

PRESS RELEASE

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Competition Commission settles poultry case with Astral Operations

The Competition Commission has reached a settlement agreement with Astral Operations Limited in which Astral has admitted to colluding with its competitor to fix the price of fresh poultry in the Western Cape. Astral has also admitted that the terms of its Elite joint venture was an abuse of dominance and had an exclusionary effect undermining Country Bird's ability to compete. Astral has agreed to pay an administrative penalty amounting to R16 732 894.47 being 3% of County Fair (a division of Astral) fresh poultry revenue in the Western Cape for the 2008 financial year.

As part of the agreement, Astral has undertaken not to engage in any conduct that contravenes the Competition Act, to cooperate with the Commission in any on-going investigations and to submit its pricing data to the South African Poultry Association via third party statisticians and in a form that is aggregated across all product categories and pack sizes.

Background and Findings

The settlement agreement with Astral follows a suite of complaints and investigations against firms involved in poultry markets. This falls within the Commission's prioritisation of staple foods as poultry is the single largest source of protein for low income consumers. The cases are as follows:

The Elite Complaint: On 20 February 2007, Country Bird and Supreme lodged the Elite Complaint in terms of which Astral and Elite were alleged to have contravened the Act by entering into a joint venture which resulted in the restriction of competition and the fixing of trading conditions for the supply of parent breeding stock.

Upon completion of its investigation, the Commission referred a case of abuse of dominance against Astral and Country Bird to the Tribunal for determination. The Commission found that as part of the joint venture, Country Bird was restricted to source 90% of its parent stock requirements from Elite. This prevented Country Bird from dealing with other suppliers of

parent stock. Elite was on the other hand, forced to procure its feed requirements only from Meadow Feeds thus eliminating competition. Furthermore, Astral required one of its customers, MPC Chickens (Proprietary) Limited, to not supply day old chicks to Supreme.

Breeding Stock and Broiler Production Complaints: The Breeding Stock and Broiler Production Complaints were initiated against the South African Poultry Association (“SAPA”) and all of its past and present members involved in the breeding stock and broiler production market. However, the Commission focused its investigation on the largest players which are Rainbow Chickens Limited (“Rainbow”), Astral, Pioneer Foods (Proprietary) Limited (“Pioneer”) and Country Bird. The Commission’s investigation encompassed market allocation specifically against Pioneer and Rainbow; exclusive supply agreements against all broiler producers (including Astral); tying allegations against certain breeding stock suppliers and information exchange against all of the respondents through their membership in SAPA.

Subsequent to its investigation, the Commission decided to non-refer this complaint to the Tribunal subject to undertakings by the respondents regarding future exchanges of information through SAPA.

Fresh Poultry Products Complaint: During April 2010, the Commission received a leniency application which related to the ‘Broiler Products Complaint’ from Pioneer on behalf of its Agri division, Tydstroom Poultry (“Tydstroom”) in respect of fresh poultry products. The alleged conduct is said to have taken place in the Western Cape.

The Commission’s investigation revealed that representatives of County Fair attended a meeting at Tydstroom which resulted in an agreement between Tydstroom and County Fair to co-operate with each other in attempting to raise pricing levels for fresh poultry in the Western Cape. The said agreement included inter alia notifying each other of upcoming price increases and the timing of such increases. Furthermore, representatives of County Fair and Tydstroom telephoned one another in an endeavour to monitor compliance with the agreement reached.

Malmesbury Dairy Feed Complaint: On 09 April 2010, the Commission initiated a complaint in the dairy feed market. The Commission had received information that Astral (Meadow Feeds) and its competitors were allegedly involved in a study group known as the Malmesbury dairy study group; the purpose of which was to facilitate the flow of information, including pending price increases or decreases.

The Commission's investigation revealed that this was a study group of farmers and not processors and therefore it found no evidence of price fixing or market allocation against processors.

Breeders and Culls Complaint: The Commission initiated a complaint, following an application for leniency by Astral, of price fixing against Astral and its competitors in the market for the sale of depleted breeders and culls, which are live chickens that have passed the end of their useful productive lives. The investigation is still on-going.

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