



NATIONAL CONSUMER COMMISSION

a member of **the dtic** group

EXPLANATORY NOTE 5 OF 2023

DATE: 12 July 2023.

The implication of failure to comply with a Compliance Notice

1. INTRODUCTION

1.1 The purpose of this explanatory note is to give guidance to suppliers/ importers and other stakeholders on steps to be taken by suppliers/ importers upon receipt of a Compliance Notice and the implication of failure to comply with a Compliance Notice.

2. FACTUAL BACKGROUND

2.1 In this explanatory note, the NCC addresses the application of relevant sections of the CPA, remedies available to suppliers/ importers upon receipt of a Compliance Notice, and implications of failure to comply with the Compliance Notice or apply for relevant remedy.

2.2 Suppliers/importers have on various occasions failed to comply with Compliance Notices issued to them which resulted in the NCC enforcing compliance therewith and referring the matter to the National Consumer Tribunal for an administrative fine to be imposed on non-compliant suppliers/ importers.

3. APPLICABLE LEGISLATION

3.1 Section 73 (1) (c) (iii), 99 (e), and 100 (1) of the CPA empower the NCC, among others, to issue a Compliance Notice to a supplier/ importer who has committed prohibited conduct.

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- 3.2. A prohibited conduct is an act or omission in contravention of the CPA, including its Regulations.
- 3.3. The Compliance Notice contains detailed steps that are required to be taken by the supplier/importer and the period within which those steps must be taken as required in terms of section 100 (3) (d) of the CPA.
- 3.4. In addition, thereto, the Compliance Notice also informs the supplier/ importer about any penalty that may be imposed in terms of the CPA if such steps are not taken as required in terms of section 100 (3) (d) of the CPA.
- 3.2 Section 100 (4) (a) states that a Compliance Notice remains in force until it is set aside by the Tribunal or a court upon a review of the Tribunal decision concerning the compliance notice. Therefore, if the supplier/ importer does not comply with the steps stipulated in the Compliance notice, within the stipulated period such supplier is deemed to have committed a prohibited conduct.

4. REMEDIES AVAILABLE TO SUPPLIER/ IMPORTER AND COMMISSION

- 4.1 If the supplier/ importer is not aggrieved or wants to challenge a compliance notice, the supplier/ importer must apply to the National Tribunal for the review of such Notice within 15 days of receipt thereof.
- 4.2 Should the supplier/ importer fail for any reason to apply for the review of the compliance notice within 15 days of receipt thereof, such supplier/ importer must apply to the Tribunal to condone the late filing of the review application of the Compliance Notice and the Tribunal has the discretion to condone such late review application or make an order that the review application be filed and served within a longer time, upon good cause shown. Therefore, the supplier/ importer must provide good reasons why the review application was not made within 15 days of receipt of a compliance notice.
- 4.3. Should the supplier/ importer fail to take the stipulated steps within the period specified in the Compliance Notice, the Commission may refer the matter to the National Consumer Tribunal (Tribunal) and ask the Tribunal to impose an administrative fine on the non-compliant supplier/ importer or refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 110 (2) of the CPA.

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4.4. Section 110 (2) of the CPA makes it an offence for any failure to act in accordance with a compliance notice. But where the Commission has referred the matter to the Tribunal for the imposition of an administrative fine, the Commission may not again refer the matter to the National Prosecuting Authority for prosecution because such action amounts to double punishment on the part of supplier/ importer who did not comply with the Compliance Notice.

5. **ADMINISTRATIVE FINE / PENALTY**

5.1 The Tribunal may impose an administrative fine on a non-compliant supplier/ importer not exceeding 10% of the supplier's/ importer's annual turnover during the preceding financial year or R1 000 000, whichever is greater, as stipulated in terms of section 112 (2) of the CPA.

5.2. Therefore, any non-compliant supplier/ importer might be fined by the Tribunal, should such supplier/ importer be found not to have taken steps stipulated in the Compliance Notice within the stipulated period. In the case between ***The NCC vs Lambons (Pty) (Ltd), case number NCT239846/2022/100(6) (a)***, the non-compliant supplier (i.e **Lambons (Pty) (Ltd)**) was fined R200 000,00 for failure to comply with the Compliance Notice.

5.2 In the event of non-compliance with the Compliance Notice being referred to the National Prosecuting Authority, the non-compliant supplier/ importer may be liable:

a) to a fine or to imprisonment of a period not exceeding 12 months or to both a fine and imprisonment, as stipulated in terms of section 111 (1) (b) of the CPA.

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