



COMPETITION ALERT

TELECOMMUNICATIONS PROVIDERS UNDER SCRUTINY

Alongside the ongoing review by the Parliament Portfolio Committee on Communications into high interconnection rates in the telecommunications sector, the Competition Commission has confirmed that it is conducting a number of investigations into the conduct of cellular phone operators. The Commission is investigating three interrelated complaints, all of which relate to collusive activity regarding the rates charged by operators. The investigation will not be limited to interconnection rates (the rates operators charge one another and other operators to carry calls on their networks) but will include other areas such as retail pricing. In an attempt to further inform its investigation, the Commission announced that it has subpoenaed key people in the telecommunications industry to provide information related to the allegations.

Meanwhile, the Commission has referred a complaint of abuse of dominance against Telkom to the Tribunal for adjudication. This follows a number of ongoing complaints brought by Internet service providers (ISPs) that Telkom has been abusing its near-monopoly in the provision of network facilities, which are required by ISPs. The Commission alleges that Telkom has been favouring its own ISP provider with cheaper prices than those afforded to its competitors in that market, making it difficult for them to on-sell cost-effective services.

Although the Commission during its investigation, apparently worked closely with the sector specific regulator for telecommunications, the Independent Communications Authority of South Africa (ICASA), it is expected that Telkom will again raise the question of whether the Competition Authorities have concurrent jurisdiction with ICASA over competition matters affecting the industry, or whether the issue falls exclusively within ICASA's domain.

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TRIBUNAL APPROVES MASSMART WHOLESALE MERGER

The Tribunal has ruled against a recommendation by the Commission that the proposed merger between Masscash, a division of Massmart Ltd, and Finro Cash & Carry be prohibited. In terms of the proposed merger, Masscash sought to acquire a 75% interest in the business of Finro, which competes with Masscash in the wholesale grocery market in Port Elizabeth.

During the hearing, in which Cliffe Dekker Hofmeyr acted for the merging parties, Masscash argued that despite an increase in market share, it would be unable to raise prices after the merger due to competitive factors affecting the market.

RAPID-FIRE CARTEL-BUSTING IN THE STEEL SECTOR

The Commission has in a single month referred three separate complaints of collusion in the steel sector to the Tribunal, recommending that the maximum administrative penalty of 10% of annual turnover be imposed on each of the alleged perpetrators.

In the first instance, several producers of long steel products, namely ArcelorMittal South Africa, Cape Gate and Cape Town Iron Steel Works, stand accused of price fixing and market allocation in relation to certain long and flat steel products (rebar, wire rod and sections). After a dawn-raid conducted earlier in the year, the Commission received assistance from another producer, Scaw South Africa (Scaw), which applied for corporate leniency.

The Commission has also referred a complaint pertaining to collusion between competing suppliers of wire and wire products.

The complaint involves 11 companies and is linked to a previous referral made in 2007. Following further revelations by Consolidated Wire Industries, a subsidiary of Scaw, charges relating to agreements on a national price list, collusive tendering and market division have been added to the existing price fixing allegations. Customers affected include agricultural co-operatives, hardware stores, fence erectors and resellers.

Thirdly, following a leniency application in 2008 by RSC Ekusasa Mining (RSC) (a subsidiary of Murray and Roberts Steel) the Commission has concluded an investigation into the mining roof bolts sector. The Commission found that the cartel commenced after a new entrant triggered a price war in 2002, which was resolved under the umbrella of an industry body through an agreement to allocate a 25% market share to each of four suppliers, regulated until 2008 through customer allocation and collusion on tendering.

MEDICAL SCHEMES EXEMPTION APPLICATION IS REFUSED

In 2007, the Board of Healthcare Funders (BHF) applied to the Commission to be exempted from the provisions of section 4 of the Act which prohibits competitors, such as medical aid schemes, from entering into agreements to fix a purchase or selling price or other trading condition or from acting collectively to such ends. The BHF had hoped to be exempted so as to use the collective bargaining power of medical schemes to negotiate better tariffs with healthcare providers. After a lengthy process, the Commission recently dismissed the BHF's application on the basis that allowing the schemes to collectively fix their trading terms with providers would diminish competition in the industry.

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