

## **Competition Economics winter-school: Lessons from key South African cases**

**23 and 24 May 2012**

**Competition Commission, Sunnyside, Pretoria**

### **Objectives**

The main objective of the winter-school is to cover key principles and tests in competition economics, drawing on Tribunal decisions of South African cases which set out the appropriate tests, as well as the evidence and analysis required.

The earlier decisions of the South African Competition Tribunal reflect how it approached the application of the law and established the framework for competition analysis in South Africa. The decisions relate to the particular provisions of the South African Competition Act, however, the cases are also useful as an illustration of the broader principles.

The school is mainly aimed at competition authority employees, of the Competition Commission South Africa and of other authorities in the region. A large proportion of the employees of the South African Commission have joined in the last three to five years and are not necessarily familiar with the earlier Tribunal decisions, while members of other authorities set up in recent years in the southern African region may also find the insights interesting as they grapple with similar challenges.

The school is also open to university-based economists working in the area, but who may not be familiar with the key cases, through the Economic Research Southern Africa network.

### **Approach and structure of the sessions**

A case study approach will be used to cover the main areas of mergers and exclusionary abuse of dominance. Each session will include:

- a presentation on the important principles and a brief overview of South African cases
- a discussion of a selected key case, which will be treated in a workshop format
- a wrap up of the main points

For the first session on market definition there will be a hypothetical exercise, and a collective discussion of the Distillers/Stellenbosch Farmers Winery merger.

For sessions 2, 3 and 4, two groups will present the arguments, one from the side of the Commission and one for the merging parties or the respondent (although they need not adopt the same arguments made by these sides in the case itself). The participants will be divided into six groups, and we will indicate which case your group will be presenting on. The groups not presenting on a given case will be expected to comment on the arguments being made.

For preparation purposes we have provided discussion questions below, which are to assist in considering the main points. Time has also been allocated for groups to meet on the afternoon of the first day and on the morning of the second day to prepare for the sessions on the second day.

### **Facilitators**

Simon Roberts, Junior Khumalo, Reena Das Nair, Liberty Mncube, economists from the South African Competition Commission.

## Outline

**23 May 2012**

### **1000-1200      1. Market Definition**

Hypothetical exercise: bricks

Discussion exercise: Distillers/Stellenbosch Farmers Winery

Discussion questions:

- What is the relevant evidence required for the market definition? Reflect on the value and pitfalls of the factual evidence and studies referred to in the Tribunal decision.
- Consider the evidence for and against category-based markets and inter-category substitution. Why have markets been defined in category terms internationally?
- On what basis did the merging parties argue for a wider liquor market, including spirits, beer, wine and FABs?
- What are the relevant terms on which there is segmentation in this case?
- Consider the value, proprietary and premium spirits markets identified by the Tribunal. Do they necessarily have similar features in terms of inter-category switching?

### **1300-1500      2. Merger evaluation**

Discussion exercise: JD/Ellerines

Discussion questions:

- How did the Commission's definition of the product market differ from that of the merging parties and what was the implication of the merging parties' product market definition?
- What is the relevance of Living Standards Measurements (LSM) classifications for market definition in this market?
- How did the Tribunal apply the 'practical indicia' concept (as per *Brown Shoe*) to separate out "furniture shops" from large appliance discounters? What evidence did the Tribunal rely on for its product market definition?
- If I want to buy a fridge I could go to a furniture store or to an appliance store such as Dions, so why are electrical goods retailers not a source of competitive rivalry to furniture stores? And, why are independent furniture stores not in the relevant market?
- What do JD and Ellerines actually derive their market position from? Put differently, what is a key instrument that these stores use to attract customers in the LSM3-5 category?
- Given the relatively short distances people travel to buy furniture, why did the Tribunal disagree with the Commission and identify a national market?

### **1500-1700      Group work**

**24 May**

**0900-1000      Group work**

**1000-1200      3. Vertical mergers and foreclosure**

Discussion exercise: Mondi/Kohler

Discussion questions:

- What effects need to be assessed in order to determine the anti-competitive effects of vertical mergers? How does this fit within the ‘substantially preventing or lessening competition in a market’ which is specified in the SA Competition Act?
- How did the Tribunal envisage Sappi assisting Mondi in engaging in input foreclosure?
- How did the Tribunal foresee sensitive information exchange taking place between Sappi and Mondi?
- Furthermore, a largely self-dealing vertically-integrated Mondi business would have what effect especially in the upstream market?
- What is the significance of Mondi’s capacity to supply Ndicore to the cores and tubes market?
- How were Mondi and Sappi’s incentives aligned?
- Mondi intended divesting of KC&T’s Cape Town plant post-merger, what was the significance of such divestiture?

**1300-1500      4. Exclusionary abuse**

Discussion exercise: SAA

Discussion questions:

- How did SAA reward travel agents in a manner that caused them to direct customers to SAA and away from its rivals? How did the override commissions work?
- How did the Tribunal define the relevant markets and why?
- How did the Tribunal assess dominance and why?
- Was it necessary to show intent in this case?
- What were the Tribunal’s findings on anticompetitive effects?
- What were SAA’s defenses and justifications for the conduct?
- What remedies did the Tribunal impose?
- What criteria did the Tribunal set for determining a penalty