

Constitutional Court Sets Procedural Precedent in the Rand Manipulation Case

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INTRODUCTION

On 30 June 2026 the Constitutional Court handed down judgment in the decade-long litigation arising from allegations that a number of banks colluded to manipulate the USD/ZAR exchange rate *BNP Paribas v Competition Commission of South Africa; Credit Suisse Securities (USA) LLC v Competition Commission of South Africa; Competition Commission of South Africa v Bank of America Europe Designated Activity Company and Others*.

BACKGROUND

The case concerns allegations that traders at several South African and international banks colluded, from 2007 until at least September 2013, to manipulate the USD/ZAR exchange rate, coordinating trades and communicating through private chatrooms. The Competition Commission initiated the complaint in April 2015, amended it in August 2016 and referred it to the Competition Tribunal in February 2017, naming 18 respondents.

Some of these banks subsequently settled or were granted leniency in exchange for cooperating with the investigation, while others argued their way out of the case entirely. By the time the matter reached the Constitutional Court, only a handful of respondents remained actively involved in the litigation.

THE RULING

The outcome is best described as a mixed result, although it ultimately weighs more heavily against the Commission than in its favour. *In casu*, the Commission sought the reinstatement of several banks that had been previously excluded. Its application succeeded in respect of only two banks, namely JPMorgan Chase Bank N.A. and Standard Americas. For every other bank it sought to reinstate, including Bank of America, Nomura, Commerzbank, Standard Bank, Nedbank and FirstRand, the request was refused.

BNP Paribas and HSBC Bank plc each made their own bids to be removed from the case and failed. Only Credit Suisse Securities (USA) LLC succeeded in securing its removal, having argued it should never have been joined in the first place.

Six banks remain in the case: BNP Paribas, JPMorgan Chase & Co, JPMorgan Chase Bank N.A., HSBC Bank plc, Investec and Standard Americas. Notably, they do not all remain in the proceedings for the same reason: the Commission's appeal succeeded in respect of only two banks, JPMorgan Chase Bank N.A. and Standard Americas, effectively restoring them to the proceedings. The other four banks simply failed to secure their own removal.

IMPACT

Notwithstanding its outcome, two points of law lend relevance to this judgement. The first concerns *res judicata*, the principle that a matter which has been finally decided between parties cannot ordinarily be reopened on the same merits. Closely related is the doctrine of peremption which bars a party from challenging a decision where its conduct has demonstrated acceptance of that decision.

The Commission sought to reargue a jurisdictional point on which it had previously been unsuccessful in 2020, in an earlier round of the litigation, without having appealed that decision. The Court held that the Commission remained bound by that ruling as they had gone on to comply with the ruling rather than challenging it. Importantly, this does not confirm that the earlier ruling was correct, rather it meant that the Commission was precluded from challenging that ruling in the present proceedings.

The second point concerns joinder, the process of adding a new party to proceedings already under way. The Competition Appeal Court had held that its earlier judgment precluded the joinder of further respondents after the Commission's 2017 referral, and on that basis set aside the joinder of Nedbank, FirstRand and Standard Americas.

The Constitutional Court disagreed, holding that the earlier ruling had not decided that post-referral joinder was prohibited and could not be read as imposing such a bar. It further held that the Commission was not required to initiate a fresh complaint or conduct a further investigation before adding a firm to an existing case, provided that that firm's conduct falls within the scope of the complaint already under investigation.

CONCLUSION

Ultimately, the judgment's value lies less in its outcome than in its reasoning. It offers guidance on when a party may reopen an argument it has already lost and elected not to appeal. It confirms that the Commission may add new respondents to an existing complaint without a fresh investigation, provided that the additional respondent's conduct falls within the scope of the complaint already initiated. It also details what must be pleaded to establish that a group of firms participated in a single, coordinated scheme rather than in several separate and unrelated arrangements.

The matter now returns to the Competition Tribunal, where the Commission must still prove its case against the six remaining active respondents rather than the twenty-eight respondents identified over the course of the litigation.



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