The facts of the moot case will be that the taxpayer's principle complaint is that the Revenue Authority in issuing additional assessments in implementing section 31 of the South African Income Tax Act on Transfer Pricing, has failed to comply with its practice note 7 on TP

TP SARS Practic...99.pdf

and the provisions of the OECD TPG 2017:
http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm

in that it rejected the Profit Split Method (see page 29 for a definition, and paras 2.9 and 2.114 in the OECD TPG 2017), (one of the 5 standard accepted TP methods) and instead applied a mixture of the first part of the profit split method in determining what profits must be split, and then followed the 'distributor' examples set out in paras 6.76, 6.77 and 6.78 of the OECD TPG in justifying the royalty to be charged by the Parentco to its subsidiaries (associated entities) for the use of WellKnownBrand, should be all the identified profits or brand earnings (100%) generated in the subsidiaries in the WKB Group be allocated to Parentco in South Africa, with no allocation to the subsidiaries (as required in the second step of the PSM in para 2.114 .

The case is about whether or not the practice note read with section 31 created a legitimate expectation in favour of the taxpayer that the RA would follow one of the 5 prescribed methods in the OECD TPG 2017, as dealt with in the practice note, instead of coming up with its own version of a mix between the profit split method and paras 6.76, 6.77 and 6.78 of the OECD TPG. The RA is to argue that no such legitimate expectation was created and that the prac note read with the guidelines is not binding and is soft law. Therefore they the RA were entitled to create their own method in an attempt to determine the correct ALP. The taxpayer is to argue that the RA via the legitimate expectations doctrine are bound by their prac note read with the OECD TPG 2017, and must apply the accepted PSM put forward by the taxpayer (with its supporting TP study), and not some concocted version.

This type of dispute will emerge in many jurisdictions where there are regulations similar to the prac note 7, subscribing adherence to the OECD TPG (which in themselves are soft law). How will the courts deal with this?