

## **MEDIA RELEASE**

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### **Competition Commission findings of the supermarket industry probe**

The Competition Commission has concluded part of its investigation against the four major supermarkets, Pick 'n Pay, Shoprite/Checkers, Woolworths and Spar as well as wholesale retailers, Massmart and Metcash for alleged contraventions of the Act. The investigation focused on the retail of key staple foods, namely, poultry; bread and maize meal; milk, fats & oils and canned fish. The supermarket investigation followed from the Commission's prioritisation of food markets in the context of public perception of high (and rising) grocery prices, increasing farm-to-retail price spreads, high market concentration, significant barriers to entry and high profit margins of the major retailers.

During investigation the Commission identified several competition concerns within this sector, including exclusive lease agreements; information exchange; category management and concentration of buyer power. The investigation revealed that there was insufficient evidence to show contraventions in terms of the Competition Act pertaining to **abuse of buyer power; category management and information exchange**. The Commission remains concerned with **long term exclusive leases** which may amount to a contravention of the Competition Act particularly where supermarkets have market power. Its investigation into this aspect is continuing. We detail the key findings of the investigation below

#### **1. Exclusive lease agreements**

The Commission has found that the exclusive lease arrangements could result in anti-competitive effects in circumstances where the Supermarket chains have market power within the relevant local markets. The Commission believes that exclusive leases in these local markets are not justified and that they result in anticompetitive outcomes such as enabling supermarkets to maintain their position of market power. Further independent and small retailers are excluded from entering certain shopping malls where the main supermarket chains are anchor tenants.

Exclusive leases arises from an industry wide practice and the Competition Commission has decided to engage all relevant stakeholders (supermarkets, property developers and banks) with a view to finding a constructive solution to this problem. There are also indications that this practice is acknowledged by the industry to be problematic; with a noticeable amount of recent property developments operating successfully without exclusive leases. The investigation of this issue will continue in the meanwhile. If a solution cannot be found through constructive engagement the Commission will proceed with prosecuting this matter.

#### **2. Information Exchange**

The Commission did not find evidence of exchange of information between the Supermarkets chain. However, the Commission noted that third parties like AC Nielsen and Synovate collect scanner data from supermarkets which they disseminate to suppliers. The dissemination of highly disaggregated information to suppliers may chill competition at this level of the industry.

The investigation reveals that suppliers receive detailed information about their performance and that of competitors per retail chain, per product category and by region. The Commission is currently investigating allegations of information exchange in the maize and wheat, poultry, pelagic fish and vegetable oils industries.

The Commission could not find evidence of collusion on pricing of the food items it isolated for investigation between the retail chains. These are high volume and low margin items across the retail chains. Supermarkets use low prices on these items to attract consumers on a regular basis.

### **3. Abuse of buyer power**

Concerns were raised that Supermarket chains may be abusing their buyer-power by placing onerous demands on suppliers, especially small suppliers. This include practices such as exclusive supply arrangement, listing fees, slotting allowances, payment policies, return policies, promotional discounts and other rebates. No evidence was found to suggest that supermarkets were abusing their buyer power in contravention of the Competition Act.

Larger suppliers considered their relationship with supermarkets to be equal or tilted toward the retailers. While the large supplier alluded to tough negotiations with the supermarkets over pricing, they have not indicated that there has been an impact on their margins and investment capability.

However, the Commission is concerned about the entry of small suppliers to supermarkets. Smaller suppliers raised concerns with the difficulty of complying with a range of allowances and rebates demanded by retailers. They have also raised concerns regarding adverse payment terms and retrospective deductions from payments when retailers realise that they have offered deeper discounts to their competitors. The Commission is concerned that these practices may place smaller suppliers at a disadvantage relative to the big suppliers. In the long run, this may undermine the competitive process at this level of the supply chain. For this reason, the Commission urges the supermarket chains to facilitate entry of small suppliers by for example changing their procurement policies and proactive disclosure of information on entry requirements.

### **4. Category Management**

Category management refers to decisions on product placement, promotion and pricing executed by a “category captain” from the ranks of the largest manufacturers. The Commission was concerned that the activities of category captains, combined with the potentially sensitive competitive information at their disposal, could facilitate collusion and/or competitive exclusion.

The investigation found that this practice is limited in the products covered by the investigation. Where it does occur, it is largely managed by in-house supermarket personnel (i.e. buyers and shelf managers), rather than by suppliers. The Commission found no evidence of category management contravening the Act and will not pursue this matter.

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## Background

The Competition Commission identified food, specifically grain and milling; poultry, pelagic fish; vegetable fats and oils; as well as dairy, as priority. To date, the Commission has concluded or is in the process of investigating several food value chains from inputs, storage, processing/manufacturing and retail.

Competition Commission initiated an investigation against Pick 'n Pay Stores Ltd ("Pick n Pay"), Shoprite Holding Ltd ("Shoprite"), Woolworths Holding Ltd ("Woolworths"), the Spar Group Ltd ("Spar"), Massmart Holding Ltd ("Massmart") and Metcash Trading Africa (Pty) Ltd (trading as Metro) ("Metcash"), hereinafter collectively referred to as the ("Supermarket Chains"). It was alleged that the supermarket chains may have contravened the Competition Act 89 of 1998, as amended ("the Act"). The Commission initiated the investigation after preliminary research in this area highlighted certain issues of concern.

The Commission also received a number of complaints from different parties related to the above investigation, which along with the Commission's initiation formed the "supermarkets investigation. The Commission's investigation related to the following allegedly anticompetitive conduct:

- Long term exclusive lease agreements with property developers and/or landlords. The practice of entering into long term and exclusive lease agreements is alleged to be in contravention of Section 5(1) and/or 8 (c) and/or 8(d)(i) of the Act.
- The exercise of buyer power by retailers and wholesalers by imposing allegedly onerous listing fees, rebates and other burdensome trading terms on suppliers and/or manufacturers, allegedly in contravention of Section 5(1) and/or 8(c) of the Act.
- Information exchange through entities such as Nielsen, Synovate and through category managers and merchandisers by exchanging sensitive information such as sales volumes and receiving information on market shares, allegedly in contravention of Section 4(1)(a) and/or 5(1) of the Act.
- The practice of category management, which refers to the category-wide management of decisions related to product placement, promotion and pricing. Category management may be executed by the appointment of a "category captain" from the

ranks of the largest manufacturers in a particular category to manage all aspects of that category in the retail store. Category captains may gain access to potentially sensitive information such as sales volume data, which could possibly facilitate collusion. This conduct was alleged to be in contravention of Section 5(1) of the Act.