



CONSTITUTIONAL COURT OF SOUTH AFRICA

Competition Commission v Yara South Africa (Pty) Ltd and Others

**Case No: CCT 81/11
[2012] ZACC 14**

Date of Hearing: 24 November 2011

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 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 allegations not listed in its original complaint. It concurrently applied to the Supreme Court of Appeal (SCA) and the Constitutional Court for leave to appeal against the decision of the CAC. The Commission's application to the CAC for leave to appeal to the SCA is still pending before the CAC.

In a judgment written by Zondo AJ (Mogoeng CJ, Jafta J and Nkabinde J concurring), the majority of the Court held that the Commission's delay in lodging its application was excessive and that its explanation for its delay was so manifestly poor as to amount to almost no explanation at all. Further, the majority found that it was preferable that this matter should first go to the SCA if leave to appeal to that Court was granted. Accordingly, the application for leave to appeal was dismissed with costs.

In a concurring judgment, Froneman J (Skweyiya J and van der Westhuizen J concurring) agreed that the application for leave to appeal should be dismissed, but for different reasons. Specifically, he found that the application should be refused because it was in the interests of justice first to obtain the views of the CAC on what role the economic expertise of the Tribunal should play in determining the proper legal ambit of its powers.

The dissenting judgment, written by Cameron and Yacoob JJ (with Moseneke DCJ concurring), found that the delay was not inordinate and that the explanation was sufficient. Thus, they would have granted condonation. In addition, the minority held that the importance of the Commission's public role, the significance of the issues it raised, its prospects of success on appeal and the fact that the matter does not lie at the complex intersection of law and economics, warrant that leave to appeal directly be granted. The minority did not reach the merits, as the matter may well be considered by another court.