

Please take a moment to read the following information in its entirety before scrolling down to the Amended Header. Thank you!

In mid-2020, HJI and Open Secrets (OS) were jointly admitted as ‘friends of the court’ (amici) in the Competition Appeal Court (CAC), in a matter involving an appeal of a decision of the Competition Tribunal involving *Dischem and the Competition Commission*. The case involved Dischem’s excessive pricing of face masks (PPE) in the COVID pandemic. HJI and OS were also permitted to adduce expert evidence. Within days, Dischem withdrew its appeal, and agreed to pay a penalty.

Following that, and building on the amici intervention in Dischem, in August 2020, HJI and Open Secrets were jointly admitted as friends of the court also in the CAC, in a similar matter and appeal against a decision of the Competition Tribunal - *Babelegi Workwear Overall Manufacturers & Industrial Supplies CC and the Competition Commission*. Shortly thereafter, the SAHRC was also admitted as a friend of the court (amicus).

The appeal was heard (virtually) by the **CAC** in September 2020 with HJI, OS and the SAHRC appearing before the CAC (Judges Davis, Rogers and Mguni) as friends of the court. HJI and Open Secrets were represented pro bono by Webber Wentzel Attorneys and Advocates P Ngcongco; F Hobden and C Tabata. Counsel for the SAHRC were Advocates B Lekokotla and O Motlhasedi.

On 18 November 2020, judgment was issued by the CAC, and it upheld the finding of excessive pricing. For reasons unknown to HJI and OS and our legal representatives, the judgment omitted to mention that three organisations were admitted as friends of the court, nor was there any direct reference to the submissions and arguments advanced by the amici. The header to the judgment at that time did not reflect the amici parties either.

In January 2021, HJI and OS’s legal representatives first wrote to the registrar of the Competition Tribunal about the omission, and since. Eventually, on 17 March 2022, an [amended header](#) was issued (the first page of the judgment) - but surprisingly, it does not include the SAHRC. No further header has been issued.

Enquiries about this anomaly should be directed to the Registrar of the Competition Tribunal:
Email CAC@comptrib.co.za, Tel [+27 \(0\)12 394 3300](tel:+27(0)123943300)



THE COMPETITION APPEAL COURT OF SOUTH AFRICA

CAC CASE NO: 186/CAC/JUN20

In the matter between

**BABELEGI WORKWEAR AND
INDUSTRIAL SUPPLIES CC**

Appellant

And

**THE COMPETITION COMMISSION OF
SOUTH AFRICA**

Respondent

HEALTH JUSTICE INITIATIVE

First amicus

OPEN SECRETS NPC

Second amicus

JUDGMENT: 18 November 2020

DAVIS JP

[1] What is the role of competition law when essential goods such as face masks are sold at a particularly high price in the midst of the Covid 19 pandemic? This question has confronted competition authorities in many jurisdictions. For example, the European Commission, EFTA and the European National Competition Authorities issued a joint statement stressing that it is 'of utmost importance' to ensure that products like facemasks which are 'considered essential to protect the health of consumers' remain available 'at competitive prices. These competition authorities announced that they 'will therefore not hesitate to take action against companies taking advantage of the current situation by... abusing dominant position.' (Joint statement of the