

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD AT PRETORIA)**

CT CASE NO: CR075JUN17

CC CASE NO: 2015JUL0384

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

ROOIBOS LIMITED

Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
ROOIBOS LIMITED IN REGARD TO ALLEGED CONTRAVENTIONS OF SECTION
8 (c) and SECTION 8 (d) (i) OF THE COMPETITION ACT NO. 89 OF 1998, AS
AMENDED**

The Competition Commission and Rooibos Limited hereby agree that application be made to the Competition Tribunal ("the Tribunal") for an order confirming this Settlement Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act No. 89 of 1998, as amended, on the terms set out below.

1 DEFINITIONS

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

1.1 "**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 Mulayo Building (Block C) the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria;

- 1.3 "**Commissioner**" means the Commissioner of the Competition Commission as appointed in terms of section 22(1) of the Act;
- 1.4 "**Complaint**" means the complaint made by the Complainant against Respondent under case number 2015Jul0334;
- 1.5 "**Complainant**" means Khoisan Tea Import and Export (Pty) Limited;
- 1.6 "**Effective Date**" means the date upon which this Settlement Agreement is made an order of the Tribunal in accordance with section 49D of the Competition Act;
- 1.7 "**L-T Supply Agreement**" means any rooibos supply agreement with a duration of more than 1 year (whether by virtue of the contracted term or due to automatic renewal of or rights to extended supply on the part of Respondent by virtue of such L-T Supply Agreement) whereby the producer commits to sell all or some of its rooibos production per annum to the Respondent;
- 1.8 "**Parties**" means the Commission and Rooibos Limited, or either of them should the context provide for the singular;
- 1.9 "**Production Research**" means research by any agricultural and or scientific firm, institution, unit and/or person as contracted by a firm and or association operating in the rooibos sector which relates to the production and harvest of rooibos, and includes clinical trials and studies, but specifically excludes a firm's business and trade secrets, own research, technical experience and advice;



- 1.10 “**Referral**” means the complaint referral made by the Commission under case number CR075JUN17;
- 1.11 “**Respondent**” means Rooibos Limited; a public company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at 5 Rooibos Avenue, Clanwilliam, Western Cape Province;
- 1.12 “**Settlement Agreement**” means this agreement duly signed by the Commissioner and concluded between the Parties; and
- 1.13 “**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

- 2.1 On 7 July 2015, the Commission received the Complaint in which Complainant alleged, amongst others, that:
- 2.1.1 Since 2014 the Respondent entered into long-term supply agreements relating to the procurement of rooibos tea from rooibos producers which required the producers not to deal with other rooibos processors;
- 2.1.2 The Respondent made access to its production research output in the rooibos tea industry conditional upon farmers supplying up to 50% of their rooibos tea production to it;
- 2.1.3 In April 2014, letters were sent to farmers on the Respondent’s supplier database setting out the conditions which required



farmers to commit stipulated volumes of rooibos tea to the Respondent in order to gain access its production research output; and

- 2.1.4 The effect of the Respondent's conduct in this regard is that it induced farmers to not deal with its competitors.

3 THE COMMISSION'S INVESTIGATION AND FINDING

- 3.1 After completing its investigation, the Commission concluded, amongst other things, that:

3.1.1 The relevant upstream market was the production and supply of rooibos tea by producers in the Western and Northern Cape regions of South Africa, and the relevant downstream market was for the bulk processing of rooibos tea;

3.1.2 The Respondent was dominant in the downstream market and had a market share of more than 60%;

3.1.3 A prohibited practice has been established on the part of the Respondent, in contravention of section 8(d)(i), alternatively section 8(c) of the Act.

4 THE REFERRAL

- 4.1 On 14 July 2017, the Commission made the Referral wherein it alleged, amongst others, that:

4.1.1 The Respondent entered into long-term supply agreements with producers for the period 2014 to 2018. In terms of these supply agreements farmers were required to supply stipulated volumes



of rooibos tea, which represented up to 50% of their production, to the Respondent to the exclusion of other processors who competed with the Respondent. The volumes locked-in by the long-term supply agreements represented at least 10% of the rooibos tea production in 2014 and 2015 respectively.

4.1.2 The Respondent used its production research scheme to induce producers to commit a stipulated amount of rooibos tea in order to gain access to such research output from the Respondent. In particular, producers were required to supply up to 50% of their production to the Respondent. The volumes locked-in by the supply commitment attached to the Respondent's production research scheme constituted at least 29% of rooibos tea production in 2015.

4.1.3 The combined or cumulative effect of the long-term supply agreements between the Respondent and producers, and the supply commitment attached to the Respondent's production research scheme was to have locked-in at least 39% of the rooibos tea production in favour of the Respondent and to significantly foreclose other rooibos tea processors, who are its competitors, from accessing it or to prevent their expansion in the market. The accessibility of the remaining 61% rooibos tea volume was restricted by, amongst others, annual supply contracts between processors and producers.

4.2 In the Referral, the Commission seeks an order declaring that:

4.2.1 The Respondent's supply conditions in the long-term supply agreements and the supply commitment arising from the production research scheme constitute a prohibited practice in contravention of section 8(d)(i) of the Act;

A handwritten signature in black ink, appearing to be 'N. B.', is located at the bottom center of the page.

- 4.2.2 Alternatively, the Respondent's supply conditions in the long-term supply agreements and the supply terms of the production research scheme constitute a prohibited practice in contravention of section 8(c) of the Act;
- 4.2.3 The supply commitment arising from the Respondent's production research scheme is void; and
- 4.2.4 The Respondent is required to pay an administrative penalty equal to 10% of its annual turnover in the Republic and its exports from the Republic during the preceding financial year.

5 SETTLEMENT

- 5.1 Pursuant to the close of pleadings in the Referral, the Parties concluded this Settlement Agreement in settlement of the Referral, and the Complainant has been notified thereof.
- 5.2 Nothing in this Settlement Agreement amounts to, or should be taken to imply, an admission of liability or wrongdoing for any prohibited conduct under the Act, alleged or otherwise, on Respondent's part.
- 5.3 The Parties agree, on the basis of the Respondent's undertakings made herein that no administrative penalty shall be paid by the Respondent

6 UNDERTAKINGS

- 6.1 The Respondent hereby undertakes:

A handwritten signature in black ink, appearing to be a stylized name, possibly 'R. B.', written in a cursive style.

- 6.1.1 To within 5 days after receipt of completed Production Research contracted or commissioned by the Respondent, publish the results of that Production Research on its website without any conditions and or restrictions as to access to that research;
- 6.1.2 to not enter into any L- T Supply Agreements with producers –
- 6.1.2.1 of a duration of more than 5 years;
- 6.1.2.2 that restrict or prevent such producers from contracting to supply rooibos to competitors of the Respondent; and
- 6.1.2.3 if the aggregate volume of rooibos supplied to the Respondent by virtue of L-T Supply Agreements annually equals more than 10% of the total annual rooibos crop as estimated by Respondent in respect of that particular year;
- 6.1.3 within one week of the Effective Date publish a copy of the Settlement Agreement on its website; and
- 6.1.4 within twelve months of the Effective Date implement a compliance programme designed to ensure that its employees, managers and directors are regularly informed of and trained regarding the provisions under the Act that relate to the business of Respondent and its compliance with the Act.
- 6.2 The Respondent confirms that, as at the date of signature of this Settlement Agreement, it is not party to any L-T Supply Agreement which contain any of the provisions set out in clause 6.1.2 above.

7 MONITORING



- 7.1 Respondent shall provide the Commission with a copy of its compliance programme within 12 months of the Effective Date.
- 7.2 Within (three) months of the end of each of its financial years, Respondent shall report to the Commission it has complied with its undertakings as per clause 6.1.1 of this Settlement Agreement.
- 7.3 Upon request by the Commission and having been given reasonable notice, Respondent shall provide the Commission with such information that is reasonably necessary to demonstrate its compliance with the provisions of clause 6.1.2 of this Settlement Agreement.
- 7.4 To the extent that the Commission believes that Respondent is not complying with its obligations under this Settlement Agreement, the Commission may require that Respondent appoints an independent auditor of Respondent's choice and cost to audit its compliance with its undertakings.
- 7.5 In the event of the audit establishing non-compliance, Respondent shall be granted a reasonable period within which to remedy any such non-compliance.

8 TERMINATION

Without derogating from the provisions of the Act that permit variation and or cancellation of this Settlement Agreement, it shall terminate automatically upon the date on which Respondent holds less than 25% of the market share reckoned with reference to the annual total crop estimate of Respondent, for 2 consecutive years and as advised in writing to the Commission.

A handwritten signature in black ink, appearing to be 'NJP' with a small circular mark to the right.

9 FULL AND FINAL RESOLUTION

This agreement is in settlement of and concludes the Referral that is the subject of the Complaint that was investigated by the Commission.

Signed at Clanwilliam on this the 21st day of August 2020.



Martin Bergh

Managing Director

Rooibos Limited

Signed at Pretoria on this the 21ST day of AUGUST 2020.



Tembinkosi Bonakele

The Commissioner

Competition Commission