



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CR189Mar22/STR04Jun25

In the application to strike out between:

META PLATFORMS INC.

First Applicant

WHATSAPP INC.

Second Applicant

FACEBOOK SOUTH AFRICA PROPRIETARY LIMITED

Third Applicant

and

GOVCHAT PROPRIETARY LIMITED

First Respondent

HASHTAG LETSTALK PROPRIETARY LIMITED

Second Respondent

In re: the matter between:

COMPETITION COMMISSION

Applicant

and

META PLATFORMS INC.

First Respondent

WHATSAPP INC.

Second Respondent

FACEBOOK SOUTH AFRICA PROPRIETARY LIMITED

Third Respondent

GOVCHAT (PTY) LTD

First Intervenor

HASHTAG LETSTALK PROPRIETARY LIMITED

Second Intervenor

REASONS FOR DECISION

INTRODUCTION

- [1] This interlocutory application relates to the complaint referral proceedings brought before the Competition Tribunal ("Tribunal") by the Competition Commission ("Commission") under case number CR189Mar22 (the "Referral").
- [2] After GovChat Proprietary Limited ("Govchat") and Hashtag Letstalk Proprietary Limited (the "Intervenors") filed their witness statements in preparation for the hearing in the main complaint, Meta Platforms Inc., WhatsApp Inc ("WhatsApp") and Facebook South Africa Proprietary Limited (the "Respondents" or "Meta") filed an application to have certain paragraphs in those witness statements struck out. The Intervenors and the Commission opposed this application.

BACKGROUND

- [3] On 5 May 2025, the Intervenors filed the witness statements of Mr Bradley Jonathan Sacks ("Mr Sacks") and Ms Tandi Haslam ("Ms Haslam").
- [4] On 12 June 2025, the Respondents filed their application to strike out certain paragraphs in these witness statements. The Respondents sought the following:
- 4.1. The strike out of paragraphs 11 - 185 and 187 - 189 of the witness statement of Mr Sacks (the only paragraphs they do not seek to strike out are paragraphs 1 to 10 and 186); and
 - 4.2. The strike out of paragraphs 2 - 5 of the witness statement of Ms Haslam (the only paragraphs they do not seek to strike out are paragraph 1).
- [5] The Respondents contend that the evidence contained in these paragraphs of the witness statements is:
- 5.1. not relevant to the permitted grounds of intervention;
 - 5.2. not relevant to the Intervenors' interest in the complaint referral; and

5.3. a duplication of evidence contained in the witness statements delivered by the Commission.

- [6] The Respondents further submitted that if these paragraphs were not struck out it would result in prejudice to them as they would need “*to expend time, resources and funds*”¹ in replying to this evidence.

Intervenors’ submissions

- [7] The Intervenors note that the Tribunal in its order in the intervention application² gave them the right to intervene in respect of declaratory relief in this matter. They submit that in order to obtain declaratory relief, it is necessary to establish an “*evidentiary basis supporting a finding for such order (in this case, that a prohibited practice has occurred)*”.³ Accordingly, the Intervenors submit that their intervention rights allow them to present evidence establishing a legal basis for the relief sought, including evidence with respect to Meta’s alleged dominance and on the allegedly anti-competitive nature of the impugned conduct.
- [8] Additionally, they submit that it would not be appropriate to strike out the relevant paragraphs of the witness statements at this stage of the proceedings. They submit that it would be more appropriate for the Tribunal to determine the admissibility of the proposed evidence in these witness statements during the hearing itself, in terms of the Tribunal’s powers with respect to the conduct of a hearing set out in section 54 of the Competition Act, 89 of 1998 as amended (the “Act”).⁴

¹ Paragraph 3 of the Applicants’ Founding Affidavit.

² Case Number CR189MAR22/INT123OCT22.

³ Strike Out Hearing Bundle at page 154.

⁴ Section 54 of the Act provides as follows:

“The member of the Competition Tribunal presiding at a hearing may -

- (a) direct or summon any person to appear at any specified time and place;
- (b) question any person under oath or affirmation;
- (c) summon or order any person -
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or
 - (ii) to perform any other act in relation to this Act;
- (d) give directions prohibiting or restricting the publication of any evidence given to the Competition Tribunal;
- (dA) amend or withdraw any direction or summons referred to in subsection (a), (c) or (d);
- (e) accept oral submissions from any participant; and

Commission's submissions

- [9] The Commission opposed the strike out application on the basis that the evidence in the Intervenor's witness statements is relevant to the Referral and the issues to be determined by the Tribunal.
- [10] The Commission further submits that evidence being duplicative is not a sufficient ground for it to be struck out. Particularly, section 55 (3) of the Act provides that the Tribunal may refuse evidence on the basis that it is unduly repetitive. Therefore, repetition, corroboration, or duplication is not a sufficient ground for striking out evidence. Moreover, whether evidence is unduly repetitive should not be determined from witness statements only. Instead, the Tribunal is better placed to determine during the hearing whether evidence is unduly repetitive.
- [11] Lastly, the Commission notes that Mr Sacks and Ms Haslam are competent and compellable witnesses and that if the impugned paragraphs in the witness statements are struck out and that evidence is then introduced by the Commission, it would be "*contrary to the principles of procedural efficiency*".⁵

LEGAL PRINCIPLES AND ANALYSIS

- [12] The Tribunal has previously found that Rule 23(2) of the Uniform Rules of Court⁶ applies in strike out applications before the Tribunal.⁷ In order for a strike out application to succeed an applicant must show that –

(f) accept any other information that is submitted by a participant".

⁵ Strike Out Hearing Bundle at page 202.

⁶ Rule 23(2) provides as follows: "Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the aforesaid matter, and may set such application down for hearing within five days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit, referred to in rule 6(5)(f): Provided that – (a) the party intending to make an application to strike out shall, by notice delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and (b) the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted".

⁷ The Competition Commission of South Africa // South African Energy Forum – Case No: STR132Oct20 / LM144Jan20 at paragraph 39.

- 12.1 The pleading contains averments that “*are scandalous, vexatious, or irrelevant*”; and
- 12.2 The applicant will be “*prejudiced in the conduct of any claim or defence if the application is not granted*”.

Irrelevance

- [13] The Respondents contend that the evidence in the impugned paragraphs of the witness statements is irrelevant. They do not allege that these paragraphs are either scandalous or vexatious.
- [14] The Courts have applied the ordinary dictionary meaning of the term ‘irrelevant’ in strike out applications, as being “*allegations which do not apply to the matter in hand, or which do not contribute one way or another to a decision of such matter*”.⁸
- [15] The Respondents’ case of irrelevance is based on two grounds, namely that the evidence in the relevant paragraphs of the witness statements –
- 15.1 falls outside the scope of the Intervenors’ permitted grounds of intervention; and
- 15.2 is duplicative of the evidence in the witness statements filed by the Commission.

Scope of intervention

- [16] The Tribunal’s order in the intervention provides as follows:

“1. The Applicants are granted leave to intervene as parties in the consolidated complaint referrals by the Competition Commission (“Commission”) under Commission case numbers 2020NV0043 and 2021OCT0019 and Tribunal case number CR189MAR22 (“Referral”), with specific reference to:

⁸ *Meintjes v Wallachs Ltd* 1913 TP D 278 at 285 quoted with approval in *Beinash v Wixley* 1997 (3) SA 721 (SCA).

- 1.1 *the declaratory relief sought by the Commission against the first to third respondents (“Referral Respondents”) in paragraphs 1 and 2 of the Commission’s notice of motion;*
- 1.2 *the interdictory relief sought by the Commission in paragraph 4 of the Commission’s notice of motion interdicting the Referral Respondents from ‘offboarding’ the Applicants from the WhatsApp Business API and/or WhatsApp Platform; and*
- 1.3 *the interdictory relief sought by the Commission in paragraph 5 of the Commission’s notice of motion interdicting the Referral Respondents from implementing and enforcing the ‘Exclusionary Terms’ (as defined in the Commission’s founding affidavit in the Referrals).*

(Collectively, the “Scope of intervention”)

- 2. *Subject to the Scope of Intervention, the Intervenors’ rights to intervene are to:*
 - 2.1 *attend all pre-hearing conferences;*
 - 2.2 *adduce evidence and, subject to the Referral Respondents’ right to object, cross-examine witnesses;*
 - 2.3 *request the Tribunal to direct, summon and or order any person to appear at the hearing, or to produce any book, document, or item for purposes of such hearing;*
 - 2.4 *inspect any books, documents and other items filed by any party, including inspection by the Applicants’ legal representatives, subject to appropriate confidentiality undertakings, of any information filed by any party subject to a claim of confidentiality;*
 - 2.5 *participate in any interlocutory proceedings; and*
 - 2.6 *make written and oral submissions...”.*

[17] The application for interdictory relief has fallen away. The Intervenors are therefore entitled to intervene only in respect of the declaratory relief.

The scope of the permitted intervention

[18] This Tribunal has authorised an intervention of limited scope. However, it is not easy, and particularly at this stage, to draw a bright line between evidence that

is relevant to “the merits” and evidence that is relevant to the declaratory relief.⁹ There may be some overlap, in which event the Tribunal will have to decide whether the evidence advanced by the Intervenor (or some part of it) is unduly duplicative and beyond the scope of the permitted intervention. It is difficult to decide that question at this stage.

Duplicative nature of the evidence

- [19] The Respondents submit that the evidence in the witness statements is duplicative. They did not undertake a detailed substantive paragraph-by-paragraph analysis of the relevance of the evidence proposed in the witness statements. Rather, they focused on the broad themes of the witness statements and contended that certain of the proposed evidence in the witness statements can also be given by the Commission’s witnesses as they would also have knowledge of this information. The issue is not really one of relevance.
- [20] The Tribunal has considered the material in the witness statements. While it addresses similar themes to the matters which are proposed to be addressed by the evidence of the Commission’s witnesses, it is not possible to say (particularly at this stage) that it does not address those themes, or aspects of them, in a different manner, and does not provide relevant information that may helpfully contribute to a decision in this matter, and as to what declaratory relief, if any, should be granted.
- [21] On the face of it, Mr Sacks and Ms Haslam are best placed, and likely better placed than the Commission, to provide a good deal of evidence which will likely be helpful to the Tribunal in enabling it to understand a number of matters. These include matters such as the background to GovChat and its establishment; WhatsApp’s threats to offboard GovChat, and the impact

⁹ This is illustrated by the many cases in which the parties in High Court litigation have separated the issues in pending litigation in terms of High Court Uniform Rule 33(4), and a court on appeal has subsequently found that the separation is unclear. See in this regard for example *CM v EM* 2020 (5) SA 49 (SCA) para 13.

thereof; the allegedly onerous terms and conditions imposed by WhatsApp; GovChat's operating model and future business plans had WhatsApp not engaged in allegedly exclusionary conduct; the interim relief application and complaint; WhatsApp's direct engagements with government; GovChat's alleged non-compliance with WhatsApp's terms and conditions; and the impact of WhatsApp's insistence on limiting GovChat's use-cases in the interim order.

Prejudice

- [22] In order for a strike out application to be granted, the applicant must show that it will be prejudiced in the conduct of its defence if a strike out order is not made.¹⁰
- [23] The High Court jurisprudence in this regard is at best of limited assistance in the decision that the Tribunal is now required to make. That is because the High Court cases typically deal with affidavits which have been filed in opposed motion proceedings. If those affidavits and the material in those affidavits are not struck out, they stand as evidence in the litigation.¹¹
- [24] The witness statements, in these proceedings, stand on a very different footing. They are not evidence. If they are not struck out, they will still not constitute evidence. What will be evidence is the evidence that is given at the hearing, at which point the evidence can include the witness statements if they are admitted as evidence.
- [25] The potential prejudice in the present situation therefore differs greatly from the prejudice that is suffered if material in an affidavit is not struck out.
- [26] To ensure that strike out applications are not abused by applicants making *“technical objections which merely serve to increase costs and are of no advantage to the litigating parties”*, the Courts have held that a *“sufficient*

¹⁰ Rule 23(2) of the Uniform Rules of Court.

¹¹ This proposition is subject to the caveat that a party is not obliged to apply for the striking out of evidence that is inadmissible, for example on the grounds that it is hearsay.

degree of prejudice should be present and such proof of prejudice is required".¹² The prejudice should be evident from the facts of the case.¹³

- [27] Whether the evidence with regard to the matters set out in the witness statements of Mr Sacks and Ms Haslam is given by them on behalf of the Intervenor or on behalf of the Commission, the Respondents will need to be ready to deal with it, to the extent that they do not contend that it is irrelevant. If they contend that it is irrelevant, they will need to be ready to justify that contention. The need to prepare to respond to this evidence will therefore exist whether it is introduced on behalf of the Intervenor or on behalf of the Commission.
- [28] If the Respondents contend that the evidence is duplicative, they will be entitled to raise this objection at the hearing, and the Tribunal will be well placed to decide that question and deal with it in terms of sections 54 and 55 of the Act and Rule 22 of the Rules.
- [29] In our opinion, the Respondents have not, at least at this stage, made out a case of sufficient prejudice to justify a striking out of part of a witness statement – assuming that this is permissible, a matter that was not debated before us.¹⁴

CONCLUSION

- [30] In light of the above, the application by the Respondents for the striking out of certain paragraphs in the witness statements filed by the Intervenor is dismissed.
- [31] There is no order as to costs.

¹² *C.P.M v N.E.M* (18195/2022) [2023] ZAGPJHC 1244 (30 October 2023) at paragraph 16.

¹³ *C.P.M v N.E.M* (18195/2022) [2023] ZAGPJHC 1244 (30 October 2023) at paragraph 18.

¹⁴ We have noted that in *FirstRand Bank Limited and another v Competition Commission; Toyota Financial Services South Africa Ltd and another v Competition Commission* (CR174Feb22/STR159Feb25 and STR161Feb25), the Tribunal struck out material in a witness statement, on the grounds that it fell outside the scope of the complaint.

05 March 2026

Prof. Imraan Valodia

Date**Prof. Thando Vilakazi and Adv. Geoff Budlender SC concurring.**

Tribunal Case Managers:

Andriza Liebenberg, Tarryn Sampson, and
Theresho Galane

For the Applicants:

Jerome Wilson SC and Lerato Zikalala
instructed by Derek Lotter and Claire Reidy of
Bowmans

For the Respondents:

Paul Farlam SC and Luke Kelly instructed by
Shawn van der Meulen of Webber Wentzel