



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO076Jul20

In the matter between:

The Competition Commission

Applicant

And

Rand Safety Equipment CC

Respondent

Panel : Y Carrim (Presiding Member)
: AW Wessels (Tribunal Member)
: A Ndoni (Tribunal Member)

Heard on : 05 August 2020

Decided on : 06 August 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement between the Competition Commission and Rand Safety Equipment CC annexed hereto.

**Presiding Member
Ms Yasmin Carrim**

**Date
06 August 2020**

Concurring: Mr Andreas Wessels and Ms Andiswa Ndoni

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

CT Case No.

CC Case No. 2020JUN0017

In the matter between:

COMPETITION COMMISSION

Applicant

and

RAND SAFETY EQUIPMENT CC

Respondent

FILING SHEET

TAKE NOTICE THAT the Applicant files herewith the following documents:

1. Competition Tribunal Form CT 6; and
2. Consent Agreement between the Competition Commission and Rand Safety Equipment CC.

DATED AT PRETORIA ON THIS 27 DAY OF JULY 2020.

COMPETITION COMMISSION

Applicant

77 Menitjies Street

Sunnyside
Pretoria
Tel: 012 394
Ref: M Swart / H Maringa
Email: MayaS@compcom.co.za
HildahL@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 / registry@comptrib.co.za

AND TO: RAND SAFETY EQUIPMENT CC

Respondent
10 Miracle Park
Tshiomate Close
Cnr old Johannesburg Road and Lenchen Ave
Hennospark
Centurion
Gauteng
Ref: Beverly Evans / Shaun Evans
Tel: 082 442 8709 / 012 653 2870
Email: bev@randsafety.co.za / shaun@randsafety.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: 2020JUN0017

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

RAND SAFETY EQUIPMENT CC

Respondent

**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
RAND SAFETY (PTY) LTD 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 Rand Safety Equipment CC ("Rand Safety") 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 ("Act"), in respect of a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the *Consumer And*

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

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 **"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;
- 1.3 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Rand Safety;



- 1.5 **“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;
- 1.6 **“Rand Safety”** means Rand Safety Equipment CC, a close corporation registered in accordance with the laws of South Africa with its business address situated Unit 10 Miracle Park cnr old Johannesburg Road and Lenchen Avenue, Hennopspark, Centurion, South Africa;
- 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, given the magnitude and severity of the COVID-19 outbreak which had been declared a global pandemic by the World Health Organisation (“WHO”) and classified as a national disaster by the Head of the National Disaster Management Centre, the Minister of Cooperative Governance and Traditional Affairs (“COGTA”) declared a National State of 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, 2002 (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 Annexures A and B list the goods and services that fall to be regulated by the Consumer Protection Regulations. Annexure A lists the goods and services that fall to be regulated by Regulation 4 of 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 2020, the Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals was issued.
- 2.8 On 9 April 2020, the President of the Republic of South Africa announced an extension of the enforced nationwide lockdown by a further two weeks, until the end of April 2020. This nationwide lockdown has been further extended and remains ongoing with some measures of relaxation occurring as and when announced by the Presidency.

3 THE COMMISSION'S INVESTIGATIONS AND FINDINGS

Investigation

- 3.1 On 5 June 2020, the Commission received information in terms of section 49B(2)(a) of the Competition Act, against Rand Safety in relation to Greenline FFP2 6200 dust masks ("dust masks"). According to the information received, Rand Safety sold 20 boxes of dust masks (20



masks per box) at a cost of R350 per box totaling R7 000 (including VAT). According to information received, the price for dust masks were increased from R153 per unit on 16 March 2020 to R350 (excluding VAT) per unit on 22 April 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(c) of the Act, market power can be inferred from the economic behaviour of the firm. In this case, the mere ability to earn significantly higher gross profit margins 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.

Findings

- 3.6 Upon receipt of the information requested from Rand Safety, the Commission found the following:

3.6.1 Rand Safety specialises in the distribution of safety and protective clothing, footwear, personal protective equipment and other allied products, to a spectrum of industries including mining, agriculture, engineering, construction, warehousing and the food industry. Rand Safety has been in operation for over 30 years;

3.6.2 Rand Safety is a reseller of Greenline respiratory products and does not manufacture any products;

3.6.3 the relevant product for the purpose of this Consent Agreement is FFP2 dust masks;

3.6.4 according to information received during the Commission's investigation, Rand Safety has been selling FFP2 dust masks since December 2019;



3.6.5 according to Rand Safety, it increased its prices for dust masks as a result of an immediate price increase notification sent on 13 February 2020 by the manufacturer, Greenline, announcing that it would increase the price of the dust masks. Consequently, Rand Safety increased the price of dust masks in February 2020 in anticipation of the price increase from Greenline. However, the Commission found that there was no actual increase as Greenline did not increase its prices in February 2020. Even though Greenline sent a price increase notification on 13 February 2020, it still honored the delivery of FFP2 masks at R82 on 14 February 2020. Greenline only increased its prices in March 2020;

3.6.6 Rand Safety sells the affected dust masks in pairs of 20 masks per box. Rand Safety also sells a more expensive version of FFP2 dust mask with a valve in boxes of 15's and a different brand of FFP2 dust mask (Dro- Air) in boxes of 12's and 20's. The FFP2 dust masks with a valve and the Dro-Air brands are not relevant for the purposes of this Consent Agreement as they were not in supply in February 2020.

Market

3.7 The Commission found that Rand Safety:

3.7.1 is active in the market for the sale of FFP2 dust masks in the Centurion and also all parts of Gauteng; and



3.7.2 has market power in the market for the sale of FFP2 dust masks given the current pandemic and national state of disaster.

Determination of excessive price

3.8 Table 1 below depicts a price-cost comparison of Greenline FFP2 dust masks sold in boxes of 20 by Rand Safety from December 2019 to June 2020. The results are as follows:

3.8.1 for December 2019 and January 2020 the gross profit margin was approximately 28% and the mark-up was 40%; and

3.8.2 the gross profit margin for February 2020 was increased by 18% (from 28,70%) to 46,41% with a mark-up of 87%. Rand safety increased the price of its dust masks in February 2020 in anticipation of the price increase from its supplier, Greenline, even though Greenline did not increase its prices during that period.

Table 1: Price-Cost comparison of Greenline FFP2 dust masks sold by Rand Safety

Date	Cost Price	Sales Price	Gross Profit %	Mark-Up %
Dec-19	R 82.00	R115.00	28.70%	40%
Jan-20	R 82.00	R115.00	28.70%	40%
Feb-20	R 82.00	R153.00	46.41%	87%
Mar-20	R109.00	R153.00	28.76%	40%
7-Apr-20	R109.00	R153.00	28.76%	40%

3.9 Table 2 below depicts Rand Safety's gross profit margins for the month of February 2020 for FFP2 dust masks (sold in pairs of 20 masks per box) sold in excess of a 46.41% gross profit margin.

Table 2:

Month	Description	Average Purchase Price excl. VAT (Rand)	Average Selling Price excl. VAT (Rand)	Quantity Sold	Gross Profit	Mark-up	Gross Profit @ Excessive Price (Rand)	Gross Profit @ margin (Rand)	Excess Profits (Rand)
Feb-20	Box of 20's	R82	R153	218 boxes	46.41%	87%	R15 478	R7 194	R8 824
Total									R8 824

3.10 The Commission compared the historic gross profit margins earned by Rand Safety (i.e. December and January margins) with the gross profit margin it earned by it in February 2020.

3.11 The Commission found that the gross profit margin earned by Rand Safety in February 2020 is much higher than the historic margins it earned before the spread of the Covid-19 and that the quantum of the overcharge amounted to an excess profit of R8 284 as reflected in Table 2 above.

3.12 The Commission found that:

3.12.1. in February 2020, Rand Safety increased its gross profit margin for FFP2 dust masks to 46.41% which increase was excessive.

3.12.2. Rand Safety had sold approximately 218 boxes of FFP2 dust masks at the higher average price of R153 per box, charged in February 2020.

3.13 Rand Safety admits that the conduct above constitutes excessive pricing in terms of section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations, and agrees to resolve the complaint on the terms set out below.

4 CONTRIBUTION TO THE SOLIDARITY FUND

4.1 Rand Safety undertakes to pay a contribution in the amount of R8 284 to the Solidarity Fund.

4.2 Rand Safety will pay the amount set out above to the Solidarity Fund within 7 (seven) calendar days from the date of confirmation of this Consent Agreement as an order by the Tribunal.

4.3 The contribution must be paid into the Solidarity Fund's bank account which is as follows:

NAME: Solidarity Fund

BANK: Standard Bank

ACCOUNT NUMBER: 023 070 021

ACCOUNT TYPE: Current account

BRANCH CODE: 051001

SWIFT CODE: SBZAZAJJ

PAYMENT REF: Competition Commission 2020JUN0017/Rand Safety



5 AGREEMENT REGARDING FUTURE CONDUCT

Rand Safety agrees to:

- 5.1 immediately desist from the excessive pricing conduct described above;
- 5.2 reduce its gross profit margin on dust masks to 20% with immediate effect for the duration of the state of national disaster;
- 5.3 circulate a statement summarising the content of this Consent Agreement to all management and operational staff employed at Rand Safety within 7 calendar days from the date of confirmation of this Consent Agreement by the Tribunal;
- 5.4 submit an affidavit under oath by the owner or director of Rand Safety testifying that the abovementioned undertakings, including the contribution to the Solidarity Fund referred to paragraph 4 above, have been adhered to within 7 calendar days of confirmation of the Consent Agreement as an order by the Tribunal;
- 5.5 develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management 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; and




5.6 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.

6 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 Rand Safety 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. 2020JUN0017.

Signed at Centurion on this the 27 day of July 2020.



Shaun Evans

Co-owner and duly authorised to sign on behalf of Rand Safety Equipment CC

Signed at PRETORIA on this the 27TH day of July 2020.



Tembinkosi Bonakele

The Commissioner, Competition Commission of South Africa