



***competition*commission**
south africa

**GUIDELINES FOR PARTICIPATION
IN
THE FRESH PRODUCE MARKET INQUIRY**

22 MARCH 2023

A. INTRODUCTION TO THE GUIDELINES

1. The Competition Commission (“the Commission”) publishes these guidelines in terms section 43A(1), read with section 43B(3), of the Competition Act 89 of 1998 as amended (“the Act”) which allows the Commission to conduct a “*formal inquiry in respect of the general state of competition, the levels of concentration in and structure of a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm*”. These guidelines must be read in conjunction with Fresh Produce Market Inquiry’s Terms of Reference (“TOR”) and the Statement of Issues (“SOI”).
2. The Commission has initiated a market inquiry into the South African Fresh Produce Market (the “FPMI” or “Inquiry”) because it has reason to believe that there may exist market features or a combination of features, which impede, restrict or distort competition in the South African fresh produce value chain; and in order to achieve the purposes of the Act.
3. These guidelines contain the rules of participation that will apply to all stakeholders who wish to participate in the proceedings of the Inquiry. The guidelines seek to provide for a fair opportunity and a transparent process for all stakeholders to effectively participate in the Inquiry. The guidelines will outline who may participate in the Inquiry and how they may submit information; the treatment of confidential information; the administrative activities of the Inquiry; and the powers available to the Commission, among other issues.
4. These guidelines will also be published on the Commission’s website (www.compcom.co.za/fresh-produce-market-inquiry/) and will become effective on the date of publication. The guidelines will however be reviewed from time to time to reflect any best practice that may develop or address any specific issue that arise during the inquiry. The public will be notified of any significant amendments to the guidelines, and the latest version will always be that appearing on the Commission’s website.

B. APPLICATION OF THE GUIDELINES

5. These guidelines only apply to the FPMI and not to other market inquiries that may be conducted by the Commission under Chapter 4A of the Act. The guidelines must be read in conjunction with the Act, the Commission Rules¹ as well as the TOR for the Inquiry, none of which are superseded by these guidelines.

¹ Rules for the Conduct of Proceedings in the Competition Commission, published in Government Notice No. 22025 in Government Gazette Vol. 428 on 1 February 2001.

6. Deviations from the guidelines will be at the discretion of the Chairperson who will be guided by the principles of fairness and justice and the need to facilitate the proper conduct of the Inquiry. An explanation for a deviation will be provided.
7. These guidelines do not bind the Competition Tribunal ("Tribunal") and the Competition Appeal Court ("CAC").

C. CONDUCT OF THE INQUIRY

8. In terms of section 43B(3) of the Act, the Commission may conduct the Inquiry in any manner, subject to the provisions set out in the Act. The Commission, as a public body and creature of statute, may only exercise its powers within the confines of the Act. Furthermore, the Inquiry must be conducted fairly and, as far as possible, openly in accordance with the Constitution and principles of administrative law.
9. The Commission is committed to the principles of fairness, transparency, and integrity and will conduct the Inquiry in accordance with these principles. The Commission will allow stakeholders a fair and reasonable opportunity to provide input into the Inquiry process and its outcomes.
10. The Commission may evaluate the subject matter of the Inquiry through a review of secondary material obtained via open sources (publicly available information), information requests, consultations with interested parties, research conducted by industry regulators or other public institutions, research undertaken and subsequently purchased from private firms and summons, as required.
11. For the purposes of the Inquiry, the methods that may be used for gathering information may include the following:
 - 11.1 Receipt of **Written Submissions** on the issues identified in the TOR;
 - 11.2 **Targeted Information Requests** to specific stakeholders;
 - 11.3 **Questionnaires and Surveys** to identified stakeholders or the general public;
 - 11.4 **Research Studies** including research papers, case law, case studies, and literature reviews drawn from a variety of domestic and comparative international sources;
 - 11.5 **Data Reviews** examining data or information gathered during the Inquiry;
 - 11.6 **Direct Consultations** including meetings, and in-depth interviews;
 - 11.7 **Public Consultations** including workshops and seminars;
 - 11.8 **Focus Group Discussions** with the relevant stakeholders;

- 11.9 **Site Visits** by arrangement with the relevant stakeholders; and
- 11.10 **Formal Public Hearings** taking into account written submissions by participants in order to provide information to the Commission on the issues to be addressed during the public hearings.
12. The submissions may be handwritten or typed. Anyone who is unable to write, or type may approach the Inquiry Technical Team for assistance in doing so. All relevant Forms and documents referenced herein are available on the Commission’s website. Anyone who does not have access to or has difficulty in completing any of the Forms or documents referenced herein may approach the Inquiry Technical Team for assistance in doing so. The relevant contact details for the Inquiry Technical Team are set out in paragraph 21 below.
13. Section 43B(3)(a) - (e) and section 43B(3A) of the Act regulates confidentiality, the powers of the Commission in the conduct of the Inquiry, as well as offences for non-compliance that apply to the Inquiry. In the conduct of the Inquiry, section 49A of the Act empowers the Commissioner to issue summons and interrogate, and to compel the production of books, documents and other objects which have a bearing on the Inquiry. However, section 43B(3)(b) of the Act excludes the power to enter and search premises in the conduct of the Inquiry.

D. ACTIVITIES AND ESTIMATED DURATION

14. The Inquiry will be conducted in accordance with the following phases:
- a. Phase 1: Pre-commencement phase;
 - b. Phase 2: Evidence gathering/investigation;
 - c. Phase 3: Public Hearings;
 - d. Phase 4: Reporting;
15. It is expected that the Inquiry will be completed on **1 October 2024**. The Commission may amend the time within which the Inquiry is expected to be completed by issuing a notice in the Government Gazette in terms of section 43B(5) of the Act.

E. WHO MAY PARTICIPATE IN THE INQUIRY?

16. The participants in the market inquiry process may include any role-player along the fresh produce value chain, such as input manufacturers, co-operatives, farmers, wholesalers,

processors, retailers, other related business enterprises, government departments, public entities, regulatory authorities, industry associations, and any other stakeholders that may be able to provide information relevant to the market inquiry. In particular, the following participants are encouraged to participate in the Inquiry process:

- a) **Members of the public** – any member of the public (individual or group) that has an interest in the Inquiry or is affected by the subject matter of the Inquiry;
- b) **Firms** – any designated representative of a business that has an interest in or is affected by the subject matter of the Inquiry;
- c) **Organised groups** – organised business fora, labour unions, civil society based organisations, industry bodies or any other bodies or institutions that have an interest in or are affected by the subject matter of the Inquiry;
- d) **Government** – government departments, regulatory authorities, public entities and any other organ of state or statutory body that has an interest in the Inquiry or is affected by the subject matter of the Inquiry.

F. METHODS OF PARTICIPATION

17. Anyone wishing to participate in the Inquiry may do so by making a written submission in response to the SOI as read with the TOR.
18. Anyone wishing to make oral presentation, in addition to their written submission, will be required to register in due course as set out below:

Written Submissions

19. The written submissions are required to be accompanied by Form “FPMI 1” which should include the information reflected in the Form.
20. Submissions may be made in any of the official languages.
21. The submissions may be hand-written or typed and must be sent to the Inquiry Technical Team by email, post or hand delivered to the following addresses:

Attention: Mr. Ruan Mare

Technical Director of the Fresh Produce Market Inquiry
Competition Commission of South Africa

Postal Address:

The Competition Commission,
Private Bag x23,
Lynwood Ridge,

Pretoria
0040

Physical Address for hand deliveries:

THE DTI CAMPUS
Block C, Mulayo Building, 3rd Floor
77 Meintjies Street
Sunnyside,
Pretoria,
0002

Email: freshproduceinq@compcom.co.za / ruanm@compcom.co.za

Contact Number: +27 (0)12 010 5499

22. Submissions that are hand delivered to the above address must be delivered between the hours of 08:30 and 15:30 on weekdays.
23. Anyone wishing to have his or her identity protected must indicate so in the Form "FPMI 1" and should attach a motivation for the request.

Meetings (Physical or virtual)

24. The Commission may hold meetings with key stakeholders in the market during the course of Inquiry. The Commission may exercise its discretion to determine which participants these meetings will be held with. Meetings may occur at physical locations or take place virtually on a suitable platform (but preferably Microsoft Teams).

Public Hearings (Physical or virtual)

25. The Commission will hold public hearings which will be open to the members of the public. Where appropriate, the Chairperson may allow some flexibility in the process in order to achieve the desired purpose and to avoid any infringements of the rights of any participant in the hearing, and to ensure that the hearings are conducted expeditiously and in accordance with the rules of natural justice.
26. The Panel enjoys inquisitorial powers to examine and interrogate the information that is placed before it.
27. The public hearings will take place at different venues across South Africa to accommodate, as far as possible, the different stakeholders to this Inquiry.

28. In order to qualify to make oral submissions at public hearings, participants must submit written submissions first in order to provide information to the Commission on the issues to be addressed during the public hearing. Interested participants can indicate their intention to participate in the public hearings on the Form "FPMI 1".
29. As the time available for the public hearings is limited, it may not be possible to guarantee that everyone who has expressed their interest to make an oral presentation will be able to do so. The Commission may exercise its discretion to determine which participants may participate in the public hearings in support of their written submission. One of the issues which may be taken into consideration in the exercise of its discretion is the extent to which an oral presentation may help to clarify or resolve any issues raised by the written submissions.
30. A hearing notice detailing the date, venue and the intended participants in the public hearing will be published on the Commission's website within a reasonable period prior to the hearing, and the relevant participants will also receive such notice.
31. There is no charge for making a written submission or for attendance or participation at the public hearings. The public hearings will be conducted mainly in English. However, to cater for the other official languages, an interpretation service will be made available if a request has been made for such a service in the written submission to the Commission or indicated on Form "FPMI 1".
32. All the Inquiry proceedings will be recorded, and all recordings will be the property of the Commission, subject to the provisions of the Act. The Inquiry proceedings will also be transcribed, and the transcripts will be the property of the Commission, subject to the provisions of the Act.
33. The Commission may make available a running transcript of the proceedings subject to the requirements of confidentiality and verification.

Pre-hearing conferences

34. The Commission may decide, at its own discretion, to conduct pre-hearing conferences with participants, in order to:
 - a. establish procedures for protecting confidential information, including the terms under which participants may have access to that information;
 - b. establish who will represent the participants at the hearings and the language in which each witness will testify;
 - c. determine the procedure to be followed at the hearing, and its expected duration

- d. establish a date, time and schedule for the hearing;
 - e. give directions in respect of technical or formal amendments to correct errors in any documents filed by participants;
 - f. identify issues in dispute and those that are common cause as between particular participants;
 - g. clarify and simplify the issues;
 - h. obtain admissions or confirmations of particular facts, documents or issues by particular participants;
 - i. determine when documents will be produced or delivered, whether formally or informally, if applicable; and
 - j. otherwise assist in expediting the Inquiry proceedings.
35. After concluding a pre-hearing conference, the Commission will issue minutes recording any agreements arising from matters considered at the pre-hearing conference.
36. The Commission may request that a further pre-hearing conference take place, if they deem it necessary to clarify any further issues prior to the proceedings. The provisions of these guidelines on pre-hearings shall similarly apply to a further pre-hearing conference.

G. ADMINISTRATIVE RULES FOR THE PUBLIC HEARINGS (PHYSICAL OR VIRTUAL)

37. A written submission is a pre-requisite for making an oral presentation at the public hearings. However, parties who fail to register with the Commission prior to the closing date for registration may be permitted to make an oral presentation. This will be subject to time availability and will be at the Commission's discretion.
38. Electronic copies of the visual presentations and/or copies of such material to be introduced at a hearing must be submitted at least five (5) business days prior to the hearing.
39. Each party making an oral presentation will only be permitted to do so once, unless the Commission, in its discretion, determines that a party needs to be allowed a further opportunity at another time.
40. In general, 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 wish to call in support of their submissions.

H. CONDUCT OF PUBLIC HEARINGS (PHYSICAL AND/OR VIRTUAL)

41. At a hearing, the Commission may:
- a) Require any person to answer questions under oath or affirmation;
 - b) Accept oral submissions from any participant;
 - c) Accept any other information that is submitted by a participant; and
 - d) Perform any other act contemplated by the relevant sections in the Act.
42. The Inquiry will be holding hearings in public with key stakeholders in the market, but *in-camera* hearings may also be held where necessary and relevant. The public hearings will require stakeholders to make submissions in open session that do not contain any confidential information. However, in order to accommodate stakeholders who require to make submissions that contain confidential information, and which cannot be dealt with adequately through confidential written submissions or other arrangements, the Inquiry will also make provision for such submissions to be made *in-camera*.

In camera sessions

43. During *in-camera* sessions, no member of public will be allowed to listen to, or sit in the venue or virtual platform, whichever is applicable. In a case of virtual platform, there will be confidential and public hearing links which will be circulated before commencement of public hearings. Importantly, in respect of virtual hearings, the public hearings will always commence on the public hearing links.
44. The Chairperson of the Inquiry or member of the Inquiry's Technical Team will notify members of public when *in-camera* sessions begin to allow third parties to exit the venue or for the relevant stakeholders to join the confidential link on the virtual platform. Once submissions of confidential information have been concluded, the Chairperson or member of the Inquiry's Technical Team will make an announcement for members of the public to be allowed into the venue, or switching to the public hearing links.
45. The confidential submissions may include submissions of an expert economic or legal nature that traverses confidential information in its analysis. Participants will be permitted to first make their presentation followed by questions from the Inquiry Panel and Technical Team. Presentations should focus on the confidential aspects and not traverse general points that should have been made in the public hearings.

46. Stakeholders need to ensure that suitably informed business and organizational representatives are present to answer questions from the Inquiry Panel and Technical Team on the main areas covered by the confidential submissions. Where expert economic or legal submissions are made, the experts need to be present to answer questions from the panel or technical team.

I. SUMMONS

47. The Commission may use its powers in terms of section 49A of the Act to summons persons, including individuals and organisations, to appear before the Inquiry and to produce any relevant book, document or other object specified in the summons.

48. Individuals and organisations summonsed may allow their legal representatives to make representations on their behalf.

49. A representative acting on behalf of any individual and organisation in any proceedings must notify the Commission in advance of the following particulars:

- a) the representative's name;
- b) their designation or formal authority;
- c) their postal address and physical address of employment or business; and
- d) their an email address and telephone number.

J. HANDLING OF INFORMATION AND DATA

Voluntary disclosure

50. It is the Commission's aspiration to solicit information from parties voluntarily, through written submissions, questionnaires, requests for information, testimony and other such means.

Testimony during hearings

51. Every person giving oral testimony in the public hearings will either be sworn in or required to make an affirmation. Every person testifying should answer any question fully and to the best of that person's ability.

52. Sections 49A(3); 72; 73(2) d) and (f) of the Act, which relate to the summons procedures; a failure to answer fully truthfully; a failure to comply with the Act by knowingly providing false information to the Commission and wilfully interrupting the proceedings or

misbehaving when a hearing is being conducted, shall be applicable to all witnesses during the Inquiry proceedings.

Confidential information and information disclosure

53. Information management during the Inquiry is guided and bound by procedures related to confidentiality in sections 43B(3A), 44, 45 and 45A of the Act and Commission Rules 14 and 15 to the extent applicable.
54. Parties have the right to claim confidentiality over any information that is claimed to be confidential in nature. Any confidentiality claim must be supported by a written statement and annexure in the prescribed form "CC7". The Competition Commission may, within 20 business days of receipt of information claimed as confidential in terms of section 44(1), determine whether or not the information is confidential information. It is important in this regard to bear the following in mind:
 - a) Only trade, business or industrial information that belongs to a firm, that has a particular economic value and is not generally available to or known by others is entitled to protection as confidential information in accordance with the Act. Firms who claim confidentiality may be requested to motivate how their information complies with these requirements when necessary;
 - b) A claim of confidentiality is binding on the Commission during the conduct of the Inquiry, subject to Sections 43B(3A) and 44.
 - c) The Commission may request a party to submit two versions of their submissions: one confidential version for the Commission and the Commission only, and a non-confidential version which omits any confidential information, which may be disclosed to the public.
55. Access to confidential information and/or documents submitted to the Inquiry shall be in accordance with the provisions stipulated in sections 43B(3A) and 45 of the Act and Commission Rules 14 and 15.
56. Where information is subject to a claim of confidentiality, the Commission may with the written consent of the owner of such information, allow specified third parties such as legal representatives and/or independent experts appointed by stakeholders to view and assess the confidential information subject to confidentiality undertakings by the parties concerned.
57. Any party who seeks access to information that is subject to a confidentiality claim may apply in the prescribed manner and form to the Tribunal, as stipulated in section 45 of the

Act. Equally, the party with confidentiality claims may appeal an unfavourable ruling at the Competition Appeal Court.

58. The Commission may use confidential information in making decisions, in a manner that does not prejudice a party's claim to confidentiality as provided for in sections 43B(3) and 45A of the Act.

K. CONCLUSION OF THE INQUIRY

59. In terms of section 43B(6), the Commission must complete the Inquiry by publishing a report contemplated in sections 43D and 43E, within the time frame stipulated in the Terms of Reference, unless amended in terms of section 43B(5).
60. Prior to publishing its final report, the Commission may periodically publish progress reports to inform the public of the progress and the direction of the Inquiry. These provisional reports may be published on the Commission's website. The provisional reports will be available for stakeholders' comments. The Commission will review the comments, and if necessary, request further interviews, information or data before finalising the report.
61. In accordance with section 43E, the Inquiry may produce any number of recommendations, including but not limited to the following:
- a) Publication of information to help consumers;
 - b) Encouragement of firms to take voluntary action;
 - c) Promotion of a customer or industry code of practice;
 - d) Recommendations to Government or other regulators on new or amended policy, legislation or regulations; or
 - e) Initiation of further investigations or of immediate enforcement actions against a particular firm or firms.



**REGISTRATION FORM FOR WRITTEN AND/OR ORAL
SUBMISSIONS**

Form FPMI 1

About this form

This is a registration form issued pursuant to the Guidelines for Participation in the Fresh Produce Market Inquiry.

The form is to be completed by parties making written submissions and parties wishing to make an oral presentation at a public hearing.

FPMI contact

Tel: 012 394 3200 / 012 010 5499

Email:
freshproduceinq@compcom.co.za

Postal address:

The FPMI,
Private Bag x23,
Lynwood Ridge,
Pretoria
0040

Physical delivery:

The FPMI,
The DTI Campus,
Mulayo (Block C),
77 Meintjies Street,
Sunnyside,
Pretoria,
0002

Details of person making submission:

Name and Surname: _____

Name of Organisation or Entity: _____

Email address: _____

Contact number: _____

Physical/Postal Address: _____

Could your submission adversely affect any other firm or individual?

Please provide details of such firm or individual:

Does your submission contain any confidential information?

If yes, please also file **Form CC7 & its annexure**

Yes No

Do you require interpretation services?

Yes No

If yes, please indicate desired language: _____



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Do you intend to make oral submissions in public hearings?

Yes No

If yes, please provide an estimate of the time required for a public oral presentation (minutes/hours/days): _____

Do you intend to make oral *in camera* (confidential) submissions at the public hearings?

Yes No

If yes, please provide an estimate of the time required for an oral *in camera* presentation (minutes/hours/days) separate from any submissions made in public : _____

(Please note, the below does not replace written/oral submission and must be completed in addition to any written/oral submissions. The purpose of the below is to provide a brief summary of the main submission).

Main focus/topic of written submission:

Summary of the written submission:



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0002

Main focus/topic of oral submission:

Summary of the oral submission:

Representative authorised to present at public hearings
(name, organisation, designation, contact details):