

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 23/CR/Apr04

In the matter between:

The Competition Commission

Applicant

and

The South African Medical Association

First Respondent

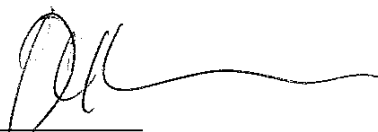
Members of the First Respondent

Second Respondent

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 respondents.

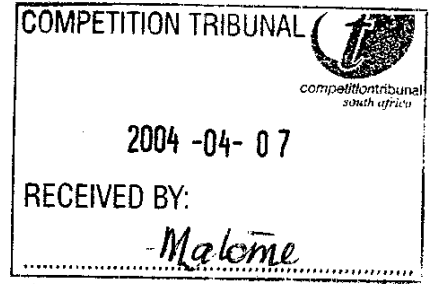


D.H. Lewis

26 April 2004
Date

Concurring: N. Manoim, U. Bhoola

" A "



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
 HELD AT PRETORIA

CASE NO: _____

In the matter between
 COMPETITION COMMISSIONER

Applicant

and

THE SOUTH AFRICAN MEDICAL ASSOCIATION
 MEMBERS OF FIRST RESPONDENT

First Respondent
 Second Respondent

CONSENT ORDER, IN REGARD TO VIOLATION OF SECTION 4(1)(b)(i) OF THE
 COMPETITION ACT, 1998 (ACT NO. 89 OF 1998)

WHEREAS THE COMPETITION COMMISSIONER OF SOUTH AFRICA, THE
 APPLICANT HEREIN, INITIATED A COMPLAINT AGAINST THE RESPONDENT, AND,

HAVING REGARD to the Competition Act, 1998 (Act No. 89 of 1998), as amended by
 the Competition Second Amendment Act, 2000 (Act No. 39 of 2000), and in
 particular Chapter 2 and Chapter 5 thereof,

HAVING REGARD to the Form CC1 Complaint lodged by the Complainant and
 issued pursuant to Section 49B of the Competition Act, 1998 (Act No. 89 of 1998) as
 amended,

HAVING REGARD to the Rules for the Conduct of Proceedings in the Competition
 Commission pursuant to Government Notice 20384 in Government Gazette No.
 22025 (Vol. 410 of 1999), and

HAVING REGARD to the parties hereto having agreed to be bound by the provisions of this Consent Order to resolve all possible disputes arising out of the aforementioned complaint initiated by the Complainant herein;


NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the Competition Commission (Complainant) and the Respondent, it is hereby **ORDERED** as follows:

1.

DEFINITIONS

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

1. The "Act" means the Competition Act, 1998 (Act No. 89, of 1998), as amended.
2. Section 4(1)(b)(i) means section 4(1)(b)(i) of the Act which states that:
 - "(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if –
 - (b) it involves any of the following restrictive horizontal practices:
 - (i) directly or indirectly fixing a purchase or selling price or any other trading condition."
3. "Agree" means to enter into any contract, arrangement or understanding, whether oral or written.
4. "The 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 B, Glenfield Office Park, Corner Glenwood Road and Oberon Street, Faerie Glen, Pretoria, Gauteng.
5. "The Competition 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, Glenfield Office Park, Corner Glenwood Road and Oberon Street, Faerie Glen, Pretoria, Gauteng.

6. "*The Complaint*" means the complaint initiated by the Competition Commissioner in terms of Section 49B(1) of the *Act* and filed with the *Commission* under case number 2002AUG164.
7. "*The Complainant*" means the Competition Commissioner ("Commissioner") of the Competition Commission of South Africa.
8. "*The Respondents*" means the South African Medical Association, an association of medical practitioners with its principal place of business at Block F Castle Walk Corporate Park, Nossob Street, Erasmuskloof X3, Pretoria and the members of the South African Medical Association.
9. "*Person*" includes any natural person, corporation, association, firm, partnership, or other business or legal entity.
10. "*The Consent Order*" means this agreement in its duly signed form by both the *Commission* and the *Respondents*, and confirmed by the *Competition Tribunal* in terms of Section 49D(1) of the *Act*

2.

APPLICABILITY

This *Consent Order* applies to the *Respondents*.

3.

JURISDICTION

The *Competition Tribunal* has jurisdiction over the subject matter of this *Consent Order* and over each of the consenting parties hereto.

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ALLEGATION OF CONTRAVENTION OF THE ACT

4.1 In its complaint initiation submission, the Complainant made the following allegations:

4.1.1 The First Respondent is an association of medical practitioners which, *inter alia*, determines, recommends and publishes benchmark tariffs for medical services on an annual basis. These recommended tariffs are embodied in an annual publication entitled *Benchmark Guide to Fees for Medical Services*.

4.2 In the Commissions view the conduct, referred to in 4.1.1 above, constitutes a contravention of section 4(1)(b)(i) of the Act.

COMMISSION'S INVESTIGATION

5.1 Following the initiation of the complaint, the Commission undertook an investigation into the alleged prohibited practices of the Respondents.

5.2 The investigation revealed that:

5.2.1 The First Respondent is an association incorporated not for gain in terms of the company laws of South Africa. The First Respondent is the representative association of medical practitioners in South Africa.

5.2.2 The First Respondent's activities deal with both the professional and business aspects of its members' practices. It offers to its members products and services which are aimed at enabling practitioners to work more effectively. It provides, *inter alia*, coding systems for the purposes of billings; it provides general advice on law, medical ethics, human rights, industrial relations and labour legislation, it

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produces publications to keep practitioners up-to-date on clinical as well as general professional development. The First Respondent provides these services to some fifteen thousand five hundred and fifty two (15,552) members in South Africa.

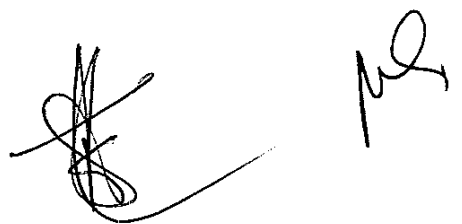
5.2.3 As part of its activities, the First Respondent determines, recommends and publishes tariffs for the pricing of the provision of medical services on an annual basis. These tariffs are contained in an annual publication of the First Respondent entitled "*Benchmark Guide to Fees for Medical Services*".

5.3 In the Commission's view, the above conduct, as stated in 5.2.3, constitutes a contravention of section 4(1)(b)(i) of the Act. To prove a contravention of the above section, the following elements must be shown:

- 5.3.1 an agreement between, or concerted practice by firms, or a decision, by an association of firms;
- 5.3.2 the agreement must be between or among parties in a horizontal relationship or the decision must be taken by an association of horizontally related firms;
- 5.3.3 the agreement, concerted practice or decision must involve directly or indirectly fixing a purchase or selling price or any other trading condition.

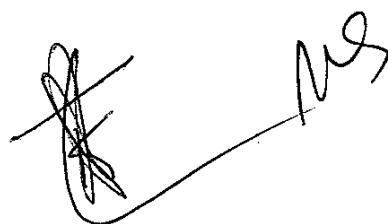
5.4 The Commission is of the view that:

- 5.4.1 the First Respondent is an association of firms;
- 5.4.2 that determines, recommends and publishes tariffs to its members;
- 5.4.3 which recommendation has the effect of fixing a selling price.

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STATEMENT OF CONDUCT

- 6.1 The Respondents admit that the First Respondent is an association of firms that determined, recommends and publishes tariffs, for and on behalf of its members, for the provision of medical services.
- 6.2 The Respondents admit that, in the circumstances, the aforesaid determination and recommendation falls within the ambit of section 4(1)(b)(i) of the Act, in that it amounts to the practice of directly or indirectly fixing a selling price, conduct which is prohibited by section 4(1)(b)(i) of the Act.
- 6.3 The Respondents thus admit that the recommendation of tariffs constitutes a contravention of section 4(1)(b)(i) of the Act.
- 6.4 However, the Respondents wish to record that, in their view:
- 6.4.1 the contravention was of a technical nature, rather than a substantive one;
- 6.4.2 the Guide to Fees published by the First Respondent was never a list of enforceable prices and merely served as a guideline for the medical profession, the Health Professions Council of South Africa (HPCSA) and the courts, as to the reasonableness of a charge for a particular service. In this regard, the HPCSA, as well as the courts, have used this recommended list of tariffs to discharge of duties in terms of the Health Professions Act 56 of 1974 (Act 56 of 1974) and in matters before the courts;
- 6.4.3 of the 15 552 (fifteen thousand five hundred and fifty two) members referred to in clause 5.2.2, only some 8000 (eight thousand) members of the First Respondent are involved in private practice and can, consequently, be implicated in the contravention set out herein.

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AGREEMENT CONCERNING CONDUCT

- 7.1 The Commission and the Respondents agree that the Respondents will cease to:
 - 7.1.1 determine, recommend and/or publish tariffs to the members of the First Respondent;
 - 7.1.2 engage in any conduct which directly or indirectly facilitates an agreement between the members of the First Respondent on prices.

- 7.2 The Commission and the First Respondent further agree that the First Respondent shall, within 30 business days after the date of issue of this Consent Order by the *Competition Tribunal*,:
 - 7.2.1 send a letter to each of its members informing them that the First Respondent will no longer recommend or publish tariffs for the provision of medical services, nor engage in any conduct which directly or indirectly facilitates an agreement between its members on prices;
 - 7.2.2 publish the abovementioned letter in the First Respondent's official publications, periodicals, communiqué's, newsletters and electronic publication;

- 7.3 The First Respondent wishes to record that, while it has already indicated that it would not continue to publish Rand values together with the codes, descriptors and units of medical services, it will continue advising its members how to continue conducting their practices ethically.

ADMINISTRATIVE PENALTY

- 8.1 In accordance with the provisions of section 58(1)(a)(iii) read with section 59(1)(a), 59(2) and (3) of the Act, the Respondents are liable for an administrative penalty.

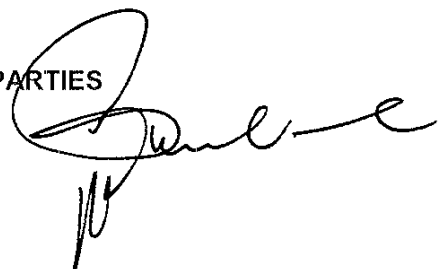
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8.2 With reference to the contravention of section 4(1)(b)(i):

8.2.1 An administrative penalty in the amount of R900 000.00 (Nine Hundred Thousand Rand)

8.3 The Respondents are, therefore, liable to a penalty in the amount of R900 000.00 (Nine Hundred Thousand Rand) to be paid by no later than 30 April 2004.

Thus done and signed by the Parties here below.

PARTIES 

COMPETITION COMMISSIONER
ON BEHALF OF APPLICANT

18/2/04
.....
DATE



THE SOUTH AFRICAN MEDICAL ASSOCIATION
ON BEHALF OF RESPONDENTS

10/02/04
.....
DATE

THE REGISTRAR
COMPETITION TRIBUNAL (SA)



DATED AND SIGNED ON THIS _____ DAY OF _____ 2003
AT _____

1. _____
Chairperson of the Tribunal

2. _____
Panel Member

3. _____
Panel Member