
COMPETITION TRIBUNAL

PRESENTATION TO THE PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY

20 October 2020



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SOUTH AFRICA

Presented by



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- **National Response to Covid-19**
- **Tribunal Response to Covid-19**
- **Tribunal Case Performance**
- **Tribunal Covid-19 Cases**
- **Amendment Act**

National Response to Covid-19



- 15 March 2020 – the State President declares a National State of Disaster
- 19 March 2020 – Minister issues the Consumer and Customer Protection and National Disaster Management Regulations and Directions
- 23 March 2020 – President announces a National Lockdown
- 23 March 2020 – Minister issues Covid-19 Block Exemption for the Healthcare Sector issued by Minister of Trade and Industry
- 23 March 2020 – Minister issues Covid-19 Block exemption for the Banking Sector issued by Minister of Trade and Industry
- 3 April 2020 – Minister issues Regulations on Competition Tribunal Rules for Covid-19 Excessive Pricing Complaint Referrals

Tribunal Response to Covid-19



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- 17 March 2020 – Tribunal issues Directives to comply with national COVID-19 protocols
- 26 March 2020 – Tribunal issues Directive
 - for staff to work from home to comply with the National Lockdown
 - it made provision for electronic filings and virtual hearings (video conference)
 - it prioritised matters pertaining to COVID-19 Excessive Pricing complaint referrals
 - opposed complex mergers (Phase-3 mergers as defined) were not placed on the roll
 - complaint referrals not pertaining to COVID-19 were not placed on the roll
- 6 April 2020 – Tribunal issues Directive on Rules and Procedure
 - timeframes for COVID-19 related complaints are truncated
- 9 June 2020 – Tribunal issues Directive pursuant to Alert Level 3
 - provisions were made to hear matters on site
 - Phase 3 mergers were re-enrolled on a case-by-case basis
 - Complaint Referrals that were set down for hearing before 1 August 2020 were provisionally removed from the roll to be re-enrolled on a case-by-case basis

The Tribunal decided 87 matters from March to September as compared to 68 last year. On the one hand, merger filings reduced as economic activity slowed, and on the other there was a spike in consent orders. Most of these concerned the excessive pricing of personal protective equipment (PPEs) and essential foods:

March-September 2020

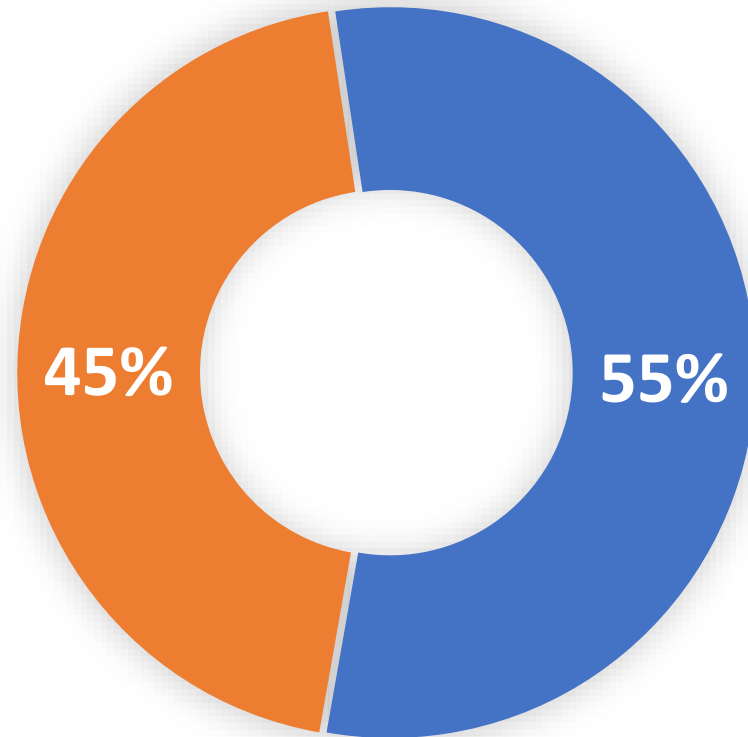
- 52 Consent Orders
- 32 Large mergers
- 1 Intermediate merger
- 2 opposed Covid-19 excessive pricing complaints

March-September 2019

- 14 Consent orders
- 49 Large mergers
- 1 Intermediate merger
- 4 Complaints

Tribunal Case Performance

87 cases decided from March to September 2020



■ Covid-19 related cases ■ Non-Covid cases

Tribunal Covid-19 Consent Orders



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- Products found to be priced excessively included face masks, hand sanitizer, eggs, fresh ginger and maize.
- The firms involved included pharmacies (local and national), hardware stores, wholesalers and food retailers.
- Cases were settled across 7 provinces; Gauteng (16), Western Cape (11), Kwa-Zulu Natal (5), Free State (2), Northern Cape (1), Mpumalanga (1) and Limpopo (1).
- Gross profit margin was used as benchmark to measure excess profit.
- Total penalties imposed amounted to R8 354 952.00
- Penalties were not levied in all cases. Small firms mostly consented to donate the excess profit to charities or the Solidarity Fund.

Tribunal Covid-19 Consent Order Penalties



Parties	Section of the Act	Penalty Amount	Product
CC And Main Hardware	8(1)(a)	R 25,410.00	surgical gloves
CC And Van Heerden Pharmacy Group	8(1)(a)	R 30,000.00	face masks
CC And Levtrade International	8(1)(a)	R 50,000.00	face masks
CC And Swift Chemicals	8(1)(a)	R 300,000.00	input products for hand sanitizers
CC And Caprichem	8(1)(a)	R 500,000.00	hand sanitizer
CC And Sicuro Safety and Hennox 638	8(1)(a)	R 1,500,000.00	face masks
CC And Matus	8(1)(a)	R 5,949,542.00	face masks
		R 8,354,952.00	

Two opposed Covid-19 excessive pricing complaints were heard by the Tribunal

- **Competition Commission v Babelegi Workwear and Industrial Supplies cc**
 - Excessive pricing of face masks
 - Price increases by 592% in February and by 987% in March compared to December prices
 - No rational or valid reasons given for these exorbitant price increases, no evidence of corresponding increases in cost
 - Penalty imposed R76 040.00 – exceeded Babelegi's excess profits of R30 416.00
 - Tribunal decision appealed to the Competition Appeal Court
 - Competition Appeal Court decision pending

- **Competition Commission v Dis-Chem Pharmacies Ltd**
 - Excessive pricing of surgical face masks
 - Price increases ranged from 47% to 261%
 - No rational or valid reasons given for these price increases, no evidence of corresponding increases in cost
 - Penalty imposed R1,2 million
 - Tribunal decision appealed to the Competition Appeal Court
 - Appeal subsequently withdrawn

Pending contested Covid-19 cases

- **Competition Commission v BlueCollar Occupational Health (Pty) Ltd and Ateltico Investments (Pty) Ltd**
 - The Commission referred a complaint against BlueCollar and Ateltico Investments claiming that the Respondents have excessively priced bulk hand sanitizer in response to a tender issued by the South African Police Service
- **Competition Commission v Tsutsumani Business Enterprises CC**
 - The Commission referred a complaint against Tsutsumani Enterprises claiming that Tsutsumani has excessively priced 3-ply surgical face masks in response to a tender issued by the South African Police Service

• Introduction

- *12 July 2019 Amendment Act 18 of 2018 came into effect*
- *Addresses concentration, lack of diversity, spread of ownership, barriers to entry and broader participation in the economy*
- *How has the Tribunal addressed these important competition and public interest concerns since the amendments?*

• Mergers

• Protecting the public interest

- In deciding mergers and complaints the Tribunal focussed on addressing the following:
 -
 - *Saving and creating jobs*
 - *Promoting and protecting worker participation and the public interest of historically disadvantaged individuals*
 - *Small business development*
 - *Foreign direct investment*
 - *Saving businesses*
 - *Tackling barriers to entry, concentration and access to markets*

- **Saving and creating jobs**

Merger Transaction	Conditions
Capital Works Atlanta GP (Pty) Ltd and Preregine Holdings Ltd	Moratorium on merger specific retrenchments for a period of 2 years, excluding four highly skilled managerial positions due to job overlaps between between the merging firms.
Senwes Ltd and Suidwes Holdings Pty Ltd	There will be no merger specific retrenchments for 2 years, except for 36 positions that overlap between the merging firms. 934 jobs saved
Afgri Agri Services (Pty) Ltd and Certain Assets and Businesses owned by Hinterland Holdings (Pty) Ltd and its subsidiaries	Moratorium on merger specific retrenchments for a period of 2 years
Retailability and Parts of the Edgars Business conducted by Edcon Limited	Moratorium on all merger specific job losses for a period of 3 years. 5 200 out of 7 595 jobs saved in South Africa

- **Saving and creating jobs**

Transaction	Conditions
Foschini Retail Group Pty Ltd and The assets and business conducted by Edcon Ltd as a going concern under the “Jet” division out of certain Edcon’s physical retail stores in South Africa	At least 4 664 employees will be transferred, and a moratorium is placed on any merger specific retrenchments for a period of 2 years If vacancies arise the merged entity will give preference to eligible Edcon employees for a period of 3 years
Mondi PLC And Mondi Ltd	Moratorium on merger specific retrenchments for a period of 2 years
British American Tobacco Holdings SA (Pty) Ltd and TWISP (Pty) Ltd	Moratorium on merger specific retrenchments for a period of 2 years
Namane Logistics (Pty) Ltd and Crossroads Distribution (Pty) Ltd	Moratorium on merger specific retrenchments for a period 3 years
Boundary Terrance 042 Group (Pty) Ltd and Bravo Group (Pty) Ltd	Save for certain listed employees, there will be no merger specific retrenchments for a period of 3 years and a fund will be established to upskill affected employees to start own business

- Saving and creating jobs

Transaction	Conditions
CPG In Store (Pty) Ltd and The Merchandising Business of the Consumer Packaged Goods Division of Imperial Logistics SA Group (Pty) Ltd	No more than 21 merger specific retrenchments and will establish a fund to upskill affected employees
Milco SA (Pty) Ltd and Clover Industries Ltd	Moratorium on merger specific retrenchments for 2 years, after this period the merged entity must limit the number of retrenchments to 277 jobs The merged entity will create 550 new jobs through its expansion project Create fund to upskill employees that are retrenched
Bidvest Bank Ltd and Eqstra Investment Holdings (Pty) Ltd	Moratorium on merger specific retrenchments of blue collar employees for a period of 3 years and for white collar employees 18 months
Simba (Pty) Ltd and Pioneer Food Group Ltd	Moratorium on merger related retrenchments for a period of 5 years. Merging parties will create 500 jobs and 2 500 job opportunities
Marinvest SRL And Ignazio Messina	Moratorium on merger specific retrenchments for a period of 3 years

- **Promoting and protecting worker participation and the interest of historically disadvantaged individuals**
 - *Simba (Pty) Ltd and Pioneer Food Group Ltd*
 - *B-BEEE ownership plan*
 - *Maintain sale and distribution agreements with SMME's*
 - *Local procurement*
 - *Foschini Retail Group (Pty) Ltd and The assets and business conducted by Edcon Ltd as a going concern under the "Jet" division out of Edcon's physical retail stores in South Africa*
 - *Maintain existing procurement ratios with local suppliers*
- **Small business development**
 - *Simba (Pty) Ltd and Pioneer Food Group Ltd*
 - *Development fund worth R600 million to develop SMMEs*
 - *Mondi PLC and Mondi Ltd*
 - *Investment of R150 million to assist local communities*
 - *Marinevest SRL and Ignazio Messina*
 - *Continue to support existing small and medium suppliers for a period of 3 years*
 - *Senwes Ltd and Suidwes Holdings (Pty) Ltd*
 - *R20 million production loans to Black farmers per annum for three years*

- **Foreign Direct Investment**

- *Simba (Pty) Ltd and Pioneer Food Group Ltd*
 - *Investment of R5.5 billion over 5 years*
 - *Head Office remains in South Africa*

- **Saving Businesses**

- *Senwes Ltd and Suidwes Holdings (Pty) Ltd*
 - *Financial distress*
- *Edcon transactions*
 - *Business rescue*

- **Tackling Barriers to entry, concentration and access to markets**

- *MIH eCommerce Holdings (Pty) Ltd and WeBuyCars (Pty) Ltd*
 - *Opened the market for a new entrant*

- **Prohibited Practices**

- **Market Inquiries**

Three matters were settled in two market inquiry investigations conducted by the Competition Commission

- **Data Services Market Inquiry**

- *Competition Commission v Vodacom (Pty) Ltd*
- *Competition Commission v Mobile Telephone Networks (Pty) Ltd*
- *Reduced headline data bundle prices*

- **Grocery Retail Market Inquiry**

- *Competition Commission v Shoprite Checkers (Pty) Ltd*
- *Exclusivity removed in more than 400 stores in non-urban areas where Shoprite has a presence*

Thank You

Questions and Answers

