



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: COVCO037Jul21**

In the matter between:

The Competition Commission

**Applicant**

And

Fruit Stop CC

**Respondent**

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Panel : E Daniels (Presiding Member)  
: Y Carrim (Tribunal Member)  
: A Ndoni (Tribunal Member)

Heard on : 13 July 2021

Last submission received  
on : 15 July 2021

Decided on : 16 July 2021

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**CONSENT AGREEMENT**

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The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Fruit Stop CC annexed hereto.

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**Presiding Member  
Mr Enver Daniels**

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**16 July 2021  
Date**

**Concurring: Ms Yasmin Carrim and Ms Andiswa Ndoni**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

**RECEIVED**

By Themba Chauke at 2:53 pm, Jul 07, 2021

CT CASE NO:

CC CASE NO: 2020Jul0074

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

FRUIT STOP CC


Respondent

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**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND  
FRUIT STOP CC 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 Fruit Stop CC hereby agree that an 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*

  
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*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 Fruit Stop CC;
- 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 **“Fruit Stop”** means Fruit Stop CC, a close corporation registered in accordance with the laws of South Africa, with its registered place of business at 899 Pierneef Street, Villeiria, Pretoria, Gauteng, 0186.

  
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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.

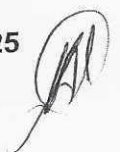
## 2 BACKGROUND AND CONTEXT

- 2.1 On 15 March 2020, 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



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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 increases in net margin or mark-up on that good or service above the average margin or mark-up for that*



  
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*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. The lockdown has subsequently been extended.


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.

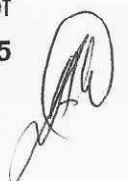
### 3 THE COMMISSION'S INVESTIGATIONS AND FINDINGS

#### Investigation:

3.1 The Commission received information in terms of section 49B(2)(a) of the Competition Act, against Fruit Stop in relation to the inflated prices of raw ginger that it was charging its customers between April 2020 and June 2020.

3.2 In terms of Section 7(c) 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

  
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constraints such that there is an ability to control prices and/or behave independently of competitors and customers.

3.3 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.

3.4 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.

#### **Findings:**

3.5 Following receipt of the information, the Commission conducted an investigation into Fruit Stop's alleged conduct and found the following:

3.5.1 Fruit Stop is a family owned grocery store which sells largely fruits and vegetables, as well as a broad range of groceries, meats, deli, cheese, milk, spices and pet foods;

  
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3.5.2 Fruit Stop has three branches, in Gezina, Silverton and Wonderboom. The store which is the subject of this consent agreement is the Wonderboom store;

3.5.3 Fruit Stop has market power in the abovementioned market, given the current pandemic and state of national disaster;


3.5.4 Fruit Stop's average gross profit margins in respect of raw ginger since April 2020 to June 2020 has been consistently over 30%, averaging at 45%, which is a 23% increase from the average profit margins of 22% earned from December 2019 to February 2020.

#### **Determination of excessive pricing**

3.6 The sales invoices submitted to the Commission by Fruit Stop revealed the following:

3.6.1 Fruit Stop earned profit margins ranging from 18% to 28% from December 2019 to February 2020. However, between April 2020 to June 2020 Fruit Stop earned profit margins ranging from 36% to 52%.

3.6.2 Table 1 below shows the mark-ups added and profit margins earned by the Respondent from the sale of raw ginger from December 2019 till June 2020. The table depicts that from December 2019 till February 2020, the firm earned profit margins of no more than 28%

  
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**Table 1: sales of raw ginger Dec 19 – July 20**

Period	Units (Kg)	%Mark-up	%Margin
19-Dec	155	38%	28%
20-Jan	60	22%	18%
20-Feb	75	28%	22%
<b>Average</b>	<b>97</b>	<b>29%</b>	<b>22%</b>
20-Mar	280	34%	26%
20-Apr	290	55%	36%
20-May	140	88%	47%
20-Jun	160	108%	52%
<b>Average</b>	<b>197</b>	<b>84%</b>	<b>45%</b>

Source: Commission's own compilation

3.6.3 The investigation revealed that Fruit Stop made excess profits of R23 110.00 during April 2020 and June 2020;

3.6.4 The Commission has found that Fruit Stop's conduct of overcharging for raw ginger may constitute a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the *Consumer Protection Regulations*;

  
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3.6.5 Fruit Stop disputes that it has charged excessive prices on raw ginger however it is willing to resolve the matter by concluding a settlement agreement.

#### 4. DONATION TO A CHARITY ORGANISATION

4.1. Fruit Stop undertakes to make a donation of essential goods (Fruit, vegetables and groceries), to the value of R23 110.00 (twenty-three thousand one hundred and ten rands) to Amadea Safe House, a community-based organisation, located in 153 Daan De Wet Nel Dr, Hestia Park, Pretoria, 0182;

4.2. The donation of the essential goods will be made over a period of three months, being, April 2021, May 2021 and June 2021. Each donation of the essential goods will be valued at R7 700 each.



\* Donations will be made July 2021, August 2021 and September 2021

4.3. The donation of the essential goods will be valued at cost, Fruit Stop will therefore not add a profit margin in respect of the essential goods to be donated;

4.4. Fruit Stop will make the donation within 7 (seven) calendar days from the date of confirmation of this consent agreement as an order of the Tribunal.

#### 5. AGREEMENT REGARDING FUTURE CONDUCT

Fruit Stop agrees to:


5.1. immediately desist from the pricing conduct described above;

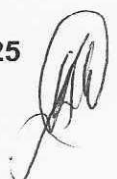
  
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- 5.2. reduce the gross profit margin charged in respect of raw garlic to 22% or less from the date of confirmation of this agreement as an order by the Tribunal for the duration of the national state of disaster;
- 5.3. submit proof of the value of the donated goods and an affidavit under oath by the owner of Fruit Stop testifying that the abovementioned donation has been made to the within 7 calendar days of such contribution;
- 5.4. 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;
- 5.5. 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
- 5.6. to circulate a statement summarising the content of this Consent Agreement to all management and operational staff employed at Fruit Stop 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 Fruit Stop confirming compliance with this undertaking.

  
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## 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 Fruit Stop 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. **2020Jul0074**.

Signed at Pretoria on this the 01 day of ~~June~~ <sup>July</sup> 2021.



**Mr Joao Antonio**

**Director and duly authorised to sign on behalf of Fruit Stop CC.**

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of June 2021.



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Bonakele,

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**Tembinkosi Bonakele**

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





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

CT CASE NO. COVCO037Jul21

CC CASE NO. 2020JUL0074

In the matter between:

**COMPETITION COMMISSION**

**APPLICANT**

and

**FRUIT STOP CC**

**RESPONDENT**

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**ADDENDUM TO CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND FRUIT STOP CC 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 purpose of this addendum is to make one correction to Consent Agreement concluded between the Competition Commission and Fruit Stop CC namely that:

1. At para 5.2 where reference is made to "raw garlic" that this be deleted and, in its stead, replaced with the phrase "raw ginger".


Signed at Pretoria on this 15 day of **July 2021**



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**Mr Joao Antonio (Director and duly authorised to sign on behalf of Fruit Stop CC)**

\_\_\_\_ day of **July 2021**

  
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**Tembinkosi Bonakele (The Commissioner, Competition Commission of South Africa)**