

Trinidad Cement Limited v The Competition Commission

Citation: [\[2013\] CCJ 2 \(OJ\)](#)
Date of Judgment: 29 May 2013
Nature of Judgment: Judgment on costs
Composition of the Court: President: D Byron
Judges: A Saunders, D Bernard, J Wit and W Anderson

CCJ Application No	Parties
OA 1 of 2012	Claimant Trinidad Cement Limited
	Defendant The Competition Commission

Counsel

N/A

Nature of Dispute

The dispute concerned a claim by Trinidad Cement Limited (TCL) against the CARICOM Competition Commission (the Commission) that the latter's decision to initiate an investigation of TCL for alleged anti-competitive conduct was inconsistent with Article 175 of the Revised Treaty of Chaguaramas (RTC). The Court, in a separate judgment on the merits, dismissed TCL's claims and ordered the parties to file and exchange written submissions on the issue of costs in the proceedings.

Summary of Legal Conclusions and Orders

- The Court ordered the Claimant to pay 30% of the costs of the Defendant to be taxed if not agreed.

Legal Provision/s at Issue

- Article 175 of the RTC

Other Relevant Community Law/Material Relied on

- Part 30.1(2)(a), 30.1(3) and (4) of the Caribbean Court of Justice (Original Jurisdiction) Rules 2006

Past CCJ Case Law

- *TCL v The Caribbean Community* [2009] CCJ 4 (OJ)
- *TCL and TCL Guyana Inc v The Co-Operative Republic of Guyana* [2009] CCJ 5 (OJ)

- *TCL and TCL Guyana Inc v The Co-Operative Republic of Guyana* [2010] CCJ 1 (OJ)
- *Hummingbird Rice Mills Ltd v Suriname and the Caribbean Community* [2012] CCJ 2 (OJ)

Other Sources of International Law

- N/A

Facts

The dispute arose out of an investigation launched by the Commission regarding alleged anti-competitive behavior by the Claimant, TCL, a company incorporated in Trinidad and Tobago. In the judgment on the merits, the Court dismissed the Claimant's claim that the decision by the Commission to initiate the investigation and to hold an Enquiry ensuing from the investigation was void. The Court clarified aspects of the Commission's Rules of Procedure and ordered the parties to file and exchange written submissions on the issue of costs in the proceedings.

Findings

The Claimant argued that the Commission should bear its own costs and part of the Claimant's costs because each party had succeeded on some and failed on other grounds.

The Court had regard to the rules on costs set out in Part 30.1(3) and (4) of the Court's Original Jurisdiction Rules: Part 30.1(3) permits the Court, where each party succeeds on some heads, or the circumstances are exceptional, to order that the costs are shared or that each party bear their own costs; Part 30.1(4) permits the Court, in exceptional circumstances, to order that the successful party bear the full costs of the proceedings, where the party has vexatiously caused the proceedings to be commenced. The Court also considered its prior case law in which it had exercised its powers for sharing of costs.

On the facts before it, the Court noted that both the Commission and the Community had received benefits from the litigation. Specifically, the Court had been able to clarify the issues relevant to this case, review rules of the Commission for the first time, and identify areas of the rules that were not completely consistent with the RTC and fell short of the requirement of procedural fairness. The Court considered that to require the Claimant, a private entity, to bear the full costs of proceedings that had clarified the rules and procedures on an important aspect of the Single Market and Economy would be unwarranted and disproportionate and that it was important not to discourage private litigants from initiating process.

Noting, however, that its judgment on the merits had ultimately indicated that there was sufficient evidence to justify the Commission taking the steps it did, it would, in the exceptional circumstances of this case, order payment of a portion of the costs incurred by the Commission.

In light of the above, the Court considered that the ends of justice would be met by an order for TCL to pay 30% of the costs of the Commission to be taxed if not agreed.

This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.