

# **Grocery Retail Sector Market Inquiry**

## **Statement of Issues**

**15 July 2016**

## INTRODUCTION

1. On 30 October 2015, the Competition Commission (“the Commission”), in its exercise of its powers under section 43B of the Competition Act No 89 of 1998 (“the Act”), published a notice that it would conduct a market inquiry into the grocery retail sector (“the Inquiry”), as well as the Terms of Reference (“ToR”) for the Inquiry<sup>1</sup>.
2. The Commission has appointed an independent Panel of experts to conduct the Inquiry on its behalf (“the Panel”). The names and particulars of the Panel are set out on the website of the Commission.
3. The ToR define the grocery retail sector to include all shops that predominantly sell fast-moving consumer goods (for example food, toiletries and liquor), whether as wholesalers, retailers or both. They encompass all kinds of shops, from small informal businesses<sup>23</sup> such as street traders, hawkers, spaza shops and small independent grocery stores<sup>4</sup> to supermarket chains<sup>5</sup> and wholesale groups or outlets. It excludes products such as hardware, clothing and household appliances.
4. The Panel takes the ToR as its point of departure. This Statement of Issues must be read in conjunction with the ToR and is not intended to restrict the scope of the Inquiry contemplated therein. In this Statement of Issues, the Panel sets out the framework for approaching the Inquiry in order to assist participants in the Inquiry to focus on issues the Panel envisages to be the most relevant in answering questions arising from the ToR. What is set out in this Statement of Issues reflects the Panel’s initial view of the

---

<sup>1</sup> The Notice as well as the ToR were published in the Government Gazette, Volume 604, on 30 October 2015, No. 39347 (p73-p82). Any reference to the ToR is a reference to the ToR as they appear in the Government Gazette.

<sup>2</sup> For the purposes of this Inquiry, small, medium and micro enterprises or businesses (“SMMEs”) are defined in line with the National Small Business Amendment Act 26 of 2003 (“National Small Business Act”), as such, refer to a small enterprise or business, whether or not incorporated, which consists mainly of a person who is carrying on small business concerns or incorporated mainly for the purpose of promoting the interests of small businesses. Further, SMMEs are categorized as survivalist, micro, very small, small and medium enterprises, as determined by the number of employees, value of assets and the total turnover generated by the business, as set out in the National Small Business Act.

<sup>3</sup> For the purposes of this Inquiry, “*informal businesses*”, “*informal economy*” or “*informal sector*” refers to businesses defined as micro and small enterprises that often exist partially or fully outside government regulation, taxation and observation. Businesses that operate in the informal economy are usually small in size and mostly run from people’s homes or located on public streets and municipal land zoned for informal business activities.

<sup>4</sup> For the purposes of this Inquiry, “*independent retailers*” are defined as: (i) businesses that are privately owned and that do not belong to, or are not associated with, a larger supermarket chain or group; or (ii) a small supermarket chain with no more than three branches.

<sup>5</sup> For the purposes of this Inquiry, “*national supermarket chains*” (whether made up of independent retailers or not) refer to grocery retailers that are not classified as SMMEs, and that have more than three branches, outlets or franchisees in South Africa.

appropriate framework for the conduct of the Inquiry. What must be emphasized is that the points raised in this Statement of Issues are intended to be topics for investigation and do not represent any settled views or findings of the Panel. This Statement of Issues also invites participants to make full submissions on the matters raised herein.

5. As the Inquiry progresses, the Panel may amend the Statement of Issues.

## **RATIONALE FOR THE INQUIRY**

6. The Commission has initiated the Inquiry:

- 6.1. 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 the sector; and

- 6.2. to pursue the purpose of the Act.

7. The task of the Inquiry, as indicated in this Statement of Issues, is to determine whether there are features of the grocery retail sector that undermine competition. The Inquiry regards "features" to mean any notable characteristics of a market, particularly its structure, its interconnections with other markets, and the conduct of participants within it.
8. In the ToR, it is stated that prior to 1994, small informal businesses supplied residents in townships, peri-urban and rural areas with groceries. Despite the importance of small informal businesses in townships, peri-urban and rural areas, they show relatively high attrition rates. The Panel will consider whether there has been a decline in the number of small informal businesses in the grocery retail sector and the extent to which the decline impacts on employment, income levels and the spread of ownership in this sector.
9. 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.
10. Broadly, these barriers relate to the high levels of concentration in the sector that afford larger players certain economies of scale, the prevalence of exclusivity clauses in lease agreements entered into between property developers and national supermarket chains, certain features of the grocery retail supply chain, such as, buyer groups, the regulatory

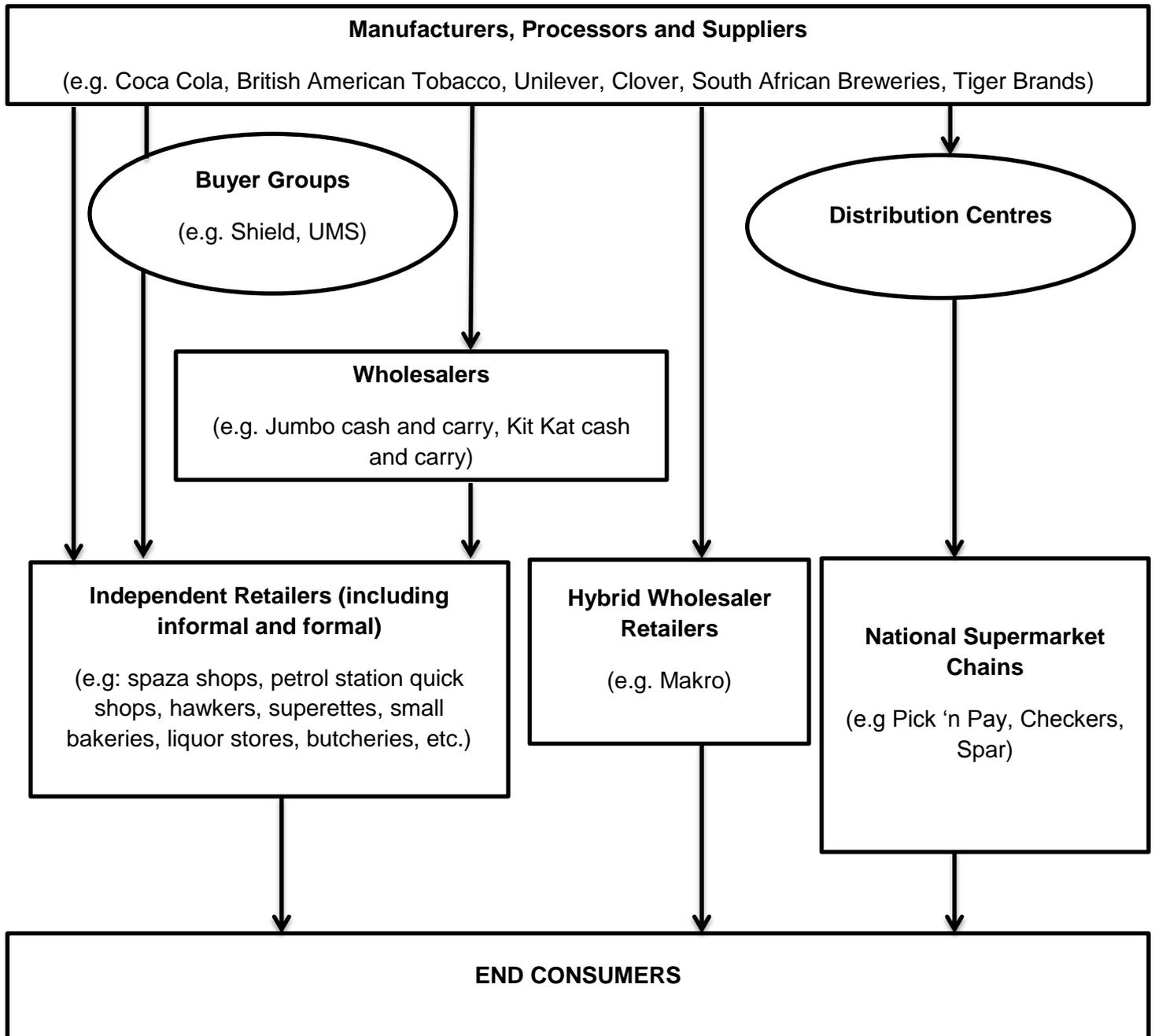
environment and those barriers that are prevalent in the value chains of certain products stocked by small and independent retailers.

11. These and other possible restrictions and barriers prevalent in the sector may affect the ability of small and independent retailers to effectively respond to increased competitive pressures from, amongst others, national supermarket chains.
12. The Panel will, accordingly, conduct the Inquiry to understand the general state of competition in the grocery retail sector, and whether there are features, or a combination of features in the grocery retail sector that prevent, distort or restrict competition. This will provide a factual basis upon which the Panel can make evidence-based recommendations to promote competition and the purpose of the Act in the sector.

### **THE STRUCTURE OF THE SOUTH AFRICAN GROCERY RETAIL SECTOR**

13. The grocery retail sector supply chain in South Africa is more complex than a stylised manufacturer-wholesaler-retailer model. It consists of: (i) manufacturers or suppliers of grocery retail products; (ii) buyer groups and distribution centres; (iii) wholesalers; (iv) hybrid wholesaler retailers (i.e. wholesalers that also have retail supermarket offerings), national supermarket chains and independent retailers (formal and informal); and (v) consumers. These are set out in the diagram below and are discussed further in the paragraphs that follow.

**Figure 1: Grocery Retail Value Chain**



Source: Tribunal decision in the Masscash/Finro merger, Case No: 04/LM/Jan09<sup>6</sup>

<sup>6</sup> [http://www.comptrib.co.za/cases/large-merger/retrieve\\_case/1083](http://www.comptrib.co.za/cases/large-merger/retrieve_case/1083), accessed on 28/03/2016 at 19:05

### ***Manufacturers and suppliers of grocery retail products***

14. At the first level of the grocery retail supply chain are the manufacturers, processors and suppliers of groceries such as Cola-Cola, British American Tobacco (“BATSA”), Unilever, Tiger Brands, South African Breweries (“SAB”), Clover as well as smaller manufacturers, suppliers and processors, such as, small food processors and household consumable manufacturers.
  
15. Grocery retailers, wholesalers and buyer groups are often important routes to market for grocery manufacturers and suppliers. As set out in the diagram above, grocery manufacturers or suppliers supply groceries to market through the following channels:
  - 15.1. direct supply by grocery manufacturers, processors and suppliers to independent grocery retailers (thus bypassing the wholesale and buyer group levels of the supply chain);
  
  - 15.2. the procurement of grocery products by independent grocery wholesalers and independent grocery retailers through buying associations or groups. Small and independent grocery retailers offer an important alternative route to market for small suppliers, manufacturers and processors of food and household consumables. Large supermarket chains are increasingly imposing standards and conditions which may be onerous to adhere to for small suppliers, manufacturers and processors of food and household consumables, as compared to the requirements that may be imposed by small and independent grocery retailers. This provides small suppliers, manufacturers and processors of food and household consumables with an opportunity to get a foothold into the grocery retail value chain; and
  
  - 15.3. internal distribution of grocery products by national supermarket chains to their various individual stores.
  
16. These channels are discussed in detail below.

### ***Buyer groups***

17. There are different types of buyer groups which may provide different membership structures to their members, for example, open membership versus closed or restricted

membership. The main buyer groups in South Africa are Unitrade Management Services (“UMS”), the Buying Exchange Company (“BEC”), the Independent Buying Consortium (“IBC”), the Independent Cash & Carry Group (“ICC”) and Elite Star Trading (“EST”).

18. The general rationale for buyer groups is that they allow independent wholesalers and retailers to pool their resources to save costs and to aggregate their volume purchases in order to secure better supply terms than they would be able to achieve individually. Buyer groups therefore fulfil to a degree, the same function that distribution centres fulfil for the national supermarket chains.
19. Buyer groups can provide different types of services to different degrees to their members. For example, the buyer group may simply inform its members of the list prices offered by suppliers or aggregate the volume purchases of its members to benefit from volume discounts offered by the supplier. Some buyer groups take a more active role by negotiating trade terms with suppliers on behalf of their members, whereas others provide value added services such as credit, assistance with marketing and advertising and business development.<sup>7</sup>
20. Therefore, for purposes of the Inquiry, buyer groups refer to the cooperation between buyers on price, product, diversity, quality, technological improvement or other factors.<sup>8</sup> In other words, the Inquiry encompasses all types of buyer groups, and all forms of cooperation between buyers in the grocery retail sector.

### ***Distribution centres***

21. Most of the major grocery retail supermarket chains have integrated distribution channels, whereby grocery manufacturers, processors and suppliers supply products to the retail chain’s distribution centres, whereafter the products are distributed from the centres to the supermarket chain’s individual stores.
22. The distribution centres are specialised buildings that are often equipped with refrigeration or air conditioning due to the perishable nature of food.

---

<sup>7</sup> See Office of Fair Trading (“OFT”) in a 2007 economic discussion paper entitled “The competitive effects of buyer groups”, prepared for the OFT by RBB economics LLP, pages 32 – 36. Available at [www.of.gov.uk](http://www.of.gov.uk)

<sup>8</sup> This definition is in line with the definition of buyer groups used by the OFT in its 2007 economic discussion paper entitled “The competitive effects of buyer groups”, prepared for the OFT by RBB economics LLP, available at [www.of.gov.uk](http://www.of.gov.uk)

23. Most of the major grocery retail supermarket chains in South Africa have invested significantly in distribution centres. The distribution centres bring about efficiencies due to the scale of the supermarket's operations and therefore impact the margins and ultimately the prices of products charged by them. These distribution centres are generally considered a necessity for supermarkets with multiple stores to effectively compete in South Africa.

### ***National supermarket chains***

24. The South African grocery supermarket sector is concentrated. According to Barclays (2014) and Who Owns Whom (2014), the five largest players collectively account for between 80% and 90% of the food retail market in South Africa.<sup>9</sup> Shoprite and Pick n Pay are the largest national grocery supermarket chains in South Africa. The SPAR Group (through its franchisees) and Woolworths hold most of the remaining share. Fruit and Veg City ("FVC") has grown considerably over the past ten years. These firms operate as grocery anchor tenants in shopping centres and malls of various sizes.

25. Most national grocery supermarket chains have operations throughout southern Africa. Walmart-owned Massmart has recently expanded its fresh food offering in its Makro and Game stores in competition with the fresh food offerings of the national grocery supermarket chains, most of which operate in South Africa's urban areas. Botswana-owned Choppies Enterprises entered South Africa in 2008 having opened its first store in Zeerust in the North West.<sup>10</sup> The firm is the leading grocery supermarket retailer in Botswana, and has grown rapidly in Zimbabwe and South Africa's North West, Mpumalanga and Limpopo provinces since its entry into these countries. It is also set to expand its operations further into Africa.<sup>11</sup>

26. The format of the national grocery supermarket chain stores has evolved over the years. They have moved away from targeting consumers in urban areas only, to successfully expanding their operations to serve consumers in townships, peri-urban and rural areas.

---

<sup>9</sup> Barclays (2014), South Africa food and general retail industry update. Retail Round-up: Market share growth becoming more important. Page 10. The report estimated the size of the sector to be in the region of R215 billion per annum. See also Who Owns Whom Wholesale and Retail of Food Report (2014) page 3.

<sup>10</sup> On its website, Choppies states that its focal point in South Africa is the North West.

<sup>11</sup> das Nair, R. & Chisoro, S. (2015) The expansion of regional supermarket chains: Changing models of retailing and the implications for local supplier capabilities in South Africa, Botswana, Zambia, and Zimbabwe. WIDER Working Paper 2015/114. Helsinki: UNU-WIDER. Page 7. See also its website.

Most of the national grocery supermarket chains have also diversified their formats to include hypermarkets, convenience stores and express stores found in petrol stations.<sup>12</sup>

27. The retail business models differ between the national supermarket chains. Choppies Enterprises only has corporate stores. The SPAR Group mainly operates through a franchise model. As regards its classification as a national supermarket chain herein, the SPAR Group has submitted that it would be more appropriately classified as a wholesaler and distributor of groceries.<sup>13</sup> The Inquiry will evaluate the classification of the SPAR Group and its franchisees once it has obtained further information as regards the nature of the franchise agreements between the SPAR Group and its franchisees, the degree of independence of the franchisees, the degree of competition between the franchisees, the degree to which they make use of the SPAR Group's distribution centres, and other characteristics that will assist the Inquiry in appropriately classifying the SPAR Group's business model within the grocery retail sector supply chain. Pick n Pay and Shoprite operate both corporate and franchise models. Woolworths and FVC are increasingly moving away from the franchise model to fully corporatised stores.<sup>14</sup>

### ***Independent grocery retailers***

28. Independent grocery retailers can either be formal or informal businesses. Formal independent grocery retailers refer to businesses, operating in the formal sector which are privately owned and do not belong to larger chains or a group of grocery retail stores. They include, amongst others, independent grocery stores and convenience stores at petrol stations.

29. Informal independent grocery retailers refer to businesses that operate in the informal sector which are usually small in size and mostly run from people's homes or located on public streets, municipal land zoned for informal business activities. They encompass a number of different types of businesses, including, for example, street traders or hawkers that sell or trade goods as vendors in a public road or place and spaza shops, which are small to medium sized general retailers selling daily goods and necessities usually in a township or informal settlement. They are usually low-margin businesses that have to manage their overheads and other expenses, such as wastage and stock shrinkage

---

<sup>12</sup> Ibid, page 8.

<sup>13</sup> See paragraph 4 of the SPAR Group's submission to the Inquiry on 15 June 2016. The document can be accessed on the Commission's website at <http://www.compcom.co.za/retail-market-inquiry/>

<sup>14</sup> Ibid, pages 4 - 6.

closely.<sup>15</sup> Spaza shops, hawkers and other small independent retailers usually operate informally without licenses.

30. Independent retailers (both formal and informal) are generally considered to be a means by which low income consumers can access grocery retail products. According to das Nair, R. & Chisoro, S. (2015), consumers who frequent independent retailers usually do so for their top-up, daily or weekly purchases.<sup>16</sup>

### **Consumers**

31. The last level of the grocery retail supply chain is the consumers, who are the end users of grocery products.

32. There have been three main drivers of consumer spending in South Africa over the last ten years, namely the underlying population growth of 16.4%, rising real incomes of 36.5% and increased urbanisation, which is now approaching 65%.<sup>17</sup> These factors have underpinned the rapid growth (89.1%) of the middle class (i.e. the LSM 5-8 bracket), primarily driven by the growth in the black middle class.<sup>18</sup> This group is the core customer base for most formal grocery retailers in South Africa and is the main driver of the increase in consumer expenditure.<sup>19</sup>

33. Despite the growth of the middle class, social inequalities remain. According to Barclays Equity Research (2016), 21.7% of South Africans live in extreme poverty, and are unable to pay for basic nutritional requirements; 37% of people cannot afford to purchase both adequate food items and non-food items such as transport and cell phone airtime.<sup>20</sup> This group has historically been the core customer base for most small and independent retailers in townships, peri-urban and rural areas.

34. There are also income disparities across the nine geographical provinces of South Africa. The wealthier urban centres, such as Gauteng (in which Johannesburg and Pretoria are located) and Western Cape (centered around Cape Town) have more households, which receive salaries as their primary source of income. Households in the

---

<sup>15</sup> Ibid, page 11

<sup>16</sup> Ibid, page 11

<sup>17</sup> Barclays Equity Research (2016), South African retail sector update. Steal my sunshine. Page 25

<sup>18</sup> Ibid, page 27

<sup>19</sup> Ibid, page 27

<sup>20</sup> Ibid, page 16

rural provinces, such as Eastern Cape and Limpopo rely more heavily on grants as their primary source of income.<sup>21</sup>

### ***Areas of focus and competitive constraints across the supply chain***

35. The grocery retail sector supply chain is characterised by certain barriers to entry and expansion.<sup>22</sup> This may be the result of, amongst others, the nature of supermarkets, their product offerings and significant investments required by national supermarket chains. Further, larger players benefit from economies of scale which enable them to negotiate discounts with suppliers and secure the most suitable location for their business to survive. The Panel has taken note of submissions by some stakeholders, arguing that it is inappropriate for the Panel to start the Inquiry from the premise that barriers to entry into the sector are high, citing Choppies and FVC as examples of firms that have been able to successfully enter into and expand in the sector.<sup>23</sup> The Panel notes, however, that even though these firms have been active in the sector for a number of years (either in South Africa or in the neighbouring countries), they have not expanded their operations in the sector at the scale and geographical reach of the national supermarket chains.

36. 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. The continued existence and development of small businesses is an important policy goal, as contemplated by the purpose of the Act, in particular sections 2(c), (e) and (f). Given the importance of small informal businesses in townships, peri-urban and rural areas, the Inquiry's primary focus will be to assess the impact of these barriers and developments on small and independent retailers in townships, peri-urban and rural areas.

37. The Inquiry's assessment of the effects of one of the potential barriers in the grocery retail sector, namely the importance of a suitable location of the business and the effects of exclusive lease agreements, will extend nationally and will not be limited to townships, peri-urban and rural areas.

---

<sup>21</sup> Ibid, page 31

<sup>22</sup> Commission (2014). Media release in respect of the supermarkets investigation. Available at <http://www.compcom.co.za/wp-content/uploads/2014/09/Commission-non-refers-supermarkets-investigation.pdf>. See also Who Owns Whom Wholesale and Retail of Food Report (2014) pages 15 - 16.

<sup>23</sup> See paragraph 7 of the SPAR Group's submission to the Inquiry on 15 June 2016. The document can be accessed on the Commission's website at <http://www.compcom.co.za/retail-market-inquiry/>

38. In order to fully understand the dynamics of competition in the grocery retail sector, the Panel will seek to understand the degree and basis of competition between the different players in the grocery retail supply chain, notably between: (i) national supermarket chains and formal and informal independent retailers; (ii) local and foreign national operated formal and informal independent retailers; and (iii) national supermarket chains and wholesalers.
39. It is possible that the competitive constraints between the different players in the grocery retail supply chain may be asymmetric, with larger players placing a significant competitive constraint on smaller players, whereas the competitive constraints placed by smaller players on larger ones may be less significant. It is also possible that the degree of competition amongst these players may vary, depending on the relevant store formats and LSM groups that are targeted and the geographic areas in which they operate.
40. The Panel invites submissions of information regarding:
- 40.1. 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;
  - 40.2. the structure, trends and players operating at each level of the grocery retail sector supply chain, as set out herein; and
  - 40.3. the degree of competition between the different players in the grocery retail supply chain.

## **THE OBJECTIVES OF THE INQUIRY**

41. The objectives of the Inquiry, as set out herein, are to be used merely as a tool for the Panel to remain focused as it develops its understanding of the markets involved and the effects that result from the features of the markets and the behaviour of its participants.
42. These objectives are not findings of harm nor are they considered as preliminary conclusions of the Panel on the status of the grocery retail sector. They serve only as a starting point in the analysis. At this stage, the statement of objectives is intended to act

as a guide to stakeholders in their submission of the issues to be assessed by the Panel. The objectives of the Inquiry and the effects thereof on the achievement of the purpose of the Act may thus evolve during the course of the Inquiry.

43. The Inquiry's objectives must be understood as applying to features of the market that may prevent, distort or restrict competition in a market and the effects thereof, and to pursue the purpose of the Act. The purpose of the Act, as set out in section 2 of the Act, is to "*promote and maintain competition in the Republic in order –*

- (a) *to promote the efficiency, adaptability and development of the economy;*
- (b) *to provide consumers with competitive prices and product choices;*
- (c) *to promote employment and advance the social and economic welfare of South Africans;*
- (d) *to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;*
- (e) *to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;*
- (f) *to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons;*
- (g) *to detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to prevent, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic; and*
- (h) *to provide for consistent application of common standards and policies affecting competition within all markets and sectors of the economy."*

44. The objectives of the Inquiry are not exhaustive and may not necessarily address all the factors that have an impact on competition in the grocery retail sector. Submissions should therefore not be confined to addressing only the objectives indicated herein.

45. In line with the scope of the Inquiry, as set out in the ToR, the Panel proposes to assess competition in the grocery retail sector according to the following objectives:

- 45.1. Objective 1: The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy;
- 45.2. Objective 2: The impact of long term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on local competition in the grocery retail sector;
- 45.3. Objective 3: The impact of the dynamics of competition between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy on competition;
- 45.4. Objective 4: The impact of regulations, including, *inter alia*, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy;
- 45.5. Objective 5: The impact of buyer groups on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy; and
- 45.6. Objective 6: 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.

46. These are discussed in more detail below.

**Objective 1: The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy**

***Expansion***

47. For the purposes of this Inquiry, the expansion of national supermarket chains into townships, peri-urban and rural areas and the informal economy refers to the increasing or the broadening of the retail portfolio of national supermarket chain stores into areas that were previously not targeted by them.

48. In particular, the pre-1994 retail landscape in the township, peri-urban, rural areas was dominated by small, mainly informal retail businesses offering basic products and

services to a relatively low income consumer market. These businesses served as convenience shops to primarily lower income groups. Since the late 1990s, township residents have experienced a substantial economic uplift. Many township consumers that were previously in the low income consumer group are now in the middle-income consumer group resulting in a significant increase in their spending.

49. This increase in spending, together with the fact that many urban retailing areas are becoming saturated, has caused national supermarket chains to increasingly focus on market expansion strategies into these areas.<sup>24</sup> This increasing movement of national supermarket chains into areas that were not previously targeted by them has resulted in the increase in shopping centre development in townships, peri-urban and rural areas.
50. The large national supermarket chain stores are often the anchor tenants in these malls targeting customers across a full range of LSMs. For example, Shoprite in Jabulani Mall, Soweto (Gauteng), Pick n Pay in Diepkloof Square, Diepkloof (Gauteng), Spar in Phillipi Plaza in Phillipi (Western Cape), Superspar in the Kwamashu shopping centre, Kwamashu (KZN), Shoprite in Modjadji Plaza, Ga-Kgapane (Limpopo), Shoprite in the RCM Complex, Botshabelo (Free State), Boxer cash and carry (Pick n Pay) in Sterkspruit Plaza, Sterkspruit (Eastern Cape), Superspar in Kathu Village, Kathu (Northern Cape).
51. In addition, we have recently noticed that some of the national supermarket chains are set to expand further into townships, peri-urban, rural areas and the informal economy by converting selected spaza shops in these areas into their franchises. As a result, the franchised spaza shop has access to the supermarket chain's distribution channels and centres, systems for ordering and managing stock, business advice and mentorship.<sup>25</sup> Some national supermarket chains are also converting petrol service stations stores into franchised stores. Examples thereof include the conversion of BP's convenience stores into Pick n Pay franchises, the conversion of Caltex convenience stores into FVC franchises under the FreshStop brand and the conversion of Engen convenience stores into Woolworths franchises.

---

<sup>24</sup> Some of the national supermarket chains are also expanding into Africa, i.e. Shoprite that has recently been increasing its offering to low-income segments through its Usave format.

<sup>25</sup> See <http://www.bdlive.co.za/business/retail/2016/02/25/pick-n-pay-converts-spaza-shop-into-store-in-diepkloof>. Accessed on 29/02/2016 at 10:51.

### ***Diversification***

52. Diversification in this context refers to the strategy by national supermarket chains to offer a varied retailing experience tailored to the demands of customers in certain income groups and areas. This would include, for example, national supermarket chains setting up partitioned versions of their hypermarkets stores, i.e. family value stores, convenience stores and express garage stores bearing the name and branding of a national supermarket chain. To this end, it is noticed that most of the national supermarket chains have become more diversified by offering different store formats of their shops to customers in different LSM categories.
53. In addition, national supermarkets have diversified the product ranges that they offer. Examples include most of the large retailers that now also have liquor stores, in competition with independent liquor store retailers. Similarly, Massmart has recently expanded its fresh food offering in its Makro stores.

### ***Consolidation***

54. Analysts estimate that the four largest supermarket chains operating in South Africa collectively account for between 80% and 90% of the South African food and grocery sales within South Africa, excluding general merchandise<sup>26</sup>. These levels of concentration have been achieved through the national supermarket chains' organic expansion and diversification plans, mergers and acquisitions of small independent retailers and franchised models in recent years.<sup>27</sup>
55. The expansion, diversification and consolidation of national supermarket chains into townships, peri-urban areas and rural areas and the informal economy may affect the ability of small independent retailers in these areas to remain viable and to expand their operations in these areas. Small independent retailers in these areas face certain barriers, such as the alleged lack of access to capital and inability to buy in bulk, which may inhibit their ability to effectively respond to the competitive pressures faced by them from competing grocery retailers.

---

<sup>26</sup> Ibid, page 10. See also footnote 5 above.

<sup>27</sup> Shoprite Checkers (Pty) Ltd/ Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd (47/LM/Jun05); CBW Holdings (Pty) Ltd/ Kwambonambi Cash and Carry (Pty) Ltd (108/LM/Dec06); Pick n Pay Retailers Ltd (Pty) Ltd and Trio Belville (Pty) Ltd (LM242Mar15); Mystic Blue Trading 62 (Pty) Ltd and The Rhino Group (35/LM/Apr11); Shoprite Checkers (Pty) Ltd/Gaterite Hypermarket (018226); Shoprite Checkers (Pty) Ltd/Metcash Seven Eleven (Pty) Ltd (30/LM/Apr11); Pick n Pay Retailers (Pty) Ltd / Boxer Holdings (Pty) Ltd (52/LM/Jul02); Masscash Holdings (Pty) Ltd / Franklin George Larkins Trading (73/LM/Jun08); Business Venture Investments no 1347 (a subsidiary of Massmart Holdings) and Astor Group & Others 83/LM/Dec09

56. Studies carried out in different townships in South Africa have confirmed that almost half of the respondents (small grocery retailers and spaza and tuck shop owners) to the studies reported a decline in the number of small businesses located within the immediate vicinity of a shopping mall in the first six months' of the shopping mall operating. It was further reported that almost three in every five small business retailers experienced a decline in their businesses' profitability, turnover, stock movement and product range.<sup>28</sup> According to another study by the Bureau of Market Research ("BMR") in Soshanguve (north of Pretoria), a significant proportion of informal businesses interviewed confirmed a decrease in their business activities during the 6 month period since the opening of a shopping centre in the area. The study also found that 75% of informal businesses located less than 1 km from the centre (or about 15 minutes walking time) reported a decline in their profits, whilst only 36,8% of informal businesses located between 4 and 5 km (approximately 1 hour's walk) from the centre experienced a drop in their profitability.<sup>29</sup>
57. As a general trend, studies have also found that small informal businesses in townships, peri-urban and rural areas show relatively high attrition rates.
58. Statistics South Africa's ("Statssa") Survey of Employers and the Self-Employed ("SESE") reveals an overall decrease in the number of persons running informal businesses from 2,3 million in 2001 to 1,5 million in 2013. In 2009, the number of persons running informal businesses stood at 1,1 million, increasing with only 400 000 to 1,5 million in 2013. The number of persons running informal businesses is therefore still substantially lower than that achieved in 2001.<sup>30</sup>
59. Data collected by Nielsen suggests an overall increase in the number of small independent retailers in townships, peri-urban and rural areas (excluding hawkers and tabletops) from 34 000 stores to 134 000 stores in the last 20 years.<sup>31</sup> Some

---

<sup>28</sup> Ligthelm, A. (2008) The Impact of Shopping Mall Development in Township Areas on Small Township Retailers, *BMR, SAJEMS NS 11*. Page 43. Accessed at <http://www.scielo.org.za/pdf/sajems/v11n4/04.pdf> on 11/02/2015 at 21:40.

<sup>29</sup> BMR Unisa (2007), The impact of retail development in emerging markets on small township retailers. Research Report No 359. Page 43

<sup>30</sup> Statssa (2013), Rise in informal businesses accessed at <http://www.polity.org.za/article/rise-in-informal-businesses-stats-sa-2014-08-14-on-05/04/2016-at-16:14>.

<sup>31</sup> Nielsen (2016), South Africa's not so traditional, traditional trade, available at <http://www.nielsen.com/ssa/en/insights/reports/2016/south-africas-not-so-traditional-traditional-trade.html>. The data referred to by Nielsen is in respect of what it terms "traditional trade", which includes i) physical bricks and mortar outlets with a fixed location; (ii) informal, independently owned outlets; and (iii) outlets which stock at least one consumer goods product, selling directly to customers.

researchers have hinted at a 'rebirth' of profitable and sustainable independent retail outlets in South Africa, citing growth of buying groups as being indicative that the independent retailers they supply are also growing, and becoming more profitable and sustainable.<sup>32</sup> On the other hand, some sector analysts have attributed the diminishing wholesale market to a decline in the informal and independent customer base as a result of the move by larger formal retailers into the areas historically serviced by informal and independent retailers.<sup>33</sup>

60. Therefore, the Panel notes that there are mixed views by sector analysts and researchers regarding the performance and outlook of informal and independent retailers.

61. The Panel invites submissions as regards the apparent lack of clarity concerning what is occurring in the informal economy, and specifically in the informal grocery retail sector. The Panel also invites submissions as regards the following:

61.1. details of small and independent grocery retailers in townships, peri-urban and rural areas that may have been trading on and around the premises where malls have subsequently been constructed; and

61.2. the impact of the construction of these malls on the small and independent grocery retailers referred in 61.1.

62. The possible reduction in the number and size of small and independent grocery retailers, possibly as a result of the expansion, diversification and consolidation of national supermarket chains in townships, peri-urban and rural areas and the informal economy, and the concomitant negative effect thereof on their suppliers could have further adverse effects on employment, income levels and the spread of ownership in this sector.

63. Specifically, BMR research has confirmed small and independent retailers in townships, peri-urban areas and rural areas and the informal economy as an important source of income and employment in these areas. To this end, BMR research suggests that spaza

---

<sup>32</sup> <http://www.shoppingandretail.co.za/2014/June/IndependentOutlets.php>, as cited in das Nair, R. & Chisoro, S. (2015) The expansion of regional supermarket chains: Changing models of retailing and the implications for local supplier capabilities in South Africa, Botswana, Zambia, and Zimbabwe. WIDER Working Paper 2015/114. Helsinki: UNU-WIDER. Pages 12 and 13.

<sup>33</sup> Ibid, page 10.

or tuck shops alone employed more than 320 000 people in 2004 (providing a living for more than one million people).<sup>34</sup> This number may decline if the turnover and number of spaza shops in these areas decline as a result of national supermarket chains entering into these areas, either as anchor tenants in malls in township areas, or as franchised spaza shops in townships, peri-urban and rural areas and the informal economy.

64. The entry of national supermarket chains into townships, peri-urban and rural areas and the informal economy is also likely to have benefits for consumers in the form of lower prices, better product quality and variety, transport cost savings and convenience associated with supermarkets located closer to their homes. In addition, the construction of malls and the movement of national supermarket chains into townships may have created formal employment opportunities, and the franchising by national supermarket chains of existing independent spaza shops could reap benefits for the converted spaza shops. There is also a possibility that the entry of malls and supermarket chains in these areas could lead to other public welfare benefits, such as infrastructure developments and attraction for other developments within the areas where these shopping centres are located to the benefit of the citizens in these areas.
65. The Panel will examine the effects (both negative and positive) of the entry of national supermarket chains into townships, peri-urban, rural areas and the informal economy. The Panel's analysis will be guided by the purpose of the Act as set out in Section 2 of the Act. In particular, the panel will seek to answer the extent to which:
- 65.1. the entry of supermarket chains in townships, peri-urban areas and rural areas and the informal economy has led to a decrease or increase in the number and performance (turnover) of small and independent retailers in these areas, as contemplated by the provisions of sections 2(e) and (f) of the Act;
  - 65.2. the barriers faced by small and independent retailers are likely to inhibit their ability to effectively respond to the competitive pressures faced by them from supermarket chains;
  - 65.3. the entry of national supermarket chains in townships, peri-urban areas and rural areas and the informal economy has led to a decline or increase in employment

---

<sup>34</sup> Ibid, page 12

levels in these areas, as contemplated by the provisions of section 2(c) of the Act; and

65.4. the entry of national supermarket chains in townships, peri-urban areas and rural areas and the informal economy has benefited or harmed consumers and led to increased or decreased efficiencies, as contemplated by the provisions of sections 2(a) and 2(b) of the Act. As part of this assessment, the Panel will also consider issues pertinent to consumers, such as transparency of the actual value of the benefits of store loyalty schemes to consumers, as well as pricing transparency through the use of unit pricing of pre-packaged goods on shelf tags.<sup>35</sup>

66. The Panel invites submissions on the effects (both negative and positive) of the entry of national supermarket chains into townships, peri-urban, rural areas and the informal economy, with particular reference to the issues outlined above, as well as any other potential sources of harm or benefit arising therefrom that have not been identified herein.

67. The submissions will provide the basis for which the Panel can make evidence-based recommendations to promote the purpose of the Act.

**Objective 2: The impact of long term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on competition in the grocery retail sector**

68. The Commission previously investigated the issue of long term exclusive leases and has recently noted increasing concerns relating thereto from market participants, as evidenced by further complaints it received since the previous investigation. Similar to complaints previously investigated, the complaints received from 2013 onwards are broadly about the use of long term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these exclusive lease agreements as a barrier to entry and expansion.

69. Since the previous investigations, the Commission has embarked on advocacy efforts and imposed conditions on the approval of mergers in the sector to persuade

---

<sup>35</sup> Per the submissions of the South African National Consumer Union (“SANCU”) to the Inquiry on 13 June 2016. The document can be accessed on the Commission’s website at <http://www.compcom.co.za/retail-market-inquiry/>

participants in the sector to change the practice of entering into exclusive lease agreements by default for each new development. However, despite the Commission's efforts, the conduct persists. The Commission has identified this Inquiry as the appropriate tool to address the issue of long term exclusive leases, given that these efforts have not always been successful.

70. In general, the exclusivity clauses in lease agreements restrict the landlord from leasing out space in the same shopping centre to potentially competing retailers, whether it is a retailer whose primary business is the sale of foodstuffs, a café or delicatessen which sells fresh fish or meat, grocery, fresh fish shop, butchery, bakery, liquor store or a fruit and vegetable shop. In certain instances where the landlord or the property owner has allowed an incumbent to sell products that overlap with that of the anchor tenant, it has been observed that some anchor tenants have litigated against property owners and landlords to enforce the exclusivity clauses in their lease agreements.<sup>36</sup>

71. The exclusivity clauses in the lease agreements may be causing distortions to competition in the grocery retail sector by entrenching barriers to entry and expansion in the sector. Specifically, the use of exclusive leases may prevent new entrants and existing competitors from locating in lucrative retail spaces. Property developers provide supermarkets with store sites, with the most desirable sites being located inside a shopping mall or centre or close to the centre where customer traffic is dense. Given the importance of attractive store sites for a new entrant to become an effective competitor, this may hinder the ability of new entrants and existing competitors to enter or expand their operations in the sector. Therefore, long term exclusivity clauses may delay, frustrate or increase the cost of entry or expansion by small and independent grocery retailers in lucrative retail spaces.

72. The exclusivity clauses in the lease agreements tend to most significantly affect small and independent retailers who may not be in a position to attract customers if located outside the shopping centre or mall. In addition, the exclusivity clauses also affect competition amongst large supermarket chains, as they may prevent competing supermarkets from trading in the same shopping centre.

---

<sup>36</sup> See, for example, *South African Informal Traders Forum and Others v City of Johannesburg and Others*; *South African National Traders Retail Association v City of Johannesburg and Others* [2014] ZACC 8; *Makwickana v Ethekwini Municipality and Others* (11662/13) [2015] ZAKZDHC 7; 2015 (3) SA 165 (KZD) (17 February 2015) and *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* (48/2014) ZASCA 143 (26 September 2014).

73. Long term exclusive lease agreements are likely to have an impact on consumers by giving rise to higher prices and less product choices. A single national grocery retailer operating in a shopping centre may be in a position to charge higher prices due to the lack of competition and the concomitant price disciplining effect on the anchor tenant in the shopping centre. In addition, consumers visiting the shopping centre will be limited to the specific range, quality and brands of products offered by the retail anchor tenant.
74. The extent of the potential harm arising from exclusive lease agreements are likely to be linked to the duration of the exclusivity clauses in the lease agreement. In other words, the potential harm arising from exclusive lease agreements with a longer duration is likely to be more significant compared to that of exclusive lease agreements with a shorter duration.
75. The Panel notes that there are also potential benefits arising from the use of the exclusive lease agreements and restrictions on the types of stores and competitors renting space in the shopping centre or mall, which may include: (i) protection of the investments made by the relevant anchor tenant and the valuable footfall the anchor tenants are able to bring to the shopping centre; and (ii) facilitating a potentially optimal tenant mix in the shopping centre that may benefit the consumer and the small businesses present in the shopping centre.
76. The Panel will examine the effects (both negative and positive) of the long term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on competition in the grocery retail sector. The Panel's analysis will be guided by the purpose of the Act as set out in section 2 of the Act. In particular, the Panel will seek to answer the following:
- 76.1. the prevalence and duration of exclusive lease agreements entered into between property developers and national supermarket chains in South Africa, by also seeking to understand the role of financiers in these agreements on competition in the grocery retail sector, as contemplated by the provisions of section 2(g) of the Act;
- 76.2. the extent to which long term exclusive lease agreements entered into between property developers and national supermarket chains have excluded small businesses and larger competitors or potential competitors from entering malls,

and from competing effectively on the basis that they do not have access to suitable retail space, as contemplated by the provisions of sections 2(e) and 2 (g) of the Act;

76.3. the extent to which the use of exclusive lease agreements has contributed to the high level of concentration in the sector, as contemplated by the provisions of section 2(f) of the Act; and

76.4. the extent to which long term exclusive lease agreements entered into between property developers and national supermarket chains have benefited or harmed consumers and led to increased or decreased efficiencies, as contemplated by the provisions of sections 2(a) and 2(b) of the Act.

77. The Panel invites submissions on the impact of long term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on competition in the grocery retail sector with particular reference to the issues outlined above, as well as any other potential sources of harm or benefit arising therefrom that have not been identified herein. The submissions will provide the basis for which the Panel can make evidence-based recommendations to promote the purpose of the Act.

**Objective 3: The impact of the dynamics of competition between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy on competition**

78. As set out in the ToR, there has been varied performance of local and foreign national operated small informal retailers across the country. Foreign national operated retailers have been perceived to be more successful than local national operated retailers and the reasons therefor are unclear. This has led to tensions that have sparked into violence in some instances.

79. Many local national operated small and independent retailers have alleged that foreign national operated grocery retailers thrive due to unfair advantages, and that this directly undermines the viability of local national operated small and independent retailers in townships, peri-urban areas, rural areas. Some of the allegations are that foreign

national operated retailers are not registered and do not pay taxes and that they receive unfair privileges from wholesalers due to shared religious beliefs, amongst others.<sup>37</sup>

80. It further appears that certain business practices, such as the careful selection of products to stock, service standards, entrepreneurial skills, bulk buying and extended operating hours are enabling foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy to out-compete local national operated small and independent retailers in these areas.<sup>38</sup>

81. Local national operated retailers face certain barriers, such as the alleged lack of access to capital and inability to buy in bulk, which may inhibit their ability to effectively respond to the competitive pressures faced by them from foreign national operated retailers.

82. Local national operated retailers have, in some instances, reacted to these competitive pressures by exiting the grocery retail market to offer other related products and services, such as fast food and liquor, or by acting as landlords to foreign national operated retailers instead.

83. In consideration of the above and other related issues, the Panel seeks to understand the dynamics of competition between local and foreign national operated small and independent businesses in order to determine if there are any factors that may:

83.1. distort, prevent or restrict competition; and

83.2. have a negative effect in achieving the purposes of the Act.

84. In particular, the panel will seek to answer the following, as contemplated by section 2(b), (c), (e), (f) and (g) of the Act:

84.1. the reasons as to why foreign national operated retailers have been perceived to be more successful than local national operated retailers, and the factors contributing to their perceived success;

---

<sup>37</sup> Provincial Government of Kwazulu-Natal (2015). Report of the special reference group on migration and community integration in Kwazulu-Natal. Page 67

<sup>38</sup> Charman, Petersen and Piper (2012). From local survivalism to foreign entrepreneurship: the transformation of the spaza sector in Delft, Cape Town. Transformation 78

- 84.2. the barriers faced by local national operated retailers that are likely to inhibit their ability to effectively respond to the competitive pressures faced by them from foreign national operated retailers;
- 84.3. the effects (positive or negative) of the dynamics of competition between foreign national operated retailers and local national operated retailers on the operations of local national operated retailers, including, amongst others, the actions taken by local national operated retailers in response to such competition, such as diversifying their product and service offerings, closing down their retailing businesses and becoming landlords to foreign national operated retailers instead;
- 84.4. the effects (positive or negative) of the dynamics of competition between foreign and local national operated retailers on consumers, notably in respect of product choice, product prices, convenience and service;
- 84.5. the effects (positive or negative) of the dynamics of competition between foreign and local national operated grocery retailers on local producers and manufacturers, buyer groups, wholesalers and upstream suppliers; and
- 84.6. the effects (positive or negative) of the dynamics of competition between foreign and local national operated retailers on employment in the sector.
85. The Panel invites submissions on the dynamics of competition between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy with particular reference to the issues outlined above, as well as any other potential sources of harm or benefit arising therefrom that have not been identified herein. The submissions will provide the basis for which the Panel can make evidence-based recommendations to promote the purpose of the Act.

**Objective 4: The impact of regulations, including, amongst others, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy**

86. Regulations are designed to promote and protect important public policy goals, such as the promotion and protection of public health and safety. There are usually many ways to achieve these goals.

87. In some instances, regulations may inadvertently restrict competition by, for example, limiting the number of participants or product ranges in an industry in order to achieve an important public policy goal.
88. Regulations may also inadvertently restrict competition by reducing the incentives for competitors to enter the market and by increasing the barriers for competitors or potential competitors to enter, expand and effectively compete in an industry.
89. The lack of enforcement, overly-excessive or corrupt enforcement of regulations both reduce the incentives and increase barriers for competitors or potential competitors to enter into, expand and effectively compete in an industry.
90. Some stakeholders in the grocery retail sector have alleged that in certain instances, municipal planning and licensing by-laws are: (i) time consuming and costly to comply with; (ii) have the effect of restricting the geographic areas in which small and independent retailers (both in the formal and informal sectors) are allowed to trade in; and (iii) often not uniformly enforced.
91. The Panel will review all regulations that are applicable to the grocery retail sector, including, amongst others, municipal town planning and by-laws, to assess whether or not they have the effect of increasing barriers for competitors or potential competitors to enter, expand and effectively compete or by reducing the incentives for competitors to compete in the grocery retail sector.
92. The Panel will prioritise the review of regulations that are likely to have the following unintended effects on competition in the grocery retail sector:
- 92.1. regulations that have the effect of limiting the number and range of small and independent retailers in specific areas;
  - 92.2. regulations that have the effect of limiting the ability of small and independent retailers to compete effectively;
  - 92.3. regulations that lead to the reduction in incentives of small and independent retailers to compete effectively;
  - 92.4. regulations that limit choice and information available to consumers;

- 92.5. regulations that create uncertainty amongst small and independent retailers regarding the requirements they are expected to comply with in order to trade and compete effectively;
- 92.6. regulations that are onerous, time consuming and costly to comply with;
- 92.7. regulations that are excessively enforced even for insignificant transgressions, thereby restricting the participation of small and independent retailers in the market; and
- 92.8. regulations that are not enforced, poorly enforced or selectively and corruptly enforced, thus creating uncertainty and an uneven playing field between small and independent retailers in townships, peri-urban and rural areas.
93. Regulations that restrict competition in the ways contemplated above are likely to have an impact on consumers by giving rise to higher prices and less product choices. In addition, they are likely to have an impact on small and independent retailers by limiting their ability to enter into or expand in the sector, with a concomitant negative affect on employment, which may affect the fulfilment of the purpose of the Act (notably sections 2(a), (b), (c), (e) and (f) of the Act).
94. In assessing these regulations, the Panel will have due regard to the objectives of the regulations and where applicable, will identify unnecessary restraints and make recommendations to develop alternative, less restrictive regulations that still achieve the objectives of those regulations.
95. The Panel invites submissions that identify regulations that are likely to have a negative effect on competition in the grocery retail sector and information as regards the ways in which they affect competition in the sector, with specific reference to the issues highlighted herein.

**Objective 5: 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**

96. As a result of submissions received from industry stakeholders in response to the draft Statement of Issues,<sup>39</sup> the Panel will consider buyer power in the sector more generally, such that its assessment will not be limited to the buyer power and activities of buyer groups only, but will also include an assessment of the buyer power of other large purchasers of FMCG products, such as the large supermarket chains.

97. The Panel's understanding of the specific issues to consider in its assessment of the impact of 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 are set out in the paragraphs below.

***The impact of buyer groups on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy***

98. As indicated in paragraphs 17 - 20 above, buyer groups play an integral part in the grocery retail supply chain, in that they allow independent wholesalers and retailers to pool their resources to save costs and to aggregate their volume purchases in order to secure better terms than they would be able to achieve when acting individually. Buyer groups therefore fulfil, to a degree, the same function that distribution centres fulfil for the national supermarket chains.

99. According to the OFT, buyer groups are most beneficial when there are large efficiency gains that result from the factors (e.g. size) that give the buyer group its power and when these are passed onto the final consumers (e.g. through downstream competition between grocery retailers).<sup>40</sup> The efficiencies that are often achieved by buyer groups include:

99.1. reduced transaction costs and switching costs;

99.2. improved product efficiency;

---

<sup>39</sup> See the submissions by Agri SA, Reena das Nair and Unitrade Management Services ("UMS") to the Inquiry on 14 June 2016 and 15 June 2016. The documents can be accessed on the Commission's website at <http://www.compcom.co.za/retail-market-inquiry/>

<sup>40</sup> Ibid

- 99.3. increased competition amongst upstream manufacturers and suppliers;
- 99.4. the potential to promote new entry of the upstream manufacturers and suppliers;  
and
- 99.5. the potential to promote new entry of the downstream players in the form of small  
and independent retailers.
100. However, in certain circumstances, buyer groups may also create artificial barriers to entry that may result in foreclosure effects on rivals that are not members of the group, ultimately harming consumers and reducing employment. This is especially so where membership of the group is restricted and where the buyer group has market power.
101. Buyer groups can harm competition by influencing upstream suppliers to offer worse terms to rival wholesalers and retailers that are not members of the buyer group, thereby affecting the ability of these rivals to have an effective competitive constraint on the members of the buying group. This is especially problematic in instances where membership to the buyer group is restricted, and could influence the incentives of the members of the buying group to pass the efficiencies achieved through the buyer group onto end consumers.
102. Buyer groups may strategically operate in a manner that facilitates anticompetitive behaviour amongst its members through collusion or by coordinating their conduct by, for example, fixing prices, allocating geographic areas in which they operate or compete, and by sharing sensitive information.
103. The Panel aims to identify buyer groups that operate in the South African grocery retail sector, so as to better understand the competitive benefits or harm of the buyer groups, insofar as they affect small and independent retailers in townships, peri-urban areas, rural areas and the informal economy. In particular, the Panel will be guided by the purpose of the Act as set out in section 2 of the Act and will focus on the following:
- 103.1. the efficiencies arising from the impact of buyer groups, and the extent to which these are passed onto consumers, as contemplated by the provisions of section 2(a) of the Act;

103.2. the positive and negative effects of buyer groups on the ability of small and medium sized retailers to effectively compete in the sector, by either reducing or increasing the barriers faced by them to enter into and expand in the grocery retail sector, as contemplated by the provisions of section 2(e) and (f) of the Act;

103.3. the positive and negative effects of buyer groups on consumer prices and product choices, in line with the provisions of section 2(b) of the Act; and

103.4. the positive and negative effects of buyer groups on employment, in line with section 2(c) of the Act.

104. The Panel invites submissions on the impact of buyer groups on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy with particular reference to the issues outlined above, as well as any other potential sources of harm or benefit arising therefrom that have not been identified herein. The submissions will provide the basis for which the Panel can make evidence-based recommendations to promote the purpose of the Act.

***The impact of the buyer power of other large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy***

105. As indicated in paragraph 21 above, most of the larger purchasers of FMCG products (such as the major grocery retail supermarket chains) in South Africa have invested significantly in distribution centres. The distribution centres increase the supermarket chains' buyer power by enabling them to buy products in bulk and to distribute same through the distribution centres to their individual stores (whether franchised or not) throughout the country.

106. The existence of buyer power can lead to large efficiency gains in the form of lower purchasing prices, and these are beneficial when they are passed onto the final consumers. However, the abuse of buyer power can manifest in the negotiations of supply contracts and trading terms between suppliers and large purchasers of FMCG products (such as the large supermarket chains), especially in instances where the balance of power is heavily skewed towards the large players.

107. In this regard, the Panel has received submissions detailing a range of costs that could be imposed on suppliers by large purchasers of FMCG products through trading terms, thus reducing the effective selling price to large purchasers of FMCG products, or by requiring the supplier to supply them on an exclusive basis.<sup>41</sup> This may impact negatively on small and independent retailers and, ultimately, on the end consumer. This is likely to occur if suppliers are pressurised into supplying small and independent retailers, or the wholesalers and buying groups supplying small and independent retailers at less favourable prices and terms, to compensate for these higher costs (a phenomenon that is commonly referred to as the waterbed effect <sup>42</sup>); or if suppliers are pressurised into not supplying small and independent retailers at all, thereby affecting the ability of these players to effectively compete against larger players and expand in the grocery retail sector.

108. The Panel will assess the extent to which there is unequal bargaining power between suppliers and large purchasers of FMCG products, whether such unequal bargaining power has been abused and, if so, the impact of this on competition in the grocery sector and, ultimately, the end consumers. In doing so, the Panel will be guided by the purpose of the Act as set out in section 2 of the Act and will focus on the following:

108.1. the efficiencies arising from the impact of the buyer power of large purchasers of FMCG products, and the extent to which these are passed onto consumers, as contemplated by the provisions of section 2(a) of the Act;

108.2. the effects of the buyer power of large purchasers of FMCG products on the ability of small and medium sized as well as independent retailers and their buyer groups to effectively compete in the sector, and the extent to which this leads to increased barriers faced by these retailers to enter into and expand in the grocery retail sector, as contemplated by the provisions of section 2(e) and (f) of the Act;

108.3. the positive and negative effects of buyer power of large purchasers of FMCG products on consumer prices and product choices, in line with the provisions of section 2(b) of the Act; and

---

<sup>41</sup> Ibid

<sup>42</sup> See page 1 of Reena das Nair's submission to the Inquiry dated 15 June 2016. The document can be accessed on the Commission's website at <http://www.compcom.co.za/retail-market-inquiry/>

108.4. the positive and negative effects of buyer power of large purchasers of FMCG products on employment, in line with section 2(c) of the Act.

109. The Panel invites submissions on the impact of buyer power of large purchasers of FMCG products, relative to their suppliers on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy with particular reference to the issues outlined above, as well as any other potential sources of harm or benefit arising therefrom that have not been identified herein. The submissions will provide the basis for which the Panel can make evidence-based recommendations to promote the purpose of the Act.

**Objective 6: 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.**

110. The Panel will assess 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.

111. The Panel will identify the relevant value chains to be assessed during the course of the Inquiry based on criteria which will be determined by the Panel taking into account views from stakeholders, findings from past studies (both local and international), as well as preliminary findings of the Inquiry.

112. In selecting the relevant value chains to be assessed, the Panel will prioritise the following:

112.1. products that are identified as the most important contributors to the turnover of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy; and

112.2. products that provide the greatest potential for poverty reduction and employment opportunities.

113. Based on the above and subject to input from industry stakeholders, products that are most likely to fulfil the above criteria could include staple foods and other essential products such as bread, milk, maize, paraffin, toiletries, etc.

114. The Panel's evaluation of the relevant value chains would include an examination of all of the relevant levels of the identified value chains to determine the following:

114.1. the effects of the degree of competition and existence of any structural and behavioural barriers to competition in the value chain that are likely to have an effect on the quality, volumes and prices of the relevant products available to small and independent retailers in townships, peri-urban areas, rural areas and the informal economy, and, ultimately, to end consumers in these areas, as contemplated by the purpose of the Act;

114.2. the effects of the barriers to competition on employment in the various levels of the value chains will also be examined, as contemplated by section 2(c) of the Act; and

114.3. the relevant levels of the value chain that will be examined would include, where applicable, the primary producers, manufacturers or processors and retailers of the identified products, as well as any other intermediaries relevant to the value chain in question, as contemplated by section 2(c) of the Act.

115. The Panel invites submissions of information on 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, with particular reference to: (i) the proposed criteria for selecting relevant value chains that should be assessed; (ii) the relevant value chains that are regarded to be the most important contributors to the turnover of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy; (iii) the products that provide the greatest potential to reduce poverty and create employment opportunities; and (iv) the degree of competition and existence of any structural and behavioural barriers to competition in the value chains for staple foods and other essential products.