



competition commission
south africa

Media Statement

For Immediate Release

01 December 2022

20 YEARS SINCE THE GROUNDBREAKING “HAZEL TAU” CASE FOR FAIR PRICING OF HIV/AIDS DRUGS

The Competition Commission (Commission) and Health Justice Initiative (HJI) today jointly hosted a seminar to commemorate 20 years since the ground-breaking case for fair pricing of HIV/AIDS drugs, now known as the Hazel Tau case.

The seminar coincided with World AIDS Day which is commemorated worldwide to show support for people living with HIV and to remember those who have died from AIDS-related illnesses.

Speakers, including Competition Commissioner Doris Tshepe, Tau, lawyers, academics, and medical professionals, delved into lessons civil society, academics, and the Commission learnt in taking on global pharmaceutical giants to arrive at a successful outcome, not only for South Africa but also for all of sub-Saharan Africa. They also discussed why the Hazel Tau case remains relevant today and what measures can be undertaken to accelerate broader access to medicines at fair prices, in a timely manner, to give effect to the Constitution in SA.

“The case is an important reminder that we can achieve an enormous amount through competition law in shaping the economy..... [The case] raised important issues of Constitutional rights of health care within the ambit of competition law. Competition law is one of the measures available to progressively realise the right to health care for all and it needs to be actively used. Otherwise, we would not be meeting our Constitutional mandate as an entity,” said Commissioner Tshepe during her opening remarks.

HJI’s Fatima Hassan, a former attorney in the Hazel Tau case, centered her discussion on the “Price of Life” and detailed why the case was brought by the complainants and what it took to settle it. Professor Brook Baker from the Northeastern University School of Law joined the seminar from Boston, Massachusetts and reflected on how the case impacted South Africa’s subsequent inclusion in voluntary licence agreements and related effects on medicine pricing. Dr. Vitor Ido, Programme Officer: Health, Intellectual Property and Biodiversity Programme South Centre, shared details on how the case had influenced competition law and intellectual property law beyond SA’s borders.

In highlighting the gains since the case, Tau said she will forever be grateful for the lives saved by making ARVs accessible to all those infected with HIV, but that more work needed to be done to achieve the same for the treatment of other chronic diseases. “You look at people who are infected with HIV getting another chronic disease like cancer. In developing countries, they've got cheaper [cancer] drugs, but here [in SA] we still have to fight for us to get the treatment back to people. It's one of the challenges we need to look at,” said Tau.

In 2002, Tau, the Treatment Action Campaign and other complainants represented by the AIDS Law Project brought a complaint to the Competition Commission alleging that first-line antiretrovirals (ARVs) used to treat HIV/AIDS were excessively priced. At the time, these drugs were only available to the private sector and were largely unaffordable. As an example, at the time, the South African price for ARV drug AZT was 665% higher than the best-priced generic for AZT available elsewhere in the world. Following an investigation, the complainants and the Competition Commission concluded settlement agreements with the two multi-national pharmaceutical companies, GlaxoSmithKline SA (Pty) Ltd and Boehringer Ingelheim (Pty) Ltd, which in turn granted the market immediate access to generics and led to a major decrease in the prices charged for first-line ARVs in sub-Saharan Africa.

Twenty years on, the issues between competition law and the exercise of intellectual property rights by pharmaceutical companies, in a Constitutional democracy, persist. These issues were heightened by the global battle for equitable access to Covid-19 vaccines during the pandemic.

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