



competitiontribunal
SOUTH AFRICA

TRIBUNAL DIRECTIVE FOR COVID-19 EXCESSIVE PRICING COMPLAINT REFERRALS – ISSUED ON 6 APRIL 2020

On 19 March 2020, the Minister responsible for Trade, Industry and Competition, Minister Patel issued Regulations prohibiting a dominant firm from charging an excessive price for specified goods and services necessary to prevent, contain and minimise the spread of the Corona Virus 2019; declared by the President a national disaster.

On Friday 3 April 2020, the Minister issued regulations, published in Government Gazette No. 43205, hereafter referred to as the COVID-19 Excessive Pricing Regulations, which contain rules governing the filing of Complaint Referrals with the Tribunal for alleged contraventions of section 8(1)(a) of the Competition Act, 98 of 1999 as amended, read with Regulation 4 of the Consumer Protection Regulations.

In terms of the COVID-19 Excessive Pricing Regulations, Complaint Referrals may be brought to the Tribunal on an urgent basis. The Tribunal has made provision for the Complaint Referrals to be heard remotely in light of the national lockdown. We have also made provision to hear the referrals on an expedited basis.

In my capacity as the Chairperson of the Tribunal I hereby issue the following Directive as a guideline for dealing with the urgent Complaint Referrals:

Filing of Urgent Complaint Referrals

1. A complainant bringing a Complaint Referral (the Applicant) must do so by Notice of Motion as set out in the Rules. For the avoidance of doubt, a complainant is defined as set out in the COVID-19 Excessive Pricing Regulations and includes the Competition Commission; or a complainant

- who filed the complaint with the Commission, which the Commission has decided not to refer to the Tribunal itself.
2. The Notice of Motion must be served on a Respondent(s) and filed with the Tribunal with proof of service on the Respondent(s) on the same day.
 3. The Respondent must serve its Answering Affidavit within 72 hours of receipt of the Complaint Referral, and file it with the Tribunal on the same day.
 4. The Applicant may, if it wishes, serve its Replying Affidavit on the respondent within 24 hours of receipt of the Answering Affidavit, and file it with the Tribunal with proof of service on the Applicant(s) on the same day.
 5. The Tribunal will set the matter down for hearing within 48 hours of the close of pleadings.
 6. The Applicant and Respondent(s) must file a joint statement with the Tribunal within 24 hours of the close of pleadings indicating the facts and issues which are agreed between them and those which are in dispute.
 7. The Commission is requested, to the extent possible, to consolidate Complaint Referrals on the basis *inter alia* of the same products or services; same respondents; retailers; wholesalers; or any other suitable basis.
 8. All documents must be filed electronically with the Registrar of the Tribunal.

Hearings

9. Applications for **Consent Orders** between the Commission and a Respondent in terms of section 49(D) of the Act will be granted in chambers. The parties will not be required to attend the hearing during the lockdown period. The Tribunal will strive to issue an order within 24 hours of hearing the Application for the Consent Order.
10. **Unopposed Applications** where the Respondent(s) has not filed an Answering Affidavit will be decided on the papers and in chambers. The Tribunal may, if required, request additional information from the Applicant to be submitted electronically. The Applicant will not be required to be

present for the hearing during the lockdown period. The Tribunal will strive to issue an order within 24 hours of hearing the Application.

11. Opposed Applications where there is no dispute of facts (**Non-Complex Applications**) as indicated in the joint statement of issues by the parties will be heard in chambers by the Tribunal. The Tribunal may, if required, request additional information from the parties to be submitted electronically. Parties *may* be required to be present for a hearing which may be conducted via audio or video conference. The Tribunal will strive to issue an order within 24 hours of hearing the Application.

12. In Opposed Applications where there is a substantial dispute of facts (**Complex Applications**) which cannot be resolved on the papers, the Tribunal will require parties to participate in a hearing which will be conducted via audio or video conference. Parties will be notified of the Tribunal's decision as soon as possible thereafter.

Extended Time Periods


13. The Chairperson, may direct, as provided for in Rule 5.14 of the attached COVID-19 Excessive Pricing Regulations, that the time periods contained in this Directive be extended as necessary on a case by case basis. In such event, a pre-hearing to regulate the conduct of proceedings may be convened on audio or video conference.

Registry

14. Filing must be made electronically via email to ctsa@comptrib.co.za, registry@comptrib.co.za.

15. Mimecast, Dropbox or WeTransfer may be used for large size files.

16. In case of emergency, the Registrar may be contacted on TebogoM@comptrib.co.za or on mobile number 074 766 4965.



Ms Mondo Mazwai
Tribunal Chair
Date: 6 April 2020