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**6 November, 2017**

**Standard Bank is not yet entitled to a copy of the Commission’s investigation record - Tribunal**

The Competition Tribunal has today released its decision in respect of Standard Bank’s application to get the record of the Commission’s investigation in the pending case against eighteen banks alleging collusion over the rand dollar currencies trades brought earlier this year the so called Forex case.

The Tribunal said it would not order the immediate production of the record as Standard Bank was not yet entitled to it.

The case was heard on 18 September 2017.

Standard Bank brought the present application separately from the Forex case, relying on a rule in the Commission’s rules of procedure that allows any person to have access to the Commission’s record of investigation once the case has been referred.

The Commission had refused to produce the record to Standard Bank arguing that as it was a litigant in the Forex case it was not entitled to the record yet.

Standard Bank then brought the application to seek an order to compel production of the record within 5 days of the order being granted.

The Commission opposed the application on a procedural ground arguing that the case should have been brought by way of a review of its decision to refuse the record and not an application to compel.

The Tribunal dismissed the Commission’s procedural objection however it also decided not to order immediate production of the record.

The Tribunal held that under the access rule which provides no specified time frame for production, production had to be made within a reasonable time. On the facts of the present Forex case, given the length of the record, the extent of confidential information in it, and the burden it would place on the Commission in preparing it, a reasonable time for production would be at the same time as discovery is made in the Forex case. (See note below)

The Tribunal also held that a person could seek earlier production of the record if it provided a good reason for this. In the present case, Standard Bank although asked by the Commission to provide reasons had not done so.

[**Note to journalists:** In the Forex case none of the fourteen respondent banks, who are contesting the case, have filed their answering affidavits. This is because the Tribunal still has to hear certain objections they have brought to the Commission’s referral, based, inter alia, on whether the Tribunal has jurisdiction over the Banks and whether the referral contains sufficient specificity. These objections will only be heard next year from 24 to 26th January.

Note further, that in Tribunal cases discovery of a record typically takes place after pleadings have closed i.e., after the respondents have filed their answers and the Commission has been given an opportunity to file a reply in response.]

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