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Date	7 June 2023

Attention: KATLEGO CHUENE / RUAN MARE / IAN MROZEK

By Email: KatlegoC@compcom.co.za / RuanM@compcom.co.za / IanM@compcom.co.za

Dear Katlego, Ruan and Ian

FOOD LOVERS HOLDINGS (PTY) LTD // FRESH PRODUCE MARKET INQUIRY: COMPETITION COMMISSION REQUEST FOR INFORMATION CASE NO.: 2022APR0051

- 1 We refer to the matter above, your letter dated 31 March 2023 ("**the Information Request**"), and our letter including the First Tranche Food Lovers Holdings Proprietary Limited's ("**FLH / our Client**") response to the Information Request, dated 24 May 2023.
- 2 As indicated in our letter dated 24 May 2023, there were a number of outstanding submissions, namely, Items 10, 11, 24, 25, 28, 37, 39, 54 and 55. We provide below the responses to these outstanding questions. We have highlighted these items in yellow so that the Commission can identify them.
- 3 For the sake of convenience, we have repeated the Commission's queries below in bold, with our Client's responses thereafter. Please note that certain of the responses in this letter are confidential and a claim for confidentiality accompanies this response.

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BACKGROUND AND BUSINESS ACTIVITIES

1 Briefly describe the business activities of Food Lovers and how it is positioned relative to other businesses that sell fresh produce directly to the end-consumer.

- 1.1 FLM SA Proprietary Limited ("**FLM SA**") is a South African supermarket chain comprising franchised and corporate-owned grocery stores and convenience stores in Southern Africa.
- 1.2 FLM SA stores conduct business as retailers of fresh produce, dry groceries, butchery, perishables, beverages, personal care, household groceries, baked goods and confectionery. However, groceries (including fresh produce) and butchery typically constitute the largest categories in most FLM SA stores.
- 1.3 The FLM group has grown to include many partners, such as Food Lover's Eatery – a deli extension of the brand offering ready to eat meal offerings; FreshStop, the fresh convenience store; Market Liquors and Diamond Discount Liquors, our alcohol brand and Seattle Coffee Company, our coffee partner.
- 1.4 FLM SA operates through the following divisions:
- 1.4.1 corporate retail stores,
 - 1.4.2 meat processing facilities,
 - 1.4.3 distribution centres,
 - 1.4.4 import and export business and
 - 1.4.5 food production business.
- 1.5 FLM SA's subsidiaries are involved in the following operations:
- 1.5.1 Fruit & Veg City Freshstop Proprietary Limited - Franchisor in respect of over 300 Freshstop convenience stores located on the forecourts of Caltex and Astron service stations;
 - 1.5.2 Freshstop Corporate Stores Proprietary Limited – Owner and the operator of two fuel service stations and the convenience stores located on the forecourts of such service stations;
 - 1.5.3 Diamonds Discount Liquor Proprietary Limited - Operator of a number of retail liquor stores and a liquor distribution centre;
 - 1.5.4 [REDACTED];
 - 1.5.5 [REDACTED];
 - 1.5.6 Seattle Coffee Company (South Africa) Proprietary Limited – The holding company of the Seattle Coffee Company Group. It owns and operates a number Seattle Coffee Company coffee bars in retail centres and kiosks within Freshstop convenience stores in the Western Cape. It is also the franchisor in respect of a number of Seattle Coffee Company coffee bars in the Eastern Cape, KwaZulu-Natal, Free State and Mpumalanga and operates two distribution centres. It also holds the following subsidiary companies:
 - 1.5.6.1 [REDACTED];
 - 1.5.6.2 [REDACTED];
 - 1.5.6.3 [REDACTED];
 - 1.5.6.4 [REDACTED];
 - 1.5.6.5 [REDACTED];

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- 2 **If Food Lovers operates multiple businesses, provide the most recent organogram depicting the companies directly and indirectly controlled by your parent company and all its subsidiaries.**
- 2.1 Please see the organogram of the Food Lover's Group attached as "**Item 2**". This document is confidential.
- 3 **Indicate if Food Lovers or related operating companies are owned and controlled by Historically Disadvantaged Persons ("HDPs").**
- 3.1 FLH and its subsidiaries are not owned by HDPs.
- 3.2 Pursuant to the merger under case number LM126Oct22, FLM SA has committed to ensuring that some of the stores it intends opening in the KZN region over the next 5 years will either be wholly-owned and operated by HDP franchisees or will be co-owned by FLM SA as to 51% and an HDP Joint Venture partner as to 49%.
- 4 **Provide the most recent audited annual financial statements (AFS) for the South African operations of Food Lovers. If the AFS cover a number of businesses, then provide the management accounts for the South African business alone.**
- 4.1 Please see the Annual Financial Statements for the year ended 22 February 2022 attached as "**Item 4**". This document is confidential.
- 5 **To the extent that it is not contained in the AFS, provide a detailed financial breakdown of both revenue sources and operational costs of the firm for the most recent financial year (April-March Basis, if not, indicate).**
- 5.1 Please refer to the AFS attached as "**Item 4**".
- 6 **Provide illustrative examples of any monthly management reports on key metrics used to track the performance of Food Lover's business in relation to fruits and vegetables division/segment. If no such reports exist, then provide a list of the key performance metrics that management uses to track the performance of the business.**
- 6.1 The performance of the business of FLM SA in relation to fruit and vegetables is tracked on a weekly basis. Please see weekly **Fruit & Vegetable Analysis Report** attached as "**Item 6**". This document is confidential.
- 7 **Provide all internally and externally commissioned research and/or studies conducted in the past 5 years on the consumer side of the business, in relation to the fresh fruits and vegetable segment/unit, and the market position of your business relative to competitors.**
- 7.1 Please find attached, as "**Item 7.1**", NielsenIQ Market Share Report for the period 4 April 2021 to 3 April 2022 and "**Item 7.2**", NielsenIQ Market Share Report for the period 27 February 2022 to 26 February 2023.
- 8 **Provide a detailed description of how you procure fruits and vegetables (for each of the relevant commodities identified in para 6 above) for the purposes of your retail operations/activities. In your response and where relevant/applicable, kindly refer (but do not limit your description) to the following and provide underlying documents/reports/data for your response.**
- 8.1 **How you identify producers/farmers/ market agents/wholesalers etc. to buy from and/or participate in your supply chain network**
- 8.2 **The role of market agents and wholesalers operating at or around the national fresh produce markets and any other relevant feature**
- 8.3 **The role of online trading platforms for e.g. "Khula!" and the extent to which Food Lovers uses these platforms in relation to fruits and vegetables division/segment**
- 8.4 **The role of contracts and the different types of contracts as a governance mechanism in your supply chain**
- 8.5 **The location of the farmer/producer/wholesaler**
- 8.6 **Scale of production (volumes in terms of tons/kg)**

- 8.7 **Ability to comply with the minimum requirements for participation in your supply chain**
- 8.8 **Packaging and any other value addition to the produce**
- 8.9 **How produce is delivered to your Distribution Centres (DCs) and the location of DCs**
- 8.10 **The costs associated with activities of moving products from farm gate or primary source (e.g. wholesaler, national fresh produce market) to your retail outlets**
- 8.10.1 FLM procures fruit and vegetables through the following channels:
- 8.10.1.1 Direct from producers/farmers;
- 8.10.1.2 From the National Fresh Produce Markets ("NFPM") through market agents;
- 8.10.1.3 Through wholesalers / marketing companies; and
- 8.10.1.4 Through online platforms.
- 8.10.2 ***Direct from producers/farmers;***
- 8.10.2.1 FLM SA procures directly from producers/farmers where such producers/farmers are willing to supply to them on a direct basis.
- 8.10.2.2 Minimum Requirements: Such producers/farmers must meet the following minimum requirements in order to supply FLM directly:
- 8.10.2.2.1 the farm on which the fresh produce is grown must have a Food Safety Management System in place that has been assessed against Local G.A.P (good agricultural practice)¹ intermediate level;
- 8.10.2.2.2 if applicable, the pack house in which the fresh produce is packaged must be in possession of a Certificate of Acceptability issued by the responsible Local Authority and have a Food Safety Management System in place that has been assessed against Local G.A.P intermediate level;
- 8.10.2.2.3 the packaging and labelling of any pre-packed fresh produce conforms to all legislative requirements, including but not limited to the Agricultural Product Standards Act 119 of 1990 and all Regulations promulgated thereunder;
- 8.10.2.2.4 the fresh produce conforms to the quality standards prescribed in the Agricultural Product Standards Act 119 of 1190 and all applicable Regulations promulgated thereunder;
- 8.10.2.2.5 the quality of the fresh produce accords with the specifications set by Food Lover's fresh produce buyers; and
- 8.10.2.2.6 the producer/farmer must be able to transport its produce to our distribution centres at its cost.
- 8.10.2.3 [REDACTED]. FLM SA's buyers rely on the relationships developed with producers/farmers and if a producer/farmer produces a product that FLM SA requires, is willing to supply to FLM SA on a direct basis and meets FLM SA's minimum requirements, FLM SA will procure from such producer/farmer. [REDACTED]
- 8.10.2.4 Location: The location of a producer/farmer does not play a role in FLM SA's decision whether to procure from a producer/farmer or not [REDACTED].
- 8.10.2.5 [REDACTED]

[REDACTED]

8.10.1 **National Fresh Produce Markets ("NFPM"):**

8.10.1.1 FLM SA procures fresh produce off the NFPM on a daily basis. FLM SA's purchases off the NFPM are to "top up" what FLM SA has not been able to procure from their direct suppliers and/or marketing companies.

8.10.1.2 In making purchases from the NFPM, FLM SA engages with the market agents (which only operate on the NFPMs) appointed by and representing the farmers/producers.

8.10.1.3 FLM understands that a commission of 12% of the selling price of the fresh produce is paid by the farmer/producer as follows: 6% commission is payable to the NFPM; and 6% commission is payable to the market agent.

8.10.1.4 FLM SA has no contracts in place with the NFPMs, other than lease agreements with the Cape Town Fresh Produce Market and the East London Fresh Produce Market in respect of distribution premises that FLM SA occupies within these Markets .

8.10.2 **Wholesalers / Marketing Companies**

8.10.2.1 FLM SA also procures fresh produce from wholesalers/marketing companies, such as [REDACTED].

8.10.2.2 Wholesalers/marketing companies procure fresh produce directly from farmers/producers and supply such fresh produce to retailers.

8.10.2.3 There are benefits for farmers / producers of fresh produce to supply produce through wholesalers / marketing companies. For instance, their produce is marketed through a single point – the marketing company; there is guaranteed uptake of their fresh produce; and it is less resource intensive than supplying directly or through the NFPM because packaging, storage and transportation of fresh produce is undertaken by the marketing company.

8.10.2.4 There are also benefits of procuring fresh produce from wholesalers/marketing companies, in that there is guaranteed supply of fresh produce; the wholesalers/ marketing companies ensure that the farmers/producers that they procure from and the fresh produce that they procure, meets the retailers' minimum requirements for sale; and wholesalers/ marketing companies package fresh produce on behalf of retailers and apply the retailers' house brands to such packaged fresh produce.

8.10.2.1 [REDACTED]

8.10.2.2 [REDACTED]

8.10.3 **Online Platforms**

8.10.3.1 FLM SA procures fresh produce from Nile Marketplace, which is an online platform connecting farmers/producers with fresh produce buyers.

8.10.3.2 Nile Marketplace is still a relatively new platform and in its very early stages. [REDACTED].

9 **Kindly provide the names and contact details of growers with whom Food Lovers contracts directly (where applicable) for each of the relevant commodities identified in para 6 above as follows:**

9.1 **The 10 largest direct contracted growers by sales in the last 5 financial year (2017 – 2022)**

9.1.1 Please see spreadsheet attached as "Item 9.1" setting out the names and contact details of the farmers/producers and marketing companies from whom FLM SA procures direct supply of the relevant commodities in the last 5 financial years. This document is confidential.

- 9.2 **The 10 smallest direct contracted growers by sales in the last 5 financial year (2017 – 2022);**
- 9.2.1 The farmers/producers and marketing companies listed in the spreadsheet referred to above are the only farmers/producers and marketing companies from whom FLM SA has procured the relevant commodities in the last 5 financial years.
- 9.3 **The 10 most recent potential direct growers who engaged with Food Lovers but did not end up using Food Lovers (either because they did not meet the Food Lovers ' requirements or on their own accord);**
- 9.3.1 [REDACTED]
- 9.4 **Provide the actual contracts that you entered into with these growers for the past 5 years (2017 – 2022).**
- 9.4.1 While FLM SA sources and procures fresh produce directly from farmers/producers and marketing companies, [REDACTED].
- 10 Provide the following price and costing information for each of the relevant commodities identified in para 6 in the past 5 years:**
- 10.1 **Total revenue earned**
- 10.2 **Total volumes sold**
- 10.3 **Average selling prices**
- 10.4 **Total cost of sales**
- 10.5 **Rand mark-ups and % mark-up**
- 10.6 **Rand gross profit margin and % gross profit**
- 10.7 **Rand net profit margin and % net profit margin**
- 10.7.1 Please find attached, as "Item 10", a spreadsheet containing price and costing information on a monthly, annual and average basis. This spreadsheet is confidential.
- 10.7.2 The Commission should note the following in respect of the spreadsheet:
- 10.7.2.1 Store category
- 10.7.2.1.7 The data is sourced from FLM SA's current corporate stores. As such, stores which were franchised during the earlier parts of the relevant period (i.e., the period identified in the Commission's RFI), but have since been corporatized, are included. Conversely, stores that were FLM SA corporate stores during the relevant period but are now franchised, are not included.
- 10.7.2.2 FLM SA Financial Year End
- 10.7.2.2.8 The data reflects FLM SA's financial year as the "period". FLM SA's financial year runs from 1 March to 28 February of the following year. Therefore, for instance, January and February 2018 (as reflected in column A of the spreadsheet represent January and February of FLM SA's 2018 financial year, but are actually January and February 2019 in calendar year.
- 10.7.2.3 Rand net profit margin and % net profit (Item 10.7 of the Information Request)
- 10.7.2.3.9 Net profits are measured only at a store level and not per product. As such, FLM SA is not able to provide net profit in rand value or % in the attached spreadsheet.

NFPMS AS A ROUTE TO MARKET

11 Explain Food Lovers' understanding of the fresh produce value chain (all levels and players) and indicate where your firm fits within the value chain. Provide a broad overview of the regulatory framework in relation to the market for fresh produce. In your response kindly refer to the role of regulatory bodies operational within the value chain and how they contribute towards the overall efficiency of the value chain.

Value Chain

- 11.1 FLM SA's understanding of the fresh produce value chain is as follows:
- 11.1.1 Farmers procure input supplies to enable them to grow/produce fresh produce on their farms.
- 11.1.2 Farmers grow/produce fresh produce and once harvested sell their produce through one of the following channels:
- 11.1.2.1 directly to retailers, processors (including for instance producers of fruit juice, jams, dried fruits) or exporters;
- 11.1.2.2 export produce themselves if they are producer-exporters;
- 11.1.2.3 to wholesalers/marketing companies; and
- 11.1.2.4 through fresh produce market agents operating on the NFPMS.
- 11.1.3 Wholesalers/marketing companies sell the produce they have procured from farmers to retailers, processors and food services or export the produce on behalf of farmers.
- 11.1.4 Market agents sell the produce that has been sent by the farmers/producers to the NFPMS on behalf of the farmers to retailers, distributors, processors, food services and informal traders.
- 11.1.5 Larger retailers distribute the fresh produce they have procured through the channels described above from their distribution centres to their retail stores.
- 11.1.6 Retail stores make the fresh produce received from retailer distribution centres available for sale to end consumers.
- 11.1.7 Informal traders make the fresh produce procured from the NFPMS available for sale to end consumers.
- 11.2 FLM SA plays two roles in the fresh produce value chain:
- 11.2.1 It is a retailer that operates distribution centres and retail stores; and
- 11.2.2 Through its FVC International division, FLM operates a fresh produce import and export business.
- 11.3 **Regulatory Environment:**
- 11.3.1 NFPMS:
- 11.3.1.1 Municipal Fresh Produce Markets are governed by Market By-Laws which regulate the day-to-day management and operations of the Municipal Fresh Produce Markets. These By-laws further stipulate how market agents are to conduct themselves while operating on the Municipal Fresh Produce Markets.
- 11.3.2 Market Agents
- 11.3.2.1 Market Agents are governed by the Agricultural Produce Agents Act and the Rules in respect of Fresh Produce Agents. Market agents are regulated by and are required to register with the Agricultural Produce Agents Council before they can operate.
- 11.3.2.2 Market agents are further required to open trust accounts into which the proceeds of the sale of the fresh produce they have received from farmers is paid.

- 11.3.2.3 The Agricultural Produce Agents Act further establishes a market agents' fidelity fund which guarantees the protection of farmers' money under certain circumstances.
- 11.3.2.4 The regulation of market agents is essential in order to provide security to farmers that they will receive the proceeds of the sale of their produce.
- 11.3.3 Agricultural Product Standards
- 11.3.3.1 Agricultural Product Standards are governed by the Agricultural Product Standards Act ("APS Act"), which is administered by the Department of Agriculture, Land Reform and Rural Development.
- 11.3.3.2 The APS Act regulates most agricultural produce, with a set of regulations for each product, specifying its definition, classification and the various grades within each product category.
- 11.3.3.3 Enforcement of these regulations has been outsourced by the Department of Agriculture to assignees in terms of the APS Act. In relation to fresh produce, Prokon has been appointed as an assignee by the Department of Agriculture.
- 11.3.3.4 Prokon is responsible for carrying out inspections and grading of fresh produce at the NFPMs, as well as inspections of fresh produce at retailer distribution centres and retail stores.
- 12 **Does Food Lovers procure any fresh produce from a National Fresh Produce Market? If yes, provide a broad overview of the process required to move produce through the levels of the value chain from purchasing, storage, packing, grading, transportation to the NFPMs, and any post market (NFPMs) logistics.**
- 12.1 Yes, FLM SA procures fresh produce from National Fresh Produce Markets ("NFPMs").
- 12.2 FLM SA is only in a position to provide an overview of the process to move produce from the point after FLM SA's buyers have procured the fresh produce from the NFPMs.
- 12.3 Once the fresh produce has been procured, FLM SA transports, at its cost, the fresh produce from the NFPMs to its distribution centres, which are all located in close proximity to the NFPMs.
- 12.4 The fresh produce is stored at FLM SA's distribution centres, where some of the fresh produce is packaged for retail purposes by FLM's pre-packs division. The fresh produce is then distributed to FLM SA's retail stores.
- 12.5 Grading at both the NFPMs and at FLM SA's distribution centres is undertaken by Prokon, an assignee appointed by the Department of Agriculture, Rural Development and Land Reform.
- 13 **What is the proportion of products that you procure from NFPM versus what you procure directly from farmers? Provide these estimates for the products of interested that you sold in the past 5 years (2017 – 2022).**
- 13.1 Over the past 5 years the proportion between the fresh produce that FLM SA procures from NFPMs and the fresh produce that FLM SA procures from direct suppliers is as follows:
- 13.1.1 [REDACTED] from NFPMs; and
- 13.1.2 [REDACTED] from direct suppliers.
- 13.2 The above proportions are impacted by the seasons, with the proportion of produce that FLM SA procures from direct suppliers increasing to [REDACTED] during the summer months as a result of summer stone fruits and table grapes.
- 14 **Does Food Lovers procure any fresh produce from a Wholesaler? To what extent are the post harvesting services provided by third-party service providers (including but not limited to: storage, breaks in the cold chain, grading and selection, packaging, and transportation)? In your response indicate how these services are priced, whether these costs are absorbed by the growers or passed on to the wholesalers?**

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- 14.1 FLM SA procures fresh produce from wholesalers/marketing companies. These wholesalers/marketing companies procure fresh produce directly from farmers/producers, and in turn supply such fresh produce to retailers.
- 14.2 FLM SA is aware that wholesalers/marketing companies do provide post harvesting services to farmers, however, the question with regard to the pricing of such post harvesting services will need to be directed to farmers and wholesalers/marketing companies as FLM SA does not have insight into this.
- 15 **Provide a list of third-party logistics service providers who provide logistics services (including but not limited to storage, breaks in the cold chain, grading and selection, packaging, and transportation) to yourselves and producers.**
- 15.1 FLM SA utilises the services of HDP Transport CC to transport fresh produce from NFMPs to its distribution centres; between its distribution centres (e.g. from the Johannesburg Distribution Centre to the Durban Distribution Centre); and from its distribution centres to its retail stores.
- 15.2 As noted above, Prokon, an assignee appointed by the Department of Agriculture, Rural Development and Land Reform undertakes grading at the NFPM and distribution centres.
- 15.3 FLM SA does not use 3rd party service providers in respect of packaging and selection, however, when produce is procured from marketing companies, such marketing companies will supply the produce to FLM SA packaged and branded with FLM SA's house brand.
- 16 **Does Food Lovers require a mandatory cold chain certification process for the domestic market, similar to the process followed by the Perishable Produce Export Certification Board (PPECB) in the export markets?**
- 16.1 No, FLM SA does not require cold chain certification in respect of the fresh produce procured.
- 17 **Is there a direct correlation between the quality of the cold chain used and the quality of the fresh produce supplied? In your response also refer to wastage and how the quality of the cold chain impacts on wastage and spoilage.**
- 17.1 Cold chains are effective in maintaining quality of fresh produce and reducing wastage and spoiling of fresh produce.
- 18 **Indicate the relative importance of NFPMs as a route to market for producers compared to other direct market platforms (online trading platforms such as khula!, direct contracting with retailers, wholesalers, and processors)?**
- 18.1 NFPMs are an important route to market for producers, particularly small-scale producers as there are low barriers to entry at the NFPMs. The NFPMs are open to all who have fresh produce to sell, provided there is consistent delivery of produce to the NFPMs and the quality of the produce is acceptable.
- 18.2 Furthermore, there is the benefit of being represented by experienced market agents, who are able to navigate the negotiations around the sale of fresh produce. In addition, payment terms at the NFPMs are favourable to producers, with producers being paid within three (3) days of their produce being sold.
- 19 **Identify the leading NFPMs operating in each province, including their relative size based on buyers, value of sales and revenues (overall and for the individual producers selling at the NFPM).**
- 19.1 The leading NFPMs are:
- 19.1.1 Johannesburg Fresh Produce Market;
- 19.1.2 Pretoria Fresh Produce Market;
- 19.1.3 Durban Fresh Produce Market;
- 19.1.4 Cape Town Fresh Produce Market (privately owned); and
- 19.1.5 Port Elizabeth Fresh Produce Market.

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- 20 **Indicate whether there is a history of entry and exit by other fresh produce markets (other than the NFPMs) operating in South Africa?**
- 20.1 Cape Town Fresh Produce Market is a fresh produce market, which was acquired from the City of Cape Town in 2004 by a consortium of shareholders and is therefore privatised. As such, the entry of new investors occurred in 2004.
- 21 **Have any other fresh produce markets (other than the NFPMs) expanded to such an extent that they increasingly represent an alternative to the NFPMs?**
- 21.1 FLM SA is of the view that other fresh produce markets have not expanded to such an extent that they represent an alternative to NFPMs.
- 22 **Explain the price setting mechanisms which pertain to the NFPMs and the role of agents in determining the daily spot price for fresh produce? In your response refer to**
- 22.1 Pricing of fresh produce at the NFPMs is dependent on availability of produce versus demand and is set on a daily basis. As far as FLM SA understands, historic pricing and volume data do not have any impact on the setting of prices at the NFPMs, since price is determined by current demand and supply.
- 22.2 Market agents represent farmers and present a price to buyers. FLM SA has no insight into the price setting arrangements between farmers and market agents. There is, however, scope for buyers to negotiate prices with market agents.
- 22.3 **Real time tracking of daily volumes and prices at the NFPM;**
- 22.3.1 Most NFPMs have pricing information available on their websites, which is updated daily at 12pm.
- 22.4 **Availability of historic pricing and volume data at the NFPM;**
- 22.4.1 NFPMs' websites include historic pricing and volume data.
- 22.5 **Real time tracking of daily volumes and prices across each NFPM;**
- 22.5.1 Most NFPMs have pricing information available on their websites, which is updated daily at 12pm. Each Fresh Produce Market has its own website, therefore, one can check each website for information across the NFPMs.
- 22.6 **Availability of historic pricing and volume data across each NFPM;**
- 22.6.1 Most NFPMs have pricing information available on their websites, which is updated daily at 12pm. Each Fresh Produce Market has its own website, therefore, one can check each website for information across the NFPMs.
- 22.7 **Determination of agent's Commission;**
- 22.7.1 In terms of market agents' commission, FLM SA's understanding is that the commission payable to market agents is product dependant and varies between 6% to 8%.
- 22.8 **To what extent do these factors listed in 22.1 – 22.6 above contribute to buyers and producers preferring to use larger regional NFPMs over their smaller local NFPMs? In your response identify any other factors that may contribute to this form of preferencing?**
- 22.8.1 The factors listed in 22.1 to 22.6 do not play a role in FLM SA's preference to utilise larger regional NFPMs over smaller local NFPMs. Rather, FLM SA's preference in this regard is based on the fact that the larger volumes of, and better-quality, fresh produce are available at the larger regional NFPMs. In addition to this, the larger regional NFPMs are in close proximity to FLM SA's regional distribution centres.
- 22.9 **Rules governing the conduct of producers, agents, and buyers at the NFPM;**
- 22.9.1 There are no rules governing the conduct of producers and buyers at the NFPMs.

22.9.2 Market agents are, however, governed by the Agricultural Produce Agents Act and the Rules in respect of Fresh Produce Agents, which contain provisions relating to the remuneration of fresh produce agents.

22.10 Grading systems and rules governing grading of fresh produce at NFPMs;

22.10.1 Prokon, an assignee appointed by the Department of Agriculture, Rural Development and Land Reform under the Agricultural Product Standards Act is mandated to implement a grading system at the NFPMs.

22.10.2 How a product is graded will inevitably have an impact on the price of a product.

22.11 Allocation of floor space across the trading floor of the NFPMs;

22.11.1 FLM SA is not aware that the allocation of floor space has any impact on the setting of prices at the NFPMs.

22.12 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.

22.12.1 FLM SA is not aware of any intermediaries operational at the NFPMs that provide these services or, at least, FLM SA has no interaction with such intermediaries. The only intermediary that FLM SA is aware of that is involved in grading is Prokon which is an assignee acting on behalf of the Department of Agriculture. FLM SA does not have insight into how Prokon determines its prices in respect of the grading service it renders at the NFPMs.

23 Indicate to what extent wholesalers are operational at the NFPMs? In your response kindly refer to:

23.1 Whether wholesalers are permitted to operate at the NFPMs and if so on what terms?

23.1.1 Wholesalers are not permitted to sell fresh produce at the NFPMs without a market agent licence.

23.2 Whether wholesalers are also mandated to purchase fresh produce from agents or whether they are permitted to buy directly from the producers?

23.2.1 Wholesalers are free to procure fresh produce either from market agents off the NFPMs or to procure fresh produce directly from farmers/producers.

24 Indicate to what extent large scale buyers such as Food Lovers are contracting directly with selected growers for their supply of fresh produce for each of the relevant commodities identified in para 6 above. In your response refer to:

24.1 FLM SA is only able to provide the Commission with information on the extent to which FLM SA procures directly from farmers/producers.

24.2 In this regard, [REDACTED] of the fresh produce procured by FLM SA is procured from growers / marketing companies (both of whom FLM SA considers as direct sellers), with the proportion of produce that FLM SA procures from direct suppliers/marketing companies increasing to [REDACTED] during the summer months as a result of summer stone fruits and table grapes which are procured directly.

24.3 The identity of these buyers and growers;

24.3.1 Please refer to the spreadsheet attached as "Item 9.1" which sets out the names and contact details of the farmers/producers and marketing companies from whom FLM SA procures direct supply of the relevant commodities.

24.4 The selection criteria and appointment process followed in entering into these agreements;

24.4.1 If a producer/farmer produces a product that FLM SA requires, is willing to supply FLM SA on a direct basis, and meets FLM SA's minimum requirements, FLM SA will procure from such producer/farmer.

24.4.2 FLM SA's minimum requirements are as follows:

- 24.4.2.1 the farm on which the fresh produce is grown, must have a Food Safety Management System in place that has been assessed against Local G.A.P (Good Agricultural Practice) intermediate level;
- 24.4.2.2 if applicable, the pack house in which the fresh produce is packaged must be in possession of a Certificate of Acceptability issued by the responsible Local Authority and have a Food Safety Management System in place that has been assessed against Local G.A.P intermediate level (Local G.A.P is a capacity building program developed by Global G.A.P, a farm certification scheme owner. Global G.A.P has written a number of farm certification standards based on Good Agricultural Practice);
- 24.4.2.3 the packaging and labelling of any pre-packed fresh produce conforms to all legislative requirements, including but not limited to the Agricultural Product Standards Act 119 of 1990 and all Regulations promulgated thereunder;
- 24.4.2.4 the fresh produce conforms to the quality standards prescribed in the Agricultural Product Standards Act 119 of 1190 and all applicable Regulations promulgated thereunder;
- 24.4.2.5 the quality of the fresh produce accords with the specifications set by Food Lover's fresh produce buyers; and
- 24.4.2.6 the producer/farmer must be able to transport its produce to FLM SA's distribution centres at its cost.

24.5 The nature and terms of these agreements including exclusivity and or volume commitments;

- 24.5.1 [REDACTED]
- 24.5.2 [REDACTED]
- 24.5.3 [REDACTED]
- 24.5.4 [REDACTED] :
- 24.5.4.1 [REDACTED]
- 24.5.4.2 [REDACTED]

24.6 The pricing mechanisms used in determining the selling price of the fresh produce including the determination of price increases over time;

- 24.6.1 The price at which FLM SA procures fresh produce from farmers/producers and marketing companies is a matter of negotiation and the daily prices on the NFPMs are utilised to negotiate prices with farmers/producers and marketing companies.

24.7 The pricing mechanisms including mark-ups and gross and nett margins of retailers, processors, and wholesalers;

- 24.7.1 The pricing of the fresh produce sold in FLM SA's stores is informed by the cost price of the product, the cost of distributing the product from its distribution centres to FLM SA stores, the cost of marketing such product, as well as the operating costs of FLM SA's stores.

24.8 In relation to pricing, indicate whether there is a link between the price for the fresh produce produced by the growers and the final retail price obtained;

- 24.8.1 There is indeed a link between the price of the fresh produce and the final retail price in respect of the fresh produce as the cost price of the fresh produce, amongst other costs, informs the retail price.

24.9 To what extent are the benefits of major increases in the retail price as a result of increased costs being passed down to the growers;

- 24.9.1 Increases in the retail price of fresh produce arise as a result of the increased cost of doing business borne by retailers, which lately also includes significant load shedding related costs.

24.9.2 It must also be borne in mind that the farmers/producers also have to contend with an increased cost of doing business as a result of, amongst other things, load shedding and the rising costs of input supplies. Just as retailers are forced to increase the retail price of fresh produce due to the rising cost of doing business, so too are farmers/producers forced to increase the selling price of their produce.

24.10 The duration of these agreements including renewal periods and terms;

24.10.1 As indicated above, [REDACTED]

24.11 Levels of investment funding by the buyers and the terms attached thereto;

24.11.1 FLM SA does not provide investment funding to the farmers/producers that it procures fresh produce from.

24.12 Who is responsible for the logistics costs (including but not limited to: storage, breaks in 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);

24.12.1 [REDACTED]

24.13 To what extent are the post harvesting services provided by third-party service providers (including but not limited to: storage, breaks in the cold chain, grading and selection, packaging, and transportation)? In your response indicate how these services are priced, whether these costs are absorbed by the growers or passed on to the wholesalers?

24.13.1 FLM SA has no insight into this area and is therefore unable to provide a response.

24.14 Provide a list of third-party logistics service providers who provide logistics services (including but not limited to storage, breaks in the cold chain, grading and selection, packaging, and transportation) to producers.

24.14.1 FLM SA is not privy to this information and is therefore unable to provide a response.

24.15 Provide a breakdown of these costs (disaggregated please) expressed as a percentage of total cost; and Quality control, health and safety requirements and verifications, including the costs associated with meeting these standards and requirements.

24.15.1 FLM SA is not privy to this information and is therefore unable to provide a response.

24.16 Quality control, health and safety requirements and verifications, including the costs associated with meeting these standards and requirements.

24.16.1 FLM SA's minimum quality and health and safety requirements are set out under 24.4 above. FLM SA does not have insight into the costs associated with farmers/producers meeting these requirements.

25 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 Producers. In your response indicate:

25.1 For FLM SA, the benefits of procuring fresh produce directly from farmers and marketing companies are the following:

25.1.1 FLM SA is able to negotiate a fixed price in respect of the produce for purposes of running promotions over a period of time;

25.1.2 To a certain extent, there is a guaranteed of supply of fresh produce; and

25.1.3 There is a saving of 12% market commission, which commission is built into the selling price of fresh produce procured at the NFPMs.

25.2 In FLM SA's opinion, there is no disadvantage to procuring fresh produce directly from farmers and marketing companies.

25.3 To what extent contracted buyers still purchase from NFPMs and under what conditions?

25.3.1 FLM SA procures 40% of its fresh produce from NFPMs, with the NFPM being used for "top up" purchases where direct supply falls short of FLM SA's stock requirements.

25.4 To what extent contracted producers still sell fresh produce at the NFPMs?

25.4.1 While FLM SA does not have data on the exact extent farmers/producers who sell directly also sell through the NFPMs, but anecdotally it understands that there are a number of farmers/producers who sell fresh produce both directly and through the NFPMs.

25.5 The reasons why these buyers and growers have opted to no longer use the NFPMs platforms;

25.5.1 FLM SA does not have insight into the decisions of the growers, but as a buyer, FLM SA uses the NFPM platforms to procure fresh produce and has no intention to opt out of utilising these platforms in the foreseeable future.

25.6 What it will take for these contracted buyers and producers to consider using the NFPMs platforms for the buying and selling of fresh produce.

25.6.1 FLM SA is not opting out of use of the NFPMs, and therefore cannot provide a response.

MARKET ACCESS FOR SMME AND HDI PRODUCERS

26 Explain in detail the factors that contribute to the lack of small-scale farmer participation in contract farming?

26.1 It is FLM SA's view that the following factors contribute towards the lack of small-scale farmer participation in contract farming:

26.1.1 Lack of access to transportation – this hampers the ability of small-scale farmers to deliver produce to retailer distribution centres; and

26.1.2 Crop selection – small-scale farmers generally grow crops that are affordable and quick to grow and produce, with the result being that they are producing crops that are already readily available.

27 What impact, if any, does the ability to contract with retailers have on small-scale farmers' ability to expand in the market?

27.1 FLM SA does not have insight into this and is therefore unable to answer this question.

28 Provide suggestions which in your view can assist in increasing the participation of small-scale farmers.

28.1 FLM SA does not have the same insight into this issue as would small scale farmers and therefore cannot answer this question.

29 What can be done to alter the trend in contract farming, if anything? Please fully explain your response.

29.1 FLM SA does not engage in contract farming and therefore is unable to express a view in this regard.

30 In Food Lovers' view are the standards imposed by regulators and industry associations fair and non-discriminatory to small-scale farmers? Briefly explain and provide evidence where applicable.

30.1 The purpose of the standards imposed by regulators is to provide protection to consumers in that they ensure safe, quality products are made available for sale to consumers. As such, it is FLM SA's view that these standards are fair and not intended to be discriminatory.

- 31 **Explain the extent to which the subjectivity of inspectors in the grading process affect small-scale farmers' effective participation in the fresh produce market value chain?**
- 31.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.
- 32 **Explain the extent to which contract terms disadvantage small-scale farmers' effective participation in the fresh produce value chain?**
- 32.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.
- 33 **Explain how contracting requirements (e.g. quality control standards, packaging, grading, cold chain requirements, volume and security of supply, transportation to the Distribution Centres) affect small-scale farmers?**
- 33.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.
- 34 **What are the standard contracting processes followed, duration of the contracts, renewal periods and terms, exclusivity and investment funding linked to the contracts?**
- 34.1 [REDACTED] FLM SA is not able to answer this question.
- 35 **To what extent do farmers have a say in the setting of the price of the contracted product?**
- 35.1 As with any producer or manufacturer, farmers have a significant say in the setting of the price of the produce they produce.
- 36 **What is the significance of the use of levies and rebates imposed by industry associations for small-scale farmers' effective participation in the fresh produce value chain?**
- 36.1 FLM SA does not have insight into this and is therefore unable to answer this question.
- 37 Has there been explicit efforts to lower barriers to entry and expansion and economic participation for SMMEs and HDIs?**
- 37.1 FLM SA does not have insight into this and is therefore unable to provide a response.

DISCRIMINATION ON OUTPUTS

- 38 **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 pros and cons of each channel.**
- 38.1 The NFPMs are an alternative route to market available to small-scale farmers.
- 38.2 FLM SA does not have any insight into the pros and cons of this route to market from the perspective of small-scale farmers, who would be better placed to provide this information.
- 39 Describe the nature of the negotiation process between Food Lovers and suppliers of fresh produce?**
- 39.1 Price negotiations between FLM SA and suppliers of fresh produce happen virtually on a daily basis. Specific negotiations also take place in respect of product specific promotions run by FLM SA retail stores during the year.
- 40 **What could be the reasons for the significant price differentials between fresh produce at NFPMs and retailers?**
- 40.1 The price differentials between fresh produce at the NFPMs and fresh produce at retailers can be attributed to:

-
- 40.1.1 the cost of logistics (transporting fresh produce procured at the NFPMs to retailer's distribution centres and from distribution centres to retail stores);
 - 40.1.2 the cost of operating distribution centres;
 - 40.1.3 The cost of buying teams and
 - 40.1.4 the cost of marketing.
 - 40.1.5 With almost permanent load shedding, retailers are also having to bear the cost of procuring diesel and generators to enable them to operate and maintain cold chain during period of load shedding, which additional cost also impacts on the price differentials between fresh produce at the NFPMs and at retail stores.

ACCESS TO FINANCIAL SUPPORT

- 41 **Does Food Lovers offer any and financial support to fresh produce small-scale farmers? Provide a full description.**
 - 41.1 FLM SA does not offer any financial support to fresh produce small-scale farmers.
- 42 **From Food Lover's 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.**
 - 42.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.
- 43 **There is information asymmetry which exists regarding the funding criteria used in some funding initiatives. The criteria are not clear and easily understood by emerging farmers. What is Food Lovers view on this statement?**
 - 43.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.
- 44 **What are the factors considered and the rationale for considering those factors when financial institutions design the funding criteria for fresh produce farming operations?**
 - 44.1 FLM SA does not have insight into this and is therefore unable to answer. Financial institutions will be best placed to respond to this question.
- 45 **Are there barriers to entry created for small growers by unfair or discriminatory application requirements and selection criteria? Briefly discuss and provide evidence where applicable.**
 - 45.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.
- 46 **In terms of development funding/finance, what is the uptake rate of small-scale farmers?**
 - 46.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers/financial institutions will be best placed to respond to this question.
- 47 **In Food Lover's view is the cost of finance/funding prohibitive or discriminatory to small-scale farmers in any way? Briefly elaborate on your answer and provide evidence where applicable.**
 - 47.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.
- 48 **What is Food Lover's standpoint on the use of the blended finance model?**
 - 48.1 FLM SA has no insight into this and is therefore unable to answer this question.

49 **What is the role and success of the incubator model for SMMEs in ensuring effective small-scale farmer participation in the fresh produce value chain?**

49.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.

50 **Are there any situations where funding is not released in time to meet the urgent financial relief sought by small-scale or emerging farmers to the extent that small-scale farmers have unfairly been prejudiced or disadvantaged?**

50.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.

51 **What are other key market features or financial institutions and government conduct that increase barriers to entry or expansion of small-scale farmers in the fresh produce market?**

51.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.

52 **What are Food Lover's views on small-scale farmer treatment by Funding and financing institutions? Kindly provide evidence, if any.**

52.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question

INQUIRY SCOPE AND ISSUES

53 **What are your views on small-scale farmer treatment by Funding and financing institutions? Kindly provide evidence, if any.**

53.1 FLM SA does not have insight into this and is therefore unable to answer. Small-scale farmers will be best placed to respond to this question.

54 Are there any additional areas of inquiry into the market for fresh produce not contained in the Terms of Reference that you believe are important for the Inquiry to cover as part of its work. If so, identify the specific area of inquiry or issue and the reasons why the Inquiry should include it in the scope.

54.1 FLM SA is of the view that it is essential that the Fresh Produce Market Inquiry ("FPMI") takes cognisance of and examines the ever-increasing costs the entire fresh produce value chain is having to bear due to load shedding, ailing public infrastructure and lack of reliable water supply.

54.2 In particular, the effects of load shedding on the fresh produce value chain should be examined by the FPMI. From what FLM SA has observed, load shedding is having a significant negative impact on the ability of farmers to produce sufficient volumes of produce, especially vegetables. This arises from the fact that farmers lose sensitive crops due to an inability run irrigation during load shedding. In addition, packhouses cannot complete daily pack runs and fall short on orders and volumes due to hours lost to load shedding.

54.3 Both farmers and retailers are having to incur massive costs (in the form of diesel and generators) to maintain the cold chain of fresh produce, which is naturally driving up the price of fresh produce.

54.4 While farmers do enjoy certain tax rebates in respect of the general fuel levy and road accident fund levy that is applied to diesel used to operate their generators during periods of load shedding under the South African Revenue Service's Diesel Rebate System, National Treasury has only recently extended the Diesel Rebate System to "manufacturers" and has specifically excluded retailers from qualifying for such Rebate System. It is incumbent upon food retailers, particularly those that sell fresh produce, to maintain the cold chain of the products that they sell, and they are therefore left with no choice but to power their retail stores and generators through alternative power supply during periods of load shedding. Therefore, there does not seem to be any rational argument to exclude food retailers from qualifying for the tax rebates in respect of diesel used to operate the generators required to power their retail stores and distribution centres during period of load shedding, particularly if the rationale for extending the Diesel Rebate System to

manufacturers is to curb rising food prices. If the industry is to get a handle on rising food prices, then the entire value chain should benefit from the Diesel Rebate System and not just pockets of the value chain.

54.5 FLM SA therefore believes that it is essential that the FPPI examines National Treasury's reasons for refusing to extend the Diesel Rebate System to food and grocery retailers, as well as the impact of such refusal on the price of fresh produce.

55 **Are there any other features of the market for fresh produce and the participation therein in South Africa of relevance to the Inquiry and which has not been traversed in the questions above? If so, please provide details as to the feature and the relevance for the Inquiry.**

55.1 FLM SA has no further inputs in this regard.

56 **Are there any other submissions the stakeholder would like to make of a general nature?**

56.1 FLM SA has no further inputs in this regard.

5 We trust the above to be in order. Please contact us if you have any questions.

Yours sincerely

(Transmitted Electronically)

CLIFFE DEKKER HOFMEYR INC