



**Media Statement**

**For Immediate Release**

**05 July 2024**

**COMMISSION HALTS TB DRUG INVESTIGATION AS INTERVENTION LEADS  
TO 40% PRICE DECREASE**

The Competition Commission (Commission) has decided not to prosecute a complaint of alleged anti-competitive conduct initiated against Johnson & Johnson (Pty) Ltd and its subsidiary company, Janssen Pharmaceutica (Pty) Ltd.

The Commission investigated allegations of abuse of dominance against Johnson & Johnson (Pty) Ltd and its subsidiary company, Janssen Pharmaceutica (Pty) Ltd, after the companies had filed a secondary patent for *Bedaquiline* (trading as Sirturo®), a drug used in the treatment of tuberculosis (TB), effectively restricting the entry of generic alternatives.

The decision to non-refer the complaint of alleged anti-competitive conduct, initiated against Johnson & Johnson (Pty) Ltd and Janssen Pharmaceutica (Pty) Ltd, to the Competition Tribunal for prosecution, follows extensive engagements with the two companies. The companies, in turn, have agreed not to enforce the *Bedaquiline* patent in 134 low- and middle-income countries, including South Africa. This opens the market allowing for the entry of generic suppliers.

In addition, the companies renegotiated the *Bedaquiline* prices charged to the National Department of Health (NDoH) as the procurer of *Bedaquiline* in South Africa. Accordingly, the price of *Bedaquiline* has been reduced by approximately 40% from R5 577.12 to R 3 148.00 inclusive of VAT and logistics. The price charged to NDoH is aligned to what the companies are offering to the Global Drug Facility (the world's largest procurer of TB medicines and diagnostics).

The complaint was initiated in September 2023 based on information that the two companies had filed a secondary patent for *Bedaquiline* in South Africa with the Companies and Intellectual Property Commission (CIPC), effectively prolonging the lifespan of the *Bedaquiline* patent to 2027. If true, this conduct effectively restricted the entry of generic medication, and allegedly enabled these companies to charge excessive prices to the NDoH.

The conduct was assessed as a possible contravention of Sections 8(1)(c) and 8(1)(a) of the Competition Act (89 of 1998), as amended (the Act).

The Commission is satisfied that the objectives of the Act, together with the public interest, are served by the change in conduct.

The Commission will continue to prioritise work in secondary patents and act particularly where secondary patents have failed in other jurisdictions with more rigorous assessments. The Commission calls on pharmaceutical companies to reconsider their secondary patenting practices in South Africa and moving forward the Commission may seek penalties if pharmaceutical companies continue to pursue meritless secondary patents.

The decision to non-refer, therefore, concludes the investigation against the two companies. The Commission does, however, reserve the right to investigate should new evidence emerge suggesting the possible abuse of dominance in the provision of *Bedaquilline*.

**[ENDS]**

**Issued by:**

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