



PENALTIES AND REMEDIES FOR MARKET DIVISION – COMPETITION COMMISSION V SAM LOUW AND OTHERS

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INTRODUCTION

In a case heard by the Competition Tribunal (“CT”) in December 2014, two locksmith companies were found to have contravened the prohibition against market division in the Competition Act. They did so by entering into an agreement to restrict their business to the Free State and Northern Cape respectively so that neither would face competition from the other in these provinces. In its reasons for decision published in 23 July 2015, the CT determined the appropriate penalty for their contravention, by applying the new formulae set out in the Guidelines for Administrative Penalties for Prohibited Practices which took effect on 1 May 2015.

THE COMPETITION TRIBUNAL RULING

Taking into account: that the two locksmith companies had been blissfully unaware of the contravention for over 30 years; that the locksmith market is generally one based on trust i.e. customers will typically go to the same locksmith; that no profits were derived from the conduct and that the Commission failed to put forward any empirical proving that the conduct had an exclusionary effect, the CT found it appropriate to grant the locksmiths a 90% discount off the penalty amount. Further, the CT enounced a practical means of remedying the exclusionary effect of the market division by

ordering that the parties uphold their undertaking to place weekly advertisements of their businesses in newspapers which circulate both in the Free State and Northern Provinces. The CT ruled that if the parties upheld this undertaking, they would get 50% off of the penalty amount.

CONCLUSION

The case serves to illustrate firstly, that the CT is developing a new jurisprudence on the determination of administrative penalties. Secondly, that although the imposition of an administrative penalty may deter parties from engaging in prohibited practices, attention must also be given to developing pragmatic means of redressing the competition harm caused by participation in prohibited conduct.

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Petra Krusche has been a director at Werksmans Attorneys in the Competition practice since November 2014. Her areas of specialisation include merger notifications, competition training and compliance services and defending against collusive charges.

Petra has been consistently recognised in international publications. She was named as the leading lawyer in Competition in *The IFRL1000 Guide to The World's leading Financial Law Firms*. Petra was also named as a recommended lawyer in Competition/Antitrust in *Chambers Global 2010* as well as listed in antitrust in *Best Lawyers International 2013*.

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