



CARIBBEAN COURT OF JUSTICE

134 HENRY STREET

PORT OF SPAIN

REPUBLIC OF TRINIDAD AND TOBAGO

Phone: (868) 623-2225 Fax: (868) 624-5071

Website: www.caribbeancourtjustice.org

MEDIA RELEASE

(For immediate release)

No. 23:2012

13 November 2012

CCJ DISMISSES TCL'S CLAIM AGAINST COMPETITION COMMISSION

CCJ, Port of Spain. The CCJ yesterday dismissed a claim by Trinidad Cement Limited (TCL) against the CARICOM Competition Commission. The CCJ also ordered the parties to make submissions on the issue of court costs within 21 days.

TCL's case arose from the first matter undertaken by the Commission in fulfilment of its role under the Revised Treaty of Chaguaramas ("the Treaty") to protect and promote competition within the Community. The Commission has divided itself into two Panels and, unknown to TCL, the Investigating Panel had initiated and conducted an investigation of alleged anti-competitive business conduct by TCL. Following the investigation, the Commission instructed TCL to appear at an Enquiry so that the Commission's Adjudicating Panel could adjudicate on the matters raised in the investigation.

Upon being informed of the Enquiry TCL immediately filed an application before the CCJ claiming that the decisions both to conduct the investigation and to hold the Enquiry were void. TCL argued that there had been no proper request for the investigation from the CARICOM Council for Trade and Economic Development (COTED) and that in conducting the investigation "behind its back" the Commission had failed to respect the rights of TCL.

The Commission advanced several grounds for concluding that the CCJ had no jurisdiction to hear the matter. These arguments were rejected by the Court. The Commission also argued that TCL should first have attended the enquiry to have the Adjudicating Panel decide on any procedural complaints TCL wished to make about the conduct of the investigation.

The CCJ agreed with the Commission in principle holding that "where no Enquiry of the Commission has as yet been held, the Court will not ordinarily take cognizance of allegations that certain procedural steps taken by the Commission during the investigation stage are unlawful or void".

On the issue of whether TCL had a right to be consulted and notified about the investigation, the CCJ stated that "Although it could be said that a targeted enterprise has an interest in being able to convince the Commission that ... the proposed investigation was not justified in all the circumstances of the case, such interest is clearly outweighed by other considerations. These considerations include safeguarding the effectiveness of the investigation which should not be compromised."

The Court also dismissed TCL's claim that there was no proper request from COTED for the Commission to embark upon the investigation. The Court went through all the relevant correspondence and concluded that although there was some ambiguity in the language used by COTED it was clear that COTED always intended that the Commission should embark on the investigation.

The Court was presided over by the President, Rt Hon Sir Dennis Byron along with Hon Justice Adrian Saunders, Hon Justice Desiree Bernard, Hon Justice Jacob Wit and Hon Justice Winston Anderson.

The case for TCL was argued by Dr Claude Denbow SC, who appeared together with Mr Darrell Allahar, Mr Jerome Rajcoomar and Mrs Donna Denbow. The Competition Commission was represented by Mr Roger Forde QC and Ms Nargis Hardyal. CARICOM was represented by Ms. Safiya Ali and Mr Bevan Narinesingh and Trinidad and Tobago was represented by Mr Ronnie Bissessar, Mr Alvin Ramroop, Ms Kamala Mohammed-Carter and Ms Avisha Panchu.

END