



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

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

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 04 November 2015  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***PREMIER FOODS V MANOIM NO (20147/2014) [2015] ZASCA 159  
(4 November 2015)***

The SCA today upheld with costs an appeal concerning an order granted by the Competition Tribunal in a matter related to a bread cartel. The Competition Commission had granted conditional immunity to Premier Foods under its corporate leniency policy. This gives immunity against the imposition of an administrative penalty by the tribunal. It expressly does not affect the rights of persons to bring actions for damages against a person to whom immunity had been extended.

When the commission referred the complaint relating to cartel activity to the tribunal, it expressly excluded Premier from the complaint, neither citing it as a respondent nor seeking relief of any sort relating to it. The

only relief sought was against the respondents cited in the complaint referral. Despite this, the tribunal granted an order in terms of s 58(1)(a)(v) of the Competition Act 89 of 1998, finding that Premier's conduct had amounted to a prohibited practice under the Act.

Such an order is a necessary prelude to the issue of a notice in terms of s 65(6)(b) of the Act, which is itself a necessary prelude to the prosecution of a claim for damages arising from a prohibited practice. Certain persons wished to institute such a claim, and, having obtained such notices in respect of the cited respondents, who had also been found to have engaged in a prohibited practice, applied for such a notice in respect of Premier.

Premier approached the Gauteng Provincial Division of the High Court, Pretoria, for an order declaring that no such notice could be issued on the basis that, because Premier had been excluded from the referral to the tribunal, the tribunal had no power to have granted the order against Premier and that the order was thus a nullity. As a result, there was no finding against Premier to certify. The court *a quo* dismissed the application with costs.

On appeal it was held that the tribunal has only those powers accorded to it by the Act. In the present context, those powers arise in respect of a complaint referred to it by the commission. In determining whether the tribunal has power to make an order, it is necessary to determine the ambit of the referral. The commission is entitled to exclude an entity involved in a cartel from a referral and, if this is done, the tribunal has no power to make any order under s 58(1)(a)(v) relating to it. This court held that, on the facts, the tribunal had had no power to make the order relating to Premier. It further held that the order was a nullity and that the court *a quo* ought to have granted the application. The dismissal of the application was set aside and the order sought by Premier was granted.