



competition commission
south africa

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COMPETITION COMMISSION WELCOMES THE CONSTITUTIONAL COURT'S DECISION TO DISMISS SHOPRITE'S APPEAL

The Competition Commission (Commission) welcomes yesterday's decision of the Constitutional Court to dismiss, with costs, Shoprite Checkers' (Pty) Ltd (Shoprite) application for leave to appeal against a judgement and order of the Competition Appeal Court in favour of the Commission.

Shoprite had approached the Constitutional Court for leave to appeal the judgement and order handed down by the Competition Appeal Court on 27 October 2020, which had set aside findings made by the Competition Tribunal to the effect that the Commission could not prosecute both the parent company and its wholly owned subsidiary (i.e. a single economic entity) for abuse of dominance under section 8 of the Competition Act. Section 8 prohibits a dominant firm in the market from abusing its dominance by, among other things, engaging in conduct which has the effect of excluding its competitors from the market.

Computicket is a wholly owned subsidiary of Shoprite. Computicket distributes tickets for entertainment events, bus, flights, hotel accommodation and holiday packages. Shoprite is a national retailer. In its investigation, the Commission found that Computicket had entered into exclusive agreements with the majority of inventory providers (such as theatre owners, promoters and other event organisers) in terms of which Computicket is appointed as the sole provider of ticketing services to inventory providers.

The Commission also found that the effect of the exclusive agreements concluded between Computicket and inventory providers was to exclude competitors of Computicket from the market. Furthermore, the Commission found that after Shoprite had acquired Computicket in 2005, it played a key role in influencing Computicket's behaviour in entering into exclusive agreements

with inventory providers. The Commission then decided to prosecute both Computicket and its parent company, Shoprite, for engaging in abuse of dominance by excluding its competitors from the market through these exclusive agreements with inventory providers.

The net effect of the Constitutional Court's decision is that the Commission will be able to continue with its prosecution of both Computicket and Shoprite in the Competition Tribunal.

[ENDS]

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BACKGROUND

The Commission has instituted two prosecutions against Computicket for the same conduct of entering into exclusive distribution agreements with inventory providers.

In the first prosecution Computicket was found guilty by the Competition Tribunal on 21 January 2019 of abuse of dominance by entering into exclusive distribution agreements for the period between 2005 – 2010 and levied a fine of R20m. The first prosecution stems from five complaints lodged by Strictly Tickets, Artslink, Going Places, TicketSpace and Ezimidlalo Technologies which alleged that Computicket had engaged in anti-competitive practices by concluding exclusive agreements with inventory providers for the provision of outsourced ticket distribution services for the entertainment industry which covers events such as sports, cinemas, theatres, festivals and live events. The finding of guilt and the fine imposed by the Tribunal was confirmed on appeal by the Competition Appeal Court on 23 October 2019. The first prosecution has been finalised and concluded.

The second prosecution against Computicket and Shoprite was instituted by the Commission in December 2018 and involves the same exclusive agreements between Computicket and inventory providers but covers a different period, which is the period from January 2013 – June 2018.

In the second prosecution, Shoprite had brought a challenge to the prosecution that the Commission could not prosecute both a parent company and its wholly subsidiary for abuse of dominance under section 8 of the Competition Act. The Tribunal agreed with the challenge. On 24 April 2020 the Commission noted an appeal against the Tribunal decision to the Competition Appeal Court against the whole of the Tribunal's decision. The Competition Appeal Court, on 27 October 2020 handed down its decision in which it substantially overturned the Tribunal's decision upholding the challenge.

On 17 November 2020 Shoprite filed an application for leave to appeal with the Constitutional Court against the judgement and order of the Competition Appeal Court. On 26 May 2021, the Constitutional Court dismissed Shoprite's application for leave to appeal with costs.