

# Agriculture, Aquaculture & Fishing and Competition Law



ALERT | 31 July 2024

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SOUTH AFRICA

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Fresh Produce Market Inquiry



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## Increasing accessibility: The Competition Commission's Fresh Produce Market Inquiry

On 23 March 2023, the Competition Commission (Commission) initiated the Fresh Produce Market Inquiry (the inquiry). The scope of the inquiry was set out in the final terms of reference (ToR).

In the [ToR](#), the Commission identified the following three broad themes that cover the entire fresh produce value chain (from input level to wholesale and retail):

- efficiency of the value chain, with an emphasis on the dynamics around fresh produce market facilities;
- market dynamics of key inputs and the impact on producers; and
- barriers to entry, expansion and participation (focused on the participation of small and medium-sized enterprises (SMEs) and historically disadvantaged farmers).

The inquiry focused on five fruits, namely, apples, citrus (particularly oranges and soft citrus), bananas, pears and table grapes, and six vegetables, specifically, potatoes, onions, carrots, cabbage, tomatoes and spinach.

National fresh produce markets (NFPMs) refer to the physical infrastructure, and accompanying services, where the (mostly) wholesale of fresh produce takes place between producers and buyers. NFPMs are crucial to food security and local economic development.

The inquiry observed the following four types of operating models for NFPMs:

- a department or business unit inside the municipal structure;
- a corporatised entity (with a separate budget, executive and board of directors), but which still reports into a municipal structure;
- a public-private partnership; and
- a wholly privately-owned and operated entity.

On 18 June 2024, the Commission released the inquiry's [provisional report](#) outlining its preliminary findings and recommendations.

The Competition Act 89 of 1998 provides the legal framework for remedying any adverse effects that a market inquiry detects and stipulates that, before the completion of a market inquiry, the Commission must take appropriate steps to communicate to any person who is materially affected by any provisional finding, decision, remedial action or recommendation of the inquiry and allow for comments. Where the Commission establishes that there is an adverse effect of competition, it must determine the action that must be taken. Remedies include, among others, the right to initiate a complaint, further investigate an alleged prohibited practice and/or refer a complaint directly to the Competition Tribunal for prosecution without any further investigation.

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The inquiry looks to address several concerns through 29 detailed recommendations. We highlight only a few of the Commission's concerns and recommendations below.

## Some of the identified concerns

### Barriers to entry

- Limited access to the NFPMs by small scale farmers, particularly farmers owned by historically disadvantaged persons (HDPs).
- Market access and access to finance by farmers qualifying as SMEs.
- Access to water.
- Lack of transformation in the composition of fresh produce members on the Agricultural Produce Agents Council, the sector regulator overseeing the conduct of fresh produce market agents.

### Existing practices and conditions

- The determination of market agent commission fees and other practices by market agents that may be distorting market outcomes.
- Certain cross-shareholdings between market agents.
- Allegedly high retail prices, margins and markups in the retail of fresh produce.
- Alleged high levels of concentration in the retailing of fresh produce.
- Deteriorating conditions of NFPMs.
- Inconsistencies in NFPM bylaws.

## Market dynamics

- Reliance on fertiliser imports exposes domestic agriculture to foreign risks.
- Access to seeds/varieties after expiration of plant breeders rights.
- The role (or lack thereof) of co-operatives (or former co-operatives) in the provision of competing inputs including open seed varieties.

## Commission's recommendations

In an attempt to deal with the barriers to entry and market dynamics, the Commission recommends: (i) all NFPMs set targets to increase annual sales of small-scale and HDP farmers through NFPMs and (ii) that the South African Property Owners Association and other large property owners commit to make available a minimum allocation of retail space to enable effective entry of new entrants including HDP, SME and emerging challenger retailers for fresh produce in shopping centres/malls.

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Dominant market agents (by either product line or overall market share) per major NFPM, are recommended to enter into management agreements with SME or HDP market agents for skills transfer and training.

The inquiry also recommends that the Department of Trade, Industry and Competition (DTIC) set up a fund to help entrants into the market to challenge the established retailers and that the DTIC implement measures to support the local/domestic fertiliser industry where there is domestic capability. The Commission also recommends a single programme be developed which leverages existing structures to provide support to small scale farmers in relation to technical advice, marketing and the benefits of bulk purchasing. The Commission recommends divesture of shareholding where cross shareholdings allegedly distort competition. Lastly, it recommends a harmonisation of bylaws and developing Codes of Good practice.

### **Transformation in the agricultural sector**

The inquiry's provisional views on SME and HDP participation indicate that the agricultural sector requires transformation and that access to markets and finance acts as barriers to entry for HDP and SME farmers. The Commission calls on various stakeholders such as the DTIC, municipalities, the Department of Agriculture, Land Reform and Rural Development, NFPMs and specific entities to take the necessary steps to address its findings.

The Commission endeavours, at this stage, to release its final report in October 2024.

**Susan Meyer and Shandr  Smith**



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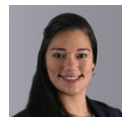
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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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