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FRESH PRODUCE MARKET INQUIRY

STATEMENT OF ISSUES

FINAL

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SECTION A: INTRODUCTION

- 1.1. On 25 March 2022 the Competition Commission (“the Commission”), in the exercise of its powers under section 43B of the Competition Act 89 of 1998 as amended (“the Act”), published a notice that it would conduct a market inquiry into the South African Fresh Produce Market (“the Inquiry”), as well as the draft Terms of Reference for the Inquiry. Public comments were invited, received and considered on the proposed Terms of Reference. Following further individual engagements with a wide range of stakeholders in the fresh produce sector, the Commission published the final terms of reference on 14 February 2023.
- 1.2. The Commission has appointed an internal panel of experts to conduct the Inquiry on its behalf. The names and particulars of the Panel are set out on the website of the Commission.
- 1.3. The Commission takes as its point of departure the final Terms of Reference. This Statement of Issues must be read in conjunction with the final Terms of Reference and is not intended to restrict or expand the scope of the Inquiry contemplated therein.
- 1.4. In this Statement of Issues, the Commission sets out a framework for approaching the Inquiry in order to assist participants to focus on issues the Panel envisages being most relevant to answering the questions arising from the Terms of Reference. What is set out in this statement reflects the Commission’s initial view of the appropriate framework for the conduct of the Inquiry.
- 1.5. What must be emphasised is that the points raised in this statement are intended to be topics for consideration and do not represent any settled views or findings of the Commission. As the Inquiry progresses further, the Commission may add issues for consideration.

The general task of the Commission

- 1.6. In initiating the Inquiry, the Commission stated that it has reason to believe that there may be adverse effects on competition in the fresh produce value chain from features that may impede, restrict or distort competition.

- 1.7. The Commission construes “features” to mean any notable characteristics of a market, particularly its structure, its interconnections with other markets, and the conduct of the participants within it.

Inquiry Scope

- 1.8. The Inquiry will focus on particular issues at each layer of the fresh produce value chain. Specifically, the scope of the Inquiry will cover aspects from the production of fresh produce by the farmer to the sale thereof to customers (such as the retailer, processor or export market). Where necessary, the perspective of the end-consumer may also be considered.
- 1.9. In light of the public comments and further stakeholder engagements on the published draft Terms of Reference, it became apparent that the interaction of particularly retailers, and to some extent end consumers, cannot be excluded from consideration in the Inquiry. In the same vein, the dynamics of the fresh produce processing market(s) cannot be excluded from the Inquiry.
- 1.10. However, in order to curtail the duration of the Inquiry, some limitation is required. To this end, where concerns and market features are specific to certain fresh produce, the Inquiry will only focus on those types of produce, alternatively on the largest and most important fresh produce items (whether by volume, revenue or social impact).
- 1.11. As indicated above and consistent with section 43B of the Act, the purpose of the Inquiry is to identify whether any adverse effects on competition are present in the fresh produce value chain which result from features that impede, restrict or distort competition. This purpose is also consistent with the broader purpose of the Act which, in line with section 2 thereof, 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; and*
- (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 impede, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic.*

1.12. The Commission has identified three broad themes which cover the features that may impede, restrict or distort competition and market outcomes. The themes are as follows:

- 1.12.1. ***Efficiency of the value chain, with an emphasis on the dynamics around fresh produce market facilities.*** This theme stems from concerns from stakeholders that the value chain, particularly at the level of the National Fresh Produce Markets (“NFPMs”), is inefficient and uncompetitive. A specific focus will be around the competition dynamics prevalent at NFPMs and other contracting means (such as direct contracting) which may affect competitive dynamics;
- 1.12.2. ***Market dynamics of key inputs and its impact on producers.*** Specific aspects relating to key inputs (such as seeds, fertiliser and agrochemicals) that will be considered under this theme are concentration levels, price discrimination (if any), buyer power and exclusivity. This theme is focused on the upper end of the fresh produce value chain; and
- 1.12.3. ***Barriers to entry, expansion and participation.*** The Inquiry will consider the barriers to entry, participation and expansion in the fresh produce value chain. Specific consideration will be given to the barriers faced by small, medium and micro enterprises (“SMMEs”) and firms owned or controlled by historically disadvantaged persons (“HDPs”). In addition, a broader regulatory framework will be considered. Where required, this may include consideration of specific pieces of legislation and the regulation conducted by other regulatory/governmental bodies in relation to such legislation.

- 1.13. The Commission wishes to emphasise that these themes and the potential harm discussed thereunder are not findings but serve only as a *starting point* in the analysis. Their identification does not in any way imply that the Commission has reached views on whether they apply. In addition, their identification in this statement does not preclude the Commission from finding harm to competition on other grounds. The specific theories of harm may thus evolve during the course of the Inquiry. Seen in this context, they are tools that guide the Inquiry. They are questions that the Inquiry will explore. The full Terms of Reference is available on the Inquiry page on the Commission's website at <https://www.compcom.co.za/fresh-produce-market-inquiry/>.

Invitation for written submissions

- 1.14. In releasing this Statement of Issues, the Inquiry invites market participants and other interested parties (collectively "stakeholders") to provide views and information on the operation of fresh produce value chain in South Africa.
- 1.15. To guide the provision of views and the submission of information, a set of annexures is included at the end of this document. Each annexure covers a different topic and poses certain questions in relation to that topic only. All stakeholders are requested to respond to Annexure 1, and further only to those annexures that are relevant to their business or area of operation.
- 1.16. Wherever possible, it is requested that reasons for views as well any evidence available be provided to support the views expressed. Reasons and evidence provide a stronger basis for the Inquiry to take account of the views expressed. **It is also requested that stakeholders ensure that it is clear from the response which annexure and question is being responded to. Further, insofar as possible and for ease of reference, it is also requested that the same numbering in a response is adopted as in the relevant annexure.**
- 1.17. Submission to the Inquiry may be made in the form of a public or confidential submission, noting that the Inquiry is a public process and that, in general, submissions will be placed on the Inquiry's website to allow for public consultation (see section below on treatment of confidential information). Stakeholders are encouraged to consult with the Commission team before providing a confidential submission if a stakeholder has

any questions at all regarding the Inquiry's processes for dealing with confidential information.

- 1.18. Written submissions to this Statement of Issues should be emailed to freshproduceinq@compcom.co.za by 17h00 on 02 May 2023.
- 1.19. In addition, the Inquiry will also directly contact some market participants to request specific information of relevance to the issues within the scope of the Inquiry.
- 1.20. The full Guidelines for Participation in the Inquiry are available on the Inquiry page of the Commission's website.

Treatment of confidential information

- 1.21. 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 Rules 14 and 15 of the Rules for the Conduct of Proceedings in the Competition Commission ("the Commission Rules") to the extent applicable.
- 1.22. Parties have the right to claim confidentiality over any information that is claimed to be confidential in nature. The Act defines "confidential information" as "*trade, business or industrial information that belongs to a firm, has particular economic value, and is not generally available to or known by others*". Any confidentiality claim **must** be supported by a written statement in the prescribed form "CC7" and **must** be accompanied by the relevant annexure in order to constitute a valid claim. The parties must identify the confidential information in this annexure and provide an explanation to the Inquiry as to why the information is considered confidential taking into consideration the above definition.
- 1.23. 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. Where information is subject to a claim of confidentiality, the Inquiry 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 in line with section 44(9) of the Act.

- 1.24. Any party who seeks access to information that is subject to a confidentiality claim may apply for access to same as stipulated in sections 44 and 45 of the Act. Equally, the party with confidentiality claims may appeal an unfavourable ruling to the Competition Tribunal or the Competition Appeal Court as the case may be.
- 1.25. The Inquiry 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.

SECTION B: INQUIRY SCOPE AND RELATED ISSUES FOR SUBMISSIONS

- 2.1 The final Terms of Reference provides a brief and general overview of the South African fresh produce value chain.. The final Terms of Reference can be accessed on the Commission's website at <https://www.compcom.co.za/fresh-produce-market-inquiry/>.
- 2.2 The final Terms of Reference also set out three themes for further evaluation by the Inquiry. This section of the Statement of Issues provides some context to each of those areas of evaluation, and then sets out specific issues that the Inquiry would want to receive submissions from stakeholders.
- 2.3 The annexures at the end of this document should thus be read in conjunction with this section. Each annexure contains a set of questions to guide the submission of views and information. All stakeholders are requested to respond to Annexure 1 and further only to those annexures that are relevant to their business or area of operation.

Criteria for selecting certain fresh produce commodities

- 2.4 As indicated above, in order to curtail the duration of the Inquiry, some limitation is required. Given the large number of different produce (fruits and vegetables) which constitutes the fresh produce sector it may not be feasible to assess all of the products individually in relation to all aspects.

2.5 The Inquiry's starting point will be to consider fresh produce in general, which includes all traded commodities. Particular focus may however be placed on certain types of commodities where necessary, according to the following criteria:

- 2.5.1 An upfront and broad delineation between fruit and vegetables;
- 2.5.2 Top share of gross production value in Rands for vegetables and fruits (separately);
- 2.5.3 Top revenue share for vegetables and fruits (separately) when traded at NFPMs or through direct contracting means;
- 2.5.4 Available data and research;
- 2.5.5 Consumption rates;
- 2.5.6 The potential for participation by SME and HDP firms; and
- 2.5.7 The current and potential relevance for exports.

2.6 Accordingly, the Commission has identified the following commodities which may receive particular focus.

i) Fruits

2.7 In applying the above criteria, the Commission noted the following (non-exhaustive) facts in relation to fruits:

- 2.7.1 South Africa exported 65% of its total fruit production in the 2020/2021 season, utilised 24% for processing and 11% for local consumption;¹
- 2.7.2 In terms of production volumes, citrus (as a broad category) accounted for 55% of total South African fruit production, pome and stone fruits for 34%, table grapes for 6% and nuts and other exotic fruits for 5%;²
- 2.7.3 In terms of production value in the 2020/2021 season (in Rands), table grapes accounted for 26% of total value, followed by oranges (18%), apples (14%),

¹ Fruit SA, 2022, *2020/2021 Key Fruit Statistics*.

² Fruit Farming in South Africa, last accessed at <https://southafrica.co.za/fruit-farming-south-africa.html> on 6 March 2023.

soft citrus³ (12%), lemons & limes (8%) and pears (6%);⁴

- 2.7.4 In terms of production volumes for the 2020/2021 season (in tons), oranges accounted for 27% of production, followed by apples (21%), lemons & limes (11%), soft citrus (11%) and pears (8%). Whilst largest in terms of production value (at 26%), table grapes only accounted for 6% of production volume;⁵
- 2.7.5 Citrus exports exceeded wine as the largest agricultural export in 2010. By 2020 citrus exports were equal to two and a half times the value of wine exports. Apples and pears are also a strong commodity for export purposes as exports valued about US\$6 million (cumulatively) in 2020;⁶
- 2.7.6 In terms of citrus exports in 2021, oranges make up the largest commodity (by volume) with more than 1.17 million tons exported. This is followed by apples (nearly 560 000 tons exported), soft citrus (476 000 tons), lemons & limes (over 461 000 tons), table grapes (over 320 000 tons), grapefruit (over 255 000 tons) and pears (nearly 230 000);⁷
- 2.7.7 Data on actual consumption patterns in South Africa is limited with only two national consumption surveys being noted: one conducted in 1999 and another in 2005. The findings indicated that increases in fruit consumption were driven mainly by bananas, apples and grapefruit;
- 2.7.8 In terms of annual consumption of fresh fruits for 2020/2021, apples appear to be the most consumed fruit (at 3.27 kg/pp), followed by oranges (1.6 kg/pp), avocados (1.6 kg/pp), pears (0.86 kg/pp) and soft citrus (0.78 kg/pp);⁸
- 2.7.9 In terms of existing support programmes for SME and/or HDP producers, efforts exist in relation to citrus and deciduous fruits;⁹ and

³ Soft citrus comprises a sub-section of citrus because of their typically loose skins. They usually include mandarins, clementines, satsumas and tangerines. Oranges, lemons, limes and grapefruits are not regarded as soft citrus.

⁴ Extrapolated from Fruit SA, 2022, *2020/2021 Key Fruit Statistics*, p2.

⁵ Ibid.

⁶ IDTT Policy Brief, 2021, *Industry associations as growth coalitions: Lessons from South Africa's citrus industry 'we need to talk about citrus!'*, p1.

⁷ Fruit SA, 2022, *2020/2021 Key Fruit Statistics*, p2.

⁸ Fruit SA, 2022, *2020/2021 Key Fruit Statistics*, p25.

⁹ Who Owns Whom, 2021, *The Fresh Fruit and Vegetable Industry*, pp45-48. Deciduous fruits are mainly stone fruits (e.g. peaches, plums, apricots) and pome fruits (e.g. apples and pears).

2.7.10 The Agriculture and Agro-Processing Master Plan identifies the following fruits groups for increased production growth: grapes, pome fruits, citrus and avocados.¹⁰

ii) *Vegetables*

2.8 In applying the above criteria, the Commission noted the following (non-exhaustive) facts in relation to vegetables:

2.8.1 In 2020, potatoes accounted for 42% of gross production value for vegetables in South Africa, followed by sweetcorn (26%), tomatoes (12%), onions (8%) and carrots (3%);¹¹

2.8.2 In terms of growth over the last five years, the average annual growth in production value over the past five years was 7% for potatoes, 13% for sweetcorn, 9% for tomatoes and 6% for onions;¹²

2.8.3 Potatoes, onions and tomatoes account for the majority of vegetables produced in South Africa. In 2018-2019 South Africa is estimated to have produced 2.48 million tons of potatoes; 724,000 tons of onions; and 558,000 tons of tomatoes;¹³

2.8.4 As of February 2022, the top four grossing produce items sold at NFPMs (in Rand value) were potatoes (21%); tomatoes (11%); bananas (11%); onions (8%); other fruits (30%); other vegetables (19%) across a total of R1.49 billion;¹⁴

2.8.5 As indicated above, data on actual consumption patterns in South Africa is limited. Nonetheless, the available studies for indicate that consumption of potatoes, tomatoes and onions increased.¹⁵

¹⁰ Agriculture and Agro-Processing Master Plan, May 2022, p43.

¹¹ BFAP, 2020, *BFAP Baseline Agricultural Outlook 2020 – 2029*, p.81; Who Owns Whom, 2021, *The Fresh Fruit and Vegetable Industry*, p10.

¹² Who Owns Whom, 2021, *The Fresh Fruit and Vegetable Industry*, p10.

¹³ Who Owns Whom, 2021, *The Fresh Fruit and Vegetable Industry*, p12.

¹⁴ NAMC, 2022, *Smallholder market access estimates – February 2022*, p1.

¹⁵IFT, 2016, Food Technology Magazine August 2016 Volume 70 No 8, *Food Consumption Changes in South Africa since 1994*, last accessed at <https://www.ift.org/news-and-publications/food-technology->

- 2.8.6 In terms of assessing the mix of vegetable commodities identified above, reliable data for sweetcorn may be limited and has been noted as a highly seasonal commodity. Trading at a retail level appears to be largely directed to informal markets (hawkers, small vendors and roadside sales). In comparison, data for carrots do not appear to face similar constraints, is not as seasonal as sweetcorn and ranks as the fifth most traded commodity; and
- 2.8.7 The Agriculture and Agro-Processing Master Plan identifies potatoes for increased production growth.¹⁶

iii) *Commodity selection*

- 2.9 Accordingly, the Commission has identified the following products which may be receive particular focus in cases where a general consideration is not feasible:
- 2.9.1 Fruits: apples, citrus (particularly oranges and soft citrus), bananas, pears and table grapes;
- 2.9.2 Vegetables: potatoes, onions, carrots, cabbage, tomatoes and spinach.¹⁷
- 2.10 In terms of market coverage, the above selection of fruit commodities represent the following:¹⁸
- 2.10.1 At least 72% of total production by volume for 2020-2021;
- 2.10.2 At least 75% of total production value for 2020-2021; and
- 2.10.3 At least 67% of sales by volume at NFPMs in 2019.
- 2.11 In terms of market coverage, the above selection of vegetable commodities represent

[magazine/issues/2016/august on 6 March 2023](#); Department of Health, 2007, *National Food Consumption Survey – Fortification Baseline (NFCS-FB): South Africa, 2005*.

¹⁶ Agriculture and Agro-Processing Master Plan, May 2022, p43.

¹⁷ For purposes of the Inquiry, tomatoes will be considered as a vegetable (from a consumption/culinary point of view) and not as a fruit (from a botanical perspective).

¹⁸ Extrapolated from Fruit SA, 2022, *2020/2021 Key Fruit Statistics*, p2. The dataset excludes bananas and, as a result these figures are all understated. The dataset however evaluated a total of 18 fruits/fruit types. Despite bananas being absent from this dataset, other data indicates that bananas alone accounted for 11% of total revenue generated in February 2022 across NFPMs and was also the most traded *fruit* on the fresh produce market system – NAMC, 2022, *Smallholder market access estimates – February 2022*, pp1, 10-11.

the following:¹⁹

2.11.1 About 83% of sales at NFPMs in 2019; and

2.11.2 In 2019, potatoes was the largest traded agricultural product across the major NFPMs (with 46% of total volumes), followed by onions (16%), tomatoes (11%), carrots (5%) and cabbage (5%).

2.12 As a further indication of whether the selection is appropriate the following provinces will be covered, from a major production perspective:

Table 1: Provinces where selected commodities are primarily produced ²⁰

COMMODITY	PROVINCE(S)
FRUITS	
Apples	Western Cape, Eastern Cape
Citrus (oranges & soft citrus)	Limpopo, Eastern Cape, Western Cape (oranges) Mpumalanga, Eastern Cape (soft citrus)
Bananas	Mpumalanga, KwaZulu Natal
Pears	Western Cape
Table grapes	Western Cape, Northern Cape
VEGETABLES	
Potatoes	Free State, Limpopo, Northern Cape, Western Cape
Onions	Western Cape, Limpopo, Free State
Carrots	Gauteng, North West
Cabbage	KwaZulu Natal, Gauteng
Tomatoes	Limpopo

2.13 The above focus will span all levels of the value chain where necessary. For example, if product-specific characteristics are present for the input level, inputs for the above products will be prioritised for consideration.

¹⁹ Who Owns Whom, 2021, *The Fresh Fruit and Vegetable Industry*, p14; NAMC, 2022, *Smallholder market access estimates – February 2022*, pp3, 4 & 9. The dataset specified 19 different vegetable commodities with the remainder making up about 4%. The dataset does not contain disaggregated data for spinach. However, spinach remains a strategic commodity in terms of production and importance to particularly low-income consumers.

²⁰ Stats SA, 2020, *Fact sheets: Census of Commercial Agriculture 2017*, pp3-11. Table 1 does not include all provinces where a commodity is produced in every instance, but focusses on provinces with the largest production volumes (per metric ton).

- 2.14 Notwithstanding the above, should stakeholders identify any issue discussed herein in relation to a product not mentioned above, the Inquiry may include consideration of that product in relation to such specific issue.
- 2.15 Given that the Inquiry covers a number of different themes, stakeholders are requested to only respond to the annexures which are relevant to them. **All stakeholders are requested to respond to Annexure 1 and further only to those annexures that are relevant to their business or area of operation. Stakeholders are also requested to kindly ensure that it is clear from their response which annexure and question they are responding to and, insofar as possible and for ease of reference, to kindly follow the same numbering as adopted in the annexures.**

Stakeholder identity and scope of submission

- 2.16 The Inquiry covers a variety of themes within the South African fresh produce market and requires submissions from a wide variety of stakeholders at all levels of the value chain. Those stakeholders include input suppliers, producers (growers/farmers), wholesalers and intermediaries, processors, retailers, consumers, academia, non-profit organisations, representatives of civil society, regulators and government.
- 2.17 For this reason, the Inquiry requires some information on the stakeholder and the scope of their submission to contextualise the submission and enable potential follow-ups by the Inquiry on any submission made. It is therefore paramount that each stakeholder who makes a submission in terms of this Statement of Issues, submits responses in line with Annexure 1 (see below).
- 2.18 The Inquiry also appreciates that some stakeholders may want their identity to remain confidential. Stakeholders are thus requested to indicate if they want their identity to remain confidential, failing which the Inquiry will assume that no such need exists. Stakeholders indicating a desire for confidentiality of their identity are asked to still provide contact details so that the Inquiry team can engage in any follow up if required.

Theme 1: Efficiency of the value chain, with an emphasis on the dynamics around fresh produce market facilities

- 2.19 Drawing on evidence of large farm-retail spreads, evidence of unexpected pricing results in municipal markets and large retailers establishing contracts directly with the largest farmers, there is clear concern that the fresh produce value chain may be inefficient and uncompetitive.
- 2.20 A review of the fresh produce value chain indicated that there could be certain features that hinder competition or distort outcomes in these markets as prices were found to vary considerably across the different markets which were not explained by market size or logistics costs.²¹ These unexplained outcomes could be evidence of inefficiencies or competition concerns across different parts of the value chain.
- 2.21 Whilst a full efficiency assessment of the entire value chain falls beyond the scope of the Inquiry, the NFPMs (which accounts for roughly 22% of all fresh produce trading in South Africa)²² has been identified as a key level of the fresh produce value chain.²³ The Inquiry will seek to understand the competition dynamics prevalent at NFPMs including the wide disparity in pricing across NFPMs nationally and other contracting means which affect competitive dynamics.

Fresh produce markets facilities / NFPMs as a route to market

- 2.22 The effectiveness of municipal fresh produce markets is a key area of consideration of the Inquiry. Fresh produce is produced nationally, and some sold through the local fresh produce markets in different cities and towns in South Africa. The daily price of fresh produce is dependent on the daily supply and demand at each market. In 2019 the NFPMs sold 3.4 million tons of fresh vegetables and fruits with an annual turnover

²¹ Competition Commission of South Africa, 2020, *Essential Food Pricing Monitoring Report, September 2020*.

²² Hortidaily, 2020, *Johannesburg Market: biggest fresh produce trading floor in Africa*.

²³ The key input markets for growers which have been identified are seeds, fertilisers and agrochemicals (herbicides, fungicides and pesticides) because it appears that high prices in these input markets tend to get passed down through the value chain. Accordingly, the Inquiry will consider these inputs in depth under Theme 2 below.

of around R17 billion. The total revenue of the fresh produce markets is estimated to have increased and reached R19 billion for the 2020 year.²⁴

- 2.23 NFPMs are two-sided markets where the benefit to one side of the market depends on the size of the user base on the other side of the market. For example, the benefit to producers at these NFPMs typically depends on the volume of buyers on the other side of the platform which they can access for sales. Similarly, buyers are attracted to a NFPM where the range of producers present provides the range, convenience and comparison benefits associated with platform aggregation. Accordingly, it may be theorised that the NFPMs will function optimally when the number of producers equal the number of buyers, and all parties have near-perfect information of both price and volume.
- 2.24 Previous Commission studies have shown a high degree of pricing variation across the NFPMs. For example, a staple like onions that are grown in most regions in South Africa have shown significant pricing variations across the four big fresh produce markets (Tshwane, Johannesburg, Cape Town and Durban). In October 2020, the Johannesburg market (at R7,14 per/kg) had the cheapest average price while the highest price was in the Cape Town market at R7,93 per/kg.²⁵ This is in line with the Commission's previous research which found some markets are more volatile than others with no clear explanation as to why.
- 2.25 The Commission has observed similar price variations across the smaller NFPMs (Bloemfontein, Port Elizabeth, East London, Pietermaritzburg and Springs), where there are significant price differences for potatoes. For instance, in October 2020, the average monthly price was the cheapest at the Springs market at R7.25 per/kg while the most expensive price was at the East London market at R8.46 per/kg. The significant differences in these average prices even across similar sized markets (along with the much greater levels of variation when considering daily data)²⁶ may be indications of an inefficient market.

²⁴ Hortidaily, 2020, *Johannesburg Market: biggest fresh produce trading floor in Africa*.

²⁵ Competition Commission of South Africa, 2020, *Essential Food Pricing Monitoring Report, September 2020*.

²⁶ Ibid.

- 2.26 Market outcomes, however, may not necessarily be optimal or competitive if there are structural features which hinder competition or distort outcomes. For example, if a fresh produce market facility has low levels of liquidity, this could increase volatility in that market facility and distort price signals (which are undesirable in and of themselves) and make it easier for larger traders in those markets to manipulate outcomes. Smaller fresh produce market facilities may see higher prices or greater price volatility which could make these smaller market facilities more susceptible to possible manipulation.
- 2.27 The Inquiry seeks to understand whether these market facilities function optimally and whether they provide the desired outcomes for farmers as well as buyers. In this regard, the Inquiry will explore whether the price setting mechanisms and the resultant prices achieved at these markets are competitive or susceptible to market manipulation by various role players operating in this space.
- 2.28 Furthermore, the nature of fresh produce is that it is perishable. This means there are challenges in getting the product to market, both in terms of how the products are transported across the value chain to end-users, but also how the product changes hands at different points in the value chain. The perishable nature of the product also leads to challenges in terms of wastage and spoiling. A large portion of fresh produce is also produced at a considerable distance from the consumption market making the nature and efficiency of the value chain more important. Modern, fast transport networks and sophisticated cooling, freezing, and logistics technologies have transformed the fresh food market to be able to enjoy fresh foods from any part of the world, all year round. However, fruit and vegetables are delicate products, and the temperature control and gentle handling of these sensitive foodstuffs are critical to retaining their quality.
- 2.29 Accordingly, the Inquiry will consider the costs farmers incur from farm gate to market relating to storage, grading, packaging, and transportation of their produce to the markets as well as any onward logistics fees incurred. Given evidence around farm-retail pricing spreads, and the apparent lack of use of rail transport, there are also questions over the efficiency of logistics for fresh produce in South Africa. The Inquiry will consider the logistical issues related to getting fresh produce to the NFPMs.

- 2.30 Fresh produce is sold at the NFPMs through registered market agents. The market agents earn a commission fee levied at between 5% to 7.5% of the value of fresh produce sold. The market facilities themselves also receive a commission fee of approximately 5% of the value of fresh produce for providing and managing the infrastructure that makes the exchange of goods possible. The markets are open to both bulk buying and individual purchases. In terms of the most regular customer base of these markets, the wholesalers, hawkers (informal traders), and processors seem to dominate the buying share.
- 2.31 The Commission conducted search and seizure operations (i.e. dawn raids) against various fresh produce market agents over alleged cartel conduct of fixing commission fees charged to farmers at the fresh produce markets. The Commission had reasonable grounds to suspect that the market agents entered into an agreement and engaged in a concerted practice to fix commission fees and trading conditions at the fresh produce markets in South Africa.
- 2.32 There were also allegations that the market agents reserved certain fresh produce grades and/or quality for particular buyers and practiced price discrimination based on the identity of the buyer. This has led to a broader concern around the role and behaviour or conduct of market agents operating at the fresh produce markets in South Africa. . The alleged behaviour or conduct of market agents can lead to limited competition amongst themselves, increasing barriers to entry and expansion for new market agents, and diminished non-price competition such as quality of service rendered to both producers and buyers in the national fresh produce markets.
- 2.33 The Commission has also been made aware of challenges faced by HDP market agents operating at the NFPMs, particularly issues on space allocation, costs and the role of historical ties influencing the decision of certain large producers in only dealing with certain market agents. The Inquiry will seek to understand the issues faced by HDP market agents including any potential exclusionary conduct which may impede effective participation by this class of agent and the impact this conduct may have on the efficiency of the NFPMs.

- 2.34 Further to the alleged collusion above, there are a number of market features of concern. In general, various conditions must be met for markets to function efficiently and result in efficient outcomes. For there to be an equilibrium price there is an underlying assumption that buyers and sellers are price takers, and they have perfect information. If these conditions are met, the farmer selling his produce through a market agent on the fresh produce market gets the closest natural value for his products because prices on the market are established by demand and supply dynamics.
- 2.35 However, information available to both the buyers and sellers may not be symmetric at the fresh produce market facilities. Whilst agents can get access to detailed price and volume information at the fresh produce market facilities, this information is not freely available to buyers or to the farmers at the point of them delivering their produce at the market facilities. Thus, farmers and buyers may not be able to make sufficiently informed decisions or understand the quality of the offer they receive from the market agent(s).
- 2.36 Furthermore, there are a large number of farmers selling their product at the NFPMs, but with relatively few agents that they can deal with. These agents can act on behalf of more than one farmer but are not supposed to favour one producer over another during their trading activities. Small consignments, however, may not be treated the same as larger consignments, as it appears they are considered an annoyance for agents, especially if they are not graded.
- 2.37 This means that there is little effort made to get the best price for smaller consignments. Further, agents in these markets may prioritise larger buyers, so that they adopt a “take-it-or-leave-it” attitude in price negotiations when dealing with smaller buyers. This suggests that the pricing received for small consignments and the price paid by small buyers is not necessarily reflective of the demand and supply dynamics.
- 2.38 Ultimately the commission-based system of agents may also drive skewed incentives of prioritising the large consignments of farmers and the larger buyers. Given the disadvantages already faced by smaller players outlined above, this is likely to further restrict the potential for smaller players to expand.

- 2.39 The Inquiry seeks to understand the make-up and determination of the agent fee (commission) in addition to issues around their conduct and asymmetries of information between agents (buyers) and sellers.
- 2.40 Furthermore, the Inquiry seeks to understand the impact these factors may have on the ultimate pricing mechanisms at these markets, as well as commission fees (usually a percentage of the value of goods sold) and other costs (e.g. ripening chambers) levied by market agents and or fresh produce facilities. .

Direct contracting by retailers, wholesalers, and processors as a route to market

- 2.41 A review of the value chain has indicated that various buyers such as large retailers, wholesalers, and large processors do not purchase fresh produce from the NFPMs and have instead opted to contract directly with selected growers (mostly large-scale commercial growers).. This form of direct contracting may have negative outcomes for the fresh produce value chain in particular smaller growers, as well as the long-term sustainability of the NFPMs who have lost this volume. However, the Inquiry will also seek to understand the benefits arising from direct contracting methods and its impact on the efficiency of the value chain.
- 2.42 The Inquiry seeks to understand the nature of these agreements concluded between large buyers (retailers, wholesalers, and processors) and large-scale commercial growers. This will include a consideration of the following factors: selection criteria, pricing mechanisms, duration of agreements including renewal terms, buyer power concerns and the impact on the NFPMs. The Inquiry will also consider market agent logistics and wholesale/trader fees, markups and the basis for their determination, as well as the retailer mark-ups and their determination.

Theme 2: Market dynamics of key inputs and their impact on producers

- 2.43 South Africa is a net exporter of primary agricultural products, but it imports a large share of the inputs required for production. The COVID-19 pandemic has highlighted many challenges related to the reliance on imported inputs. The disruptions of global supply chains have shown the country's vulnerability to rising input costs in an environment which is exposed to exchange rate fluctuations. The ongoing invasion by

Russia of Ukraine further highlights the vulnerability of the agricultural sector to global developments.

- 2.44 The Commission understands that one of the factors that influence the price of fresh produce is the prices of key inputs. As indicated in the final Terms of Reference, key inputs for growers include seeds, fertilisers, agrochemicals (herbicides, fungicides, and pesticides), farm equipment and water. Many of these (manufactured) inputs are imported or priced on international bases²⁷ and can lead to significant cost effects for growers, particularly smallholder farmers.
- 2.45 Markets at this level appear to be highly concentrated and have experienced continued consolidation over the past decade.
- 2.46 The Inquiry will seek to understand how each of the identified key markets at the input level of the value chain work, and the impact of the value chain more broadly.

Seeds

- 2.47 As a base for the agricultural sector, the seed system has an important role in determining the type, quality and cost of seed supplied to the country's farmers. By extension, it (at least partly) influences the type, quality and cost of food sold to consumers.
- 2.48 The seed market in South Africa consists mainly of three categories of agricultural seeds, namely agronomical, horticultural and forage seeds. Agronomical seeds make up the bulk of the seed market, while horticultural and forage seeds account for smaller shares of the market.²⁷
- 2.49 Globally and nationally, the seed market appears to be highly concentrated and appears to have experienced continued consolidation in the industry over the last decade. The Commission's recent study into levels of concentration in the South

²⁷ Agronomical seeds include maize, soya bean, wheat, sunflower, barley, sorghum etc. Horticultural crops consist mainly of vegetables and fruit.

African economy²⁸ noted broadly that the farming input sector (which includes seeds, storage, fungicides, insecticides, and fertiliser) is highly concentrated.

- 2.50 The increasing concentration by global firms in agricultural inputs may be because of the lack of (an actual or perceived) strong public research effort in aspects like seed varieties, livestock genetics and crop treatment. The Inquiry will consider the impact of this ever-increasing move towards significant concentration in these markets with a particular focus on the pricing of these inputs and access thereto by growers to both open and closed varieties of seed which are most suitable our climatic conditions.
- 2.51 The seed industry in South Africa has evolved to meet the needs of large-scale commercial farming, which has taken precedence over smallholder activities. A continuing challenge for many small farmers is access to improved seeds. The Commission's Essential Food Price Monitoring Report from August 2021 highlights further challenges that the seed markets pose towards small players in the food markets. The price of seeds faced by smaller farmers is a high input costs as seeds may have become more commodified by the large global seed companies who may increasingly be promoting genetically modified and hybrid seeds as superior seed options for smallholder agriculture in Africa.
- 2.52 The Inquiry will seek to understand the dynamics at play in these markets including the interface between the growing need for new and improved variants capable of meeting the changing producer needs caused by *inter alia* climate change and the intellectual property protections afforded to these seed companies to incentivise innovation.
- 2.53 There is increasing evidence pointing to issues associated with these seeds' costs and the resultant debt that farmers incur from using hybrid seeds. These seeds, developed by global players, are not able to be replanted each year like traditional seeds. Instead contracts or technology agreements between farmers and seed companies generally dictate how farmers should grow their crops and require farmers to buy new seeds each

²⁸ Competition Commission, *Measuring Concentration and Participation in the South African Economy: Levels and Trends*, Main Report, November 2021.

year.²⁹ Furthermore, hybrid seeds require expensive and precise chemical inputs in order to be effective.³⁰ Small farmers may also struggle to access seeds given their generally high cost as an input, while also having to face other variable costs of production such as fertiliser, irrigation water, herbicides, insecticides, pesticides, packaging materials and transport.³¹

- 2.54 The Inquiry will consider the price setting mechanisms applicable to seed varieties which are largely unregulated and afforded intellectual property protection to assess whether there is potential exploitative conduct in the form of higher prices and inflated margins within the market. The Inquiry will also seek to understand whether there is potential exclusionary conduct in the form of inducement or discriminatory pricing practices to its downstream customers.

Fertiliser

- 2.55 Since South Africa's large-scale deregulation of the agricultural sector, value chains appear to have remained concentrated especially for most of the staple food products, where only a few large players operate in the market. Overall, there appears to exist high concentration levels in the manufacture and supply of inputs such as fertiliser.³² For example, the Commission's recent study into concentration levels in the South African economy found that the top three fertiliser companies in each category control between 60 and 80% of sales.³³
- 2.56 The Inquiry will consider price-setting mechanisms applicable to fertiliser feedstocks with significant capital costs which in the past may have largely been state-sponsored, to assess whether there is potential exploitative conduct in the form of higher prices and inflated margins within the market.

²⁹ Cornish, L (Devex). 2018. How do corporations perceive their role in the GMO debate?. Wynberg, R. 2016. *Seeds under siege: it's time to support traditional systems*.

³⁰ Wynberg, R. 2016. *Seeds under siege: it's time to support traditional systems*.

³¹ Competition Commission, Essential Food Pricing Monitoring Report, August 2021.

³² Global Food Value Chains and Competition Law BRICS (draft report), p. 858.

³³ Competition Commission, *Measuring Concentration and Participation in the South African Economy: Levels and Trends*. November 2021. Summary Report of Findings and Recommendations, p45.

Agrochemicals (fungicides, herbicides and pesticides)

- 2.57 The crop protection market in South Africa is an import-orientated market with most of the chemicals used in crop protection formulas imported from overseas countries. The market is regulated with the presence of top international crop protection companies in the market. The global players, with recent mergers or acquisitions, have consolidated their positions at the world level.
- 2.58 Research shows that input markets, including seeds, fertiliser and crop protection chemicals, tend to be highly concentrated and controlled by a handful of large, global firms. Access to improved seeds and intellectual property around seed varieties may create market barriers and higher input costs for smaller farmers and growers. The fertiliser market, with its high concentration levels, may further imply that fertiliser prices could be above the competitive level, while the crop protection market makes it difficult for new entrants to participate in this market due to the high barriers to entry.
- 2.59 The Inquiry is interested to understand whether some of these global market features and conduct identified above is also applicable to the South African fresh produce market and to what extent these market features may impact on competition between large scale commercial farming operation and small-scale farming. If this is the case, the Inquiry is interested to understand the business rationale for the conduct specifically around intellectual property protection and exploring any efficiencies in the form of increased innovation generated by the protections afforded, and what impacts, if any, it has on competition between competitors in the input markets, and cost escalations in the downstream markets for producers.

Theme 3: Barriers to entry facing SME and HDP producers

- 2.60 The thresholds for qualifying as an SME for purposes of the Competition Act are determined by the Minister through notice in the Government Gazette. As such Government Notice No. 987 of 12 July 2019 sets out the following criteria/thresholds to be regarded as an SME for the agricultural sector:³⁴

³⁴ Government Notice No. 987 of 12 July 2019 (Government Gazette No. 42578).

SIZE OF BUSINESS	TOTAL FULL-TIME EQUIVALENT OF PAID EMPLOYEES	TOTAL ANNUAL TURNOVER (RAND)
Micro business	0 – 10	≤ R7 million
Small business	11 – 50	≤ R17 million
Medium business	51 – 250	≤ R35 million

2.61 Thus, all firms that do not fit within the above parameters (in terms of employees AND turnover) will be regarded as large firms.

2.62 Furthermore, and for purposes of the Inquiry, “small-scale farmers” will mean emerging farmers, subsistence farmers and smallholder farmers. Such terminology will however not detract from the requirements above which must be met in order to qualify as an SME for purposes of the Inquiry.

2.63 Section 3(2) of the Competition Act determines that a person is a historically disadvantaged person (or HDP) if that person:

- (a) is one of a category of individuals who, before the Constitution of the Republic of South Africa came into operation, were disadvantaged by unfair discrimination on the basis of race;
- (b) is an association, a majority of whose members are individuals referred to in paragraph (a);
- (c) is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or
- (d) is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes.

2.64 Accordingly, the Inquiry will regard firms which meet any one of the above criteria (in section 3(2) of the Competition Act) as an HDP firm. Where necessary, the type of HDP firm may also be distinguished (such as HDP producer/farmer, HDP market agent, HDP retailer) without detracting from the above requirements.

- 2.65 It may occur that a single firm can be both an SME and an HDP. The Inquiry does not regard such overlap as problematic as it may provide special insights.
- 2.66 Farmers play a crucial part in the country's fresh produce value chain as they are involved in the primary agricultural activities of producing fruits and vegetables. Therefore, they play a crucial role in achieving the country's food security. The new lifestyles of consumers, along with shifting demographics, and a growing appreciation of the link between diet and health, have contributed to different eating patterns and influenced food demand by consumers. The supposition is that growing populations and urbanisation generate opportunities to expand domestic markets for those farmers of fresh produce who can consistently link production with sales.
- 2.67 The production and distribution of fresh produce in South Africa resonate with the dualistic economic system of the country where a sophisticated, developed economy exists alongside a developing economy. Fresh produce is produced by a small number of relatively large, established commercial producers ("large-scale producers") on the one hand, and a multitude of small-scale producers on the other. The country's large-scale producers make up 6.5% of all farms and they accounted for 67% of the country's fresh produce total income in 2017/18.³⁵
- 2.68 More broadly, the Commission's previous and recent concentration studies show that high levels of market concentration in the country's agricultural sector persist, and that market power in the South African context can create barriers to entry.
- 2.69 The Commission conducted a series of research papers in 2019 that examined the barriers to entry and expansion facing emerging farmers in South Africa's agricultural sector. These papers cover three main kinds of barriers, namely barriers to accessing finance, barriers to inputs and infrastructure and barriers which limit emerging farmers' access to markets.³⁶

Competition Commission, *Measuring Concentration and Participation in the South African Economy: Levels and Trends*, Main Report, November 2021 at p32.

³⁶ Mtombeni, S., Bove, D., Thibane, T. & Makgabo, B. 2019. Commission Working papers CC2019/01, CC2019/02 and CC2019/03.

- 2.70 Further research also indicates that small-scale producer challenges relate mainly to insufficient finance and technical capabilities, a lack of operational knowledge, the inability to create scale economies, low bargaining power, a lack of market access and access to important production inputs (like quality seeds and fertilisers). These challenges appear to also limit farmers' ability to reach food safety and/or quality levels accepted by retailers.
- 2.71 Further aspects affecting small farmer production include poor infrastructure (such as limited storage facilities) and logistics (due to the poor condition of available transportation systems like road and rail) which limit the distribution of inputs and outputs to and from farms.
- 2.72 The Commission understands that the main risks that limit the participation of small-scale farmers in formal, high income-value chains are at two levels. At the production level, farmers face risks from the procurement of inputs through to the post-harvest stage of the food supply chains. At the retail and consumption level, risks are tied to meeting the quality and quantity standards (which include packaging, grading, and labelling); traceability and transport requirements. Because of these risks materialising, small-scale farmers tend to resort to distributing their products in informal, low income-markets. Consequently, this implies that these farmers are less likely to effectively participate in the fresh produce market facilities, and thus, market access may be limited.³⁷
- 2.73 The Inquiry is interested in understanding the barriers for entry, expansion and participation faced by small-scale farmers. In this respect, the Inquiry is particularly interested in the following specific aspects relating to the participation of SME and/or HDP producers, where not already covered in the other sections:
- 2.73.1 Market access for small-scale farmers;
 - 2.73.2 Discriminatory practices against small-scale farmers (for inputs and outputs)
 - 2.73.3 Small-scale farmers' access to financial support; and
 - 2.73.4 Challenges relating to access to water.

³⁷ Louw, A. & Jordaan, D. 2016. *Supply chain risks and smallholder fresh produce farmers in the Gauteng province of South Africa.*

Barriers related to market access for small-scale farmers

- 2.74 Some research shows that the barriers to entry and expansion facing small-scale and emerging farmers include the self-regulating grading systems (where incumbents may have perverse incentives to manipulate the system); the varying packaging and branding requirements across retailers as well as access to shelf-space.
- 2.75 Furthermore, the country's fresh produce value chain appears to be characterised by a 'large-scale or nothing' dynamic, which limits the scope for small-scale participation in the market. There are further high barriers in the retail and export channels of the fresh produce market as a result of stringent compliance requirements.
- 2.76 Another barrier is the apparent lack of small-scale farmer participation in direct/contract farming as a result of stringent requirements by retailers and/or wholesalers. Indications are that it is mostly large-scale farmers who are able to operate in the direct contract farming space, while small-scale farmers are more reliant on fresh produce market facilities (or other wholesalers and intermediaries) as a route to market.
- 2.77 Some stakeholders have previously stated that they experience discrimination during the process of grading the quality of their products.³⁸ The concern is that the grading process appears to be subjective and open to exclusionary practices.
- 2.78 In addition, industry associations implement a set of standards for the grading of products produced by farmers in South Africa. In some instances, it is argued that these standards, which vary by commodity market, are cumbersome for small players and do not promote entry as the cost to meet them is a hindrance to their participation in the various agricultural markets.
- 2.79 Issues raised by small-scale or emerging farmers include access to shelf space at retail supermarkets. Retailers generally have stringent listing requirements and appear to have prohibitive costs to be met by their suppliers (e.g. fresh produce farmers) before receiving shelf space. Retailers also appear to have non-uniform pricing structures

³⁸ Mtombeni, Bove, Thibane & Makgabo, 2019, Commission Working papers CC2019/01, CC2019/02 and CC2019/03.

based on supply contracts. Some retailers also have stringent requirements on the contracting processes including the terms of the agreement, the duration and renewal periods thereof, exclusivity and contract-linked investment funding. The concern is that small-scale farmers find it difficult to meet these requirements and are thus excluded from the market.

- 2.80 The retailers' listing requirements appear to favour commercial farmers who can guarantee volumes of produce and quality while enjoying the economies of scale required to fulfil distribution, packaging and listing costs. These also include other fees that cover several categories, ranging from incentive fees, rebate commissions, advertising fees, and settlement fees. In addition, packaging and branding requirements vary across retailers, which is a significant barrier for small players.
- 2.81 The Inquiry seeks to understand the specific market features and challenges that inhibit the growth of small-scale and new entrants in the market. More particularly the Inquiry seeks to understand issues related to contracting directly with retailers.

Discriminatory practices concerning small-scale farmers' access to inputs (price/trading term discrimination)

- 2.82 Fresh produce farmers use a full range of inputs including seeds, seedlings, fertiliser, pesticides, herbicides, packaging materials and equipment (from hand hoes to tractors). Most of the inputs are purchased at typical agricultural supply shops, agricultural associations and/or directly from the manufacturers.
- 2.83 Indications are that the two major issues identified by small-scale farmers at the input supply level relate to the costs and quality of the inputs.³⁹
- 2.84 The Inquiry is interested in understanding if and/or how the rising costs of key inputs for farmers are creating barriers to entry, expansion or participation. In particular, the Inquiry seeks to ascertain evidence on whether large-scale farmers are receiving

³⁹ Louw & Jordaan, 2016, *Supply chain risks and smallholder fresh produce farmers in the Gauteng province of South Africa*, Southern African Business Review Volume 20, pp286-312.

preferential pricing or discounts *vis-a-vis* small-scale growers in the protected class (SME/HDP).

Discriminatory practices concerning sale of small-scale farmers' outputs (buyer power)

- 2.85 The Inquiry is interested in understanding if and/or how the rising costs of key inputs for farmers may be creating barriers to entry, expansion or participation. In particular, the Inquiry seeks to ascertain evidence on whether large-scale farmers are receiving preferential pricing or discounts *vis-a-vis* small-scale growers in the protected class (SME/HDP).
- 2.86 This concern relates to allegations that market outlets (such as retailers, wholesalers, and processors) may impose unfair prices or trading conditions on farmers that fall within the protected class.
- 2.87 Some researchers are of the view that lead firms with market power (i.e. buyers in this context) are often 'gatekeepers' of a value chain, and their actions determine who participates and who is excluded.⁴⁰
- 2.88 The Inquiry seeks to understand whether the prices and trading conditions imposed on suppliers (small-scale farmers) in the protected class are unfair.

Challenges related to small-scale farmers' access to financial support

- 2.89 The Inquiry seeks to understand whether the prices and trading conditions imposed on suppliers (small-scale farmers) in the protected class are unfair.
- 2.90 With regards to barriers that relate to funding markets and financial support, access to finance and financial services may be key to achieving economic and social transformation. Many farmers, both large and small-scale, rely on either credit from financial institutions or grant funding from the government to effectively participate in and expand their farming operations. Furthermore, both financial institutions and

⁴⁰ Gereffi & Lee, 2014, *Economic and social upgrading in global value chains and industrial clusters: Why governance matters*, Journal of Business Ethics, 133, pp 25–38.

government have funding/financing models that inform the criteria that are used to assess whether a farmer qualifies for either grant or credit.

- 2.91 These criteria are largely employed for risk profiling purposes. Certain stakeholders suggest that the funding criteria are geared towards catering to a certain category of farmers who meet the institution's designed risk profile. The risk profiles generally include medium to large commercial farmers which creates a funding gap for small-scale and emerging farmers.
- 2.92 The financial barriers for emerging farmers observed by research include the lack of creation and adoption of innovative funding models; the information asymmetry in the funding criteria; the timing of funding disbursements; the conflict of interest in using incumbents as financial intermediaries; and the lack of coordination and collaboration among key stakeholders.⁴¹
- 2.93 Lengthy timeframes for the assessment of funding applications and the granting of funding are regarded as significant challenges for small-scale farmers. Farmers often require funding urgently and feel that the processes and turn-around times to access funding are long.
- 2.94 The lack of access to agricultural credit may be a constraint to the development of the small-scale segment of the fresh produce value chain. Studies suggest that this emanates from the fact that major financial institutions fail to provide agricultural credit that meets the unique demands of the entire agricultural sector (both commercial and emerging sectors).⁴² The effect of this is largely felt by small-scale farmers as the lack of capital for investment contributes significantly to the lowering of small-scale farmers' productivity levels.

⁴¹ Mtombeni S, Bove D and Thibane T. An analysis of finance as a barrier to entry and expansion for emerging farmers. WORKING PAPER CC2019/01

⁴² Qwabe, 2014, *Lending to small - scale farmers in South Africa: a case for best practices in formal institutions*, last accessed at <http://hdl.handle.net/2263/43227> on 6 March 2023.

2.95 The Inquiry is particularly interested in understanding how access to funding and financial support may pose a barrier to entry, expansion or participation for emerging farmers.

Access to water resources

2.96 Water is one of the key inputs to primary agriculture, particularly to those under irrigation systems. However, for small-scale farmers access to water as a key input to their production remains a challenge.

2.97 The Department of Water and Sanitation is responsible for granting water rights and is guided by the regulations for administering water use authorisation. As part of an application for a water licence, an applicant must submit certain technical reports. For applications from small-scale farmers, the most common technical report required is a groundwater study (for boreholes). However, the cost associated with these technical reports may be burdensome for these small-scale farmers and its extent to posing a barrier requires attention.

2.98 There is also a phenomenon where emerging farmers transfer and/or trade water use entitlements or licenses to third parties in order to generate revenue (driven by an otherwise lack of access to other means of funding). There are concerns that such practices contribute to the inability of emerging farmers to grow as this may not be a sustainable means of revenue generation, especially where the same farmer again requires access to water (now belonging to another party).

Submissions as to the scope and issues

2.99 Whilst the Commission believes that the most critical issues from a competition and public interest viewpoint have been identified above, stakeholders are not precluded from providing submissions and information in relation to the functioning of the fresh produce value chain that have not been traversed above, provided its relevance to the Inquiry is also set out. Annexure 10 should be used as guideline for such submission.

**FRESH PRODUCE MARKET INQUIRY
STATEMENT OF ISSUES: ANNEXURES**

SECTION C: QUESTIONNAIRE ANNEXURES

1. This section comprises of a set of annexures, each covering a different aspect. Stakeholders must only respond to the annexures that are relevant to their business or area of operation.

2. We request that stakeholders ensure that it is clear from their response which annexure and question they are responding to and that the same numbering in a response is adopted as in the relevant annexure.

3. For ease of reference, it is requested that the below table be completed and submitted along with your response (this page may be used/submitted):

Name of stakeholder: _____

ANNEXURE NO.	COMPLETED (✓ or x)
Annexure 1	
Annexure 2	
Annexure 3	
Annexure 4	
Annexure 5	
Annexure 6	
Annexure 7	
Annexure 8	
Annexure 9	
Annexure 10	

**FRESH PRODUCE MARKET INQUIRY
STATEMENT OF ISSUES: ANNEXURES**

ANNEXURE 1: DETAILS OF THE STAKEHOLDER

NOTE: *All stakeholders must respond to this annexure if they make a submission in response to the Statement of Issues.*

- 1.1. Provide the name of your firm or organisation, a contact person and contact details.
- 1.2. Provide a brief description of the activities of your firm or organisation.
- 1.3. Please indicate if you would like your identity to remain confidential and please fully explain the reasons for seeking anonymity.
- 1.4. Explain your understanding of the fresh produce value chain (all levels and players) and indicate where your firm fits within the value chain.
- 1.5. Provide a broad overview of the regulatory framework applicable to fresh produce.
- 1.6. What is your experience in dealing with any regulatory body? Kindly provide details of the particular regulatory body/bodies and be as specific as possible.
- 1.7. Indicate which level(s) of the value chain is the focus of the submission (i.e. inputs, producers, processing, etc.).

ANNEXURE 2: NFPMs AS A ROUTE TO MARKET

***NOTE:** These questions relate to issues associated with NFPMs. NFPMs, as a route to market, is the platform where trading takes places between producers/farmers and buyers, with various other market participants also playing a role.*

- 2.1. Indicate which level(s) of the value chain is the focus of the submission (i.e. inputs, producers, processing, etc.).
- 2.2. Indicate the relative importance of NFPMs as a route to market for producers compared to other direct market platforms (direct contracting with retailers, wholesalers, and processors)?
- 2.3. Identify the leading NFPMs as well as the basis for such grading or selection.
- 2.4. Indicate to what extent wholesalers are operational at the NFPMs? In your response kindly refer to:
 - 2.4.1. Whether, according to your knowledge, any wholesaler is permitted to operate at the NFPMs and if so on what terms?
 - 2.4.2. Whether wholesalers are also mandated to purchase fresh produce from agents or whether they are permitted to buy directly from the producers/farmers?
- 2.5. Who is responsible for the logistics costs (including but not limited to: storage, the cold chain, grading and selection, packaging, and transportation) incurred in getting the produce from farm gate to the NFPMs?
- 2.6. Who is responsible for the logistics costs (including but not limited to: storage, the cold chain, grading and selection, packaging, and transportation) incurred in getting the produce from the NFPMs (after purchase) to the buyer?
- 2.7. Explain the price setting mechanisms which pertain to the NFPMs. Kindly also address the role of agents in determining the daily spot price for fresh produce.

**FRESH PRODUCE MARKET INQUIRY
STATEMENT OF ISSUES: ANNEXURES**

- 2.8. Please explain the role of intermediaries operational at the NFPMs in relation to grading and quality assurance checks, packaging, weighing, health and safety requirements and certifications, offloading and transportation services and onward logistics services. In your response also refer to the way in which the price of these particular services is determined.
- 2.9. Do you have any concerns in relation to NFPMs as a route to market. Please explain fully.
- 2.10. If you have any concerns in relation to NFPMs as a route to market, kindly provide any potential remedies/suggestions that can address such concern(s).

ANNEXURE 3: DIRECT CONTRACTING AS A ROUTE TO MARKET

***NOTE:** Direct contracting entails trading apart from the NFPMs where a producer/farmer produces fresh produce for sale directly to a buyer (usually a retailer, processor or wholesaler). These questions seek to understand the dynamics of such relationships.*

- 3.1. Indicate which level(s) of the value chain is the focus of the submission (i.e. inputs, producers, processing, etc.).
- 3.2. Indicate, to your knowledge, the extent to which large scale buyers (such as wholesalers, processors or retailers) contract directly with selected producers for their supply of fresh produce (apart from trading at NFPMs).
- 3.3. Provide a detailed explanation of the benefits and disadvantages of direct contracting over the use of the NFPMs platform from both the perspective of the buyer and the producer (farmer). In your response indicate:
 - 3.3.1. To what extent contracted buyers still purchase from NFPMs and under what conditions?
 - 3.3.2. To what extent contracted producers still sell fresh produce at the NFPMs?
 - 3.3.3. The reasons why these buyers and growers have opted to no longer use the NFPMs platforms;
 - 3.3.4. What it will take for these contracted buyers and producers to consider using the NFPMs platforms for the buying and selling of fresh produce?
 - 3.3.5. Who is responsible for the logistics costs (including but not limited to: storage, the cold chain, grading and selection, packaging, and transportation) incurred in getting the produce from farm gate to the agreed destination (e.g. distribution centres);
- 3.4. Do you have any concerns in relation to direct contracting? Please explain fully.
- 3.5. If you have any concerns in relation to direct contracting, kindly provide any potential remedies/suggestions that can address such concern(s).

**ANNEXURE 4: DYNAMICS AROUND KEY INPUTS (SEEDS, FERTILISER &
AGROCHEMICALS)**

***NOTE:** These questions seek to explore the dynamics at play in the provision of key inputs in the production of fresh produce. For purposes of the Inquiry and this questionnaire, key inputs are limited to seeds, fertilisers and agrochemicals (herbicides, pesticides and fungicides).*

- 4.1. Explain your understanding of the value chain for agricultural inputs and the various activities of the key role players at the different levels.
- 4.2. Identify the leading manufactures and/or suppliers of the following agricultural inputs: seeds, fertilisers, agrochemicals (herbicides, fungicides and pesticides), including their relative size based on value of sales, volumes and revenues.
- 4.3. What are the barriers to entry for input suppliers? In your response, please refer to: (a) capital and infrastructure costs; (b) time required to recoup the costs of investment; (c) other sunk costs; and (d) scale economy advantages.
- 4.4. Provide a broad overview of the role cooperatives play in markets for fresh produce. In your response kindly refer to the ability of cooperatives to: (a) lower costs for small scale growers; (b) create access to markets for small scale growers; and (c) ensure better pricing and negotiating power with buyers.
- 4.5. In relation to producers/farmers as customers of agricultural inputs, to what extent has changes in climate conditions impacted on:
 - 4.5.1. The need to source more (or less) complex agricultural inputs;
 - 4.5.2. The increase/decrease in costs of agricultural inputs, particularly for small holder farmers;
 - 4.5.3. The extent to which access to improved seeds and intellectual property around seed varieties may have created market barriers and higher input costs for smaller farmers and growers; and
 - 4.5.4. The extent to which access to more advanced fertilisers, agrochemicals (herbicides, fungicides and pesticides), and farming equipment may have created market barriers and higher input costs for smaller farmers and growers.

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- 4.6. Do you have any concerns in relation to key agricultural inputs? Please explain fully.
- 4.7. If you have any concerns in relation to key agricultural inputs, kindly provide any potential remedies/suggestions that can address such concern(s).

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ANNEXURE 5: BARRIERS TO ENTRY - MARKET ACCESS

***NOTE:** These questions are aimed at exploring challenges faced by SMEs and/or HDPs farmers relating to accessing the fresh produce value chain (whether through NFPMs, direct sales to retailers/processors/wholesalers, informal markets or any other route to market). Please refer to the Statement of Issues for which firms qualify as SME and/or HDP.*

- 5.1. Have you experienced barriers to entry? If so, please detail your experience.
- 5.2. Which channels (or routes to market) do you use when selling your produce, e.g. NFPM, direct to a retailer/processor/wholesaler, informal traders/markets etc? If you use multiple channels, kindly indicate the proportion in which each is used.
- 5.3. What is your preferred channel to sell into and why?
- 5.4. Explain in detail the factors that contribute to the apparent lack of small-scale farmer participation in direct contract farming?
- 5.5. What impact, if any, does the ability to contract (directly) with retailers/wholesalers/processors have on small-scale farmers' ability to expand in the market? If you have direct experience, kindly relate your experience.
- 5.6. Explain the extent to which contract terms advantage small-scale farmers' effective participation in the fresh produce value chain?
- 5.7. Explain the extent to which contract terms disadvantage small-scale farmers' effective participation in the fresh produce value chain
- 5.8. Explain how contracting requirements (such as quality control standards, packaging, grading, cold chain requirements, (minimum/maximum) volumes, security of supply, transportation to the distribution centres or any others) affect SME/HDP farmers?
- 5.9. In your view are the standards imposed by industry (quality) regulators and industry associations fair and non-discriminatory to SME/HDP farmers? Briefly explain and provide evidence where applicable.
- 5.10. What is the significance (if any) of the use of levies and rebates by industry associations for small-scale farmers' participation in the fresh produce value chain?
- 5.11. What are the local and international pricing dynamics that affect farmers? How can these

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factors be managed best (if at all)?

- 5.12. What has been your experience in trading at NFPMs (whether positive or negative)? Kindly provide detail.
- 5.13. What has been your experience in contracting directly with retailers/wholesalers/processors (whether positive or negative)? Kindly provide detail.
- 5.14. Has there been explicit efforts from public sector institutions (i.e. government) to lower barriers to entry, expansion and participation for SMMEs and HDPs in the fresh produce sector?
- 5.15. Has there been explicit efforts from private sector institutions (e.g. companies or associations) to lower barriers to entry, expansion and participation for SMMEs and HDPs in the fresh produce sector?
- 5.16. Do you have any concerns in relation to accessing the fresh produce value chain? Please explain fully.
- 5.17. If you have any concerns in relation to accessing the fresh produce value chain, kindly provide any potential remedies/suggestions that can address such concern(s).

ANNEXURE 6: BARRIERS TO ENTRY – DISCRIMINATION FOR INPUTS

***NOTE:** These questions seek to understand if SME or HDP buyers (such as farmers) face discrimination when purchasing their inputs. The discrimination may relate to the different prices or other trading terms or conditions.*

- 6.1. Do you have any suggested remedies/solutions to the issues which have been identified in the statement of issues in relation to the market access as a barrier to entry for SMEs and/or HDPs? Please explain fully.
- 6.2. Do small-scale farmers have access to similar trading terms (e.g., quality, price, discount, rebates etc.) as those of large-scale farmers? In your explanation, provide supporting documents.
- 6.3. What are the most favourable terms offered by key input suppliers to large-scale farmers that may not be accessible to small-scale farmers?
- 6.4. Are there any instances where a small-scale farmer was unfairly priced for a specific input? If so, briefly explain and provide evidence where applicable.
- 6.5. What are the justifications for asking different prices or trading terms to small-scale farmers?
- 6.6. Are there any barriers that emanate from the pricing dynamics across the input level of the fresh produce sector?
- 6.7. Is there a role for co-operatives in the input level of the fresh produce value chain? If so, briefly describe the importance of co-operative in the fresh produce value chain.
- 6.8. Do you have any concerns in relation to the pricing/other trading conditions of the purchase of inputs? Please explain fully.
- 6.9. If you have any concerns in relation to the pricing/other trading conditions of the purchase of inputs, kindly provide any potential remedies/suggestions that can address such concern(s).

ANNEXURE 7: BARRIERS TO ENTRY – DISCRIMINATION FOR OUTPUTS

***NOTE:** These questions seek to understand if SME or HDP sellers (such as farmers) face discrimination when selling their goods. The discrimination may relate to the different prices or other trading terms or conditions.*

- 7.1. Are there any unfair pricing dynamics or other unfair trading conditions in the level of value chain that your firm operates at?
- 7.2. What are the alternative routes to market available to small-scale farmers to market or sell their fresh produce? Briefly explain these channels, your answer must specify the positives and negatives of each channel.
- 7.3. Describe the nature of the negotiation process between the buyer (be it wholesaler, processor, retailer or other buyer) and SME/HDP sellers (farmers)?
- 7.4. What could be the reasons, in your view, for the apparent significant price differences for fresh produce at NFPMs versus at the retail level?
- 7.5. Do you have any concerns in relation to the prices/other trading conditions that large purchasers demand from you? Please explain fully.
- 7.6. If you have any concerns in relation to the prices/other trading conditions that large purchasers demand from you, kindly provide any potential remedies that can address the concern(s)?

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ANNEXURE 8: BARRIERS TO ENTRY – ACCESS TO FINANCIAL SUPPORT

***NOTE:** These questions seek to understand the barriers faced by SME or HDP producers in relation to accessing financial support (in whatever form such as bank loans or other credit, development finance, micro-loans, mortgages etc).*

- 8.1. Provide a description of funding markets and financial support available to fresh produce small-scale farmers.
- 8.2. What has your experience been in accessing (or seeking to access) financial support? Were such efforts successful or not? Kindly provide detail.
- 8.3. If you were unable to access financial support, how did it impact your business. Kindly provide detail.
- 8.4. From your viewpoint does the current design of funding (funding markets and financial support) models promote entry and economic participation of small-scale farmers? Briefly explain and provide evidence where applicable.
- 8.5. In your view is the cost of finance/funding prohibitive or discriminatory to small-scale farmers? Please elaborate on your answer and provide evidence where applicable.
- 8.6. Do you have any concerns in relation to accessing finance? Please explain fully.
- 8.7. If you have any concerns in relation to accessing finance, kindly provide any potential remedies that can address the concern(s)?

ANNEXURE 9: BARRIERS TO ENTRY – ACCESS TO WATER RESOURCES

***NOTE:** These questions seek to understand the barriers faced by all producers in relation to water resources. This question is not limited to the impact on SME and/or HDP farmers, but all farmers (whether small or large). Where such distinction may alter your answer however, it is important to indicate it and explain why it would make a difference.*

- 9.1. What challenges if any, are faced by farmers in accessing water rights specifically aimed at agricultural waterworks and irrigation?
- 9.2. Explain the infrastructural and capital requirements in relation to accessing water rights (e.g. such as storage facilities or land)?
- 9.3. What are the alternatives available to farmers in case of water supply shortages or an otherwise inability to secure supply from the State. What are the cost implications for such alternatives?
- 9.4. What is your annual water bill for your operations? Kindly also indicate the following in your response:
 - 9.4.1. What individual cost/line items make up a typical water bill;
 - 9.4.2. What cost/line items make up a typical total water bill; and
 - 9.4.3. How significant is your water cost relative to other costs associated with operating a farming business (if possible provide a percentage relative to total cost).
- 9.5. What is the application process faced by small-scale farmers in securing an adequate supply of water resources for their farming operations?
- 9.6. Do you (irrespective of whether you are an SME or HDP) have any concerns in relation to accessing water? Please explain fully.
- 9.7. If you have any concerns in relation to accessing water, kindly provide any potential remedies that can address the concern(s)?

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ANNEXURE 10: GENERAL QUESTIONS

NOTE: *These questions provide an opportunity to make submissions that are not covered by any of the preceding annexures. Give the general nature of the questions, kindly be as specific as possible in your response.*

- 10.1. Are there any other features of the fresh produce sector which, in your view, may impede, restrict or distort competition and which have not been raised in the questions above? If so, please provide details as to the feature and the relevance for the Inquiry.
- 10.2. In relation to any features identified in the previous question, do you have any suggested remedies/solutions which may adequately address the issue(s)? Kindly provide detail.
- 10.3. Are there any other submissions you would like to make that are of a general nature? Kindly indicate the relevance of any such submissions for the Inquiry.