



Reduction in the price of Covid-19 PCR tests and Rapid Antigen tests

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On 12 December 2021 the Competition Commission (“the Commission”) announced that it has concluded consent agreements with the two largest private laboratories in South Africa, Du Buisson Kramer Swart Bouver Incorporated trading as Ampath (“Amphat”) and Drs Mauff AC & Partners trading as Lancet Laboratories (“Lancet”), following a formal complaint lodged by the Council for Medical Schemes on 8 October 2021 alleging that the price for Covid-19 PCR tests is unfairly inflated, excessive and unjustifiable in contravention of Section 8(1)(a) of the Competition Act, No. 89 of 1998, as amended (“the Act”), read with Regulation 4 of the Consumer Protection Regulations, being to the detriment of vulnerable consumers and customers in the time of this devastating pandemic.

During the investigation by the Commission it was found that the costs for laboratories in conducting Covid-19 PCR tests had reduced on average, yet the price charged for such a test remained high and unchanged. Furthermore, pathology groups have been earning significant profits since March 2020, indicating that excessive pricing on Covid-19 PCR tests may be present and that pathology groups have, *prima facie*, engaged in conduct amounting to a contravention of Section 8(1)(a) of the Act.

As a result of the aforesaid consent agreements, which have been confirmed as orders by the Competition Tribunal, the cost of a Covid-19 PCR test has been substantially reduced from R850 (VAT inclusive) to R500 (VAT inclusive) with immediate effect. This price reduction is capped allowing both Amphat and Lancet to charge or negotiate a lower price should they wish to do so and shall remain in effect for the next two years from the date of confirmation.

Following the announcement by the Commission, the third largest private laboratory, Dietrich, Voigt, MIA & Partners and Dr. Vermaak Incorporated (“Pathcare”) also entered into a consent agreement with the Commission reducing its Covid-19 PCR test price to R500 (VAT inclusive). However, this consent agreement is subject to confirmation by the Competition Tribunal.

All three laboratories are required to submit compliance reports including financial statements to the Commission every three months, setting out, *inter alia*, the prices charged for PCR tests and any material changes thereto, enabling the Commission to monitor the pricing.

The Competition Commissioner, Mr. T Bonakele, has since called on all pathology groups to follow suit and reduce their Covid-19 PCR test prices making these tests more accessible and affordable to the public since such tests are required by various organisations, as well as for purposes of international travel.

On 23 December 2021 the Commission announced that Ampath, Lancet and Pathcare have further agreed to a price reduction of Covid-19 Rapid Antigen tests, being no more than R150 (VAT inclusive) with immediate effect. This price reduction also remains in effect for the next two years from the date of confirmation of the consent agreements as orders of the Competition Tribunal, and a similar compliance report must be submitted to the Commission every three months.

The investigation by the Commission into the price of Covid-19 Rapid Antigen tests follows a complaint lodged by the Department of Health (“the DOH”) on 14 December 2021 against service providers delivering such tests in South Africa to consumers. The DOH alleged that the National Health Laboratory Services charges R150, and that a test costs R50 through UNICEF, therefore any price above R150 would be excessive and in contravention of Section 8(1)(a) of the Act.

The Commission confirmed that it will be continuing its investigation on the supply and delivery of Covid-19 Rapid Antigen tests, and that maximum administrative penalties will be imposed on companies found guilty of exploiting consumers and customers.

The aforementioned reduction in the price of both the Covid-19 PCR tests and Rapid Antigen tests should drastically broaden the accessibility and affordability of such tests to the public ultimately supporting the fight against the Covid-19 pandemic.

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