

Pricing of essential food items remains key focus for authorities

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The Competition Commission in South Africa has made it clear that it is closely watching the price volatility of essential food items in South Africa. The justification of price hikes for food items will continue to be a focus for the competition authority, despite legal interventions intended to guard against this happening during the pandemic recently being repealed by the end of the National State of Disaster in the country.



Image source: Kampus Production from [Pexels](#)

Across the continent, competition authorities are increasingly acknowledging their role as guardians of fair practice and consumer protection, and they have expressed their intention to enforce these principles going forward. At the same time, businesses that operate in the Consumer Goods and Retail (CG&R) sector are having to contend with serious supply chain disruption caused by geopolitical and environmental challenges, made worse by the pandemic, but also impacted by a lack of infrastructure.

Mitigating impact

In early 2020, the Minister of Trade, Industry and Competition in South Africa issued various regulations in response to the declaration of Covid-19 as a national disaster in South Africa. Such regulations were intended to mitigate the impact of the pandemic on the economy. One such regulation was directed at the CG&R sector in South Africa - the Consumer and Customer Protection and National Disaster Management Regulations and Directions (Consumer Protection Regulations), which came into effect on 19 March 2020. On 6 April 2022, the National State of Disaster was lifted in South Africa and with that, most regulations and directions made in terms of the Disaster Management Act were repealed, including the Consumer Protection Regulations.

At the beginning of the pandemic in March 2020, concerns by government and consumers that firms could seek to charge higher prices for certain goods due to supply shortages caused by Covid-19, prompted the Minister to promulgate

regulations which prohibited "excessive pricing" by dominant firms in the sector. The Competition Act prohibits a dominant firm from charging excessive prices to the detriment of consumers or customers.



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4 Feb 2021



Under these regulations, the authorities scrutinised material price increases for certain goods or services, where the increase did not correspond to, or was not equivalent to, the increase in the cost of providing that good or service; or where the increase inflated the net margin or mark-up on that good or service above the average margin or mark-up of that good or service in the three-month period prior to 1 March 2020.

The regulations applied to a number of goods and services, including medical and household cleaning equipment. Notably, essential foods items were also included on the list: cooking oils, wheat flour, rice, maize meal, pasta, sugar, long-life milk, canned and frozen vegetables, canned, frozen and fresh meat, chicken or fish and bottled water.

Price increase complaints

After the promulgation of these regulations, there were a flurry of reports regarding excessive price increases, including for basic food necessities. The Competition Commission investigated more than 1,199 reports, which eventually led to successful prosecution of two firms for excessive pricing of surgical masks. While the courts held that these cases were to be prosecuted under the Act (due to the regulations not applying retrospectively), the test set out in the regulations was used to establish that the price increases bore no reasonable relation to increased input costs and therefore the excessiveness of the prices.



Companies fined for Covid-19 price gouging

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Despite the fact that these regulations are now repealed, firms in the CGR sector should continue to take the utmost care to ensure price increases of essential food items can be justified, especially during supply or demand shocks. The authorities have not needed to rely on these regulations to investigate or prosecute such conduct, and these prosecutions have not been limited to firms who are dominant under normal market conditions.

Food price monitoring

The issue price volatility with regard to essential food items was also addressed in the Competition Commission's latest *Essential Food Pricing Monitoring report*, where certain fruits, meat and cooking oil were listed as items that have been subject to recent volatile price increases. It was noted that such price increases had the most detrimental impact on poorer communities.

Not all essential food price increases have been due to the pandemic, however. Changing weather conditions (from drought to heavy rain), oil price fluctuations, serious supply chain blockages and massive geopolitical challenges, have all led to a decrease in supply and a subsequent increase in prices. The Commission noted that the decreasing supply of essential food products has been mostly driven by local events. The Commission stated that it would be keeping a close watch on the price of essential foods items going forward, including the price of imported food items, to ensure that anti-competitive conduct does not occur and that the increase in prices of essential food items can be justified.



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Widespread concern

The price volatility of essential food items is an increasing concern across the continent. With the growth of economies across Africa, competition law has remained one of the key drivers for effective market participation, consumer protection and fair business practices. The global pandemic introduced new challenges for competition authorities in Africa and abroad, with each enforcer pursuing the most optimal enforcement method for its national or regional jurisdiction.

These efforts were aimed at curbing the persistence of unjustified price hikes, anticompetitive cooperation between competitors and other harmful business practices that sought to undermine competition. In addition to the urgent responses to the unprecedented impacts of the global Covid-19 crisis, competition authorities in countries and regions across Africa continued to introduce new laws and amend existing legislation as a sign of the rapidly increasing prioritisation of competition law enforcement on the continent.

While contending with serious supply chain concerns, suppliers and retailers in the CG&R essential food items sector should carefully consider any price increases and ensure that they are able to be justified. Due to current geopolitical, economic and environmental challenges, the focus on the pricing of essential food items is expected to remain an area of core focus for competition authorities across the continent.

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