



THE COMPETITION AUTHORITY OF KENYA

ORDER ON EXCLUSIVITY AGREEMENTS ON ESSENTIAL COMMODITIES

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Nairobi

The ongoing investigations by the Competition Authority of Kenya into unconscionable increases of prices and/or hoarding, following pronouncement by the Government of confirmed Coronavirus disease (COVID-19) in Kenya, have established, among others, that some major manufacturers and distributors of essential foodstuffs have entered into exclusive agreements in various parts of the country.

These exclusive contracts apply mainly to the following foodstuffs; maize flour, wheat flour, edible oils, rice, sanitizers and toilet papers.

The agreements facilitate allocation of distributorship territories, brand exclusivity, quantities supplied, and deter manufacturers of competing brands from accessing the same distributors to deliver their products to retail outlets contrary to section 21 (1) of the Competition Act, No 12 of 2010 (“the Act”).

The Authority has determined that these exclusive arrangements distort allocation of optimal prices for these commodities, ultimately denying consumers in some regions of the country from accessing the commodities at competitive prices. This situation may be exacerbated further by the COVID-19 pandemic.

Informed by the aforementioned, the Authority **HEREBY DEMANDS** and **ORDERS**, that pursuant to section 37 (1) (b) of the Act:

- i. All manufacturers and distributors of the following essential commodities: maize flour, wheat flour, edible oils, rice, sanitizers, and toilet papers to expunge exclusivity clauses in their contracts with immediate effect and not later than **26th March 2020**;
- ii. All manufacturers and distributors to *cease* and *desist* from entering into such exclusive agreements unless authorized by the Authority; and
- iii. Distributors who also operate their own retail outlets shall avail the aforementioned essential commodities, and other commodities they distribute, to other retail outlets on non-discriminatory terms.

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ISO 9001:2015 CERTIFIED