

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Status: Immediate

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

Agri Wire (Pty) Ltd v The Competition Commissioner

The SCA delivered judgment today in a case involving the validity of the Competition Commission's Corporate Leniency Policy. The policy is a key element in the Commission's fight against cartel behaviour. It was challenged in the context of a referral to the Competition Tribunal of an alleged cartel in the wire products industry. Consolidated Wire Industries (Pty) Ltd had reported to the Commission the existence of an alleged cartel in that industry and sought, and obtained, conditional immunity under the policy. Agri Wire, one of the parties to the alleged cartel, challenged the reference to the Tribunal on the grounds that the policy in its present form, which permits the Commission to grant immunity is not sanctioned by the Competition Act. It accordingly contended that the evidence obtained from Consolidated Wire had been unlawfully obtained and that the referral to the Tribunal was accordingly irregular and should be set aside.

The SCA first rejected a challenge to its jurisdiction by the Commission, which contended that exclusive powers of appeal and review had been vested in the Tribunal. It also rejected the Commission's argument that the Corporate Leniency Policy did not vest the power to

grant immunity in the Commission, but in the Tribunal. This argument was contrary to the terms of the policy.

The court considered the contention that the policy was unlawful and rejected it. It held that one of the functions of the Commission is to promote transparency in markets and that the investigation and termination of cartels enhances transparency. In addition the Commission is obliged to investigate all anti-competitive behaviour identified in the Competition Act and the Corporate Leniency Policy is a useful tool in this process. Accordingly the grant of conditional immunity to Consolidated Wire was lawful as was the referral to the Tribunal. The appeal was accordingly dismissed.