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African Competition Authorities Respond to COVID-19 Crisis

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The substantial increase in confirmed COVID-19 cases in Africa has led to innumerable complaints of anti-competitive conduct from customers and consumers across the continent, who have expressed concerns over sudden price hikes of healthcare and hygiene products as well as identified essential products. This has prompted rapid responses from African competition authorities.

In South Africa, competition and consumer protection authorities are collaborating in efforts to examining complaints from customers and consumers implicating companies for excessive and/or exploitative pricing of essential products. Such essential products include facemasks, toilet paper and hand sanitisers. In addition, South Africa's Department of Trade, Industry and Competition has introduced new regulations, which together with existing competition regulations on excessive pricing, deal with pricing and supply matters during the national disaster. These regulations do not prevent market players from implementing necessary price adjustments, their objective being to prevent unjustified price hikes and facilitate the collaboration of essential service providers in a regulated manner.

Further, essential service providers - the private healthcare sector, hotel industry, banking sector and retail property sector - have been granted block exemptions from certain provisions of the

South African Competition Act, thereby enabling them to coordinate resources and infrastructure for the benefit of consumers during the period of the national disaster.

The country has also entered a 21-day lockdown period, which began on Thursday, 26 March 2020 and is due to end on 16 April 2020. During this period, all non-essential services providers are required to allow employees to operate from their homes in order to limit non-essential human interaction. The lockdown has affected the operations of both the Competition Commission (Commission) and Competition Tribunal (Tribunal), requiring that both refocus their resources on complaints filed in relation to COVID-19 and other urgent matters over the 21 days. The scaling down of operations by the competition authorities has proved to be necessary, not only to comply with the resolution of the National Coronavirus Command Council, but also to deal with the increase in COVID-19 complaints submitted to the Commission - 559 complaints have been received to-date.

In Namibia, the Namibian Competition Commission (NaCC) concluded a market analysis, which revealed that the price of immune boosters, hand sanitisers and 3ply facemasks have substantially increased due to growing demand for these essential products. In response to this, the NaCC formed a dedicated task team under its Enforcement, Exemptions & Cartels Division, which will continue to investigate and prioritise price exploitation complaints in relation to essential healthcare and hygiene during the COVID-19 crisis. The NaCC is cognisant of the fact that it is necessary for certain essential service providers to collaborate during this period; therefore we can expect engagements between the NaCC and the Namibian government, with the aim of introducing block exemptions similar to those introduced in South Africa.

Mauritius has also experienced a surge in the pricing of essential goods in response to the COVID-19 pandemic. In addition, certain suppliers of essential goods in Mauritius have come under the spotlight of the authority, suspected of creating artificial shortages

of supplies. In response, the Mauritian government has announced that its Competition Commission will be tasked with monitoring the market for unjustified price escalations of essential goods and will prosecute any businesses found to be engaging in such restricted trade practices during this period.

The rest of Southern Africa's competition authorities are yet to issue cautionary measures or publish competition regulations in response of the effects of the COVID-19 pandemic on their markets.

Although the number of confirmed COVID-19 cases in the East African countries combined are significantly less than those reported in South Africa, competition authorities in Kenya, Tanzania, Malawi and Zambia have adopted a proactive approach to guarding against unjustified price hikes and the excessive pricing of essential goods during this period.

The Competition Authority of Kenya (CAK) has published a cautionary note warning manufacturers and retailers that are implicated in price fixing or any sort of price manipulation behavior that they will be subject to an administrative penalty of up to 10% of turnover.

Further, the CAK has ordered the removal of exclusivity clauses in agreements between manufactures and distributors of maize flour, wheat flour, edible oils, rice, sanitizers and toilet papers, effective 26 March 2020. Exclusive distribution agreements between market players interfere with the allocation of favorable prices in relation to essential goods. The CAK highlighted that negative effects of such agreements may be further exacerbated during pandemics such as COVID-19. In addition, distributors who also operate in the downstream retail market have been requested to provide these essential goods to other retailers on non-discriminatory terms.

The Competition and Fair Trading Commission (CFTC) of Malawi concluded an investigation on 23 March 2020, which revealed that 11 pharmacies in Lilongwe and Blantyre were excessively pricing hand sanitizers, facemasks and gloves in response to the COVID-

19 outbreak in Malawi. The CFTC has also published a cautionary note warning against excessive pricing during this period.

The Competition and Consumer Protection Commission of Zambia's cautionary note was directed at companies and individuals that are excessively pricing hygiene products in response to the demand during the COVID-19 crisis. The Fair Competition Commission in Tanzania has responded to the Ministry of Industry and Trade's request to monitor and report on whether market players are maintaining reasonable prices on essential items such as sterilizers, masks and disinfectant hand wash during the COVID-19 pandemic.

From a West African perspective, Nigeria announced a 14-day lockdown of its two major cities, Lagos and Abuja, effective Monday, 30 March 2020 at 11pm. Accordingly, the Federal Competition and Consumer Protection Commission (FCCPC) announced that it will be scaling down on its operations and available resources will be redirected to focus on COVID-19-related complaints and issues. The FCCPC similarly published a cautionary notice to suppliers, retailers and online shopping platforms, warning them against irregularly increasing prices of essential hygiene products in response to increased demand caused by the COVID-19 epidemic. The FCCPC has been active in the enforcement of competition laws amid the COVID-19 crisis. Currently, it has referred four supermarkets and their pharmacy distributors to court for conspiring to hike prices and selling essential products at unfair prices during the pandemic.

Apart from communication indicating the scaling down of operations by competition agencies in Morocco, Tunisia and Egypt, no other preventative measures in response to COVID-19 have been communicated by competition authorities in North Africa.

Numerous competition authorities in Africa are aware of the effects of unjustified price hikes and excessive pricing on already vulnerable economies. They have responded by establishing

specialized investigation teams, refocusing existing resources to COVID-19 specific complaints and introducing new competition regulations – as is the case in South Africa. African competition authorities have further noted that collaboration between themselves and consumer protection authorities, as well as between competing essential service providers, is essential in order to enable countries to adequately respond to the COVID-19 crisis. Unprecedented times appear to have called for unprecedented measures for competition authorities across Africa.

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