
SA court sends excessive pricing ruling back to Competition Tribunal

Monday, 01 Jun, 2009

Lawyers for gold miner Harmony, which referred the complaint of excessive pricing against ArcelorMittal South Africa to the Competition Tribunal in 2004, has expressed disappointment with the Competition Appeal Court's decision to uphold the steel producer's appeal against the tribunal's 2007 finding against the company, which was accompanied by a record fine of ZAR 691.8 million.

In his 90 page judgment, Judge Mr Dennis Davies set aside what was the tribunal's first ever excessive pricing finding, but did not entirely dispose of the matter.

Cliffe Dekker Hofmeyr competition practice director Mr Nick Altini, who acted for Harmony in the matter, said his client was disappointed both by the ruling and by the fact that it brought no resolution to what had already been a protracted dispute.

ArcelorMittal South Africa expressed a similar anxiety in its response to the judgment. While it naturally welcomed the court's decision to set aside the tribunal's findings, it described as unfortunate the fact that the court did not bring these proceedings to a conclusion.

It appears that the Competition Appeal Court found itself at odds with the tribunal's definition of excessive pricing and would like it to reassess whether the steel producer was indeed guilty of the offence under another more tightly defined definition.

But the Competition Appeal Count felt that the Act also demanded that the tribunal determine the actual price of the good or service said to be priced excessively, the economic value of that good in monetary terms whether the actual price was higher and that difference unreasonable; and if the charging of the excessive price was indeed to the detriment of the consumers.

(Sourced from Engineering News)

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