



COMPETITION ALERT

COMPETITION APPEAL COURT RULES ON ARCELORMITTAL EXCESSIVE PRICING CASE

Seven months after the appeal was heard, the Competition Appeal Court (CAC) has handed down its judgement in the appeals lodged by ArcelorMittal (Mittal) and MacSteel International against the landmark 2007 ruling of the Competition Tribunal in which the Tribunal found that Mittal had been charging excessive prices in the local market for flat steel, through its infamous international parity pricing system. The appeals had been opposed by the complainants in the matter, Harmony Gold and DRDGold, both represented by Cliffe Dekker Hofmeyr.

In essence, the CAC declined to bring finality to the matter and instead has referred the matter back to the Tribunal for redetermination. The CAC has indicated that it does not agree with the Tribunals' explication of the concept of excessive pricing. The CAC, in its lengthy judgement, has placed its own interpretation on the term "excessive pricing" and indicated that an assessment of whether a price is excessive should begin with a determination of the economic value of the good or service concerned, which necessitates a determination of a monetary value. The economic value should then be compared to actual prices charged in the market. Only then can an assessment be made of whether the actual price charged is excessive in relation to the economic value. This is fundamentally different to the approach taken by the Tribunal which, simply put, was that a price will be excessive if there is no justification for, or explanation of, the price, other than the exercise of pure market power by the firm charging the price concerned, which is unconstrained by any cognisable competitive forces.

The Tribunal is asked to reconsider the evidence that was placed before it in the initial hearing of this matter, to apply the CAC's interpretation of excessive pricing and then to issue a new ruling on the matter. It is expected that the Tribunal will do this in the next few months.

No order as to the cost of the appeal was made.

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