



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CO066Jul20**

In the matter between:

The Competition Commission

**Applicant**

And

Cambridge Food (Pty) Ltd

**Respondent**

Panel : Y Carrim (Presiding Member)  
: A Ndoni (Tribunal Member)  
: F Tregenna (Tribunal Member)

Heard on : 28 July 2020

Decided on : 28 July 2020

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**CONSENT AGREEMENT**

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Cambridge Food (Pty) Ltd annexed hereto.

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**Presiding Member  
Ms Yasmin Carrim**

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**Date  
28 July 2020**

**Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna**

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

**CT Case No.**

**CC CASE NO: 2020AprC0606**

In the matter between:

**COMPETITION COMMISSION**

**Applicant**

and

**CAMBRIDGE FOOD (PTY) LTD**

**Respondent**

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**FILING SHEET**

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**TAKE NOTICE THAT** the Applicant files herewith the following documents:

1. Competition Tribunal Form CT 6; and
2. A Confidential Consent Agreement between the Competition Commission and Cambridge Foods (Pty) Ltd.

**DATED AT PRETORIA ON THIS 14<sup>th</sup> DAY OF JULY 2020.**

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**COMPETITION COMMISSION**

**Applicant**  
77 Meintjies Street  
Sunnyside

Pretoria  
Tel: 012 394 3527  
Ref: Bakhe Majenge / Maya Swart /  
Luke Rennie  
E-mail: BakheM@compcom.co.za/  
MayaS@compcom.co.za / NomkhosiM@compcom.co.za  
LukeR@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/ registry@comptrib.co.za

**AND TO: Cambridge Food (Pty) Ltd**  
**Respondent**  
11 Fricker Road,  
Illovo  
Sandton  
Email: Anthea.Holland@Massmart.co.za;  
CC: [natasha.pramchand@Massmart.co.za](mailto:natasha.pramchand@Massmart.co.za)



**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).

**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:**



**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

**For Office Use Only:**

Tribunal file number:

Date filed:

\_\_\_\_\_

\_\_\_\_\_

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA****CT CASE NO:**  
**CC CASE NO: 2020AprC0606**

In the matter between:

**COMPETITION COMMISSION OF SOUTH AFRICA****Applicant**

And

**CAMBRIDGE FOOD (PTY) LTD****Respondent**

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**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND  
CAMBRIDGE FOOD JOZINI 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**

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The Competition Commission and Cambridge Food (Pty) Ltd 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 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:

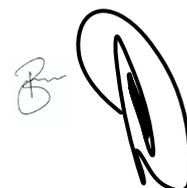
## 1 DEFINITIONS

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 “**Cambridge Food**” means Cambridge Food (Pty) Ltd, a private company registered in accordance with the laws of South Africa with registration number 2008/011666/07 and its head office situated at 11 Fricker Road Illovo, Sandton, South Africa and includes its subsidiaries, affiliates or holding company;
- 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;

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- 1.5 **“Consent Agreement”** means this agreement duly signed and concluded between the Commission and Cambridge Food;
- 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 **“Disaster Management Act”** means the Disaster Management Act, 57 of 2002;
- 1.8 **“Essential products”** means basic food and consumer items listed in Annexure B of the Consumer Protection Regulations.
- 1.9 **“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;
- 1.10 **“Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals”** means the directive issued by the Tribunal on 6 April 2020;
- 1.11 **“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; and

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## 2 BACKGROUND AND CONTEXT

- 2.1 On 15 March 2020, given the magnitude and severity of the COVID-19 outbreak which had been declared a global pandemic by the World Health Organisation (WHO) and classified as a national disaster by the Head of the National Disaster Management Centre, 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. Paragraph 10(6) of the 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

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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.*

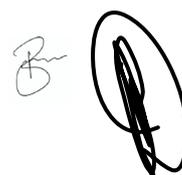
*4.1. In terms of section 8(1) of the Competition Act a dominant firm may not charge an excessive price to the detriment of consumers or customers.*

*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 –*

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

*4.2.2. 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.
- 2.8 On 9 April 2020, the President of the Republic of South Africa announced an extension of the enforced nationwide lockdown by a further two weeks, until the end of April 2020. The lockdown has subsequently been further extended.

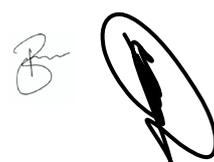
### 3 THE COMMISSION'S INVESTIGATIONS AND FINDINGS

#### *Investigation*

- 3.1 In April 2020, the Commission received information in terms of section 49B(2)(a) of the Competition Act, regarding excessive prices charged by Cambridge Food for, *inter alia*, 25kg Top White Super Maize Meal.
- 3.2 25kg Top White Super Maize Meal falls under the category of "basic food and consumer items" in Annexure A of the Consumer Protection Regulations. Regulation 4 of the Consumer Protection Regulations is therefore applicable to the conduct described in this Consent Agreement.

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- 3.3 In terms of Section 7(c) of the Act, market power can also be inferred from the economic behaviour of the firm. 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. In the context of abnormal market conditions amid the Covid-19 crisis, a firm's own conduct therefor is the best available proxy for market power if the market is distorted by the crises.
- 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.



## **Findings**

3.6 The Commission conducted an investigation into Cambridge Food's alleged conduct and found the following:

3.6.1 Cambridge Food Jozini, a division of Cambridge Food, is based in Kwa-Zulu Natal and sells amongst others basic food and consumer items. It has a store located at 522 Main Road Jozini, Kwa-Zulu Natal.

3.6.2 Cambridge Food Jozini is a grocery supermarket which services the general public. Their focus is on providing basic food and consumer items to a variety of consumers including those who are part of the lower Living Standards Measures ("LSM").

3.6.3 The Commission's findings relate to 25kg Top White Maize Meal sold by Cambridge Food Jozini.

3.6.4 Based on pricing and cost information supplied by Cambridge Food Jozini in relation to 25kg Top White Maize Meal, the Commission found the following:

3.6.4.1 The average gross profit margin earned on 25kg Top White Maize Meal during the period of September 2019 to December 2019 was 6%, 1,5% and 3,6%

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respectively. These excludes negative margins earned when the products were sold on monthly specials.

3.6.4.2 However, in April 2020 (between 22 April to 29 April 2020), Cambridge Food Jozini increased the price of 25kg Top White Super Maize Meal from R129,99 to R159,99 without a corresponding increase in cost of the then remaining stock that the Jozini store sold during the week 22 April to 29 April 2020.

3.6.4.3 During the period of 22 April to 29 April 2020, Cambridge Food Jozini sold approximately 2270 (two thousand two hundred and seventy) units of 25kg Top White Super Maize Meal.

3.7 The Commission found that the conduct by Cambridge Food, at its Jozini store, of escalating its price and gross profit margins on 25kg Top White Super Maize Meal without corresponding increases in costs, during the period of April 2020, is a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the *Consumer Protection Regulations*.

3.8 **Cambridge Food does not admit to the conduct above, nor that the above conduct constitutes excessive pricing in terms of section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations. Notwithstanding the above, in order to**

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**avoid protracted litigation and costs, Cambridge Food agrees to resolve the complaint on the terms set out below.**

#### **4 AGREEMENT REGARDING FUTURE CONDUCT**

Despite the non-admission contained in clause 3.8 above, Cambridge Food agrees that:

4.1 The conduct described above has already ceased;

4.2 It will refrain from the conduct described above in future.

4.3 It will ensure its gross profit margin on 25kg Top White Super Maize Meal does not exceed 6% (which is the highest gross profit margin earned by Cambridge Food Jozini on 25kg Top White Super Maize Meal for the period January 2020 to March 2020) with immediate effect and for the duration of the state of national disaster.

4.4 It will donate essential goods amounting to a total cost price value of R24 947.00 (Twenty-four thousand nine hundred and forty-seven rand) to Siyaphambili Qondile Home Based Care Project<sup>1</sup>. This

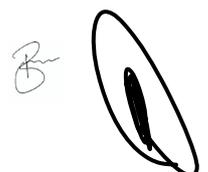
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<sup>1</sup> This is a community-based non-profit organization based in Jozini providing home-based care services for sick people and support for their vulnerable family members. They identify vulnerable children in child-headed households and offer them assistance. They assist with applications for identity documentation as well as with foster care placement. They also distribute food parcels to child-headed households. The services which they provide include: Nutritional Support, Palliative Care, Social Welfare. Situated on Maphanya reserve next to Jozini Mall and NPO registration number: 039-286.



amount is based on, amongst others, the additional income derived by Cambridge Food as a result of the significant increase in margins in April 2020.

- 4.5 It will effect the donations in paragraph 4.4 above within 14 calendar days of confirmation of this Consent Agreement as an order of the Tribunal;
- 4.6 It will within 7 calendar days of effecting the abovementioned donations, submit an affidavit under oath by the Vice-president of Operations at Cambridge Food testifying that Cambridge Food has effected the donations;
- 4.7 It has developed and implemented a competition law compliance programme incorporating corporate governance across their business which is designed to ensure that its employees, management, directors and agents do not engage in contraventions of the Act. There is also continuous monitoring of this programme in place. This compliance programme includes a mechanism for the monitoring and detection of any contravention of the Act;
- 4.8 It will submit a copy of the existing compliance programme to the Commission within 60 business days of the date of confirmation of the Consent Agreement as an order by the Tribunal;

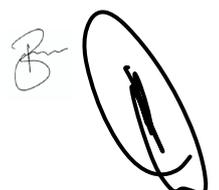


4.9 It will circulate a statement summarising the content of this Consent Agreement to all senior management and senior operational staff employed at Cambridge Food within 7 calendar days from the date of confirmation of this Consent Agreement by the Tribunal; and

4.10 It will within 7 calendar days of circulating the summary of the Consent Agreement as envisaged in clause 4.9. above, submit an affidavit under oath by the Vice-President of Operations at Cambridge Food testifying that the summary was so circulated throughout Cambridge Food senior management and senior operational teams as mentioned in clause 4.9 above.

## 5 FULL AND FINAL SETTLEMENT

In an effort to avoid protracted litigation, this Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement, without admitting liability and concludes all proceedings between the Commission and Cambridge Food 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 relates to Cambridge



Food Jozini and that is the subject of the Commission's investigation under  
Commission Case No. 2020AprC0606.

Signed at Worcester on this the 14<sup>th</sup> day of July 2020.



Chris Lourens

**Vice-President: Operations Cambridge Food**

**Duly authorised to sign on behalf of Cambridge Food (Pty)Ltd**

Signed at PRETORIA on this the 14<sup>TH</sup> day of July 2020.



**Tembinkosi Bonakele**

**The Commissioner, Competition Commission of South Africa**

