

PRESS STATEMENT

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Competition Commission settles with Dismed and Thusanong

The Competition Commission has reached a settlement agreement with Dismed Criticare (PTY) LTD and Thusanong Healthcare (PTY) LTD, the remaining parties in the pharmaceutical cartel.

The settlement agreements follow after the Competition Commission referred complaints of anti-competitive conduct in the pharmaceutical industry to the Competition Tribunal on 11 February 2008, soon after Fresenius Kabi South Africa (Pty) Ltd (FKSA) had admitted its involvement in the cartel. Subsequent to the referral, Tiger Brands Limited, the parent company of Adcock Ingram Critical Care (Pty) Ltd ("AICC"), admitted AICC's involvement in the cartel and entered into a settlement agreement with the Competition Commission in terms of which AICC paid a penalty of 8% of its annual turnover.

Dismed and Thusanong conducted their own investigation of the allegations and both parties found that they had contravened section 4 (1) (b) (iii) of the Competition Act, through collusive tendering of contracts. As a consequence both parties have decided to settle with the Competition Commission.

Dismed has agreed to develop and implement a compliance programme with corporate governance designed to ensure that all employees within Dismed do not engage in any contravention of the Competition Act. Thusanong is no longer operational; hence there is no provision for it to implement a compliance programme.

Dismed is liable for an administrative penalty of 6% of its annual turnover from all operations for the financial year ending in 2007, while Thusanong is liable for 5% of its annual turnover for the same period, in terms of section 58(1)(a)(iii), 59(2) and (3) of the Competition Act.

Background

The Commission received information regarding collusive tendering and the division of the private hospital market by AICC, FKSA, Dismed and Thusanong in the South African healthcare market.

The Commission initiated an investigation and thereafter FKSA confessed its involvement in collusive tendering and market allocation; and sought indemnity from prosecution in terms of the Commission's Corporate Leniency Policy.

FKSA subsequently provided the Commission with detailed information about its role and the role of AICC, Thusanong and Dismed in the collusive tendering and market allocation and was granted conditional leniency after agreeing to assist the Commission in its investigations and in proceedings before the Tribunal.

The investigation established that at various stages during the period 1993 to 2007, AICC, FKSA, Dismed and Thusanong were involved in collusive tendering, holding discussions and meetings where they collaborated on their respective responses to the invitation to tender for Contract RT 299 and discussed and agreed on prices prior to the submission of their respective tenders. Furthermore, the parties agreed that whenever tenders were not awarded as agreed or arranged between them, the winning firms would cede portions of their business (i.e. the business which formed part of Contract RT 299) to one or other of the losing firm(s) in certain proportions.

The investigation also established that during the period 2001 to 2002 AICC and FKSA had divided the private hospital market by allocating customers and specific types of goods or services among themselves.

Tiger Brands Limited, the parent company of AICC, subsequently approached the Commission with a view to settling the matter. This led to the consent agreement in terms of section 49D of the Competition Act.

AICC admitted that it has contravened sections 4(1)(b)(ii) and (iii) of the Competition Act in that:

- AICC and its competitors were involved in collusive tendering in respect of Contract RT 299, the state tender for intravenous medical products; and
- AICC and Fresenius Kabi South Africa (Pty) Ltd (FKSA) divided the private hospital market by allocating customers and specific types of goods or services among themselves.

ENDS

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