

8 APRIL 2020

COMPETITION ALERT

IN THIS ISSUE

Swift Justice: A fast-track for excessive pricing complaints during the COVID-19 pandemic

Minister Ebrahim Patel and the competition authorities are pulling out all the stops to ensure that allegations of excessive pricing during the COVID-19 National Disaster are processed with alacrity.

Swift Justice: A fast-track for excessive pricing complaints during the COVID-19 pandemic

Those familiar with the Commission's investigatory and referral process will know that investigations and prosecutions can take a year or more to get before the Tribunal, where after the process to conclude a hearing is lengthy.

Minister Ebrahim Patel and the competition authorities are pulling out all the stops to ensure that allegations of excessive pricing during the COVID-19 National Disaster are processed with alacrity.

On Friday 3 April 2020, the Minister published further excessive pricing regulations, which were followed by a directive from the Competition Tribunal on 6 April 2020 that will allow complaint referrals to be brought to the Tribunal on an urgent basis and will further allow the Tribunal to impose pricing orders.

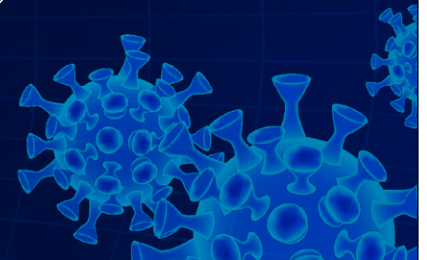
Those familiar with the Commission's investigatory and referral process will know that investigations and prosecutions can take a year or more to get before the Tribunal, where after the process to conclude a hearing is lengthy. The now-expedited process, which will

only remain in force for as long as the COVID-19 outbreak remains declared a National Disaster, could see complaints referred and decided within a matter of days. This process shows a strong sense of commitment from the competition authorities to protect consumers and prevent any abuse by dominant firms in a time where consumers are particularly vulnerable.

The new regulations dispense with the usual timelines for pleadings following a referral from the Commission. Instead of the usual 20 business days for a respondent to answer, a respondent now has 72 hours. A reply from the complainant (which can be the Commission or a third party if the Commission declines to prosecute) must follow in 24 hours, as opposed to the usual 15 business days. The Tribunal will then set the matter down for a hearing within 48 hours.

CDH'S COVID-19 RESOURCE HUB

[Click here for more information](#) 



Swift Justice: A fast-track for excessive pricing complaints during the COVID-19 pandemic...continued

It is clear that respondents in a COVID-19 related excessive pricing case are in for a wild ride and will have very little time to marshal a defence in the face of the Tribunal's aggressive commitment to regulate firms in this critical time.

The Tribunal will strive to issue an order within 24 hours. All told, a complaint referral can now move from beginning to end within approximately seven days, compared to months (at least) under the usual timeframes.

Measures are also introduced to expedite the process before the Tribunal. Within 24 hours of close of pleadings (i.e. 24 hours before the hearing) parties are required to file a joint statement with the Tribunal indicating the extent of any factual dispute. Where there is no dispute of facts, the Tribunal can decide the matter in chambers, without a full-blown hearing (although the Tribunal may request additional information from the parties to be submitted electronically). Where there is a substantial dispute of facts, a hearing via audio or video conference will be held. Notably, if a respondent fails to file an answer in the new shortened period (unless extended by the Tribunal) the matter can be decided on the papers, on an unopposed basis.

The Tribunal is empowered to impose pricing orders to cure findings of excessive pricing. These may urgently be appealed to the Competition Appeal Court, but the

pricing order stays in place until set aside on appeal or review. For respondents that do not wish to fight an allegation, the Tribunal's directive allows for any consent order (settlement) to be heard in chambers and decided in 24 hours, without the usual public hearing.

It is clear that respondents in a COVID-19 related excessive pricing case are in for a wild ride and will have very little time to marshal a defence in the face of the Tribunal's aggressive commitment to regulate firms in this critical time. This may sit uncomfortably for those wary of abuse of State power as it might compromise the right to a fair trial and the cornerstone doctrine of *audi alteram partem* (Latin for "listen to the other side"). However, in the face of the pandemic, some compromise may be inevitable and, hopefully, short-lived. The temporary regulations and directive may have the upfront deterrent effect of making dominant suppliers of essential goods and services think twice about any material price increase during the National Disaster, just to avoid the strafe of a truncated prosecution.

Chris Charter and Kirstin Swanepoel

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

OUR TEAM

For more information about our Competition practice and services, please contact:



Chris Charter
National Practice Head
Director
T +27 (0)11 562 1053
E chris.charter@cdhlegal.com



Albert Aukema
Director
T +27 (0)11 562 1205
E albert.aukema@cdhlegal.com



Naasha Loopoo
Senior Associate
T +27 (0)11 562 1010
E naasha.loopoo@cdhlegal.com



Lara Granville
Director
T +27 (0)11 562 1720
E lara.granville@cdhlegal.com



Kitso Tlhabanelo
Senior Associate
T +27 (0)11 562 1544
E kitso.tlhabanelo@cdhlegal.com



Andries Le Grange
Director
T +27 (0)11 562 1092
E andries.legrange@cdhlegal.com



Preanka Gounden
Associate
T +27 (0)21 481 6389
E preanka.gounden@cdhlegal.com



Susan Meyer
Director
T +27 (0)21 481 6469
E susan.meyer@cdhlegal.com



Duduetsang Mogapi
Associate
T +27 (0)11 562 1068
E duduetsang.mogapi@cdhlegal.com



Veronica Cadman
Executive Consultant
Competition
T +27 (0)11 562 1131
E veronica.cadman@cdhlegal.com



Craig Thomas
Associate
T +27 (0)11 562 1055
E craig.thomas@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2019 8825/APR

