



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO015May20

In the matter between:

The Competition Commission

Applicant

And

Cedar Pharmaceuticals CC t/a
Bel-Kem Pharmacy

Respondent

Panel : E Daniels (Presiding Member)
: I Valodia (Tribunal Member)
: T Vilakazi (Tribunal Member)

Heard on : 14 May 2020

Decided on : 26 May 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Cedar Pharmaceuticals CC t/a Bel-Kem Pharmacy annexed hereto.

**Presiding Member
Mr Enver Daniels**

**Date
26 May 2020**

Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi

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

CT CASE NO:

CC CASE NO:2020APRC0390

In the matter between:

COMPETITION COMMISSION

Applicant

and

CEDAR PHARMACEUTICALS CC T/A BEL-KEM PHARMACY

Respondent

FILING SHEET

TAKE NOTICE THAT the Applicant files herewith the following documents:

1. Competition Tribunal Form CT6;and
2. A Confidential Consent Agreement between the Competition Commission and Cedar Pharmaceuticals CC t/a Bel-Kem Pharmacy.

DATED AT PRETORIA ON THIS 8TH DAY OF MAY 2020.

COMPETITION COMMISSION

APPLICANT

The DTI Campus, Block C,
Mulayo Building
77 Meintjies Street, Sunnyside
Pretoria

Tel: 012 394 3527/ 3275/ 3037

Ref: B Majenge/ M Swart/ H Dlamini

E-mail: [BakheM@compcom.co.za/](mailto:BakheM@compcom.co.za)
[MayaS@compcom.co.za/](mailto:MayaS@compcom.co.za)
[HughD@compcom.co.za/](mailto:HughD@compcom.co.za)

**TO: THE REGISTRAR
COMPETITION TRIBUNAL**

Block C, The Dti Campus
77 Meintjies Street
Sunnyside
Pretoria

Tel: 012 394 3355

Email: [ctsa@comptrib.co.za/](mailto:ctsa@comptrib.co.za) [registry@comptrib.co.za/](mailto:registry@comptrib.co.za)

**AND TO: CEDAR PHARMACEUTICALS CC T/A BEL-KEM PHARMACY
RESPONDENT**

Engen Complex, Amandel Road
Belhar
Cape Town
Western Cape

Ref: Raphael Swanepoel and Norma Sasman

Tel: 021 952 7445/6

Email: [raphael@belkem.co.za/](mailto:raphael@belkem.co.za) [norma@belkem.co.za/](mailto:norma@belkem.co.za)



competitiontribunal

SOUTH AFRICA

Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: _____ File # _____

To: The registrar of the Competition Tribunal

Concerning the matter between:

_____ (Applicant)
and _____ (Respondent)

Take notice that the _____
intends to apply to the Tribunal for the following order:

Name and Title of person authorised to sign:

Authorised Signature:

Date:

**For Office
Use Only:**

Tribunal file number:

Date filed:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO:
CC CASE NO: 2020APRC0390

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

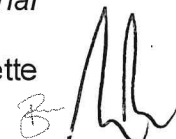
and

CEDAR PHARMACEUTICALS CC T/A BEL-KEM PHARMACY

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
BEL-KEM 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 Bel-kem 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 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 Consent Agreement:

- 1.1 “**Act**” means the Competition Act 89 of 1998, as amended;
- 1.2 “**Bel-kem Pharmacy**” means Cedar Pharmaceuticals CC trading as Bel-kem Pharmacy with registration number 89/02853/23 situated at Engen Complex, Amandel Road, Belhar, Cape Town, Western Cape Province;
- 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 Bel-kem 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.

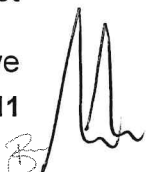
3 THE COMMISSION'S INVESTIGATIONS AND FINDINGS

3.1 During April 2020, the Commission received information in terms of section 49B(2)(a) of the Competition Act, against Bel-kem Pharmacy in relation to the price of 750ml Dettol Antiseptic Disinfectant Liquid ("750ml Dettol") that it was overcharging customers in March 2020.

3.2 Dettol falls under the category of 'medical and hygiene supplies' in Annexure A, as well as item 1.8, i.e. "Antiseptic Liquids", 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. 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 national state of 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 Bel-kem Pharmacy's alleged conduct and found the following:

3.6.1 Bel-kem Pharmacy is an individual pharmacy that trades in Belhar, Cape Town, Western Cape, and operates 365 days a year with extended service hours;

3.6.2 Bel-kem Pharmacy operates in the market for the supply of pharmaceutical products to consumers in the Belhar area;

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

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3.6.4 Bel-kem Pharmacy has been a seller of different sizes of Dettol sourced from various suppliers such as Makro, 1-UP Cash and Carry and Jumbo. Bel-kem Pharmacy procures its supply of 750ml Dettol resells them at an average cost mark-up of 54% and an average gross profit margin of 34.79%;

3.6.5 During the period of 19 March 2020 to 29 March 2020, Bel-kem Pharmacy sold 70 units.

3.7 The Commission found that the average cost mark-up of 54% and a gross profit margin of 34.79% in respect of 750ml Dettol for March 2020 by Bel-kem Pharmacy is high and possibly 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

Bel-kem Pharmacy agrees to:

- 4.1 immediately desist from the pricing conduct described above;
- 4.2 reduce its gross profit margin on 750ml Dettol to 20% or lower with immediate effect for the duration of the national state of disaster;
- 4.3 to donate, within 7 calendar days of the date of confirmation of this Consent Agreement as an order by the Tribunal, an amount of R1 059.10



(one thousand and fifty nine rand, ten cents), in the form of a cash donation to the Solidarity Fund using the following bank account details:

Bank: Standard Bank

Branch Name: Sandton City

Account Name: Solidarity Fund

Account Number: 023 070 021

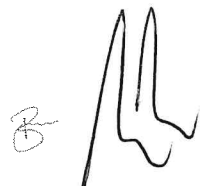
Account Type: Current account

Branch Code: 051001

SWIFT Code: SBZAZAJJ

4.4 submit an affidavit under oath by a duly authorised representative of Belkem Pharmacy testifying that the abovementioned donation has been made to the Solidarity Fund within 7 calendar days of such donation. Proof of payment must also be sent to collections@compcom.co.za. Please include this case number [2020APRC0390] in the subject line;

4.5 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;

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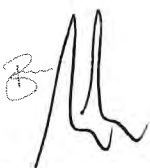
4.6 to submit a copy of a compliance programme to the Commission within 60 business days of the date of confirmation of the Consent Agreement as an order by the Tribunal; and

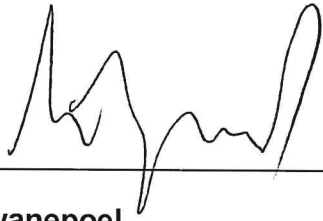
4.7 to circulate a statement summarising the content of this Consent Agreement to all management and operational staff employed at Bel-kem Pharmacy within 7 calendar days from the date of confirmation of this Consent Agreement by the Tribunal and notifying the Commission by submitting an affidavit under oath a duly authorised representative of Bel-kem 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 Bel-kem 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. **2020APRC0390**.

Signed at Belkema on this the 29th day of April 2020.





Raphael Swanepoel

Duly authorised to sign on behalf of Bel-kem Pharmacy

Signed at PRETORIA on this the 29TH day of April 2020.



Tembinkosi Bonakele

The Commissioner, Competition Commission of South Africa