COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

In the matter between:

The Competition Commission  
Applicant

And

Steelmate (Pty) Ltd  
Respondent

Panel:  
E Daniels (Presiding Member)  
Y Carrim (Tribunal Member)  
AW Wessels (Tribunal Member)

Heard on:  
13 July 2020

Decided on:  
13 July 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Steelmate (Pty) Ltd annexed hereto.

Signed by: Enver Daniels
Signed at: 2020-07-13 11:15:52 +02:00
Reason: I approve this document

Enver Daniels  
13 July 2020

Presiding Member  
Mr Enver Daniels

Concurring: Ms Yasmin Carrim and Mr Andreas Wessels
IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO:
CC CASE NO: 2020APRC0380

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

STEELMATE (PTY) LTD

Respondent


The Competition Commission and Steelmate (Pty) Ltd hereby agree that application of section 8(1)(a) of the Competition Act 89 of 1998, as amended, in respect of a non-execution of section 8(1)(a) of the Act and
together with Regulation 4 of the Consumer And Customer Protection And National Disaster Management Regulations And Directions published in Government Gazette No 43116 on 19 March 2020, as well as the Regulations on Competition Tribunal Rules for Covid-19 Excessive Pricing Complaint Referrals published in Government Gazette No 43205 on 3 April 2020 and the Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals on the terms set out below:

1 DEFINITIONS

The following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings in this Consent Agreement:

1.1 “Act” means the Competition Act 59 of 1998, as amended;

1.2 “Director-General” means the Director-General of the Competition Commission, appointed under section 18 of the Act;

1.3 “Consent Agreement” means the agreement or any agreement and consent order under the Act.
1.5 "Consumer Protection Regulations" means the Consumer and Customer Protection and National Disaster Management Regulations and Directions published in Government Gazette No 43116 on 19 March 2020;

1.6 "Steelmate" means Steelmate Proprietary Limited, a company registered in accordance with the laws of South Africa with its business address situated 16 Top Rd, Boksburg North, Gauteng, South Africa;

1.7 "Tribunal" means the Competition Tribunal of South Africa, a statutory body, established in terms of section 26 of the Act, with its principal place of business at Building C, Mulayo Building, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
2 BACKGROUND AND CONTEXT

2.1 On 15 March 2020, given the magnitude and severity of the COVID-19 outbreak which had been declared a global pandemic by the World Health Organisation ("WHO") and classified as a national disaster by the Head of the National Disaster Management Centre, the Minister of Cooperative Governance and Traditional Affairs ("COGTA") declared a National State of Disaster in the Republic of South Africa which declaration was published in Government Notice No. 313 of Government Gazette No. 430096.

2.2 On 18 March 2020 the Minister of COGTA issued regulations ("Disaster Management Regulations") published in Government Notice No. 318
escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster and to protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster.

2.4 In relation to excessive pricing, the Consumer Protection Regulations states the following:

"4. Excessive Pricing.

4.1. In terms of section 8(1) of the Competition Act a dominant firm may not charge an excessive price to the detriment of consumers or customers.

4.2. In terms of section 8(3)(f) of the Competition Act during any period of the national disaster, a material price increase of a good or service contemplated in Annexure A which does not correspond to the cost put equivalent to the increase in the cost of providing that good or service or results in a net margin of marking up the good or service whereby the markup margin or markup for the good or service in the latter period prior to 1 March 2020, is deemed to be excessive or unfair and included all the facts that the price is excessive or unfair."
2.5 Annexures A and B list the goods and services that fall to be regulated by the Consumer Protection Regulations. Annexure A lists the goods and services that fall to be regulated by Regulation 4 of the Consumer Protection Regulations.

2.6 On 23 March 2020, the President of the Republic of South Africa announced the enforcement of a nationwide lockdown for 21 days with effect from midnight on Thursday, 26 March 2020.

2.7 On 3 April 2020, the Tribunal Rules for Covid-19 Excessive Pricing Complaint Referrals were published and thereafter, on 6 April 2020, the Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals was issued.
the 3-ply surgical facial masks cost R977.50 inclusive of VAT and the price of a single 3-ply surgical facial mask was R19.55 inclusive of VAT.

3.2 Facial masks fall under the category of “medical and hygiene supplies” in Annexure A, as well as item 1.3 of Annexure B, of the Consumer Protection Regulations. Regulation 4 of the Consumer Protection Regulations is therefore applicable to the conduct described in this Consent Agreement.

3.3 In terms of Section 7(c) of the Act, market power can be inferred from the economic behaviour of the firm. In this case, the mere ability to earn significantly higher gross profit margins is indicative of market power as it demonstrates a lack of constraints such that there is an ability to control
profit margin is detectable if the ordinary prices are increased materially absent cost increases.

Findings

3.6 Upon receipt of the information requested from Steelmate, the Commission found the following:

3.6.1 Steelmate operates its business from 4 branches in Boksburg, Benoni, Kempton Park and Germiston;

3.6.2 Steelmate specialises in retail of building and industrial hardware such as steel tubing, welding equipment, safety gear and security features;
3.6.6 Steelmate sells FFP1 in different sizes - as a box of 20, as a box of 5, and as a box of 2;

3.6.7 the cash sales invoices of Steelmate revealed that some customers receive ___% discounts and pay the selling price less than ___%; and

3.6.8 the box of 20 FFP1 dust masks were sold at slightly higher volumes than the other sizes.

Market

3.7 The Commission found that Steelmate:

3.7.1 is active in the market for the sale of FFP1 dust masks in the Boksburg area; and

3.7.2 has market power in the market for the sale of FFP1 dust masks given the current pandemic and national state of disaster.

 Determination of excessive price

3.8 Table 1 depicts Steelmate's gross profit margins since March 2020 for FFP1 dust masks (in different sizes - as a box of 20; as a box of 5; and as a box of 2) sold in excess of a 20% gross profit margin. The results are as follows:
3.8.1 for the box of 20 FFP1 dust masks, the gross profit margin for April 2020 was 43% and for May 2020 was 43%;

3.8.2 for the box of 5 FFP1 dust masks, the gross profit margin for March 2020 was 43%; and

3.8.3 for the box of 2 FFP1 dust masks, the gross profit margin for March 2020 was 42%.

**Table 1**

<table>
<thead>
<tr>
<th>Month</th>
<th>Description</th>
<th>Average Purchase Price excl. VAT (Rand)</th>
<th>Average Selling Price excl. VAT (Rand)</th>
<th>Quantity Sold</th>
<th>Gross Profit</th>
<th>Mark-up</th>
<th>Gross Profit @ Excessive Price (Rand)</th>
<th>Gross Profit @ 20% - margin (Rand)</th>
<th>Excess Profits (Rand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr-20</td>
<td>Box of 20</td>
<td>R360</td>
<td>R632</td>
<td>9</td>
<td>43%</td>
<td>76%</td>
<td>R2 450</td>
<td>R810</td>
<td>R1 640</td>
</tr>
<tr>
<td>May-20</td>
<td>Box of 20</td>
<td>R360</td>
<td>R629</td>
<td>20</td>
<td>43%</td>
<td>75%</td>
<td>R5 380</td>
<td>R1 800</td>
<td>R3 590</td>
</tr>
<tr>
<td>Mar-20</td>
<td>Box of 5</td>
<td>R32</td>
<td>R55</td>
<td>16</td>
<td>43%</td>
<td>75%</td>
<td>R379</td>
<td>R127</td>
<td>R252</td>
</tr>
<tr>
<td>Mar-20</td>
<td>Box of 2</td>
<td>R13</td>
<td>R23</td>
<td>23</td>
<td>42%</td>
<td>74%</td>
<td>R227</td>
<td>R77</td>
<td>R150</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>R5 622</strong></td>
</tr>
</tbody>
</table>
of the Act read together with Regulation 4 of the Consumer Protection Regulations.

3.13 Steelmate does not admit that the conduct above constitutes excessive pricing in terms of section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations. However, after engaging with the Commission, Steelmate agrees to resolve the complaint on the terms set out below.

4 CONTRIBUTION TO THE SOLIDARITY FUND

4.1 Steelmate undertakes to pay a contribution in the amount of R5 622 to the Solidarity Fund.

4.2 Steelmate will pay the amount as set out above to the Solidarity Fund within 7 (seven) calendar days from the date of notification of the Decision Agreements in favour by the Tribunal.

4.3 The contribution should be paid into the Solidarity Fund’s bank account which is as follows:

ACCOUNT NUMBER: 022 245 678
ACCOUNT TYPE: Current Account
BRANCH CODE: 123
5 AGREEMENT REGARDING FUTURE CONDUCT

Steelmate agrees to:

5.1 immediately desist from the excessive pricing conduct described above;

5.2 reduce its gross profit margin on facial masks to 20% with immediate effect for the duration of the state of national disaster;

5.3 circulate a statement summarising the content of this Consent Agreement to all employees and operational staff employed at Steelmate within 7 calendar days from the date of notification of the Consent Agreement as an order by the Court;

5.4 shall not further offer, sell, or otherwise make available any product, good, or service having the same or similar characteristics as described in paragraph 5 above, have been attached to within 7 calendar days of notification of the Consent Agreement as an order by the Court;

6 Steelmate's management and staff to desist from any inappropriate actions, incorporating Steelmate's communications directed to employees, management and suppliers via all contact methods
contraventions of the Act. In particular, such compliance programme will include a mechanism for the monitoring and detection of any contravention of the Act; and

5.6 to submit a copy of a compliance programme to the Commission within 60 business days of the date of confirmation of the Consent Agreement as an order by the Tribunal.

6 FULL AND FINAL SETTLEMENT

This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Steelmate relating to any alleged contravention of section...
Signed at PRETORIA on this the 8th day of July 2020.

Tembinkosi Bonakele

The Commissioner, Competition Commission of South Africa