

Tribunal gives reasons for dismissing Lekoa complaint

By [Nazeera Mia](#)

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On 20 November 2014 the Competition Tribunal published reasons for its decision to dismiss a complaint referred directly to it on the basis that the complainant failed to demonstrate a competition law case.



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Increasingly, parties aggrieved by failed contractual relationships attempt to seek re-dress through, amongst others, competition law. Importantly however, is that parties bear in mind that competition harm needs to be occasioned first, before reliance is placed on competition law remedies.

During June 2013, Lekoa Fitment Centre lodged a complaint with the Competition Commission against Altech Netstar. After investigating the complaint, the Commission issued a Notice of Non-referral. Dissatisfied with the Commission's decision to non-refer, Lekoa referred the complaint directly to the Tribunal. Lekoa was contracted, on an exclusive basis, to install, register, re-register and service Netstar products to a particular standard of quality and in return, Netstar would pay Lekoa a pre-determined fee.

Alleged breach

The parties' relationship broke down in early 2014 when Netstar terminated the agreement for alleged breach by Lekoa. Lekoa alleged, inter alia, that the vertical relationship between Netstar and itself substantially prevents and lessens competition and that Netstar was abusing its dominant position in the market by engaging in an exclusive agreement with Lekoa.

Lekoa sought relief from the Tribunal. The relief sought by Lekoa in respect of the vertical arrangement between the parties was inherently contradictory. This is because Lekoa alleged that the agreement substantially prevents and lessens competition, but at the same time sought a declaration that the termination of the agreement be rescinded. If the agreement was in fact unlawful for running afoul of the Competition Act, the Tribunal would not be competent to rescind the termination thereof.

Competitors' products

Lekoa alleged that the agreement prevented it from dealing with any products and/or services of Netstar's competitors and as a result, the agreement failed to provide an opportunity for small businesses to participate equitably in the economy. Lekoa failed to substantiate this argument further. In alleging dominance, Lekoa simply stated that there exists a particular market and that Netstar enjoys dominance in that market.

Lekoa was neither able to delineate the relevant market, nor was it able to establish dominance. Whilst the Tribunal was sympathetic to Lekoa's case, the Tribunal found that Lekoa was unable to demonstrate that the vertical arrangement between the parties substantially prevents and lessens competition or that Netstar was abusing its dominance by engaging in an exclusionary act, and that the mere assertions of anti-competitiveness by Lekoa does not in fact make it so.

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