



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CO062Jul20**

In the matter between:

The Competition Commission

**Applicant**

And

Steelmate (Pty) Ltd

**Respondent**

Panel : E Daniels (Presiding Member)  
: Y Carrim (Tribunal Member)  
: AW Wessels (Tribunal Member)

Heard on : 13 July 2020

Decided on : 13 July 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 Steelmate (Pty) Ltd annexed hereto.

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**Presiding Member  
Mr Enver Daniels**

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**13 July 2020  
Date**

**Concurring: Ms Yasmin Carrim and Mr Andreas Wessels**

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CT CASE NO:  
CC CASE NO: 2020APRC0380**

In the matter between:

**COMPETITION COMMISSION OF SOUTH AFRICA**

**Applicant**

And

**STEELMATE (PTY) LTD**

**Respondent**

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**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND  
STEELMATE (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**

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The Competition Commission and Steelmate (Pty) Ltd 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 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 Steelmate;

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

- 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 **“Steelmate”** means Steelmate Proprietary Limited, a company registered in accordance with the laws of South Africa with its business address situated 16 Top Rd, Boksburg North, Gauteng, 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 21 April 2020, the Commission received information in terms of section 49B(2)(a) of the Competition Act, against Steelmate in relation to " facial masks. According to the information received, 50 packets of



the 3-ply surgical facial masks cost R977,50 inclusive of VAT and the price of a single 3-ply surgical facial mask was R19,55 inclusive of VAT.

- 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 Steelmate, the Commission found the following:

3.6.1 Steelmate operates its business from 4 branches in Boksburg, Benoni, Kempton Park and Germiston;

3.6.2 Steelmate specialises in retail of building and industrial hardware such as steel tubing, welding equipment, safety gear and security features;

3.6.3 the relevant product for the purpose of this Consent Agreement is FFP1 dust masks;

3.6.4 according to information received during the Commission's investigation, Steelmate has been selling FFP1 dust masks since at least December 2019;

3.6.5 according to Steelmate, there was a high demand for FFP1 dust mask during March and April 2020 and most suppliers did not have stock, as a result Steelmate started buying and selling 3-ply surgical facial masks in April 2020 to complement its existing stock of FFP1 dust masks;



3.6.6 Steelmate sells FFP1 in different sizes - as a box of 20, as a box of 5, and as a box of 2;

3.6.7 the cash sales invoices of Steelmate revealed that some customers receive ■% discounts and pay the selling price less than ■%; and

3.6.8 the box of 20 FFP1 dust masks were sold at slightly higher volumes than the other sizes.

### **Market**

3.7 The Commission found that Steelmate:

3.7.1 is active in the market for the sale of FFP1 dust masks in the Boksburg area; and

3.7.2 has market power in the market for the sale of FFP1 dust masks given the current pandemic and national state of disaster.

### **Determination of excessive price**

3.8 Table 1 depicts Steelmate's gross profit margins since March 2020 for FFP1 dust masks (in different sizes - as a box of 20; as a box of 5; and as a box of 2) sold in excess of a 20% gross profit margin. The results are as follows:



- 3.8.1 for the box of 20 FFP1 dust masks, the gross profit margin for April 2020 was 43% and for May 2020 was 43%;
- 3.8.2 for the box of 5 FFP1 dust masks, the gross profit margin for March 2020 was 43%; and
- 3.8.3 for the box of 2 FFP1 dust masks, the gross profit margin for March 2020 was 42%.

**Table 1**

| 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 @ 20% - margin (Rand) | Excess Profits (Rand) |
|--------------|-------------|---|--|---------------|--------------|---------|---------------------------------------|------------------------------------|-----------------------|
| Apr-20       | Box of 20   | R360                                    | R632                                   | 9             | 43%          | 76%     | R2 450                                | R810                               | R1 640                |
| May-20       | Box of 20   | R360                                    | R629                                   | 20            | 43%          | 75%     | R5 380                                | R1 800                             | R3 580                |
| Mar-20       | Box of 5    | R32                                     | R55                                    | 16            | 43%          | 75%     | R379                                  | R127                               | R252                  |
| Mar-20       | Box of 2    | R13                                     | R23                                    | 23            | 42%          | 74%     | R227                                  | R77                                | R150                  |
| <b>Total</b> |             |   |  |               |              |         |                                       |                                    | <b>R5 622</b>         |

- 3.9 The Commission compared the above gross profit margins with the benchmark margin of 20%. The benchmark is based on information obtained during the Commission's investigations of similar matters.
- 3.10 During March 2020, April 2020 and May 2020, the gross profit margin of Steelmate was in excess of 20% gross profit margin.
- 3.11 The quantum of the overcharge amounted to an excess profit of R5622,00 as reflected in the Table 1 above.
- 3.12 The Commission found that Steelmate's average gross profit margin of above 20% during March 2020, April 2020 and May 2020 in respect of FFP1 dust masks sold by Steelmate is a contravention of section 8(1)(a)

of the Act read together with Regulation 4 of the Consumer Protection Regulations.

- 3.13 Steelmate does not admit 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. However, after engaging with the Commission, Steelmate agrees to resolve the complaint on the terms set out below.

#### 4 CONTRIBUTION TO THE SOLIDARITY FUND

- 4.1 Steelmate undertakes to pay a contribution in the amount of R5 622 to the Solidarity Fund.
- 4.2 Steelmate 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: SBZAJJ

PAYMENT REF: Competition Commission 2020APRC0380/Steelmate

## 5 AGREEMENT REGARDING FUTURE CONDUCT

Steelmate agrees to:

- 5.1 immediately desist from the excessive pricing conduct described above;
- 5.2 reduce its gross profit margin on facial 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 Steelmate 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 Steelmate testifying that the abovementioned undertakings, including the contribution to the Solidarity Fund in paragraph 5 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 Steelmate 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. 2020APRC0380.

Signed at BOKSBURG on this the 6<sup>th</sup> day of July 2020.



**Werner Pieter Van Der Westhuizen**

**Director and duly authorised to sign on behalf of Steelmate (Pty) Ltd**



Signed at PRETORIA on this the 8<sup>th</sup> day of July 2020.



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**Tembinkosi Bonakele**

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