

Comment on the proposed amendments to the regulations applicable under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) as announced by the Minister of Health on 18 October 2002

Fortification of Foodstuffs

General Comment

The proposed regulations for the fortification of foodstuffs announced by the Minister of Health on 18 October 2002 have been designed for the operations of large millers and food manufacturers. However, these regulations will also apply, and have devastating consequences for, small rural millers, including owners of hand-operated mills who grind maize for their neighbours.

Small businesses cannot cope with complex regulations

If the effects of the present regulatory system and the more general structure of the economy were neutral in their impact on businesses regardless of their size, there would not be a strong case for giving any special consideration to small firms. In many ways, however, over many years economic structures have been distorted, especially by the apartheid system, leaving small firms at a significant competitive disadvantage.

- Laws were made (and still are) on the assumption that all citizens are equally well educated and equally fluent in either English or Afrikaans.
- Many laws create barriers to entry into business, so that those on the inside are protected from new competition from those still on the outside.
- Many laws are enacted on the basis that 'one size fits all', i.e. with an implicit assumption that the costs of complying with them will be proportionately similar regardless of the size of the entity concerned. In practice, the compliance costs for small firms can be ten times and more greater, per unit of sale or per unit of profit, than the comparable costs for their larger competitors.
- The small firms sector is poorly organised and has neither the money nor the time to match the sophisticated and continuous lobbying efforts of organised labour and of the corporate world. In many cases the rent-seekers triumph over the interests of small firm owners.
- Past state spending on infrastructure was biased towards the interests of a minority portion of the population. As a result many black, small firm owners operate in areas poorly serviced with electricity, water, sewage, postal services, banks, courts, roads, telephones and all the other services that ease the establishment of a thriving business.
- Until very recent times, black entrepreneurs were severely limited in terms of the education offered to them, the businesses they were permitted to run, the staff they could employ and the places where they could operate. They were also largely denied the opportunity to acquire freehold or any other mortgageable titles to properties.

There is therefore a case for offsetting the structural disadvantages imposed on small firms with some countervailing benefits, if equality of opportunity to compete is to be achieved. A restructuring of the regulatory system is a good place to begin this process.

The case is strengthened by the undoubted economic and social benefits that the nation would derive from having a much stronger small firms sector. This sector, in all the economically successful countries of the world, is the main generator of new, wealth-creating and sustainable jobs. It is also the source of most of the useful inventions and innovations. It is essential if South Africa is to become globally competitive, and it is essential if competitive business opportunities are to be redistributed to those entrepreneurs previously suppressed and disadvantaged.

Regulation places small firms at a competitive disadvantage

Legislation and regulations adopted with the best of intentions to deal with a particular problem in society often have unintended negative consequences never envisaged by the drafters. It is, for instance, highly likely that whoever drafted the regulations under discussion never gave a thought to small millers and would have considered only the giant milling companies in preparing the

regulations. According to our information there are many hundreds of small millers in the rural areas who provide a valuable service to their communities by milling local produce for local consumption. We are advised that these millers do not remove the kernel from the maize they mill and that the meal they produce is consequently much more nutritious than that which is produced by the large millers. It is highly likely that fortification is intended to replace the nutritional value, at least to a large extent, lost in the process of removing the kernel. In effect, this would mean that punishment for the sins of the large millers would be visited upon the small millers.

The consequence of the imposition of the proposed regulations for fortification of maize meal would be to make the small rural millers illegal. The small millers would find it impossible to cover the cost or deal with the complexity of complying with the regulations. They would be put out of business and the communities would suffer. We are convinced that it is not the intention of your department to cause this disruption in the lives of rural people.

In the past it was licensing requirements that placed rural millers at a competitive disadvantage and allowed large milling companies to take over small mills in rural towns and villages throughout South Africa. Instead of continuing to operate the mills in the small towns the large milling companies closed them down and transported the finished products from the sites of their large mills to supply retailers in those towns. The consequence was a loss of industry and jobs in the small towns. If these regulations should be adopted in their present form it would mean that the large millers would once again supply the customers of the defunct small millers by transporting maize meal into the rural areas. Our experience has taught us that the larger competitors will ensure that the regulations are carried out and that any miller that does not comply will be reported to the relevant department. The large millers will argue that they are doing this in the interests of the health of the nation but we all know that they will be thinking of the profitability of their own businesses.

Small maize producers

Another factor that has to be considered is that small maize producers store their whole grain and have small quantities milled by the small mills as and when they require it. Storage of whole grain allows the producers to maintain the quality of their grain and turn it into freshly ground and healthy meal at any time. These regulations would deprive small maize producers of this facility as it did when the small millers previously disappeared as a result of restrictive licensing. Small producers would be compelled to follow the costly procedure of transporting their whole grain to sell to grain dealers at relatively low prices, and purchasing maize meal at relatively high prices to transport back home. A double transport cost is imposed on such producers as well as the cost of the difference between the quantity and cost to them of their "home-ground" meal and the "store-bought" meal they are able to buy with the proceeds of the sale of their maize. In addition the producers lose convenience and the availability of a more appetising product. Anyone who has had the privilege of eating porridge made from freshly ground maize meal will know that the meal consumed by city dwellers (whether or not it is fortified) is inferior to the rural product.

The Department of Health should look closely at the nutritional value of maize ground with the kernel included and compare this with the nutritional value of the fortified product before finalising these regulations. The Department should also carefully evaluate the probable effect on the lives of small grain producers if the regulations were to be promulgated in their current form. We are convinced that such an evaluation will lead to the unavoidable conclusion that a special dispensation needs to be devised to exempt small millers from the proposed regulations.

Resolving the problem

A possible solution to the problem could be to exempt small millers that:

- (a) grind whole maize without removing the kernels, or
- (b) grind less than a specified volume of maize per annum

Such an exemption would relieve the small millers of the impossible burden of complying with the regulations and would not compromise the nutritional value of the maize meal they produce. It

would also relieve the Department of the cost and burden of attempting to police the rural areas for possible contravention of the regulations.

Small, medium and micro enterprises (SMMEs)

It is vitally important for the economic future of South Africa that all government departments should be sensitive to the effect on business, and especially SMMEs, of their legislative and regulatory proposals. Every attempt should be made to avoid imposing provisions that have the effect of destroying businesses and destroying jobs. In public statements the Department of Health has made it quite clear that it considers poverty to be the most important single cause of ill health in South Africa. Causing increased poverty amongst the country's small grain millers and their customers would negate the purpose of the regulation, which is to increase the health of the nation and not to reduce it.

In all countries of the world, including the mighty USA, it is SMMEs that employ the most people. They employ the most first-time and unskilled workers and provide most people with their first on-the-job training. They consequently perform a vital function in all economies and governments have become increasingly conscious that SMMEs deserve special consideration. Small businesses in the rural areas, especially those that are involved in the processing of agricultural products, need to be carefully nurtured, particularly in South Africa with its high level of rural poverty.

Government departments need to take cognisance of the fact that SMMEs can be destroyed by the cost of regulations that can be handled relatively easily by large businesses. Analysing the cost of implementing these proposed regulations will show that the capital cost will be relatively easily borne by large millers, as will staffing and control costs, acquisition and storage of the materials required for fortification, and quality maintenance. Small millers, on the other hand, will find it most difficult, if not impossible, to comply with the requirements. Where will they find the money to buy the mixing machines, pay for the specialists needed to check the products, maintain proper storage of sensitive products, and handle the administration and reporting requirements? It is surely not the intention of the Department to impose a sentence of death on these micro businesses by imposing such impossible costs on them?

Conclusion

We appeal to the Department to consider the effect of the proposed regulations on the small rural millers and grain producers and to exempt them from its provisions. Any measure that has the effect of increasing poverty and unemployment in the rural areas is comparable to a criminal act. This view may be considered to be excessively harsh but we are dealing here with people's lives and their livelihood. No person with a conscience can be unmoved by the probable consequences.

Having expressed grave concern, we have no doubt that this aspect and its probable consequences have not previously come to the attention of the Department. We are therefore convinced that the matter will be dealt with in a manner that will allow the small millers to continue unhindered in supplying an essential service to the small maize producers and consumers in the rural communities.

Prepared by:

Eustace G Davie
Director
Free Market Foundation
PO Box 785121
Sandton, 2146

Tel: (011) 884-0270
Fax: (011) 884-5672
E-mail egdavie@mweb.co.za

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