competitiontribunal
south africa

Date Issued: 03/03/2017

Competition Tribunal Practice Note 1 of 2017

Managing confidential information in Reasons issued by the Competition Tribunal

Background

Any person is entitled to inspect the Tribunal's non-confidential case files. Most people however do not exercise this right but instead are interested in reading the Tribunal's reasons for deciding a particular case. Frequently in competition cases confidential information is furnished by firms. Firms are entitled to have this information protected but unfortunately parties very often make claims to protect information that is patently not confidential or make blanket claims over whole documents when only certain portions may contain confidential information.

In light of this the Tribunal's panels, when drafting reasons for their decisions, make an effort not to include information that is claimed confidential by the parties unless it is necessary to do so to explain the decision. In the latter instance, where the reasons include information that is, based on our experience, typically regarded as confidential, we will make an effort to provide parties to the case, with both a confidential and redacted version. Since, despite our best efforts, reasons or redacted versions, may, inadvertently, still include confidential information, we have adopted the following practice. The practice is designed to balance a firm's right to protect its confidential information with the public's right of access to information within a reasonable time.

Tribunal practice

The Case Manager of the Tribunal will email a copy of the signed reasons to legal or other representatives of the parties requesting them to advise the Tribunal, whether the reasons contain any confidential information that should be redacted. During this period the reasons will not be available for public inspection in the records of the registry or on the Tribunal's website. If the Tribunal does not hear from the parties within five business days of sending the reasons to them, or receive a request for an extension, it will assume the reasons do not contain confidential information. The reasons, in the form sent to the parties[1], will then be published on the website and be made available for inspection in the registry. If, after consulting the parties, the reasons require redactions, only the redacted version will be published on the website and will be available for public inspection in the registry.

[1] i.e. in the case of reasons the Tribunal has already redacted this means the redacted version.

This practice note applies to all reasons issued by the Competition Tribunal and will commence on the date that this notice is issued.

Norman Manoim

Chairperson of the Competition Tribunal

Date: 3 March 2017