

SOUTH AFRICA / JUDGMENT

Competition Commission v Ampath (COVCO140Dec21) [2021] ZACT 108 (12 December 2021) [2021] ZACT 108

COURT

Competition Tribunal

CASE / FILE NUMBER

COVCO140Dec21

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Date of release: 12 December 2021

AGREEMENTS TO REDUCE PRICES FOR COVID-19 PCR TESTS

CONFIRMED AS ORDERS OF THE COMPETITION TRIBUNAL

Two leading pathology laboratories in South Africa have agreed to reduce their prices for COVID-19 PCR tests for the next two years, capping the amount at R500 including VAT.

This forms part of the terms of two separate consent agreements which the Competition Commission (“the Commission”) has concluded with Drs Du Buisson, Kramer, Swart, Bouwer Incorporated t/a Ampath (“Ampath”) and Drs Mauff AC & Partners t/a Lancet Laboratories (“Lancet”), respectively.

The two consent agreements have been confirmed as orders of the Competition Tribunal on an urgent basis to give effect to the price

reductions without delay, given the current rising numbers of Covid-19 Omicron infections and consequent increase in the number of PCR tests.

Ampath

In terms of its consent agreement, Ampath agrees to the following:

- to stop charging a price of R850 (VAT incl.). This amount formed the subject matter of a complaint lodged by the Council for Medical

Schemes (“CMS”) with the Commission;

- to stop charging R710 (VAT incl.), which is the price charged since 29 November 2021; and
- to reduce the price of Covid-19 PCR tests to no more than R500, inclusive of VAT.

Lancet

Lancet agrees to the following, in respect of its consent agreement:

- to stop charging the price of R850 (VAT incl.) which formed the subject matter of the CMS complaint;
- to stop charging R725 (VAT incl.) which is the price charged since 2 December 2021; and

The price reductions by Ampath and Lancet will be applicable for a period of two years. The price of R500, inclusive of VAT, is a maximum price cap and Ampath and Lancet may charge or negotiate a price below this maximum price cap.

In addition, both laboratories will be required to submit compliance reports, setting out, inter alia, the prices charged for PCR tests and any material changes in costs, to the Commission every three months. Furthermore, the Commission will be entitled, at any time, to request any data relating to their compliance with the consent agreements.

Neither Ampath nor Lancet admit that they charged excessive or exorbitant prices in contravention of section 8(1)(a) of the Competition Act, read together with Regulation 4 of the Consumer Protection Regulations. As stipulated in their respective consent agreements,

nothing therein amounts to or should be construed as an admission of any facts, conduct, liability or wrongdoing on their part.

Background

On 8 October 2021, the CMS lodged a complaint with the Commission, alleging that private laboratories were charging between R850-R900

for a COVID-19-test. The CMS believes that these prices are exorbitant and unjustifiable in the context of alleged reductions in

costs.

The Commission's investigation revealed that prices have decreased across pathology suppliers, i.e. suppliers who supply the

laboratories have lower prices, thus reducing their costs. A basic average of the costs (i.e. not accounting for differences in volume) from individual COVID-19 PCR test kit suppliers, shows that the costs have decreased between March 2020 and September 2021.

The Commission's investigation also revealed that the pathology groups have been earning significant profits since March 2020,

especially in the current financial year to date. The significant increases in profitability indicated to the Commission that excessive

pricing on COVID-19 PCR tests may be present.

The Commission found that, prima facie, pathology groups including Ampath and Lancet have engaged in conduct amounting to a contravention of section 8(1)(a) of the Act.

Whilst the investigation was under way, and following preliminary discussions with Ampath, Ampath voluntarily reduced its COVID-19 PCR test price to R710 (VAT inclusive) on 29 November 2021. Lancet too, from 2 December 2021, reduced its price to R725 (VAT inclusive).

However, an assessment by the Commission concluded that Ampath and Lancet were capable of profitably selling tests at R500 (VAT inclusive).

On 08 December 2021, the Commission sent letters of demand to Ampath and Lancet to immediately reduce the cost of COVID-19 PCR tests to no more than R500 inclusive of VAT, failing which it would launch an urgent application in the Tribunal for appropriate relief aimed at the reduction of COVID-19 PCR tests to R500 inclusive of VAT.

On 9 December 2021 Ampath responded and on 10 December 2021 Lancet responded to the Commission's request and agreed to reduce the price for COVID-19 PCR tests to no more than R500 inclusive of VAT. Consequently, the Commission and the two laboratories concluded the respective consent agreements.

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Prepared on 9 October 2026 · Esheria