



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

27 November 2009

STATUS: Immediate

The Competition Commission of South Africa and Telkom SA Ltd and the Competition Tribunal of South Africa (623/2008) [2009] ZASCA 155 (27 November 2009)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal decided today to uphold an appeal by the Competition Commission against a decision of the High Court in Pretoria to review and set aside its decision to refer certain complaints of anti-competitive conduct by Telkom to the Competition Tribunal. The Court held that the Commission's decision to refer the complaint was not administrative action within the meaning of the Promotion of Administrative Justice Act 3 of 2000. There was also no grounds to review the decision and complaint referral on the basis of illegality. The Court held that there was no reason to suggest that the decision was vitiated by bias or prejudice rendering it unlawful. The Commission made the complaint referral within the time periods provided for in the Competition Act 89 of 1998 and acted in accordance with the memorandum of agreement concluded between the Commission and ICASA. The Court accordingly held that the Commission had the jurisdiction to refer the complaint and the Tribunal the competence to adjudicate on it. This jurisdiction is concurrent jurisdiction shared with ICASA under the now repealed Telecommunications Act 103 of 1996.