

MEDIA RELEASE

29 August 2011

Competition Commission seeks direct access to the Constitutional Court

The Competition Commission last Thursday (25 August 2011) filed an application for direct access to the Constitutional Court to appeal a decision of the Competition Appeal Court (CAC). The CAC's decision relates to a matter involving Yara South Africa (Pty) Ltd, Omnia Fertiliser Ltd and Sasol Chemical Industries Ltd.

The three companies were facing allegations of being involved in a cartel in the fertiliser industry. Sasol settled this case with Competition Commission with an administrative penalty amounting to R250 million in 2009. Omnia and Yara challenged the Commission's investigation and the CAC found that the referral against the two firms was invalid because the complainant did not intend to complain against the anti-competitive behaviour uncovered in the investigation.

The purpose of the appeal is to seek clarity from the Constitutional Court on the proper scope and ambit of the Commission's powers to investigate and refer complaints of anti-competitive behaviour submitted by third parties. It is filed in the wake of a spate of procedural challenges that have been brought by a number of respondents following recent decisions of the appellate courts.

The notice of motion to the Constitutional Court is attached.

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