

Competition Commission finds pharmaceutical firms in contravention of the Competition Act

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The Competition Commission has found that pharmaceutical firms GlaxoSmithKline South Africa (Pty) Ltd (GSK) and Boehringer Ingelheim (BI) have contravened the Competition Act of 1998. The firms have been found to have abused their dominant positions in their respective anti-retroviral (ARV) markets.

In particular the Commission has found the firms have engaged in the following restrictive practices:

1. Denied a competitor access to an essential facility
2. Excessive pricing
3. Engaged in an exclusionary act

The Commission has decided to refer the matter to the Competition Tribunal for determination.

Menzi Simelane, Commissioner at the Competition Commission, says, "Our investigation revealed that each of the firms has refused to license their patents to generic manufacturers in return for a reasonable royalty. We believe that this is feasible and that consumers will benefit from cheaper generic versions of the drugs concerned. We further believe that granting licenses would provide for competition between firms and their generic competitors."

"We will request the Tribunal to make an order authorising any person to exploit the patents to market generic versions of the respondents patented medicines or fixed dose combinations that require these patents, in return for the payment of a reasonable royalty. In addition, we will recommend a penalty of 10% of the annual turnover of the respondents' ARVs in South Africa for each year that they are found to have violated the Act."

Simelane said these practices violate the Competition Act of 1998's prohibitions against excessive pricing (section 8(a)), refusing access to essential facilities (section 8(b)) and exclusionary acts that have an anticompetitive effect that outweighs technological, efficiency or other pro-competitive gains (section 8(c)).

"Indeed the very goals of our Competition Act - promoting development, providing consumers with competitive prices and product choices, advancing social and economic welfare and correcting structural imbalances - have been made difficult in this context by the refusal of the respondents to license patents."

The original complaint in this matter was filed by Hazel Tau and others alleging that GSK and BI were charging excessive prices to the detriment of consumers for their patented ARV medicines.

GSK and BI hold patents on certain antiretroviral (ARV) medications used to treat HIV/AIDS. GSK holds patents in South Africa on AZT (branded as Retrovir), Lamivudine (branded as 3TC) and AZT/Lamivudine (branded as Combivir). BI holds patents in South Africa on Nevirapine (NVP) (branded as Viramune).

ENDS

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