



competition commission
south africa

Media Statement

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**CONSTITUTIONAL COURT UPHELD THE COMPETITION COMMISSION APPEAL AND RULED
AGAINST STANDARD BANK AND WACO AFRICA**

The Competition Commission welcomes the Constitutional Court judgment delivered against Standard Bank of South Africa Limited as well as Waco Africa (Pty) Limited (and its joint venture partners) on Thursday.

The Constitutional Court set aside the decision of the Competition Appeal Court ordering the Commission to grant access to its investigation record to the respondents before they answer the case against them.

In the case of Standard Bank, the Commission filed a case in February 2017 accusing it of being involved in the Rand Dollar currency manipulation through coordinated activities with the other banks involved in trading the currencies. Standard Bank then appealed to the Competition Appeal Court, which ruled in its favour.

In the case of Waco, the case involved collusive tendering and price fixing for the supply of scaffolding to Eskom for the total amount of R4.5 Billion. The Commission filed the case against WACO and other firms involved in February 2018. Instead of filing its answer, WACO, following the Competition Appeal Court Standard Bank decision, also approached the Competition Tribunal insisting that the Commission should produce the record of its investigation before it could answer.

The Tribunal, following precedent, granted the order sought by Waco. The Commission subsequently appealed the case directly to the Constitutional Court and asked for it to be consolidated and heard together with the Standard Bank case.

The essence of the dispute was whether the respondents involved in litigation with the Commission have the same right of access to the information held by a public body such as the Commission in the same manner that members of the public do according to the Constitution. The Constitutional Court has now clarified that the rights of a litigant in Competition Tribunal proceedings are limited, in the same manner as litigants in the High Courts, when it come to access to the record.

The Court distinguishes between the litigant's right to a fair trial from the Constitutional right of access to information. It asserts that once a person is involved in litigation, the rules of access to information for purposes of the trial are regulated by rules applicable in litigation rather than the general rights of access to the record of a public body.

This case marks an end to these technical challenges and pave a way for Standard Bank and Waco to file answers to the cases they face within twenty business days. The Commission is pleased with the Court's judgement that bemoaned the respondent's tendency to attempt to avoid and evade responsibility by embarking on "Stalingrad" method of litigation.

The judgement also resolves bottlenecks at the competition authorities that were caused by a number of respondents in various other cases asking for the record of the investigations before they could answer cases against them. The clarification of this important point of law by the highest court in the land will go a long way in facilitating the resolution of cases by the competition authorities in a timely manner.

[ENDS]

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