

The economics of potential price gouging during Covid-19 and the application to complaints received by the CMA

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The CMA received a large number of complaints about price hikes during Covid-19. In this paper, we first review the economic framework of price gouging and identify the situations when intervention by competition authorities is justified. We then analyse the CMA's consumer complaints data. We find that most complaints related to essential products sold by small local retailers, including many that operate in some of the most deprived areas of the UK, and their price hikes were particularly likely to harm vulnerable consumers. We also explain the CMA's antitrust investigations into the pricing of hand sanitisers by retailers. This product, essential for reducing Covid-19 transmission, saw substantial and sustained price increases around March to June 2020. We conclude by discussing the merits of, and challenges for, competition authorities in responding to price gouging concerns and in playing a market observatory role more generally.

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1. Introduction

The Covid-19 pandemic is the gravest global health crisis in the last 100 years which has had a truly exceptional negative impact on health and economies.² One consequence has been to dramatically change the way we shop, to increase the demand for some essential products and to disrupt supply chains. It has also led to unprecedented market interventions by governments around the world to protect jobs and to sustain the economy.

The CMA set up a taskforce to monitor and respond to competition and consumer problems arising from the pandemic.³ From mid-March to mid-November 2020, the CMA received more than 115,000 complaints from consumers. Over 15,000 of these complaints concerned price rises,⁴ mostly related to a narrow set of food and hygiene products. In particular, some very substantial price increases were reported for hand sanitisers and for various food products and toilet rolls (Figure 1).⁵ While the vast majority of businesses behaved responsibly in the unprecedented circumstances of Covid-19, the CMA received a large number of complaints concerning independent local shops, many of which came from people in lower income neighbourhoods. Given the CMA's focus on vulnerable consumers it was clearly important to take the complaints seriously.

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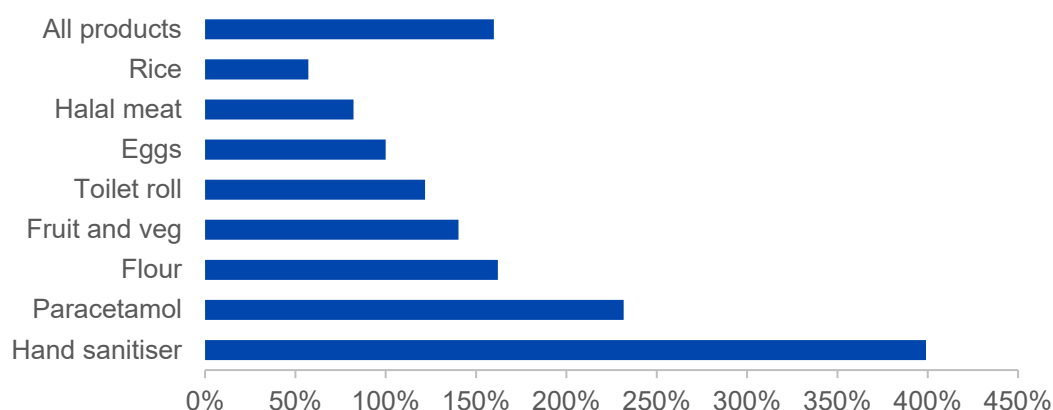
² For brevity, we use the terms 'Covid-19' or 'the pandemic' to refer to the Covid-19 pandemic in this paper.

³ Hayter (2020) describes the principles that guide the CMA's response to Covid-19, including the setting up of the taskforce. Tyrie (2020) takes a longer term perspective and discusses the impact of Covid-19 on the UK economy, as well as the role of the CMA to play in mitigating the problems that are arising.

⁴ A large proportion of the non-price related complaints related to difficulties in obtaining refunds from businesses such as wedding venues and holiday cottages.

⁵ CMA (2020) provides a more detailed description and summary statistics of the complaints received.

Figure 1. Average (median) reported price increase for all, and selected, products



Note: price increase is calculated based on prices in the complaint and normal prices reported by consumers.

Source: CMA (2020)

The typical economists' view of high prices is that they reflect demand and supply. In times of short-term scarcity, as some argue, high prices provide an incentive for producers to increase supply, and government intervention disrupts such market adjustments. If price gouging – charging high prices unjustified by costs for essential products during a pandemic – reflects a temporary imbalance between demand and supply, then why should authorities be concerned? How is it any different from normal situations, such as higher airfares during peak seasons, where authorities do not typically intervene?

The answer is that the pandemic has brought about significant and unexpected disruptions to both demand and supply. The competition issue lies in where high prices reflect the exploitation of market power. For example, during the lockdown consumers shop around less and have fewer alternatives available, and suppliers may not expand quickly enough due to supply chain disruptions. These distortions give local shops windfall market power and allow them to raise their mark-ups.

There are other market failures too. For essential products such as food and medication, distribution based on market prices alone during a pandemic is not likely to be socially efficient when a consumer's willingness to pay reflects income rather than need. Moreover, market prices do not account for the positive public health externalities - widespread use of personal hygiene products such as hand sanitisers or face masks benefits everyone, not just people who can afford them. In these situations, market outcomes that simply reflect demand and supply are no longer socially desirable and efficient.

Tackling market power is at the heart of the work of any competition authority. While there is no price gouging provision in the UK, excessive pricing is a form of abuse of dominance under UK and EU competition law. Past cases of excessive pricing apply exclusively to large dominant firms with substantial and durable market power, where high prices have been sustained. However, the exceptional nature of the pandemic has led other competition

authorities, notably in South Africa, to pursue cases of short-term excessive pricing by smaller firms which would normally not be considered dominant.⁶

Of course, other concerns such as with distribution or externalities are normally addressed by taxation or subsidy, and possibly through price regulation. Indeed, France has imposed price caps on hand sanitisers and face masks.⁷ In some USA states, and in Australia, where competition laws do not prohibit exploitative excess pricing, specific price gouging laws have been adopted for application in emergency situations.⁸

With multiple policy considerations in mind, what are the grounds for the CMA getting involved in price gouging complaints, given its powers and priorities? What are the merits and challenges of tackling price gouging through competition enforcement?

This paper first reviews the economic framework in assessing price gouging in section 2. Section 3 then sets out the approach adopted for an initial evaluation of the complaints and market data. The initial appraisal led to a focus on assessing local markets where there may be few alternatives for consumers, detailed in section 4. Section 5 then examines pricing complaints specific to hand sanitiser, which stood out as an essential product with a sustained demand surge and the steepest price spikes by local retailers. Section 6 concludes by discussing the relative merits of a competition authority engaging with the issues, the challenges in responding swiftly and flexibly, and the importance of understanding how markets work and how consumers behave as circumstances change.

2. Framework for assessing pricing gouging behaviour

This section first outlines the economics of price gouging and explains the relevant concerns based on standard microeconomic principles. It then briefly discusses the use of competition enforcement tools to tackle price gouging complaints.

2.1. Economics of price gouging

Standard microeconomics predicts that in a market economy, when demand increases, prices go up and products are allocated to the consumers who value them most. High prices in turn incentivise suppliers to expand, which brings prices down through the force of

⁶ Ratshisusu and Mncube (2020) discusses the South African experience in enforcing competition law against price gouging behaviour during Covid-19. Kigwiru (2020) explains the findings of the Competition Authority of Kenya against a supermarket which increased prices of sanitisers in contravention of competition law in March 2020. OECD (2020) provides further examples of potential investigations by other competition authorities, including in Spain, Greece, Romania, Italy, Indonesia, Thailand and Brazil.

⁷ France has capped retail prices of face mask at 0.95 euro, and hand sanitisers at two euros for a 50ml bottle, three euros for a 100ml bottle, five euros for a 300ml bottle and 15 euros for a litre bottle.

⁸ In response to Covid-19, Australia has adopted an ordinance prohibiting the resale of essential goods (e.g. face masks and hand sanitisers), purchased in a retail transaction, at mark-ups exceeding 20%. In the US, price gouging laws exist in over 30 states that prohibit excessive prices of certain commodities, typically triggered by a state of emergency. Similarly, Portugal imposed a profit cap of 15% for protective equipment and hand sanitisers. OECD (2020) provides a summary of the measures to tackle price gouging adopted in various jurisdictions.

competition. Economists generally refer to this framework in arguing that government action regarding price gouging is counterproductive because it disrupts market responses.^{9,10}

However, standard economics also recognises that markets can and often do fail. A well-known market failure is that firms can exploit market power to restrict supply and charge high prices (monopolist pricing being an extreme example). This section first explains how the pandemic can hand market power to suppliers by considering demand and supply side factors respectively, building on recent contributions by several economists.¹¹ It then explains that, additionally, price gouging can lead to undesirable and inequitable allocations of essential goods and socially inefficient outcomes.

2.1.1 Price gouging as exploitation of market power

The pandemic reduced consumer engagement on the demand side

There were sudden surges in demand for essential goods at the start of the pandemic in the UK, around late March 2020. The widely-reported shortages of essential goods – and related government social distancing guidance – changed consumer behaviour in fundamentally different ways from normal situations for broadly three reasons.

First, local shops became one of the few options available to some consumers due to lockdown rules.¹² Consumers who rely on public transport, particularly vulnerable people with mobility difficulties, were less able to travel to supermarkets (which have generally maintained stable prices)¹³ outside their neighbourhoods. Moreover, public transport services have been reduced, and infection risks have deterred people from using the reduced services. These limited the alternative outlets accessible by consumers.¹⁴

Second, the pandemic has increased search costs for all consumers, including those with the means to travel independently. Social distancing rules required retailers to limit customer access and created long queues outside retail outlets. Access to online groceries and

⁹ In 2012, the University of Chicago Booth School of business did a poll of a panel of eminent academic economists and asked whether Connecticut, US should pass a proposed price gouging legislation. Of the 32 responding economists, 20 disagreed with the price gouging legislation, 6 were uncertain, 3 expressed no opinion, and only 3 agreed. Notably, two Nobel Prize laureates expressed strongly opposing views: Angus Deaton strongly agreed with the legislation and reasoned that ‘*Efficiency is less important than distribution under such transitory conditions*’, whilst William Nordhaus strongly disagreed because “*At best, symbolic. At worst, would return to price controls of the 1970s*’. See <http://www.igmchicago.org/surveys/price-gouging> (retrieved 2 July 2020)

¹⁰ Noy (2018) points out that there was no empirical evidence to conclusively say whether allowing price gouging is preferable.

¹¹ There have been a number of contributions to these questions from this pandemic, including Fletcher (2020), Davies (2020), Jenny (2020), Motta (2020), and Fabra, Motta and Peitz (2020).

¹² The UK Government’s social distancing guidance required that people “only leave or be away from your home for very limited purposes: shopping for basic necessities, for example food and medicine, which must be as infrequent as possible... Even when doing these activities, you should be minimising time spent away from the home” (See <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others>), retrieved on 5 June 2020.

¹³ See Section 3 for a discussion on broad price trends in different retail channels.

¹⁴ Using antitrust terminologies, these changes lead to narrower geographical markets compared to normal situations, for example, geographic market definitions found in grocery retail mergers.

delivery slots have also been severely limited. This further reduced consumers' ability to shop around and weakened the constraint of supermarkets on smaller local shops.¹⁵

Third, the uncertainties created by scarcity of essential goods could inflate consumers' willingness to pay.¹⁶ Retailers could exploit consumers' fear of shortage and command higher prices than normal situations. Uncertainties may even induce stock-piling behaviour, whereby consumers with more disposable income buy-up goods far beyond their day-to-day usage of these products (e.g. food and toilet rolls). This creates a vicious circle by exacerbating the scarcity problem, and as we discuss later, leads to more regressive distributions of essential goods.

In summary, the pandemic has affected consumer behaviour beyond simply increasing the demand for essential goods. It can limit consumers' options, restrict their ability to shop around, and inflate their willingness to pay. These changes can undermine the competitive forces of consumer switching and increase retailers' market power.

Product shortages reduced competition on the supply side

The pandemic can reduce the intensity of competition between retailers. When demand for essential goods suddenly far outstrips supply, retailers that run out of stock no longer impose a constraint on retailers which have remaining stock. The latter can therefore charge higher mark-ups until other retailers replenish their stock.¹⁷ In other words, some retailers gain windfall market power from unexpected supply shortages.

In more extreme situations, sellers may even create artificial shortages through hoarding or buying up products from other shops and re-sell at higher prices subsequently.¹⁸ The incentives of such resellers are to induce high prices by restricting supply, rather than expanding production to bring prices down. These situations are clearly harmful to consumers.

¹⁵ The ONS surveyed consumers on whether they had experienced problems related to refunds, cancellations, and excessive prices due to the Covid-19 outbreak. Respondents with disabilities and health conditions that reduce their ability to perform day-to-day activities were more likely to cite very high prices as a problem, as were respondents who stated that the outbreak had affected the availability of groceries, medication and essentials. See footnote 39.

¹⁶ The scarcity can be real (e.g. based on a consumer's personal experience) or perceived (e.g. reports of empty shelves in social media). Kuruppu and De Zoysa (2020) provides a summary of the psychology and behavioural theories behind panic buying behaviour. Based on qualitative study using online searches data, the authors found that information circulated through social and news media had played a significant role in the unprecedented panic buying observed around the world during Covid-19.

¹⁷ In an extreme scenario where only a single retailer in a neighbourhood has remaining stock to sell, it can price like a monopoly for the product in question. Retailers can also raise mark-ups because of changes in consumer behaviour described in the preceding section.

¹⁸ Two examples, both occurred in the US during the pandemic, illustrate how sellers can induce scarcity and resell products at much higher prices subsequently. The first one concerned two traders who bought nearly 18,000 bottles of hand sanitisers from local shops and resold them on Amazon at multiples times the purchase price (<https://www.nytimes.com/2020/03/14/technology/coronavirus-purell-wipes-amazon-sellers.html>). The second example relates to groups of sophisticated traders who reportedly used software to monitor and buy up high-demand quarantine items online (e.g. dumbbells and hair clippers), and resold these products for a profit. (https://www.vice.com/en_uk/article/epgymw/resellers-are-making-dumbbells-and-hair-clippers-impossible-to-find-online)

There is a fundamental difference between price gouging of essential goods in a pandemic and charging high prices in peak seasons. In normal times, firms plan capacity according to expected demand. If firms cannot readily adjust capacity in response to predictable seasonal demand fluctuations (e.g. an airline cannot change its fleet size every month), they typically charge higher prices during peak seasons and lower prices in low seasons. In assessing whether such pricing is an exercise of market power, one should therefore consider average prices and costs over an entire demand cycle, rather than high prices in peak seasons alone.¹⁹ By contrast, sellers engaging in price gouging during the pandemic do not compete away the windfall profits by charging below-average mark-ups when the pandemic is over.

Is market self-correction quick enough?

If high prices can incentivise suppliers to expand quickly, there is probably little cause for concern. Such market correction would mean that consumer harm from price gouging is short-lived. This is an important factor in considering what action is appropriate for authorities to take: how durable and substantial must any harm inflicted on consumers be to warrant action before market correction happens? Conversely, what is the risk that intervention would delay market correction?

Regarding the duration of harm, the pandemic has caused global supply chain disruptions which have likely prolonged market correction. For example, some countries have imposed export bans on essential products or raw materials (e.g. ethanol for hand sanitiser production). For countries that rely on imports of certain products (e.g. personal protection equipment), local production may not expand quickly and shortage is possibly further worsened by logistic delays.²⁰ Meanwhile the harm caused by price gouging, in potentially denying vulnerable consumers access to essential products, can be very material even if high prices are sustained just for a few weeks.²¹

Regarding the risk of intervention, some economists have pointed out that price regulation can discourage entry and stifle innovation generally.²² However, one must be sceptical about applying these general arguments against intervention on price gouging in a pandemic for two reasons.

First, the incentives of downstream retailers are not the same as those of upstream suppliers. The fundamental solution to a shortage of essential goods is expansion of production or imports. Therefore, it is important that upstream suppliers have enough incentive to expand production or imports, which in turn will ensure that downstream retail outlets have sufficient stock of products to sell to consumers. However, pricing gouging by

¹⁹ Inter-temporal price discrimination can be an outcome consistent with vigorous competition.

²⁰ During localised disasters, such as hurricanes or forest fires, markets and supply chains outside of the affected areas will be undisrupted, allowing an efficient response – supply will be able to be diverted to the affected area in response to small price changes and other forms of planning.

²¹ Jenny (2020) discusses the case for policy intervention in relation to supply shortages of essential goods during Covid-19, noting that the ‘adjustment between supply and demand is so huge that it is going to take quite a bit of time for the market to readjust’, and that ‘the lack of adjustment has or imposes a huge cost on society in the form of lost lives [...] probably policymakers cannot rely on the normal functioning of market forces and they have to take measure to ensure that the supply is increased as fast as possible, but also that whatever little supply is available is distributed in the best, the most optimal way.’

²² These arguments are often raised in objection of excessive pricing enforcement. For a summary, see, for example, Evans and Padilla (2005) and Motta and De Streel (2007).

downstream retailers (i.e. charging high retail mark-ups)²³ are unlikely to provide an incentive for upstream suppliers to expand output.²⁴ In other words, intervention against excessive retail mark-ups, and not against price increases that reflect higher production costs, is unlikely to undermine producers' incentives to expand.

Second, economic theory does not imply that any arbitrarily high price is *necessary* to induce efficient entry. If suppliers expect substantial demand growth (e.g. increased usage of face masks or hand sanitisers), normal margins on much larger volumes will be sufficient to induce expansion. This can be illustrated using a simple and stylised example in Figure 2 below. It shows that when demand increases (from D to D') in a market with short-term capacity constraint (represented by the vertical supply curve S), the market price which equates demand and supply can increase from P to P_{ST} .²⁵ However, a price increase to P_{LT} would be enough to induce efficient supply expansion to a long term equilibrium (S').²⁶ The consumer welfare loss (i.e. the rent captured by producers) is shown in the shaded area.²⁷

²³ Most price complaints received by the CMA concerned retailers rather than upstream suppliers. See section 3.

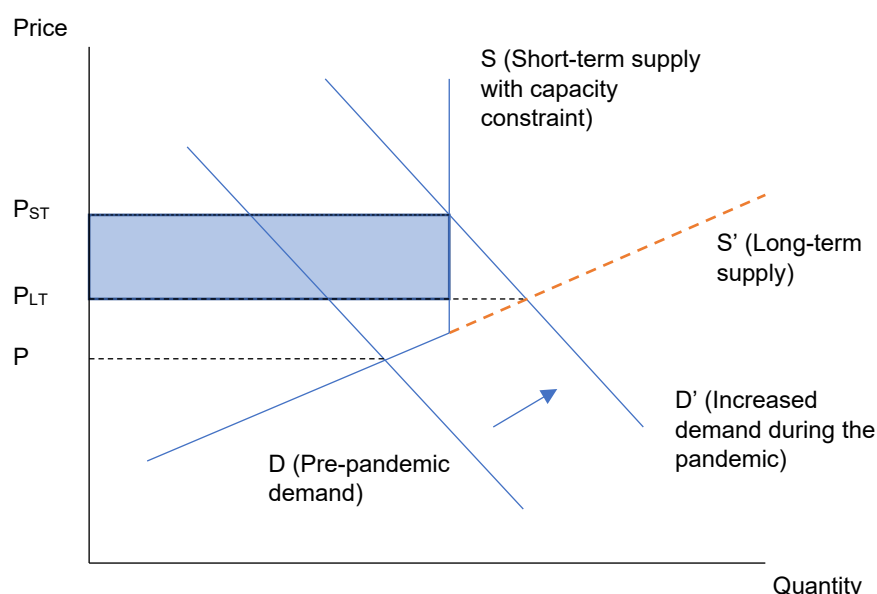
²⁴ In principle, producers can raise wholesale prices to capture some of the rents as a result of downstream market power. However, in the current pandemic producers are much more likely to respond to strong signals of demand growth (e.g. increased usage of hand sanitisers and face masks) rather than mark-ups of individual retailers. Moreover, producers face other constraints in increasing wholesale prices as we further discuss below.

²⁵ As noted above, sellers with market power may even restrict output and charge a higher price than P_{ST} .

²⁶ If demand is actually expected to fall right back (such as for toilet roll and food) then suppliers will not expect higher future prices and there is no incentive to increase supply, regardless of the short-term price spike. It also means current market capacity – without relying on high prices to provide an incentive for expansion – is sufficient to satisfy demand once panic buying is over. Ezrachi and Gilo (2009) set out reasons why excessive prices may more generally not be self-correcting, including where possible entrants have reason to believe the prevailing high prices do not reflect the prices they would face after entry.

²⁷ These rents can be captured by the retailers which increase prices if producers kept wholesale prices unchanged.

Figure 2: Stylised illustration of price increase required to induce efficient entry



The above suggests that policies to prevent retailers from spiking mark-ups to exploit temporary market power can be justified within a standard microeconomics framework. The cost of false conviction (i.e. wrong intervention undermining efficient market response) seems low, while the cost of false acquittal (i.e. inaction leading to consumer harm uncorrected by market forces) seems much higher.²⁸ This is particularly the case in a situation where demand increases quickly and panic buying could be exacerbated by the price increases.

2.1.2 Price gouging can lead to a socially undesirable allocation of goods

Standard economics recognises that other market failures exist in addition to the exercise of market power discussed above. In relation to essential products supplied during a pandemic, there are two main reasons why price-based allocation according to the greatest willingness to pay can fail to deliver socially desirable outcomes.

First, the willingness to pay high prices is not necessarily a fair reflection of the value of essential goods.²⁹ For basic items such as food, medication and hygiene products, consumers are likely to vary little in the utility derived from the goods – everybody needs to eat and values good health and hygiene, after all. However, variation between consumers in their willingness to pay for essential goods is likely to reflect income rather than need. This is

²⁸ Motta and De Streel (2007) considered that excessive pricing actions present high risk of false condemnation and false acquittal and, because of the high cost of false condemnation which undermines innovation and investment compared to the low cost of false acquittal which undermines allocative efficiencies. They advocated that competition policy should set strict conditions and a high standard of proof for intervention.

²⁹ Davies (2020) noted in relation to price gouging during Covid-19 that “it’s quite clear that the public, in general, does not share the view of a kind of naive economics 101 first-year textbook, [...] People can and do object very vigorously to what they perceive as exploitative price increases unto what they perceive as the fairness, the unfairness of such actions, particularly in a time of crisis.”

compounded by the fact that richer consumers are more likely to be better able to access alternative sources such as online groceries.

The second reason is that market outcomes are socially inefficient when there are externalities. In a pandemic, richer consumers can stock-pile and buy far in excess of their own needs, but they do not take into account the fact that such stock-piling would overwhelm market supply and deny others' access. Moreover, for products with positive externalities there will be an even greater mismatch between market and socially desirable outcomes. For example, widespread use of hand sanitiser and face masks benefit all consumers, not just those who can afford to pay high prices, through the dampening of the virus's spread. For public health reasons, therefore, it would be far more desirable to ensure as many people have access to these products, especially for key workers who are unable to work from home, rather than to allocate them based on high prices thus limiting access to richer consumers only.

Alternative means of allocating essential products exist. Indeed, most large UK retailers have used non-price mechanisms, such as quantity rationing of essential items or exclusive shopping hours for NHS workers and the elderly, to ration scarce goods during the pandemic. Similarly, online marketplaces have rules against price gouging by sellers on their platforms.³⁰ These show that short-term product-level profit maximisation is not the sole objective of private firms, especially for large grocery chains which are more likely to face public scrutiny than are smaller local shops, as noted in Cabral and Xu (2020). While there are clear imperfections with other rationing mechanisms, from a social welfare perspective, they are probably preferable to the outcome which would result from allowing price gouging to continue unabated and leaving it all to 'demand and supply'.³¹

2.2. Using competition policy tool to tackle price gouging

There is an existing set of tools in competition policy designed to prevent the exploitation of market power by firms through setting very high prices – the “excessive pricing” offence. The economic and legal framework of excessive pricing is designed to combat abuse by dominant firms with persistent market power, typically in markets characterised by the lack of possible self-correction. Can this framework be applied also to price gouging by smaller firms in periods of significant and simultaneous demand and supply shocks? What are the challenges of doing so?

Economists and antitrust researchers have tended to be careful with excessive pricing offences. Generally, price setting by firms is viewed as an ordinary part of the competitive process, unlike exclusionary abuses which are more often seen to distort competition.³²

³⁰ See, for example, Amazon (<https://blog.aboutamazon.com/company-news/price-gouging-has-no-place-in-our-stores>) and eBay (<https://www.ebay.co.uk/help/policies/prohibited-restricted-items/price-gouging-policy>).

³¹ This is perhaps the reason that Angus Deaton commented in response to the survey on price gouging legislation (see footnote 9 above) that 'efficiency is less important than distribution under such transitory conditions'.

³² The economic reasoning is also recognised by UK Courts. The Court of Appeal judgment in *The Competition and Markets Authority v. Flynn Pharma Limited and Pfizer* (Phenytoin excessive pricing case) summarises the economic literature and states that 'Where there are no material barriers to entry high prices can act as a magnet to entry which, in due course, drives prices down. Many markets are thus self-correcting. In the absence of entry

Motta and De Streel (2007) provide a taxonomy of the sets of conditions proposed by various authors, and propose their own conditions for when an excessive pricing abuse may arise.³³ They can be summarised as follows:

- The firm holds a dominant position in a defined market;
- The firm's position is not the result of, or is only partially the result of, the firm's investment and innovation;
- There are substantial barriers to entry, and a lack of other means for the market to correct itself; and
- There are no other regulatory or structural remedies available to the competition authority.

Several of these criteria apply clearly to the case of price gouging during the Covid-19 pandemic. The ability by shops to charge high (resale) prices is not linked to firm's investment or innovation, but instead is a windfall from the outbreak. Price gouging occurs mostly at the local retail level which are not heavily regulated, and where barriers to entry, whilst not insurmountable, are sufficiently high in the short-term to allow for harm to take place before market self-correction can happen.

The dominance criterion does not normally apply to local retailers, but the pandemic situation may warrant a novel approach. In normal situations (for example, grocery merger investigations) local retail markets are defined based on a geographic area within certain distances.³⁴ Local shops typically have small market shares and are not deemed to be dominant in these markets. However, the demand and supply distortions caused by the pandemic can well hand significant market power even to smaller retailers, as discussed above.³⁵

Dominance and market definition assessments are, after all, means to the end of identifying market power and consumer detriments. In exploitative abuses, the real proof of market power is in the firms' conduct. If retailers are able to sell at prices well in excess of their own costs (and prices before the pandemic), this is itself direct evidence that firms are unconstrained by competitive forces. Indeed, given that the pandemic has distorted demand and supply conditions in unpredictable ways, in assessing a potential abuse it seems particularly relevant to consider the impact of the conduct itself, rather than inferring from a formalistic market definition exercise. This exceptional approach has been applied by the South African Competition Commission and confirmed by the South African Competition Tribunal in their seminal cases on excessive pricing of face masks during the pandemic.³⁶

barriers regulatory intervention can risk prolonging a monopoly situation by blocking efficient signals which would otherwise promote market entry'.

³³ Evans and Padilla (2005) evaluated the pros and cons of excessive pricing enforcement and recommended that public policy should not intervene in pricing of dominant firms, except in circumstances with entrenched monopolies and legal barriers to entry.

³⁴ For example, in assessing the Tesco/Booker merger in 2018, the CMA assessed geographic markets for convenience store using 1-mile catchment around each store.

³⁵ Motta (2020) notes that firms that may be accused of price gouging might not necessarily be dominant in ordinary times, but may well be in exceptional times due to changes in consumer shopping behaviour, and when demand is much higher than capacity, even small firms may be endowed with significant market power.

³⁶ *The Competition Commission of South Africa v. Babelegi Workwear and Industrial Supplies CC*, 1 June 2020. The mark-ups charged by the workwear company in question was found to be as high as 1120%. The South

However, enforcing competition law against price gouging comes with its own challenges. Although stopping unjustifiably high prices can improve consumer welfare, it is only part of the solution. Other rationing policies (by retailers and governments) must be in place to ensure equitable allocation of scarce essential goods based on needs, and to achieve other public health objectives. Ultimately, where there is genuine shortage then expansion of supply is key, and this cannot be solved directly by competition enforcement.

Finally, there are practical challenges of competition enforcement too. It is a lengthy process, and even if cases are uncontested, it can only be targeted at a small number of firms at a time. On the other hand, a pandemic requires swift policy actions across sectors. Irreversible consumer harm can be inflicted before a competition authority intervention is successful; and, delayed intervention can be obsolete as market forces return to normal. We further discuss policy implications in section 6 of this paper.

3. Initial evaluation of complaints

The factors discussed in section 2 suggest that price gouging is more likely to be a concern in essential products with few substitutes and in local markets with few alternative outlets. This is broadly confirmed by an initial evaluation of the consumer complaints and market price data analysed by the CMA, which we set out in this section.

3.1 Screening of complaints

The CMA found that the vast majority of businesses behaved responsibly and fairly given the unprecedented circumstances created by Covid-19.³⁷ Nevertheless the volume of complaints received were substantial, which meant an appropriate method of screening was required to prioritise further assessment, given the CMA's constrained resources. The criteria involved identifying: (i) the most complained of products, (ii) relevant retail channels, and (iii) the prices reported in complaints relative to appropriate market benchmarks.

Product categories reported in complaints

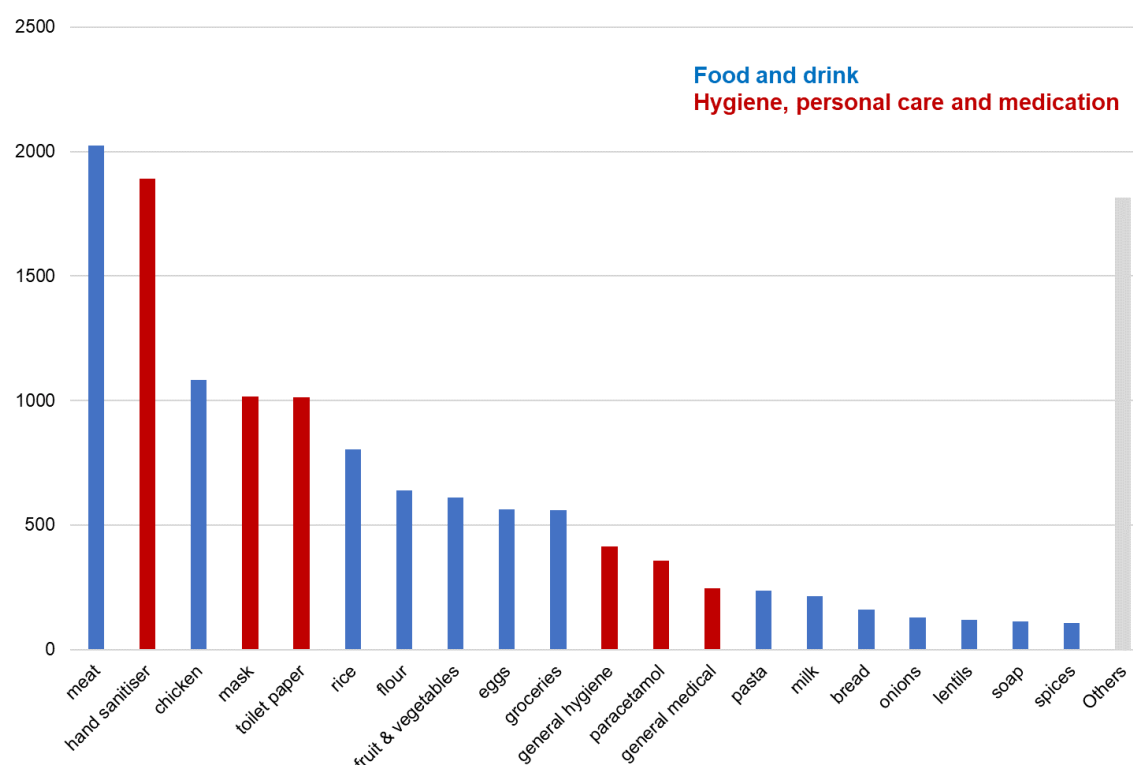
Figure 3 below shows that most of the price-related complaints concerned a narrow set of food (in blue) and personal care products (in red). Two product categories are notable: over 1800 instances of complaints were related to each of meat and hand sanitisers. Moreover, many of the complaints relate to a basket of goods. For example, considering the top 20 outlets that have been complained of (all of which are independent retailers),³⁸ 54% of the complaints concerned more than one product, and 15% concerned four or more products.

African Competition Tribunal's Reason for Decision (paragraph 85-86) states that: 'there is no compelling reason to engage in market delineation if other means exist to determine market power...in the context of abnormal market conditions amid the Covid-19 crisis, a firm's own conduct therefore is the best available proxy for market power if the market is distorted by the crisis'. In another case, *Competition Commission of South Africa v. Dis-Chem*, the South African Competition Tribunal reasoned that "material price increases of life essential items such as surgical masks, even in the short run, in a health disaster such as the Covid-19 outbreak, warrants our intervention" (paragraph 145, Reason for Decision). See also Ratshisusu and Mncube (2020) and First (2020).

³⁷ CMA (2020).

³⁸ The top 20 most complained-of outlets received 873 complaints together.

Figure 3. Number of price-related complaints by product (20 March to 28 June 2020)



Note: products with fewer than 100 complaints are not shown individually. Meat includes mutton, lamb, beef and other general meat complaints.

Source: CMA

Data gathered by other organisations, including Which? and ONS, broadly confirmed the patterns in the complaints reported to the CMA. The ONS surveyed consumers on whether they had experienced problems related to refunds, cancellations, and very high prices since the Covid-19 outbreak.³⁹ Around half of the respondents had experienced at least one problem since the start of the outbreak, with 15% having experienced very high prices for essential goods.⁴⁰ A survey by Which? found high prices being observed most frequently for hand sanitiser.⁴¹

³⁹ The question was asked as part of the Covid-19 section of the weekly ONS GB Opinions and Lifestyle survey. The survey was conducted online and over the phone, with the question being asked on four survey waves between 7 and 31 May 2020. A sample of 4,428 respondents was achieved across all four waves.

⁴⁰ The same question is being asked to consumers in Northern Ireland by The Northern Ireland Statistics and Research Agency, based on 1785 telephone interviews, where 32% of respondents have experienced having to pay very high prices to get essential goods.

⁴¹ Questions on high prices were asked on an Opinium panel survey 24-27 April 2020. There were 2,004 respondents. Quoted results are weighted to be nationally representative.

Overview of market price data

The CMA obtained data from Nielsen and Retail Data Partnership (RDP) to assess market price trends in different retail channels and to construct benchmarks that broadly reflect market competitive conditions. Given the large majority of businesses behaved responsibly, price hikes by a minority of local retailers would be unlikely to affect market averages materially. Further, market average prices would capture any legitimate price changes for particular products that were driven by industry-wide cost increases. By comparing market average prices with prices reported in the complaints, we seek to identify any individual retailers who might have unjustifiably inflated prices over and above market-level changes.

To compare on a like-for-like basis, it is necessary that the benchmark closely matches the product which is being complained about. For example, the price of a package of toilet roll will vary depending on the number of rolls in a pack, on the characteristics of the product (including brand), and on the type of retailer in which it was purchased – large supermarkets and independent convenience stores have different costs and will normally charge different prices for otherwise similar products.

Both Nielsen and RDP data report all the stock-keeping units (SKUs) of the products most complained of, derived from electronic point-of-sale devices (EPOS) in bricks-and-mortar stores. Nielsen data offers a wider coverage across independent and national retail channels, but it is aggregated for each channel. We use Nielsen data to illustrate price trends below. The RDP data only covers independent retailers and convenience stores, but it provides granular store-level data which we use to assess distribution of prices within the independent channel.

Price trend by retail channels

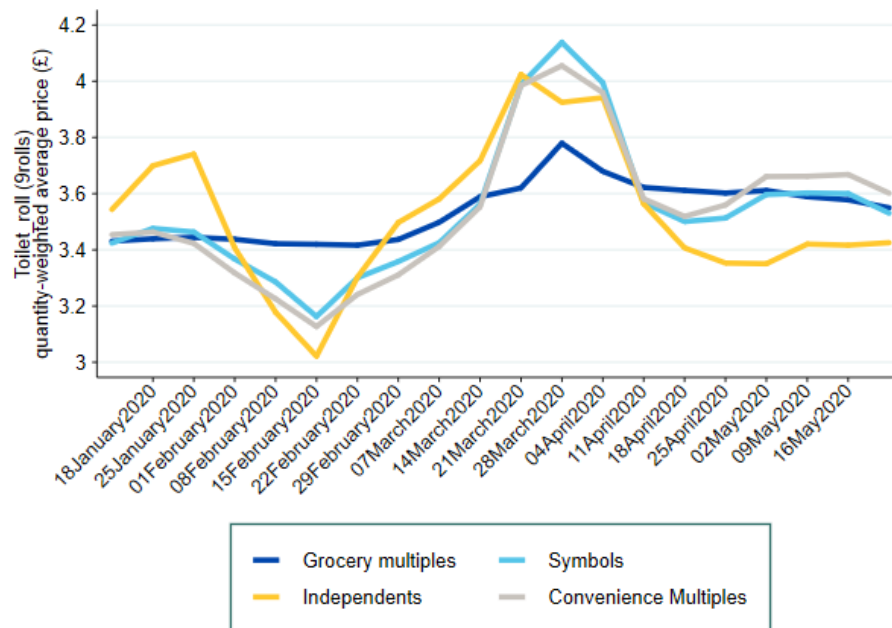
From the most complained-of product categories (Figure 3) a set of eight products were selected – toilet roll, eggs, flour, pasta, rice, disinfectant, paracetamol, and hand sanitiser.⁴² Our analysis of the Nielsen data confirmed that average prices for certain products have increased sharply during the outbreak in independent channels such as convenience stores and symbol stores, but to a much lesser extent in the ‘grocery multiples’ channel comprising large national grocery retailers.^{43, 44} For example, the differences in price levels and their trends across retail channels can be seen in toilet roll (Figure 4) and flour (Figure 5). The much larger extent of price increases observed for independent channels during the pandemic supports prioritising the assessment of complaints in these channels.

⁴² Meat products were not considered, as these are so differentiated that it is extremely difficult to construct benchmarks from the EPOS data. Face masks were not selected as, at the time of analysis around April 2020, they did not figure highly in the complaints and the product characteristics were not well specified in the complaints data.

⁴³ ‘Grocery multiples’ is defined by Nielsen to include national supermarket chains, and in relation to personal care and medication products, also two national pharmacy chains (Boots and Superdrug).

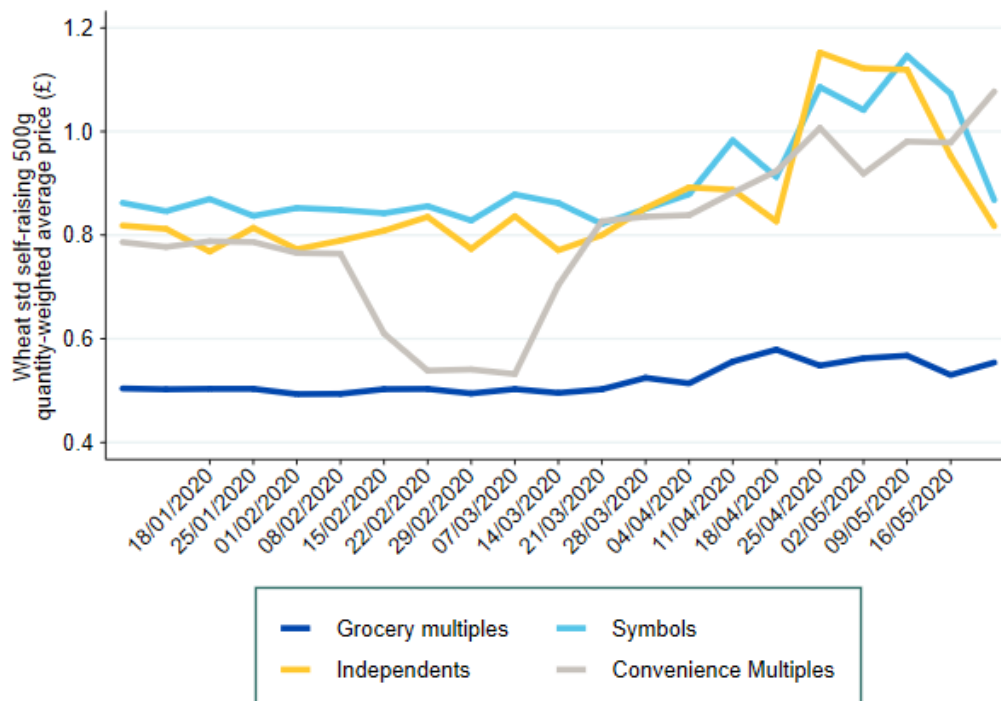
⁴⁴ Jaravel and O’Connell (2020) find that grocery prices increased by 2.4% month-on-month at the start of lockdown, over ten times faster than preceding months. We note that although the price increase seems small in percentage terms, these could have large impacts on consumers given the large quantities of food sold by this channel.

Figure 4. Toilet roll, average prices by channel (9 roll pack size)



Source: CMA analysis of Nielsen data

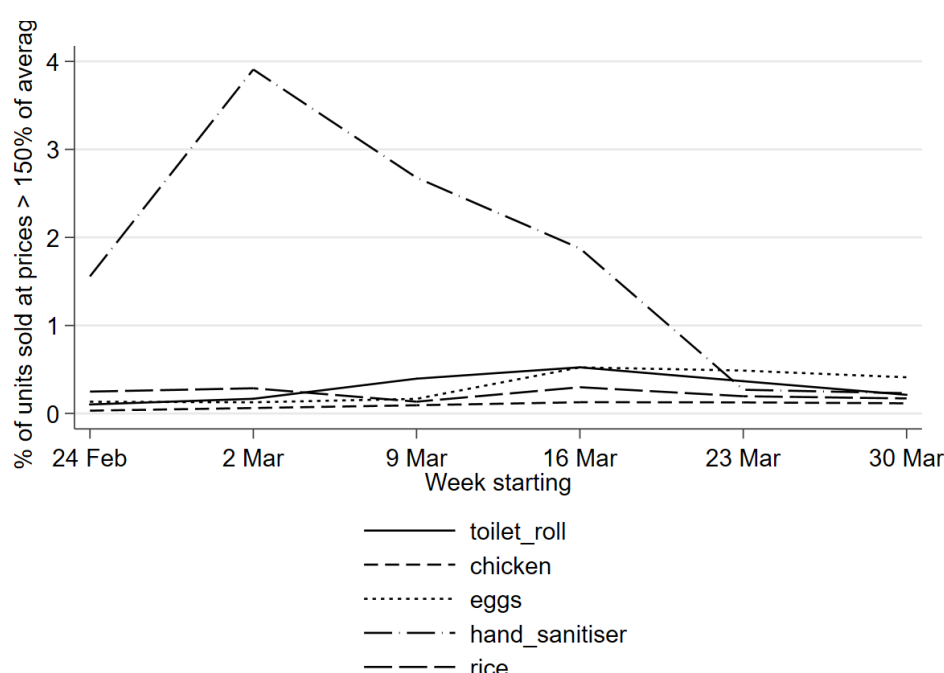
Figure 5. Standard self-raising flour 500g, average prices by channel



Source: CMA analysis of Nielsen data

We then used RDP data to examine the distribution of prices across stores within the independent channel, in order to identify whether price hikes were more widespread for any particular product. Figure 6 below shows the proportion of units sold at prices that exceeded average prices in the same channel by a significant proportion (using 150% as a proxy for significance).⁴⁵ It can be seen that the product which stands out in this regard is hand sanitiser, where at the peak in early March nearly 4% of units were sold at prices more than 150% above the average in that week. This fell back to the levels of the other product groups late March. For other product groups on which data were collected, less than half a percent of units were sold at prices exceeding 150% of the market averages. This analysis confirms that price rises in hand sanitisers were more widespread across independent retailers, which we discuss in detail in section 5.

Figure 6: Percentage of units sold at prices exceeding 150% of the average price



Source: RDP data

Comparing complaint prices and market benchmarks

To understand whether prices reported in the complaints are justified by wider market cost increases, we compare them against market benchmarks, taking into account product specifications and pack sizes where possible.⁴⁶ Table 1 summarises these analyses for toilet roll, rice and chicken breast.

⁴⁵ Average calculated as weekly mean prices weighted by number of units. It is not necessarily the case that each of these sales at a “high price” represents an incident of price gouging – the retailer may have been charged an unusually high wholesale price, for example.

⁴⁶ This exercise was done in April 2020 and reflected the complaints made at that time, largely reflecting the spike in complaints in late March 2020 (Figure 1 above).

Table 1. Comparing complaint prices against market benchmarks

Product	Pack size / location	Market benchmark price	Mean complaint price	% over benchmark
Toilet roll*	4	£1.87	£5.32	185%
	9	£4.14	£10.00	142%
	24	£9.84	£9.99	2%
Rice	10kg	£19.33	£21.00	9%
	20kg	£32.21	£36.68	14%
Chicken breast (1kg)**	Non-London	£3.97	£6.00	51%
	London	£6.27	£9.90	58%

Notes:

*In the independent and convenience channels covered by RDP data, units of 4 pack and 9 pack were sold in substantially greater quantities than units of 24 pack. For example, between 24th February and 20th March 2020, units of 4 pack and 9 pack toilet rolls sold were 396,546 and 166,710 respectively, compared to only 5,155 units of 24 pack toilet rolls sold.

** The benchmark was constructed from ONS data as this had a per kg fresh chicken breast price which was very difficult to extract from the various prices by pack in the RDP data.

From Table 1 we can observe the following:

- In the case of toilet roll, for the main pack sizes the average complained of prices were very substantially in excess of the benchmark prices for the symbol stores and independents, over 140% higher (i.e. around two and half times the average levels). Of course, the quality and other characteristics of the products being complained of could be different from an average product which would have needed further investigation. The CMA sent correspondence to the most complained of outlets noting the high prices reported by consumers and asking for further information and justifications. In any event prices adjusted quite rapidly back to normal levels (see, for example, Figure 4) reflected in the decline of price-related complaints over time.⁴⁷
- In other cases, such as rice, the increased prices were not, in fact, high relative the benchmarks. Overall, it was decided rice was not a priority along with the other food products as prices appeared to have adjusted.

Possible regional differences in average prices were also taken into account and, in the case of chicken, this indicated sufficiently large differences between prices in and outside London.

3.2 Pricing complaints and potential market power

The initial evaluation above pointed to two distinct sets of issues regarding the complained of prices, products and outlets, which merited an in-depth assessment.

First, a large number of the complaints related to the prices of products in local convenience and symbol stores. These complaints were often about a basket of essential products. Notwithstanding the increased demand and possible cost increases, the prices complained of were substantially higher than the market averages in this channel. This suggests price

⁴⁷ See CMA (2020). A large proportion of complaints initially received by the CMA related to price rises, particularly for personal hygiene goods such as hand sanitiser and basic food products. Over time, however, there has been substantial growth in the number of complaints about cancellations and refunds, and a decline in complaints about prices.

increases are not explained by higher wholesale costs. These complaints appeared to be relatively concentrated in local urban markets which were not well served by large national supermarket outlets and are therefore consistent with local stores having market power, as we further explain in section 4.

Second, there were very widespread complaints regarding hand sanitiser prices against a large number of independent chemists and convenience stores. Market benchmarks also show that high prices were sustained for a much longer period than those for other products. In terms of prioritisation, the positive externality from hand sanitisers – good personal hand hygiene benefiting the society as a whole by reducing Covid-19 transmissions – was taken into account. Concerns were also considered in the context of likely sustained increased demand for hand sanitiser due to its importance for those having to move around, such as key workers travelling to and from work, as well as more widely as the country eased out of lockdown. We further assess hand sanitiser pricing and explain the actions taken by the CMA to tackle these complaints in section 5.

4. Local retail markets and the effects of Covid-19

This section examines the features of local retail markets where pricing complaints were prevalent. It first briefly summarises the characteristics of independent and convenience stores, based on previous CMA inquiries, and explains how Covid-19 might have affected them. It then considers the geographic areas served by the most complained of outlets and discusses the socioeconomic implications.

4.1 Characteristics of independent and convenience stores

The most complained of outlets were smaller grocery retailers. They include convenience stores operating as part of a symbol group and other independent retailers, which operate in local markets.⁴⁸ We refer to these as ‘independent and convenience stores’.

Relative to large national supermarket chains, independent and convenience stores offer narrower product ranges, but they often operate longer opening hours for top-up shopping. Moreover, independent and convenience stores are typically located in close proximity to consumers. They tend to be more important for lower income households, in areas where there is less coverage by the main supermarket chains.⁴⁹

As explained in section 2, the lockdown rules due to Covid-19 meant that consumers, especially those who rely on public transport, were much less willing to travel. The CMA’s Tesco/Booker merger investigation in 2017 found that proximity is the most important driver of customers in the convenience channel, where over 78% of shoppers travel less than a mile to a convenience store.⁵⁰ The pandemic (at least during the initial phase) was likely to

⁴⁸ Symbol groups are independent stores which are affiliated with a wholesale symbol group provider through franchise-type arrangements, but each store is free to set its own retail prices. The main symbol groups in the UK include Londis, Costcutter, Nisa and Premier.

⁴⁹ The Local Shop Report by the Association of Convenience Stores in 2017 found that 55% of the users of independent and convenience shops belong to lower income categories (C2DE) which is higher than the UK population average.

⁵⁰ See Tesco/Booker (2018), paragraph 6.20.

shrink the geographic markets quite substantially. Moreover, while previous grocery investigations found that supermarkets constrain independent and convenience stores,⁵¹ Covid-19 lockdown rules imply the constraints from supermarkets were weakened in areas without easily accessible supermarket outlets.⁵²

The unprecedented changes therefore created a situation in which independent and convenience shops, who normally face competitive pressure from supermarkets to keep prices low, as recognised in previous CMA inquiries, could likely profitably increase prices in at least some geographic markets. Indeed, consistent with increased reliance on local stores, sales in independent convenience stores increased year-on-year by 69.3% in the 12 weeks to 14 June 2020, while take home sales from supermarkets increased by 13.7%.⁵³

4.2 Illustration of local markets served by the most complained of outlets

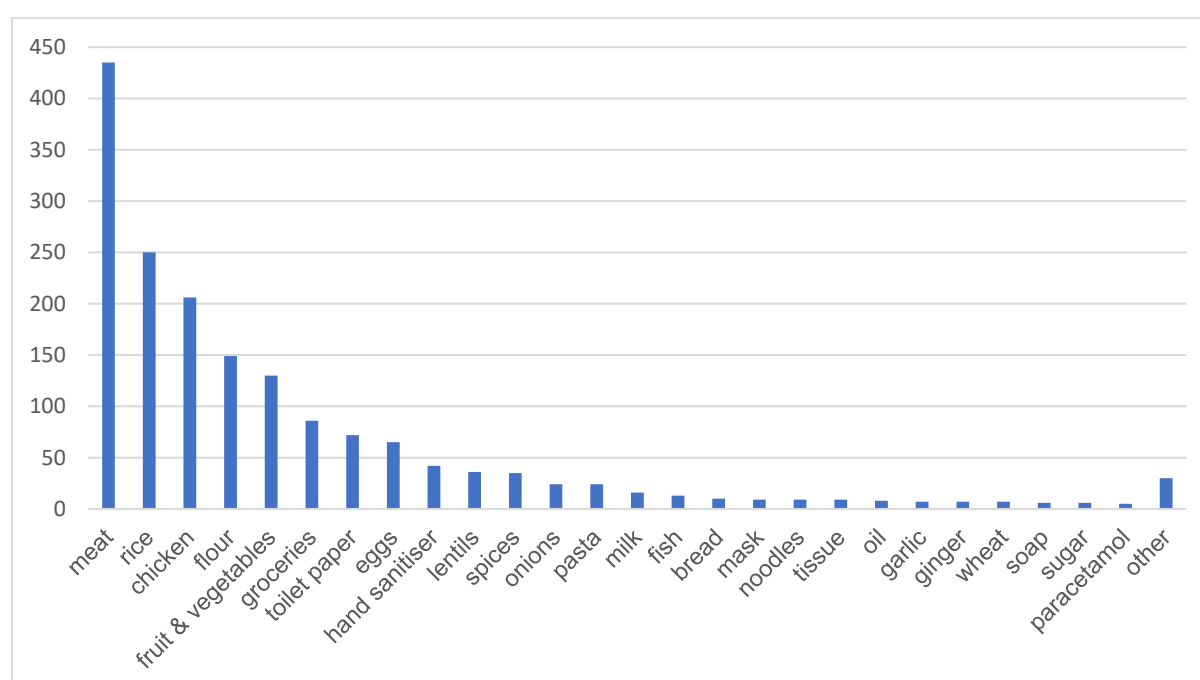
All of the top 20 outlets by number of complaints were independent and convenience stores (including very small chains of convenience stores). And, half of the complaints against the top 20 were accounted for by the top four firms. The number of complaints ranged from 297 for the business with the highest number, to 14 complaints for the 20th business. The main products identified in the complaints against these outlets were food and toilet roll, illustrated in Figure 7 (which is broadly in line with the aggregated picture in relation to food items in Figure 3). As noted in the initial screening (Figure 1 and section 3), the price rises complained of regarding these products were substantial.

⁵¹ See Tesco/Booker (2018), paragraph 6.8, which found that larger stores constrain smaller ones but not vice versa, and hence the constraints from supermarkets on independent retailers is asymmetric.

⁵² We note that recent cross-country studies have found that lockdown restrictions and local market power have had the effect of increased food retail prices (Akter, 2020; Ihle et al, 2020).

⁵³ According to Kantar 23 June 2020 <https://www.kantar.com/uki/inspiration/fmcg/UK-grocery-sales-reach-new-high-as-shoppers-remain-cautious>. The overall demand increases – in both independent convenience stores and supermarket chains – are presumably explained by substitution away from eating or drinking out and by potential stock-piling behaviour.

Figure 7. Products most complained of in 20 most complained of businesses



Note: Meat includes mutton, lamb, beef and generic meat complaint)

Source: CMA

The areas around the stores were analysed based on a 10-minute walk (or around 0.8km) radial. We considered two local features in particular: (i) the presence of other retail outlets of national supermarket chains or independents which potentially compete with the store being complained about;⁵⁴ (ii) the socioeconomic composition of residents based on the index of multiple deprivation deciles in each postcode (IMD).⁵⁵ This analysis revealed that of the top 20 complaints, which related to shops located in 18 local areas, they broadly fell into three categories:

- a) 6 areas with very few alternative retail outlets;
- b) 3 areas where there are clusters of outlets with complaints against them, suggesting questions of co-ordination;⁵⁶ and
- c) 9 areas with supermarket outlets nearby, raising questions as to the nature of the competitive constraint posed by the supermarkets.

⁵⁴ We were not necessarily able to identify all independent outlets in each area, such as very small outlets which are do not appear on google maps.

⁵⁵ The socioeconomic analysis of the complaints was conducted by mapping each postcode's 2019 index of multiple deprivation (IMD) decile. The IMD is calculated based on seven domains of deprivation which are considered and weighted as follows: Income. (22.5%), Employment. (22.5%), Education. (13.5%), Health. (13.5%), Crime. (9.3%), Barriers to Housing and Services. (9.3%) and Living Environment. (9.3%). The IMDs values are ranked from most to least deprived, for example a rank of 1 is the most deprived area in England and so would place that area in decile 1. Similarly, a rank of 32 844 most deprived would be the neighbourhood that is the least deprived and so is in decile 10.

⁵⁶ This also possibly reflects the mobilisation of complaints in local neighbourhoods.

We provide stylised illustration of complaints in areas with no close supermarket competitors and even other convenience stores and where there are other stores against which complaints have also been made, with some supermarket outlets. The illustrations are also consistent with the fact that most residents are in postcodes classified as among the most deprived in the country. Figure 8 below shows a map centred on the most complained of outlet (the blue square), with the circle indicating a 10-minute walking distance around this outlet.

Figure 8. Mapping of a local area around the most complained of retail outlet



Source: Authors' illustration of a stylised local area based on the CMA's consumer complaints data.

It can be seen that in this local area:

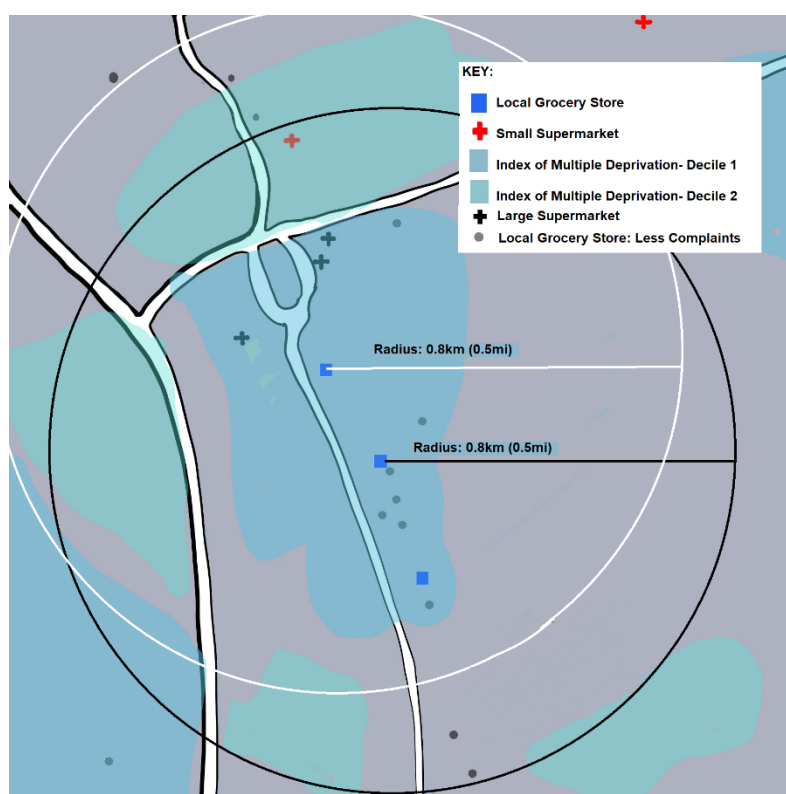
- The outlet has no close competitors in the form of supermarket outlets or sizable other independents nearby; the closest alternative is a small supermarket located just over 10-minute walk away. That means the outlet may well be one of the few, if not the only,⁵⁷ options available to residents around it, for shopping essentials during lockdown.
- The area comprises predominantly residents in the two lowest IMD deciles (1 and 2), i.e. the most deprived in England. This suggests that the exploitation of local market power by the outlet is particularly likely to harm less well-off consumers, many of whom are presumably also vulnerable consumers.

⁵⁷ We were not necessarily able to identify all local convenience store type outlets in a given area.

Further data would have been required to analyse potential market conduct in each local area individually. However, as prices apparently adjusted back to normal levels, this was not pursued.

Figure 9 is a stylised example of an area where there are several outlets of most complained of businesses along a main street and other outlets (local grocery stores) where complaints have also been made nearby. There are some supermarket chains with stores in this region too. This raises a number of questions about consumer behaviour and pricing in this locality which would require further analysis to understand. The CMA adopted a monitoring and the complaints did not continue in such areas indicating that the pricing was very short term.

Figure 9. Mapping of a local area around several most complained of retail outlets



Source: Authors' illustration of a stylised local area based on the CMA's consumer complaints data.

4.3 Socioeconomic implications

The outlets which the CMA received the most complaints about operated in some of the most deprived areas of the UK. Price hikes of essential goods in these areas thus impact on individuals and households who are already struggling to make ends meet and are food insecure.⁵⁸

⁵⁸ The Food Standards Agency (2017) found: 28% of people in lowest income quartile lived in food insecure households, 12% of those in 'other' working status (covering part-time, casual or gig-type work) lived in food insecure households. Similarly, a Unicef comparative study (2017) found UK among the worst countries in Europe for children experiencing food insecurity.

It has previously been highlighted that low-income urban households already have poorer access to main supermarkets with fresh food.⁵⁹ This appears to have been compounded by price increases under lockdown, spurring the large number of complaints to the CMA. The price increases have a larger relative effect on those on low incomes for whom the proportion of spending on 'essentials' including groceries (along with housing and utilities), is much larger than for richer households.⁶⁰

A series of studies have concluded that the impacts of the pandemic hit low income people the hardest. There was a 89% increase in need for emergency food parcels during April 2020 compared to the same month last year, including a 107% rise in parcels given to children.⁶¹ Sector shutdowns and being unable to work from home have unevenly affected low paid workers.⁶² Less than 20% of those in the bottom 10% of the earnings distribution could work from home, meaning low income people are much more likely to have been furloughed, laid off or seen their hours reduced.

Any sustained price increase of essential goods is therefore particularly concerning for the CMA given its focus on protecting vulnerable consumers. The CMA's processing of the complaints was followed up by communication with the businesses concerned noting the monitoring and assessment of the complaints and requesting explanations for the prices being charged. Notwithstanding the explanations including higher prices charged by wholesalers, prices have been adjusted downwards once again. Given the CMA's existing powers it is unclear what further action could have been taken aside from launching investigations into excessive pricing or cartel conduct. With the adjustments of the prices to more normal levels, including apparently in part due to the CMA's attention, this was not considered further.

5. The case of hand sanitiser pricing

Hand sanitiser stood out among all products in terms of the large volume of complaints received, the high reported level of price increases (median of 400%),⁶³ the substantial demand growth for this product, and its essential function to reduce transmission of Covid-19. These factors led the CMA to open investigations into suspected excessive pricing of this product in June 2020.⁶⁴

This section first provides an overview of the findings from the consumer complaints. It then examines the hand sanitisers supply chain in the UK and considers whether price hikes are

⁵⁹ See Corfe (2018).

⁶⁰ Crawford et al (2020).

⁶¹ The Trussell Trust, "UK food banks report busiest month ever, as coalition urgently calls for funding to get money into people's pockets quickly during pandemic", 3 June 2020 < <https://www.trusselltrust.org/2020/06/03/food-banks-busiest-month/> >

⁶² Blundell R., Dias M. C., Joyce R., Xu X., (2020) p.8.

⁶³ Figure 1. See also CMA (2020). The number of complaints has however gradually declined, from over 50 complaints per day around late March to around 5-10 per day in May 2020.

⁶⁴ <https://www.gov.uk/cma-cases/hand-sanitiser-products-suspected-excessive-and-unfair-pricing>

justified by costs or by providing incentives for suppliers to expand. It is then followed by a summary of the outcomes of the CMA's investigations.

5.1 Comparison of complaints and price trends

The CMA received over 1,800 complaints between March 2020 and May 2020 related to high hand sanitiser pricing. The great majority of complaints concerned independent retailers including local chemists and convenience stores.⁶⁵ The complaints were dispersed widely across the UK, with the large majority of retailers receiving a single complaint. For prioritisation, the CMA focused on complaints that contained precise pack-size and price information and identified retailers which received repeated complaints for an in-depth assessment.

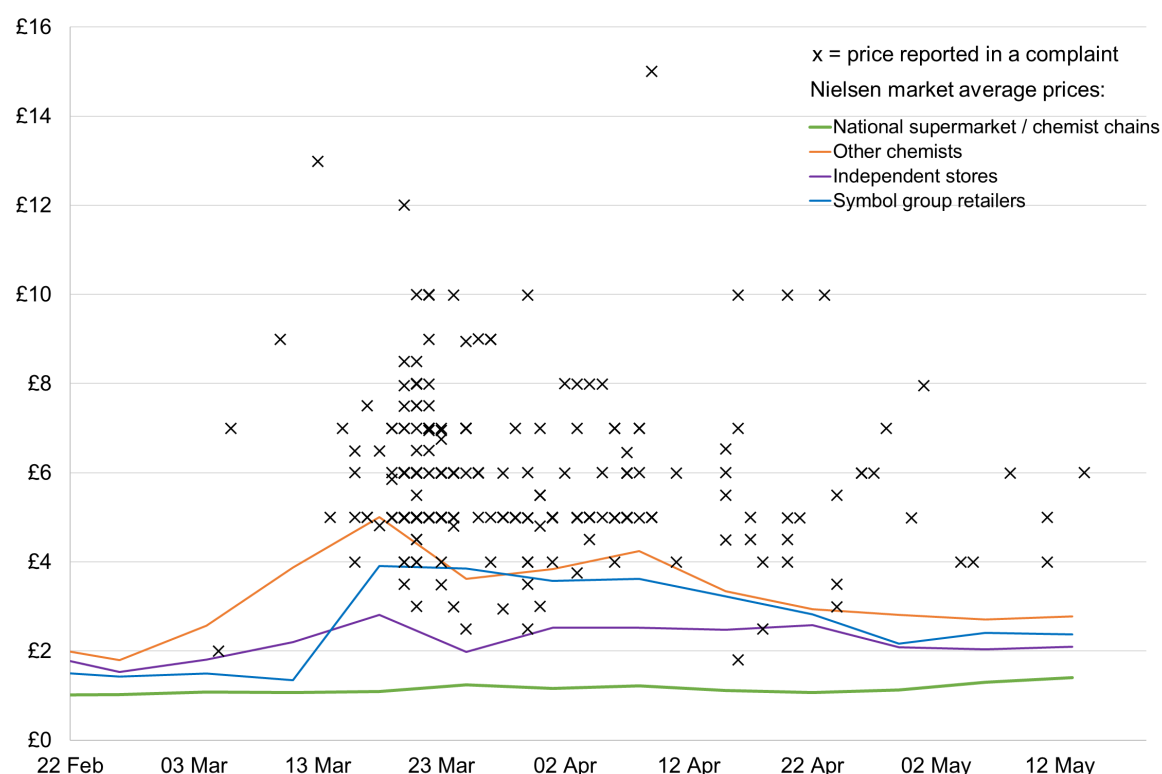
Before considering individual retailers in detail, we first compare complaint prices with market average price trends using Nielsen data.⁶⁶ Figure 10 illustrates this comparison using the top selling pack-size (50ml) of hand sanitisers. Each cross in the diagram represents a complaint, showing the price level reported and the date of the complaint. The lines show average price (weighted by volume across all brands) in each retail channels, including grocery multiples (which account for the majority of sales),⁶⁷ followed by chemists, symbol group retailers and other independent retailers.

⁶⁵ Of the 563 complaints which contained precise price and pack size information for analysis, 160 related to independent chemists and 219 related to convenience stores (including symbol stores).

⁶⁶ See section 3.1 for a description of the Nielsen data.

⁶⁷ Nielsen data includes two national pharmacy chains, Boots and Superdrug, in this channel.

Figure 10: Prices reported in complaints and market average prices by retail channel, hand sanitiser (50ml bottles)



Notes: Grocery multiples including Boots and Superdrug based on Nielsen categorisation. Three complaints with very high prices (over £19) are not shown in the figure.

Sources: CMA (complaints); Nielsen (market average prices)

Figure 10 above shows that prices reported in the most complaints throughout March till around mid-May were substantially higher than market prices. Several observations are noteworthy. First, prices at large national grocery and chemist chains (green line) remained broadly stable at around £1.⁶⁸ Second, prices at other retail channels, especially the independent chemist channel (orange line), saw some significant increases from around £1.5 in end-February (before the outbreak and government advice on handwashing) to the peak of around £5 in the third week of March 2020.⁶⁹ Prices gradually trended down but remained to be well over the pre-Covid level of around £2.⁷⁰ Even when compared against the higher market averages in the channels other than grocery multiples, the prices reported in most of the complaints were much higher.⁷¹

⁶⁸ An article on BBC News website reported (3 March 2020) that Boots and Lloyds Pharmacy restricted supply of hand sanitisers to two per person, and referred to Kantar Worldpanel data showing sales have more than tripled in February. <https://www.bbc.co.uk/news/uk-51729012> (retrieved on 3 August 2020)

⁶⁹ This is shortly before the lockdown rule came into effect on 26 March 2020 in the UK.

⁷⁰ A more granular analysis of the Nielsen data reveals that such price increases were in part driven by smaller or new brands, which were typically sold at higher prices than those large brands supplied mainly in the national grocery and chemist channels.

⁷¹ The price trend and complained price levels for hand sanitisers of 100ml, another popular product, are similar to 50ml bottles.

5.2 Assessment of the hand sanitisers supply chain

The CMA carried out a review of the hand sanitiser supply chain in May 2020 to assess the price gouging complaints in their market context. It gathered market intelligence and data from the following industry participants: (a) major UK upstream suppliers of hand sanitisers;⁷² (b) national chemist chains, (c) brand-owners of symbol groups (given a significant number of complaints were reported against symbol stores); and (d) retailers including independent chemists or convenience stores, which received repeated complaints. In addition, the CMA carried out ‘mystery shopping’ phone calls to those retailers to verify the price information reported in the complaints.

On the basis of the information gathered, this section examines two key questions: (a) were high retail prices of hand sanitisers justified by higher raw material costs? (b) were high retail prices necessary to attract entry? Intervention would be justified in cases where the answers to both questions are negative.

Were hand sanitiser price increases explained by raw material cost increases?

Some media reports appear to ascribe the retail price hikes of hand sanitiser to shortages of – and hence cost increases in – ethanol, which is a key ingredient of hand sanitisers.⁷³ However, this would have meant the costs of all hand sanitisers would have increased, driving an increase in average prices. In addition, the main upstream suppliers told the CMA that ethanol cost increases would only account for a relatively small price increase, because other cost components such as filling fees, thickeners, caps and bottles, fragrances and so on remained broadly unchanged. According to their estimates, if they had to recover ethanol cost increases they would have to increase wholesale prices by around 20% (rather than doubling or tripling their prices), and in any event upstream suppliers did not pass on all of this cost increase.⁷⁴

Were high prices necessary to attract entry?

In the case of hand sanitisers, it appears that the substantial demand growth has played an important role to incentivise expansion. Even without increasing their prices, suppliers can increase profits by earning normal mark-ups over much larger volumes.

⁷² These suppliers of main hand sanitiser brands together account for over 50% of the retail sales in the UK. The CMA focused on suppliers of products for retail use, rather than for industrial or medical use, reflecting the nature of the consumer complaints.

⁷³ A BBC News article (Coronavirus: Where has all the hand sanitiser gone?, 2 April 2020) reports anecdotally that a cosmetic producer in the UK, which used to pay around £700 for a tonne of ethanol, were offered £10,000 a tonne in late March; the producer declined this offer but eventually paid three or four times more than usual. See <https://www.bbc.co.uk/news/stories-52126847> (retrieved 3 August 2020)

⁷⁴ This also appears to confirm that brand reputation, i.e. the need to avoid the perception of price gouging on essential products during a pandemic, is likely to play an important part in constraining large upstream suppliers. The main UK hand sanitiser suppliers all supply other well-known brands of personal and household hygiene products; such business might be at risk if the brand suffers general reputational damages.

All large suppliers told the CMA that they have been expanding local production and increasing imports of hand sanitisers to meet the expected sustained growth in demand,⁷⁵ although production capacity would take a while to catch up.⁷⁶ Similarly, national chemist chains (which have also kept prices broadly unchanged) have told the CMA that they have actively looked for new suppliers to expand their retail stock. In short, businesses have taken steps to expand without requiring higher retail prices as a signal for them to do so.

Moreover, new suppliers such as breweries and distilleries in the UK have responded to supply shortages by shifting production of ethanol for use in hand sanitisers. Rather than attempting to sell at high retail prices, some of them simply gave the products away to frontline workers.⁷⁷ While the quantities are probably small and are not available for general consumer use, they show that entry can be driven by a myriad of factors during the pandemic, not just higher retail mark-ups.

We recognise that some entrants may have been motivated by the prospect of selling at high prices. The large suppliers and chemist chains have told the CMA, anecdotally, that the pandemic has given rise to short-term opportunities for smaller wholesalers and importers to supply new products. Consistent with these anecdotes, our analysis of the Nielsen data shows that 16% of revenue relate to brands that were not supplied in the UK pre-Covid, and these brands tend to be more expensive than the existing brands.

On balance, while *some* entry may have been driven by high retail prices in line with the prediction of economic theory, industry participants' actions show that expected and sustained demand growth (even absent substantial price increases) is likely to be a much more significant factor that induces a supply response, at least for large upstream suppliers. In any event, higher downstream retail mark-ups would be unlikely to benefit upstream suppliers and be the reason for their expansion.

5.3 Actions taken to tackle retailers potentially charging excessive mark-ups

The CMA requested data from the retailers receiving the most repeated complaints to evaluate their prices and mark-ups. The retailers' mark-ups were then compared with a reasonable range of retail mark-ups estimated based on information: from producers on their

⁷⁵ They told us that the retail demand for hand sanitisers in the UK is estimated to grow to three to four times that of the pre-Covid level. The production increase has occurred on a global level too. For example, Unilever has 'increased production capacity worldwide by more than 600 times in tonnage as hand hygiene became a vital way to fight the virus'. See <https://www.unilever.com/news/news-and-features/Feature-article/2020/how-our-hand-sanitiser-business-adapted-to-meet-global-demand.html> (retrieved on 3 August 2020)

⁷⁶ A BBC News article reports that PZ Cussons was 'working at full capacity' and Karium has increased production volumes, both in response to exception demand increases. (<https://www.bbc.co.uk/news/uk-51729012>).

⁷⁷ For example, according to the website of BrewDog (<https://www.brewdog.com/uk/hand-sanitiser>) a brewery based in Scotland, it has donated over 50,000 units to the NHS and local charities. The Scotch Whisky Association website (<https://www.scotch-whisky.org.uk/insights/coronavirus/coronavirus-portal/suppliers-ethanolhand-sanitiser/>) lists a large number of distillers offering to supply hand sanitiser or ethanol.

pricing to different channels and their recommended retail prices (RRPs); on pricing by major wholesalers; and from the retailers including responses to the CMA. The CMA also made 'mystery shopping' calls in mid-May to these retailers in order to verify the prices reported in the complaints, so as to prioritise retailers that continued to charge high prices.

Of the retailers considered, the CMA found that:

- A small number of pharmacies charged high prices that were not justified by costs, with some extremely high mark-ups. These retailers have voluntarily agreed to reduce prices to levels based on either the pre-Covid mark-ups, the normal mark-ups of other products, and/or the RRP set by the wholesalers.
- The mystery shopping exercise confirmed that a number of retailers had already reduced their prices since the complaint was reported. In addition, one retailer reduced its price on the day after it received the CMA's information request, and another retailer reduced its prices later around mid-May.
- The prices for the remaining retailers were high relative to market benchmarks but were due to high wholesale costs. Their retail mark-ups appear to be within a reasonable range typical for the product. The retailers typically sell smaller brand products; several of them only supplied on a one-off basis after the outbreak.

In the light of these findings, the CMA closed its investigations on hand sanitiser products in September 2020. It determined that the prices the retailers were charging did not, nor were likely to, infringe competition law.

Outside the retailers with repeated complaints, there were a significant number of single complaints concerning individual pharmacies. Rather than investigating each pharmacy individually, the CMA engaged with the General Pharmaceutical Council, the regulator of pharmacies, to send a joint letter to over 4,000 pharmacy owners and superintendent pharmacists across Great Britain. This letter provided guidance for pharmacies and encouraged them to set prices for essential products (including hand sanitiser, face masks and paracetamol) that did not include higher than usual mark-ups, when compared to their pre-Covid levels and their mark-ups for other products more generally.⁷⁸

The CMA also carried out advocacy work through symbol groups. Symbol stores (i.e. independent retailers that carry the brand of the symbol group) is another category of retailers that had been repeatedly complained about. They told the CMA that they generally monitored their own complaints (typically on social media or direct consumer feedback) and noted that only a small minority of retailers have been reported as behaving unreasonably. It also appeared that the CMA's public announcements and our excessive pricing investigations have directly influenced the behaviour. For example, two symbol groups communicated with their retailers making direct mention to the CMA's role in enforcing

⁷⁸ The letter, dated on 29 June 2020, can be found on the CMA's website, available at <https://www.gov.uk/government/publications/joint-letter-from-the-cma-and-the-general-pharmaceutical-council-pricing-during-the-covid-19-pandemic> (retrieved on 3 August 2020).

against unreasonable behaviour, and highlighting the need to protect their brand image in local communities and refrain from profiteering behaviour.⁷⁹

6. Conclusions

The CMA received a large number of complaints from consumers of substantial price hikes by retailers on essential products. This challenged the CMA to assess and respond to the price changes and high price levels being complained of. The unprecedented nature of Covid-19 led the CMA to decide to play a 'market observatory' role, even while there were questions about the basis of applying competition tool to tackle short-term price hikes in the absence of price gouging powers.

The analysis of the complaints took into account where and on what products the prices were being charged, whether they were likely to be associated with cost increases and a comparison of the higher prices against benchmarks of prevailing prices in the UK. These are all important considerations in light of the need to balance over and under enforcement. Finding supra-competitive prices where these reflect higher costs would be a false positive. In addition, there would be over-enforcement where tackling high prices undermines incentives to invest in required supply expansion to meet higher demand. However, where the high prices are simply increased mark-ups, and do not reflect higher costs but simply windfall local market power created by demand and supply shocks, then not addressing them would mean consumers who do not have good alternatives are being unfairly taken advantage of. The potential harm of denying vulnerable consumers access to essential goods can be very substantial, even while this was likely to be a relatively short-term state of affairs.

The complaints of price hikes mainly related to a relatively narrow range of products in local independent retail outlets. It was possible that this simply reflected higher costs in the supply chains to these categories of outlets. The compilation of benchmark prices indicated where the increases complained of were far in excess of the average increases for the products in these retail channels. It also enabled a comparison of the higher prices against the average prices in the retail channels to flag where the complaints identified prices for specific products which were substantially in excess of the average prices during Covid-19.

The monitoring and assessment role enabled targeted follow-up with retailers to request further information on the pricing and possible justifications in terms of increased costs. The monitoring role further supported engagement with market participants, such as the symbol groups. A number of the major symbol groups communicated with the symbol stores to highlight concerns about the effects of opportunistic price hikes unrelated to costs and referred to the CMA's public statements.

The CMA's analysis of the local markets for the stores most complained of indicated cause for concern in terms of the lack of alternatives in a number of the areas, given the changes in consumers' shopping behaviour due to Covid-19. The assessment indicated possible local market power underlying the price increases which, if the high prices had persisted, would

⁷⁹ The CEO of Nisa (a symbol group) confirmed in a media interview that 'a string of Nisa stores tried to profit from panic buying and hiked prices on products in short supply. The business was one of the retailers contacted by the competition watchdog about it. ...the vast majority of retailers were fair and Nisa passed on industry guidance in "bitesized chunks" to prevent that from happening. See *Nisa hungry to tap boom in local shopping*, Daily Telegraph, 18 August 2020.

have warranted further attention. As prices normalised, including due to the attention paid by the CMA, and the number of complaints fell away, it was decided to continue to monitor if and when further complaints were made.

Hand sanitiser stood out as an exception in terms of the magnitude of price increases, the high price levels being complained of relative to the benchmark prices, and the number of the complaints. A mystery shopping exercise confirmed that higher prices were being sustained in a number of the outlets complained of. At the same time, demand for hand sanitisers clearly continued at much higher levels. These factors warranted further information gathering and analysis at the retailer and supplier levels and a focus on the most concerning cases. This led the CMA to open investigations against a small number of retailers and engagement with other organisations to bolster the message of responsible pricing by outlets related to costs and not an opportunistic exploitation of market power.

Overall, the CMA's experience in addressing the complaints of price hikes indicates an important role for competition authorities as observers of markets - to assess firm conduct and maintain public trust by preventing the most severe abuses while taking care not to disrupt supply responses. This contrasts with the alternatives of direct price regulation or, on the other hand, of doing nothing.

The experience highlights the challenges to competition authorities in responding flexibly and at speed and the importance of understanding the nuances of how markets work in practice, and how consumers make choices as circumstances change. Playing this role requires being able to obtain and analyse timely data on market developments, which digitalisation has enabled to be collected by a number of firms. It also requires being able to reach out to businesses to obtain firm specific information, where warranted. In each of these areas the experience of responding to Covid-19 points to issues which could be addressed. The data being collected on prices and market developments from electronic point of sale must be purchased by the CMA which means budgetary constraints apply to what can be obtained. The absence of price gouging legal provisions meant that the CMA is currently required to open an excessive pricing investigation against a firm to formally require relevant information from it. Each of these hampers the ability of the CMA to be responsive.

While the Covid-19 pandemic is unprecedented, the challenges it has posed and the lessons learned from it for the CMA have more general relevance. It is important to understand how markets are working in practice rather than relying on textbook assumptions about market efficiency and responses. At the centre of this understanding is how demand and supply distortions can lead to the exploitation of market power and affect consumers' ability to shop around. Similar concerns have been at the heart of the CMA's recent actions in other areas such as tackling 'loyalty penalties' and misleading contract terms in the leasehold housing sector. The ability of the CMA to be flexible and responsive, with its work solidly based in market analysis, depends on being able to access data and to take the appropriate actions. Here, there is a need for the tools to be updated to reflect the volume of real time data being generated and the need to be able to act relatively quickly, especially in emergency situations where the 'second best' solution may be better than doing nothing. A price gouging law would have assisted in this regard.

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