



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR179Jan23/SA033Jun23

In the matter between:

The Competition Commission

Applicant

And

Medmart Health (Pty) Ltd

Respondent

Panel : T Ngcukaitobi (Presiding Member)
: I Valodia (Tribunal Member)
: T Vilakazi (Tribunal Member)

Heard on : 24 July 2023

Decided on : 24 July 2023

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Medmart Health (Pty) Ltd annexed hereto.

Presiding Member
Adv. Tembeka Ngcukaitobi
SC

24 July 2023

Date

Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi

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By Themba Chauke at 2:47 pm, Jun 20, 2023

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

CT Case No:

CC Case No: 2022Feb0050

In the matter between:

THE COMPETITION COMMISSION

APPLICANT

And

MEDMART HEALTH (PTY) LTD

FIRST RESPONDENT

MR ALON LEVER t/a BABYBUG

SECOND RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, 89 OF 1998 ("THE ACT"), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND MEDMART HEALTH (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) AND (ii) OF THE ACT.

Preamble

The Competition Commission and Medmart Health (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 read with section 58(1)(a)(iii) and 58(1)(b) of



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the Competition Act, No. 89 of 1998 ("the Act"), as amended, in respect of contraventions of section 4(1)(b)(i) and (ii) of the Act, on the terms set out below.

1. DEFINITIONS

For the purposes of this Consent Agreement, the following definitions shall apply:

- 1.1. **"Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.2. **"Babybug"** means Mr. Alon Lever t/a Babybug, a sole proprietorship with its principal place of business situated at his residential property located at 24 Hildreen Avenue, Fairmount Extension, Johannesburg, Gauteng;
- 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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4. **"Commissioner"** means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.5. **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2022Feb0050;
- 1.6. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Medmart;
- 1.7. **"Medmart"** means Medmart Health (Pty) Ltd, a a private company duly registered in accordance with the laws of the Republic of South Africa, with its



principal place of business situated at 26 Grant Avenue, Norwood, Johannesburg, Gauteng;

1.8. **“Respondents”** means Medmart and Babybug;

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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1. On 17 February 2022, the Commissioner of the Competition Commission (“Commissioner”) initiated a complaint in terms of section 49B(1) of the Act against Medmart Health (Pty) Ltd and Babybug for entering into an agreement and/or engaging in a concerted practice to fix the price of 3-ply face masks and divide the market by allocating suppliers and/or specific types of goods on the Takealot platform in contravention of sections 4(1)(b)(i) and (ii) of the Act.

2.2. The allegations against the Respondents are that they concluded an agreement in terms of which they would jointly set the prices at which they would sell 3-ply face masks on the Takealot platform. It is further alleged that the Respondents allocated days and timeslots on which they would sell 3-ply



face masks on the Takealot platform. The complaint was investigated under case number: 2022Feb0050.

2.3. The Commission's investigation revealed the following:

2.3.1. On 3 December 2020, Mr. Alon Lever of Babybug called Medmart and spoke to Mr. Faheem Vally of Medmart. In the conversation, the Respondents agreed to manipulate their respective prices for 3-ply face masks in such a manner that they would be able to make profit selling on the Takealot platform.

2.3.2. The investigation also found that the Respondents agreed to allocate to each other, days on which the first and second respondent would adjust their respective prices and stock availability in order to limit competition between themselves. This agreement included agreeing on which days they would alternate amongst themselves to price higher than the other on the Takealot platform.

2.3.3. Further, the investigation found that the prices the Respondents agreed on ranged from R79.00 to R90.00 per pack of 50 3-ply face masks. Babybug and Medmart would each have a day of charging a higher price followed by a day of charging a lower price. The switching would happen at 1700hrs in the afternoon of each day.



2.3.4. The investigation found that the conduct of the Respondents constitutes price fixing and market division in contravention of sections 4(1)(b)(i) and (ii) of the Act.

3. ADMISSION OF LIABILITY

3.1. Medmart does not make an admission of liability in respect of the conduct described in paragraph 2 above.

4. ADMINISTRATIVE PENALTY

4.1. Medmart agrees that it is liable for an administrative penalty of **R75 000 (Seventy-five thousand rands)**. This amount is less than 10% of Medmart's turnover in the financial year ending February 2021.

4.2. Medmart shall pay the amount set out above in paragraph 3.2 in three separate monthly instalments of **R25 000 (Twenty-five thousand rands)**. The first instalment to the Commission must be paid within 30 (thirty) days from the date of confirmation of this Consent Agreement as an order of the Tribunal.

4.3. The administrative penalty shall be paid into the Commission's bank account, details of which are as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345



5. AGREEMENT REGARDING FUTURE CONDUCT

Medmart, including its subsidiaries and affiliated firms, agree and undertake to:

- 5.1. Independently and unilaterally determine prices of all 3-ply face masks, including the days on which they will be sold.
- 5.2. Refrain from engaging in price fixing and market division by allocating suppliers in contravention of section 4(1)(b)(i) and (ii) of the Act, and from engaging in any prohibited practice.
- 5.3. Prepare and circulate to all management and operational staff employed by Medmart within 30 (thirty) Days from the date of confirmation of this Consent Agreement as an order of the Tribunal a statement that summarises the content of this agreement and makes clear the Commission's objective to ensure that its prices and the days on which it sells its products, reflects its unilateral and independently determined choices.

6. FULL AND FINAL SETTLEMENT

- 6.1. This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation into the activities of Medmart under case no.2022Feb0050.

Dated and signed at JHB on the 18 day of May 2023

For Medmart





Name in Full: Fakhem Vally

Position Director

Dated and signed at Pretoria on the 15 day of June 2023

For the Commission



Doris Tshepe
Commissioner

