COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 013607

In the matter between:

Gas2Liquids (Pty) Ltd	**Applicant**
And	
The Competition Commission	**First respondent**
The South African Petroleum Industry Association	**Second respondent**
And Fourteen Others	

Panel:	N Manoim (Presiding Member)
	Y Carrim (Tribunal Member)
	L Reyburn (Tribunal Member)
Heard on:	13 April 2012
Reasons and Order issued on:	6 July 2012

Interlocutory Application: Reasons for Decision and Order

Introduction

[1] Gas2Liquids (Pty) Ltd ("Gas2Liquids") seeks leave to prosecute an appeal against the exemption granted by the Competition Commission ('Commission') to the South African Petroleum Association ('SAPIA') and its members in terms of sec 10(8) of the Competition Act, Act no. 89 of 1998 ('the Act').

[2] In these reasons, we do not consider the merits of the appeal. Rather we have to determine two preliminary points; does Gas2 Liquids have *locus standi* to bring the appeal and second, if it does, what is the nature of an appeal in terms of section 10(8).

[3] Three parties are involved in this hearing each with a different perspective. Gas2Liquids contends it has standing (*locus standi*) to bring this appeal and that the appeal is a wide one, as we discuss more fully later. SAPIA and its members are opposing this application, submitting that Gas2Liquids does not have standing to appeal, but that if it does, the appeal should proceed on a narrow basis.

[4] The Competition Commission does not dispute Gas2Liquids' *locus standi*, but in its view the appeal is wider than that contended for by SAPIA, but narrower than that contended for by Gas2Liquids.

Background

Legal issues

[5] The Act outlaws certain practices known collectively as prohibited practices. The Act also recognises that certain other objectives may outweigh competition concerns and for this reason the legislature saw fit to create a class of circumstances in which firms could apply to exempt their otherwise unlawful activity from exposing them to liability under the Act, provided the agreement or category of agreement met certain objectives provided for in the Act. The applications are made in terms of section 10(1) of the Act which states:

> *(1) A firm may apply to the Competition Commission to exempt from the application of this Chapter-*
>
> *(a) an agreement or practice, if that agreement or practice meets the requirements of subsection (3); or*
>
> *(b) or category of agreements or practices, if that category of agreements or practices meets the requirements of subsection (3).*

[6] This section has to be read in conjunction with section 10(3) which sets out the requirements for exemption. Section 10(3)(a) sets out the requirement that the restriction created by the agreement is necessary in order to attain one of the objectives listed in

section10(3)(b). In this case the specific objective relied upon is contained in section 10(3)(b)(iv). The relevant passage reads as follows:

Sec 10(3) The Commission may grant an exemption in terms of subsection (2)(a) only if-

(a) Any restriction imposed on the firms concerned by the agreement or practice concerned, or category of either agreements or practices concerned, is required to attain an objective mentioned in paragraph (b); and

(b) The agreement or practice concerned, or category of agreements or practices concerned, contributes to any of the following objectives:

(i).....

(iv) the economic stability of any industry designated by the Minister, after consulting the Minister responsible for that industry.

[7] Although exemptions are granted by the Commission, the Act provides for an appeal to the Tribunal. This right of appeal is not only conferred upon the firm that applied for exemption, but also, as is relevant to the present case, any other person with a substantial financial interest affected by the decision to grant the exemption. This is in terms of section 10(8). We set out and discuss the terms of this sub-section more fully below.

Factual issues

[8] On 5 June 2009 the Minister of Trade and Industry granted the petroleum industry a designation in terms of section 10(3)(b)(iv), for a period ending 31 December 2015. Then SAPIA, its members and affiliated companies and subsidiaries applied to the Commission and were granted, on 17 March 2010, a short-term exemption from certain restrictive practices. This was necessary in order to enable the petroleum industry to work together to develop, plan and monitor the supply of liquid fuels during the 2010 FIFA World Cup. The exemption ended on 31 August 2010.

[9] SAPIA, in view of the World Cup exemption ending later that year, applied on 13 April 2010 to the Commission for a further exemption commencing on 31 August 2010 and ending on 31 December 2015. The exemption covers a wide range of cooperation agreements and practices which, according to SAPIA, are required to ensure the continuity and stability of

liquid fuels supply to various sectors and geographic locations in South Africa.[1] The Commission, after investigating the application, granted SAPIA a conditional exemption in terms of section 10(3)(b)(iv) from 3 October 2011 to 31 December 2015. The Commission concluded that the agreements and practices contravened sections 4(1)(a) and 4(1)(b)(i) of the Act, but found that the cooperation agreements and practices would contribute towards maintaining the economic stability of the petroleum and refinery industry by reducing the risks of fuel supply interruption, thereby meeting the criterion set out in section 10(3)(b)(iv) of the Act.

[10] Among the conditions imposed by the Commission in granting the exemption was a requirement that SAPIA open up its membership to accommodate both existing and potential marketers in the petroleum and refinery industry on fair, reasonable and transparent grounds in order to level the playing field in this industry. This flowed from objections raised by the South African Petroleum and Energy Guild and others (SAPEG), a non-profit organisation constituted to represent emerging companies in the energy sector. Gas2Liquids is a member of SAPEG. SAPEG raised objections against the cooperation agreements and practices which formed the basis of the exemption, indicating that the exemption was inconsistent with the regulatory framework of the South African energy sector. SAPEG wanted access for third parties and historically disadvantaged South Africans (HDSA wholesalers) to all national infrastructure used by oil companies at different stages of the liquid fuel supply chain, because it had found it difficult to get access in the past.

[11] On 10 November 2011 Gas2Liquids noted an appeal against the Commission's decision to conditionally grant the exemption. Although Gas2Liquids had not made submissions in its own capacity to the Commission at the time that it considered the exemption, it is a member of SAPEG and thus associated itself with that submission.

[12] SAPIA and its members opposed the Gas2Liquids appeal, submitting that Gas2Liquids had not established that it had any substantial financial interest that was affected by the granting of the exemption and therefore did not have *locus standi* in terms of sec 10(8) of

[1] The exemption application relates to the cooperation agreements and/or practices between SAPIA and its members at the following stages of the liquid fuels supply chain: inbound logistics; primary distribution; terminal and depot operation and specific shared services such as airport fuelling services and port joint bunkering services. The exemption does not extend to the wholesale, commercial and retail trade supply chain.

the Act. It also emerged that even if Gas2Liquids had *locus standi* to appeal there was disagreement on the nature of the appeal.

[13] In view of these contentions Gas2Liquids approached the Tribunal to convene a pre-hearing to give directions to the parties on the way forward.

[14] A pre-hearing was held on 13 April 2012 at which the Tribunal directed that it would decide the following two issues *in limine* before hearing the appeal:

i. Does Gas2Liquids have *locus standi* to bring an application in terms of sec 10(8) of the Act?
ii. If it does have *locus standi*, should the appeal proceed as an appeal in the wide sense, involving a complete rehearing of and fresh determination on the merits of the exemption, based if necessary on additional information not before the Commission at the time, or on a narrow basis, i.e. an appeal confined to the record that served before the Commission when it considered the exemption?

[15] This decision deals with the resolution of these two issues.

Locus standi

[16] Two provisions in the Act deal with the *locus standi* point in issue in this case: section 53(1)(b)(iv), which forms part of a general section that deals with the right to participate in a hearing in terms of the Act, and section 10(8) which, as we mentioned earlier, is the section that provides specifically for appeals in respect of exemptions.

[17]Section 53(1)(b) deals with who may participate in a Tribunal hearing in relation to exemption appeals. For our purposes the relevant sub-paragraph is (iv). The relevant passage bestowing such rights of participation provides:

> .. " *If the hearing is in terms of section 10....an interested person contemplated in section 10(8) who submitted a representation to the Competition Commission, unless, in the opinion of the presiding member of the Competition Tribunal, that person's interest is*

adequately represented by another participant, but only to the extent required for the person's interest to be adequately represented" ... (Our emphasis)

[18] Thus the section requires us to consider whether the prospective participant is a person contemplated in section 10(8).

[19] Section 10(8) provides:

> *"The firm concerned, or any other person with a substantial financial interest affected by a decision of the Competition Commission in terms of subsection (2), (4A) or (5), may appeal that decision to the Competition Tribunal in the prescribed manner."*[2]

[20] Jali JA, in the intervention application in *Industrial Development Corporation of South Africa and Anglo American*[3] noted that different criteria are set for participation in different hearings before the Tribunal, for instance, a "material interest" is required to intervene in complaint procedures while a very low threshold is set by the Act for intervention in merger proceedings. This is so because in litigation there may be an issue of dispute to safeguard a right, which is not the case in merger proceedings, and litigation by nature also has serious cost implications.

[21] Whilst this case is not directly on point in a consideration of section 10(8) it is persuasive authority that rights to intervene in different proceedings are relative – the interest is interpreted by reference to the nature of the proceeding.

[22] In the nature of exemption proceedings an objecting party will be one whose ability to compete in the market place is affected either as a customer, supplier or competitor. Thus a financial interest is an interest affected by the terms of the exemption, bearing on the appellant's ability to compete in the market place.

[23] Of course the section makes it clear that the interest has to be substantial. Not every financial interest which we described above meets the test of substantiality. Exemptions can of course affect a wide constituency of the class of interests described above. Presumably in order to limit the class of potential appellants the legislature chose to use the limiting language of *'substantiality'* so as to avoid making the exemption hostage to those without substantial interests.

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[2] Emphasis added

[3] Anglo SA Capital v Industrial Development Corp of SA [2003] 1 CPLR 10 CAC

[24] However adopting too restrictive an interpretation of what 'substantial' means may infringe upon an appellant's constitutional rights to have a dispute adjudicated.[4]

[25] That of course does not help answer the question of when the threshold of substantiality is crossed. Gas2Liquids flips the concept on its head and suggests that a substantial interest is one that is not trivial. That does not take matters much further. SAPIA argues that substantiality is something that requires quantification; something it is common cause Gas2Liquids has not done. It goes on to argue the test should be a counterfactual one. What would the financial interest of the appellant be, if the exemption was wished away? If it would not be substantially better off without the exemption, then the threshold would not have been satisfied.

[26] But this approach could lead to lengthy collateral debates about the counterfactual. Indeed less time might be required to determine an appeal than to determine *locus standi*.

[27] There seems little point in attempting to divine another formulation that would make the term 'substantial' more precise. Neither proposal from the parties takes the matter much further. The test for substantiality depends to a large degree on the market situation of the appellant. Thus the factual enquiry is the best guide to resolving the question of substantiality. What is substantial is a question of fact in each enquiry. It is not easily susceptible to prior formulation.

[28] There is a second aspect we must consider before going on to the factual enquiry. Part of the preliminary enquiry is whether an applicant needs to show more than a *prima facie* case of a substantial interest. In our view this is all that is required. To decide otherwise would again be unfairly burdensome on appellants and involve the Tribunal in an extensive collateral enquiry.

[29] Let us therefore consider the factual issues concerning Gas2Liquids in this exemption and ask whether it has shown it has a financial interest and if so whether that financial interest is substantial.

[30] Gas2Liquids describes itself as an energy company operating in the petroleum sector and says it is an accredited and licensed wholesaler of petroleum products. It has been active in the fuel industry for more than 10 years and it supplies more than 100 million litres of fuel per year to the South African market which it imports via Mozambique. According to it, it was one of the first firms

[4] Sec 1(2)(a) provides expressly that the Act must be interpreted in a manner that is consistent with the Constitution.

that was not a major oil company to have imported petroleum products into South Africa and it has made significant investments to enable it to supply fuel to the South African market. It also points out that, amongst other things, it has begun investing in storage facilities in Richard's Bay and the construction and development of this multi-product storage terminal requires massive financial investment.

[31] It argues that the granting of the exemption effectively gives SAPIA members a licence to cooperate and further strengthen their control over bottlenecks and vital assets, including the Durban port, the fuel pipeline and the rail transport of fuel. Not only do the agreements lead to the exclusion of parties such as Gas2Liquids from access to such infrastructure, but they also lead to increased transport costs in having to import via Mozambique rather than Durban port. The exemption also sanctions the exclusion of Gas2Liquids from assets and discussions that would enable it to become more competitive and to expand its business within South Africa in a market where manufacturing capacity is constrained and in which the market requires a greater level of imports. Operating costs are increased because the cooperation that is sanctioned benefits only a select few industry players who do not have to concern themselves with uncertainties of the market – sharing of sensitive information between them is allowed, which arguably enables them to plan much better and to operate more securely in the industry.

[32] It is common cause that Gas2Liquids conducts its business as a wholesaler in the petroleum market. However SAPIA argues that Gas2Liquids, as an importer of diesel, is not involved in any of the stages in the supply chain affected by the exemption, namely manufacturing and refining activities or the importation of crude oil, jet fuel or bunker fuel and that wholesale activities are specifically excluded from the ambit of the exemption.

[33] This argument may reflect the current status quo, but it ignores the fact that Gas2Liquids has attempted to get into other markets and access the infrastructure utilised by SAPIA members. At some stage Gas2Liquids attempted to get access to the infrastructure of SAPIA's members at the Durban port. Despite a lengthy correspondence over 4 months this attempt yielded no success. However, what this correspondence shows is that Gas2Liquids has demonstrated an interest in accessing the very facilities that are now the subject of the exemption. It therefore cannot be said, as suggested by SAPIA, that this is a firm which confines its ambitions to its current practice of importing as a wholesaler via Mozambique.

[34] SAPIA's next argument is that the agreements specifically allow for third party access to uncommitted capacity of the facilities at each stage of the supply chain. Therefore Gas2Liquids is not excluded from applying for access to the facilities covered by the exempt agreements.

[35] However this point favours Gas2Liquids' approach. It is precisely because firms like it are potential entrants to the market, as recognised by the language of the exemption, that they can demonstrate that they have a financial interest. For present purposes, when all we have to decide is whether they have a right to bring the appeal, the fact that other firms that are not presently enjoying access to the supply chain may apply, suggests that they have a financial interest in the exemption. Whether the third party access terms are adequate is an issue for the merits of the appeal and we do not need to consider them now.

[36] What Gas2Liquids has shown is that it is in the market as a trader; it has been such for a number of years; it wishes to expand its business beyond that of trading as a wholesaler through its present channels; it has demonstrated that it attempted to get access to the infrastructure at the Durban port, which is partly the subject of the present exemption, without success; that its competitiveness would be adversely affected if rivals or potential rivals were to be exempt from concluding or implementing co-operation agreements and were to engage in information-sharing in order to be more efficient and to reduce costs; and lastly that it would as a result of this history be a plausible applicant for third party access to the supply chain which is the subject of the exemption. We thus find that Gas2Liquids has established that it has a financial interest affected by the exemption.

[37] The next issue is whether this financial interest can be regarded as a substantial one. Gas2Liquids's turnover in 2011 was slightly less than R2 billion and its sales volume between 1-2% of the volume of fuel sales in South Africa. While the percentage may be low, the absolute amount of these sales is by no means an insignificant number in the context of any industry in South Africa. It is common cause that the infrastructure that forms the subject matter of the exemption is economically significant.

[38]Gas2Liquids alleges that in order to understand the effect that the exemption has on it, one has to consider the practical effect the sharing of information has over the whole spectrum of the supply chain as opposed to considering it as a discrete set of individual agreements. The information exchange is necessary to ensure that the infrastructure is used optimally by all the parties to the

agreement by synchronising delivery to all areas. This means that there is no capacity available to any third parties. The implication, Gas2Liquids alleges, is that it cannot ever access the infrastructure because there never is any capacity available, irrespective of whether third parties have notional rights of access to it or not via the agreements. The consequence is that Gas2Liquids has to, at much higher cost, import and move product around in South Africa. Thus, even though the agreements do not extend to practices within the same market as Gas2Liquids finds itself in presently, the collective effect of the agreements extends to the wholesale market in which Gas2Liquids presently competes, and the exemption will certainly affect its attempts to expand.

[39] If these allegations are correct then Gas2Liquids, *prima facie*, will have a substantial financial interest in the effect created by the exemption.

[40] We find therefore that Gas2Liquids has made out a *prima facie* case that it has a substantial financial interest in the exemption and has thus satisfied the requirement of sec 10(8) in that it has shown that it has a substantial financial interest that is affected by the exemption. Gas2Liquids therefore does have *locus standi*.

Wide or narrow appeal

[41] An appeal in the wide sense entails a complete rehearing and redetermination on the merits of the case, with or without additional information. We would thus not be confined to the record on which the Commission based its decision. In a narrow appeal we would be confined to the Commission's record compiled during its investigation, an appeal in the ordinary strict sense.

[42] Sec 10(8) provides that a person with standing affected by an exemption decision of the Commission "*may appeal that decision to the Competition Tribunal in the prescribed form.*" Tribunal Rules 38-41 prescribe the manner in which an exemption appeal must proceed. We summarise them as follows:

1. A notice of appeal is filed within 20 business days of the Commission releasing its decision.
2. The Rules do not make any provision for filing affidavits.
3. The Commission is required to prepare a full record of the exemption investigation within 20 business days after the appeal notice is filed.
4. The Tribunal is required to set a date and time for hearing the appeal upon receiving the notice of appeal.

5. Fifteen days before the date set for the hearing, the applicant must file heads of argument and 10 days before the hearing date the respondents must file their heads.

[43] Gas2Liquids proposes that the appeal be dealt with through a process in which affidavits are exchanged prior to argument, and where disputes on factual issues arise and require resolution, that they be resolved through the hearing of *viva voce* evidence. It submits that its views are supported by sec 55(1) of the Act which empowers the Tribunal to adopt procedures appropriate to a matter being heard by it with a view to ensuring that the dictates of the principles of natural justice are adhered to in hearings conducted under its auspices.

[44] SAPIA submits that we do not have the competence to order that a wide appeal should be followed in relation to exemption appeals. It says that the determinative provision is sec 10(8), which provides that an appeal may be made to the Tribunal "in the prescribed manner" which is set out in Tribunal Rules 38-41. In the face of this clear wording, argues SAPIA, there is no basis in law for Gas2Liquids's contention that Tribunal Rules 38-41 should be ignored in favour of an appeal involving fresh evidence. It concludes that the power in sec 55(1) is expressly made subordinate to the Rules and that there is thus no basis for Gas2Liquids' submission that the Tribunal could override the provisions of Tribunal Rules 38-41.

[45] The Commission argued that although the Act and the Rules appear to envisage an ordinary appeal that does not necessarily mean that the Tribunal should not, as an absolute rule, allow further evidence on appeal no matter the circumstances. The Commission is thus not opposed to the adoption of an appeal process that is more comprehensive than a narrow appeal, but does not want it to be as wide as the process suggested by Gas2Liquids. It says that further evidence on appeal should only be admitted in exceptional circumstances and suggests that the Tribunal follow the approach of the High Court as formulated by Holmes JA in *S v De Jager* [5] before further evidence on appeal is admitted, namely that:

1. there should be some reasonably sufficient explanation, based on allegations which may be true, why the evidence which is sought to be led was not led at the trial;
2. there should be a prima facie likelihood of the truth of the evidence;
3. the evidence should be materially relevant to the outcome of the trial.

[5] S v De Jager 1965 (2) SA 612 (A) AT 613 B

Analysis

[46] We have concluded that the appeal is a narrow one. This is clear from both the language used in section 10(8) as well as other approaches that are more purposive.

Clear language

[47] As we noted earlier, the different functions that must be performed by the competition authorities in terms of the Act have different procedural implications which depend on the nature of the function being performed.

[48] For this reason when the legislature used the term 'appeal' in 10(8) it did so advisedly to connote an appeal in the ordinary sense – the narrow appeal confined to the record of the body being appealed.

[49] Contrast this with Chapter 3 on merger control, where parties are allowed to 'appeal' a decision of the Commission in respect of small and intermediate mergers. Here the legislature uses the word 'consideration' not appeal, although this process is akin to the wide appeal contemplated by Gas2Liquids i.e. a proceeding that is not confined to the record before the Commission. There is a good reason for this. The time periods for these merger considerations are limited for the parties to the merger, the Commission and any participating third party. For this reason the legislature intended to provide for a wide appeal and to signal this intent unambiguously used the word 'consideration', the same term it used to apply to a large merger proceedings which are not appealed but are *de novo* proceedings.

[50] If the legislature had intended an exemption appeal to be one in the wide sense of the consideration process, it would surely have used the same language. The choice of 'appeal' rather than' consideration' therefore points to a narrow appeal.

Purposive approach

[51] In considering the purposive approach we follow the suggestion made by counsel for the Commission that one considers the test as formulated by Baxter in his treatise on administrative law in assessing the nature of an appeal:[6] According to Baxter one would consider the following:

[6] Baxter, *Administrative Law* (1984), pg 261 -263

- Lack of a record: If there is no provision for the keeping of a record, the appeal jurisdiction will almost certainly be wide.
- Procedural powers: There is a strong indication of wide jurisdiction where the powers of inquiry are identical to those of the adjudicator of first instance (an 'administrator' in Baxter's language).
- Decisional powers: A wide appellate jurisdiction is indicated where the decision of the appellate agency is deemed to be that of the administrator. A narrower jurisdiction may be intended where the appellate body is empowered to 'substitute' its decision or merely 'confirm, vary or set aside' the original decision.

[52] If we apply Baxter's test we find that:

Lack of Record

[53] Tribunal Rule 39 clearly indicates that the Commission must file its exemption record with the Tribunal. This record must include the application for exemption submitted, any written representations concerning the application that were considered, any exemption certificate, notice of refusal, notice of revocation, or decision concerning a revocation issued to the person who applied for the exemption and any written reasons given by the Commission for the decision issued. Provision is thus made for a full record to be supplied to the Tribunal in considering the appeal.

Procedural powers

[54] The Act and the Commission Rules describe in great detail how the Commission must proceed in considering the application and what requirements must be met before it can grant an exemption. The Commission must publish a notice in the Gazette of the application and may request further information from any person. It must conduct a full investigation.

[55] Sec 55(1) provides that the Tribunal may determine matters of procedure subject to the Tribunal's rules of procedure. Sec 10(8) clearly states that the manner in which exemptions must be appealed is set out in the Tribunal Rules, which states that after the record is received from the Commission, the Tribunal must set the hearing down and the parties must file their heads of argument.[7] The Tribunal rules on exemptions differ markedly from those of the Commission. The Commission rules provide for the application, submission of evidence by the applicants or other persons, and the publication of the proposed exemption in the Government gazette for public

[7] See Tribunal rules 38-41.

comment.[8] In addition, the Commission enjoys investigative powers to aid its consideration.[9] Contrast this with the Tribunal's rules which provide only for the hearing of an appeal on the record of the Commission. The Tribunal's powers of enquiry are thus not identical to those of the Commission. Based on this the rules envisage an appeal confined to the record.

Decisional powers

[56] In terms of the Act the Commission may grant, refuse or revoke an exemption application after considering and investigating the agreements contemplated in the application.

[57] Sec 27(c) provides that the Tribunal may hear appeals from, or review any decision of, the Competition Commission that may, in terms of the Act, be referred to it. In sec 10(8) the Tribunal is given the power to hear an exemption appeal. This suggests that unlike with mergers the Tribunals' discretion in terms of section 10(8) is limited.

[58] If we apply the test posited by Baxter the conclusion again is that the appeal must proceed on a narrow basis, i.e. it is restricted to the record only.

Exception to the narrow appeal principle

[59] One aspect of this case suggests that for limited purposes the record on appeal may be expanded from what was before the Commission. Gas2Liquids has argued persuasively that where a party makes submissions to the Commission in respect of an application for exemption, it is not required to show a substantial financial interest. The Act simply refers to *"interested parties"*.[10] It would be burdensome to parties if they had to anticipate the possibility of an appeal at the stage when they made submissions to the Commission. Indeed many submissions may be made by parties who do not have a substantial financial interest, but the submissions may be very useful to the Commission – by way of example from academics and research bodies.

[60] For this reason as an exception to the principle of the narrow appeal confined to the record, we would allow, as we do in this case, appellants by way of affidavit to establish their *locus standi* to

[8] See Commission rules 19-20.
[9] Section 10(6)(c).
[10] See section 10(6)(b) which says in exemption applications the Commission must allow *"...interested parties ...to make written representations..."*

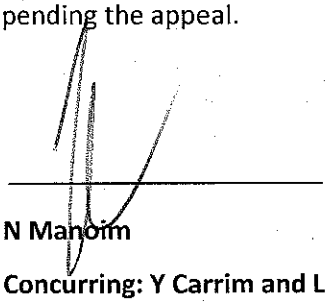
bring the appeal. Where the *locus standi* is challenged that can be resolved by way of application on papers, as in this case.

Conclusion and order

[61] We find that Gas2Liquids has *locus standi* to bring this appeal. Apart from the record generated by this application on *locus standi*, the appeal is confined to the record before the Commission. The appeal is therefore a narrow one.

Costs

[62] As no party has been wholly successful or unsuccessful we will reserve the issue of costs pending the appeal.



6 July 2012

N Manoim **Date**

Concurring: Y Carrim and L Reyburn

Tribunal Researcher:	Rietsie Badenhorst
For the Applicant:	Adv J.P.V McNally SC and Adv M.J Engelbrecht, instructed by Darryl Ackerman Attorneys
For 1st Respondent:	Adv J.A Motepe, instructed by the Competition Commission with heads of argument prepared by Adv. I.V Maleka S.C and Adv J.A Motepe.
For 2nd – 16th Respondents:	Adv A Cockrell SC and Adv D Turner, instructed by Bell Dewar Inc.