competitiontribunal
south africa

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 019455

In the matter between:

The Competition Commission **Applicant**

and

Summit Cycles (Sole Proprietorship) **Respondent**

Panel	:	Y Carrim (Presiding Member) A Roskam (Tribunal Member) A Ndoni (Tribunal Member)
Heard on	:	15 October 2014
Decided on	:	15 October 2014

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and Summit Cycles (Sole Proprietorship), annexed hereto marked "A".

Presiding Member
Ms Y Carrim

15 October 2014
Date

Concurring: Mr A Roskam and Ms A Ndoni

ANNEXURE "A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO. 73/CR/JUL12

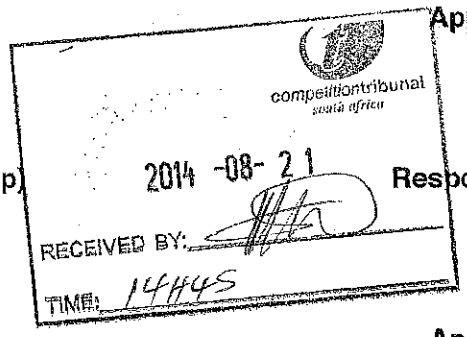
CC CASE NO. 2011JUL0155

In the matter between:

THE COMPETITION COMMISSION **Applicant**

and

SUMMIT CYCLES (Sole Proprietorship) **Respondent**



In re:

COMPETITION COMMISSION **Applicant**

and

FRITZ PIENAAR CYCLES (PTY) LTD AND 19 OTHERS **Respondents**

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND SUMMIT CYCLES ("SUMMIT") IN REGARD TO ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED.

The *Commission* and Summit 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 (1)(b) and 59(1)(a) of the Act 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, 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 DTI 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: 2011Jul0155;

1.5 ***"Settlement Agreement"*** means this settlement agreement duly signed and concluded between the Commission and Summit;

1.6 ***"Summit"*** means a sole proprietorship with its place of business at Venue Faire Shopping Centre, Old Pretoria Road, Halfway House, Mindrand, Pretoria, Gauteng.

1.7 ***"Parties"*** means the Commission and Summit;

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"), Salojee'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 ("Coolheat"), 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, 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 respodents 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: 2011Jul0155, 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 Summit together with other respondents constituted a contravention of section 4(1)(b)(i) 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 Summit admits that its conduct amounts to a contravention of section 4(1)(b)(i) of the Act.

4.2. **Future Conduct**

4.2.1 Summit agrees to fully co-operate 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, Summit specifically agrees to:

4.2.1.1 Testify before the Tribunal to such conduct and events forming the factual basis of the Commission's referral affidavit and this Settlement Agreement as are within Summit's knowledge; 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 Summit 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 Summit 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.

4.2.4 Summit will ensure that such training materials will be made available to all new employees joining Summit.

4.2.5 Furthermore, Summit will update and repeat such training materials annually to ensure on an ongoing basis that its employees, management, directors and agents do not engage in any future contraventions of the Competition Act

5. 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 Summit relating to any alleged contravention by the respondents of the Act that is the subject of the Commission's investigation (CC Case no. 2011JUL0155).

Dated and signed at on this the 24 day of July 2014

For Summit

A. Rossman OWNER

[title]

Dated and signed at PRETORIA on this the 8th day of August 2014

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 21 day of July 2014

For: the Commission

Competition Commissioner

For: Summit Cycles

Owner