

**Media Release**  
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## **HJI and Open Secrets**

### **Health Justice Initiative and Open Secrets admitted as joint amici (friends of the court) in Competition Appeal Court – involving Dis-Chem & the Competition Commission (pricing of face masks for COVID-19)**

On 11 August 2020, the Health Justice Initiative (hji) and Open Secrets jointly sought admission from the Competition Appeal Court (CAC) as amici (friends of the court) in a matter involving an appeal brought by Dis-Chem Pharmacies (Pty) Ltd (Appellant) and the Competition Commission (Respondent) against a decision of the Competition Tribunal. See: <https://www.comptrib.co.za/case-detail/9112>

On 7 July 2020, the Competition Tribunal of South Africa found Dis-Chem guilty of charging excessive prices for three types of surgical face masks to the detriment of consumers during March 2020. Dis-Chem was fined R1 200 000.00. In its judgment, the Competition Tribunal found:

*“... the exploitative conduct of Dis-Chem of excessive pricing was particularly reprehensible. It exploited customers desperate to lay their hands on an essential item in the fight against a pandemic of global proportions, with potential consequences for consumers and public health... To this end we consider its conduct was not only exploitative of vulnerable consumers, especially the poor, but was especially egregious”.*

The appeal concerns the interpretation of Section 8 of the Competition Act and the Customer Protection and National Disaster Management Regulations and Directions, in the context of a pandemic, and in light of the levels of social and economic inequality in South Africa. The decision of the CAC in this appeal will be of great and widespread significance. It will have ramifications not only for the pricing of masks, but for the pricing of essential medical supplies, including treatment and vaccines in the future.

On 14 August 2020, HJI and Open Secrets were admitted as joint amici by the CAC and will be submitting its arguments shortly. The Health Justice Initiative (hji) and Open Secrets have also requested that the CAC admit the evidence of its experts in the matter, and this request will be argued on the date of the e-hearing of the appeal, scheduled for 4 September 2020, when the court will make its determination thereon.

HJI and Open Secrets have submitted in their arguments that it is essential that evidenced-based and constitutionally-aligned jurisprudence be developed regulating issues such as potential profiteering, gouging and anti-competitive behaviour in the context of a pandemic – and that the current global pandemic and public health crisis disproportionately affects poor and vulnerable members of our society. In this matter HJI and Open Secrets are represented pro bono, by Webber Wentzel Attorneys and Advocates Phumlani Ngcongco; Frances Hobden and Cingashe Tabata at the Johannesburg Bar.

*The Health Justice Initiative (HJI) is a dedicated public health and law initiative, founded in 2020 by a human rights lawyer and social justice activist, and established specifically to address the intersection between racial and gender inequality with a focus on the COVID-19 pandemic. Its distinct focus is on access to, inter alia, lifesaving diagnostics, treatment and vaccines. It draws on the expertise of researchers in law, public policy, economics, and public health, as well as on universities and scientific experts.*

*Open Secrets is a non-profit organisation which exposes and builds accountability for private sector economic crimes and related human rights abuses in Southern Africa through investigative research, advocacy, and the law. Open Secrets was established in 2017 and has since undertaken a number of major investigations, all within the public interest, into the role of the private sector in economic crime.*