

Update on COVID-19 Cases and Investigations

to the Portfolio Committee on
Trade and Industry

20 OCTOBER 2020



competition commission
south africa

DELEGATION

1. Mr Tembinkosi Bonakele – Commissioner
2. Mr Hardin Ratshisusu – Deputy Commissioner
3. Mr Bukhosibakhe Majenge – Chief Legal Counsel
4. Mr James Hodge – Chief Economist
5. Ms Khanyisa Qobo – Divisional Manager: Advocacy
6. Ms Mapato Ramokgopa – Divisional Manager: Office of the Commissioner

OUTLINE

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INTRODUCTION

The Competition Commission is empowered by the Competition Act to investigate, control and evaluate restrictive business practices.

Our purpose is to promote and maintain competition in South Africa, in order to achieve efficiency in the South African economy, as well as promote public interest objectives.

The Competition Act prohibits various acts of excessive pricing, price fixing, allocation of markets and market shares, and bid rigging.

Any firm found to have engaged in such acts, faces penalties of up to 10% of annual turnover for the first offence and up to 25% of annual turnover for a repeat offence.

COVID-19 – ECONOMIC IMPACT

COVID-19 while a public health challenge, presents significant challenges to the economy.

Low economic growth trajectory, heightening of our socio-economic challenges, including unemployment.

Likely to impact market dynamics:

- Increase in market concentration as firms exit
- Increase in merger activity on acquisitions of distressed firms or economic sectors

COVID-19 REGULATIONS AND BLOCK EXEMPTIONS

- 1) Shortly after the declaration of COVID-19 as a national disaster, the Minister of Trade, Industry and Competition published regulations addressing price gouging in terms of excessive pricing provisions of the Competition Act.

The Regulations prohibit dominant suppliers from charging excessive prices for certain specified goods and services – mainly basic food and consumer items, medical and hygiene supplies, and other emergency products and services

- 2) Regulations for Block Exemptions were further published to enable business to coordinate in order to respond to the COVID-19 pandemic.

The Block Exemption regulations exempt categories of anticompetitive agreements or practices in respective industries from the application of Sections 4 and 5 of the Competition Act.

- 3) Special Tribunal Rules which have enabled COVID-19 price gouging matters to be heard on an expedited basis were also published.

COVID-19 REGULATIONS AND BLOCK EXEMPTIONS (Cont..)

The Exemption Regulations published include the following key sectors:

- 1) **Healthcare sector** – relating to coordinating a supply response for essential health services and products.
- 2) **Banking sector** – relating to debt relief measures.
- 3) **Retail Property Industry** – to collectively negotiate for rental relief measures.
- 4) **Hotel industry** – coordinating on supply of space for potential quarantine premises.
- 5) **Liquid Fuels Wholesalers Association**

Business has been encouraged to take advantage of these where applicable to avoid falling foul of the Competition Act.

COVID-19 EXCESSIVE PRICE INVESTIGATIONS

The Commission has since the beginning of the National Disaster on 17 March 2020, received a total of **1734** complaints and tip offs from the public.

The Commission has also initiated own investigations, relating to public procurement.

The complaints and investigations relate to the allegations that retailers, traders, suppliers and pharmacies are charging excessive prices for COVID-19 related products including:

- Masks and sanitizers,
- Protective gear (PPEs), and
- Certain essential goods and basic food items

The complaints have been investigated in terms of Section 8 of the Competition Act, which prohibit excessive pricing.

COVID-19 EXCESSIVE PRICE INVESTIGATIONS

Cont..

Excessive pricing is prohibited in terms of section 8 of the Competition Act.

An excessive price refers to a price for a good or service which bears no reasonable relation to the economic value of that good or service, or is higher than the value of that good or service.

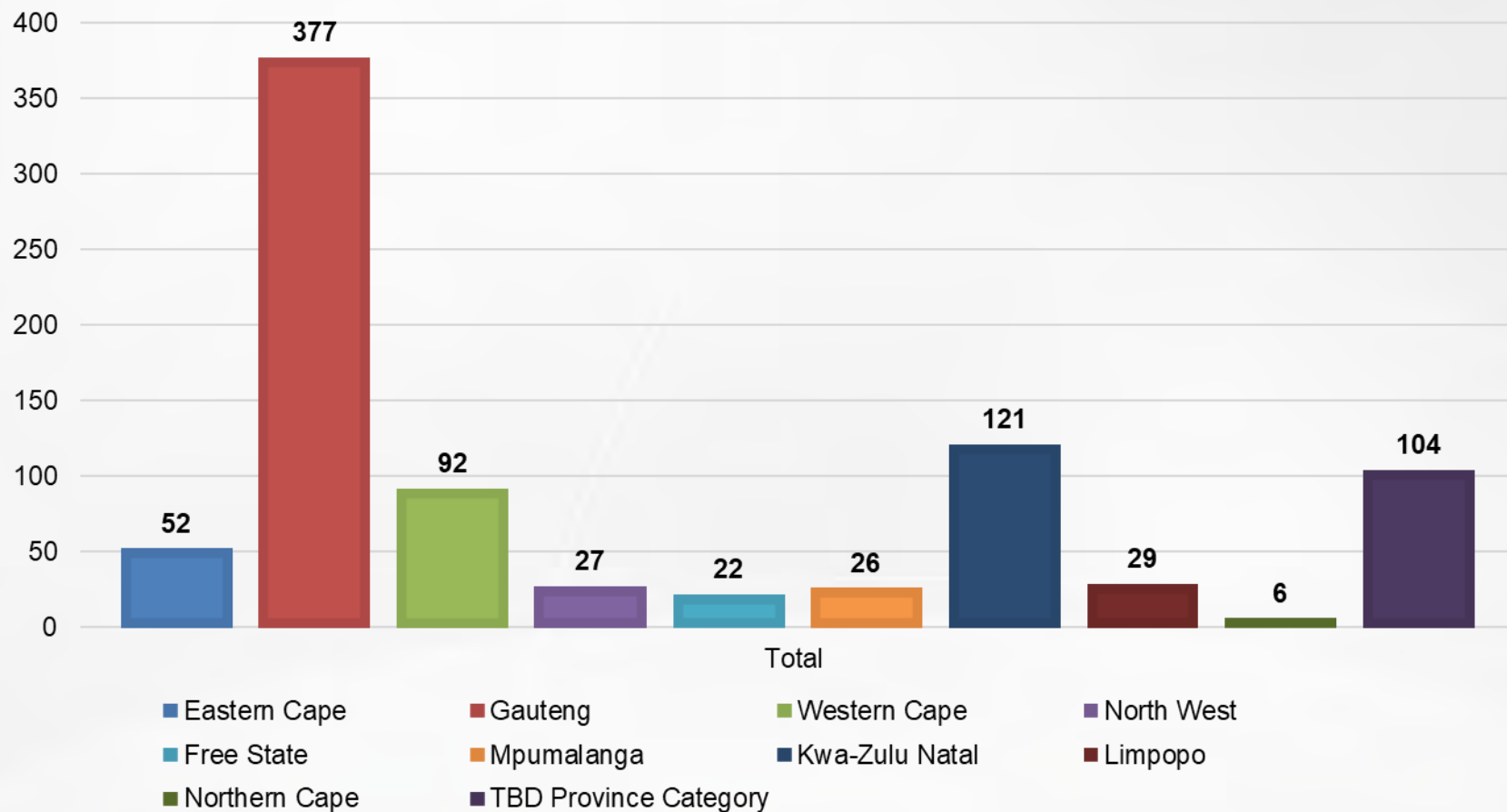
It is prohibited for a dominant firm to charge an excessive price to the detriment of consumers.

The threshold for dominance is turnover of over R5 million and the possession of market power.

COVID-19 EXCESSIVE PRICE INVESTIGATIONS

Cont.. Trends

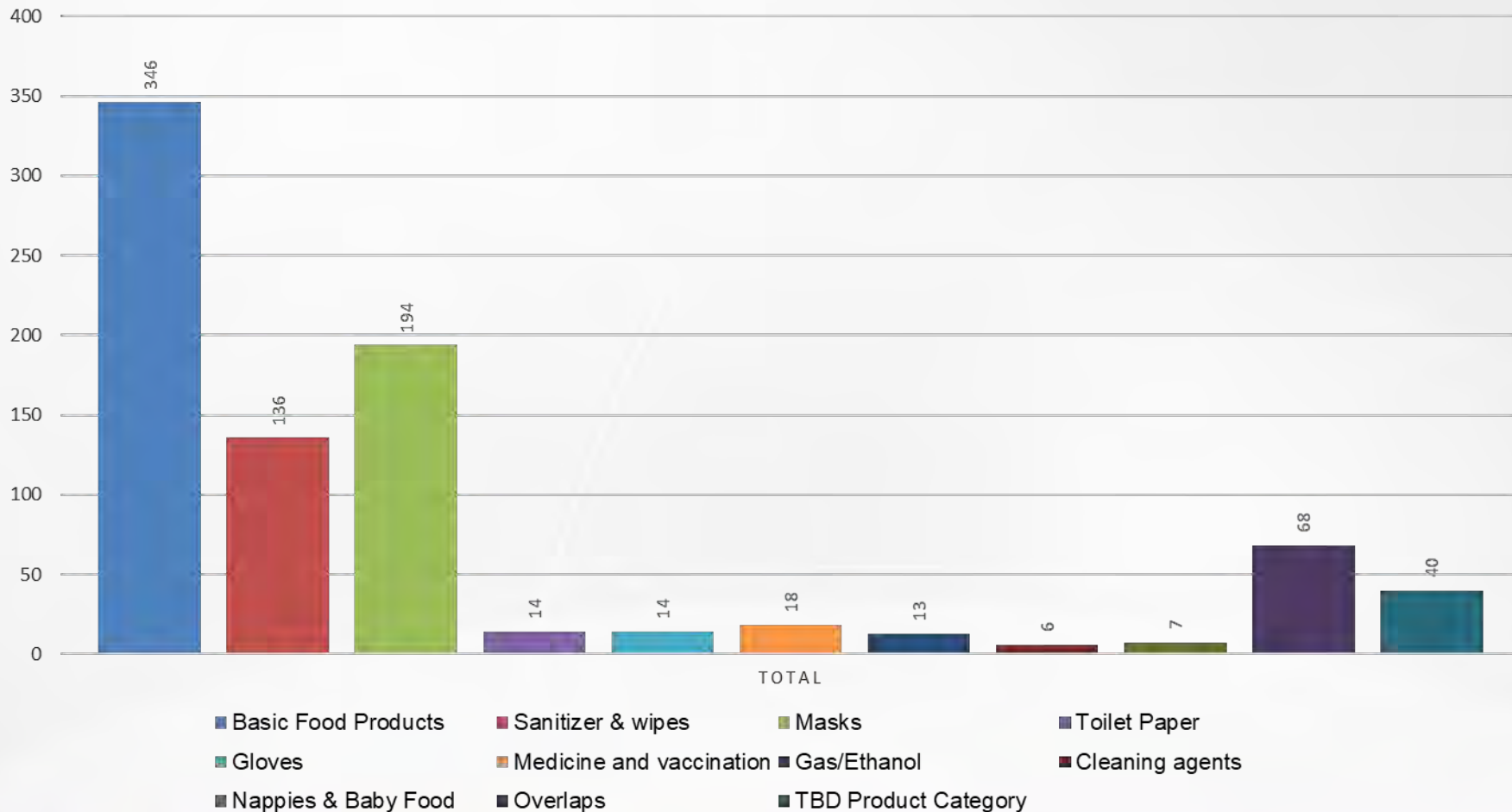
PROVINCES



COVID-19 EXCESSIVE PRICE INVESTIGATIONS

Cont.. Trends

PRODUCT CATEGORY



MULTIPRONGED APPROACH TO CASES

1) Advocacy

- Proactive advocacy steps taken to reach out to business to understand their business model, encourage adequate supplies and limit panic buying.
- Dissuade profiteering from the crisis.
- Advocacy processes also entail communicating investigations and processes to educate and raise public awareness.
- Encouraging the public to report cases through various programs, including press conferences, media releases and social media.

2) Enforcement

- All COVID-19 related cases have been prioritised for expedited investigation and referral to the Competition Tribunal
- Investigations conducted in collaboration with the National Consumer Commission. A Joint Operations Team has been established to streamline investigations and avoid duplication in investigations.
- Part of the Fusion Centre with other law enforcement agencies.

3) Settlements

- Where contraventions have been found, respondent firms are approached to reach settlements with corrective measures to the conduct.

OUTCOMES OF COMPLETED INVESTIGATIONS

Prosecutions at the Competition Tribunal

1) **Babelegi Workwear Overall Manufacturers & Industrial Supplies**

- Prices increases of facial masks from R41 per box up to R500 per box –mark ups in excess of 500% - the matter is subject to appeal at the Competition Appeal Court (CAC).

2) **Dis-Chem Group**

- Price increases of surgical face masks increased in excess of between 43% and 261%. The Competition Tribunal found in the Commission's favour – Dischem was fine R1,5 million.
- Dischem initially appealed the matter at the CAC, but was subsequently withdrawn.

OUTCOMES OF COMPLETED INVESTIGATIONS

Cont..

Settlements and Consent Orders

The Commission has achieved a number of settlements and consent orders with several respondent firms, with the following broad undertakings:

- Corrective action to prices/margins – reduction of up to 20%,
- Penalty or donation that bears some relationship to the excess profits earned to charity organizations, old age homes and the Solidarity Fund, and
- Penalty that exceeds excess profits earned

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OUTCOMES OF COMPLETED INVESTIGATIONS

Cont..

Settlements and Consent Orders

35 settlements have been confirmed by the Competition Tribunal through consent orders and memorandums of understanding concluded with respondent firms.

The total value of the settlements finalised equal:

R15 499 996,12

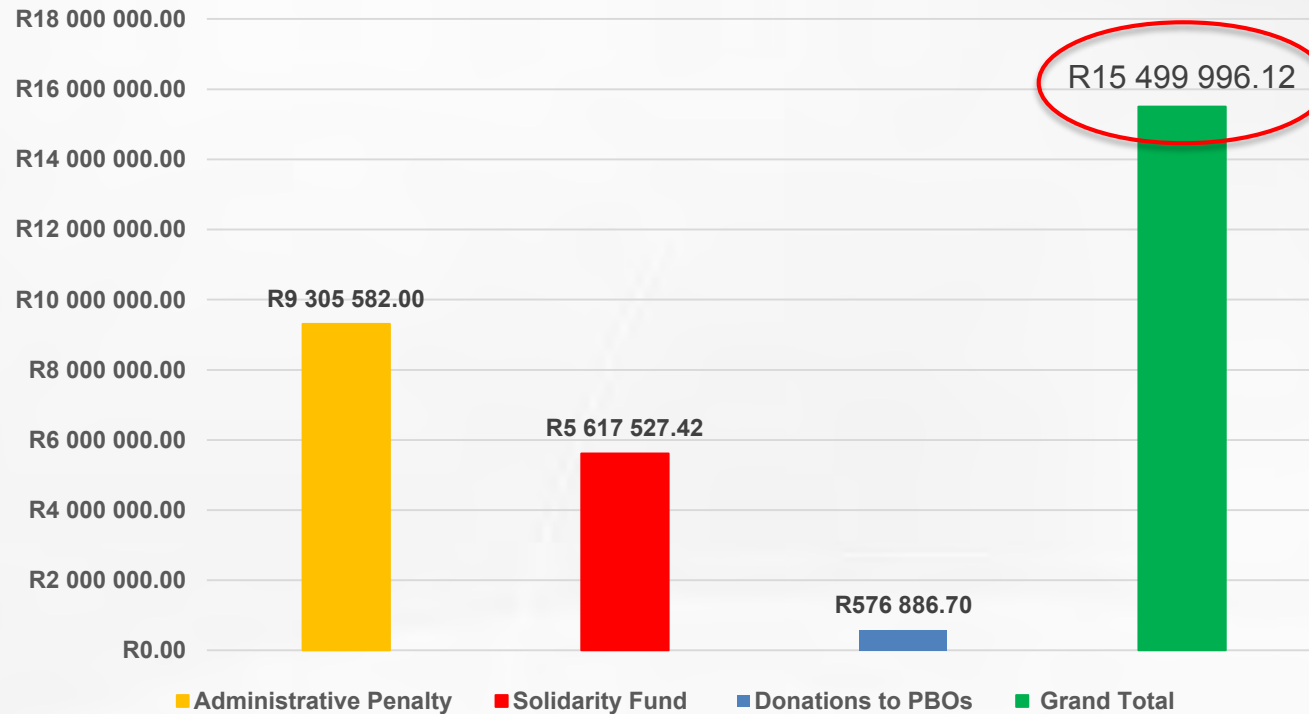
Other possible settlements are still under consideration with respondent firms.

OUTCOMES OF COMPLETED INVESTIGATIONS

Cont..

Settlements and Consent Orders

Breakdown of fines and donations



PUBLIC PROCUREMENT OF PPE

The Commission forms part of the Fusion Centre that has been created by President Ramaphosa, which brings together all the relevant law enforcement agencies looking into the PPE procurement related corruption.

Whilst there has been corruption in PPE contracts, it is also the case that suppliers exploited the spike in demand from government and the need to remain operational under lockdown by charging excessive prices.

We received over **50** specific complaints from SAPS and NHLS (National Health Laboratory Services).

- We have also identified outlier prices for procurement amongst those published by National Treasury on their website.
- Cases which relate to pure corruption have been referred to the SIU.

PUBLIC PROCUREMENT OF PPE (Cont..)

We have referred two cases of exploitative pricing of PPE supply to SAPS (Blue Collar (sanitiser) and Tsutsumani (surgical masks)).

- BlueCollar and Ateltico – responded to the SAPS Request For Quotation for the supply of bulk hand sanitiser. BlueCollar and Ateltico entered into a memorandum of understanding in terms of which they agreed to share the profits earned from the transaction. BlueCollar then supplied SAPS with 10 000 25Lt containers of hand sanitisers at the price of R3,550 per 25Lt container with a gross mark-up of 123%, a price that the Commission found to be excessive.
- Tsutsumani – SAPS procured 500 000 surgical face masks from Tsutsumani at R32.50 per mask. Tsutsumani earned a gross mark-up of 87% on this transaction, which the Commission deems excessive.

The Commission has also noted the Report of the Auditor General of South Africa pointing to overcharging by suppliers of PPE to the public sector.

The Commission is following up on the Report and is engaging with the AG's office, National Treasury and the Special Investigations Unit to sift cases for prioritisation.

FOOD PRICE MONITORING

The Commission has since the beginning of Lockdown monitored food market pricing to understand retail level inflation and the need for enforcement action.

The second Essential Food Price Monitoring report was published in September 2020 and it covered the following aspects:

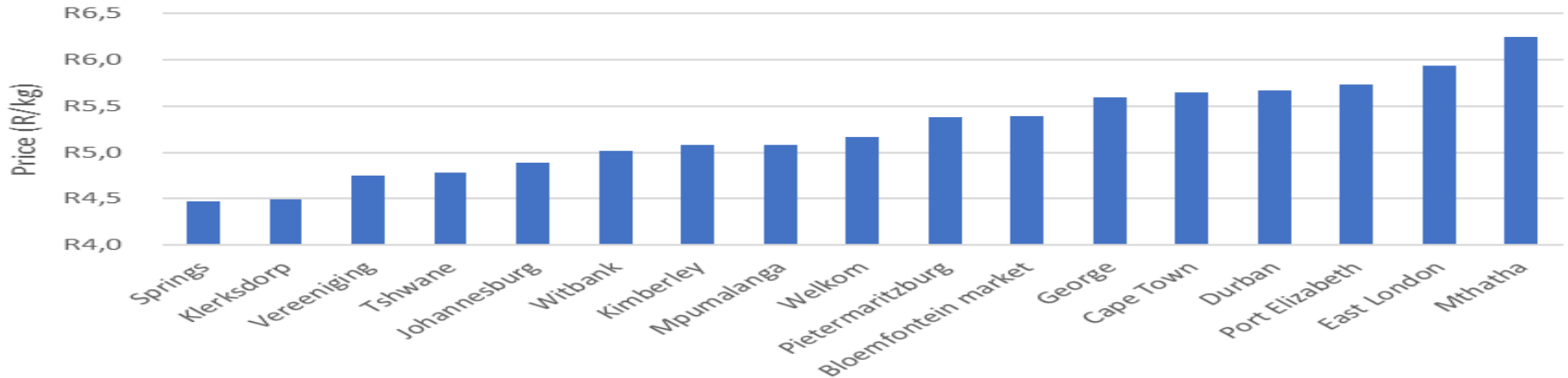
- 1) Examination of fresh produce market volatility and differentials across markets nationally
- 2) Examination of the farm gate to shelf price gap at the advent of the crisis and beyond for some key food items using StatsSA survey raw data.
- 3) Continued monitoring of the movements in grains and fresh produce prices in the wholesale and commodity trading markets

The report is available at: <http://www.compcom.co.za/wp-content/uploads/2020/09/Essential-Food-Pricing-Report-September-2020.pdf>

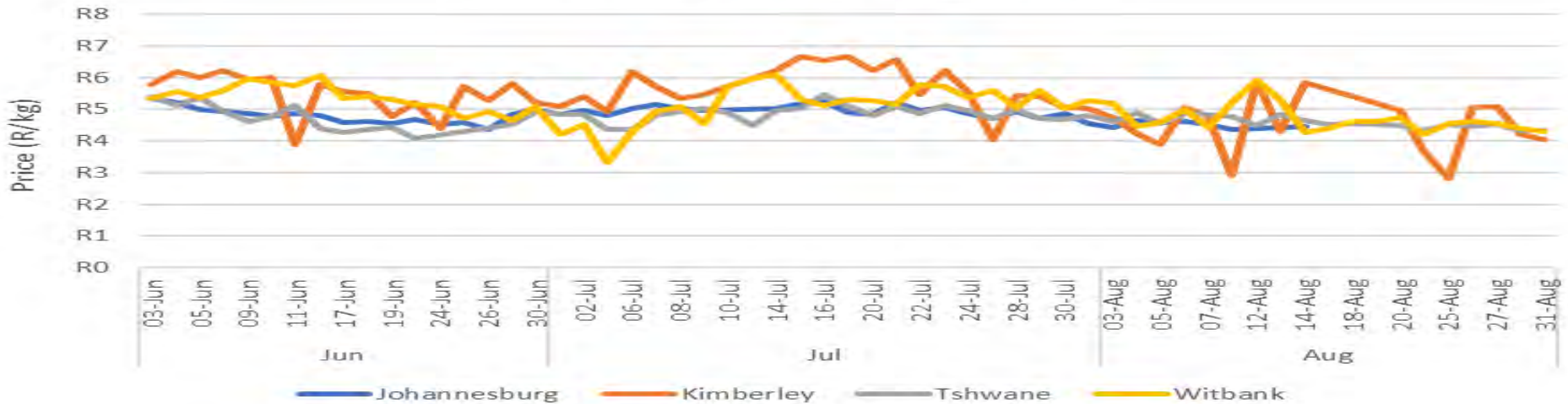
FOOD PRICE MONITORING (Cont...)

Finding: There is much more variability in pricing in smaller less liquid markets and large differentials across markets nationally (e.g. onions)

Onion prices across markets

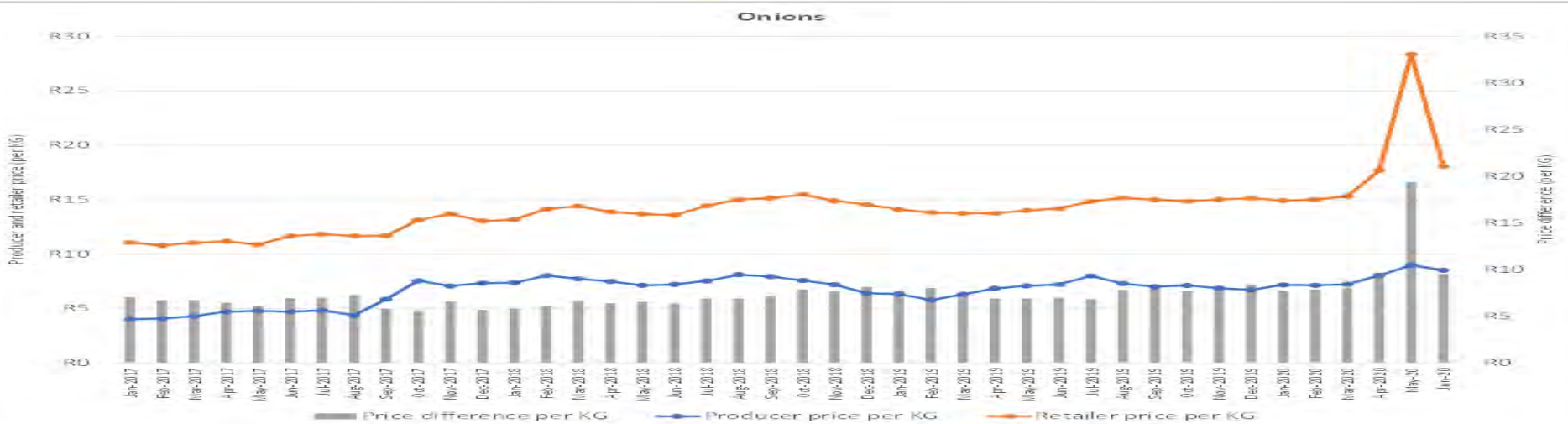
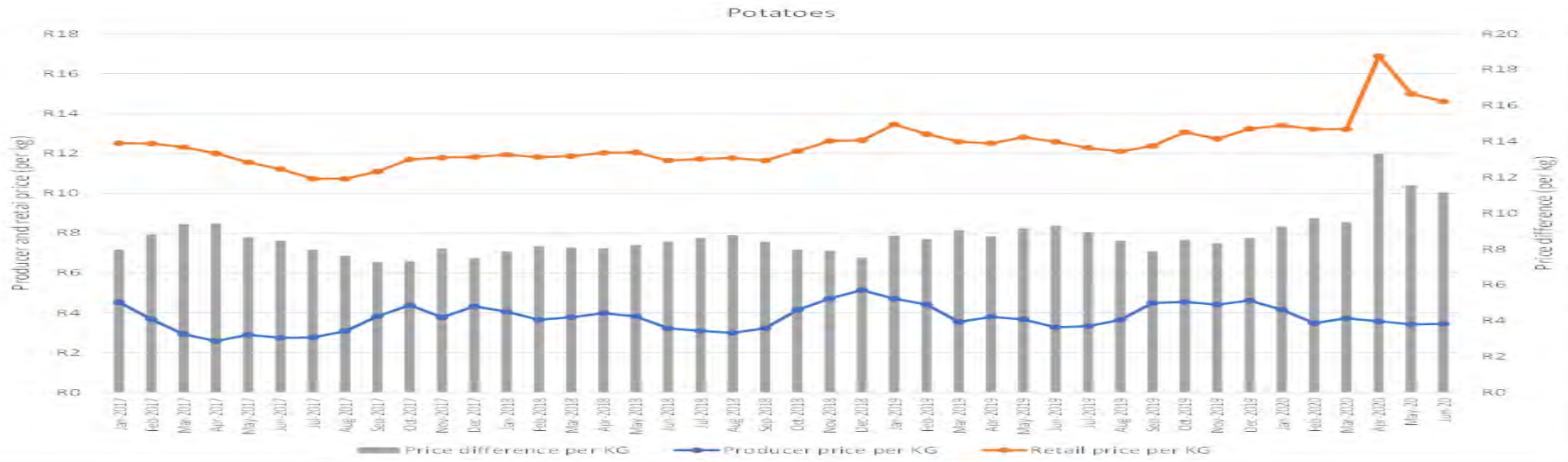


Onion prices, 3 June - 31 August 2020



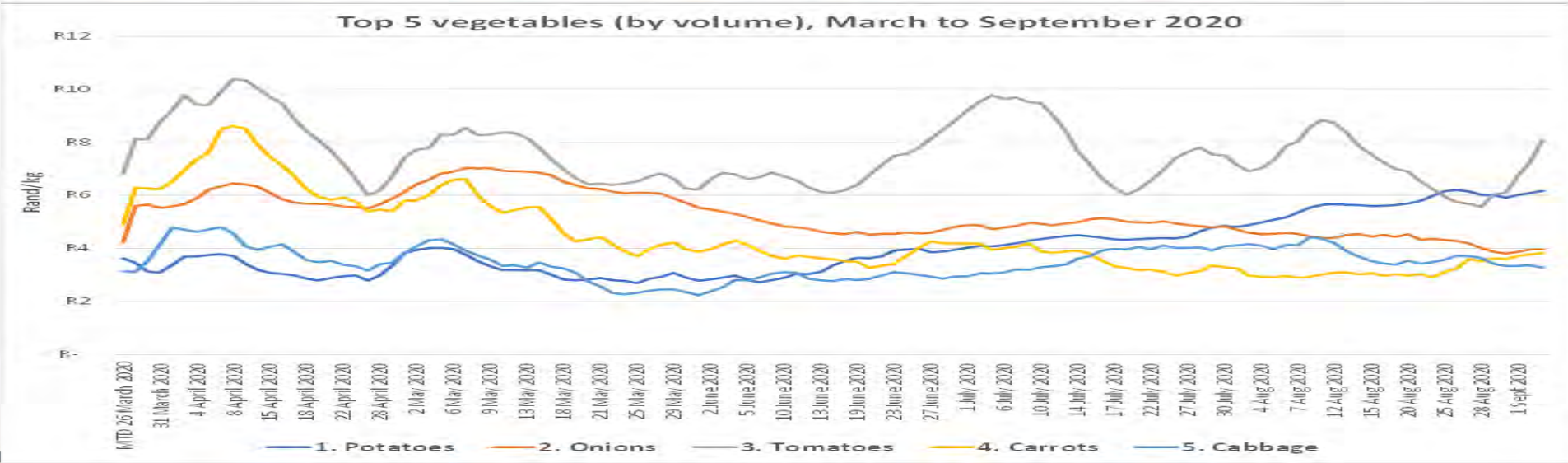
FOOD PRICE MONITORING (Cont...)

Finding: some evidence from StatsSA that the retail-wholesale margin ballooned on some essential items in phase 5 lockdown



FOOD PRICE MONITORING (Cont...)

Finding: stability has returned to most commodity and fresh produce items at the wholesale level



OTHER SIGNIFICANT MATTERS

The Commission has also prioritised the following key matters during the COVID-19 period:

Assessment of significant Mergers

- Coal merger: acquisition of South32 by Seriti
- Acquisition of the business assets of Edcon group by Fochini Group – with public interest conditions:
 - Moratorium on retrenchments for a period of 3 years from implementation date.
 - Transfer of at least 4664 employees from Edcon to Foschini.
 - Transfer of at least 333 stores from Edcon to Foschini subject to various external factors.
 - The merged entity shall ensure that the target firm maintains at least the same ratio of procurement of apparel products from South African manufacturers and suppliers.

Settlement with Major Retail Stores

- Shoprite Checkers has undertaken to immediately cease exclusivity against other supermarkets in non-urban areas. This will be phased out over five years in urban areas.

CONCLUSION

The Commission will continue to prioritise COVID-19 cases and refer several more cases for prosecution, including settlements and consent orders with respondent firms.

The Commission has also worked closely with government and business to provide advice or advocacy regarding specific proposed interventions for economic recovery.

THANK YOU!

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