

Statement by the Commissioner

Chapter 4A of the Competition Amendment Act 1 of 2009 (“Competition Amendment Act”) became effective on 1 April 2013 and provides the Competition Commission (“Commission”) with formal powers to conduct market inquiries. It gives me great pleasure to present the first market inquiry report of the Commission following the promulgation of formal powers to conduct market inquiries.

A market Inquiry is recognised globally as an important tool for competition authorities to understand the market dynamics of complex sectors and assess market distortions impeding competition. A market inquiry is a formal inquiry regarding the general state of competition in a market for particular goods and services, without necessarily referring to the conduct or activities of any particular named firm. The Commission is empowered to initiate a market inquiry if it has reason to believe that any feature or combination of features of a market for any goods or services prevents, distorts or restricts competition within that market.

As provided in the Competition Act, the outcomes of a market inquiry may include recommendations to the Minister for new or amended policy, legislation or regulations; or recommendations to other regulatory authorities regarding competition matters. The Commission may also initiate a complaint based on information obtained during the market inquiry that may be settled or referred to the Competition Tribunal without further investigation, or may be investigated further. The Commission may also choose to take no action.

The market inquiry into the Liquefied Petroleum Gas (“LPG”) sector is the first market inquiry to be finalised under the new provisions outlined in the Competition Amendment Act. The Commission initiated a market inquiry into the LPG sector as it believed certain features of the sector prevented, distorted or restricted competition. The following features of the market were identified as a cause for concern: (i) Structural features of the market; (ii) High switching costs; (iii) The regulatory environment and its impact on competition; and (iv) The limited usage of LPG at the household level.

I am pleased to note that a great level of participation was received from the industry with over 90 market participants participating in the market inquiry processes. Importantly, I wish to commend the participation of regulatory bodies and government entities. I appreciate the support and participation from all market participants as without it, this inquiry would not have been complete.

After careful investigation and deliberation – including targeted meetings and detailed submissions from market participants, trade associations, regulatory bodies and government bodies – the Commission has concluded the following features prevent, restrict and distort competition, among others:

- a) The overlapping and misaligned regulatory environment that (1) hinders the ability of competitors to enter and/or expand in the market; and (2) the speedy investment into import, loading and storage facilities.
- b) The dialogue between market participants on setting uniform deposit fees.
- c) The widespread practice of long-term contracts and agreements favouring incumbent LPG wholesalers over LPG wholesalers with short-term contracts, or LPG wholesalers who rely on the spot market to receive their supply of LPG from refineries.
- d) The restrictions on bulk customers' ability to switch seamlessly due to barriers incumbent LPG wholesalers put in place.

As a result, it has become necessary for the Commission to recommend the introduction of new measures with a view to improving competition in the LPG sector. The successful implementation of these measures, should they become law or regulations, makes a collaborative approach indispensable.

I hope this market inquiry will raise further awareness of the state of competition in the LPG sector, stimulate debate on how to address the challenges identified, and reinforce the case for effective regulatory mechanisms to be in place to allow for an inclusive energy sector in which effective competitors are able to seamlessly enter and expand.

I am hopeful that the identified stakeholders will implement all the recommendations, and the Commission will periodically review the progress of the implementation of the remedies proposed.

Finally, I would also like to extend my appreciation to the Commission staff that conducted this inquiry.



Mr Tembinkosi Bonakele
Commissioner