



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 31 May 2013  
Status: Immediate

*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.*

**COMPETITION COMMISSION OF SA  
V  
ARCERLORMITTAL SA LTD**

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Competition Commission, and upheld a cross-appeal by ArcerlorMittal (Pty) Limited and Cape Gate (Pty) Ltd against an order of the Competition Appeal Court (CAC). It ordered the Commission to make available documents sought by Mittal and Cape Gate from the Commission to enable them to answer to allegations that they engaged in prohibited practices in contravention of the Competition Act 89 of 1998 as part of a steel cartel. One of the firms that admitted to being part of the cartel, Scaw South Africa (Pty) Ltd, applied for leniency and was given conditional immunity from prosecution on condition that it cooperated fully with the Commission in prosecuting the other cartel members. The Commission used this information to lodge a complaint against Mittal and Cape Gate with the Competition

Tribunal relating to their alleged anti-competitive practices. It is Scaw's leniency application to the Commission, and the documents that were part of the application, which Mittal and Cape Gate sought disclosure of, that became the main point in dispute.

The Commission had resisted disclosure of the documents on the grounds that they are privileged, because they had been prepared for the purpose of litigation and also that they could be restricted under the Commission's rules. The Tribunal had upheld the Commission's opposition to the disclosure of the documents. The Commission then appealed to the CAC.

The CAC however considered it unnecessary to decide the two issues, but nevertheless ordered the Commission to disclose the documents subject to any claim by Scaw that the documents were confidential – an issue it remitted to the Tribunal for determination.

The CAC's omission to rule on the two issues created a dilemma for all the parties. Because when the matter again came before the Tribunal, the Commission would once again be entitled to resist disclosure of the documents on the two grounds. So, all the parties appealed to the SCA to decide the outstanding questions.

The SCA ruled that the Commission was entitled to claim privilege over the documents because they had been prepared for the purpose of litigation. But that the Commission had waived the privilege, as they did in respect of any right it had to restrict the documents, by making reference to the documents in its complaint against Mittal and Cape Gate. The SCA consequently ruled that the documents are to be disclosed subject to any claim by Scaw that the documents were confidential, which was a matter for the Tribunal to decide. The SCA accordingly referred the matter back to the Tribunal for decision on this question.