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LEGAL UPDATE

Price gouging

19 March 2020 *2 min read*

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Where firms, in times of crisis, increase the prices of goods, or services to levels substantially above what would, under normal circumstances, be considered fair and reasonable, it is regarded as "price gouging".

Typically, this behaviour follows a steep rise in demand for basic necessities such as medications, food, water, fuel and, as the current coronavirus crisis has demonstrated, perceived necessities such as hand-sanitiser and toilet paper. This conduct is illegal in some jurisdictions and in South Africa, it is regulated under the Competition Act 89 of 1998 ("Competition Act") as well as the CPA.

State of Emergency Act 64 of 1997

Should a state of emergency be declared under the State of Emergency Act 64 of 1997 ("SoE Act"), in circumstances where it is regarded that the progress of the disease is threatening the life of the nation and such declaration is necessary to restore peace and order, it is not inconceivable that price gouging can also be addressed in emergency regulations, which may be promulgated under the SoE Act.

The Minister of Trade and Industry, Mr Ebrahim Patel has already cautioned that the Competition Commission would be on "high alert" after complaints of retailers hiking prices of basic necessities. Under the Competition Act, it is prohibited for a dominant firm to charge an excessive price to the detriment of consumers or customers.

The CPA also specifically prohibits a supplier from offering to supply or supplying goods or services "at a price that is unfair, unreasonable or unjust".

Firms are advised to carefully consider any increase in prices over the crisis period to ensure that such higher prices are necessitated by increases in costs to produce the product or render the service in question, rather than by a desire to capitalise on the steep increased demand curve caused by the COVID-19 pandemic.

Patel was speaking after the special executive council meeting held on the 16th of March 2020 between government, business, and labour and other social partners at the National Economic Development and Labour Council (NEDLAC) to discuss measures to deal with the impact of the COVID-19 epidemic.