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Putting a stop to price gouging during lockdown

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On 15 March 2020, the President declared a State of National Disaster and announced the enforcement of a nationwide lockdown. Subsequently, the Minister of Trade and Industry, Minister Ebrahim Patel, gazetted several regulations aimed at protecting consumers during the State of National Disaster. One such regulation relates to the prohibition of the excessive pricing of essential goods and services. Essential goods include items such as toilet paper, hand sanitiser and disinfectant cleaners, to name a few.

The regulations relating to excessive pricing are broken up into three parts:

1. excessive pricing in terms of the Competition Act No 89 of 1998 (Competition Act);
2. unconscionable, unfair, unreasonable and unjust pricing in terms of the Consumer Protection Act No 68 of 2008 (CPA); and
3. the supply of goods.

Although in terms of the Competition Act, the prohibition is directed at dominant firms, consumers are still able to raise a complaint under the CPA in cases where the party charging the excessive price is not a dominant firm.

In terms of these Regulations, for the purposes of both the Competition Act and the CPA, a price increase may be excessive and unreasonable if:

1. the price increase does not correspond to the increase of providing the good or service; or
2. the price increase increases the net margin above the average margin in the three months prior to 1 March 2020.

These will be critical factors in determining whether the price is excessive and indicate *prima facie* (at first glance) that the price is excessive or unfair. The Regulations also caution suppliers to implement measures to ensure fair distribution to consumers and customers (including small businesses). Suppliers are also required to implement measures such as limiting the numbers of items customers may purchase in order to maintain adequate stock.

The public has been encouraged to report significant and abrupt increases in the price of goods and services to both the Competition Commission and the National Consumer Commission. In a media statement released by the Competition Commission, the Commission indicated that it had received 559 complaints as at 31 March 2020. Although some of the complaints relate to matters that fall outside the scope of the Competition Act and the Regulations, the majority are against retailers and suppliers for charging excessive prices. In order to adequately address complaints with the requisite urgency, preliminary investigations of complaints are being expedited by the Competition Commission and respondent firms are being given 48 hours to rebut the allegations against them.

The Competition Act prohibits various acts of excessive pricing, price fixing, allocation of markets and market shares, and bid rigging. Any firm found to have engaged in such acts faces penalties of up to 10% of annual turnover for the first offence and up to 25% of annual turnover for a repeat offence. For price fixing, allocation of markets and market shares, and bid rigging, the directors or persons with management authority who engage in such acts or instigate these face imprisonment of a period not exceeding 10 years. Similarly, in terms of the regulations, a person or firm that contravenes the regulations could also face a fine of up to R1m, a fine of up 10% of annual turnover, and imprisonment of a period not exceeding 10 years.

As a result of the surge in demand for a number of essential goods, many suppliers have seen their own input costs rise significantly, which in turn has a direct impact on the ultimate selling price. This is not who the Regulations are targeted at. The Regulations are targeted at businesses which choose to take unfair advantage of the State of National Disaster at the expense of their customers.

ABOUT THE AUTHOR

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