

MEDIA RELEASE

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Competition Commission to appeal Competition Appeal Court (CAC) decision in the Loungefoam matter

On Friday 03 June 2011, the Competition Commission lodged its application for leave to appeal the decision of the Competition Appeal Court (CAC), handed down on 6 May 2011. The CAC upheld appeals by Loungefoam (PTY) Limited, Gommagomma (PTY) Limited, Steinhoff International Holdings Limited and Steinhoff Africa Holdings (PTY) Limited. The firms had appealed against a Competition Tribunal decision allowing the Commission to amend its complaint referral and join Steinhoff as a party to the case.

The case pertains to alleged cartel conduct between Loungefoam (PTY) Ltd, Gommagomma (PTY) Ltd, Steinhoff International Holdings Limited and Steinhoff Africa Holdings which started in and around 1999 until 2004 involving price fixing and market allocation in polyurethane foam used in the manufacture of furniture.

The Commission is to appeal the CAC decision based on the following grounds:

- that the Court's ruling regarding what should be included in an initiation statement is too restrictive or alternatively sets an unduly high standard not required by the Competition Act or the Constitution.;
- that the Commission is not compelled to refer a case within one year (1) if it initiates a complaint as held by the CAC. The Competition Act provides that the Commission can refer such a complaint to the Tribunal at any time;
- that it is competent in law for a parent company to be held liable for actions of its subsidiary when the latter engages in anti-competitive conduct.

This appeal follows applications filed by the Competition Commission against the CAC's decisions in the Yara/Omnia and Netstar matters. The cumulative effect of these decisions is to constrain the Commission's ability to investigate anticompetitive conduct and to compromise the rights of third parties to lodge complaints of anticompetitive conduct. In the meantime, the Commission is awaiting the Tribunal reasons on the SAB matter which was dismissed due to the precedent set by the higher courts.

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