

# **GROCERY RETAIL MARKET INQUIRY PUBLIC HEARINGS**

## **Remarks by Market Inquiry Panel**

**Ms Lulama Mtanga (Panelist)**

**The Grocery Retail Market Inquiry stakeholders, public hearing  
participants and members of the media**

**Manhattan Hotel**

**Pretoria**

**5 June 2017**

## 1. Introduction

- 1.1. I would like to formally greet everyone in attendance and welcome you to the Grocery Retail Market Inquiry public hearing in Pretoria. Unfortunately Professor Halton Cheadle, the chairperson of the Inquiry, is unable to attend this week's proceedings due to a family emergency and he sends his sincere apologies. In light of this unforeseen event, I will be leading this week's proceedings on his behalf. By introduction, I am Lulama Mtanga, a competition lawyer with extensive experience earned through my former roles as a legal counsel at the Competition Commission and as a director at law firm, Bowman Gilfillan Inc. The Chairperson in absentia, Halton Cheadle, is a Professor Emeritus at the University of Cape Town. He has extensive experience in legislative and policy drafting. H has participated in the drafting of the Bill of Rights in the final Constitution, various labour statutes including the Labour Relations Act and several National Economic Development policies and strategies.
- 1.2. We also have Ms Louise Du Plessis from the Competition Commission who is here in her capacity as the Head of the Inquiry's technical team and evidence leader. She and the technical team of lawyers and economists will be assisting the Panel in soliciting evidence for the Inquiry.
- 1.3. To begin, I would like to explain what an Inquiry entails as stipulated in Section 43A of the Competition Act 89 of 1998. An Inquiry is a general investigation into the state, nature and form of competition in a market, as opposed to an investigation of a specific conduct by a specific firm. Moreover, an Inquiry is initiated to pursue the purpose of the Competition Act, which aim to "*promote and maintain competition in the Republic*". Drawing from this, the Grocery Retail Market Inquiry was initiated because the Competition Commission has reason to believe that there exist features or a combination of features in this market that may prevent, distort or restrict competition. Following the publication of the Terms of Reference in the Government Gazette on 30 October 2015, the Inquiry officially commenced on 27 November 2015.
- 1.4. As many of you are aware, the Competition Commission has been very active in various markets as seen through the widespread media coverage. We have seen various dawn raids on cartel behaviour, more recently in the Gauteng fresh fruit and vegetable market

and also the exchange rate trading cartel by the banks. This active regulation by the Commission brings comfort to the work that will be done here, by both the Competition Commission and the stakeholders, and its importance in society and the economy at large. The findings of the Inquiry will provide a factual basis upon which the Panel can make evidence-based recommendations to the Minister of Economic Development in order to promote competition and the purpose of the Act in the market. The recommendations, may include, but are not limited to:

- a. recommendations for new or amended policy, legislation or regulations; and
  - b. recommendations to other regulatory authorities in respect of competition matters.
- 1.5. The Minister will then present the findings in parliament for debate. Subsequently, recommendations approved in parliament will be implemented.

## **2. Brief overview of the Grocery Retail Market Inquiry**

- 2.1. In line with the Terms of Reference and the Inquiry's Statement of Issues, which are both available on the Commission's website, the Inquiry will assess competition in the grocery retail market under six objectives, namely:
- 2.1.1. the effects of national supermarket chains moving into townships, peri-urban and rural areas and what the effect of this move has on small and independent retailers and the informal economy within these areas;
  - 2.1.2. The effect of property developers, financiers and national supermarket chains entering into exclusive lease agreements that restrict landlords from being able to rent space within their developments to other retailers that may potentially compete with these national supermarket chains;
  - 2.1.3. the impact of regulations, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy;

- 2.1.4. the impact of the buyer power of buyer groups and other large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy;
  - 2.1.5. 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; and
  - 2.1.6. the Inquiry will also probe the dynamics relating to competition between foreign and South African operated small and independent retailers (i.e. spaza shops, general dealers etc.) in townships, peri-urban areas, rural areas and the informal economy. However, it is important to note that this objective will not be covered during the course of these particular public hearings.
- 2.2. It is important to reiterate that these objectives are not findings of harm nor may they be considered as preliminary conclusions of the Panel on the status of the grocery retail market. The objectives as listed in the Terms of Reference and Statement of Issues are starting points for the Inquiry's analysis of this market and may be amended as required during the course of the Inquiry's assessment, depending on the information received from and submissions made by stakeholders in these proceedings, and through other information gathering exercises. Furthermore, these objectives are intended to act as a guide to stakeholders when making their submissions of relevant and related issues that are to be considered by the Panel.

### **3. An update on the progress of the Grocery Retail Market Inquiry**

- 3.1. From the time that the Inquiry started, the technical team and the Panel have embarked on an extensive information gathering exercise. The information has been gathered through a number of avenues including: (i) general stakeholder engagements aimed at properly understanding the grocery retail market in South Africa and the relevant role-players involved in the market; (ii) targeted consultations in the form of numerous site visits and re-visits to stakeholders in townships, peri-urban and rural areas throughout the country to gather specific information and data; (iii) calls for written submissions from stakeholders in

respect of the Inquiry's Statement of Issues; (iv) consumer and small business surveys; (v) targeted information and data requests; (vi) desktop research; and (vii) public hearings.

3.2. At this juncture, the information gathering conduct of the Inquiry can be summarized in four phases:

3.2.1. **Phase one** involved the collecting of literature and existing data on the South African grocery retail market as well as soliciting data that has been collected thus far in the market.

3.2.2. **Phase two** involved a two-pronged consultative process. The first comprised of direct meetings with various stakeholders including research institutions, consulting houses, universities, all spheres of government and business organizations dedicated to small business development in townships and rural areas. These consultations served to provide the technical team and the Panel with a working knowledge of the market.

3.2.3. Secondly, the Inquiry conducted countrywide site visits. The technical team and the Panel met with, amongst others, small and independent business owners in the informal market (local and foreign), government, grocery suppliers, wholesalers, new market entrants, property developers, and financiers located mainly in township, peri-urban and rural areas throughout the country. The site-visits were followed up by revisits, where the members of the technical team and the Panel further engaged with the constituents of associations and organizations formed by small and independent retailers in the informal market.

3.2.4. In the **third phase**, the Inquiry has commissioned two surveys targeted at consumers and small businesses, respectively. Thus far, the consumer survey has been concluded and the results will be published on the Inquiry's website in the next coming weeks. The small business survey will be concluded in late June.

3.2.5. And the **fourth phase**, which is what brings everyone here is the public hearings. The hearings will allow the Inquiry to give an opportunity to consumers, retailers of all sizes (especially small and independent retailers), and any other interested parties to submit their views and experiences to the Inquiry. The first hearings were held in Cape Town in May. This is the second set of hearings, which are being held here in Gauteng. The next round of hearings will be held in KwaZulu-Natal from 03 – 07 July 2017. But do note, the Inquiry may also decide to hold additional public hearings in other provinces, should the need arise.

#### **4. Conduct of the public hearing**

4.1. As I indicated earlier, these particular public hearings will only cover specific objectives that were previously stated. This is because some of the objectives, in particular some of those dealing with the informal sector, were extensively discussed and probed during the Inquiry's site visits and revisits.

4.2. The topics to be discussed at this public hearing therefore include:

4.2.1. The impact (negative and positive effects) of the entry of national supermarket chains into townships, peri-urban areas, rural areas and the informal economy;

4.2.2. The impact of long term exclusive lease agreements and the role of financiers on competition in the grocery retail market;

4.2.3. The impact of regulations and by-laws on competition in the grocery retail market; and

4.2.4. The impact of buyer groups and buyer power of purchasers of fast moving consumer goods on competition in the grocery retail market.

4.3. At this point, we hereby set out conduct which are applicable to the stakeholders making submissions:

- 4.3.1. Where necessary, stakeholders may claim confidentiality through the Commission's processes as outlined in Section 44 of the Competition Act;
- 4.3.2. Stakeholders should note that in accordance with Section 72 of the Competition Act, failure to answer fully or truthfully is a recognized offence;
- 4.3.3. As per Section 73 of the Competition Act, a person commits an offence if they fail to comply with the Act; and
- 4.3.4. Lastly, stakeholders should note that they may be summoned should the Commission believe a person is able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject being probed.

## **5. RULES FOR PUBLIC HEARING.**

### *Procedure*

- 5.1. The formal sittings of the Inquiry will be open to the public at all times except when the Panel rules that part of the proceedings be closed on the grounds set out below. Upon making such a ruling, we may exclude the public or specific persons, or categories of persons, from attending the proceedings on the following grounds:
  - 5.1.1. if the information to be presented is confidential information;
  - 5.1.2. if the proper conduct of the hearing requires it; or
  - 5.1.3. for any other reason that would be justifiable in proceedings of the Competition Tribunal and Competition Appeal Court or in terms of the Competition Act.
- 5.2. All the sessions will be recorded and streamed live online save for those sessions, or parts of sessions that are closed.

- 5.3. In order to allow for the proper ventilation of information, the Panel, as well as the head of the Inquiry's Technical Team, may pose questions to the person making oral submissions or to any witness.
- 5.4. We will not permit any person, neither personally nor through legal representatives, to question witnesses or any other person making oral submissions during the public hearings.
- 5.5. In the event that a stakeholder has an objection, comment or question in respect of submissions made during the proceedings, that stakeholder must submit the objection, comment or question to the Inquiry in writing by email at [Retail@compcom.co.za](mailto:Retail@compcom.co.za); or by post at Private Bag x23, Lynnwood Ridge, Pretoria, 0040 or by telephone on **012 763 8629**. The Inquiry will attend to the matter at the appropriate time.
- 5.6. Due to the available time being limited, only one representative of a group or entity, either personally or through a legal representative, will be permitted to make oral submissions at the public hearings, other than witnesses the parties may wish to call in support of their submissions. Where parties anticipate that different representatives will be needed to address different topics, appropriate arrangements should be made with the Panel in advance.
- 5.7. We may conduct joint hearings in terms of which any number of persons may be combined as participants in the same proceedings if their respective submissions or responses seem to the Panel to involve substantially the same question of law or facts.

## **6. Conclusion**

- 6.1. In conclusion, we hope that over the coming days we will develop a mutual sense of trust that is vital for the proper conduct of the Inquiry. This Inquiry is not merely important to us, the Commission and to you as a stakeholder, but it is important to the nation as a whole. The grocery retail market is important as it is a part of the chain that ensures food security, creates jobs, allows South African companies to expand and provides a lot of young people with entrepreneurial opportunities. We hope its outcome will be to promote competition in South Africa and, in so doing, to promote an inclusive South African economy.