

Bank in row with regulator over evidence

Standard Bank and the Competition Commission were at loggerheads over the whereabouts of the antitrust regulator's forex investigation record, with the bank arguing the commission was retaining the record for strategic reasons.



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The commission hit back with claims that Standard Bank was trying to gain access to evidence before pleading to the charges against it.

The bank, one of 18 banking entities that was accused in February of rigging trade in the rand-dollar currency pair, has sought access to this record since March, according to arguments before the Competition Tribunal on Monday.

The complaint has since been tied up in lengthy legal processes including exception applications from 13 entities. Three entities - Absa, Barclays Capital and Barclays plc - have applied for leniency, while Citibank has settled and Standard Chartered is said to be in settlement talks.

"The exceptions have not been adjudicated upon, and Standard Bank is not obliged to plead in the circumstances," said Greta Engelbrecht, counsel for Standard Bank.

Standard Bank said it had asked the commission to provide an index to the record, indicating which portions were restricted and the reasons for that, as well as to provide copies of the record by March 15 2017.

E-mail correspondence attached to Standard Bank's application to compel the commission to produce the records show the commission agreed to do so and responded to reminders from the bank's lawyers with assurances that it was working on the record. But it had not produced the record by April, when the bank advised it would bring the application to compel it to do so.

The commission failed to respond to the threat, and the application was launched five days later.

"The commission initially sought to comply with the request but, on further consideration, determined it was an impermissible attempt by Standard Bank to gain access to evidence before pleading to the complaint against it," said Tembeka Ngcukaitobi, counsel for the regulator. "The commission then took the decision to deny Standard Bank's request."

But Engelbrecht said the Competition Appeal Court had previously ruled on a similar matter involving Group Five, where it found the regulator was a public body to whose records legislators had offered a general right of access. "The aspersions cast by the commission must be dismissed out of hand," said Engelbrecht.

Ngcukaitobi said the commission had decided not to grant the records, so the matter before the tribunal was not about the bank's rights of access.

"Is a party in the position of Standard Bank entitled to disregard a decision of the commission and go behind it?" Ngcukaitobi asked.

"The answer " is not to be found in Group Five. Rather, it is to be found in principles of administrative law."

Ngcukaitobi argued that the bank accepted the commission had made a decision, and the only power the tribunal could exercise was that of review or appeal.

The tribunal reserved judgment on Monday.

Source: *Business Day*

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