



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Senwes v Competition Commission (118/2010) [2011] ZASCA 99 (1 June 2011)

The Supreme Court of Appeal (SCA) upheld an appeal against an order made by the Competition Appeal Court (the CAC) dismissing an appeal by the appellant (Senwes) against a judgment of the Competition Tribunal (the Tribunal) in which an application by the respondent (the Commission) was upheld. The appellant appealed to the CAC after the Tribunal found that they, the appellant, had contravened s 8(c) of the Competition Act 89 of 1988 (the Act) by engaging in what is classified in the parlance of competition law as a 'margin squeeze'.

A 'margin squeeze' is a phenomenon that occurs when a vertically integrated firm, participating in both the upstream and downstream markets, is dominant in the upstream market and supplies an essential input to its competitors in the downstream market. The dominant firm is then said to engage in a margin squeeze when it raises the price of that input to a level where the downstream competitors can no longer survive in that market.

The SCA found that the respondents' charge of margin squeeze was not included in the original referral to the Tribunal. In addition, the Commission refused to seek an amendment of the referral so as to incorporate the complaint of margin squeeze. In the light of Senwes' persistent attitude throughout the proceedings that the complaint of a margin squeeze was not part of the case against it, any suggestion of an implied agreement to incorporate that complaint is clearly unsustainable.

The court held that the Tribunal, as a creature of statute, was not empowered to adjudicate charges that are not included in the referral before them. For these reasons the SCA made the following order:

‘The order of the Competition Tribunal is set aside and replaced with the following:

“The application is dismissed.”