



competition commission
south africa

PRESS RELEASE

IMMEDIATE RELEASE

DATE 18 NOVEMBER 2020

COMPETITION APPEAL COURT CONFIRMS FACE MASKS SUPPLIER GUILTY OF EXCESSIVE PRICING

The Competition Commission welcomes the decision by the Competition Appeal Court (CAC) which dismissed the appeal of Babelegi Workwear and Industrial Supplies CC (Babelegi) against the Competition Tribunal's finding that it was guilty of excessive pricing, in contravention of section 8(1)(a) of the Competition Act.

This follows a decision by the Competition Tribunal on 1 June 2020 which found that Babelegi had contravened section 8(1)(a) of the Competition Act. The Tribunal found that Babelegi's prices were of an exploitative nature: "Babelegi knew full well that there was a significant increase in demand for masks ... and took advantage of customers and consumers amid the international Covid-19 health crisis. This leads us to conclude that Babelegi's prices charged during the Complaint Period were to the detriment of consumers and customers," said the Tribunal.

Babelegi appealed to the CAC, against the Tribunal's decision, calling for this to be set aside.

In its judgment handed down today, the CAC dismissed Babelegi's appeal. The CAC found that "The evidence on record revealed that throughout the complaint period appellant acted as if it was a monopolist, extracting the maximum price that it possibly was able to obtain from those who purchased a product which was necessary to assist in slowing the spread of the virus."

The CAC stated that: "... no evidence was produced to show that costs were expected to rise by an amount which was anywhere close to the 888% increase extracted during the complaint period."

The CAC found that Babelegi's explanation proffered for the increases effected were "manifestly inadequate" to rebut the Commission's prima facie case of excessive pricing.

The CAC held that Babelegi's "excessive prices were charged at a time of crisis, when the employment of a mask by every person in the country was seen as being essential to the protection of the health, safety and welfare of others and therefore critical to the reduction of the danger posed by Covid 19. The high prices of such a necessity unquestionably acted to the detriment of consumers in the country."

While noting the obvious precedential value and importance of the case, in determining an appropriate penalty, the CAC had regard to Babelegi's size, the very few masks sold at an excessive price, and the harm Babelegi had suffered as a result of its own excessive pricing conduct, and determined that no administrative penalty should be imposed.

The Commission also wishes to acknowledge the Human Rights Commission, and the Health Justice Initiative and Open Secrets NPC, the latter being non-profit organisations which focus on health care, all of which were admitted as friends of the Court in this matter.

Competition Commissioner Tembinkosi Bonakele said: "This judgment by the CAC vindicates the Commission's proactive stance on investigating and prosecuting excessive prices during the advent of Covid-19 pandemic. I'm also very happy that this really places the Commission and the Competition Authorities of South Africa as pioneers in enforcement and protection of consumers during a national disaster, and I'm sure that this is a precedent that will probably last for a very long time, indeed forever. Well done to the team and we are glad that this brings all the matters of law about whether we can prosecute such types of cases. It brings all of that uncertainty to the end."

[ENDS]

Issued by:

Siyabulela Makunga, Head of Communication/Spokesperson

On behalf of: The Competition Commission of South Africa

Tel: 012 394 3493 / 072 768 0238 / 067 421 9883

Email: SiyabulelaM@compcom.co.za

Find us on the following social media platforms:

Twitter: @CompComSA

Instagram: Competition Commission SA

Facebook, LinkedIn and YouTube: The Competition Commission South Africa

BACKGROUND

On 15 April 2020 the Commission referred Babelegi to the Competition Tribunal (Tribunal) on charges of inflating prices of facial masks following the advent of the COVID-19 national disaster. This was the first case referred for prosecution following a complaint laid on 24 March 2020 and the matter was heard a month later on 24 April 2020. This was also the first case heard by the Tribunal subsequent to the introduction of amendments to section 8(1)(a) by the Competition Amendment Act of 2019.

The Commission received over 1500 complaints from consumers and customers about prices of certain essential goods and other basic food items that suddenly sky-rocketed since the declaration of the disaster in mid-March.

The Commission investigated the complaint expeditiously and found that during the period 31 January 2020 to 5 March 2020 Babelegi had increased its prices of facial masks from R41 per box up to the highest price of R500 per box, earning during this period mark-ups in excess of 500%.

The Commission further found that Babelegi's prices for facial masks increased by at least 888% when comparing the prices charged on 9 December 2019 to the prices charged on 5 March 2020.

On 1 June 2020 the Tribunal held that Babelegi had contravened section 8(1)(a) of the Competition Act. It found that Babelegi's prices were of an exploitative nature: "Babelegi knew full well that there was a significant increase in demand for masks ... and took advantage of customers and consumers amid the international Covid-19 health crisis. This leads us to conclude that Babelegi's prices charged during the Complaint Period were to the detriment of consumers and customers" said the Tribunal.

Babalegi appealed to the CAC, against the Tribunal's decision, calling for this to be set aside.