

# Blueberry dispute: A victory for free markets and competition laws

Embattled blueberry farmers in South Africa enjoyed their first victory in what is set to become a landmark case for fruit sales and the correct handling of licenced cultivars.



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Dutch authorities released two shipments of Ross Berries' blueberries on the instruction of United Exports after they were seized at the request of the exports company earlier this month.

The company maliciously claimed that Ross Berries had shipped and sold the blueberries without consent, which United Exports claims Ross Berries required. Furthermore, United Exports alleged that Ross Berries infringed upon United Exports' trademarks.

While the blueberries have been sealed in the shipping containers and may or may not still be marketable, the agreement is a momentous victory since United Exports had to agree not to interfere in any further marketing of Ross Berries' blueberries, provided that inter alia, United Exports' OZblu trademark is not used.

This happened after an investigation unearthed that United Exports only holds registered plant breeders' rights for two of the nine varieties that Ross Berries acquired from United South Africa.

## The free market should remain free

United Exports is being exposed for not registering all the varieties sold to farmers and claiming royalties in respect of these plants for many years. Charles Rossouw, director of Ross Berries, has instructed the company's legal team to institute claims against United Exports for the royalties paid to date for those varieties that the company had Ross Berries believe held registered plant breeders' rights.

Losses incurred as a result of the seizure of the fruit in the Netherlands will also be claimed. Ongoing investigations into the operating practices of United Exports will further serve to strengthen the case for uncompetitive pricing in this sector.

"We are free to market our fruit as we wish, until the dispute pertaining to ownership of the plants is finally determined in March 2021. Marketing one's products as one sees fit is the very foundation of a free market system, which up until now, United Exports has circumvented," said Rossouw.

## **A win for all blueberry farmers**

Several other farmers who signed contracts with United Exports to plant their purported licenced cultivars have since suffered enormous losses as dubious marketing practices have seen below-market value returns on-farm.

Attempts by these farmers to sell their blueberries on the free market resulted in bullying tactics from United Exports, as was seen with the Ross Berries consignment being unilaterally seized and the mudslinging United Exports undertook to discredit Ross Berries in the media.

This settlement could open the way for other farmers to sell their fruit for market value, which for some, will be the difference between losing their farms or keeping them afloat.

"Furthermore, other fruit industries are facing similar battles, with farmers being done in on similar grounds after signing contracts with unscrupulous exporters and plant breeders. In the end, the farmer takes all the risks, creates employment, pays huge amounts in royalties, but is then held to ransom when it comes to being paid a fair price for the fruit.

"This victory is the first step towards ending this vicious cycle. It is a win for anti-competitive practices and free-market systems, which will serve to boost the entire blueberry industry.

"With the increasing consumer demand and higher prices being paid for blueberries it is shameful that we have seen farmers go out of business due to unscrupulous practices forced upon them. As a sunrise sector hailed for its potential to create employment, earn forex and create investment in rural economies, it is an industry worth fighting for," concluded Rossouw.

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