

[LEGAL NOTICE NO. 99]

FIJIAN COMPETITION AND CONSUMER COMMISSION ACT 2010

**Fijian Competition and Consumer Commission  
(Price Control) (Pharmaceutical Product Prices)  
Order 2021**

IN exercise of the powers conferred on me by sections 44 and 51 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 (Price Control) (Pharmaceutical Product Prices) Order 2021.
- (2) This Order comes into force on 30 September 2021.

*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’s or re-wholesaler’s premises;

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

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

“package” means—

- (a) the outermost receptacle, container or wrapper in which any price controlled item is encased, covered, enclosed, contained or packaged for the purpose of sale by retail; or
- (b) if for retail sale there is provided a transparent outer cover or wrapper enclosing or covering a receptacle, container or wrapper, the receptacle, container or wrapper that is enclosed or covered;

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

“related entity” means any of the following—

- (a) a director or a member of a Corporation that engages in a wholesale or re-wholesale trade;
- (b) a relative, spouse or *de-facto* partner of a director or member under paragraph (a);
- (c) a relative of a spouse or *de-facto* partner of a director or member under paragraph (a);
- (d) a Corporation that is related to the Corporation under paragraph (a);

- (e) a beneficiary under a trust of which the Corporation in paragraph (a) 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 Corporation, one of whose directors is also a director of the Corporation under paragraph (a); 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 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.

*Extent of control*

3.—(1) For the purposes of this Order, the prices charged by a manufacturer within Fiji, in so far as they concern goods manufactured, are not regarded as wholesale or retail prices.

*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 good of the wholesaler;
- (b) the 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 or rate 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 the submission of all documentary evidence of the 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 good to the re-wholesaler;
- (b) the 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 or rate 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 the submission of all documentary evidence of the costs incurred by the re-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 good to the retailer or in the case of an importer who sells by retail, the total into-store cost for pricing; and
- (b) the mark-up on that cost of an amount no greater than the retail percentage or rate 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 the mark-up stipulated in paragraph (1)(b).

(3) The cost and maximum retail price under paragraph (1) are determined by the Commission upon the submission of all documentary evidence of the 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) 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) Any person selling by retail any of the goods specified in the Schedule must cause the same to be legibly and conspicuously marked with the maximum retail price for the information of the public.

(2) If the goods specified in the Schedule are not displayed for sale in individual packets or containers, a retailer complies with this order if the retailer displays in a prominent position a legible and conspicuous notice clearly indicating those goods to which the notice relates and the maximum retail price of the goods.

*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 if—
  - (i) the item is not marked with its maximum retail price being calculated in the manner prescribed in orders 6 and 7; or
  - (ii) the maximum retail price 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 the 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 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 29 September 2024 unless the Order is varied, extended or revoked.

Approved this 30th day of September 2021.

F. S. KOYA  
Minister for Commerce and Trade

Made this 30th day of September 2021.

I. TIKODUADUA  
Chairperson  
Fijian Competition and Consumer Commission

SCHEDULE—PRICE CONTROLLED ITEMS  
(Order 2(1))

<i>Item</i>	<i>Description</i>	<i>Import percentage</i>	<i>Wholesale percentage</i>	<i>Retail percentage or rate</i>	<i>Packaging</i>
1	Pharmaceutical – patents falling within Chapters 28 to 30 of Schedule 2 to the Customs Tariff Act 1986	12%	5%	20%	In bulk, unless retail packaging included in total into-store cost

and classes in Fiji are controlled.