



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO077Jul20

In the matter between:

The Competition Commission

Applicant

And

Mzanzi Meat and Chicken (Pty) Ltd t/a
Roots Dawn Park

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 Mzanzi Meat and Chicken (Pty) Ltd t/a Roots Dawn Park, 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: 2020Aprc0053

In the matter between

THE COMPETITION COMMISSION

Applicant

And

MZANZI MEAT AND CHICKEN (PTY) LTD

t/a Roots Dawn Park

Respondent

FILING NOTICE

TAKE NOTICE that the Applicant herewith files the following documents:

1. CT6 Form; and
2. Consent agreement between the Competition Commission and Mzanzi Meat and Chicken (Pty) Ltd t/a Roots Dawn Park

Signed at **PRETORIA** on the **29** day of **JULY 2020**.

Kgashane Kgomo

KGASHANE KGOMO

Competition Commission

The Dti Campus, Building C, Mulayo

77 Meintjies Street

Tel: 012 762 6985

Email: Kgashanek@compcom.co.za

Ref: Kgashane Kgomo/2020Aprc0053

TO:

THE REGISTRAR

Competition Tribunal of South Africa

The Dti Campus, 77 Meintjies Street,

1st Floor, Block C, Mulayo Building

Sunnyside, Pretoria

Tel: 012 394 3354

Fax: 012 394 0169

E-mail: SibongileM@comptrib.co.za

AND TO:

Shaheed Dollie Inc

48 Twickenham Avenue

Auckland Park

Johannesburg

2029

Ref: Mr Shaheed Dollie

Tel: 011 482 9933

Fax: 011 726 8850/086 696 1057

By Email: [reception@sdollieinc.co.za/](mailto:reception@sdollieinc.co.za)
shaheed@sdollieinc.co.za



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
fax: 27 12 394 0169
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:

**Mercantile Bank**

The Business Bank inspired by entrepreneurs

Payment Confirmation

Date /Time Actioned : 17/06/2020 09:28:21 AM
Transaction ID : 000124456

Payment Details

From Account : MZANZI MEATS
Amount : 12,000.00 ZAR

Beneficiary Details

Name : SOLIDARITY FUND
Account Number : 023070021
Bank : STANDARD BANK
Branch Code : 051001
Reference : 2020APRC0053 ROOTS

Mercantile Bank Limited Reg. No. 1965/006706/06. An Authorised Financial Services and Credit Provider. NCRCP19

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

**CT CASE NO:
CC CASE NO: 2020Aprc0053**

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

**MZANZI MEAT AND CHICKEN (PTY) LTD
(TRADING AS ROOTS DAWN PARK)**

Respondent

**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
ROOTS BUTCHERY 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 Roots Dawn park 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. **"Roots Dawn Park"** means Mzansi Meat and Chicken (Pty) Ltd (t/a Roots Dawn Park)", a butchery retail store with registration number **2012/127007/07** situated at Shop 21, Galahad Road, Dawn Park, Extension 31, Boksburg.
- 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 Roots Dawn Park;
- 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.
- 2.8. 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.

- 2.9. 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 of the firm 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.
- 2.10. 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. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 3.1. On 02 April 2020, the Commission received information in terms of section 49B(2)(a) of the Act, against Roots Dawn Park in relation to the inflated prices of 5 dozen (60) large and medium eggs that it was charging its customers during April 2020.
- 3.2. Eggs fall under the category of "essential goods" 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. Following receipt of the information, the Commission investigated Roots Dawn Park's alleged conduct and found the following:

3.3.1. Roots Dawn Park is a franchisee of Roots Group wholesale and retail stores which provide a wide range of products like meats, chicken, turkey, groceries, fast foods, fish and seafoods, bakery and more. It is located in Dawn Park, Gauteng.

3.3.2. Roots Dawn Park had market power in the abovementioned market for the supply of eggs. In particular, large eggs (60) and medium eggs (60).

3.3.3. Prior to March 2020, Roots Dawn Park sourced the large eggs (60) from A1 at a cost of between R55.00 and R62.50. From March to April 2020, Roots Dawn Park sourced the large eggs (60) at a cost of between R55.00 and R70.00.

3.3.4. In respect medium eggs (60), prior to March 2020, Roots Dawn Park sourced the medium eggs at a cost of between R40.00 and R50.00. From March to April 2020, Roots Dawn Park sourced the medium eggs (60) at a cost of between R47.50 and R67.50.

3.3.5. During January 2020, Roots Dawn Park sold the large eggs (60) for R79.99. Its mark-up was 24.98%. In respect of medium eggs there has been a lot fluctuation from high to low mark-up throughout the period from January to April 2020.

3.3.6. In February and most of March 2020, Roots Dawn Park run specials on large eggs (60) and medium eggs (60). When the specials ended, Roots



Dawn Park increased its mark-up from 24.98% (being the mark-up before the period of specials) 42.84% in April 2020 for large eggs (60). For medium eggs (60), Roots Dawn Park increased its mark-up from 26.29% to 33.31% in April 2020.

- 3.3.7. The Commission found that Roots Dawn Park's price increase of large eggs (60) and medium eggs (60) in April 2020 is in contravention of section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations.

4. AGREEMENT REGARDING FUTURE CONDUCT

Roots Dawn Park agrees to:

- 4.1. immediately desist from the excessive pricing conduct described above;
- 4.2. reduce its mark-up on large eggs (60) to 24.98% and on medium eggs to 26.26% with immediate effect for the duration of the state of the national disaster;
- 4.3. contribute a total amount of R12 000.00 (**Twelve Thousand Rands**) to the Solidarity Fund. This amount does not exceed the statutory limit of 10% of the Roots Dawn Park's annual turnover in the Republic for its preceding financial year as provided for in section 59(2) of the Act read with regulation 7.2.2 of the Consumer Protection Regulations;
- 4.4. Roots Dawn Park shall pay the abovementioned amount as a contribution to the Solidarity Fund within 7 calendar days from the date of confirmation of this consent agreement as an order of the Tribunal.

4.5. The contribution shall be paid into the Solidarity Fund's bank account, details of which are as follows:

Bank name: Standard Bank

Account holder: Solidarity Fund

Account number: 023 070 021

Branch Code: 051001

Swift Code: SBZAZAJJ

Reference: 2020Aprc0053 / ROOTS DAWN PARK

4.6. Roots Dawn Park further agrees to:

4.6.1. 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;

4.6.2. 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

4.6.3. to circulate a statement summarising the content of this Consent Agreement to all management and operational staff employed at Roots Dawn Park 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 Roots Dawn Park confirming compliance with this undertaking.



5. FULL AND FINAL SETTLEMENT

5.1. 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 Roots Dawn Park 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 Case No. 2020Aprc0053.

For Roots Dawn Park

Signed at Palmridge on this the 17 day of June 2020.



Mike Defreitas

Owner, Roots Dawn Park

For the Commission

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



Tembinkosi Bonakele

Commissioner