

South Africa

Competition Act, 1998

## Competition Act: Regulations related to COVID-19 Government Notice R350 of 2020

Legislation as at 19 March 2020

FRBR URI: /akn/za/act/gn/2020/r350/eng@2020-03-19

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PDF created on 3 June 2023 at 18:34.

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# South Africa

## Competition Act, 1998

# Competition Act: Regulations related to COVID-19

## Government Notice R350 of 2020

Published in [Government Gazette no. 43116](#) on 19 March 2020

**Commenced on 19 March 2020**

*[This is the version of this document from 19 March 2020.]*

### 1. Interpretation

In these regulations, unless the context indicates otherwise, any word or expression has the meaning assigned to it by the Competition Act, 1998 ([Act No. 89 of 1998](#)), Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)), the Disaster Management Act, 1957 ([Act 57 of 2002](#)), or the regulations issued in terms of section 27 (2) of the Disaster Management Act, 1957 ([Act No. 57 of 2002](#)) and published in Government Notice No. 318 of Government Gazette No. 43107 on 18 March 2020 and—

- 1.1 "Competition Act" means the Competition Act, 1998 ([Act No. 89 of 1998](#));
- 1.2 "Consumer Protection Act" means the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#));
- 1.3 "Disaster Management Act" means the Disaster Management Act, 1957 ([Act No. 57 of 2002](#));
- 1.4 "national disaster" means the national disaster relating to the COVID-19 outbreak declared in Government Notice No. 313 of Government Gazette No. 43096 on 15 March 2020; and
- 1.5 "price increase" means a direct increase or an increase as a result of unfair conduct such as, amongst others, false or misleading pricing practices, covert manipulation of prices, manipulation through raising or reducing grade levels of goods and services.

### 2. Application

- 2.1 These regulations and directions apply to the supply of goods and services contemplated and listed in Annexures A and B during the period of the national disaster.
- 2.2 These regulations and directions come into effect on the date of their publication in the Government Gazette.
- 2.3 These regulations and directions will be of no force of effect when the COVID-19 outbreak is no longer declared a disaster.

### 3. Purpose

The purpose of these regulations is to—

- 3.1 promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster; and
- 3.2 protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster.

### 4. Excessive pricing

- 4.1 In terms of section 8 (1) of the Competition Act a dominant firm may not charge an excessive price to the detriment of consumers or customers.

- 4.2 In terms of section 8 (3)(f) of the Competition Act during any period of the national disaster, a material price increase of a good or service contemplated in Annexure A which—
- 4.2.1 does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or
- 4.2.2 increases the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three month period prior to 1 March 2020,
- is a relevant and critical factor for determining whether the price is excessive or unfair and indicates *prima facie* that the price is excessive or unfair.

## 5. Unconscionable, unfair, unreasonable and unjust prices

- 5.1 In terms of sections 40 and 48 of the Consumer Protection Act a supplier may not—
- 5.1.1 engage in unconscionable conduct, which includes the use of unfair tactics in connection with the marketing of any goods or service and the supply of goods or service to a consumer; and
- 5.1.2 may not offer to supply, supply or enter into an agreement to supply any good and service at a price that is unfair, unreasonable or unjust.
- 5.2 In terms of section 120(1)(d) of the Consumer Protection Act, during any period of the national disaster, a price increase of a good or service contemplated in Annexure A which—
- 5.2.1 does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or
- 5.2.2 increases the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three month period prior to 1 March 2020,
- is unconscionable, unfair, unreasonable and unjust and a supplier is prohibited from effecting such a price increase.
- 5.3 The Minister, after consultation with the Minister of Health, may issue directions in terms of the regulations issued in terms of section 27(2) of the Disaster Management Act published in Government Notice No. 318 of Government Gazette No. 43107 on 18 March 2020, should it become necessary, to set maximum prices on private medical goods and services relating to the testing, prevention and treatment of the COVID-19 and its associated diseases during the national disaster.

## 6. Supply of goods

- 6.1 A supplier must develop and implement reasonable measures to—
- 6.1.1 ensure the equitable distribution to consumers or customers, including small businesses, of goods contemplated in Annexure A; and
- 6.1.2 maintain adequate stocks of goods contemplated in Annexure A.
- 6.2 These measures may include limiting the number of items of the goods referred to in Annexure B which a consumer or customer may purchase in a defined period of time.
- 6.3 A retailer must prominently display a notice in each of its stores that states that it has developed and will implement the measures referred to in sub-regulations 6.1 and 6.2 and that it will adequately and diligently carry out these measures.
- 6.4 A wholesaler must take all reasonable steps to ensure that purchases by customers and consumers are not intended to circumvent the object and implementation of the measures referred to in sub-regulation 6.1.

- 6.5 The Minister may, by notice in the Gazette, delete or add goods and services contemplated and listed in Annexures A and B.
- 6.6 The Minister may, by notice in the Gazette, issue directions in terms of the regulations issued in terms of section 27(2) of the Disaster Management Act published in Government Notice No. 318 of Government Gazette No. 43107 on 18 March 2020, should it become necessary, to set maximum quantities limiting the number of items of the goods referred to in Annexure B which a consumer or customer may purchase in a defined period of time.

## 7. Penalties

- 7.1 A dominant firm that contravenes or fails to comply with regulation 4 must be investigated by the Competition Commission and, if found to be in contravention, is liable for the penalties imposed upon it as provided for in the Competition Act.
- 7.2 Subject to the requirements of the Competition Act, the Consumer Protection Act and the regulations published in terms of section 27(2) of the Disaster Management Act, a person or firm which contravenes these regulations could have one or more of the following penalties imposed—
  - 7.2.1 a fine of up to R1 000 000;
  - 7.2.2 a fine of up to 10% of a firm's turnover; and
  - 7.2.3 imprisonment for a period not exceeding 12 months.

## 8. Representations on these regulations

- 8.1 Any person may make written representations regarding these regulations and directions.
- 8.2 Representations must reach the Department of Trade and Industry not later than 14 days from the date of publication of this notice.
- 8.3 Representations should be submitted by email to [ministry@economic.gov.za](mailto:ministry@economic.gov.za).
- 8.4 Following consideration of the representations, the Minister may amend these regulations and directions.

### Annexure A

The goods and services are those which relate to—

1. basic food and consumer items;
2. emergency products and services;
3. medical and hygiene supplies;
4. emergency clean-up products and services.

### Annexure B

1. The goods are—
  - 1.1 Toilet Paper;
  - 1.2 Hand Sanitiser;
  - 1.3 Facial Masks;
  - 1.4 Disinfectants Cleaners;

- 1.5 Surgical gloves;
  - 1.6 Surgical masks;
  - 1.7 Disinfectant Wipes;
  - 1.8 Antiseptic Liquids;
  - 1.9 All-Purpose Cleaners;
  - 1.10 Baby Formula;
  - 1.11 Disposable Nappies;
  - 1.12 Bleach;
  - 1.13 Cooking Oils;
  - 1.14 Wheat Flour;
  - 1.15 Rice;
  - 1.16 Maize meal;
  - 1.17 Pasta;
  - 1.18 Sugar;
  - 1.19 Long-life Milk
  - 1.20 Canned and Frozen Vegetables;
  - 1.21 Canned, frozen and fresh meat, chicken or fish;
  - 1.22 Bottled Water.
2. The services are—
- 2.1 private medical services relating to the testing, prevention and treatment of the COVID-19 and its associated diseases.