



CONSTITUTIONAL COURT OF SOUTH AFRICA

Competition Commission of South Africa v Pioneer Hi-Bred International Inc and Others

CCT 58/13

Date of hearing: 4 November 2013

Date of judgment: 18 December 2013

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.

Today the Constitutional Court handed down a judgment in a matter concerning the power of the Competition Appeal Court to order costs against the Competition Commission of South Africa (Commission).

The Commission prohibited a merger between Pioneer Hi-Bred International Inc and Pannar Seed (Pty) Ltd (merging parties) in terms of the Competition Act. The merging parties applied to have the Commission's decision reconsidered in the Competition Tribunal (Tribunal). The Tribunal too prohibited the merger and granted no order as to costs. The merging parties appealed the Tribunal's decision to the Competition Appeal Court, which overturned the decision and approved the merger subject to conditions. The Competition Appeal Court ordered costs against the Commission in the Tribunal proceedings and in the appeal before it.

In the Constitutional Court, the Commission sought leave to appeal against the Competition Appeal Court's costs order only. The Commission argued that the Competition Appeal Court has no power to award costs against the Commission in relation to Tribunal proceedings and that the Court's power to order costs against it in appeal proceedings is limited. It argued that the discretion to award costs in the appeal was wrongly exercised.

In a unanimous judgment written by Skweyiya ADCJ, the Constitutional Court held that the Competition Appeal Court has no power under the Act to order costs against the Commission in relation to Tribunal proceedings. Its costs award in relation to those proceedings was therefore set aside. The Court held further that while the Competition Appeal Court has the discretion to

order costs against the Commission in appeal proceedings before it, that power is limited by the Act. The Court held that the Competition Appeal Court should be guided in exercising this discretion by the principle that when the Commission litigates in the course of fulfilling its statutory duties, it is generally undesirable for it to be inhibited in the good faith fulfilment of its functions by the threat of an adverse costs order. In considering various factors, including that the Competition Appeal Court had not given reasons for its costs order and that there was no indication that the Commission had acted in bad faith or committed any irregularity, the Court held that the costs order in relation to the appeal proceedings should be overturned. In the result, leave to appeal was granted and the Commission's appeal was upheld.