IN THE COMPETITION APPEAL COURT OF SOUTH AFRICA

CASE NO: 248/CAC/JUL23

In the matter between:

eMEDIA INVESTMENTS PROPRIETARY LIMITED	Applicant
And	
MULTICHOICE PROPRIETARY LIMITED	First Respondent
THE COMPETITION COMMISSION	Second Respondent
THE MINISTER OF TRADE AND INDUSTRY AND COMPETITION	Third Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fourth Respondent

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REASONS

THE COURT

Introduction

[1] On 28 July 2023 this Court issued the following order:

'Having heard counsel for the parties, the following is ordered:

1. It is declared that the words "*a further period*" in section 49C(5) of the Competition Act do not limit the power of the Competition Tribunal to granting only one extension to the interim relief granted under section 49C of the Competition Act;
2. The Competition Tribunal is directed to determine the Applicant's ("**eMedia's**") application for a further extension of its interim relief in accordance with section 49C(5) on the papers filed before this Court; provided that the Applicant files its application with the Tribunal by no later than 16h00 on 31 July 2023; and
3. Pending the finalisation of the Competition Tribunal's determination of eMedia's application for a further extension of its interim relief, the First Respondent ("**MultiChoice**") is directed to maintain the *status quo*, and is interdicted from removing the following channels from the bouquet of channels on the DStv platform of which they currently form part:
   3.1. eExtra;
   3.2. eToonz;
   3.3. eMovies; and
   3.4. eMovies Extra.
4. Subject to the Applicant complying with its filing obligations in terms of paragraph 2, the Tribunal order granted on 19 December 2022, under case number IR194Mar22/EXT151Nov22, is extended until the earlier of:
   4.1. the finalisation of the Competition Tribunal's determination of the application,
   4.2. the conclusion of the hearing into the alleged prohibited practice; or

4.3. a further period not exceeding six months.

5. There is no order as to costs.'

[2] Given the urgency of the matter an order was granted without accompanying reasons which now follow.

[3] To the extent that it is relevant for the provision of reasons the factual background can be summarised thus: The first respondent operates DStv a subscription television broadcasting service. Since 2007 the applicant has supplied certain packaged television channels to the first respondent which are broadcast by it as part of its DStv service. On 12 May 2017 the parties concluded the Commercial Master Channel Agreement which was designed to regulate the content and channels provided by applicant to first respondent for a five year period which in terms of the contract was to end on 31 March 2022.

[4] During November 2021 negotiations to conclude a further agreement commenced during which time first respondent made it clear that it was only interested in the acquisition of the rights in respect of the ENCA channel and eNews bulletin. It was not interested in the acquisition of rights in respect of a variety of other entertainment channels or eChannels, which it had been carrying up until then.[1] On 25 February 2022 the parties concluded an agreement in respect of the acquisition of rights in respect of the ENCA channel and eNews bulletin. At the same time, it was made clear by first respondent that it will no longer broadcast the eChannels from 1 April 2022.

[1] These eChannels are described in paragraph 11 below.

[5] It was at this point that applicant initiated a complaint that first respondent's conduct constituted an abuse of dominance in contravention of ss 8(1)(c) and 8(1)(d)(ii) of the Competition Act of 1998 (the Act). At the same time the applicant instituted an urgent application before the Tribunal in which it sought interim relief in terms of s 49C(1) of the Act. The relief sought in terms of s 49C(2) of the Act was that, pending the final conclusion of the Tribunal's hearing into the complaint initiated by the applicant, or for a period of six months after the date of the interim order so granted, the first respondent would be interdicted from removing the eChannels from the bouquet of channels shown on the DStv platform.

[6] The Tribunal heard this application on 21 and 26 April 2022 and dismissed the application on 31 May 2022 at which point the first respondent removed the eChannels from the DStv packages on the same date.

[7] The applicant then appealed to this court, the majority of which upheld its appeal on 1 August 2022 and granted the applicant the relief that it had sought in terms of s 49C(2)(b).

[8] On 31 January 2023 the Tribunal extended this interim relief by agreement between the parties until the finalisation of a complaint hearing by the Tribunal or for a period of six months whichever occurred earlier.

[9] On 20 June 2023 the Competition Commission concluded an investigation of the complaint and issued a notice of non-referral. The reasons for its finding were briefly that the first respondent's decision not to renew the eChannels did not amount

to an exclusionary act and did not give rise to anti-competitive effects It held further that to compel first respondent to continue to carry channels of third parties may have unintended negative consequences in respect of the participation of other historically disadvantaged persons which produced products of the same content and first respondent's decision to acquire content from other third parties.

[10] It appears that applicant approached first respondent to agree to a further extension of the interim relief which was refused. Following the non-referral by the Commission of applicant's complaint, Mr Antonio Lee ,the Chief Financial Officer of applicant, informed this Court in his founding affidavit that the applicant would self-refer its complaint to the Tribunal in the next few days.

Application before this Court

[11] Pursuant to these developments ,the applicant launched an application in two parts. Part A is an application for interim introductory relief in which it seeks an order that pending the finalisation of Part B of the application first respondent is directed to maintain the *status quo* and be interdicted from removing a series of channels from the bouquet of channels on the DStv platform, eExtra, eToonz, eMovies and eMovies Extra. In terms of Part B the applicant has launched a constitutional challenge to s 49 C(5) of the Act in that it contends that the section failed to provide for more than one extension of an interim relief order granted in terms of s 49C of the Act. In terms of Part B, apart from the declaration of unconstitutionality being sought in relation to s49 C(5), the applicant seeks an interim reading in of the words 'or further periods' following the words 'a further period' in s 49C(5) and a further interim interdict that pending the finalisation of the Tribunal's hearing into the complaint or six months from

the date of this Court's order, whichever is the earlier, first respondent is directed to maintain the status quo and is interdicted from removing the various channels to which reference has been made from the bouquet of channels on the DStv platform of which they currently form part.

[12] In his founding affidavit, Mr Lee refers to correspondence between the applicant and first respondent concerning a proposal to an extension of interim relief to which first respondent recorded that 'the Tribunal has no power under the Competition Act to grant a further extension of interim relief that has been granted under s 49C(4) and extended for a period of six months under s 49C(5). Responding thereto, Mr Lee stated that, given the first respondent's approach to s 49C(5) of the Act and in the absence of any undertaking that it would retain the relevant eChannels on the DStv platform pending the finalisation of the Tribunal's hearing into the self-referral, it had no alternative but to approach this Court on an urgent basis to challenge the constitutionality of the limitation on the power of the Tribunal to grant interim relief for a period of more than twelve months. Applicant contended that the matter was urgent in that the interim relief which was granted by the Tribunal would lapse on 31 July 2023.

The key dispute before this Court

[13] Although the affidavits filed by the parties accompanied by the heads of argument by counsel for both applicant and first respondent canvassed not only the interpretive question concerning s 49C but whether, on the facts, there was justification for this Court to grant further interim relief in terms of the requirement of s 49C, the

key question was the meaning of s 49C(5) and what was referred to as 'the one extension' rule.

[14] Section 49C(5) provides thus 'if an interim order has been granted and a hearing into that matter has not been concluded within six months after the date of that order, the Competition Tribunal, on good cause may extend the interim order for a further period not exceeding six months.

[15] In *Business Connexion (Pty) Ltd v Vexall (Pty) Ltd and another* [2020] ZACAC 4 at para 18 Unterhalter AJA referred to this section and stated 'the Tribunal is empowered to regulate how competition in the market is to take place for a six or twelve month period'. (para 18)

[16] It appears to be that the *obiter dictum* in the *Vexall* case has been accepted by the Tribunal as permitting an extension of the order under s 49 C only for a further six months after the initial order was granted. (See in this regard the embrace of this *dictum* by the Tribunal in *Apollis Studios (Pty) Ltd and another v Audat SA (Pty) Ltd and another* (Case number: IR198Mar23) and *Industrial Gas Users Association of South Africa v Sasol Gas (Pty) Ltd and others* (IR095Aug22). In short, on the approach taken in these cases, interim relief can only be for a maximum period of twelve months. It is this approach to the section which has informed the present application before this Court in terms of both Part A and Part B of the application.

The key issues for determination

[17] It follows that the determination of the dispute turns on the answer to a series of issues being;

1. Is s 49C(5) in breach of the Republic of South African Constitution of 1996 and in particular as contended for by applicant in breach of s34 of the Constitution?
2. In order to make this determination, this Court must seek to interpret the section by way of the fidelity to the words employed in the section and recourse to the purpose and context thereof.
3. If this interpretation accords with the *obiter dictum* set out in *Vexall* then the further question arises as to whether the section is in breach of the Constitution and in particular s 34 thereof.
4. If this section can be interpreted in a manner which permits the Tribunal, in its discretion, to extend relief envisaged in s 49C beyond the period of one year, then should this Court engage with the further requirements set out in s 49 C or should it remit the matter for determination in terms of the proper interpretation of the section to the Tribunal?
5. If the Court is so inclined does it have the jurisdiction to make any such order?

The proper interpretation of s 49C(2)

[18] This Court in *Vexall* helpfully engaged with the purpose of s 49C where Unterhalter AJA said at para 21:

> 'The need for intervention is a function of the probability of serious or irreparable damage occurring, if no intervention is ordered by the Tribunal before it can make a final determination as to whether the alleged prohibited practice has taken place. It is the damage to the competitive position of the applicant that the prohibited practice may cause that marks out this inquiry.'

[19] Expressed in general terms, the key purpose of the Act is to preserve, protect and enhance the competitive process in a defined market. Hence s49C should be

interpreted within the context of this purpose. Section 49C envisages that the Tribunal is obliged 'to make a summary assessment before granting the interim relief'. This assessment is only at the *prima facie* level. It must consider the evidence as to the alleged practice. There is usually no time to delve too deeply into theories of irreparable harm but at the very least it must be assessed in the context of whether there is a prima facie right at the interim level. As long as there is clear and non speculative evidence about possible anti-competitive effects, then serious consideration must be given to the granting of the relief.' *Media Investments (Pty) Ltd of South Africa v Multichoice (Pty) Ltd and another* [2022] ZACAC at 9. Relief cannot be granted under s 49C unless a *prima facie* case has been established which, in turn, implies that an applicant has put up an arguable case that the state of competition, that is the competitive dynamics in the defined market can be detrimentally affected by the alleged conduct or practice of a respondent.

[20] That the section envisaged that the relief should only be granted for six months and that a further extension could only be granted for a maximum of a further six months is predicated on the dynamic features of a market, where the balance of convenience may well have shifted during the six month period. The facts on which the initial relief was granted may have so altered due to the changes in the market that the possible detrimental effects to the competitive process no longer exist in sufficient weight to justify an extension of the order.

The wording of s 49 C (5)

[21] It is now possible to return to an engagement with the wording of s 49C(5), namely 'if an interim order has been granted and a hearing into that matter has not been concluded within six months after the date of that order the Competition Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.'

[22] First respondent, on the strength of the *BCI, dictum* ,contends that the meaning of the phrase, 'may extend the interim of the order for a further period not exceeding six months envisages that only one further period can be granted and that at the end of a twelve month cycle this section can no longer be applied to grant a party such as applicant any further relief.

[23] By contrast, the applicant contends that the reference in s 49 C (5) to a single further period should be read to include the plural. In its view the phrase 'for a further period not exceeding six months is one that gives rise to the constitutional difficulties because it appears to contemplate only a single further period for which an extension may be granted. Invoking s 6 (b) of the Interpretation Act 33 of 1956 which provides that 'in every law unless the contrary intention appears words in a singular number include the plural and words in the plural number include the singular', counsel for the applicant contended that the phrase 'for a further period' is capable of being construed to include the two further periods.

[24] The solution to this clash of interpretation can be guided by a *dictum* of Moegoeng CJ in *Independent Institute of Education (Pty) Ltd v KwaZulu – Natal Law Society and others* 2020 (2) SA 325 (CC) at para 2 when referring to the mandated interpretative exercise, the Chief Justice said:

pp.

> 'Section 39(2) of the Constitution dictates that 'when interpreting any legislation ... every court, Tribunal or forum must promote the spirit, purport and object of the Bill of Rights. Meaning, every opportunity the courts have to interpret the legislation must be seen and utilised as a platform for the promotion of the Bill of Rights by infusing its central purpose into the very essence of the legislation itself.'

[25] Significantly, in *Independent Institute of Education, supra* the Court was faced with a declaration by the High Court of the constitutional invalidity of s 26(1)(a) of the Legal Practice Act because it excluded private higher education institutions duly registered and accredited to offer LLB degree. Examining the declaration of invalidity by the High Court, the Constitutional Court, per Moegoeng CJ, said:

> 'There is in my view no sound reason for not giving the word "university" its ordinary grammatical meaning and for not concluding that its contextual and purposive construction ought to save s 26 (1) (a) from constitutional invalidation. To do otherwise would be absurd.' (para 13)

[26] The Chief Justice concluded:

> 'Put bluntly if when considering the constitutionality of a particular legislation becomes apparent that its provisions were consistent with or will promote the Bill of Rights there would be no need to still ascertain whether its provisions are consistent with those of another related legislation.' (para 15)

[27] In summary, this judgment of the Constitutional Court enjoins an engagement with the interpretation of the section which has been subjected to a challenge of constitutional validity being s 49C(5) and to decide whether a constitutionally

compatible interpretation can be given to the words in question, particularly an interpretation guided by the spirit, purport and objects of the Bill of Rights.

[28] Viewed in this context, the task of this Court is to engage with the words of s49 C (5) through the prism of s 39(2) of the Constitution. This conclusion also provides an answer to first respondent counsel's argument that the case made out by the applicant in its papers was based exclusively on a direct attack on the constitutional validity of s 49C(5) and that the interpretive solution was only raised in applicant's heads of argument as an afterthought. In other words, the case which the first respondent had come to meet was based on a direct attack on the constitutional validity of the section and not on a process of statutory interpretation.

[29] But once this Court, as we have indicated, on the basis of the authority of *Independent Institute of Education (Pty) Limited* is enjoined to engage in the interpretation of the impugned section as part of the process of determining its constitutional invalidity, it follows that the interpretive question will have to be debated. The outcome thereof is an initial requirement to the further engagement as to the possibility of constitutional invalidity. For this reason, the complaint about being ambushed by having to deal with the interpretive argument therefore has no merit.

[30] The question therefore arises as to the proper interpretation of s 49C(5). Applicant has invoked s 34 of the Constitution 'every has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate another independent an impartial Tribunal or forum.

[31] Section 34 was canvassed in a similar, albeit not equivalent, circumstance by the Constitutional Court in *Competition Commission of South Africa v Pickfords Removals SA (Pty) Ltd* [2020] ZACC 14. The Court was concerned to interpret s 67 (1) of the Act which then provided: 'The complaint in respect of a prohibited practice may not be initiated more than three years after the practice was ceased.' At para 32, the Court engaged with the wording of s 67 of the Act and said that it was open to two possible interpretations, one being a substantive time bar and another being a procedural time bar which can be condoned by the Tribunal in terms of its powers set out s 58 (1)(c)(ii) of the Act.

[32] Significantly, Majiedt J then said: 'Both interpretations undoubtedly limit the right of access to Courts as enshrined in s 34 of the Constitution'. It then held that the Court must determine 'which of the two possible interpretations is the least limiting of the right of access to Courts'. (para 37) Viewed through the prism of s 34 the Court held that an interpretation of s 67(1) of the Act as a procedural time bar was to be preferred over an inflexible substantive time bar because the interpretation of the section as an absolute time bar would not only limit the Commission's access to the Tribunal but also access to a civil court for potential claim for consequential damages arising from a prohibited practice.

[33] In this case an interpretation which does not restrict the meaning of s 49C(5) to only one extension and offers the possibility that a party with a case which shows prima facie that is the subject to anti-competitive conduct such as abuse of dominance in terms of s 8 would continue to have access to a court to obtain interim relief.

[34] Were the contrary interpretation to be preferred an applicant would have no recourse to any relief. If subsequent to the expiration of the twelve month period, the Tribunal (or this Court) held the respondent to be liable for having committed a breach of s 8 of the Act, in the absence of any interim relief ,the business of the applicant could be so impaired that only pyrrhic victory would have been obtained by it. Its success on the merits would have come after its business could have been destroyed as a consequence of the abuse of dominance . This would represent so gross and injustice that it could not have been intended by the legislature in its promulgation of the provisions of section 49C(5) of the Act. In essence, the alternative interpretation amounts to giving the applicant relief with one hand and, upon expiry of the twelve months' period, taking it away with the other hand without the applicant being afforded any recourse to prevent disastrous consequences that flowed from an abuse of dominance established by the Tribunal

[35] An argument pressed by the first respondent was that such an interpretation would mean that an applicant could get indefinite extensions and thus in effect what amounted to final relief based on the lesser burden of a prima facie case as opposed to the more exacting burden of balance of probabilities provided in section 68 of the Act. That section states: 'In any proceedings in terms of this Act, other than proceedings in terms of section 49C or criminal proceedings, the standard of proof is on a balance of probabilities.'

[36] But the concerns of a de facto regime of final relief if the one extension interpretation is not favoured must be balanced by an equally compelling concern of the consequences of the premature termination of interim relief for no other reason than a year has elapsed. The fears of an interminable period of relief premised on only

a prima facie standard must be put in proper perspective. Interim relief orders are reviewed every six months, as discussed earlier, subject to a good cause standard. This means the Tribunal is regularly required to review the ongoing relief – it is not a *fait accompli* that it will always be renewed.

[37] Viewed through the prism of s 39(2) in general and s 34 of the Constitution in particular, this Court is faced with the wording of section s 49C(5) which is capable of more than one plausible interpretation. An interpretation which is more congruent with these constitutional provisions, in our view, is also congruent with the core purpose of the interim relief envisaged in the s 49C as we have set out above. Hence the phrase, 'for a further period not exceeding six months' can be read to extend beyond a single further period for which an extension may be granted to mean that any further period even beyond twelve months may be granted provided that any single such order can only be for a maximum of six months.

[38] This conclusion leads to the further issue concerning the power of this Court to make such a determination and to grant any appropriate order which flows therefrom.

The jurisdictional debate

[39] First Respondent contended that in terms of s170 read with s 166(e) of the Constitution this Court may decide any matter determined by an Act of Parliament. In the view of the first respondent these sections are restricted to matters which are provided for in s 37 and s 62 of the Act .It thus followed that this Court would have no jurisdiction to determine the matter unless it fell specifically within the ambit of these two sections.

[40] Section 37(2) of the Act provides that the Competition Appeal Court may give any judgment or make any order including an order to:

(a) confirm, amend or set aside the decision or order of the Competition Tribunal; or

(b) permit the matter to the Competition Tribunal for a further hearing on any appropriate terms.

[41] To the extent relevant, s 62(1)(a) provides that the Competition Tribunal and Competition Appeal Court share exclusive jurisdiction in respect of the following matters:

1. Interpretation and application of Chapters 2, 3 and 5.... (2) in addition to any other jurisdiction granted in this Act to the Competition Appeal Court the Court has jurisdiction over:

(a) the question whether an action taken or proposed to be taken by the Competition Commission or the Competition Tribunal is within their respective jurisdictions in terms of this Act;

(b) any constitutional matter arising in terms of the Act; and

(c) the question whether a matter falls within the exclusive jurisdiction granted under subsection (1).

[42] The first respondent contends that the one section to which applicant turns , namely s 62(1)(b) which empowers this Court to determine any constitutional issue must arise only in an appeal or a review contemplated in s 37 of the Act. To a considerable extent, this submission overlooks the judgment of the Constitutional Court in *Competition Commission of South Africa v Group Five Construction Ltd* 2023 pp.

(1) BCLR 1 (CC) where in dealing with s 62(2) of the Act , the majority of the Constitutional Court said:

> 'Unlike the Tribunal the Competition Appeal Court which has a status similar to that of a High Court does have jurisdiction to hear a PAJA and legality reviews in terms of two provisions of the Act. First the Competition Appeal Court is expressly empowered to review any decisions of the Tribunal – this power is limited to decisions of the Tribunal and does not include decisions of the Commission. Second, in addition to any other jurisdiction granted in the Act it has jurisdiction at the Constitutional matters arising in terms of the Act. That includes the power to review the exercise of Commission's public powers derived from the Act.' (at para 132)

[43] It is clear from this judgment in *Group Five* that this Court can, as a court of first instance, decide matters which fall within the scope of s 62(2) and that further this Court is entitled to adjudicate upon constitutional matters which, as indicated above, includes the constitutional validity of the wording of sections within the Act.

[44] The question is to what constitutes a constitutional matter for the purpose of the Court's jurisdiction in the context of this kind of dispute was settled in *Head of the Department: Mpumalanga Department of Education and another v Hoerskool Ermelo and another* 2010 (2) SA at 415 (CC) paras 96-97 where Moseneke DCJ said thus:

> 'The power to make such an order derives from s172(1)(b) of the Constitution. First, s172(1)(a) requires a court, when deciding a constitutional matter within its power to declare any law or conduct that is inconsistent with the Constitution invalid to the extent that of its inconsistency. Section 172(1)(b) of the Constitution provides that when this Court decides a constitutional matter within its power it may make any order that is just and equitable. The litmus test will be whether considerations of justice and equity in a

particular case dictate that the order be made. In other words the order must be fair and just within the context of the particular statute.

It is clear s 172(1)(b) confirms wide remedial powers on a competent court adjudicating a constitutional matter. The remedial power envisaged in s 172(1)(b) is not only available when a court makes an order of constitutional invalidity of a law or conduct within s 172(1)(a). A just and equitable order may be made even in instances where the outcome of the Constitutional dispute does not hinge on Constitutional invalidity of legislation or conduct. This ample and flexible remedial jurisdiction in constitutional disputes permits a court to forge an order to place substance above form by identifying the actual underlying dispute between the parties and requiring the parties to take steps directed at resolving the dispute in a manner consistent with constitutional requirements.'

[45] Further support for the power of this Court to make an order in the present dispute is to be found in *Mwelase Brothers v Director Genera for the Department of Rural Development and Land Reform and another* 2019 (6) SA 597 (CC) at para 65 where Cameron J said:

'This Court has held that the Labour Court although not expressly so invested enjoys jurisdiction to strike down a statute on the grounds of constitutional invalidity. By parallel reasoning it follows that the Constitution affords the Land Claims Court extensive powers, when deciding constitutional matter within its powers to "make any order that is just and equitable". Any order that is just and equitable! That is no invitation to judicial hubris. It is an injunction to do practical justice as best and humbly as the circumstances demand.

[46] It follows that this Court must stand in the same position, namely when constitutional issues are engaged , the Court has the power to make an order that is

just and equitable. A constitutional dispute in this connection is not only restricted to a declaration of constitutional invalidity but to a clear engagement with the Constitution in order to justify an interpretation which is congruent with the spirit, purport and objects of the Constitution. This is precisely the approach which we have adopted.

Conclusion

[47] The primary inquiry required of this Court to determine the appropriate meaning of s 49C(5). Confronted with two competing interpretations of the section, this Court, as enjoined by s 39(2) of the Constitution, has interpreted this section in a manner which is congruent with the spirit, purport and objects of the Constitution as sourced in s 34 of the Constitution as well as to ensure an interpretation that reflects and promotes the objectives of s 49C in general. This required the kind of constitutional engagement which affords this Court the power to make an order which is just and equitable in the circumstances of this case.

[48] There was a considerable debate about urgency and thus the time at which this application was brought. In essence, the first respondent contends that this is a case of self-induced urgency. In its view, applicant should have launched a constitutional challenge to s 49C(5) earlier because it was aware, at least on 31 January 2023, when it obtained an extension of interim relief pursuant to s 49C(5) that it could not be granted a further extension.

[49] As the applicant's counsel submitted, had applicant instituted a constitutional challenge earlier, it would have been criticised for having brought an application that had no basis in that, when brought, an interdict was still in place. Furthermore on 14

June 2023 applicant asked first respondent for an extension of the current interim relief or undertaking that it would not remove or close channels from the DStv platform; that is a full six weeks before the expiry of the interim relief. A week later, on 21 June 2023, first respondent indicated that it would not agree to any such extension. In these circumstances the argument of lack of urgency which was designed to persuade this Court not to hear this case, clearly stands to be rejected .The applicant had not remained supine but upon a failure to procure an agreement regarding an extension of interim relief, its only option was to launch the present application.

[50] On the basis of the interpretation of s 49 C (5) as set out by this Court, the appropriate relief is to remit the entire application for a further extension of the interim relief pursuant to s 49 C (5) as now defined, to the Tribunal in order for it to consider whether, on the current facts, a further extension of interim relief can be legally justified. Furthermore, pending the finalisation of the Tribunal's determination, it is just and equitable to maintain the status *quo* and thus prevent first respondent from removing the various channels from the bouquet of channels on the DStv platform. The maximum period for such an interdict should be no longer than six months.

[51] In its discretion, this Court decided that no cost order should be made. Given the manner in which the application was justified in the founding papers and the order ultimately granted on the interpretation of S49C as opposed to the direct challenge to the constitutionality of the section, no award of costs was the most equitable outcome.

Manoim JP

pp Davis AJA

pp Nkosi AJA

Appearances

Counsel for Applicant:	Adv G Marriot, Adv N Ferreira, Adv Catherine Kruyer, Adv S Pudifin Jones and Adv S Nelani
Instructed by:	Nortons Inc
Counsel for First Respondent:	Adv W Trengove SC, Adv M Norton Adv J Wilson SC, Adv M Mbikiwa and Adv Ntlakana
Instructed by:	Webber Wentzel
Date of hearing:	28 July 2023
Date of order:	28 July 2023
Date of judgment:	16 August 2023