



Deloitte Legal – Representing Tomorrow The Competition Lawyer

Welcome to the second edition of Deloitte Legal’s competition update - The Competition Lawyer.

In the first edition we discussed cartel activities and the penalties which stem therefrom, merger filing notices, and the growing prevalence of dawn raids. In this edition of the Competition Lawyer we will look at various ongoing competition matters both locally and globally.

We, at Deloitte Legal, strive to be at the forefront of Competition Law in South Africa by providing up to date and innovative solutions to our clients’ Competition Law issues as well as keeping them abreast of developments as and when they occur.

The role of public interest in mergers

South Africa published its public interest guidelines for mergers during 2016, seeking to create a degree of certainty for investors and allow merging parties to consider these issues proactively as opposed to being subject to an unexpected or unnecessary condition being imposed on the merger.

In South Africa the most important of the public interest issues is that of employment, with its protection being of utmost importance. Fellow African jurisdictions such as Botswana, Kenya and Tanzania have followed suit by focusing on employment, with other African jurisdictions choosing to focus on local procurement.

With this in mind, it is expected that more and more African jurisdictions will publish their own public interest guidelines in the near future. It is especially likely that we will begin to see new competition law being drafted and implemented in those East African Community (“EAC”) member states who do not as yet have any competition legislation in effect, such as Burundi, Rwanda and Uganda.

With many African jurisdictions establishing competition authorities and expanding on their competition regulations, 2017 could be the year where competition authorities begin to flex their collective muscles in Africa.

The duty to speak out

On 19 December 2016 the Competition Appeal Court handed down judgement in a matter involved bicycle wholesalers Omnico and Cool Heat Agencies, confirming its zero-tolerance approach to cartel conduct.

The Competition Appeal Court confirmed that there is a duty to speak out and publicly distance oneself from collusive conduct, and that attending a meeting for the purposes of receiving “gossip” will not stand as a valid excuse for such a firm to avoid liability under the Act.

Cartel conduct and collusion has always been considered the most severe of competition law offences, with this being typified by the criminal sanctions that now attach to cartel conduct.

Being a passive bystander at a meeting where cartel conduct is taking place will not absolve a firm from liability even where such a firm does not follow through or implement the agreed upon actions.



Collusion in the fresh produce market

On 23 March 2017 the Commission conducted dawn raids on nine fresh produce dealers in Johannesburg and Tshwane (later extended to premises in Cape Town and Durban), due to reports of cartel conduct by the Department of Agriculture, Forestry and Fisheries alleging that such conduct could limit the development of black farmers and raise prices in the food sector.

According to the Commission, South Africa's largest fresh produce market agencies, which serve as intermediaries between farmers and buyers of freshly produced fruits and vegetables in South Africa, were suspected of slashing prices to undercut market entrants, most notably developing black farmers, before raising prices when smaller companies run out of stock and using identity to discriminate on price.

According to the Commission, it "has reasonable grounds to believe that the agents entered into an agreement and/or engaged in a concerted practice to fix the price and trading conditions for the supply of freshly produced fruits and vegetables".

The Commission has accused the targeted companies of agreeing to charge "way below" market price in the mornings, forcing smaller competitors to match the low price, and then increasing prices later in the day when the smaller competitors have run out of stock. This would force new entrants to the market to close as they would sell their stock below market value, without sufficient stock to continue trading when agents increase their prices.

This case is the latest in a string of high-profile investigations by the Commission into cartels and collusive conduct resulting in anti-competitive behaviour. The Commission has evidently ear-marked 2017 as a watershed year for its crackdown on cartel conduct. Should it succeed herein, it could go a long way towards minimising corruption in South African industries and boosting the economy. It is therefore imperative that companies develop and implement a set of mechanisms to discourage and identify anti-competitive behaviour by their staff.

How can Deloitte Legal assist you?

If you are concerned about any of the aspects covered in this edition, please feel free to contact our Subject Matter Experts.

Dean Chivers

Deloitte Legal Africa Leader
Tel: +27 11 806 5159
Email: dechivers@deloitte.co.za

Candice Holland

Director: Deloitte Legal
Tel: +27 11 202 8598
Email: caholland@deloitte.co.za



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see <http://www.deloitte.com/about> to learn more about our global network of member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 225,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.