

**EXTRAORDINARY
GOVERNMENT OF FIJI GAZETTE SUPPLEMENT**

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2019

[LEGAL NOTICE NO. 93]

FIJIAN COMPETITION AND CONSUMER COMMISSION ACT 2010

**Fijian Competition and Consumer Commission
(Control of Prices for Hardware Items) Order 2019**

IN exercise of the powers conferred on it by section 44 of the Fijian Competition and Consumer Commission Act 2010, the Fijian Competition and Consumer Commission, with the approval of the Minister, hereby makes this Order—

Short title and commencement

1.—(1) This Order may be cited as the Fijian Competition and Consumer Commission (Control of Prices for Hardware Items) Order 2019.

(2) This Order comes into force on 6 November 2019.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“delivery cost” means the cost incurred in the delivery of goods to a retailer or re-wholesaler’s premises;

“manufacturing” means the conversion of the unfinished products into finished products by means of manual labour or machinery;

“offer” includes exposing, displaying or keeping goods for sale by retail;

“price controlled item” means an item specified in the Schedule;

“related entity” means any of the following—

- (a) a director or a member of that body or of a related body corporate;
- (b) a relative, spouse or *de-facto* partner of such director or member;
- (c) a relative of a spouse or *de-facto* partner of such director or member;
- (d) a body corporate that is related to the first mentioned body;
- (e) a beneficiary under a trust of which the first mentioned body is or has at any time been a trustee;
- (f) a relative, spouse or *de-facto* partner of such beneficiary;
- (g) a relative of a spouse or *de-facto* partner of such beneficiary;
- (h) a body corporate one of whose directors is also a director of the first mentioned body; or

- (i) a trustee of a trust under which a person is a beneficiary, where the person is a related entity of the first mentioned body because of any other application of this definition;

“re-wholesaler” means any person who purchases goods from a wholesaler for resale to a consumer;

“total into-store cost for pricing” means the cost calculated in accordance with the formula and provision as determined by the Commission;

“trader” means any person who in connection with any business carried on by that person sells, has sold, or proposes to sell any good, or who supplies or who carries on any service; and

“VAT” means value added tax.

(2) A reference in this Order to the cost to a trader of any good or service includes any delivery cost properly incurred by the trader and not otherwise included in the calculation of the cost and is a reference to the lesser of the following—

- (a) the cost to the trader, as evidenced by the invoice for the transaction; or
- (b) the cost which would probably have been incurred for the provision of the same goods and services under similar conditions in the ordinary course of business, had the goods or services been obtained from an independent person usually engaged in the business of providing those goods or services.

(3) In the case of an importer of goods into Fiji, the total into-store cost for pricing formula applies whether or not the importer takes physical possession of the goods.

(4) For the purposes of this Order, goods are deemed to be sold when possession of the goods has been taken by the purchaser and not otherwise.

(5) For the purposes of this Order, local manufacturers that are factory wholesalers are not deemed to be wholesalers.

Extent of control

3.—(1) For the purposes of this Order, the prices charged by enterprises manufacturing within Fiji, in so far as they concern goods manufactured and licensed under the ‘Fijian Made – Buy Fijian’ Campaign, are not regarded as wholesale or retail prices.

(2) The specific details of the items specified in the Schedule are subject to the Commission’s listing.

Maximum wholesale price

4.—(1) The maximum wholesale price of any price controlled item is fixed at the sum of the following—

- (a) the total into-store cost for pricing of the goods of the wholesaler;
- (b) a delivery cost incurred by a wholesaler may also be charged if that charge is stated separately in the invoice provided at the time of sale; and
- (c) the mark-up on the total into-store cost for pricing plus a delivery cost incurred up to an amount no greater than the wholesale percentage prescribed in the Schedule.

(2) This order does not apply to a wholesaler or a related entity of a wholesaler that retails goods.

(3) The cost and maximum wholesale price under paragraph (1) are determined by the Commission upon submission of all documentary evidence of all costs incurred by the wholesaler and may only be charged after approval from the Commission.

Maximum re-wholesale price

5.—(1) The maximum re-wholesale price of any price controlled item is fixed at the sum of the following—

- (a) the total into-store cost for pricing of the goods to the re-wholesaler;
- (b) a delivery cost incurred by a re-wholesaler may also be charged if that charge is stated separately in the invoice provided at the time of sale; and
- (c) the mark-up on the total into-store cost for pricing plus a delivery cost incurred up to an amount no greater than the wholesale percentage prescribed in the Schedule.

(2) This order does not apply to a re-wholesaler or a related entity of a re-wholesaler that retails goods.

(3) The cost and maximum re-wholesale price under paragraph (1) are determined by the Commission upon submission of all documentary evidence of all costs incurred by the wholesaler and may only be charged after approval from the Commission.

Maximum retail price

6.—(1) The maximum retail price of any price controlled item is fixed at the sum of the following—

- (a) the total into-store cost for pricing of the goods to the retailer or in the case of an importer who sells by retail, the total into-store cost for pricing; and
- (b) a mark-up on that cost of an amount no greater than the retail percentage prescribed in the Schedule.

(2) A retailer that imports goods into Fiji is prohibited from charging a mark-up on the into-store cost for importing the good or any amount stipulated in the Schedule, other than a mark-up stipulated in paragraph (1)(b).

(3) The cost and maximum retail price under paragraph (1) are determined by the Commission upon submission of all documentary evidence of all costs incurred by the retailer and may only be charged after approval from the Commission.

Packaging

7.—(1) The maximum retail price of any price calculated in the manner prescribed in order 6 includes the cost of the packaging described in the Schedule.

(2) If a trader in paints and other coatings repackages goods in a container supplied by the trader, the trader may make an additional charge for those containers not exceeding the higher of—

- (a) the into-store cost of the container; or
- (b) the amount which the consumer can obtain for the empty container in good condition in the open market.

(3) The weight of packaging must not be included in the weight sold to the consumer at the price calculated in the manner prescribed in order 6.

Prices to be marked or displayed

8.—(1) Subject to paragraph (2) any person having any price controlled item for sale by retail must cause it to be legibly and conspicuously marked with the maximum retail price for the information of the public.

(2) Where a retailer of any good specified in the Schedule does not display the good for sale in an individual packet or container, the retailer is in compliance with this order if the retailer displays in a prominent position a legible and conspicuous notice clearly indicating the good to which the notice relates and the maximum retail price of the good.

Marking of goods

9. A person must not—

- (a) sell by retail or offer for sale by retail any price controlled item at a price in excess of that marked on such item, such maximum retail price having been calculated in the manner prescribed in orders 6 and 7; or
- (b) sell by retail or offer for sale by retail any price controlled item—
 - (i) if the item is not marked with its maximum retail price being calculated in the manner prescribed in orders 6 and 7; or
 - (ii) if the maximum retail price of the item has been removed, obliterated, concealed or altered other than an alteration reducing the maximum retail price shown on the item.

Records

10.—(1) A trader dealing in a price controlled item must keep to the satisfaction of the Commission the records and accounts, including stock and costing records, as are customary and proper in the type of business carried on by the trader, and without limiting the generality of the foregoing—

- (a) a wholesaler must maintain records—
 - (i) sufficient to identify goods sold to each retailer;
 - (ii) showing the price at which those goods were sold; and
 - (iii) of the receipt of those goods into-store and the cost at which those goods were received into-store; and
- (b) any trader, whether selling by wholesale or by retail, must maintain pricing records showing—
 - (i) the basis on which the selling prices are arrived at by reference to the total into-store cost for pricing calculations;
 - (ii) the basis on which all subsequent price variations are calculated by reference to the total into-store cost for pricing calculations; and
 - (iii) delivery costs.

(2) Where goods are sold by a wholesaler at a price which includes the delivery cost, the delivery cost must be stated separately in the invoice provided at the time of sale.

VAT

11.—(1) A trader must state VAT separately, if applicable, in the invoice provided at the time of sale.

(2) A person not registered under section 22 of the Value Added Tax Act 1991 is not entitled to deduct VAT paid on purchases and is also not entitled to charge VAT on their sales.

Expiration of Order

12. This Order expires on 5 November 2022 unless the Order is varied, extended or revoked.

Revocation

13. The Commerce (Control of Prices for Hardware Items) Order 2016 is revoked.

Approved this 6th day of November 2019.

P. D. KUMAR
Minister for Industry and Trade

Made this 6th day of November 2019.

J. YOUNG
Chairperson
Fijian Competition and Consumer Commission

SCHEDULE
(Order 2(1))

PRICE CONTROLLED ITEMS

<i>Item</i>	<i>Import Percentage</i>	<i>Wholesale Percentage</i>	<i>Retail Percentage</i>	<i>Packaging</i>
1. (a) Fasteners (all types) – imported	10%	5%	20%	According to trade custom
(b) Fasteners (all types) – local	Nil	10%	20%	
2. (a) Paint (all types) – imported	10%	5%	18%	According to trade custom
(b) Paints (all types) – local	Nil	10%	18%	
3. (a) Tools (all types) – imported	8%	5%	20%	According to trade custom
(b) Tools (all types) – local	Nil	10%	20%	
4. (a) Electrical products (all types) – imported	8%	5%	20%	According to trade custom
(b) Electrical products (all types) – local	Nil	10%	20%	
5. (a) Plumbing equipment and fittings (all types) – imported	10%	5%	20%	According to trade custom
(b) Plumbing equipment and fittings (all types) – local	Nil	10%	20%	
6. (a) Timber (all types) – imported	8%	5%	18%	According to trade custom
(b) Timber (all types) – local	Nil	10%	20%	
7. (a) Roofing products (all types) – imported	8%	5%	18%	According to trade custom
(b) Roofing products (all types) – local	Nil	10%	20%	
8. Concrete blocks (all types) – local	Nil	10%	20%	According to trade custom
9. (a) Louvre frames (all types) – imported	8%	5%	15%	According to trade custom
(b) Louvre frames (all types) – local	Nil	8%	15%	
10. (a) Cladding and boards (all types) – imported	10%	5%	15%	According to trade custom
11. (a) Plywood (all types) – imported	8%	8%	15%	According to trade custom
(b) Plywood (all types) – local	Nil	8%	15%	