

Procedure at fore in competition case against SAB

Arms company Thint, Jacob Zuma and the National Prosecuting Authority made a cameo appearance in the Competition Tribunal yesterday when counsel for the Competition Commission invoked a Constitutional Court judgment to back up the way the commission had prosecuted its complaint against South African Breweries (SAB).

By [Michael Bleby](#) 7 Apr 2011

Advocate Anthony Gotz argued for the commission yesterday, 6 April 2011, that Chief Justice Pius Langa finding in the 2009 Thint case - that a warrant had to be "reasonably intelligible" - backed up the commission's referral of a complaint against SAB that did not give the company all details of a charge against it. (In 2009, Thint, a French company, faced charges of corruption, racketeering and money laundering in the corruption case against President Zuma.)

"It's not a question of whether or not the person who receives the warrant is able to understand," Gotz said

"It's more that those tasked with dealing with and fighting organised crime should be able to understand what is expected of them in the course of the warrant."

Charges

SAB, facing charges including abuse of dominance, carving up of markets between wholesalers, and resale price maintenance, challenges the case, saying the commission did not follow the correct process when it referred the findings of its investigation into the brewer to the tribunal in 2007.

It told the tribunal it should set aside the hearing as the commission's failure to prepare the case properly meant the tribunal had no jurisdiction to hear it.

If the tribunal sides with SAB, the case that started in 2004 will be over. If it backs the commission, the case will continue.

Gotz argued against what it said was SAB's attempt to interpret "restrictively" high court rulings about how the commission could expand complaints brought to it.

"On SAB's approach, the guillotine has come down on the day the initial complaint was formulated," he said. "We would suggest this is to elevate form over substance."

SAB counsel David Unterhalter SC responded that procedure was important. "It is not the case that you can simply submit a complaint in any way you wish," he said.

"Were it otherwise, not only would the entire architecture of the (Competition) Act be destroyed, but you would have other odd consequences.

"Anything that happens could amount to a new complaint and you'll never know what it is."

Source: Business Day

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