

Retail Market Inquiry
Attention : Ms Louise du Plessis

Email : retail@compcom.co.za

14 June 2016

Dear Louise

SUBMISSIONS ON DRAFT ADMINISTRATIVE TIMETABLE AND DRAFT STATEMENT OF ISSUES

1. We act on behalf of Pick n Pay.
2. Our client wishes to make certain brief submissions in relation to the draft administrative timetable and the draft Statement of Issues.
3. In relation to the draft administrative timetable, our client is supportive of the time periods provided for in the draft timetable, in particular, that the inquiry should be concluded by 29 May 2017. Our client believes that a focussed inquiry which is conducted as expeditiously as possible is in the interests of providing certainty to the business community and the general public.
4. Our client also supports the panel's focussed approach to the Terms of Reference and draft Statement of Issues in considering a specific focus on the various factors and developments which impact on competition from small and independent retailers in townships, peri-urban and rural areas. In this regard, we have identified, inter alia, the following passages, which appear to confirm our understanding in this regard:

Competition Law Specialists • Litigation Attorneys • Regulatory Advice

Directors: Anthony Norton • Anton Roets • Paul Russell • John Oxenham • Warwick Redford • Michelle Rawlinson

Senior Associates: Maria Celaya • Stephany Torres • Nicol van der Walt • Nicola Hignier • Paton Dennison

“The ToR identify various developments and features of the grocery retail sector that may constitute barriers for small and independent retailers to enter into, expand and effectively compete in the sector.”

and

“The main focus of this Inquiry will be to identify and assess the causes of the barriers and any other factors and developments that impact on competition in the grocery retail sector in townships, peri-urban and rural areas.”

5. Our client agrees that it is important to ensure that customers are served effectively in townships, peri-urban and rural areas and that they are able to access a diverse mix of retail outlets. This is also important in delivering public policy objectives such as inclusive growth, enterprise development, entrepreneurship and greater prosperity on the part of previously disadvantaged communities.
6. Insofar as the draft Statement of Issues is concerned, our client is of the view that the Terms of Reference read with the draft Statement of Issues requires clarification in a number of respects in order to enable our client to meaningfully prepare for the inquiry and to address any areas of potential concern.
 - 6.1. First, in paragraph 2.3 of the Terms of Reference dated 30 October 2015, the Commission indicates that it is conducting the grocery retail sector inquiry, *“because it has reason to believe that there are features or a combination of features in the sector that may prevent, distort or restrict competition within that market and/or to achieve the purposes of the Act.”* However, apart from paragraphs 3.5 to 3.7, which deal with so-called exclusive leases, it is unclear from the Terms of Reference read with the draft Statement of Issues, what particular features or combination of features in the sector prevent, distort or restrict competition. The Retail Market Inquiry is requested to clarify this issue. We also believe that once the Retail Market Inquiry has clarified what specific features of the relevant market it wishes to inquire into in respect of any possible distortion or restriction of competition in

Competition Law Specialists • Litigation Attorneys • Regulatory Advice

Directors: Anthony Norton • Anton Roets • Paul Russell • John Owenham • Warwick Radford • Michelle Rawlinson
Senior Associates: Maria Colaya • Stephany Torice • Nicci van der Walt • Nicola Ilgner • Paton Donnison

relation to small and independent retailers, that the inquiry should be confined to dealing specifically with these issues.

- 6.2. Second, certain terminology is employed both in the Terms of Reference and the draft Statement of Issues where it is unclear precisely who is being referred to. By way of example, in both the Terms of Reference and the draft Statement of Issues reference is made to “*small, informal businesses*” as well as to “*independent grocery retailers*” and “*small and independent retailers*”. It is not clear whether these descriptions are intended to apply to the same categories of retailer, nor is it clear precisely which types of retailers are included within this category. Similarly, reference is made in the Terms of Reference and the draft Statement of Issues to “*larger players*” and “*national supermarket chains*”, but again there is no clarity as to precisely which entities are being referred to. Furthermore, additional confusion is created by the terms “*formal and informal independent retailers*.” We would appreciate it if the Retail Market Inquiry could clarify its understanding of the various terminology referred to above.
- 6.3. Third, the Retail Market Inquiry has also indicated that one of the issues which it intends having regard to is “*the impact of certain identified value chains on the operations of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy*”. While we understand that the panel will identify the relevant value chains to be assessed during the course of the inquiry, we would suggest that clarity in this regard should be provided as soon as possible given the very tight timelines provided for substantive submissions, which we understand are due by no later than 15 August 2016.
- 6.4. Fourth, certain statements have been made in both the Terms of Reference and the draft Statement of Issues to the effect that the four largest supermarket chains operating in South Africa collectively account for between 80-90% of food and grocery sales within South Africa. Apart from the references in footnote 5 of the Terms of Reference, to certain extracts from Who Owns Whom

Competition Law Specialists • Litigation Attorneys • Regulatory Advice

Directors: Anthony Norton • Anson Roots • Paul Russell • John Oxenham • Warwick Sadford • Michelle Rawlinson
Senior Associates: Maria Cahya • Stephany Torres • Nicci van der Walt • Nicola Ilgar • Paton Dennison

Wholesale and Retail Food Report and a Barclays Retail Report, no other references or facts are cited to confirm these market share calculations and our client would like to understand whether the Commission has any other factual or empirical basis for its calculations in this regard given the fact that our client believes that the figure of 80-90% quoted by the Commission is a significant overestimate of the national grocery chains' market shares.

7. We look forward to hearing from the Retail Market Inquiry in respect of the issues dealt with herein.

Yours sincerely



Anthony Norton/Michelle Rawlinson
NORTONS INC.

Competition Law Specialists • Litigation Attorneys • Regulatory Advice

Directors: Anthony Norton • Anton Roets • Paul Russell • John Oxenham • Warwick Radford • Michelle Rawlinson
Senior Associates: Maria Ceiaya • Stephany Torres • Nicci van der Walt • Nicola Ignor • Paton Denbison