

Media Release

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Competition Commission's statement on the SAB matter

The Competition Commission regrets that the hearing of its complaint against SAB and its appointed distributors has been dismissed on a technicality preventing merits from being heard. The SAB case, referred in 2007, has been the subject of numerous procedural challenges since its commencement. The initial complaint was lodged with the Commission in 2004 by an independent beer wholesaler, the Big Daddy's group.

The Tribunal today ruled that it has no jurisdiction to hear the complaint because of the recent decisions of the superior courts. Recently, the Competition Appeal Court (CAC) and the Supreme Court of Appeal (SCA) issued rulings, in the Yara and Woodlands cases, that impact on the Commission's ability to investigate and prosecute complaints of anti-competitive conduct.

These judgements appear to be contradictory and constrain the Commission's ability to investigate and prosecute complaints. They also create opportunity for firms who are the subject of the Commission's investigations to frustrate the investigation and prosecution of cases.

In the Yara decision, the CAC ruled that the Commission can only investigate and prosecute the conduct as set out in the complaint submitted to it and that there is no provision in the Act allowing for it to amend or add to the conduct disclosed in that complaint. The effect of this decision is to require a complainant to know with precision all the facts relating to the conduct complained of at the time of lodging the complaint when the complainant simply does not have the facts to enable it to do so. On the other hand, the SCA in the Woodlands decision suggested that the Commission can amend its complaints if new evidence comes to light during the course of its investigation.

The Commission is preparing its grounds of appealing the Competition Appeal Court ruling on the Yara matter to obtain more clarity on the Commission's power to initiate, investigate and prosecute complaints. The Commission does not intend to abandon its case against SAB and in that vein will study the Tribunal reasons once available and decide on the way forward.

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