

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 45/CR/May07

In the matter between:

The Competition Commission

and

The South African Orthotic and Prosthetic Association (SAOPA)

Panel : Y Carrim (Presiding Member), M Mokoena (Tribunal Member) and M Holden (Tribunal Member)

Heard on : 30 May 2007

Decided on : 31 May 2007

Order

Further to the application of the Competition Commission in terms of Section 49D, in the above matter -

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent.



Y Carrim
Presiding Member

Concurring: M Mokoena and M Holden

THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Held at Pretoria

**CT Case No.
CC Case No: 2004Nov1296**

In the matter between

The Competition Commission

Applicant

and

**The South African Orthotic and
Prosthetic Association**

Respondent

AGREEMENT

**BETWEEN THE COMPETITION COMMISSION AND THE RESPONDENT ON
THE TERMS OF AN APPROPRIATE CONSENT ORDER
IN TERMS OF SECTION 49D OF THE COMPETITION ACT, 1998 (Act No. 89
of 1998), AS AMENDED**

1. DEFINITIONS

For the purposes of this agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89, of 1998), as amended;
- 1.2 "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 Block C, Mapungubwe Campus, 77 Meintjies Street, Sunnyside, Pretoria;
- 1.3 "Commissioner" means the Competition Commissioner of South Africa, the Chief Executive Officer of the Commission appointed by the Minister of Trade and Industry in terms of section 22 of the Act;
- 1.4 "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 Block C Mapungubwe Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.5 "*complaint*" means the complaint initiated by the *Commissioner* on 09 November 2004 in terms of Section 49B(1) of the *Act* and filed with the *Commission* under case number 2004Nov1296;

1.6 "*person*" includes any natural person, corporation, association, firm, partnership, or other business or legal entity; and

1.7 "*SAOPA and respondent*" means the South African Orthotic and Prosthetic Association.

2. APPLICATION TO THE COMPETITION TRIBUNAL

The *Commission* and SAOPA hereby agree that application be made by the *Commission* to the *Tribunal* for a consent order in terms of section 49D of the *Act* on the terms set out below.

3. BACKGROUND

3.1 During 2004, following the institution of an action by a member of the public against the South African Rail Commuter Corporation Limited and Metrorail for relief which included compensation for medical costs for orthotic and prosthetic therapy, the *Commission* received information that SAOPA was publishing tariffs for orthotic and prosthetic products and services which were being utilised by its members when determining their fees.

3.2 As the *Commissioner* considered that the conduct might constitute the fixing of a selling price in contravention of section 4(1)(b)(i) of the *Act*, he initiated a complaint against SAOPA in terms of Section 49B(1) of the *Act* on 09 November 2004.

3.3 The *Commissioner* made the following allegations in his *complaint*:

SAOPA publishes a tariff of recommended prices for the provision of orthotic and prosthetic services, consumables and components.

3.4 Following the initiation of the *Complaint*, the *Commission* undertook an investigation into the alleged prohibited practices of SAOPA.

4. **COMMISSION'S FINDINGS**

After completing its investigation, the *Commission* concluded that:

4.1 SAOPA published a tariff of recommended prices for the provision of orthotic and prosthetic services, consumables and components from January 1999 to December 2003; and

4.2 SAOPA stopped publishing the tariff in December 2003 when it was advised that it may be unlawful.

4.3 In the *Commission's* view, the conduct described in 4.1 above constitutes a contravention of section 4(1)(b)(i) of the *Act* in that:

4.3.1 SAOPA is an association of firms consisting of the practitioners who are its members;

4.3.2 SAOPA published recommended tariffs which had the effect of indirectly fixing the selling prices of orthotic and prosthetic products and services by its members.

5. **STATEMENT OF CONDUCT BY SAOPA**

5.1 SAOPA admits that it is an association of firms and that it recommended tariffs for the provision of orthotic and prosthetic services, consumables and components by its members during the period from January 1999 to December 2003.

5.2 SAOPA further admits that the aforesaid conduct is proscribed by the section 4(1)(b)(i) of the *Act*.

5.3 SAOPA however records that:

5.3.1 the tariff was a recommended tariff and no obligation was placed on any member to adhere to the tariff, nor were any penalties levied against members for non-compliance;

A handwritten signature in black ink, appearing to be 'NRQ', is located in the bottom right corner of the page.

- 5.3.2 certain medical aid schemes refused to reimburse SAOPA members for their services unless they complied with the rates prescribed in the tariff.
- 5.3.3 In the event of non-compliance with the tariff, medical aid schemes refunded patients directly rather than the SAOPA members placing SAOPA members in a difficult position as many patients were unemployed and therefore unable or unwilling to reimburse the SAOPA members;
- 5.3.4 notwithstanding pressure from medical schemes and/or their administrators, some SAOPA members declined to adhere to the SAOPA tariff;
- 5.3.5 the tariff enabled SAOPA, as an institution, to facilitate the expeditious settlement of complaints from patients and create an accountable institution through which instances of malpractice could be dealt with; and
- 5.3.6 SAOPA is a not for profit institution which played a role in restoring and/or maintaining ethics and accountability in the industry.

6. UNDERTAKINGS BY SAOPA

The *Commission* and SAOPA agree that SAOPA shall:

- 6.1 circulate to all its members within one month from the date of this agreement being confirmed as a consent order by the *Tribunal*, a letter conveying the substance of the consent order and advising them that:

SAOPA will not in the future, itself or through any *person* authorised to act on its behalf, notify its members, or otherwise publish in relation to any goods and/or services a price stated or calculated to be understood as the price which should be levied against any patient by members of SAOPA;

SAOPA does not in any way condone and positively discourages agreements between its members as to the prices to be charged or quoted for goods supplied;

SAOPA will not be party to, or in any way support agreements between its members as to the prices to be charged or quoted by its members.

A copy of the above letter and an affidavit confirming the sending of the letter to all SAOPA members must be submitted to the *Commission* within 30 days of the confirmation of this agreement as a consent order by the Tribunal.

7. AGREEMENT CONCERNING REFERENCE PRICE LIST

7.1 The *Commission* accepts that in order to facilitate complex negotiations between medical schemes and medical service providers (including orthotic and prosthetic services) and to enable consumers to have access to objective information concerning the likely cost of such services, that reference prices similar to those previously established by the Council for Medical Schemes as a "national health reference price list" should exist in relation to orthotic and prosthetic services.

7.2 Such a list of reference prices is intended merely to provide a guideline with reference to which, if they so wish, medical schemes can individually negotiate and determine benefit levels and providers can individually determine fees charged to patients.

7.3 It is therefore further agreed that an independent third party with no direct or indirect interest, commercial or otherwise, in SAOPA or the orthotic or prosthetics industry, may from time to time obtain fee and cost related information from SAOPA members and make submissions regarding appropriate prices for orthotic and prosthetic services and

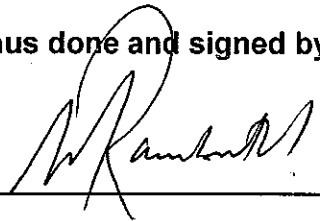


consumables to the Department of Health or its successor, responsible for the NHRPL process;

8. ADMINISTRATIVE PENALTY

In the normal course a party who has engaged in *per se* prohibited conduct would be liable to pay an administrative penalty. The *Commission* and SAOPA agree that due to the particular circumstances of this case an administrative penalty would not necessarily be appropriate and the *Commission* therefore does not seek the imposition of an administrative penalty.

Thus done and signed by the Parties here below:



COMPETITION COMMISSION

13/03/07
DATE

PER: _____



THE SOUTH AFRICAN ORTHOTIC AND
PROSTHETIC ASSOCIATION

27/2/2007
DATE

PER: R. Knight