



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR005Apr20

In the matter between:

The Competition Commission

Applicant

And

Cilliers and Heunis CC T/A Centrum
Pharmacy

Respondent

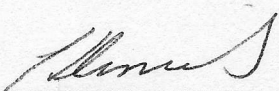
Panel : Enver Daniels (Presiding Member)
: Yasmin Carrim (Tribunal Member)
: AW Wessels (Tribunal Member)

Heard in chambers on : 20 April 2020

Decided on : 20 April 2020

Consent Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Cilliers and Heunis CC T/A Centrum Pharmacy annexed hereto marked "A" subject to the replacement of the phrase "gross profit" in para 3.6.9 with "turnover".


Mr Enver Daniels
Presiding Member

20 April 2020
Date

Concurring: Ms Y Carrim, Mr AW Wessels

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO:

CC CASE NO: 2020MarC0006

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

CILLIERS AND HEUNIS CC T/A CENTRUM PHARMACY

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
CENTRUM 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 Centrum 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 Settlement Agreement:

- 1.1 **"Act"** means the Competition Act 89 of 1998, as amended;
- 1.2 **"Centrum Pharmacy"** means Cilliers And Heunis CC trading as Centrum Pharmacy with registration number 92/05436/23 situated at the corner of Trichardt Road and Market Street, Boksburg, 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 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 Centrum 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.

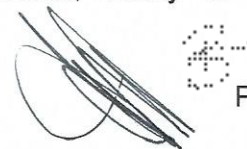
3 THE COMMISSION'S INVESTIGATIONS AND FINDINGS

3.1 On 20 March 2020, the Commission received information in terms of section 49B(2)(a) of the Competition Act, against Centrum 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 item 1.3 of Annexure B of the Consumer Protection Regulations. 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 Centrum Pharmacy's alleged conduct and found the following:

3.6.1 Centrum Pharmacy is an individual pharmacy that trades in the central business district of Boksburg, Gauteng, and operates 365 days a year with extended service hours;

3.6.2 Centrum Pharmacy operates in the market for the supply of pharmaceutical products to consumers in the Boksburg central business district;

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

A handwritten signature in dark ink, consisting of several overlapping loops, is written over a circular stamp. The stamp contains a small, stylized logo or emblem in the center.

- 3.6.4 Centrum Pharmacy's average mark-up on non-essential products, including facial masks, is [REDACTED]% and this is the mark-up that they have maintained over time;
- 3.6.5 Centrum Pharmacy did not sell many facial masks before March 2020;
- 3.6.6 due to the sudden demand and panic-buying brought on by the state of national disaster, Centrum Pharmacy had to source facial masks from various suppliers;
- 3.6.7 Centrum Pharmacy's average mark-up in respect of facial masks for March 2020 was approximately 150%;
- 3.6.8 in March 2020, Centrum Pharmacy stocked [REDACTED] masks and sold [REDACTED] units. The remaining [REDACTED] units were used internally by its staff; and
- 3.6.9 Centrum Pharmacy sold [REDACTED] face masks at a price of R[REDACTED] per unit and made a gross profit of R[REDACTED]

3.7 The Commission found that the increase in the average mark-up of approximately 150% in respect of facial masks for March 2020 by Centrum Pharmacy is a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the *Consumer Protection Regulations*.

4 AGREEMENT REGARDING FUTURE CONDUCT

Centrum Pharmacy agrees to:



- 4.1 immediately desist from the excessive pricing conduct described above;
- 4.2 reduce its mark-up on facial masks to ■■■% with immediate effect for the duration of the state of the national disaster;
- 4.3 donate the following essential goods amounting to a total value of R25 410,00, namely -
- 4.3.1 500 hand sanitizers (100ml each)
 - 4.3.2 320 items of 3 ply face masks
 - 4.3.3 7 boxes of gloves (1 box contains 100 gloves each);
- 4.4 within 7 calendar days of confirmation of this Consent Agreement as an order of the Tribunal, donate the above-listed essential goods to two old age homes situated in Boksburg, namely Alan Woodrow Park, 48 Jubilee, Boksburg, and, Andries Scribante Haven, 65 Cason Rd, Caon, Boksburg;
- 4.5 submit an affidavit under oath by the owner of Centrum Pharmacy testifying that the abovementioned donations have been made to the two old age homes within 7 calendar days of such donation;
- 4.6 develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance

programme will include a mechanism for the monitoring and detection of any contravention of the Act;

4.7 to submit a copy of a compliance programme to the Commission within 60 business days of the date of confirmation of the Consent Agreement as an order by the Tribunal; and

4.8 to circulate a statement summarising the content of this Consent Agreement to all management and operational staff employed at Centrum 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 Centrum Pharmacy confirming compliance with this undertaking.

5 FULL AND FINAL SETTLEMENT

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 Centrum 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.
2020MarC0006.

Signed at Boksburg on this the 14th day of April 2020.



Marian Heunis

Owner, Centrum Pharmacy

Signed at PRETORIA on this the 16TH day of April 2020.



Tembinkosi Bonakele

The Commissioner, Competition Commission of South Africa