Now Tiger Brands health unit is in a collusion storm

By Tamar Kahn, Science and Health Editor

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Hot on the heels of being fined for colluding on the price of bread, consumer goods giant Tiger Brands' health-care unit Adcock Ingram and several smaller health-care groups are in the spotlight for the same offence.

Consumer goods giant Tiger Brands' health-care unit Adcock Ingram and several smaller health-care groups face the threat of huge fines for allegedly colluding to fix tenders and divide up the market for intravenous drip solutions.

The Competition Commission said yesterday it had concluded its investigation into alleged collusion between Adcock Ingram Critical Care (AICC), Dismed Criticare and Thusanong Healthcare, and had referred the matter to the Competition Tribunal for prosecution. The commission had asked the tribunal to apply the maximum penalty allowed by the Competition Act — 10% of turnover — said the commission's senior legal analyst, Nandi Mokoena.

According to Tiger Brands' most recent annual report, the company's turnover was R16,2bn last year, while Adcock, which is to be unbundled from Tiger, reported turnover of R2,87bn for the same period. If the tribunal concurs with the commission, the firms could face fines of up to R1,6bn and R287m respectively.

Tiger Brands was included in the probe because several of its directors, including Mike Norris, Phillip Nieman, Hayden Franklin and Ian Isdale, allegedly knew about the collusive behaviour, but took no action, said Mokoena.

The case comes against a backdrop of several recent investigations with important implications for consumers and producers, such as its probes into price fixing for bread and milk. There is also growing public concern about rising health-care costs.

Last year, Tiger Brands agreed to pay a fine of R98.8m in respect of its role in fixing bread prices.

“Collusive behaviour would undoubtedly be one of the contributing factors to higher prices in health-care markets,” said Competition Commissioner Shan Ramburuth.

He stressed that the commission's investigation had been confined to intravenous solutions, and no inferences could be drawn about the extent of collusion in other aspects of the health-care market.

The commission began investigating allegations of a cartel between the firms and health care company Fresnius Kabi SA (FKSA) in 2005. It gave FKSA immunity from prosecution after it confessed its involvement in the cartel and agreed to co-operate with investigators.

The tender investigation, which dates back to at least 1999, centred on the way the companies allegedly manipulated the health department's RT299 contract for the supply of pharmaceutical products, large-volume injected drugs, irrigation solutions, administration sets and accessories to state hospitals.

The commission found that Adcock, FKSA, Dismed and Thusanong collaborated on their tender bids, manipulated prices, and agreed among themselves who should win state contracts. They achieved this by altering the terms of their bids, said Mokoena.

The companies took turns to help each other win the contracts, and agreed that if the “chosen” firms did not win the tenders, the unintended winners would share a portion of their deals with colluding partners.

The commission had evidence that Adcock and FKSA had colluded to divide markets for the supply of intravenous solutions to private hospitals, including SA's three biggest hospital groups, Afrox Healthcare (now LifeHealthcare), Netcare, Medi-Clinic, and mine hospitals.

The firms would agree which of them should provide specific products to specific hospitals, said Mokoena.

She said the commission had evidence that senior officials of the firms involved held meetings and telephone conversations to agree on the rigging of bids and the allocation of markets.

Adcock Ingram's MD, Jonathan Louw, declined to comment on commission's allegations, saying only that the company would issue a statement in due course. Adcock Ingram is expected to be unbundled from Tiger Brands and listed on the JSE by the end of next month.

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