

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CO012Apr20

In the matter between:

Competition Commission

**Applicant**

And

Matus

**Respondent**

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Panel : Enver Daniels (Presiding Member)  
: Mondo Mazwai (Tribunal Panel Member)  
: Thando Vilakazi (Tribunal Panel Member)  
Heard on : 04 May 2020  
Decided on : 06 May 2020

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### Consent Agreement

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Matus annexed hereto.

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**Presiding Member**  
**Mr Enver Daniels**

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**06 May 2020**

**Date**

**Concurring: Ms Mondo Mazwai and Dr Thando Vilakazi**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO:  
CC CASE NO: 2020AprC0270

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

MATUS

Respondent

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CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND  
MATUS 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

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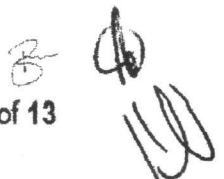
The Competition Commission and Matus hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 27(1)(d) read with section 49D of the Competition Act 89 of 1998, as amended ("**the Act**"), in respect of an alleged 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 No. 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 Matus;
- 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 "**Matus**" means the company conducting business under the trade name "Matus" with registration number 2007/014063/07 situated at 21-23 Andrea Rd, Reuven, Johannesburg, 2091;

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- 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 Co-operative Governance and Traditional Affairs ("**COGTA**") declared a state of national disaster in the Republic of South Africa (hereafter "**state of national disaster**") 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

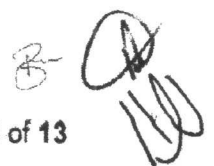
Government Gazette no. 43107, regarding the steps necessary to prevent an escalation of the disaster or to alleviate, contain and minimize the effects of the disaster. These regulations were made in terms of section 27(2) of the Disaster Management Act, 1957 (Act No. 57 of 2002) ("**Disaster Management 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 state of national 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.*

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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 On or about 30 March 2020 and 6 April 2020, the Commission obtained information in terms of section 49B(2)(a) of the Competition Act, against Matus in relation to the inflated prices of dust masks (FFP1 and FFP2 masks) that it was charging its customers in March 2020.
- 3.2 Dust 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(3) of the Act, market power can also be inferred from the economic behaviour of the firm. In this case, 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 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.
- 3.6 Following receipt of the information, the Commission conducted an investigation into Matus' alleged conduct and, *inter alia*, found the following:
- 3.6.1 Matus operates in the market for the provision of commercial products and has three main branches in Johannesburg, Cape Town and Durban and satellite branches in Port Elizabeth and Mbombela;
  - 3.6.2 Matus' main business is the distribution of power tools, welding equipment, automotive equipment, hand tools, electrical equipment and general hardware;
  - 3.6.3 Matus also distributes personal protection equipment such as dust masks (including FFP1 and FFP2 masks), overalls, boots, hardhats, hand sanitizers, fire protective gear, first aid kits, etc which it procures from local and overseas manufacturers (i.e. it does not manufacture anything itself);
  - 3.6.4 Matus' customers consist of distributors and retail hardware stores;
  - 3.6.5 Its sale representatives sell products throughout South Africa;
  - 3.6.6 In the context of paragraphs 3.3 and 3.4, Matus has market power in the market for the supply of masks during the national disaster, given the current pandemic and state of national disaster; and



3.6.7 During the period February to March 2020, Matus increased its gross profit margins for facial masks between █% and █% as illustrated in the table below:

| Description                               | March 2020<br>Gross<br>Profit % | Feb 2020<br>Gross<br>Profit % | GP Margin<br>Change |
|---|---------------------------------|-------------------------------|---------------------|
| MASK DUST MATSAFE PACK OF 5<br>FFP1 IND   | █%                              | █%                            | █%                  |
| MASK DUST MATSAFE PACK OF 20<br>FFP1 IND  | █%                              | █%                            | █%                  |
| MASK DUST MATSAFE PACK OF 20<br>FFP2 MINE | █%                              | █%                            | █%                  |
| MASK DUST MATSAFE PACK OF 10<br>FFP2 MINE | █%                              | █%                            | █%                  |
| MASK DUST MATSAFE PACK OF 5<br>FFP2 MINE  | █%                              | █%                            | █%                  |

3.7 The Commission found that Matus' increase in the gross profit margins of dust masks between █% and █% in March 2020 is a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations.

3.8 Matus is entering into this Consent Agreement in order to avoid protracted litigation and nothing in this consent agreement should be construed as an admission of liability for a contravention of the Consumer Protection Regulations or section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations.

#### 4 ADMISSION

Matus admits that it increased its gross profit margins for dust masks as set out in paragraph 3.6.7 above.

## 5 SETTLEMENT AMOUNT

- 5.1 Having regard to the provisions of section 49D of the Act, Matus shall pay a settlement amount to the Commission in the amount of R5 949 542 (five million nine hundred and forty-nine thousand five hundred and forty-two Rand).
- 5.2 Matus will pay the settlement amount over a period of 3 (three) years from the date on which this Consent Agreement is made an order of the Tribunal. Matus agrees to pay the above settlement amount in 3 (three) annual instalments of not less than R1 983 180 (one million nine hundred and eighty-three thousand one hundred and eighty Rand) each, the first payment being due in 2020 and the last payment being due in 2022. The first instalment shall be paid within a period of 90 (ninety) days from the date of confirmation of this Consent Agreement by the Tribunal, and thereafter on or within each successive anniversary of the date of confirmation of this Consent Agreement by the Tribunal, until the final payment in 2022.
- 5.3 No interest will be levied upon the settlement amount for the first 18 (eighteen) months from the date on which this Consent Agreement is made an order of the Tribunal and thereafter interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act No. 1 of 1999, as amended.

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At the time of signature of this Consent Agreement the applicable rate is 10.25%.

5.4 Matus shall remit payments of the settlement amount into the following bank account:

|                                |                               |
|--------------------------------|-------------------------------|
| <b>Name of account holder:</b> | <b>COMPETITION COMMISSION</b> |
| <b>Bank name:</b>              | <b>ABSA BUSINESS BANK</b>     |
| <b>Account number:</b>         | <b>4087641778</b>             |
| <b>Branch code:</b>            | <b>632005</b>                 |
| <b>Reference:</b>              | <b>Matus/2020AprC0270</b>     |

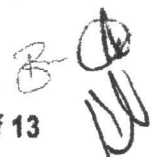
5.5 The Commission will pay the settlement amount into the National Revenue Fund in terms of section 59(4) of the Act.

## 6 AGREEMENT REGARDING FUTURE CONDUCT

6.1 Matus agrees to:

6.1.1 contribute an amount of R [REDACTED] ([REDACTED] [REDACTED] Rand) to the Solidarity Fund for Covid-19 within 5 (five) business days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

6.1.2 reduce its gross profit margin on FFP2 dust masks from [REDACTED]% to [REDACTED]% with immediate effect for the duration of the state of national disaster;



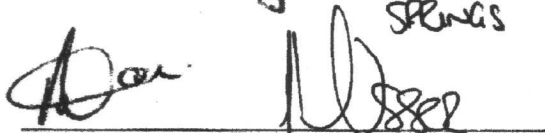
- 6.1.3 ensure that its gross profit margins for FFP1 and FFP2 dust masks will not exceed █ % for the duration of the state of national disaster;
- 6.1.4 ensure that its gross profit margins for its products which are regarded as essential products in terms of the Consumer Protection Regulations (as set out in **appendix A** hereto), will not, during the state of national disaster, be increased above that which was applicable on 16 February 2020, for as long as such products are regarded as essential products in terms of the Consumer Protection Regulations or any amendment or replacement thereof;
- 6.1.5 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;
- 6.1.6 to submit a copy of a compliance programme to the Commission within 60 business days of the date of confirmation of this Consent Agreement as an order by the Tribunal or such longer period as may be agreed with the Commission depending on the duration of any lockdown imposed in terms of the legislation and directions referred to in paragraphs 2.1 and 2.2 above; and
- 6.1.7 to circulate a statement summarising the content of this Consent Agreement to all management and operational staff employed at

Matus 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 CEO of Matus confirming compliance with this undertaking.

**7 FULL AND FINAL SETTLEMENT**

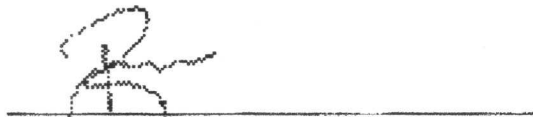
This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement of all complaints and investigations, and concludes all proceedings, between the Commission and Matus relating to any alleged contravention of the Consumer Protection Regulations and, in particular, section 8(1)(a) the Act read together with Regulation 4 of the Consumer Protection Regulations in connection with the sale of essential products set out in Appendix A, including without limitation those that is the subject of the Commission's investigation under Commission Case No. 2020AprC0270.

Signed at Meyerton Springs on this the 28 day of April 2020.



**Robin Coen and Hentie Visser**  
Matus

Signed at PRETORIA on this the 28<sup>TH</sup> day of April 2020.



**Tembinkosi Bonakele**

**The Commissioner, Competition Commission of South Africa**



## Appendix A

MASK MTS/EVR DUST P/PACK 10PC MINE FFP2  
MASK MTS/EVR DUST P/PACK 10PC IND FFP1  
MASK DUST MATSAFE PACK OF 5 FFP1 IND  
MASK DUST MATSAFE PACK OF 20 FFP1 IND  
MASK DUST MATSAFE PACK OF 20 FFP2 MINE  
MASK DUST MATSAFE PACK OF 10 FFP1 IND  
MASK DUST MATSAFE PACK OF 10 FFP2 MINE  
MASK DUST MATSAFE PACK OF 5 FFP2 MINE  
SPRAY KLEAN FLIGHT 100ML (24  
SPRAY KLEAN FLIGHT 500ML (20  
SPRAY KLEAN FLIGHT 2L (6)  
SPRAY KLEAN FLIGHT 5L (4)  
SPRAY KLEAN FLIGHT 20L (1)  
SPRAY KLEAN FLIGHT COMB 500ML & 2L  
SHIELD SAFECO FACE CLEAR 1MM LENS  
G FOX HAND SANITIZER 5L  
GLOVE MATSAFE VINYL DISPOSABLE(L)(100)  
GLOVE MATSAFE NITERILE XL PP 120

*B* *A*