



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO013Apr20

In the matter between:

The Competition Commission

Applicant

And

Mandini Pharmacy (Pty) Ltd

Respondent

Panel : E Daniels (Presiding Member)
: M Mazwai (Tribunal Member)
: T Vilakazi (Tribunal Member)

Heard on : 04 May 2020

Decided on : 07 May 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Mandini Pharmacy (Pty) Ltd annexed hereto marked "A", as well as an addendum to the consent agreement marked "B".

**Presiding Member
Mr Enver Daniels**

**7 May 2020
Date**

Concurring: Ms Mondo Mazwai and Dr. Thando Vilakazi

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

"A"

CT Case No.

CC Case No. 2020AprC0305

In the matter between

COMPETITION COMMISSION

Applicant

and

MANDINI PHARMACY (PTY) LTD

Respondent

FILING SHEET

TAKE NOTICE THAT the Applicant files herewith the following documents:

1. Competition Tribunal Form CT 6; and
2. Consent Agreement between the Competition Commission and Mandini Pharmacy (Pty) Ltd

DATED AT PRETORIA ON THIS 30th DAY OF APRIL 2020.

COMPETITION COMMISSION

Applicant
77 Meintjies Street
Sunnyside
Pretoria
Tel: 012 394 5675

Ref: Maya Swart / Nomkhosi Mthethwa-Motsa
E-mail: [MayaS@compcom.co.za/](mailto:MayaS@compcom.co.za)
NomkhosiM@compcom.co.za

TO:

THE REGISTRAR

Competition Tribunal
Block C, The dti Campus
77 Meintjies Street
Sunnyside
Pretoria
Tel: 012 394 3355
Email: [ctsa@comptrib.co.za/](mailto:ctsa@comptrib.co.za) leratom@comptrib.co.za

AND TO:

MANDINI PHARMACY

502 Long Street,
Mandini,
4490
Tel: 032 456 6805
Email: online636273@telkomsa.net



Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: _____ **File #** _____

To: The registrar of the Competition Tribunal

Concerning the matter between:

_____ (Applicant)
and _____ (Respondent)

Take notice that the _____
intends to apply to the Tribunal for the following order:

Name and Title of person authorised to sign:

Authorised Signature:

Date:

**For Office
Use Only:**

Tribunal file number:

Date filed:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

**CT CASE NO:
CC CASE NO: 2020AprC0305**

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

MANDINI PHARMACY (PTY) LTD

Respondent

**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
MANDINI PHARMACY IN RESPECT OF AN ALLEGED CONTRAVENTION OF
SECTION 8(1)(a) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED,
READ WITH REGULATION 4 OF THE CONSUMER AND CUSTOMER
PROTECTION AND NATIONAL DISASTER MANAGEMENT REGULATIONS
AND DIRECTIONS PUBLISHED IN GOVERNMENT GAZETTE NO 43116 ON 19
MARCH 2020**

The Competition Commission and Mandini Pharmacy hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 27(1)(d) read with section 49D of the Competition Act 89 of 1998, as amended ("**the Act**"), in respect of a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the *Consumer And Customer Protection And National Disaster Management Regulations And Directions* published in Government Gazette No 43116 on 19 March 2020, as well as the

Regulations on Competition Tribunal Rules for COVID-19 Excessive Pricing Complaint Referrals published in Government Gazette No 43205 on 3 April 2020 and the *Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals* on the terms set out below:

1 DEFINITIONS

The following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings in this Consent Agreement:

- 1.1 “**Act**” means the Competition Act 89 of 1998, as amended;
- 1.2 “**Mandini Pharmacy**” means a company duly incorporated in accordance with the laws of the Republic of South Africa with registration number 1968/004342/07. Its principal place of business is located at 502 Long Street, Mandini, 4490;
- 1.3 “**Commission**” means the Competition Commission of South Africa, a statutory body, established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 “**Commissioner**” means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

- 1.5 **“Consent Agreement”** means this agreement duly signed and concluded between the Commission and Mandini Pharmacy;
- 1.6 **“Consumer Protection Regulations”** means the Consumer and Customer Protection and National Disaster Management Regulations and Directions published in Government Gazette No 43116 on 19 March 2020;
- 1.7 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body, established in terms of section 26 of the Act, with its principal place of business at Building C, Mulayo Building, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.8 **“Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals”** means the directive issued by the Tribunal on 6 April 2020; and
- 1.9 **“Tribunal Rules for COVID-19 Excessive Pricing Complaint Referrals”** means the Regulations on Competition Tribunal Rules for COVID-19 Excessive Pricing Complaint Referrals published in Government Gazette No 43205 on 3 April 2020.

2 BACKGROUND AND CONTEXT

- 2.1 On 15 March 2020, the Minister of Co-operative Governance and Traditional Affairs (**“COGTA”**) declared a State of National Disaster in

the Republic of South Africa which declaration was published in Government Notice No. 313 of Government Gazette No. 430096.

2.2 On 18 March 2020, the Minister of COGTA issued regulations (“**Disaster Management Regulations**”) published in Government Notice No. 318 of Government Gazette no. 43107, regarding the steps necessary to prevent an escalation of the disaster or to alleviate, contain and minimize the effects of the disaster. These regulations were made in terms of section 27(2) of the Disaster Management Act, 1957 (Act No. 57 of 2002) (“**Disaster Management Act**”). Paragraph 10(6) of the Disaster Management Regulations (“**Disaster Management Regulations**”) authorised the Minister of Trade and Industry to, *inter alia*, issue directions to protect consumers from excessive, unfair, unreasonable or unjust pricing of goods and services during the national state of disaster.

2.3 On 19 March 2020, the Minister of Trade and Industry published the Consumer Protection Regulations. The purpose of the Consumer Protection Regulations is to promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster and to protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster.

2.4 In relation to excessive pricing, the Consumer Protection Regulations states the following:

“4. Excessive Pricing.

4.1. In terms of section 8(1) of the Competition Act a dominant firm may not charge an excessive price to the detriment of consumers or customers.

4.2. In terms of section 8(3)(f) of the Competition Act during any period of the national disaster, a material price increase of a good or service contemplated in Annexure A which –

4.1.1. does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or

4.1.2. increases in net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three-month period prior to 1 March 2020. is a relevant and critical factor for determining whether the price is excessive or unfair and indicates prima facie that the price is excessive or unfair.”

2.5 Annexure A lists the goods and services that fall to be regulated by the Consumer Protection Regulations.

2.6 On 23 March 2020, the President of the Republic of South Africa announced the enforcement of a nationwide lockdown for 21 days with effect from midnight on Thursday, 26 March 2020.

2.7 On 3 April 2020, the Tribunal Rules for COVID-19 Excessive Pricing Complaint Referrals were published and thereafter, on 6 April, the

Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals was issued.

3 THE COMMISSION'S INVESTIGATIONS AND FINDINGS

3.1 On 23 March 2020, the Commission received information in terms of section 49B(2)(a) of the Competition Act, against Mandini Pharmacy in relation to the inflated prices of facial masks that it was charging its customers in March 2020.

3.2 Facial masks fall under the category of 'medical and hygiene supplies' in Annexure A as well as items 1.2 of Annexure B of the Consumer Protection Regulations respectively. Regulation 4 of the Consumer Protection Regulations is therefore applicable to the conduct described in this Consent Agreement.

3.3 In terms of Section 7(3) of the Act, market power can also be inferred from the economic behaviour of the firm. In this case, the mere ability to raise prices is indicative of market power as it demonstrates a lack of constraints such that there is an ability to control prices and/or behave independently of competitors and customers.

3.4 States of disaster often provide the conditions for temporary market power to be held by market participants that may not otherwise have market power outside of the disaster period. The removal of constraints may occur for several reasons, many of which are

conceptually related to a narrowing of the geographic market for products as a result of disruptions to the normal functioning of markets. Due to the national lockdown, the scope of the geographic market is narrow as citizens' movements are heavily restricted.

3.5 In a state of national disaster, an established test within the assessment of excessive pricing under the Act is determining whether price increases have a corresponding cost justification. This is because an excessive profit margin is detectable if the ordinary prices are increased materially absent cost increases.

3.6 Following receipt of the information, the Commission conducted an investigation into Mandini Pharmacy's alleged conduct and found the following:

3.6.1 Mandini Pharmacy is an individual pharmacy that trades in the Mandini area, Kwazulu-Natal;

3.6.2 Mandini Pharmacy operates in the market for the supply of pharmaceutical products to consumers in the Mandini area;

3.6.3 Mandini Pharmacy has market power in the abovementioned market, given the current pandemic and state of national disaster;

3.6.4 During March 2020, in light of the COVID-19 pandemic, Mandini Pharmacy ordered face masks from a supplier,

Sunshine Detergents (Pty) Ltd, with the intention to resell to its customers;

3.6.5 Mandini Pharmacy purchased, face masks for R10.00 per unit from the supplier and sold it to its customers for R15.00 per unit;

3.6.6 Mandini Pharmacy sold a total number of 100 units of face masks to its customers for R15.00 each and made a gross profit of R500.00 (R15.00 minus R10.00 multiplied by 100 units);

3.6.7 Mandini Pharmacy's mark-up on face masks is 50%;

3.6.8 Mandini Pharmacy did not sell face masks before March 2020. However, due to the sudden demand and panic-buying brought on by the state of national disaster, Mandini Pharmacy decided to source face masks from the above-mentioned supplier; and

3.6.9 Mandini Pharmacy's average margin in respect of face masks was approximately 20%;

3.7 The Commission found that the gross profit margin of 20% in respect of face masks for March 2020 is a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the *Consumer Protection Regulations*.

4 **ADMISSION**

4.1 Mandini Pharmacy admits that it has engaged in the conduct of excessive pricing which conduct amounts to a contravention of section 8(1)(a) of the Act.

5 **AGREEMENT REGARDING FUTURE CONDUCT**

Mandini Pharmacy agrees to:

- 5.1 immediately desist from the excessive pricing conduct described above;
- 5.2 reduce its net margin on facial masks to 20% with immediate effect;
- 5.3 donate a variety of essential goods amounting to a value of **R300.00**
(The value of the “overcharge” for face masks.)
- 5.4 within 7 calendar days of confirmation of this Consent Agreement as an order of the Tribunal, donate the above-listed essential goods to Mandeni child welfare situated in Mandini, Kwazulu Natal.
- 5.5 submit an affidavit under oath by the owner of Mandini Pharmacy testifying that the abovementioned donations have been made to the child welfare within 7 calendar days of such donation;

5.6 to circulate a statement summarising the content of this Consent Agreement to all management and operational staff employed at Mandini Pharmacy within 7 calendar days from the date of confirmation of this Consent Agreement by the Tribunal and notifying the Commission by submitting an affidavit under oath by the owner of Mandini Pharmacy confirming compliance with this undertaking.

6 FULL AND FINAL SETTLEMENT

6.1 This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Mandini Pharmacy relating to any alleged contravention of section 8(1)(a) the Act read together with Regulation 4 of the *Consumer And Customer Protection And National Disaster Management Regulations And Directions* published in Government Gazette No 43116 on 19 March 2020 that is the subject of the Commission's investigation under Commission Case No 2020AprC0305.

Signed at TINLEY MANOR on this the 24 day of April 2020.



Mr Daven Moodley

Owner, Mandini Pharmacy

Signed at PRETORIA on this the 24TH day of April 2020.



Tembinkosi Bonakele

The Commissioner, Competition Commission of South Africa

CT CASE NO: CO013Apr20
CC CASE NO: 2020AprC0305

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

MANDINI PHARMACY (PTY) LTD

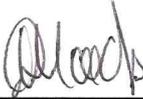
Respondent

ADDENDUM TO CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND MANDINI PHARMACY IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 8(1)(a) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED, READ WITH REGULATION 4 OF THE CONSUMER AND CUSTOMER PROTECTION AND NATIONAL DISASTER MANAGEMENT REGULATIONS AND DIRECTIONS PUBLISHED IN GOVERNMENT GAZETTE NO 43116 ON 19 MARCH 2020

1. Terms and abbreviations used in this document ("**the Addendum**") shall have the meaning assigned to them in the parties' Consent Agreement dated 24 April 2020 ("**the Consent Agreement**").
2. The parties agree to supplement the Consent Agreement by confirming that the mark-up referred to in paragraph 3.6.7 of the consent agreement means a gross profit margin.

3. The parties agree to supplement the Consent Agreement by confirming that paragraph 3.6.9 of the consent agreement should be deleted in its entirety.
4. The parties agree to correct the erroneous reference to a "20% profit margin" in paragraph 3.7 of the consent agreement and to delete the words "20% profit margin" and to replace it with "50% gross profit margin".
5. This Addendum forms an amendment to and an integral part of the Agreement, the terms of which remain otherwise unchanged.

Dated and signed in MANDINI on this the 7 day of May 2020



Duly authorised signatory
Mandini Pharmacy(Pty) Ltd

Name in full: MR. DARGI MOOLEY

Authority: OWNER

Dated and signed in Pretoria on this the 7TH day of May 2020.



Tembinkosi Bonakele

The Commissioner: Competition Commission

