



competition commission
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Competition Commission welcomes Competition Appeal Court judgment on bicycles cartel case

The Competition Commission (the Commission) welcomes the Competition Appeal Court (CAC) judgment in relation to a long-running bicycle cartel case.

In 2008 some 20 bicycle retailers and wholesalers contravened the Competition Act (the Act) in that whilst being competitors in the market for the supply and delivery of bicycles and bicycle accessories, they agreed to fix prices. This resulted from a meeting held on 10 September 2008.

In the meeting the parties agreed to increase gross margins by inflating mark-ups for cycling accessories from 50% to 75% and for bicycles from 35% to 50%. They further agreed to implement the increases from October of that year while stopping discounts and getting shops to stop undercutting each other. In addition, wholesalers would provide higher recommended retail prices to retailers and advertise these to the public.

The Commission initiated a complaint in terms of the Act against all 20 parties that were at the meeting. Prior to the hearing at the Competition Tribunal, the Commission concluded settlement agreements with eleven (11) bicycle retailers and six (6) wholesalers. Among other things, the retailers and wholesalers agreed to settle the matter based on the following:

- They admitted to having contravened the Act;
- They agreed to conclude the settlement agreements without payment of an administrative penalty;
- They undertook to cooperate fully with the Commission in relation to the prosecution of any other party who are subject of this matter;
- They undertook to desist from engaging in similar conduct;
- They agreed to refrain from engaging in meetings that may constitute cartel conduct; and
- They agreed that their employees, management, directors and agents would attend competition law compliance programs.

However, two more wholesalers did not conclude any settlement with the Commission and decided to pursue the matter at the Tribunal.

Omnico (Pty) Ltd and Cool Heat Agencies (Pty) Ltd argued that they did not 'actively participate' in the discussions and were therefore not liable.

The Tribunal, however, found the wholesalers did nothing to distance themselves from the discussions and that their silence amounted to an agreement. Administrative penalties (fines) of R4 627 412.00 and R4 250 612.00 were imposed on Omnico and Coolheat respectively.

The two subsequently took the matter on appeal to the CAC which has handed down judgement and concluded the long-running case.

In dismissing the appeal, the CAC found that neither Omnico nor Coolheat distanced themselves at the meeting after consensus had been reached: “They gave no indication thereafter that they disagreed and they placed no evidence before the Tribunal that the increased recommended retail price, following the September meeting, was as a result of an independent decision without anti-competitive effect.”

The CAC upheld the Tribunal’s finding that Omnico and Coolheat engaged in conduct directly and indirectly in contravention of the Competition Act, namely agreeing as competitors to fix prices.

In dismissing the appeal, the CAC ordered the wholesalers to pay the costs of the appeal. Omnico was granted a 50% discount on its administrative penalty.

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Issued by the Competition Commission.

For more information, please contact:

Sipho Ngwema, Head of Communications: Competition Commission
012 394 3493/ 078 048 1213/ SiphoN@compcom.co.za