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Tribunal dismisses an abuse of dominance complaint against Transnet National Ports Authority

The Competition Tribunal dismissed a complaint brought by Siyakhuphuka Investment Holdings (Pty) Ltd (“Siyakhuphuka”) against Transnet SOC (“Transnet”) and Transnet National Ports Authority (“TNPA”) for an alleged abuse of dominance regarding a concession for a dedicated container terminal at the port of Richards Bay.

It upheld an exception application brought by Transnet and TNPA to the referral of the complaint on the grounds that the Tribunal had no jurisdiction to hear this matter.

Siyakhuphuka’s complaint stems from the rejection of a proposal to the TNPA for a concession to operate a container terminal at the Port of Richards Bay.

The Commission investigated Siyakhuphuka’s complaint and decided not refer it to the Tribunal. Siyakhuphuka itself then referred the matter to the Tribunal.

Siyakhuphuka alleged that TNPA owns all the land of SA ports and is a monopoly provider of port land and licences/authorisations as it is the only authority vested with such power pursuant the National Ports Act (NPA). Siyakhuphuka further alleged that Transnet’s rejection of its applications amounts to a violation of sections 8(b) and 8(c) of the Competition Act.

The Tribunal said “that when TNPA considers granting concessions to operate port terminals it is exercising its function in terms of a statute. Therefore, when the TNPA makes a decision whether or not to grant concessions it is exercising public power over which the Tribunal has no jurisdiction”.

The Tribunal was not willing to direct a state functionary exercising a public power to act in a particular manner. These are typical matters that the High Court has the power to review as and when they are brought before it.

In June 2016 Siyakhuphuka brought a review application against the Regulator, Transnet, the Minister of Public Enterprises and the Minister of Transport. This application was brought following a dismissal of a complaint laid with the Ports Authority Regulator and is still pending before the High Court of KwaZulu-Natal Local Division.

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