



NATIONAL CONSUMER COMMISSION

a member of **the dtic** group

EXPLANATORY NOTE 1 OF 2024

DATE: 27 MARCH 2024

THE VALIDITY OF A REFERRAL MADE BY THE NATIONAL CONSUMER COMMISSION TO THE NATIONAL CONSUMER TRIBUNAL, WHEREIN THE REFERRAL GOES WIDER THAN THE COMPLAINT ON WHICH IT IS BASED.

1. PURPOSE.

In this explanatory note, the National Consumer Commission (NCC) seeks to provide clarity concerning whether the National Consumer Commission referral is valid where the referral goes wider than what the complainant complained about.

2. FACTUAL BACKGROUND.

- 2.1 The NCC has a mandate to receive and investigate such complaints in terms of section 72 of the Consumer Protection Act.
- 2.2 The complaints are usually not exhaustive of the conduct which has been complained of and in most cases if not in all, upon completion of the investigation it becomes apparent that the supplier has engaged in several prohibited conducts.
- 2.3 Now, the question that arises is whether the NCC may add particulars to the complaints lodged by the complainants or need to initiate an investigation of its own accord to focus on new issues uncovered during the investigation. This is the focus of this explanatory note.

2.4 To properly deduce the validity of this kind of referral, we will look at the Constitutional Court judgment in the case of ***The Competition Commission v Yara SA (Pty) Ltd, Omnia Fertiliser Ltd, and Sasol Chemical Industries (Pty) Ltd, Case no: CCT 81/11*** where the court stated that:

“The Commission is entitled to refer to the prohibited practices that it uncovers during its investigation. It is unnecessary for it to amend the initiating complaint or prepare a new initiating complaint each time it discovers new prohibited practices.”

3. EXPLANATORY NOTE.

3.1 The CPA does not make provision for what should happen where it is determined after investigation that the referral may go beyond the complaint.

3.2 However, the Constitutional Court developed a principle in the abovementioned case which states that the Commission is entitled to refer the prohibited practices that it uncovers during its investigation and, therefore, it is not necessary for the Commission to amend the initial complaint or prepare a new initiating complaint each time it discovers new prohibited practices.

3.3 Therefore, in a nutshell, the NCC is entitled to add new particulars to a complaint submitted by complainants without having to initiate a new complaint.

3.4. Where the NCC’s referral covered issues beyond what was a complaint but also what was discovered during the investigation such referral is valid in terms of the above principle.

For non-binding legal opinions or advisories, email us at Advisory@thenc.org.za.

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