



competition commission
south africa

Media Release

For Immediate Release

29 April 2022

SAPS FACE MASKS SUPPLIER, TSUTSUMANI FINED R3.4 MILLION FOR PRICE GOUGING

The Competition Commission welcomes the decision by the Competition Tribunal (Tribunal), handed down on Thursday 28 April 2022, in which it found the South African Police Services (“SAPS”) supplier, Tsutsumani Business Enterprises (“Tsutsumani”) guilty of excessive pricing or price gouging, in contravention of section 8(1)(a) of the Competition Act, read with Regulation 4 of the Consumer Protection Regulations. This is the first excessive pricing case prosecuted by the Commission and determined by the Tribunal in the context of a public procurement process during the pandemic.

Tsutsumani is a general trader registered on the National Treasury’s Central Supplier Database and supplies a range of products through tenders issued by government departments and municipalities.

The matter emanates from a complaint lodged with the Commission by the SAPS on 05 May 2020 relating to price-gouging in the supply of face masks required by the SAPS during the period of the hard lockdown. The Tribunal found that during the hard lockdown, SAPS was in desperate need of face masks for its 197 000 members who were in the frontlines of efforts aimed at containing the escalation of the pandemic and as a result, SAPS required nine million masks per month to protect its members from contracting the corona virus. At the time, there was an unprecedented surge in the demand for surgical face masks and SAPS had to secure supply of face masks on an emergency basis.

The Tribunal essentially found that Tsutsumani exploited the crisis presented by the pandemic, and in response to a request for a quotation sought on an emergency basis, charged the SAPS R16 250 000 (sixteen million two hundred and fifty thousand rand) for the bulk supply of 500 000 surgical face masks during the hard lockdown in April 2020.

The Tribunal found that Tsutsumani charged the SAPS an excessive price of R32.50 (inclusive of VAT) per mask. In its papers before the Tribunal, the Commission alleged that Tsutsumani procured the masks from its suppliers at an average of cost of R17.35 per mask. This means that Tsutsumani earned a total of 87% mark-up and 46% gross margin per mask. The Commission estimated that the excessive profits earned by Tsutsumani amounted to R5, 3 million rand.

The Tribunal fined Tsutsumani the maximum administrative penalty of 10% of its relevant turnover in the sum of **R3 441 689.10 (three million four hundred and forty-one thousand six hundred and eighty-nine rand and ten cents)**. Fines imposed by the Tribunal are based on turnover of firms, and thus the size of the penalty is determined by the turnover of firms.

“This is one of the landmark price-gouging cases that the Commission has successfully prosecuted since the advent of the COVID-19 pandemic. These prosecutions have uncovered how both state organs and vulnerable consumers and customers were exploited during the lock-down occasioned by state of national disaster. The maximum fined imposed by the Tribunal on Tsutsumani sends a clear message that price-gouging in public procurement to exploit a crisis or emergency situation is viewed in a serious light by competition authorities,” says Competition Commissioner Tembinkosi Bonakele.

[ENDS]

Issued by:

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