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**7 August, 2017**

**Documents of export and import discussions between battery manufacturers and ITAC to be handed over - Tribunal**

The Competition Tribunal has ordered the South African Battery Manufacturers’ Association (SABMA) chairman Glenn Llewellyn Geldenhuis and the association secretary Maria Da Fonseca to disclose selected documents to applicants in a complaint, alleging price fixing and agreements to lessen competition in the sale and manufacturing of automotive batteries.

SABMA, Geldenhuis and Fonseca brought an application for subpoenas against them to be set aside, alternatively that the Tribunal set aside the request for certain documents set out in the subpoena on the grounds that they predate the commencement of the Competition Act.

The initial complaint was brought by the South African Batteries Importers Association (SABIA) and five other applicants, in which they said that members of SABMA had contravened sections 4(1)(b)(i), 5(1) and 8(c) of the Competition Act, which includes offences such as directly or indirectly fixing a purchase or selling price and agreements to lessen competition by battery producers. The subpoenas were issued on behalf of SABIA by the Tribunal.

The complaint referral to the Tribunal by SABIA followed a non-referral that was issued by the Competition Commission.

Since the subpoenas were issued, two of SABMA’s three members, namely First National Battery and Powertech Industries trading as Willard Batteries, have since settled with SABIA and its members, leaving only Donaventa Holdings Pty Ltd, trading as Dixon Batteries.

SABMA applicants Geldenhuis and De Fonseca argued that the subpoenas requiring them to hand over documents be set aside, as they are overbroad and unlawful. Among the reasons put forward to challenge the subpoenas were: SABMA is not cited as a respondent in the main complaint referral; Dixon is the only remaining respondent but the subpoenas require documents in relation to other SABMA members and that some of the requested documents goes back to 1940.

At the commencement of the hearing, SABIA and its members, also brought an application challenging the Tribunal’s jurisdiction to set aside a summons or subpoena.

In the process of the hearings, the itemised list of documents requested by SABIA was reduced from 27 to just three. SABMA argued that the remaining documents were communications between SABMA and the International Trade Administration Commission of South Africa with regard to the export of scrap batteries from SA and the imposition of increased tariffs in respect of imported batteries, and were confidential.

The Tribunal said it has a confidentiality regime in place allowing for the disclosure of documents to the respondents’ legal representatives and expert witnesses, if any, upon the provision of suitable confidentiality undertakings by the respondents’ attorneys and expert witnesses, which is sufficient and appropriate.

It ordered SABMA and its two applicants to disclose the remaining documents itemised as 18, 19 and 21 of the list of requested documents.

SABIA and the five respondents are required to pay costs with regard to the jurisdiction application and the cost of the subpoena application as many of the documents they required were abandoned.

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