1Xb) and 59(1)(a) of the Act on the terms set out below.

1. DEFINITIONS.

For the purposes of this Settlement Agreement the following definition 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 Building C, Mulayo Building, the DT! Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;

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 of the Competition Commission in terms of section 49B of the Act under case number: 2011 Jul0155;

1.5. "Settlement Agreement" means this settlement agreement duly signed and concluded between the Commission and West Rand;

1.6. "West Rand" means a close corporation duly registered in accordance with the laws of the Republic of South Africa, with its main place of business at 29 Voortrekker Road* Mind a tore North, Gauteng.

1.7. "Parties" means the Commission and West Rand;

1.8. "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, the DTI Campus* 77 Meintjies Street, Sunnyside, Pretoria, South Africa.

1.9. "Respondents") means all the firms that are cited as the respondents in the Commission's complaint referral filed under Competition Tribunal Case number: 73/CR/JUL12 respectively, namely: Fritz Pienaar Cycles (Pty) Ltd ("FPC"), Melody Street 18 (Pty) Ltd ("Melody"),

Moneymine 88 CC trading as Hotspot Cycles {"Hotspot"}, Pedal-On-Marketing CC trading as Maverick Cycles ("Maverick"),

Saiojee's Cycles CC ("Salojee's"), West Rand Cycles CC ("West Rand Cycles"), Bowman Cycles (Pty) Ltd

("Bowman"), Albatros Fishing & Cycling, previously named Winners Cycles (Pty) Ltd ("Albatros"), Omnico (Pty) Ltd ("Omnico"), Cytek Cycle Distributors CC ("Cytek"), Coolheat Cycle Agencies (Pty) Ltd ("Coolheaf"), Maillot Jaune Trading (Pty) Ltd ("Maillot Jaune"), Tridirect SA (Pty) Ltd ("Bicicletta"), Le Peloton (Pty) Ltd ("Le Peloton"), DBS Distributing CC trading as Thule Car Rack Systems ("Thule"), Pedaling Dynamics CC trading as Dunkeld Cycles ("Dunkeld"), Summit Cycles ("Summit"), Dynamic Choices Two CC trading as Bester Cycles ("Bester"). Johnson Cycle Works CC ("Johnson"), and New Just Fun.

2. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

2.1. In September 2008, the Commission received information from anonymous source regarding the meetings which allegedly took place in Cape Town and Gauteng between various cycling retailers and wholesalers. The Commission was also provided with minutes of one such meeting. These minutes were also posted on the Hub Website, a web based forum for cycling enthusiasts in the cycling industry. The minutes provided to the Commission were of a meeting which occurred on 10 September 2008 ("the September 2008 meeting") in Midrand.

2.2. As reflected in this minutes, the following key issues were discussed:

2.2.1. Increasing gross margins by increasing mark-ups for cycling accessories from 50% to 75%, and for bicycles from 35% to 50%;

2.2.2. A proposed time for the price increase (as from the 1st October 2008);

2.2.3. Getting rid of discounting and of shops undercutting each other;

2.2.4. Getting wholesalers to provide higher recommended retail prices ("RRPs") to the retailers and advertise these prices to the public.

2.3. Based on this information, the Commission initiated a complaint in terms of section 49B of the Act, on 5 March 2009 against FPC and Cycle Lab (now Melody) under CC Case Number: 2009Mar4326. The representatives of these firms were identified as having been the instigators behind the September 2008 meeting, Both the firms against whom the complaint was first initiated are cycling retailers.

2.4. The Commission later obtained further information implicating other firms and the Commissioner amended the first initiation to include other respondents on 12 May 2009.

2.5. Following an investigation, the Commission referred the complaint to the Tribunal on 25 June 2010 against 28 respondents who were both cycling retailers and wholesalers, Including all of the respondents identified in the amended initiation. On 12 November 2010, the Commission filed amended notice of motion and supplementary referral affidavit.

2.6. Pursuant thereto, the Commission withdrew the first referral on 10 June 2011 against all respondents named in the first referral

2.7. On 18 July 2011, the Commissioner then initiated a fresh complaint under CC Case Number: 2011Jul0155t into the allegations concerning primarily the September 2008 meeting and received additional information from certain respondents pursuant to the investigation of this complaint.

3. THE COMMISSION'S REFERRAL

3.1. Following its investigation, the Commission concluded that the conduct by West Rand together with other respondents constituted a contravention of section 4(1)(b)(t) of the Act, in that they agreed, alternatively engaged in a concerted practice to directly or indirectly fix prices or other trading conditions. This includes both the retailers and wholesalers present at the September 2008 meeting since they are in the same line of business in respect of the sale of bicycles and cycling accessories and equipment, at the wholesale and retail levels respectively.

3.2. In light of its findings, the Commission decided to refer the complaint on 5 July 2012 to the Tribunal for determination.

4. AGREEMENTS

4.1. Admissions

4.1.1. West Rand admits that its conduct amounts to a contravention of section 4(1)(b)(i) of the Act.

4.2, Future Conduct

4.2.1. West Rand agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents who are the subject of its investigations and referral to the Tribunal. Without limiting the generality of the foregoing. West Rand specifically agrees to:

4.2.1.1. Testify before the Tribunal regarding the conduct and events forming the factual basis of the Commission's referral affidavit and which are covered by this Settlement Agreement; and

4.2.1.2. To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions set out in the Commission's referral affidavit.

4.2.1.3. Desist from engaging in the conduct complained of.

4.2.2. West Rand agrees that it will in future refrain from participating in meeting(s) aimed at engaging in a cartel conduct which may lead to a possible contravention of section 4(1)(b) of the Act.

4.2.3. West Rand agrees that its employees, management, directors and agents will attend a competition law compliance training programme incorporating corporate governance to be provided by the Commission and designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Competition Act-

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 West Rands relating to any alleged contravention by the respondents of the Act that is the subject of

the Commission's investigation (CC Case no. 2011 JUL 0155).

Dated and signed at Krugersdorp on this the 26th day of March 2013

For West Rand

Eben Venter

Dated and signed at Pretoria on this the 4th day of April 2013

For the Commission

Competition Commissioner

ANNEXURE "A"

The parties agree that a notice on the terms set out hereunder will be displayed in a prominent place in their premises for a period of 6 months from the date of the Competition Tribunal's order.

'[Name of a firm] has settled a complaint referral with the Commission and has undertaken to ensure full compliance with the provisions of the Competition Act 89 of 1998.

For further information feel free to contact the Commission on telephone number: 012 394 3200 or E-mail:CCSA@compcom.co.za

Dated and signed on this the 29 th day of May 2013

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