IN THE APPEAL TRIBUNAL ESTABLISHED UNDER SECTION 44 OF THE FAIR TRADING COMMISSION ACT.

Eastern European Engineering Ltd
of Beau Vallon, Mahe — *Appellant*

v/s

FAIR TRADING COMMISSION — 1st *Respondent*

Vijay Construction Pty Ltd
of Providence Industrial Estate, Mahe — *2nd Respondent*

Appeal case no 5, 2013

RULING

The appellant filed an appeal before the Appeal Tribunal which was based mostly on points of law.

The Appeal Tribunal raised an issue at the hearing that there is a legal point to be trashed out and that is whether the appellant has a right of appeal to the Appeal Tribunal since it is not the decision of the Board of Commissioners of which the appellant is appealing against but that of the decision of the Fair Trading Commission not to investigate. The Appeal Tribunal was doubtful as to whether the Appeal Tribunal had Jurisdiction to hear such point of law in terms of section 16(1) of schedule 2 of the Fair Trading Commission act.

Mr. Bernard Georges Counsel for the 2nd Respondent, Vijay Construction suggested in his submission that the matter be sent back to the Fair Trading Commission to hear the parties as to whether the Fair Trading Commission should investigate the complaint in terms section 32(1) of the Fair Trading Commission act. Counsel for the appellant consented to such a suggestion. The appeal Tribunal is of the view that since no opportunity was given to the appellant to put its case across as to why the matter should be investigated and that the Fair Trading Commission did not state in the letter dated 11th March 2013 which the Fair Trading Commission communicated through its CEO its decision on what grounds was the Fair Trading Commission relying as provided for in section 31(1) of the act in deciding not to investigate. In our opinion we consider this omission to be fatal.

We therefore quash the decision of Fair Trading Commission not to investigate the matter and remit the matter back to the Fair Trading Commission for reconsideration and determination with a specific direction to hear both parties namely the Appellant and the 2nd Respondent on the issue of why the matter should or should not be investigated.

The Appellant have a right of Appeal to the Supreme Court.

Dated this the .....15th.....day of .....October.....2013

.....D.E.sparon.....
DAVID ESPARON
Chairman of the Appeal Tribunal

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JOHN HIP-WAYE
Member

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AUDREY NANON
Member

.....Course.....
RAYMONDE COURSE
Member

Appeal Tribunal
established under
Section 44(1) of the
Fair Trading Commission Act 2009

FAIR TRADING COMMISSION
RECEIVED
31 OCT 2013
BOARD OF COMMISSIONERS