



OUTCOME OF COMPETITION TRIBUNAL CASES

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Competition Tribunal dismisses Competition Commission's case against SAB

Today the Competition Tribunal dismissed the 2007 case brought by the Competition Commission against South African Breweries Limited and thirteen SAB appointed distributors or AD's. The Commission alleged that SAB's distribution system favoured its own appointed distributors to the detriment of independent distributors and ultimately to the detriment of consumers. The Tribunal, however, found that the Commission did not present sufficient evidence to prove that SAB's distribution system lessened intra-brand competition, that is competition between firms that distribute SAB branded beer, as the Commission had alleged.

The Tribunal's decision comes nearly ten years since the complaint was lodged with the Commission; seven years since the Commission referred the case to the Tribunal; after the parties filed several disputes on procedure; after a lengthy pause when SAB attempted to get the case quashed; and after a Tribunal hearing that saw ten witnesses take the stand over a three year period (including the lengthy pause). In the complaint the Commission alleged SAB had contravened the Competition Act in that:

- SAB, which has a market share of between 89 and 90 per cent in the production of clear beer, had appointed distributors and given them exclusive territories in which to distribute SAB products, thus restricting competition between the various appointed distributors;
- SAB unfairly discriminated between the appointed distributors and other customers of SAB who performed a distribution function because the appointed distributors received a discount from the retail price to distribute whereas the latter did not;
- SAB required the appointed distributors to utilise a computer system which only allowed users to charge a price set centrally by SAB and prevented appointed distributors from setting lower prices for their goods if they so wished.

The Tribunal, after considering the evidence presented, found in each case that:

- the appointed distributors were not sufficiently autonomous to be considered competitors of one another and so it could not be said that competition between them had been restricted;
- SAB's transactions with appointed distributors, on the one hand, and its transactions with other customers who performed a distribution function, on the other hand, could not be compared on equal grounds as they concerned different sets of customers. Thus SAB's conduct did not amount to unjustified discrimination;
- on the evidence provided it was not at all clear that appointed distributors were not allowed to set lower prices if they wished.

Accordingly the Tribunal dismissed the Commission's allegations.

As guidance to the Commission though the Tribunal pointed out, amongst other things, that one of the problems with the Commission's case was that its entire case focused on the system of appointed distributors, which accounted for only 10% of SAB's method of beer distribution. Given this, no remedy was likely to have a great impact on the market and, even if a remedy was imposed, SAB could easily make its distribution system conform to the remaining 90% of distribution which was not under attack from the Commission. SAB said it would do as much during the hearing.

In the original 2007 complaint referral, the Commission had also alleged that SAB's conduct was designed to induce retailers not to deal with SAB's competitors, in contravention of the Competition Act. Following an objection from SAB, the Commission elected to commence with the case concerning the appointed distributors and advised that the case alleging inducement would follow at a later date. At the time of the Tribunal's decision in the current case concerning appointed distributors, the Commission had not yet referred the inducement case.

The full judgment of the Tribunal is available on its website: www.comptrib.co.za.

Background

The appointed distributors were beer distributors appointed by SAB and restricted, until the year 2000, to distributing only SAB beer products. They were paid a fee for doing their distribution. The fee was in the form of a discount on the retail price. The contract imposed upon them certain restrictions including restricting them to a geographic region and requiring that they serve all customers of SAB in that region who ordered above a prescribed minimum quantity. They were also subject to strict performance and reporting requirements. SAB also distributed products through its own wholly owned depots, but the depots did not compete with the appointed distributors but instead supplied different areas.

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