



NATIONAL CONSUMER COMMISSION

a member of **the dti** group

Remarks by Commissioner Ebrahim Mohamed
at the occasion of the Consumer Interest Seminar

held at Pretoria on

15 March 2018

Programme director;

Government representatives present;

Executives and staff from the Competition Commission;

Distinguished guests;

Ladies and gentlemen

All protocol observed;

Good morning.

Thank you for inviting the National Consumer Commission to this auspicious event, and for allowing us to participate in its programme.

Programme director,

Before I speak to the theme of the day, I would like to wish each and everyone present here, a happy **World Consumer Rights Day!**

As many of you may know, World Consumer Rights Day is an occasion commemorated on 15 March annually, to recognise the impact made by consumer and civil rights organisations like us, mobilize citizen action in respect of consumer rights, and to express solidarity within the global consumer movement.

Programme director,

With your indulgence I would like to take a few moments to remind us all that in exactly seven days from today, South Africa as a country will be commemorating Human Rights Day, to pay tribute to the heroes and heroines who lost their lives during the tragic events of 21 March 1960, which came to be known as the **Sharpeville Massacre**. For it is due to

the gallantry of such warriors that human rights, in their natural or consumer rights form, have become so prominent in our country. It would thus be remiss of me to not give context and, or some background to what had given rise to our country's rights-based laws and institutions.

Programme director:

I believe South Africa has done well by enacting progressive laws and establishing institutions that protect consumers from harmful business practices, unfair discrimination and inequality in the marketplace.

With regard to protecting South African consumers, government has instituted various measures, to put into effect, policies and laws that comply with international guidelines and principles.

The United Nations encourage governments to develop or maintain a strong consumer protection policy, taking into account its guidelines and relevant international agreements.

To this end South Africa has implemented policies and measures that have contributed to the development and promotion of market conditions that support the equitable and sustainable consumption of goods and services.

These policies and measures include the enactment of the Consumer Protection Act which entrenches consumer policy, the National Credit Act, a Competition law, environmental management policy, the introduction of additional regulation in the areas of disclosure, such as the Home Mortgage Disclosure Act, a review of the Estate Agency Affairs Act, the Promotion of Access to Information Act, the Promotion of Equality and Prevention of Unfair Discrimination Act, the President's

Office initiative on the Status of the Disabled and the Electronic Communications and Transactions Act.

In terms of the objectives of the United Nations Guidelines on Consumer Protection, developing countries should recognize that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection.

The UN guidelines sets its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of a country, and the needs of its population, bearing in mind the costs and benefits of proposed measures.

Core to these guidelines is that government policies should seek to enable consumers to obtain optimum benefit from their economic resources. Government policies should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place. Governments are thus encouraged to intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards.

The guidelines caution that in applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

Bearing in mind that every citizen of the Republic of South Africa is a consumer, it is important to assess the progress made by the South African government insofar as its obligations relate to the protection of consumer rights. In terms of Section 41 of the Constitution read with Schedule 4 thereof, consumer protection is an area of concurrent jurisdiction. It is an area that falls within the competencies of both National and Provincial government.

Provincial consumer protection authorities exist in all provinces. Provincial consumer courts have jurisdiction over complaints of unfair business practices in terms of their respective legislations. Of significance also, legislation on product safety in the areas of agriculture and health have been introduced.

Prior to the Consumer Protection Act being drafted, it was established that the consumer protection processes by then, were insufficient to deal with contemporary and emerging challenges facing consumers. In particular, there was no overarching consumer law regulating the interaction of consumers and business in the market place with respect to issues such as marketing and selling practices, contracts, product safety and labelling, for example. The emergence of new issues such as globalisation and e-commerce, which provide opportunities for universal access, needed to be considered in the light of consumer privacy and the provision of redress and enforcement. E-commerce and the knowledge economy also exposed consumers to old risks in new guises

with many old practices re-emerging. It is for this reason that **the dti** attempted to develop a more comprehensive consumer protection legislation which would in essence establish consumer protection policy and norms and standards within this sphere.

The purpose of the Competition Act is, amongst others, to promote and maintain competition in order –

- (a) to promote the efficiency, adaptability and development of the economy;
- (b) to provide consumers with competitive prices and product choices;
- (c) to promote employment and advance the social and economic welfare of South Africans;

The Competition Commission has over time, taken sustained action against cartels that have shamelessly colluded against the interest of ordinary consumers and very often against their direct consumers to fix prices. Whilst it may be argued that the banking and bread investigations sought to assist consumers, **I submit that price fixing in general impacts directly on consumers.** When the price of steel is fixed on a manufacturing level, it invariably impacts on the price of all consumer goods (from pots and pans; motor vehicles and homes). **When there is price collusion in the construction of a stadium, the return on investment is invariably recovered from consumers attending the stadium.**

I recall that many years ago, an investigation was conducted into soda ash price fixing. I did not know until then that this was a key ingredient for the manufacturing glass and detergents.

The Competition Commission has played a significant role in blocking mergers which were likely to result in lower levels of competition and therefore result in higher prices for consumers. Very often, the intervention of the Competition Commission and the resultant positive impact on consumer in mergers is overlooked by ordinary consumers.

Earlier on I mentioned that at the core of the UN Guidelines is that Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. The vast majority of our citizens and consumers fall within the lower to middle LSM groups. Value for money is thus critical for our consumers. When business collude with each other to fix prices or to merge for purposes of dominating markets, these businesses are in fact plotting to rob ordinary consumers of their little available and hard earned money. Such conduct should never be tolerated. I can only urge the Competition Commission and the Tribunal to consider the actual impact of such conduct on ordinary consumers.

Fairly recently, the Minister of Economic Development, Honourable Ebrahim Patel indicated that government will prioritise bringing down data costs as part of developing an economy in line with the fourth industrial revolution and to develop the economy to be more inclusive. Minister Patel stated that ***“Technology is changing economies and society in a deep and fundamental way,”***

In order to do this the Competition Commission will conduct a market enquiry. President Cyril Ramaphosa in his maiden State of the Nation address, stated that increased competition and lower communications prices are high on his agenda. In an article published by MyBroadband on 11 March 2018, it was reported that there was a large gap between

contract, prepaid, and out-of-bundle data prices. Prepaid prices are up to 200% more expensive than comparable contract prices. The article went on to state that the situation is worse when comparing in-bundle and out-of-bundle prices. Out of bundle prices were between 580% and 2,600% more expensive than in bundle costs.

ICASA recently published regulations to improve benefits to consumers of voice and data services. In its deliberations with ICASA on the issue, the NCC was vehemently opposed to consumers not receiving value for money insofar as the amount of data they actually paid for. The NCC is opposed to, and will continue to oppose the practice of forfeiting unused data, which is to the detriment of consumers and only benefits network operators. According to the National Integrated ICT Policy White Paper:

“Both the New Growth Path and the National Development Plan recognise that inclusive economic growth in South Africa is critical to addressing inequality. Increased access to communication technologies, in particular broadband, and the services and content carried on ICT networks, is acknowledged as an important means of promoting growth. To realise this, it is crucial that:

“All people, regardless of who they are, their social or economic status or where they live, can access communications services and content and can therefore participate actively in society and realise the benefits and opportunities of ICTs”.

Thus, the sooner the Competition Commission begins with its market enquiry on data prices, the better.

I have stated earlier that the conduct of price fixing invariably impacts negatively on consumers. I have also acknowledged that significant fines have been imposed by our competition authorities on companies that have been exposed. That is all good. However, the cost of these fines are likely to be passed onto consumers, over time.

It is also possible that innocent shareholders will also have to accept lower returns. In essence the consumer pays twice. If this is the case, then what is the alternative?

I am certain that authorities all over the world grapple with this issue. I can only urge our competition authorities to be more creative with their penalties and to take into account the issue of double jeopardy for consumers.

In conclusion programme director,

I wish to assert that competition law is critical to furthering consumer protection. The role of regulating competition in South Africa is crucial to advancing economic inclusivity. We all know that we come from a past in which the bulk of our people were excluded from the mainstream economy. Competition law must continue to play a role in protecting vulnerable and innocent consumers.

I thank you!