



competition commission south africa

Notice CC 8

About this Notice

This notice is issued in terms of section 50 of the Competition Act.

The complainant may refer the complaint directly to the Competition Tribunal in Form CT 1(2), within 20 business days after the date of this notice. Please refer to Competition Tribunal Rules 14 to 17.

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
tel: 27 012 394 3200
fax: 27 012 394 4200
e-mail: ccsa@compcom.co.za

Notice of Non-referral of Complaint

Date: 25/06/2009

Concerning:

(Name and file number of complaint:)

COMPLAINT BY DR JOHN PRIDGEON AGAINST DR HARRIS STEINMAN
Case Number: 2009Apr4396

The Competition Commission received a complaint against the above named respondent on: 15/04/2009 .

Having completed its investigation, or the time having expired for referring the complaint to the Tribunal in terms of section 50(2) of the Competition Act, the Competition Commission gives notice that:

- The Commission will not refer any part of the complaint to the Competition Tribunal.
- The Commission will not refer to the Competition Tribunal the particulars of the complaint listed on the attached sheet, but will refer the remaining particulars of the complaint.

Name and Title of person authorised to sign on behalf of the Competition Commission:

Mr. Tembinkosi Bonakele (Acting Manager: Enforcement and Exemptions Division)

Authorised Signature:



Building C Mapungubwe Building
77 Meinljes Street
Sunnyside, Pretoria
☒ Private Bag X23, Lynnwood Ridge 0040
Tel: +27 (12) 394 3268 Fax: +27 (12) 394 4268
E-mail: mapator@compcom.co.za
Website: <http://www.compcom.co.za>

competitioncommission south africa

Enquiries: Ms M. Rakhudu
Our Ref: 2009Apr4396

25 June 2009

Dr J Pridgeon
Alkara 248 (Pty) Ltd
20A High Road
Eastleigh
Edenvale
1609

E-mail: drjohn@alcatsa.co.za

BY EMAIL ONLY

Dear Dr Pridgeon

COMPLAINT BY DR JOHN PRIDGEON AGAINST DR HARRIS STEINMAN

Case Number: 2009Apr4396

We refer to the above complaint, lodged by yourself, in which you, acting on behalf ALCAT South Africa ("ALCAT"), allege that, Dr Harry Steinman ("Dr Steinman") has engaged in conduct which could contravene the Competition Act 89 of 1998, as amended ("the Act").

In summary you alleged that:-

- Dr Steinman, who is a well known and very active member of the South African medical community, is using every resource at his disposal to discredit, obstruct and cripple ALCAT, and other marketed delayed allergy and intolerance tests in South Africa, which compete commercially in the testing market with the companies that Dr Steinman represents and consults for.
- Dr Steinman is protecting the interest of his company FACT, which is consulting for Phadia, Pfizer and Lancet Laboratories, which are some of the main companies involved in the allergy testing market.
- There are other significant connections between the Allergy Society of South Africa (ALLSA), an industry association of various individuals involved in the allergy testing)¹ in which Dr Steinman is a member, and the major allergy testing companies.

¹ This includes medical practitioners, academics and companies in the allergy testing market.

- These companies use the ALLSA to discredit the products of ALCAT, in that the ALLSA has on numerous occasions published reports discouraging the use of ALCAT's products in South Africa.

The Competition Commission ("the Commission") has concluded its investigation and has decided on the basis of the information available to it, not to refer the matter to the Competition Tribunal for adjudication. The reasons for the Commission's decision are set out below.

The Commission assessed the complaint under a possible contravention of section 8(c), (*exclusionary act*) and 8(d)(i) (*inducement*) of the Act.² To make a finding under these sections, it must first be shown (in terms of section 7 of the Act) whether that the Respondent is a competitor and dominant in a relevant market.

- i) For purposes of this complaint, we regard the relevant market as the market for allergy testing products in South Africa. Our view is that that, although Dr Steinman is involved in allergy market, he is not directly active as a producer of any allergy testing products which competes in the relevant market, but acts mainly as a consultant, thus cannot be a competitor. Further Dr Steinman consults for various other industries in his areas of expertise, e.g. Food industry, food research companies, Pathology testing etc. Thus his role is generally that of a consultant and not a producer or marketer of particular products. Further, no information or evidence has been provided to the effect that Dr Steinman is acting not in his personal capacity but as an agent of any of the competing companies and therefore no evidence that the acts undertaken by Dr Steinman are those of any of the competing companies.

We accordingly do not regard Dr Steinman as competitor nor as being dominant in the market for allergy testing products and therefore the conduct does thus does not meet the requirements of the Act to make any finding of exclusionary act or inducement.

- ii) Notwithstanding the above, even if Dr Steinmann was a competitor in the relevant market and one of these competing companies were dominant, the Commission does not find any indication that the behavior of Dr Steinman could constitute an exclusionary act or inducement. Our reasons are detailed below.
 - a. There is no evidence to suggest that ALCAT is being excluded from operating in the market. ALCAT is still operating and its products are available in the market, despite the alleged exclusionary or inducement acts.
 - b. There are other articles written by other sources other than Dr Steinman, which question the reliability of ALCAT products. The Commission is also in possession of a report published by ALLSA, which cites various other sources questioning the reliability and appropriateness of the ALCAT allergy tests. Thus it seems there is a general concern about ALCAT products and the negative publicity is not only as a result of Dr Steinman as alleged.
 - c. Medical products in general, including allergy tests may first have to be registered with the Medical Control Council of South Africa ("the MCC"). It has been established that the ALCAT products are not registered with the MCC, and as such the scientific

² Section 8(c)/8(d) (i) provide that "*it is prohibited for a dominant firm to engage in conduct which is an exclusionary act, including requiring or inducing a supplier or customers not to deal with a competitor*".

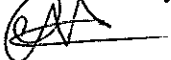
benefits of the products have not been scrutinized before the products could be marketed. The Commission contacted the MCC to find out if the ALCAT product is to be registered with the MCC, and this was confirmed.³ According to the MCC any products that meets the provisions of the Medical and related substances Act (Act 101 of 1965) and that claim medicinal benefits are to be registered.⁴ We therefore find that the MCC might be best suited to deal with any scientific claims made by ALCAT and if they are suitable for use.

- d. The Commission requested information regarding the registration of the ALCAT product with the MCC. It was indicated that although the products had not been registered with the MCC, ALCAT attempted to register the ALCAT Test with the National Pathology Group ("NPG") in 2006, which refused to accept the products. The reasons provided by the NPG are that "*The Alcat test was previously evaluated by our Group and found not to have scientific merit or justification for inclusion in the pathology tariff. To my knowledge no new information has become available to justify the creation of a tariff for this test*".⁵ This again confirms the general negative views about ALCAT in the market, which may not necessarily be as a result of Dr Steinman.
- iii) Finally this matter seems to fall within the jurisdiction of the Advertising Standards Authority ("ASA"), which has the mandate to investigate and rule on matters dealing with false advertising and negative publications. Our investigations are that ASA is dealing with the current complaint.

In light of the above, the Commission is therefore of the view that there is no evidence to substantiate the allegation that there is an exclusionary conduct by Dr Steinman. Please find attached hereto Form CC8, which is the Notice of Non-Referral. The Commission, therefore, considers this matter finalised.

Should you disagree with the Commission's decision you may, in terms of section 51(1) of the Act, read with rule 14(1) (b) of the *Rules for the Conduct of Proceedings in the Competition Tribunal* refer the complaint to the Tribunal within 20 business days after the Commission has issued, or has been deemed to have issued, a Notice of Non-Referral.

Yours faithfully,



MS M. RAKHUDU
ENFORCEMENT AND EXEMPTIONS
(Electronic Submission)

³ Telephone conversation with Mr Molewa (17 May 2009, 01 June 2009).

⁴ See correspondence from the MCC dated 5 June 2009.

⁵ See letter from the NPG to Dr Pridgeon dated 3 May 2006.