

IN THE SUPREME COURT OF NEW ZEALAND

**SC 63/2012
[2012] NZSC 105**

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| BETWEEN | VISY BOARD PTY LIMITED Applicant |
| AND | COMMERCE COMMISSION Respondent |

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: A R Galbraith QC and S C Keene for Applicant
F M R Cooke QC and B Hamlin for Respondent

Judgment: 28 November 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed

REASONS

[1] Visy Board Pty Limited applies for leave to appeal against a decision of the Court of Appeal, allowing an appeal from the High Court which had upheld Visy Board’s protest to jurisdiction. The protest to jurisdiction turned on application of s 4 of the Commerce Act 1986 and to whether Visy Board was “carrying on business in New Zealand” and engaged in conduct that “affects a market in New Zealand”.

[2] The Court of Appeal was careful to recognise that it should be cautious in attaching jurisdiction to a foreign defendant. It nevertheless concluded that it was reasonably arguable that the Commerce Act applied to the conduct undertaken by Visy Board and relied on by the Commission. That provisional conclusion was open to it. Whether the Commerce Commission will succeed in its contention that the provisions of the Commerce Act attach to Visy Board’s conduct will turn on the application of s 4 to the evidence accepted at trial. If any matter of principle in the

application of the provisions of the Commerce Act to the facts as found arises, it can be raised at trial where it can be determined in context. If necessary, the conclusion reached may be appealed to the Court of Appeal.

[3] Granting leave to appeal would not dispose of all matters in the proceedings and would not appreciably shorten the hearing. Nor is it necessary in the interests of justice to hear and determine the point ahead of trial. The Court of Appeal's ruling is provisional and may be overtaken by re-assessment when the evidence is heard.

[4] Leave to appeal is accordingly declined.

Solicitors:

Russell McVeagh, Auckland, for Applicant

Meredith Connell, Auckland, for Respondent