



CONSTITUTIONAL COURT OF SOUTH AFRICA

Competition Commission v Loungefoam (Pty) Ltd and Others

Case CCT 90/11
2012 ZACC 15

Date of Hearing: 7 February 2012

Date of Judgment: 26 June 2012

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 26 June 2012, the Constitutional Court dismissed an application for leave to appeal by the Competition Commission (Commission) against a judgment of the Competition Appeal Court (CAC). The CAC overturned a decision of the Competition Tribunal, which permitted the Commission to amend its complaint referral against the respondents. The respondents, manufacturers and sellers of flexible polyurethane foam, are alleged to have engaged in anti-competitive conduct in breach of certain provisions of the Competition Act (Act).

The Commission sought a determination on whether it could amend its complaint referral to include parties and allegations not listed in its original complaint. One of the procedural points raised by the respondents was that the Commission was obliged first to seek the CAC's leave to appeal before approaching the Constitutional Court, and that it had failed to do so.

In a judgment written by Maya AJ, the majority of the Court identified two possible interpretations of the provision in the Act concerning leave to appeal from the CAC. On the first interpretation, a litigant may appeal to the Supreme Court of Appeal or the Constitutional Court only after having sought leave and having obtained a decision from the CAC. On the second interpretation, a litigant must first seek leave of the CAC, unless the interests of justice permit a direct approach to the Constitutional Court. The Court held that it was not necessary to determine the correct interpretation, as the Commission would fail on either. Leave to appeal was ultimately refused.

A dissenting judgment, written by Yacoob ADCJ and Cameron J, held that the Act does not bar a litigant from approaching the Constitutional Court for leave to appeal directly. The Commission's important public role, the significance of the issues raised, and the fact that the matter does not lie at the complex intersection of law and economics warranted the grant of

leave to appeal directly. The minority did not consider the merits as they may well be considered by another court.