

Abuse Of Dominance: Refusal to Supply

Jean Mellie V Ferox Hatchery

Case Number: FCA 39

Date: December 2014

Complaint: On September 10th 2013, the Fair Trading Commission received a complaint from Mr. Jean Mellie a farmer owning a farm named Mellie's Farm, located at Anse Royale carrying out the rearing of boiler hens and crop farming. The complainant alleged that Ferox Hatchery failed to supply him with hatchlings. Should this situation be substantiated, Apex Holdings could potentially be found in breach of FCA, 2009.

Commission's Assessment: The Commission in its preliminary assessment carried out an investigation into the allegations. Meetings were conducted with the representatives of Ferox Hatchery and the complainant. Based on the information gathered from the meetings, the commission carried out a market survey, to investigate the businesses that are dependent on the respondent for their operations as well as any influences that the respondent may have on the supply of broiler chicks.

It was found that Ferox Hatchery is an essential facility as there are no viable substitutes for its products and services. The Commission established that the only other method by which farmers could obtain broiler chicks is by directly importing them from Mauritius, transported via Air Seychelles. It was also discovered that Ferox Hatchery is vertically integrated and competes with other businesses in the rearing of chicks.

The case was forwarded to the Board of Commissioners. The Board found the abattoir to be in breach of Section 7 (3) (b) of FCA 2009 and was directed to cease the abusive conduct according to Section 41 (1) (b) of the same Act.

The respondent appealed the decision at the Appeal Tribunal. The Tribunal ruled that the respondent had a right to refuse supply to the complainant in view that there was a previous debt unsettled between the two parties.

Conclusion: In conclusion, the Commission is of the opinion that there is no infringement of the FCA 2009 by the Ferox Hatchery. Therefore, the Hatchery has no liability in regards to Mr. Jean Mellie.