



competition commission
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Media Release

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Constitutional Court dismisses bicycles cartel leave to appeal

The Commission welcomes the Constitutional Court's decision to dismiss with costs the application for leave to appeal by two members of the bicycle cartel who were found guilty of price fixing.

Omnico (Pty) Ltd (Omnico) and Coolheat Agencies (Pty) Ltd (Coolheat) had sought leave to appeal the Commission the Appeal Court's ruling that if a firm participates in a collusive meeting, without publicly distancing itself from what was discussed, the company has given other participants in the meeting reason to believe that it agreed to and would comply with what was decided at the meeting.

The Constitutional Court dismissed the application for leave to appeal. This means that the precedent setting decision by the Competition Appeal Court, relating to silent or passive participation in a collusive meeting, stands.

In 2008 some 20 bicycle retailers and wholesalers contravened the Competition Act by agreeing to fix prices during a meeting held in September of that year. The Commission initiated a complaint against all 20 parties. The Commission subsequently concluded settlement agreements with 11 bicycle retailers and 6 wholesalers. Among others, the retailers and wholesalers admitted to having contravened the Act.

However, Omnico and Coolheat did not conclude any settlement with the Commission and pleaded not guilty. They argued at the Tribunal that they did not 'actively participate' in the discussions and were therefore not liable.

The Tribunal, however, found the wholesalers did nothing to distance themselves from the discussions and that their silence amounted to an agreement. Administrative penalties (fines) of R4 6m and R4 2m were imposed on Omnico and Coolheat respectively.

The two subsequently took the decision on appeal to the Competition Appeal Court (CAC). The appeal was dismissed and the CAC found that Omnico and Coolheat engaged in price fixing.

The decision of the Constitutional Court concludes the matter.

[ENDS]

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