



Overview of the Role of Selected Consumer Protection Bodies in the Regulation of Prices and Access to Redress Under the Consumer Protection Act 68 of 2008

Phemelo Magau¹, Howard Chitimira²

Abstract: The Consumer Protection Act 68 of 2008 (CPA) seeks to promote the achievement and maintenance of a fair, accessible, efficient, sustainable and responsible market place for consumer products and services in South Africa. Moreover, the CPA seeks to provide an accessible, consistent, harmonised, effective and efficient system of redress for consumers. Notably, the CPA provides that the supplier should not supply or enter into an agreement to supply any goods or services at a price that is unfair, unreasonable, or unjust. This is generally aimed at combating any problems that are suffered by consumers when accessing goods and services in South Africa. Accordingly, various regulatory bodies and related role-players were established to enforce consumer rights and provide redress mechanisms to vulnerable and affected consumers. These consumer protection bodies and related role-players include the National Consumer Commission (NCC), the National Consumer Tribunal (NCT), provincial consumer courts, ordinary courts and other alternative dispute resolution agencies. These bodies and role-players are statutorily obliged to resolve consumer disputes in South Africa. However, there are some uncertainty challenges regarding the jurisdiction of ordinary courts and consumer protection regulatory bodies in relation to disputes that relate to the consumers' right to fair, just and reasonable prices, terms and conditions of goods and services. This article discusses the role of the

¹ Senior Lecturer, Department of Mercantile Law, Faculty of Law, University of Pretoria, Address: Private Bag X20, Hatfield, 0028, South Africa, E-mail: Phemelo.Magau@up.ac.za.

² Research Professor and Professor of Securities and Financial Markets Law, Faculty of Law, North-West University, Address: Private Bag X2046, Mmabatho, 2735, South Africa, Corresponding author: Howard.Chitimira@nwu.ac.za. This article was supported in part by the National Research Foundation of South Africa (NRF), Grant Number 141933. In this regard, the authors wish to thank the NRF for its valuable support.



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NCC, the NCT, provincial consumer courts, ordinary courts and other alternative dispute resolution agencies in the regulation of prices for goods, services and access to redress for affected consumers under the CPA. This is done to provide some recommendations that could resolve jurisdictional and regulatory challenges in relation to the price and access to goods and services under the CPA.

Keywords: consumer protection; prices; consumer rights; regulatory bodies; vulnerable consumers

1. Introductory Remarks

The Consumer Protection Act 68 of 2008 as amended (“CPA”, see ss 2 & 3) is primarily responsible for regulating consumer protection in South Africa. The CPA should ensure consumer protection by promoting and advancing the socio-economic welfare of consumers in South Africa through the establishment of a robust legal framework for the achievement and maintenance of a fair, accessible, efficient, sustainable and responsible market place for consumer goods and services (see s 3(1)(a) of the CPA; also see van Eeden & Barnard, 2017, p. 41). The CPA is obliged to curb the disadvantages and/or challenges experienced in accessing goods and services by all consumers, especially those who are living in remote areas, minors, low-income earners and illiterate in South Africa (s 3(1)(b); also see Chitimira & Ncube, 2020, p. 344; Chitimira & Magau, 2021, pp. 1-19; Abrahams, 2017, pp. 632-640; Chitimira, 2020, p. 278; Chitimira & Ncube, 2021, p. 75). Moreover, the CPA promotes fair business practices by protecting consumers from unfair, unreasonable, or improper trade practices by service providers in South Africa (see s 3(1)(c)-(d)(i); also see van Eeden & Barnard, 2017, p. 42). The CPA also provides for an accessible, consistent, harmonised, effective and efficient system of redress for consumers (s 3(1)(h); also see Mupangavanhu, 2012, pp. 320-341).

The CPA requires the supplier not to supply or enter into an agreement to supply any goods or services at a price that is unfair, unreasonable, or unjust (s 48(1)(a)(i); van Eeden & Barnard, 2017, p. 315; Barnard, 2013, pp. 528-529). The CPA defines “price” as a representation required to be displayed in terms of the same Act, which includes any mark, notice, or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services (s 1 of the CPA). The term “price” is further defined in section 1 of the CPA as the consideration for any transaction, which means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation (van Eeden & Barnard, 2017, pp. 314-316). This

definition of “price” is generally aimed at combating any disadvantages experienced by consumers in accessing goods and services in South Africa (s 3(1)(b)); also see related Chitimira & Ncube, 2020, p. 344; Chitimira, 2020, p. 278; Chitimira & Ncube, 2021, p. 75).

Notwithstanding the discussion above, the CPA does not provide a definition for fairness, reasonableness or justice in the determination of prices. Thus, it is up to the courts and other enforcement authorities to determine the fairness and reasonableness of prices. Moreover, the CPA does not expressly define the concept of “personalised pricing”. Personalised pricing refers to the discriminatory setting of prices for identical goods or services for individual consumers based on their willingness and/or ability to pay. This practice could give rise to unfair and unequal treatment of consumers in South Africa (*Botha (now Griessel) v Finanscredit (Pty) Ltd* 1989 3 SA 773 (A); *Brisley v Drotsky* 2002 4 SA 1 (SCA); *Afrox Healthcare; Price Waterhouse Coopers Inc v National Potato Co-Operative Ltd* 2004 6 SA 66 (SCA); *South African Forestry Co Ltd v York Timbers Ltd* 2005 3 SA 323 (SCA); *Barkhuizen v Napier* 2007 5 SA 323 (CC); *Breedenkamp v Standard Bank of South Africa Ltd* 2009 5 SA 304 (GSJ), 2009 6 SA 277 (GSJ), 2010 4 SA 468 (SCA)). This has led to numerous challenges for consumers regarding the fairness, reasonableness and justice of prices. Consequently, a number of complaints had to be lodged with the National Consumer Commission (NCC), the National Consumer Tribunal (NCT), provincial consumer courts and ordinary courts for redress (Barnard, 2013, pp. 521-522; *Barkhuizen v Napier* 2007 5 SA 323 (CC); *Breedenkamp v Standard Bank of South Africa Ltd* 2009 5 SA 304 (GSJ), 2009 6 SA 277 (GSJ), 2010 4 SA 468 (SCA)). It is important to note that the NCT exercises its powers in terms of the National Credit Act 34 of 2005 as amended (“NCA”, ss 26 & 27) and any other applicable statute such as the CPA. Nonetheless, despite numerous cases being brought by consumers for redress, only a few cases have been successfully settled by both the NCC, the NCT and the courts. To this end, this article seeks to investigate the role and robustness of the NCC, the NCT, consumer courts, consumer ombuds and other alternative dispute resolution (ADR) agencies in the regulation of consumer goods and services prices under the CPA in South Africa. This is done to investigate whether the stated regulatory bodies and/or enforcement authorities are well-capacitated and adequately empowered by the CPA to provide appropriate redress for affected consumers, especially vulnerable consumers, in South Africa. Thereafter, some recommendations will be provided to curb the current gaps in the CPA.

2. The Rationale for Consumer Prices Regulation in South Africa

The definition of the term “price” and the regulation of unfair, unreasonable and unjust terms and conditions under the CPA are commendable on the part of the policymakers in South Africa (ss 1 and 48; also see van Eeden & Barnard, 2017, p. 315). Currently, the CPA contains various provisions which relate to the price of goods and services. For instance, the CPA regulates the charging of prices and requires that the price of goods and services should be adequately displayed to all consumers (s 23(4) & (5); also see van Eeden & Barnard, 2017, pp. 316-317). The CPA also provides that the supplier may not charge a price that is higher than the displayed price or higher than the lowest price displayed (see s 23(6)(a)-(b); also see van Eeden & Barnard, 2017, p. 318). Moreover, the CPA regulates discounts and reductions on prices for goods and services in South Africa (s 23(1); van Eeden & Barnard, 2017, p. 318).

The promotion of fairness, justice and reasonableness in the price of goods and services is vital for the balancing of a wide range of competing interests of consumers and suppliers who often have different objectives in the marketplace for goods and services (*Free Market Foundation v Minister of Labour and Others* (2016) 3 All SA 99 (GP) 132; *Nunes v Crawford and Others* (2010) 4 All SA 304 (WCC) 309). The conflict between the competing rights of consumers and suppliers requires independent and objective processes that are enforced impartially and fairly to resolve disputes (van Eeden & Barnard, 2017, p. 2). Market failure could also occur where there is an unrestricted ability of suppliers to raise prices above the competitive level for a sustained period of time (Cooter & Ulen, 2016, pp. 43-47; Mercurio & Medema, 2006, pp. 60-67; van Eeden & Barnard, 2017, p. 14). To combat this challenge and promote socio-economic welfare of consumers, it is imperative to have robust regulatory mechanisms in place (see further Viscusi et al, 2018, pp. 550-551). This follows the fact that the good performance of any economy as well as the economic welfare of consumers are dependent on robust institutions, laws that promote consumer rights, the rule of law, competitive consumer markets and stable prices for goods and services (Cseres, 2005, pp. 151-152; Gwartney et al, 2020, pp. 237-338).

The corona virus (covid-19) pandemic has affected the livelihood of most consumers and left many with untold negative socio-economic challenges (De, Pandey & Pal, 2020, pp. 1-5). Currently, most consumers and suppliers are still trying to recover from the devastating socio-economic effects of the covid-19 pandemic (Hamadziripi & Chitimira, 2021, pp. 27-28). Numerous cases relating to the abuse and/or

manipulation of prices for the supply of essential goods and services were recorded during the covid-19 pandemic (Oxenham, Curie & van der Merwe, 2020, pp. 524–530; Boshoff, 2021, pp. 112-138). Recently, the South African Reserve Bank (SARB) increased the repo rate interest in a bid to curb economic challenges in South Africa (see ss 223-225 of the Constitution of the Republic of South Africa, 1996 “Constitution”; also see Chitimira & Magau, 2022, pp. 364-366; Sharrock, 2016, pp. 64-65). Consumers are also dealing with increases in fuel prices while on the other hand grappling with continued power cuts and electricity challenges which are also affecting the suppliers. Although some of these challenges such as fuel prices and upward repo rate interest adjustments do not solely fall under the ambit of the CPA, there should be a robust regulation of prices to ensure that consumers are protected from unfair, unjust and unreasonable prices for goods and services (s 23(7) of the CPA; also see van Eeden & Barnard, 2017, p. 318). Additionally, appropriate redress mechanisms should be put in place to protect consumers from excessive, unfair and unreasonable prices of goods and services.

3. The Role of Selected Role Players in the Regulation of Prices Under the CPA

3.1. The Role of the NCC

The NCC is an independent administrative body that has jurisdiction across South Africa to promote consumer rights and enforce consumer laws (s 85(2)(a) of the CPA; Chitimira & Magau, 2023, p. 39; Mupangavanhu, 2012, pp. 322-325; Chitimira & Ncube, 2020, p. 15). The NCC is an investigative body that is empowered to work with the Provincial Consumer Protection Authorities (PCPAs) to promote consumer protection in South Africa (ss 84-85 of the CPA; also see *Byleveld v Execor Twelve (Pty) Ltd t/a Motor City and Another* (2014) ZANCT 2; see further Chitimira & Magau, 2023, pp. 39-40). The NCC is required to conduct its functions in line with the CPA and principles of public administration as outlined in the Constitution and other relevant statutes (ss 85(2)(c)(ii) read with s 92(1) of the CPA; s 195 of the Constitution; *Woodlands Dairy (Pty) Ltd and Another v Competition Commission; Competition Commission v Clover Industries Ltd and Others* (2009) ZACT 18). The NCC is empowered to detect and combat all prohibited conduct in terms of the CPA (s 83(4)-(6) read with ss 84-85 of the CPA; Chitimira & Magau, 2023, p. 39).

The NCC may be approached by any affected person whose consumer rights are infringed, impaired, or threatened (s 4(1)(a)-(e) of the CPA; also see Mupangavanhu, 2012, p. 323). In this regard, the NCC may initiate or receive complaints regarding prohibited conduct or related offences from any affected persons (ss 71-75 of the CPA; also see van Edeen & Barnard, 2017, p. 410). Moreover, the NCC may conduct investigations into any complaints regarding any alleged prohibited conduct and offences. It can also issue and enforce compliance notices against the offenders (ss 99 and 100 of the CPA; also see Chitimira & Ncube, 2020, p. 15). Compliance notices are issued and enforced by the NCC to remedy any non-compliance by the offenders under the CPA (*Clientele General Insurance Ltd v National Consumer Commission* (NCT/4671/2012/60(3) & 101(1) (P) (2013) ZANCT 7 para 48; also see Magaqa, 2015, p. 36; Chitimira & Magau, 2023, p. 40). The NCC is empowered to champion the interests of both the consumers and suppliers in order to maintain impartiality and integrity in exercising its functions (*Murray, Cloete et al v The National Consumer Commission et al* NCT/4454/2012/101 (1) (P) CPA; *Auction Alliance v The National Consumer Commission and Others* WCC No 7798/2012). The NCC may also refer matters to the NCT for it to impose administrative fines or to the National Prosecuting Authority (NPA) for prosecution (s 73(2)(a) read with ss 99-102 of the CPA; *Vodacom Service Provider Company v National Consumer Commission* (NCT/2793/2011/101 (1)(P)) (2012) ZANCT 9; *National Consumer Commission v Vodacom (Pty) Ltd* (NCT/205517/2021/73(2)(b)) (2022) ZANCT 13; *Wingfield Motors (Pty) Ltd v National Consumer Commission* (NCT/3882/2012/101(1)(P) CPA) (2013) ZANCT 11; also see Magaqa, 2015, p. 36; Chitimira & Ncube, 2020, p. 15). The NCC is also obliged to monitor the effectiveness of the ADR agents and PCPAs (ss 95(2)(a) and 99(c) of the CPA; also see Mupangavanhu, 2012, p. 323).

Nonetheless, the CPA does not specifically empower the NCC to deal with matters of fairness of contractual terms, including the fairness of prices for consumer goods and services. This is contrary to the objectives of the NCC which was mainly established to deal with consumer complaints and ensure that consumers receive the best assistance and outcomes of their complaints seamlessly and efficiently (s 3(1)(h) of the CPA; also see Woker, 2019, p. 112). In this regard and in line with, the CPA should be carefully amended to grant the NCC more practical powers to deal with the fairness of prices in South Africa. This should be done to augment the investigative powers of the NCC (ss 4(1)(a)-(e); 72(1)(b) & (d) of the CPA; also see Naudé, 2010, p. 523; Mupangavanhu, 2012, p. 323).

3.2. The Role of the NCT

The NCT is a juristic person established under the NCA to adjudicate upon all consumer-related matters in South Africa (ss 26(1)(c) and 27 of the NCA; also see van Eeden & Barnard, 2017, p. 447; Chitimira & Magau, 2023, p. 38; Chitimira & Ncube, 2020, p. 14). It exercise its powers and functions in terms of both the NCA to, inter alia, curb overindebteness and promote consumer protection (ss 26 & 27; 86A(5)(a)-(b) read with s 87A(2)(b)) and the CPA (*National Credit Regulator v Chatspare Pty Ltd* (NCT/16/2008/138(1)(P) (2008) ZANCT 1 para 4; *Babelegi Workwear and Industrial Supplies CC v Competition Commission of South Africa* (186/CAC/JUN20) (2020) ZACAC 7; Chitimira & Magau, 2023, p. 38). The NCT is one of the bodies obliged to promote consumer rights under the CPA (s 4(2)(b); also see Mupangavanhu, 2012, p. 325). The CPA empowers the NCT to make appropriate innovative orders to enhance the advancement and realisation of consumer rights in South Africa (s 4(2)(b); also see Mupangavanhu, 2012, pp. 325-326; Chitimira & Ncube, 2020, p. 14). The NCT is further empowered to confirm consent orders of the negotiated settlements between the parties which it receives from the NCC under the CPA (s 74(1)). The NCT may also impose administrative fines where there is an allegation of prohibited conduct and make appropriate orders to declare and/or interdict any such prohibited conduct (s 84 read with s 112 of the CPA; Chitimira & Ncube, 2020, p. 14; Mupangavanhu, 2012, p. 326).

The NCT plays a vital role in imposing administrative fines for prohibited conduct in South Africa (s 84 read with s 112 of the CPA; *NCC v Belegi Workwear and Industrial Supplies (Pty) Ltd* NCT/160912/2020/73(2), “*Belegi case*”). For instance, in the *Belegi case*, the NCT held that it was not aware of any prior case law that specifically addresses section 48(1)(a)(i) of the CPA in relation to unfair pricing (*Belegi case* para 34). The *Belegi case* is the first one that was dealt with by the NCT regarding the fairness of prices, especially during a national disaster such as the covid-19 pandemic (*Belegi case* paras 5 7; s 73(2) of the CPA). It is submitted that on 24 March 2020, the NCC received a complaint from the complainant arguing that Belegi quoted a price of R874.00 for a box of 20 face masks yet prior to this date, Belegi sold the masks for R76.00 per box and it appears that the price of goods was unfairly and unlawfully inflated (*Belegi case* para 8). The NCC later referred the matter to the NCT (*Belegi case* para 8). The NCT held that Belegi had engaged in prohibited conduct and was liable to pay an administrative fine (s 84 read with s 112 of the CPA; *Belegi case* para 45).

Notwithstanding the NCT's adjudicative powers and ability to impose administrative fines, the NCT is not expressly empowered to make orders for disputes relating to fairness. Such powers are only vested upon the relevant courts (s 52 of the CPA). The NCT correctly held that it could not determine what is a reasonable price or mark-up (*Belegi* case at para 34). Moreover, the NCT indicated that it could not establish the circumstances under which a mark-up becomes unfair or unreasonable, what factors to consider in making such a decision, and whether different principles should apply depending on the goods sold (*Belegi* case para 34). It appears that the NCT is not expressly granted the jurisdiction to deal with the substantive issues of the fairness of prices in South Africa (s 52 of the CPA). In this regard, it is submitted that the South African policymakers should consider amending the CPA to expressly grant the NCT the powers to deal with the gaps pertaining to the fairness of prices (ss 52 & 84 of the CPA; Mupangavanhu, 2012, p. 341). This approach could enhance the effectiveness of the NCT and ensure the realisation of the objectives of the CPA which include creating an accessible, consistent, harmonised, effective and efficient system of redress for consumers (s 3(1)(h) of the CPA; Mupangavanhu, 2012, pp. 320-346; *Mobile Telephone Networks (Pty) Ltd v The National Consumer Commission* NCT/2738/2011/101(1) (P) (2012) ZANCT 20).

3.3. The Role of the Courts

Courts play an important role in the administration of justice and in providing consumers with relief in South Africa (ss 52; 69(d) of the CPA; Mupangavanhu, 2012, pp. 330-331). The Constitution provides everyone with the right to have any dispute resolved in a public hearing by a court, or where appropriate, by any other independent and impartial tribunal or forum (s 34 of the Constitution, also see van Eeden and Barnard, 2017, pp. 101-103). The CPA provides that a court does not include a consumer court (s 1 of the CPA). On the other hand, a consumer court means a body of that name, or a consumer tribunal established in terms of the relevant provincial consumer legislation (s 1 of the CPA; also see Barnard & Mišćenić, 2019, p. 121). In terms of the Constitution, courts include the Constitutional Court, the Supreme Court of Appeal, High Courts, Magistrates' Courts and any other court established or recognised in terms of an Act of Parliament (s 166 of the Constitution; s 1 of the Promotion of Access to Justice Act 3 of 2000; see also van Eeden & Barnard, 2017, p. 101; Rautenbach, 2022, p. 133). The courts are independent legal institutions that are subject to the Constitution and the law. Moreover, the courts are obliged to apply the law impartially and without fear,

favour, or prejudice (s 165(2) of the Constitution; also see van Edeen & Barnard, 2017, p. 103). This shows that the impartiality and independence of the courts are crucial to the provision of adequate redress to all affected consumers in South Africa.

The CPA states that courts should be approached as a measure of last resort if all other remedies have been exhausted (s 69(d); also see Mupangavanhu, 2012, pp. 330-331). The courts are required to hear any appeals against NCT decisions (s 73 of the CPA). Moreover, courts must also adjudicate matters after failed ADR (69(d) of the CPA). However, from the wording of the CPA, courts have exclusive powers to deal with matters that constitute prohibited conduct, unfairness, injustice, or unconscionable conduct on the part of the offender (s 52 of the CPA). The courts are empowered to make orders for unfair, unreasonable, and unjust conduct under the CPA (s 52 of the CPA). Where the court is of the view that a consumer has been charged an unjust, unreasonable, or unfair price, is empowered to make various orders (s 52(3) of the CPA; also see Naudé, 2009, p. 526). The courts may make any declaration or order for restoring money or property to the consumer, compensating the consumer for any loss, or requiring the supplier to cease or alter any practice to avoid repetition of the supplier's illicit conduct of charging unfair, unreasonable and unjust prices (s 52(3) of the CPA). It appears that only ordinary courts have powers to deal with unfair contract terms. This follows the fact that there is no express reference of the NCT or consumer courts in respect of the orders that could be made by the courts to curb illicit conduct of suppliers regarding unfair contract terms (s 52 of the CPA; Naudé, 2009, pp. 525-526).

Nonetheless, more needs to be done since vulnerable consumers, especially the poor and low-income earners struggle to afford litigation and/or access the relevant courts for redress (s 3(b) of the CPA; Chitimita & Magau, 2022, pp. 360-361; Woker, 2016, pp. 23-24; also see Woker, 2010, p. 217). Litigation is currently very expensive for vulnerable consumers in South Africa (Van Heerden & Barnard, 2011, pp. 131-132). Moreover, most vulnerable consumers are ignorant of the redress and dispute resolution processes that are employed by the NCT and the courts (Woker, 2016, pp. 23-24). This follows the fact that most vulnerable consumers from poor, informal settlements and rural backgrounds are illiterate (Woker, 2019, pp. 103-104; Chitimira & Magau, 2021, pp. 8-10). Thus, consumer protection may only be fully realised if all consumers are educated to know their rights and the available redress measures in terms of the CPA and the NCA (Woker, 2019, pp. 103). Financial education is important for the protection of consumers against unfair, unreasonable,

and unjust prices for goods and services (Chitimira & Magau, 2023, p. 29; Chitimira & Magau, 2021, p. 9; Dellal & Koch, 2019, pp. 34-47).

The courts' redress mechanisms are mostly inaccessible to consumers residing in remote, informal settlements and rural areas, who are poor and illiterate (Van Heerden & Barnard, 2011, p. 135; Woker, 2016, pp. 23-24; Mupangavanhu, 2012, p. 327). Moreover, vulnerable consumers who live in informal settlements and rural areas struggle to access the courts and other basic services owing to, inter alia, infrastructural, geographical location and financial challenges (Chitimira & Magau, 2021, pp. 6-7; also see Chitimira & Ncube, 2021, pp. 337-355). The backlog of cases in the courts has also affected the effective and timeous access to appropriate redress for affected consumers, especially those who reside in informal settlements and rural areas in South Africa. The NCC should function effectively and the NCT should be given more powers to make orders to ensure fair and just treatment of vulnerable consumers to empower them to have appropriate redress on price-related disputes timeously (Woker, 2019, p. 112). South African policymakers should consider amending the CPA and the NCA to grant the NCC and the NCT more statutory powers to deal with matters relating to fairness, justice and reasonableness of the prices of goods and services (s 48(1)(a)(i) of the CPA; van Eeden & Barnard, 2017, p. 315; Barnard, 2013, pp. 528-529).

3.4. The Role of Ombuds and Other ADR Agents

The CPA places a strong emphasis on ADR and recognises the role that ombuds and other ADR agents can play in helping consumers with the resolution of disputes arising from consumer transactions, including the fairness, reasonableness and justice of prices (s 3(1)(g)-(h) read with s 48(1)(a)(i) of the CPA; also see Woker, 2019, p. 113). The CPA provides that a consumer may seek to find redress in respect of any dispute regarding a transaction or agreement with a supplier by referring the matter to an ADR agent who may be an ombud with jurisdiction, an accredited industry ombud or a person or entity providing conciliation, mediation, or arbitration services to resolve consumer disputes (s 70(1)(a)-(c) of the CPA; also see s 1 of the NCA, for the definition of ADR; Mupangavanhu, 2012, p. 342). If the ADR agent as contemplated under the CPA argues that the dispute cannot be resolved in accordance with their processes, the matter may be filed with the NCC (s 70(2) read with s 71 of the CPA; also see Mupangavanhu, 2012, p. 342). Ombuds and other ADR agents are established to provide timeous, efficient, effective and cheaper dispute resolution to consumers (ss 3(1)(g) & 70 of the CPA; Lake, 2011, p. 46).

Ombuds and ADR agents provide alternative redress measures to consumers for the enforcement of consumer rights (ss 69 & 70 of the CPA; Barnard & Mišćenić, 2019, pp.122-123). Ombuds provide a quick, cheap and informal way of resolving consumer disputes for the enforcement of consumer rights, including the right to receive goods and services at a price that is fair, just and reasonable (ss 48(1)(a)(i) of the CPA; Melville, 2010, pp. 54-55; Barnard, 2013, pp. 528-529; Mupangavanhu, 2012, p. 330). For any consumer protection law to achieve its objectives, it should be effectively enforced (Woker, 2019, p. 108; also see Mupangavanhu, 2012, p. 330).

Currently, there are two accredited industry ombuds in South Africa, namely the Consumer Goods and Services Ombud (CGSO) and the Motor Industry Ombud of South Africa (MIOSA) (s 82(6) of the CPA; Barnard & Mišćenić, 2019, pp.122-123). The CGSO has a broad mandate and jurisdiction over all market participants unless they are regulated by another entity or legal framework. For instance, the CGSO has no jurisdiction over matters which relate to electronic communication services, credit agreements and transactions with organs of state or financial institutions (s 1 of the Electronic Communications Act 36 of 2005; also see s 4 of the CPA). On the other hand, the MIOSA only has jurisdiction over matters relating to the automotive industry. Accordingly, there is a need for more specialised industry ombuds that are independent to effectively and timeously resolve consumer-related disputes (Melville, 2010, pp. 54-55; Woker, 2019, p. 113; Mupangavanhu, 2012, pp. 329-330). The establishment of more industry ombuds will enable consumers to access and receive appropriate redress timeously (s 34 of the Constitution; also see Woker, 2019, p. 113; Greenbaum, 2020, pp. 250-251; Heywood & Hassim, 2008, pp. 263-268).

However, the ombuds and ADR agents have no adjudicative powers over fair and just conduct because such powers are vested in the relevant courts (ss 52, 69 & 70 of the CPA; Barnard & Mišćenić, 2019, pp. 122-123). The lack of adjudicative powers on the part of the ombuds and other ADR agents affects their effectiveness in providing redress and resolving disputes, especially those involving the fairness, reasonableness and justice of the prices of goods and services. Consequently, most consumers, especially the poor and low-income earners will not have effective access to justice since they do not afford litigation in the courts. South African policymakers should consider expanding the mandate of the ombuds and ADR agents to include matters relating to fairness, justice and the reasonableness of prices of goods and services. This approach could ensure that vulnerable consumers such as the poor and low-income earners have effective means for the enforcement and

redress of their rights on matters involving price-related disputes of goods and services.

3.5. The Role of the PCPAs

The PCPAs are statutorily empowered to promote and enforce consumer protection rights in South Africa (s 84 read with ss 95(2)(a) and 99(c) of the CPA; also see Mupangavanhu, 2012, p. 323; Chitimira & Ncube, 2020, p. 15). The PCPAs have jurisdiction within the relevant province to issue compliance notices in terms of the CPA on behalf of the NCC to any person carrying on business exclusively within that province (s 84(a) of the CPA; Chitimira & Magau, 2022, pp. 366-367). Moreover, the PCPAs are obliged to facilitate the mediation or conciliation of a dispute arising in terms of the CPA between or among persons resident, or carrying on business exclusively in the relevant province (s 84(b) of the CPA). The PCPAs are empowered to refer any consumer-related dispute as contemplated in the CPA to the provincial consumer court for enforcement of consumer rights and redress of consumer disputes (s 84(c) of the CPA). The PCPAs and the provincial consumer courts should effectively cooperate to enforce consumer rights and resolve consumer disputes. The PCPAs may further request the NCC to initiate complaints in respect of any prohibited conduct or committed offence arising in the relevant province under the CPA (s 84(d) of the CPA). The PCPAs should do more to promote financial education and awareness to consumers on the importance of fair prices, especially in the rural areas and informal settlements.

4. Concluding Remarks

The CPA remains an important piece of legislation for the promotion and advancement of the socio-economic welfare of consumers in South Africa. It promotes consumer rights by ensuring that the marketplace is fair, accessible and efficient to all consumers (s 3(1)(a); also see van Eeden and Barnard, 2017, p.41). As indicated above, the regulation of prices of goods and services is important for balancing a wide range of competing and complementary interests of consumers and suppliers who do not always have the same objectives in the consumer marketplace (*Free Market Foundation v Minister of Labour and Others* (2016) 3 All SA 99 (GP) 132; *Nunes v Crawford and Others* (2010) 4 All SA 304 (WCC) 309). It was also pointed out that the definition of the term “price” and various provisions relating to this term under the CPA are commendable on the part of the South African

policymakers since they promote fairness in the pricing of goods and services (ss 1 and 48(1)(a)(i); also see van Eeden and Barnard, 2017, p. 315; *Competition Commission of South Africa v Distillers Corporation (SA) Ltd* (2003) ZACAC 10).

Nevertheless, there are still some legislative gaps that continue to affect consumer protection and the enforcement of consumer rights by relevant authorities under the CPA (ss 1 and 48(1)(a)(i); also see Barnard, 2013, pp. 528-531; Naudé, 2009, p. 516). For instance, the CPA does not provide any definitions for key terms such as “unfair”, “unreasonable” and “unjust” (Barnard, 2013, pp. 528-531; see also Naudé, 2009, p. 516). In this regard, it is submitted that South African policymakers should consider amending the CPA to expressly provide clear definitions for these terms so as to explain what constitutes unfair, unreasonable and unjust terms and conditions of goods and services under the CPA. This should be done to combat the current and emerging challenges such as personalised pricing which prejudices all consumers.

The CPA should also be amended to empower various regulatory bodies and other enforcement role-players of consumer rights with more statutory powers to detect and timeously resolve disputes involving unfair, unreasonable and unjust terms and conditions of goods and services in South Africa (ss 52; 69 of the CPA; Mupangavanhu, 2012, pp. 321-331; Naudé, 2009, pp. 525-526). The absence of express jurisdictional powers on the part of the NCC, the NCT and other role-players has negatively affected their effectiveness in curbing unfair prices and related consumer disputes in South Africa (Woker, 2019, pp. 108-109; *Clur v Keil* 2012 (3) SA 50 (ECG)).

South African policymakers should carefully consider amending both the CPA and the NCA to specifically enact provisions that oblige the relevant regulatory bodies and other role-players to adopt appropriate measures that provide effective consumer redress on all disputes relating to unfair, unreasonable and unjust pricing of goods and services in South Africa (s 52 of the CPA; also see Naudé, 2009, pp. 525-526).. Currently, only ordinary courts have the jurisdiction to deal with matters relating to unfair, unreasonable and unjust pricing of goods and services in South Africa. This has caused most vulnerable consumers to fail to access the courts for redress because they cannot afford litigation costs (Woker, 2016, pp. 23-24; Woker, 2010, p. 217). In this regard, policymakers should amend the CPA to enact adequate provisions that promote an accessible, cheap, consistent, harmonised, effective and efficient system of redress for all consumers (s 3(1)(h) of the CPA; also see Mupangavanhu, 2012, pp. 320-346).

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