

Board of Commissioners Ruling

The Board of Commissioners of the Fair Trading Commission has directed Ferox Abattoir (Pty) Ltd (Respondent) in relation to its Hatchery Facility, under Section 41(1) (b) of the Fair Competition Act 2009(FCA 2009), to make available any requested number of chicks upon the demand of the complainant or any registered farmer with license to rear chickens for monetary consideration.

This decision is in relation to a complaint made by a local registered farmer with a license to rear broiler chickens. The complainant alleged that he had been refused the supply of broiler chicks at the Hatchery facility due to an outstanding bill owed by the complainant to the Ferox Abattoir.

Through the investigation of the Commission, it was found that both the Hatchery Facility and the Abattoir Facility are owned and managed by Ferox Abattoir (Pty) Ltd and that the respondent was also licensed to rear chickens, therefore also qualifying as a direct competitor of the complainant. A case of Abuse of Dominance under Section 7 (1) and (3)(b) of the FCA 2009 was made by the Commission where reference was made to the Essential Facility Doctrine. The doctrine refers to a situation where a dominant firm has control over an asset to which access is essential for competitors to compete on a downstream market. The Commission determined that the Hatchery Facility was an essential facility seeing as there are no viable substitutes for the essential input (the supply of broiler chicks) in the broiler production market. The Commission therefore put to the Board of Commissioners that the Respondent was abusing its dominance in the market through refusing the complainant supply of broiler chicks from its essential facility, thereby preventing the enterprise from engaging in competitive conduct in that market. A claim for loss of two potential cycles of broiler chickens was also made by the complainant owing from the respondent's refusal to supply.

The action complained of was not contested by the respondent however the latter stated that the case was one which surrounded the simple matter of debt owed in view of the fact that both the Hatchery Facility and Abattoir Facility would be considered as one entity and that therefore

the denial of services at the Hatchery for debt owed to Ferox Abattoir (Pty) Ltd should be maintained.

The Board of Commissioners pronounced that the defence made by Ferox Hatchery (Pty) Ltd did not satisfy any exemption to an abuse of dominance as provided under Section 7 (4) of the FCA 2009. The Board has found Ferox Abattoir (Pty) Ltd to have abused its dominance under Section 7(3)(b) of the FCA 2009 and directs that Ferox Abattoir (Pty) Ltd with immediate effect upon a demand, by the complainant or any registered farmer with a licence to rear chickens for monetary consideration, for a request to buy chicks at the hatchery facility to make available the desired number of chicks requested.

The Board has further awarded the complainant the sum of Rs 20,000 in damages for loss of profit from one cycle of rearing broiler chickens.

The decision was pronounced October 7th 2014.

Complete rulings of the Board of Commissioners can be accessed via website (www.ftc.sc) or viewed upon request at the FTC office.