IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case number: **NCT/444974/2026/73(2)(b)**

In the matter between:

NATIONAL CONSUMER COMMISSION APPLICANT

And

TOTAFIN (PTY) LTD T/A TRIBECA STANDARD
CIPC NO 2010/008001/07 RESPONDENT

Coram:

Mr S Hockey - Presiding Tribunal member
Mr S Mbhele - Tribunal member
Dr MC Peenze - Tribunal member

Date of hearing: 10 November 2026
Date of order: 11 November 2026

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission (the applicant), a juristic person established in terms of section 85(1) of the Consumer Protection Act 68 of 2008 (CPA). The applicant is responsible for enforcing the CPA by monitoring the consumer market to prevent or detect prohibited conduct and offences, and to prosecute them.

2. At the hearing, the applicant was represented by Miehleketo Magagula, its Legal Advisor.

3. The respondent is Totafin (Pty) Ltd (the respondent), trading as Tribeca Standard, a supplier as defined in section 1 of the CPA.

4. At the hearing, the respondent was represented by Adv Albe Basson.

TERMINOLOGY

5. Unless otherwise stated, a reference to a section or regulation in this judgment refers to a section of the CPA or the CPA regulations.

6. A reference to a rule refers to the Rules of the Tribunal[1].

TYPE OF APPLICATION

7. This is an application in terms of section 73(2)(b) in which the applicant alleges that the respondent has contravened certain provisions of the CPA and, in doing so, has engaged in prohibited conduct.

BACKGROUND AND FACTS

8. The referral arises from an investigation into the respondent's practice of imposing a 10% service charge on consumers purchasing food and beverages at its restaurant at Lynnwood Bridge, Pretoria, between the middle of 2023 and March 2025.

9. The respondent's menu included the following wording: “A discretionary charge of 10% will be added to your bill. Please notify management if the service you received is not up to standard; management will gladly remove it from your bill.”

10. Notwithstanding its description as discretionary, the charge was automatically applied to consumers' bills.

11. On 4 March 2025, the applicant formally notified the respondent of the

[1] Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015 and GN 157 in GG 39663 on 4 February 2016.

investigation and requested information regarding the impugned practice.

12. The respondent, through its legal representatives and management, provided responses maintaining that the service charge was discretionary, that consumers could request its removal, and that the proceeds collected were distributed to waiters as gratuities.

13. During the investigation, the respondent further confirmed that approximately 200 service-charge transactions were processed daily. Accordingly, the applicant considered the practice to be systemic and recurring rather than an isolated occurrence.

14. During the investigation, on 15 April 2025, the respondent informed the applicant that, following the concerns raised, it had suspended the practice of automatically adding a service charge to a consumer's bill and removed the reference to a discretionary charge from its menu. The respondent nevertheless maintained that its previous practice did not contravene the CPA.

15. The applicant seeks findings of contraventions of sections 23(6)(a), 48(1) and 51(1)(a)(i) and (b)(i). The applicant further seeks an order declaring the respondent's contraventions to constitute prohibited conduct and imposing an administrative fine of R1 000 000.00 on the respondent.

LEGAL ARGUMENTS

16. The applicant contends that, despite the charge's description as discretionary, in practice the 10% charge was incorporated into consumers' bills by default, requiring consumers to take additional steps to have it removed.

17. The applicant submits that this practice undermined the statutory protections afforded to consumers, particularly the rights to transparent pricing and to fair and reasonable terms and conditions.

18. The respondent denies that its conduct constituted prohibited conduct. In substance, it contends that the charge was discretionary and disclosed; consumers could request its removal; the proceeds were distributed to waiters;

the menu wording and practice were subsequently amended, and no identified consumer has shown that a removal request was refused.

19. The applicant submits that these defences do not address the central question: whether the practice, as implemented at the relevant time, complied with the CPA's substantive requirements. According to the applicant, subsequent amendment of the menu or discontinuation of the practice cannot retrospectively regularise conduct that had already occurred.

APPLICABLE LEGISLATION

20. Section 23(6)(a), subject to the statutory qualifications and exceptions, prohibits a supplier from requiring a consumer to pay a price higher than the displayed price for any goods or services.

21. Section 48(1) prohibits a supplier from offering, supplying, or agreeing to supply goods or services at an unfair, unreasonable, or unjust price or on unfair, unreasonable, or unjust terms; from marketing or administering a transaction in an unfair, unreasonable, or unjust manner; or from requiring consumers to waive rights or assume obligations on unfair terms.

22. Section 51(1)(a)(i) prohibits a supplier from entering into a transaction or agreement subject to a term or condition whose general purpose or effect is to defeat the purposes and policy of the CPA.

23. Section 51(1)(b)(i) prohibits a term or condition that purports, directly or indirectly, to waive or deprive a consumer of a right conferred by the CPA.

CONSIDERATION OF PROHIBITED CONDUCT

24. Section 73(2)(b) provides that if the applicant believes a person has engaged in prohibited conduct, the applicant may refer the matter to the Tribunal for adjudication.

25. The Tribunal considered the parties' submissions regarding whether there was reasonable suspicion that the respondent was engaging in prohibited conduct. The Tribunal is satisfied that the applicant has provided sufficient argument and

evidence to establish that there was reasonable suspicion to conduct a full investigation into the respondent's conduct.

26. The factual matrix in this matter is not in dispute. It is common cause that the menu included a discretionary charge that would be added unless consumers notified management that the service was not up to standard.

27. Section 23(6)(a) does not prohibit a supplier from charging for services rendered. The intention of section 23(6)(a) is to give a consumer the right to agree to the full price before any specific goods or services are delivered. The full price for both goods and services must be displayed. Where specific services are to be rendered and charged in addition to a displayed price, a supplier must specify those additional services and display the exact full price to be charged.

28. This requirement applies in all instances where a restaurant charges a fixed amount for services for its own account, in addition to a food order. In casu, if the full price for both the goods and the specified additional services were clearly set, a consumer would be able to make an informed choice about whether to accept the full price. However, given the use of the word "discretionary", and failure to describe the actual services referred to, the respondent's previous menu did not provide pricing certainty in advance. Accordingly, the Tribunal finds that the respondent's conduct transgressed section 23(6)(a).

29. The issue also concerns the inherent statutory right to quality services. By imposing a discretionary charge for unspecified services, the supplier risks compromising the consumer's right to demand high-quality services. The consumer has the right to good-quality food and to demand quality services, a right protected under sections 54 and 55. If the goods or services are poor, the consumer would have access to the related statutory remedies for redress. A consumer cannot contract to receive poor service at a lower, to-be-negotiated price. A supplier also cannot offer to, maybe, deliver poor service. To the extent that a consumer is required to agree to negotiate a lower price later if the

services delivered turn out to be poor, such a term runs counter to the spirit of the CPA.

30. Further, by including a term on the menu stating that the service fee is negotiable in the event of poor service delivery, the consumer must assume an obligation to challenge an unspecified set of services. Accordingly, the supplier is indirectly expecting consumers to waive their rights to quality service, which the Tribunal is persuaded is unfair in the context of the case at hand.

31. Accordingly, the Tribunal finds that the respondent's conduct transgressed section 48 read with sections 51(1)(a)(i) and 51(1)(b)(i).

32. The above contraventions occurred because an automatic charge, labelled a "discretionary service fee", was applied without specifying the types of services and the exact amount for those services in the total price. However, this finding should not be interpreted as indicating that a discretionary tip to a waiter would constitute a contravention of the CPA. On the contrary, if a consumer is given genuine discretion to tip a waiter and such a tip does not form part of the total price for goods or services delivered by the supplier, it would not form part of that price. The CPA does not prohibit a supplier from administering any such tips on behalf of employees, provided this is done in compliance with applicable statutory requirements and tax regulations. Similarly, such a tip would not constitute payment for the inherent quality of services expected from the supplier. It should reflect the consumer's genuine discretion. This was not the case in this matter.

33. A genuinely voluntary gratuity is one that the consumer freely elects to pay. It is not an amount automatically added to a bill and removed only if the consumer challenges it. In this case, the service charge was not genuinely voluntary, and reflecting it on the invoice did not remedy the failure to include the additional charge for specific services in the full price.

RELIEF

34. The applicant requested that the Tribunal direct the respondent to pay an administrative fine. The Tribunal is not persuaded that it is in the interests of

justice to impose an administrative fine in these circumstances. The Tribunal considered various mitigating factors, including the absence of mala fides, a genuine intention to provide quality service, and the actual practice of distributing the collected service fees as “tips” to waiters upon receipt. The evidence does not support any finding that the respondent obtained any profit from the contravention. No specific loss or damage was placed before the Tribunal, and the respondent’s status as an expensive restaurant serving an informed, privileged clientele is not in dispute.

35. The Tribunal is satisfied that the respondent has cooperated with the investigation and changed the wording on its menu. It is no longer automatically charging for unspecified services, and applying a punitive measure in these circumstances is not warranted.

ORDER

36. Accordingly, the Tribunal makes the following order:

36.1 The respondent contravened sections 23(6)(a) and section 48(1), read with sections 51(1)(a)(i) and 51(1)(b)(i) of the CPA.

36.2 The above contraventions are declared prohibited conduct.

36.3 There is no cost order.

[signed]

Dr MC Peenze

Tribunal member

Presiding Tribunal member Mr S Hockey and Tribunal member Mr S Mbhele concur.

Authorised for issue by The National Consumer Tribunal

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