

CHAMBERS LEGAL PRACTICE GUIDES – COMPETITION CARTELS

2015 SOUTH AFRICA CHAPTER

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A. LEGISLATIVE FRAMEWORK

1. Legal basis

Which provisions in the law govern public enforcement actions regarding cartels in your jurisdiction?

Cartel conduct is prohibited in terms of section 4 of the Competition Act, 89 of 1998 (“the Act”). While the Act does not expressly refer to “cartels”, section 4 prohibits certain conduct by firms or associations of firms in a horizontal relationship.

Section 4(1)(a) prohibits an agreement or concerted practice between, or a decision by an association of firms in a horizontal relationship which has the effect of substantially preventing or lessening competition unless any technological, pro-competitive or efficiency gains which outweigh the anticompetitive effect can be proven. As such, section 4(1) allows for an application of a ‘rule of reason’ analysis in the assessment of horizontal anticompetitive conduct.

Section 4(1)(b) prohibits any agreement, concerted practice or decision if it involves the following restrictive horizontal practices:

- Directly or indirectly fixing a purchase or selling price or any other trading condition;
- Dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or
- Collusive tendering.

These prohibited practices are deemed ‘per se’ offences as conduct falling within the provisions of section 4(1)(b) are not subject to a rule of reason analysis. Parties found to have contravened these provisions are, in terms of section 59 subject to an administrative penalty which is limited to 10% of the firm’s annual turnover generated in, into or from South Africa in its preceding financial year.

An agreement to engage in a restrictive practice referred to in section 4(1)(b) of the Act is presumed to exist between two or more firms if any of them owns a significant interest in the other, or has at least one director in common and any combination of these firms engage in a restrictive practice. This presumption may be rebutted if a firm, director or shareholder concerned establishes that a reasonable basis exists to conclude that the practice referred to in section 4(1)(b) is a normal commercial response to conditions prevailing in the relevant market.

2. Scope

Cartel Conduct

a. Which conduct is considered to amount to cartel conduct?

Cartel conduct occurs where competitors (firms in a horizontal relationship) agree, or develop a practice or understanding, to co-operate with one another instead of competing. An agreement or concerted practice between, or a decision by an association of firms in a horizontal relationship which has the effect of substantially preventing or lessening competition as well as the specific forms of conduct (price fixing, market division, and collusive tendering) are considered to amount to cartel conduct.

Limitation Periods

b. Which limitation period(s) applies/apply?

Section 67 of the Act provides that a complaint in respect of prohibited practices (including cartel conduct) may not be initiated more than 3 years after the practice has ceased.

Exemptions

c. Are there any sectors or industries that are exempt from public cartel enforcement action?

The Act and Regulations do not identify specific sectors or industries which are exempt from the provisions of the Act. However, section 10 provides that firms may apply to the Competition Commission ("Commission") for an exemption from the provisions of Chapter 2 (Prohibited Practices).

Section 10 stipulates that an exemption may only be granted in respect of agreements or practices which contribute to the following objectives:

- maintenance or promotion of exports;

- promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive;
- change in productive capacity necessary to stop decline in an industry; or
- the economic stability of any industry designated by the Minister, after consulting the Minister responsible for that industry.

A firm may also apply for an exemption in respect of an agreement or practice which relates to the exercise of intellectual property rights. Professional associations may also apply to have all or part of their association rules exempted.

Geographic Reach

d. What is the geographic reach of the public enforcement actions in your jurisdiction?

The Act applies to “any economic activity within, or having an effect within, the Republic”. In the context of section 4, the Act applies to agreements concluded outside South Africa, but which have an effect within South Africa. In practice, it may be difficult for competition regulators to act against firms domiciled outside the jurisdiction, but whose conduct has an effect in South Africa, especially where foreign firms have no local office or physical presence in the country.

The Principle of Comity

e. Where conduct is potentially subject to enforcement in multiple jurisdictions, to what extent do principles of comity affect the decision-making and discretion of your enforcement authorities?

The Competition Appeal Court (“CAC”) has considered and been cognizant of the principles of international comity in its adjudication of cases which affect foreign firms (Ansac/Botash case no. 12/CAC/Dec01). In the Ansac/Botash appeal, the CAC considered whether principles of comity would argue against the exercise of jurisdiction by South African authorities in the prosecution of cartel conduct of foreign firms. In this case the CAC found that no consideration of comity precluded the South African competition authorities from exercising their jurisdiction in terms of the Act.

B. COLLECTING EVIDENCE

1. Standard of proof

a. What standard of proof must the public enforcement agency in your jurisdiction satisfy in cartel cases (e.g. “beyond reasonable doubt”)?

The standard of proof is a balance of probabilities, similar to the standard of proof in civil law matters. For cartel conduct the onus will lie with the Commission to prove that the conduct complained of has occurred. In the case of cartel conduct, the Commission does not have to demonstrate that anticompetitive effects flow from the conduct.

2. Evidence collected through use of investigative powers – how do you advise clients to protect themselves before, during, or after a raid?

Surprise Visits

b. Can the agency in your jurisdiction conduct surprise visits at the companies’ or company employees’ premises? If so:

The Seizure of Evidence

- *How does the agency collect and take possession of relevant documents (e.g. seizure of hard copies / electronic mail) at the companies’ premises?*

The Commission’s powers of entry and search are set out at Chapter 5, Part B of the Act. Unannounced visits and searches conducted at company premises are referred to as ‘dawn raids’. The Act provides mechanisms by which an investigator may enter and search premises with a warrant, or in limited circumstances without a warrant. A judge or magistrate may issue a warrant to enter and search any premises if, from information on oath or affirmation, there are reasonable grounds to believe that: (a) a prohibited practice has taken place, is taking place or is likely to take place on or in those premises; or (b) anything connected with an investigation in terms of the Act is in the possession of a person who is on or in those premises.

During the inspection officials of the Commission may enter premises, examine and copy documents (both in hard and electronic format), seal business premises and ask for explanations from staff in order to obtain information on suspected infringements. The Commission may attach and remove any documentation or article and may use or require the assistance of any person on the premises to use any computer system to:

- Search any data contained in or available to that computer system;
- Reproduce any record from the data;
- Seize any output from that computer for examination and copying.

In most cases the Commission's investigators copy the hard drives of the computers of key personnel.

Legal Privilege

- *How does it deal with the issue of legal privilege?*

The Commission's powers of inspection are subject to claims of privilege. In terms of Section 49(5) of the Act a person may refuse, during a search, to permit the inspection or removal of an article or document on the ground that it contains privileged information. Privilege may be legal professional privilege or litigation privilege. In terms of section 49(6) of the Act, if the person being subjected to the search and seizure claims privilege, the investigators conducting the search may request that the registrar or sheriff of the High Court having jurisdiction attach and remove the article or document for safe custody, until the court determines whether or not such article or document is, in fact, privileged. In this regard it is important to note that the owner of the premises or the person in control thereof must be furnished with a receipt for such article or document removed and such article or document must be returned as soon as possible after achieving the purpose for which it was removed.

Interviews with Company Employees

c. Can the agency in your jurisdiction conduct interviews with company employees? If so:

- *Can the agency conduct interviews on site at the companies' premises?*

The Commission is entitled to interview company employees on site. Individuals may be summoned (or invited) to respond to questions from the Commission and must answer fully and truthfully.

- *Can it invite company employees to its premises for interviews?*

The Commission may summon (or invite) any person who is believed to be able to furnish information or to have possession or control of documents relevant to the investigation, to appear before the Commission. The Commission may interrogate the individual and/or request that relevant documents in such person's control be produced.

Requests for Information

d. Can the agency in your jurisdiction send companies requests for documents or information?

The competition authorities may make requests for specific documents or a range of documents described in broad terms.

Privilege Against Self-Incrimination

- *How does the agency handle privilege against self-incrimination?*

Individuals may be summoned to respond to questions from the Commission and must do so fully and truthfully, where possible. However, a question does not have to be answered if it is self-incriminating. The only criminal proceedings in which self-incriminating information may be used are those relating to perjury.

It should be noted that section 56 of the Act, which deals with witnesses appearing before the Competition Tribunal (Tribunal), provides that the Tribunal may order a person to answer any question or produce an article or document, even where such evidence is self-incriminating.

Companies Located Outside the Jurisdiction

- *Do the companies located outside the jurisdiction have a duty to reply to these requests?*

The Act applies to agreements or concerted practices concluded outside South Africa by foreign firms, insofar as they have an effect within South Africa. Foreign firms have a duty to reply to requests for documents and information. The Commission is generally pragmatic in its approach and accepts the submission of documents electronically as well as the submission of written statements of individuals where individuals may not be available in person.

Additional Elements of Proof

e. Are there other elements of proof that the agency can use to discharge its burden of proof (e.g. tap telephone conversations)?

In most cases the Commission relies heavily on information supplied by leniency applicants under the Corporate Leniency Policy framework. Information including documentary evidence and witness testimony obtained from leniency applicants has, to date, been the most effective source of information for the Commission in its prosecution of cartel conduct.

3. Evidence collected through the leniency program

Eligibility

a. Does your jurisdiction provide sufficient clarity about the benefits and risks of disclosure or non-disclosure to government authorities? Is there predictability of outcomes that gives you comfort in advising clients?

The Commission has issued a Corporate Leniency Policy (CLP) which serves as a framework for the granting of immunity from prosecution to cartel participants in exchange for information and cooperation with the Commission. The decision to grant immunity (or enter into a settlement agreement, where applicable) is at the discretion of the Commission, provided that certain requirements and conditions are met by the cartel member. The CLP is applicable in respect of agreements among competing firms to engage in price fixing, division or allocation of markets or collusive tendering. These cartel activities need not have been entered into in South Africa and must merely have an effect within South Africa.

There is a reasonable degree of certainty regarding the outcomes following a leniency application. Where a leniency applicant dutifully provides the Commission with all available information and documents, and complies with the requirements set out in the CLP, leniency is granted. However, in the case where a leniency applicant is not the first to approach the Commission there is some uncertainty as the CLP does not stipulate the penalty reduction to which those who are second, third, etc. to apply will be eligible.

First-in-the-door (whistleblower)

Immunity from fines

- *What does a company have to do in order to obtain immunity from fines?*

Only a firm that is first to apply may qualify for immunity by by:

- providing complete and truthful disclosure of all information available to it;
- offering full, expeditious and continued co-operation to the Commission (such co-operation should be continuously offered until the Commission's investigations are finalised and the subsequent proceedings in the Tribunal or the CAC are completed);
- immediately ceasing the cartel activity or acting as directed by the Commission;
- not alerting former cartel members that it has applied for leniency;
- not acting to destroy, falsify or conceal information, evidence and documents relevant to any cartel activity; and
- not making a misrepresentation concerning the material facts of any cartel activity or act dishonestly.

Leniency applications may be made orally or in writing to the Enforcement and Exemptions division of the Commission. Leniency applications must contain sufficient information to allow

the Commission to identify the cartel conduct and participants. The CLP does not allow for blanket immunity and an applicant is required to specify the cartel conduct in respect of which it seeks leniency. The leniency applicant must submit to the Commission all relevant information, evidence (whether written or oral) and documents relating to the cartel activity.

Markers

- *Can the company apply for a marker? If so, under which conditions*

The CLP allows for the submission of a marker, which must be made in writing and must clearly indicate that a request for a marker is being made. The marker must contain the applicant's name and address, the cartel conduct and participants along with reasons why a marker is being sought (i.e. the reasons why a full application cannot be made). A marker is typically sought where the firm is aware that prohibited, cartel conduct has taken place but requires time in order to source documentary evidence in support of its leniency application.

Second-in-the-door company and late comers

Reduction of Fines

- *Are all these companies eligible for a reduction of the fines and, if so, what do they have to do to benefit from a reduction?*

Firms who are not first to the door are not eligible for immunity (unless conditional immunity granted to the first to the door applicant is withdrawn), but may negotiate with the Commission in order to secure a reduction in the applicable penalties which would otherwise be levied.

Even where there is already a successful leniency applicant, there are advantages to approaching the Commission with information for the purpose of reaching a settlement agreement with the Commission (with possible reduced penalties). There is also the possibility that later leniency applicants may bring unknown conduct to the attention of the Commission. If this conduct was not specified by the original leniency applicant, leniency in respect of the new conduct may be afforded to a later applicant.

In circumstances where another firm has already been granted immunity, there is no certainty regarding the extent of the reduction in fines which will be granted. In practice firms that have not been granted immunity provide the Commission with information and cooperation with the Commission and negotiate a reduced fine in line with their level of cooperation and various other considerations, including duration of the conduct.

Partial Immunity

- *Can they obtain partial immunity / amnesty-plus and, if so, under which conditions?*

The CLP contemplates three types of immunity:

- Conditional immunity – temporary immunity afforded to an applicant while the Commission is still in the process of conducting its investigation; this type of immunity precedes total immunity or no immunity;
- Total immunity – once a final decision (by the Tribunal or the CAC, as the case may be) has been reached in respect of the alleged cartel total immunity may be granted to the first to the door applicant that has complied with all the requirements of the CLP; and
- No immunity – an applicant may not be granted immunity in circumstances where it fails to meet the requirements of the CLP.

The CLP does not provide for an immunity plus regime.

Process

Corporate Oral Statements

- *Please describe the process regarding the submission of corporate oral statements*

There is no standard format for a leniency application. The applicant may meet with the Commission to disclose orally the nature of the conduct and show the Commission the relevant documents (without giving the Commission copies). Where the Commission believes that there has been a contravention of section 4(1)(b) that has not already been brought to its attention, it will call on the firm to schedule a formal oral submission (which is usually recorded by the Commission) in order to provide all known information about the conduct.

Leniency

- *Until when does a leniency applicant benefit from confidentiality?*

Sections 44 and 45 of the Act provide that once a claim for confidentiality has been lodged with the Commission, the Commission is obliged to treat such information as confidential until the Tribunal or CAC determine otherwise. The CLP, read with sections 44 and 45 of the Competition Act, suggests that information submitted to the Commission will remain confidential until such time as the Commission would prosecute its complaint against the remaining cartel members in the Tribunal. Tribunal hearings and records are usually accessible and open to the public.

There are some limitations in respect of access to information classified as “restricted information” in terms of the Rules for the Conduct of Proceedings in the Commission.

4. Disclosure of evidence in private damage actions

Investigative Powers

a. To what extent is the evidence collected through use of investigative powers discoverable in court?

The strict rules of evidence applicable to proceedings in the civil courts will apply to damages claims made by private litigants. Evidence submitted by the Commission in the course of a Tribunal or CAC hearing become part of the public record and may be used by private litigants in civil actions.

Leniency Program

b. To what extent is the evidence collected through the leniency program discoverable in court?

The CAC in the ArcelorMittal case (case no. 61/CR/Sep09) recognized that a litigant’s right to inspect a leniency applicant’s application may be limited by claims of confidentiality but indicated that these issues are regulated in terms of the Act. A litigant may approach the Tribunal to make a determination on whether certain information collected through a leniency application is confidential, as contemplated in the Act. In the ArcelorMittal appeal, the Supreme Court of Appeal held that a leniency application is privileged in the hands of the Commission.

5. International cooperation between enforcement agencies in multi-jurisdictional cases

Extent of Cooperation

a. To what extent is the agency in your jurisdiction involved in such cooperation?

South African competition regulators frequently engage with international counterparts, particularly in the case of international cartel conduct which impacts several jurisdictions. The Commission has received assistance from the US Department of Justice and Federal Trade Commission and has looked to the practice of US authorities in the exercise of its investigative functions.

Both the Commission and Tribunal (Tribunal) are active participants in the International Competition Network (“ICN”) and the Commission has been granted ‘observer status’ by the Competition Division of the OECD.

Impact of Cooperation

b. What impact does any such cooperation have on the cartel case in your jurisdiction in terms of timing, evidence gathering, etc?

While there are no formal information sharing arrangements in place between the Commission and foreign competition regulators, the communications which take place between the regulators alert the local authorities to industries or sectors which are the subject of investigation in foreign jurisdictions.

C. DECISION MAKING

1. Settlement / plea bargaining

a. Does the enforcement agency in your jurisdiction operate a procedure allowing companies to plead guilty in order to reduce their liability?

Yes. Cartel participants may approach the Commission with a view to negotiating a settlement agreement. While there have been a few exceptions, the Commission has required that all settlement agreements contain an admission of guilt.

b. If so, is such a procedure comparable to an EU-type of settlement or rather to an US-type of plea-bargaining?

Criminal sanctions are not specifically provided for in the Act and accordingly, there is no provision for the Commission to enter into a plea bargain with any members of a cartel. The Commission may conclude a settlement agreement which must be considered and approved by the Tribunal.

2. Sanctions

a. Can the enforcement agency in your jurisdiction itself impose sanctions or does it have to bring suit against the companies in a court?

The Commission must refer a complaint to the Tribunal which must decide whether the conduct amounts to an infringement of the Act and if so, the appropriate sanction to be applied. A complaint is lodged with the Commission or the Commission initiates a complaint of its own accord. The Commission's role is the investigation of alleged cartel conduct and has a year in which to complete its investigation and assessment. Once the Commission believes that it has gathered sufficient information, it refers the matter for adjudication by the Tribunal. Once

referred to the Tribunal, the matter proceeds by way of an exchange of statements between the Commission and the respondent (i.e. the alleged cartel member). These steps are akin to pleadings in the civil courts. Pre-hearing conferences are convened by the Tribunal to clarify issues, obtain admissions of fact and to give direction regarding the evidence and witnesses to be called. Parties with an interest in the matter may intervene in the proceedings.

Fines

b. Can fines be imposed on companies?

The Tribunal may impose administrative penalties for cartel conduct. In the case of an infringement of the general prohibition in terms of section 4(1)(a) of the Act, a fine may be imposed only if the conduct is substantially a repeat by the same firm of conduct previously found by the Tribunal to be a prohibited practice. In the case of specific prohibitions in terms of section 4(1)(b) of the Act (price fixing, market sharing or collusive tendering) a fine may be imposed in the case of a first time offense.

A fine imposed may not exceed 10% of the firm's annual turnover generated in, into or from South Africa in the firm's preceding financial year. The Tribunal is also entitled to order divestiture, order that firms concerned supply a third party on terms reasonably required to end the prohibited practice or it may declare an agreement or part thereof, void.

Criteria

- *How does your agency determine the level of these fines?*

Various factors are taken into consideration when determining a fine. The methodology to be used (often referred to as the "six-step process") has been specified by the Tribunal and follows, to a large extent, the methodology adopted by the European Commission.

The first step calls for the determination of the relevant year and the relevant turnover amount. The turnover used is generally the turnover from the last full financial year preceding the date on which the infringement ended. In addition, the relevant turnover is the turnover derived from the offending conduct i.e. "affected turnover".

Step two involves a calculation of the "base amount". Determining the basic amount is a matter of discretion and requires consideration of the factors listed in section 59(3)(a),(b) and (d) of the Act. These factors are:

- the nature, duration, gravity and extent of the contravention;

- any loss or damage suffered as a result of the contravention; and
- the market circumstances in which the contravention took place.

The maximum percentage in the EU and the figure used as a reference by the Tribunal is 30% of the affected turnover. Obviously, the more egregious the contravention, the higher the percentage, and the less severe the contravention, the lower the percentage.

In the third step the base amount is multiplied by the duration of the contravention (for periods of less than a full year, the pro-rata value is applied).

Step four allows for the rounding off of the figure obtained in step three, if this figure exceeds the cap of 10% provided for in section 59(2) of the Act.

Step five requires consideration of the factors listed in section 59(3)(c), (e), (f) and (g) of the Act to determine whether discount or premium should be applied. These factors are:

- the behaviour of the respondent;
- the level of profit derived from the contravention;
- the degree to which the respondent has cooperated with the Commission and the Tribunal; and
- whether the respondent has previously been found in contravention of the Act.

Step six involves rounding off of the figure obtained in step five, if this figure exceeds the cap of 10% provided for in section 59(2).

Fines agreed in terms of settlement agreements are determined through negotiations with the Commission. While the six-step process is used a guideline in the determination of negotiated fines, the parties may deviate from the steps as appropriate.

Joint and Several Liability

- *To what extent can the agency hold parent companies of cartel participants jointly and severally liable?*

The competition authorities may hold parent companies jointly and severally liable for the prohibited cartel conduct of their subsidiary firms.

Other Sanctions

- *Are there other sanctions that can be imposed by the agency?*

In addition to fines, the Tribunal is also entitled to order divestiture, order that firms concerned supply a third party on terms reasonably required to end the prohibited practice or it may declare an agreement or part thereof, void.

Sanctions Against Company Employees

c. Which sanctions can be imposed on company employees?

- Imprisonment?
- Other sanctions?

There are currently no criminal sanctions specifically provided for in the Act for cartel activity.

D. DAMAGE CLAIMS

1. Claimants

Collective Redress

a. Does your jurisdiction offer means of collective redress, be in the form of genuine class actions (opt-in or opt-out) or actions brought by consumer groups or other institutional organizations representing specific interest groups?

Class actions are possible within the South African legal system. However, the substantive and procedural aspects of class action suits have only recently begun to be tested by our courts. In terms of procedure, litigants must apply for a certification of the action, the class must be appropriately defined, there must be a triable issue and there must be common elements to the claims of the members of the class (although all the claims need not be identical). It appears from the early case law that either opt-in or opt out classes may be established.

In 2013 the Constitutional Court held in favour of a bread distributor in his application to bring a class action on his behalf and on behalf of other bread distributors in the Western Cape region in South Africa (*Mukaddam v Pioneer Foods* case no. CCT131/12). This application followed a finding by the competition authorities in relation to cartel conduct by a number of bread producers. The applicant had applied for a certification of the class of claimants but was refused by the High Court and the Supreme Court of Appeal. The matter was taken further to the Constitutional Court, which ruled that the lower courts' application of the relevant tests for certification was too strict and that a consideration of the interests of justice must be reckoned into the courts' consideration in such matters.

Indirect Purchasers

b. Can indirect purchasers bring a damage claim? And, if so, can defendants raise a pass on defense against claims brought by direct purchasers?

There is little clarity in respect of class action suits in South Africa. However, at present there is no apparent impediment to indirect purchasers wishing to bring a damage claim. Section 65 of the Act provides that a person who has suffered loss or damage as a result of a prohibited practice is entitled to commence an action in a civil court (except in circumstances where such person has been awarded damages pursuant to a consent order made by the Tribunal). The civil damages claims following the competition authority's prosecution of the bread cartel have been brought by two groups of claimants. The first group is bread distributors (i.e. direct purchasers) and the second is bread consumers (i.e. indirect purchasers of bread).

2. Damages

Types of Compensation

a. What can claimants ask compensation for?

- Losses and forgone profits caused by the cartel (i.e. compensatory damages)
- Punitive damages?
- Other types of damages?

A civil damages claim following a finding of anticompetitive conduct by the competition authorities has yet to be argued before the courts in South Africa. As such there is little guidance in relation to the claims which may be brought by private litigants.

The only claim for damages that has to date been pursued before a civil court in South Africa, is the matter of Nationwide Airlines (Pty) Limited ("Nationwide") v South African Airways (Pty) Limited ("SAA"). The matter involved a complaint referral against and successful conviction in 2004 of SAA for its abuse of dominance in the domestic airline market. Following the successful conviction of SAA, Nationwide instituted the first damages action in South Africa before the High Court. The case was settled on the second day of trial. The case was long-awaited as it would have been the first ruling on a civil damages claim flowing from a contravention of the Act.

Subsequently, Nationwide (in liquidation) and Comair Limited instituted civil damages claims against SAA in relation to its ongoing abuse of dominance. The matter is enrolled for trial during October 2015. In the event of the matter not becoming settled, it will establish a precedent in

South Africa on how civil courts would determine the damages flowing from a ruling by the Tribunal that a firm had engaged in conduct in contravention of the Act.

Quantifying Damages

b. Does your jurisdiction offer any guidance regarding the methodology for quantifying damages?

As no civil damages cases flowing from findings of anticompetitive conduct by the competition authorities have been decided by our courts, there is no specific guidance on the methodology to be applied in the quantification of damages which follow findings of anticompetitive conduct by the competition authorities. It is, however, likely that South African courts will have regard to the jurisprudence as well as the guidance developed by the European Commission (such as the Draft Antitrust Damage Claims Directive and the Practical Guide on the Quantification of Harm in antitrust infringements).

The focus of the trial enrolled for October 2015 will be on the techniques that can be used to quantify the losses suffered by the claimants as a result of the infringement. The underlying objective of damages estimation is to return the plaintiff to the position that it would have been in, had it not been for the competition law infringement.

E. JUDICIAL REVIEW

The Appeal Process

1. *Please describe the appeal process?*

The appeal of a decision of the Tribunal regarding complaints lies with the CAC, a specialised court forming part of the High Courts of South Africa. The CAC consists of three high court judges. The rules of the CAC set out the appeal process. Appeals from the CAC have been heard by the Supreme Court of Appeal and Constitutional Courts. However, amendments to the Constitution of the Republic of South Africa, 108 of 1996, have established that the CAC is the final court of appeal in respect of competition matters (i.e. that matters may not be taken on appeal to the Supreme Court of Appeal). Certain competition cases raising constitutional issues may be brought on appeal before the Constitutional Court.

Extent of Review

2. *To what extent can the appeal body review the agency's findings of fact, legal assessment and sanctions?*

A party which has been granted a right of appeal may make an appeal against findings of fact and law made by the Tribunal.

**The above chapter was included in the Chambers & Partners Legal Practice Guide: Competition Cartels - a 2015 publication.*