

Probe into Roche's inflated pricing of cancer-treatment drug

The Competition Commission has today filed a referral with the Competition Tribunal for prosecution of Switzerland-based multinational healthcare company, Roche Holding AG, and its subsidiaries, F Hoffman La Roche AG and Roche Products.



Source: [Pexels](#)

This is for alleged excessive pricing of a breast cancer treatment drug, Trastuzumab, in contravention of sections 8(a) and 8(1)(a); of the Competition Act.

The Commission's referral also alleges that the excessive price of Trastuzumab constitutes a violation of basic human rights including the right of access to healthcare enshrined in the Bill of Rights as it denies access to life-saving medicine for women living with breast cancer.

The alleged excessive pricing of Trastuzumab by Roche took place in both the private and public healthcare sector in South Africa.

Trastuzumab is a first-line treatment life-saving drug which stops the development of an aggressive type of breast cancer called Human Epidermal Growth Factor Receptor 2 Positive (HER2+) breast cancer.

Trastuzumab is used to stop the development of these tumour cells to prevent the cancer from spreading, and death.

In South Africa, Trastuzumab is sold under Roche's brand name Herceptin in the private healthcare sector, and under the brand name Herclon in the public healthcare sector.

Infringement of constitutional rights

The Constitutional Court has recently endorsed the centrality of the Bill of Rights to the interpretation of the Competition Act.

Consequently, the Commission further found that Roche's conduct also infringed several constitutional rights which include the right to equality under section 9 of the Constitution, the right of access to healthcare services under section 27 of the Constitution, the right to dignity under section 10 of the Constitution, and the right to life under section 11 of the Constitution.

The Commission's investigation found that the excessive pricing conduct took place between January 2011 and November 2020 in the South African private healthcare sector, and in the South African public healthcare sector during the period 9 November 2015 to July 2020.

In view of the fact that Roche had declined to provide the Commission with its cost data (despite the Commission pursuing all available legal channels, including the diplomatic channels), allegedly on the basis that, that cost data sits in Switzerland, the Commission considered three competitive benchmarks in its assessment, namely:

- Trastuzumab biosimilar manufacturing cost estimates – the Commission relied on a body of knowledge that provides a calculation algorithm to estimate the manufacturing cost of Trastuzumab biosimilars;
- Prices of a biosimilar drug supplied in South Africa – the Commission relied on the price of a biosimilar drug supplied in both the private sector and public sector South Africa since 2019. A biosimilar medicine is one that has the same active properties and similar clinical outcomes as an originator biologic medicine; and
- Value-based price benchmarks – the Commission relied on ratios estimating the additional value/benefit attributable to Trastuzumab against the income per capita (a proxy of the affordability of Trastuzumab).



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The Commission estimated that over 10 000 breast cancer (HER2+) patients (nearly 50% of the total number of newly infected patients in the private and public healthcare sectors) were unable to receive treatment with Trastuzumab between 2011 and 2019 because of the excessive prices Roche charged for the medicine.

"The Commission has prioritised this case because the impact of excessive pricing of Trastuzumab falls heavily on women, particularly poor women, who cannot access essential treatment because they cannot afford to pay for it. This is so even for the minority of women who belong to medical schemes. The Commission is obligated to pursue this case in light of the fundamental rights implicated by the conduct, all of which are enshrined in our Constitution.

"The Commission has asked the Tribunal to impose a maximum penalty against Roche, for its alleged harmful and life-denying pricing conduct," says Competition Commissioner Tembinkosi Bonakele.