

Joint Briefing to the Portfolio Committee on Trade and Industry and Select Committee on Economic Development, Small Business Development, Tourism, Employment and Labour

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competition commission
south africa

DELEGATION

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INTRODUCTION

The Competition Commission is empowered by the Competition Act to investigate, control and evaluate restrictive business practices.

Our purpose is to promote and maintain competition in South Africa, in order to achieve efficiency in the South African economy.

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.

COVID-19 – ECONOMIC IMPACT

COVID-19 while a public health challenge, presents significant challenges to the economy.

Low economic growth trajectory, heightening of our socio-economic challenges, including unemployment.

Likely to impact market dynamics:

- Increase in market concentration as firms exit
- Increase in merger activity on acquisitions of distressed firms or economic sectors

Need to refocus Competition regulation:

- Focus on lowering market barriers and promoting access to markets for Small-Medium Enterprises and Historically Disadvantaged Individuals
- Consumer protection against price increases and abuse
- Exemption applications by distressed industries

OPERATIONS DURING COVID-19

The Commission has been operating remotely since the declaration of the national disaster and lockdown, in March 2020.

Internal organizational and communication systems have been strengthened to ensure that work continues remotely.

Mechanisms to prioritise investigations related to COVID-19 or those related to key sectors of the economy impacted by the pandemic have been put in place. These include:

- Providing input on Excessive Price Regulations
- Block Exemptions
- Expediated investigations of COVID-19 related complaints
- Merger regulation in key sectors
- Advocacy efforts with business and government to minimise the impact of the pandemic.

COVID-19 REGULATIONS AND BLOCK EXEMPTIONS

- 1) Shortly after the declaration of COVID-19 as a national disaster, the Minister of Trade, Industry and Competition published regulations addressing price gouging in terms of excessive pricing provisions of the Competition Act.

The Regulations prohibit dominant suppliers from charging excessive prices for certain specified goods and services – mainly basic food and consumer items, medical and hygiene supplies, and other emergency products and services

- 2) Regulations for Block Exemptions were further published to enable business to coordinate in order to respond to the COVID-19 pandemic.

The Block Exemption regulations exempt categories of anticompetitive agreements or practices in respective industries from the application of Sections 4 and 5 of the Competition Act.

- 3) Special Tribunal Rules which have enabled COVID-19 price gouging matters to be heard on an expedited basis were also published.

COVID-19 REGULATIONS AND BLOCK EXEMPTIONS (Cont..)

The Exemption Regulations published include the following key sectors:

- 1) **Healthcare sector** – relating to coordinating a supply response for essential health services and products.
- 2) **Banking sector** – relating to debt relief measures.
- 3) **Retail Property Industry** – to collectively negotiate for rental relief measures.
- 4) **Hotel industry** – coordinating on supply of space for potential quarantine premises.
- 5) **Liquid Fuels Wholesalers Association**

Business has been encouraged to take advantage of these where applicable to avoid falling foul of the Competition Act.

COVID-19 EXCESSIVE PRICE INVESTIGATIONS

The Commission has since the beginning of the National Disaster on 17 March 2020, received a total of **1354** complaints and tip offs from the public.

The complaints relate to the allegations that retailers, traders, suppliers and pharmacies are charging excessive prices for COVID-19 related products including:

- Masks and sanitizers,
- Protective gear (PPEs), and
- Certain essential goods and basic food items

The complaints have been investigated in terms of Section 8 of the Competition Act, which prohibit excessive pricing.

COVID-19 EXCESSIVE PRICE INVESTIGATIONS

Cont..

Excessive pricing is prohibited in terms of section 8 of the Competition Act.

An excessive price refers to a price for a good or service which bears no reasonable relation to the economic value of that good or service, or is higher than the value of that good or service.

It is prohibited for a dominant firm to charge an excessive price to the detriment of consumers.

The threshold for dominance is turnover of over R5 million and the possession of market power.

COVID-19 EXCESSIVE PRICE INVESTIGATIONS

Cont..

Not all complaints received raise competition issues or are relevant.

Our approach is to first screen cases to sift those that require a follow up, or raise competition concerns.

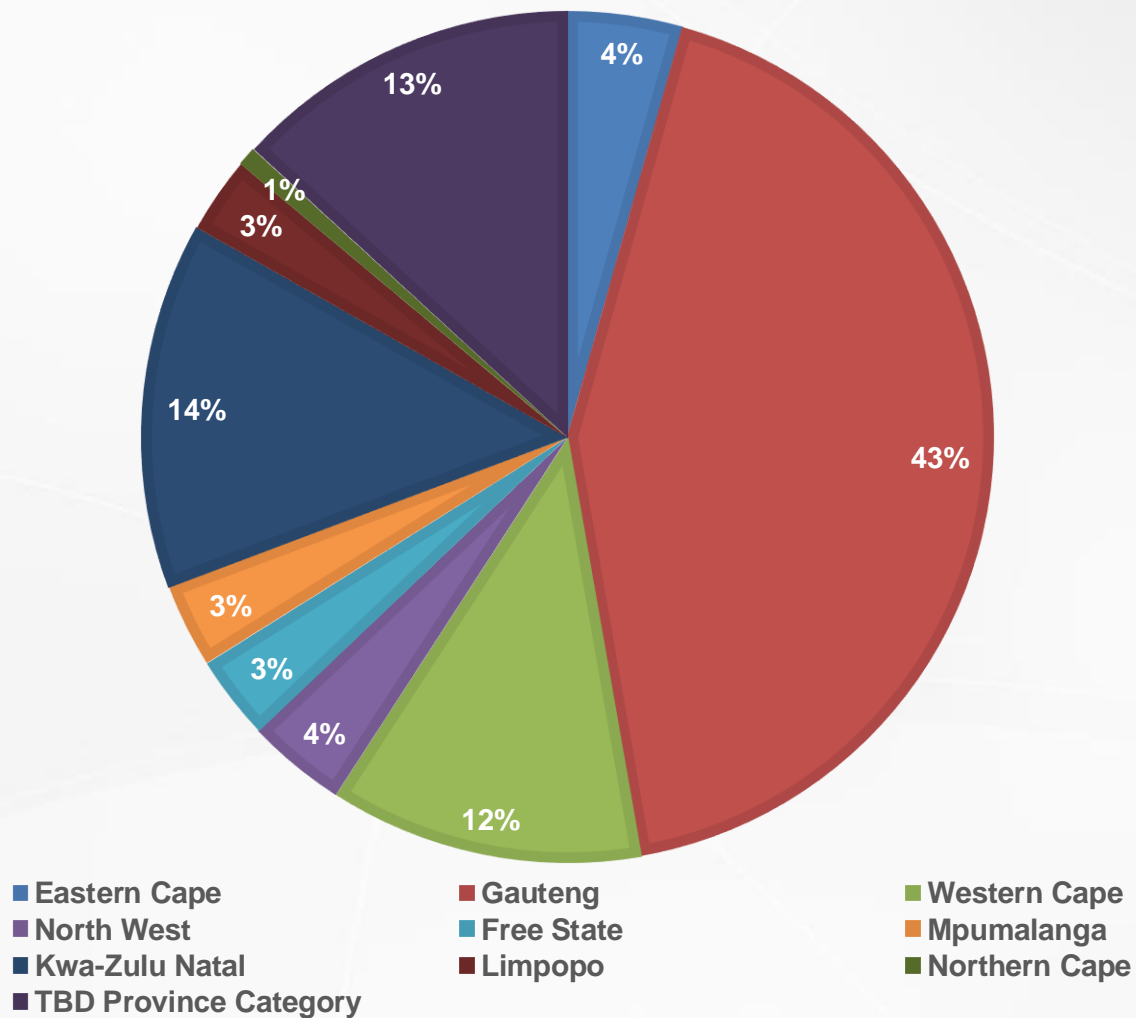
We observe the following key trends from screened cases:

- 1) **Retailers, traders or suppliers who have increased prices and margins in response to increases in:**
 - Public demand and panic buying
 - Input costs
 - Cost of imports, Rand depreciation and/or supply disruptions because of COVID-19.
- 2) **Firms who have increased prices despite no significant increase in input costs (price gauging).**
- 3) **Opportunistic trading:** through various platforms, such as existing retail channels, direct sales to the public or online platforms of items that were not previously traded with huge mark-ups.

COVID-19 EXCESSIVE PRICE INVESTIGATIONS

Cont.. Trends

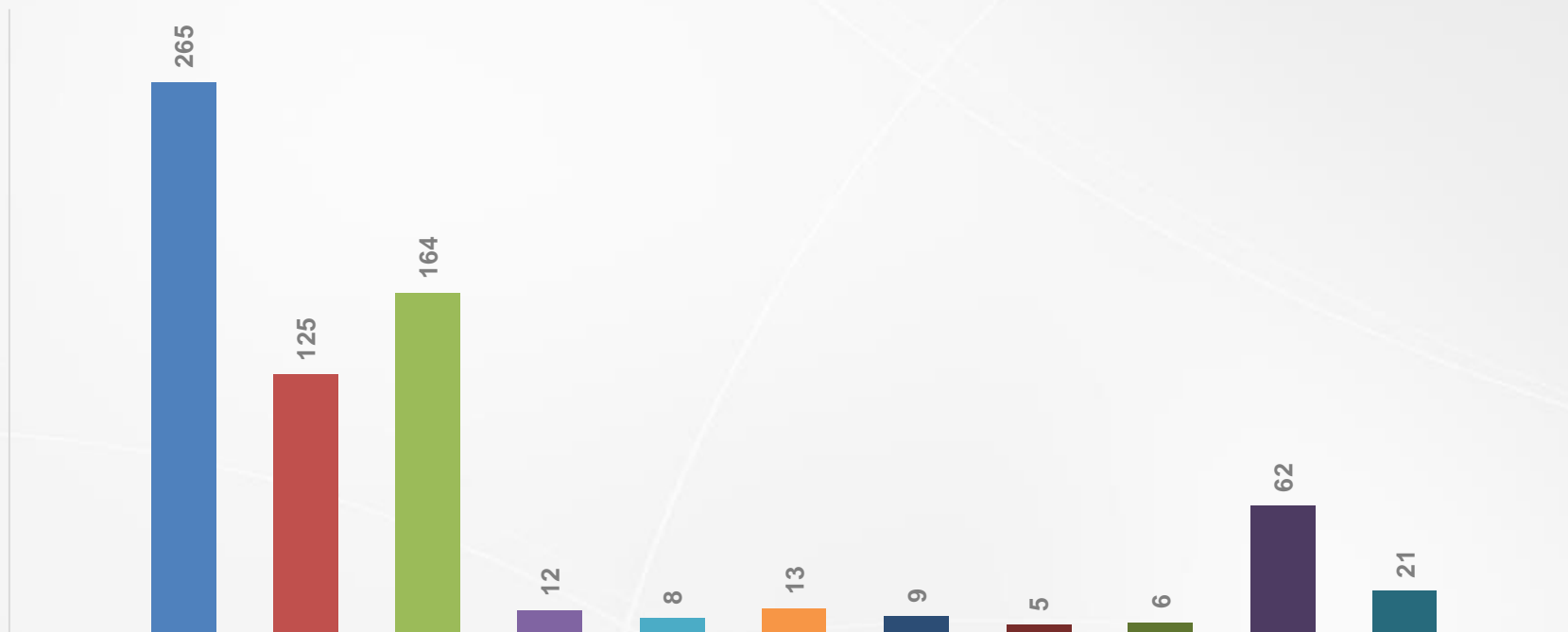
COMPLAINTS BY PROVINCE



COVID-19 EXCESSIVE PRICE INVESTIGATIONS

Cont.. Trends

PRODUCT CATEGORY



TOTAL

- Basic Food Products
- Sanitizer & wipes
- Masks
- Toilet Paper
- Gloves
- Medicine and vaccination
- Gas/Ethanol
- Cleaning agents
- Nappies & Baby Food
- Overlaps
- TBD Product Category

MULTIPRONGED APPROACH TO CASES

1) Advocacy

- Proactive advocacy steps taken to reach out to business to understand their business model, encourage adequate supplies and limit panic buying.
- Dissuade profiteering from the crisis.
- Advocacy processes also entail communicating investigations and processes to educate and raise public awareness.
- Encouraging the public to report cases through various programs, including press conferences, media releases and social media.

2) Enforcement

- All COVID-19 related cases have been prioritised for expedited investigation and referral to the Competition Tribunal
- Investigations conducted in collaboration with the National Consumer Commission.
- A Joint Operations Team has been established to streamline investigations and avoid duplication in investigations.

3) Settlements

- Where contraventions have been found, respondent firms are approached to reach settlements with corrective measures to the conduct.

OUTCOMES OF COMPLETED INVESTIGATIONS

Prosecutions at the Competition Tribunal

1) **Babelegi Workwear Overall Manufacturers & Industrial Supplies**

- Prices increases of facial masks from R41 per box up to R500 per box –mark ups in excess of 500%

2) **Dis-Chem Group**

- Price increases of surgical face masks increased in excess of between 43% and 261%.

3) **Hennox 638 CC**

- Price increases of Filtering Face Piece 1 (FFP1) masks by up to 969.07%

4) **Sicuro Safety CC**

- Price increases of FFP1 masks by up to 956.07%

The firms could face penalties of up to 10% of annual turnover.

OUTCOMES OF COMPLETED INVESTIGATIONS

Cont..

Settlements and Consent Orders

The Commission has achieved a number of settlements and consent orders with several respondent firms, with the following broad undertakings:

- Corrective action to prices/margins – reduction of up to 20%,
- Penalty or donation that bears some relationship to the excess profits earned to charity organizations, old age homes and the Solidarity Fund, and
- Penalty that exceeds excess profits earned

To date, a total of 35 firms are in various stages of settlement.

OUTCOMES OF COMPLETED INVESTIGATIONS

Cont..

Settlements and Consent Orders

13 settlements have been confirmed by the Competition Tribunal through consent orders, including:

Firm	Settlement Terms
Celliers and Heunis CC t/a Centrum	Donation of 500 hand sanitisers, 320 face masks, 7 boxes of gloves (700) gloves valued at R25 000
Main Hardware (Pty) Ltd	Reduction of the net-mark ups to 10% during pandemic period and 6 months afterwards Refund customers that were overcharged.
Evergreens Fresh Market	Reduction of margin on hand sanitiser to 25% or lower Donation of hand sanitisers to the value of R1 800 to Tembisa hospital
Matus (Pty) Ltd	Administrative penalty of R5.9 million Contribution of R5million to Solidarity Fund Ensure that gross profit margins for face masks will not increase during state of national disaster
Mandini Pharmacy	Reduction of mark ups by 20% Donation of essential products to Mandini child welfare.

OTHER SIGNIFICANT MATTERS

The Commission has also prioritised the following key matters during the COVID-19 period:

1) Assessment of significant Mergers

- Firm in distress: acquisition of Cell C (telco) and Suidwes (Silos)
- Coal merger: acquisition of South32 by Seriti

2) Settlements with Mobile Network Operators

- Reductions of data costs by up to 30% by Vodacom and MTN
- Lifeline Data and Zero Rating of Data to provide free data and zero rating for public interest organizations, such as education, healthcare etc by all MNOs (Vodacom, MTN, Cell C and Telkom)
- Important in this time where economies are transitioning to operate digitally.

OTHER SIGNIFICANT MATTERS

(Cont..)

3) Publication of Buyer Power Regulations

- Restrict exercise of abuse of power by dominant suppliers.
- Presents an opportunity for SMEs or HDIs firms to participate in the economy

4) Settlement with Major Retail Stores

- Shoprite Checkers has undertaken to immediately cease exclusivity against other supermarkets in non-urban areas. This will be phased out over five years in urban areas.
- These interventions are critical and will enable other market players to enter many shopping centres without restrictions of exclusive leases.
- The Commission is at advanced engagements with other retailers.

CONCLUSION

The Commission will, in collaboration with the National Consumer Commission, continue to prioritise COVID-19 cases and refer several more cases for prosecution, including settlements and consent orders with respondent firms.

Priority will be given to merger regulation and/or block exemptions in sectors of the economy which have been severely impacted by the pandemic.

The Commission will work closely with government and business to provide advice or advocacy regarding specific proposed interventions for economic recovery.

Increased need for coordination with international counterparts.

It is important that Competition policy be prioritised as a key tool towards economic recovery.

THANK YOU!

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