**OUTCOME OF CASES - TRIBUNAL ROLL FOR WEDNESDAY, 7 DECEMBER 2016**

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| --- | --- | --- | --- |
| Type of matter | Parties involved | Competition Commission’s recommendation to Tribunal | Tribunal decision |
| Consent agreement | Competition Commission And Pelchem SOC Ltd | Confirm consent order | Confirmed consent order |
| Settlement agreement | Competition Commission and Premium Brands Distributors (Pty) Ltd | Confirm settlement agreement | Confirm settlement agreement |

The Competition Tribunal on Wednesday confirmed a consent order and a settlement agreement with regard to two cases involving Section 5 contraventions of the Competition Act. This section that prohibits conduct arising out of the interaction between a firm and its customers or suppliers.

This prohibited practice was identified in both the Competition Commission and Pelchem and the Competition Commission Premium Brands Distributors matters before the Tribunal.

The majority of settlements before the Tribunal involve Section 4 contraventions, which prohibits conduct arising out of an agreement between, or concerted practice by, firms who compete against each other.

**The Pelchem case involved an abuse of dominance charge**

The Commission received the complaint on 18 December 2013 from competitor Colvic, a company active in fuel storage, management and environmental protection solutions, that Pelchem, the sole supplier of fluorination services in South Africa, and Marley had entered into a Joint Development Agreement. In terms of the agreement Pelchem is required to only surface fluorinate Marley’s HDPE fuel pipes in South Africa.

Colvic said the agreements made it impossible for it to supply in that market.

Offenders of Section 5 (1) and 8 (c) do not get penalised for first time contraventions.

Instead, Pelchem has undertaken to remove the clauses pertaining to exclusivity and evergreen duration from its existing JDA in respect of: HDPE and PP pails/buckets and electric cables. Pelchem has also undertaken not to enter into exclusive supply agreements for the provision of surface fluorination services for including but not limited to HDPE and PP pails/buckets and electric cables.

**Premium brand has agreed not to engage in minimum price retail engagement**

The Commission found that Premium Brand, sole distributor of Nikon cameras in South Africa, prohibited retailers from selling cameras at a mark-up of not less than 5% between 2008 and 2012.

Premium brand admitted that it coordinated the advertisement of the Nikon Brand by coordinating prices at which the Nikon brand was advertised in a manner which may have had the effect of contravening section 5 (2).

The Tribunal confirmed an agreement, in terms of which Premium Brand agrees not to engage in resale price maintenance, to develop and circulate a policy document to all its distributors informing them that all recommended retail prices in relation to Nikon products are recommendations only and all distributors are at all times free to determine their own retail prices.

Premium Brand is to pay an administrative penalty of R300 500.

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