

Media Release

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Competition Commission to appeal decision of Supreme Court of Appeal in the Premier Foods matter

On 25 November 2015, the Competition Commission (Commission) lodged its application for leave to appeal to the Constitutional Court against the judgment and order of the Supreme Court of Appeal (SCA) delivered on 04 November 2015. In its judgment, the SCA upheld an appeal by Premier Foods (Pty) Ltd (Premier) against a decision by the North Gauteng High Court which held that the victims of the bread cartel may obtain a certificate issued by the Chairperson of the Competition Tribunal (Tribunal) in terms of section 65(6)(b) of the Competition Act to enable them to institute civil claims against Premier for loss or damage suffered as a result of cartel conduct.

Premier was a leniency applicant in the matter in terms of the Commission's Corporate Leniency Policy and admitted its participation in the bread cartel. Premier was however not cited as a respondent in the complaint referral made to the Tribunal. The Tribunal found that Premier together with Pioneer Foods (Pty) Ltd, Tiger Brands (Pty) Ltd and Foodcorp (Pty) Ltd had participated in the bread cartel.

The effect of the SCA's judgement is that victims of the bread cartel will not be able to institute a civil claim for damages against Premier, but will be able to institute civil claims against the other three firms which participated in the bread cartel.

The Commission's application joins a similar application made by victims of the bread cartel filed with the Constitutional Court on 23 November 2015.

The Commission is concerned that the decision of the SCA precludes the victims of the bread cartel from exercising their right to sue Premier for damages suffered as a result of its participation in the bread cartel, notwithstanding that Premier does not dispute that it was a member of the bread cartel and has admitted under oath and confessed its participation in an unlawful cartel.

"Cartels are the most egregious violations of competition law. It is the responsibility of the Commission to defend the rights of the victims of cartel conduct, such as the victims of the bread cartel to bring claims for civil damages if they wish to do so. For this reason, we have, respectfully, decided to appeal against the decision of the SCA," said Commissioner Tembinkosi Bonakele

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