



**SALGA SUBMISSION IN RELATION TO
THE COMPETITION COMMISSION'S
FRESH PRODUCE MARKET INQUIRY
(FPMI)**

Prepared for:

Competition Commission

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LIST OF ACRONYMS

FPMI	: Fresh Produce Market Inquiry
MFPM	: Municipal Fresh Produce Market
NFPMCs	: National Fresh Produce Market Councils
RFI	: Request for Information
SALGA	: South African Local Government Association
WSA	: Water Services Authority

1. INTRODUCTION

The Competition Commission of South Africa (“the Commission”) – in exercising its powers in terms of section 43b of the Competition Act 89 of 1998 – has launched a market inquiry into the South African Fresh Produce Market. The purpose of the Fresh Produce Market Inquiry (“FPMI”) is to examine whether there are any features in the fresh produce value chain which lessen, prevent or distort the competitiveness of the South African fresh produce market. The scope of the Fresh Produce Market Inquiry covers aspects from the sale of fresh produce by the farmer to the customer (the retailer, processor or export market).

On the 31st of March 2023 the Commission submitted a Request for Information (RFI) to SALGA seeking answers and clarity on the following:

- *The role played by SALGA in relation to the fresh produce agricultural sector;*
- *The mandate of SALGA;*
- *If there are any institutions that report to SALGA;*
- *SALGAs understanding of the fresh produce value chain (all levels and players) and indicate where SALGA fits in*

Subsequent to the RFI, a meeting was convened – on the 11th of April 2023 – between the two (2) parties to afford the Commission and opportunity to detail their request, and for SALGA to respond accordingly.

2. OVERVIEW OF THE MANDATE OF SALGA

The South African Local Government Association (SALGA) is an autonomous association of all 257 South African municipalities and acts as a single voice in representing and protecting the interest of the sector. SALGA has set out its role to represent, promote and protect the interests of municipalities and to raise the profile of local government, amongst other objectives. SALGA has a clear strategic role to play in representing the interests of local government

within the system of government as a whole and supporting its members to fulfil their developmental obligations, on the other hand.

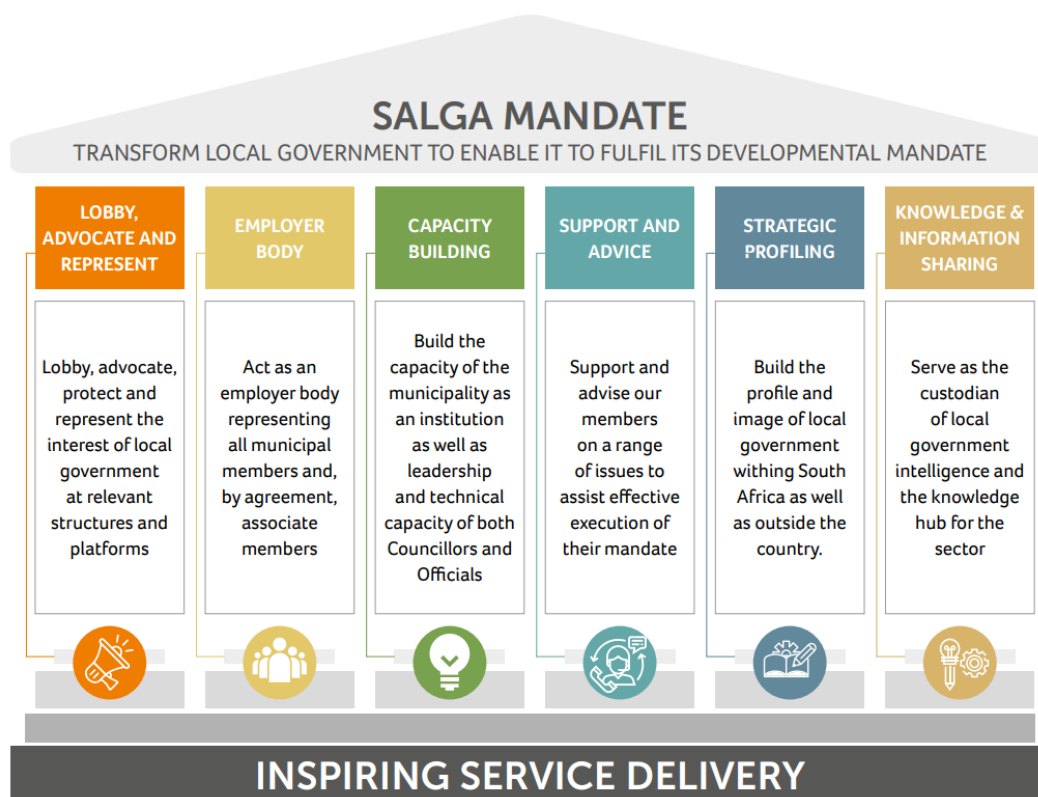


Figure 1: Mandate of SALGA

SALGA has set out to support municipalities meet their Constitutional mandate as enjoined by section 152(c) of the Constitution which, amongst other directives, calls on municipalities to promote social and economic development. SALGA, as the single voice of local government and the guardian of the sector, is concomitantly required by section 3(c) of the Municipal Systems Act (32 of 2000) to “find solutions for problems relating to local government...”

3. OVERVIEW OF THE MUNICIPAL FRESH PRODUCE MARKET (MFPM) LANDSCAPE

There are twenty-three (23) Municipal Fresh Produce Markets (MFPMs) that operate across South Africa. In 2019, MFPMs sold **3.4 million** tons of fresh

vegetables and fruits, resulting in a turnover of **R17 billion**. There are four (4) types of FPMs in terms of ownership/management, namely:

- Department/business units
- Corporatised/municipal entities
- Public-private partnerships
- Privately owned and operated entities

3.1 How do FPMs operate?

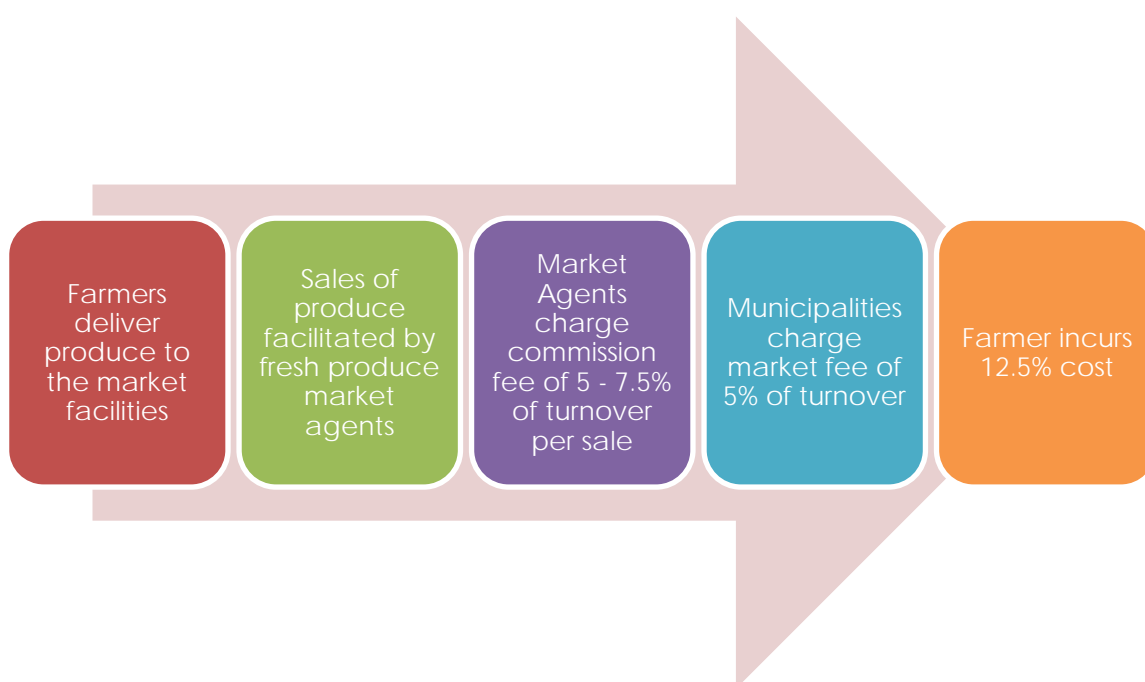


Figure 2: How MFPMs operate – infographic

3.2 FPMs forms of ownership categories and examples

Table 1 represents the different categories of FPMs, as well as examples in the form of municipalities.

Table 1: Categories of FPMs and examples

CATEGORY	MARKETS
Municipally owned and operated markets (Department/ business units)	Tshwane; Sol Plaatjie (formerly Kimberley); Port Elizabeth; East London; Durban; Mangaung (formerly Bloemfontein); Pietermaritzburg; Matjhabeng (formerly Welkom); Matlosana (formerly Klerksdorp);

	Springs; Vereeniging and eMalahleni (formerly Witbank)
Corporatised/Municipal Entity	Joburg and Kei
Public-private partnerships (municipally owned but privately operated)	Cape Town
Privately owned and operated	George; Nelspruit; Mpumalanga; Mooketsi; Polokwane and Van der Bijl Park

The FPMs play a pivotal role in advancing local economic development, a mandate of Local Government in terms of section 152(c) of the Constitution. While SALGA has, in the past, not been foremost involved in the space of the FPMs, it is an area that the association is now looking to keep within its radar. This is primarily due to FPMs being significant contributors to local economic development.

4. EXCERPTS FROM KEY LEGISLATION RELATING TO LOCAL GOVERNMENT POWERS AND FUNCTIONS

4.1 The Constitution

4.1.1 Objects of Local Government

Section 152 (1) of the Constitution spells out the objects of local government, which are:

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.

4.1.2 Powers and functions of municipalities

In terms of section 156 (1) of the Constitution, a municipality has executive authority in respect of, and has the right to administer:

- (a) The Local Government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution; and
- (b) Any other matter assigned to it by national or provincial legislation

Furthermore, section 156 (2) of the Constitution states that:

“A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.”

Schedule of powers and functions of municipalities (not exhaustive)

Table 2: Schedule of powers and functions of municipalities

SCHEDULE 4 PART B	SCHEDULE 5 PART B
Municipal Planning	Markets
Municipal health services	Public Places
Trading regulations	Street trading
Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems	Licensing and control of undertakings that sell food to the public

4.2 White Paper on Local Government (1998)

The paper serves as a blueprint for the sector and its developmental agenda, and it states that: “Local Government is NOT directly responsible for creating jobs. Rather, it is responsible for taking active steps to ensure that the overall economic and social conditions of the locality are conducive to the creation of employment opportunities”.

4.3 Municipal Systems Act (32 of 2000)

Section (3): For the purpose of effective co-operative government, organized local government must seek to—

(c) find solutions for problems relating to local government generally

4.4 Other applicable Local Government powers

4.4.1 Municipal Planning Function

Municipal planning function entails the preparation and allocation of among other:

- plans to respond to community needs and priorities for service delivery and development within the scope of assigned functions and constitutional obligations. These plans have a hierarchical relationship with the integrated development plan serving as the principal document outlining the municipal strategic vision and broad development objectives. For it to effectively realise, it is supported by the adoption of a series of operational and sectoral functional plans;
- plans to regulate and formulate policies and by-laws to support the undertaking of municipal functions;
- Plans to raise revenue, allocate resources to fund the undertaking of assigned municipal functions;
- plans to monitor, co-ordinate and facilitate cooperative governance including community involvement in the affairs of a municipality in pursuit of sustainable delivery of assigned functions.

4.4.2 Markets Function

The municipal function assigned in terms of **schedule 5B** of the **Constitution (Act 106 of 1996)** informs most activities that municipalities undertake within the fresh produce markets. In exercising this function in respect of fresh produce, the 23 municipalities listed in **Table 2** above provide infrastructure and trading platform for selling and buying fresh produce.

It is a function whose delivery enjoins competencies held by other spheres of government in respect of National and Provincial economic and trading policy, legal and regulatory frameworks as well as law enforcement.

In terms of this function municipalities are responsible and often able (there is a varied level of capacity among municipal typologies to raise own revenue and receive grant funding for performance of certain activities) to undertake among other the following set of enabling activities:

- policy and regulatory services (eg. By-laws, town planning schemes, by-law enforcement etc)
- planning support to enable markets to function and contribute to economy.
- provision of fresh produce handling and trading infrastructure and platforms including trading buildings, cold storages and trading software as well basic supporting infrastructure and services such as electricity, water, sanitation, roads and waste management to the fresh produce markets.
- facilitation and coordination of stakeholders (eg. producers, consumers, regulators) including intergovernmental relations to the extent feasible at the municipal level.

It must be noted that municipalities currently do not receive any dedicated national grant to undertake the markets' function. Resources for the activities undertaken are dependent on the ability of each municipality to raise own revenue from rates, traded assigned services or raising of loans. This is often a key challenge to the ability of each municipality to develop sufficient required capacity and intervention programmes to effectively enable supporting, development, and regulation of markets.

4.4.3 Water Services Function

Municipalities are either assigned powers to be water service authority or water service provider or both depending on the assessment undertaken in terms of:

- Water Services Act: 108 of 1997 (allocation of water functions between spheres)

- Municipal Systems Act: 102 of 2000 (s76-82)
- Municipal Structures Act: 117 of 1998 (s84 & 85 determinations)

In all instances, municipal water service roles are often restricted to reticulation related functions (i.e. purification and supply). Municipalities play a limited role (planning and consultation) in the final determinations on matters of raw water extraction, bulk supply and policy or regulation thereof.

5. OVERVIEW OF THE WATER CYCLE

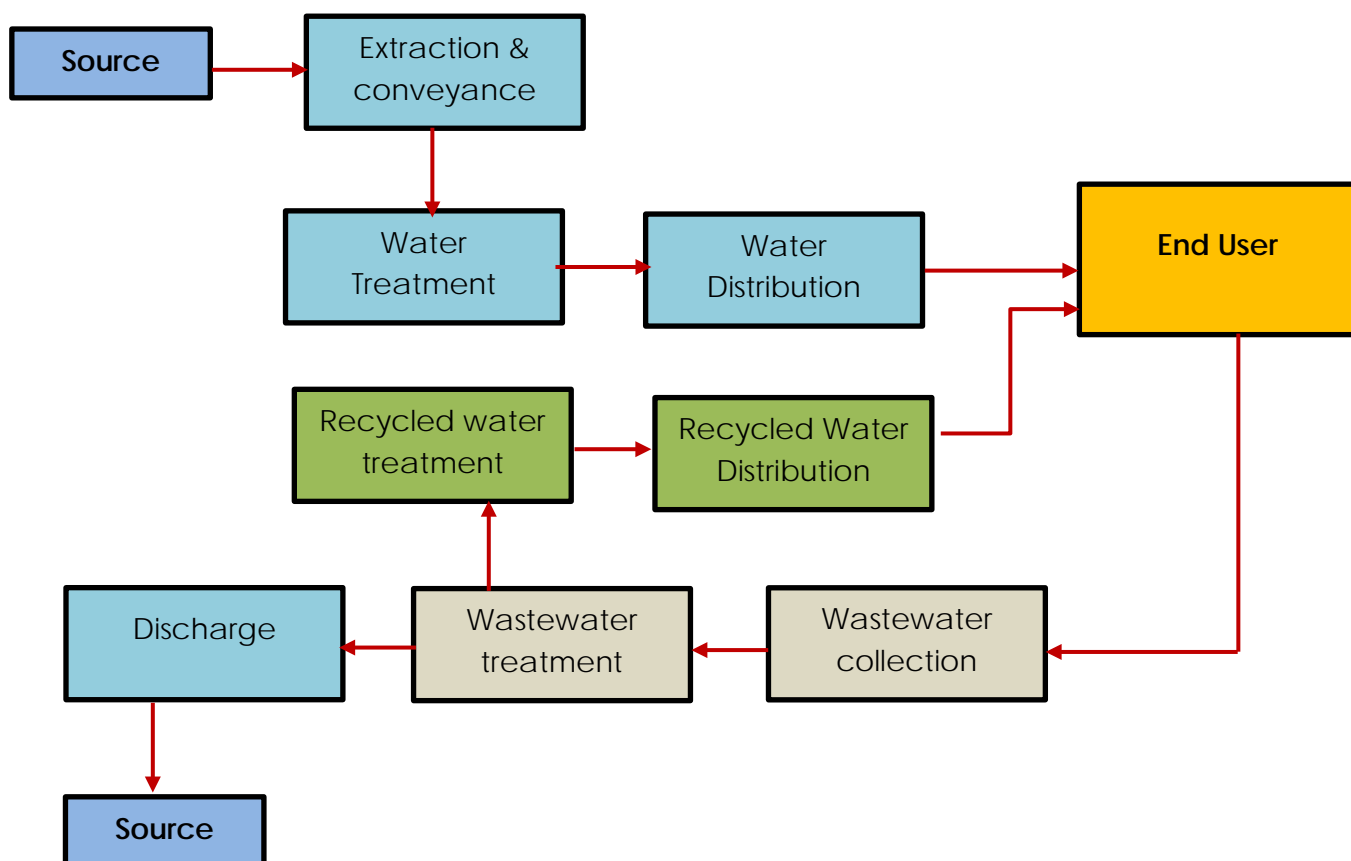


Figure 3: Schematic overview of the water cycle

Explanatory notes:

Source	dam, river, catchment (falls within the jurisdiction of the Department of Water & Sanitation)
Extraction & conveyance	Undertaken by a licensed authority (municipality, water board, etc)
Water treatment	Treatment of water to drinkable standard. Responsibility of the the WSA (municipality) or Water Services Provicer (eg. Water Board)
Wastewater treatment	Responsibility of the the WSA

4.1 Main users of water



Figure 4: Main users of water

6. WATER SERVICES INSTITUTIONS

The **Water Services Act (108 of 1997)** provides for the institutional arrangements for water services provision. It sets out who is responsible for different activities as depicted in Table 2.

Table 3: Water services institutional arrangements

<p>Water Services Authority (WSA)</p>	<p>is any municipality that has executive authority for water services within its area of jurisdiction in terms of the Municipal Structures Act or the ministerial authorisations made in terms of the Municipal Structures Act</p>
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	A water services authority is a municipality and cannot be any other type of institution
Water services intermediary	a person or body which provides water to people as a part of some other contract (e.g. a farmer who provides water to farm labourers or a mine that provides water to people living in company housing and hostels)
Water services provider	physically provides the water supply and sanitation services to consumers under contract to the water services authority. This function can be performed by the municipality itself or any other public or private body, such as a water board, a non-governmental organisation (NGO), a community-based organisation (CBO) or a private company
Water Board	Established by the Minister of Water and Sanitation. The primary function of a water board is to provide water services to other water services institutions.

7. SALGA SUBMISSION TO THE COMMISSION

Based on the information provided, the powers and functions of municipalities in relation to water extraction and provision, and the mandate of SALGA with respect to the National Fresh Produce Markets, the following submission is hereby made to the Commission:

- THAT it be noted that all the water sources – rivers, dams, catchment areas – fall within the purview of the Department of Water and Sanitation, which is legally mandated to be the sole authority for all South Africa’s water resources;

- THAT any extraction of the roar water resources from the sources mentioned above can only take place provided a water use license or permit has been issued by the Department of Water and Sanitation. Municipalities have minimal to no influence in this regard;
- THAT not all municipalities are assigned powers to act as water services authorities or even providers. Those that are assigned powers to act as water services authorities (ie. All Category A, Category Cs mainly in EC, KZN and NW, Category Bs in WC, FS, LP, NC and GP). Water Service Authorities are responsible for drafting of service delivery plans, policies and regulations in respect of the scope of their assigned powers and function. The function of policy and regulation in respect of water service includes setting of tariffs and enforcement of compliance to adopted municipal by-laws and policies.
- THAT the purification and distribution of water is the responsibility of assigned municipal providers. These are a range of mechanisms agreed after following the Municipal System’s Act section 78 process and typically include options like Water Boards, Municipal Water Utility, Contracted private concession suppliers.
- In respect of fresh produce markets, SALGA submits that this is one of the municipal functions that the association should play its role of facilitating the creation of an enabling environment for their effective and efficient operations through advocating, representing, supporting and advising municipalities, fulfilling the employer role and facilitating information sharing among municipalities. This is an area to which Salga would like to pay attention going forward.
 - In respect of obtaining substantive information to guide the decision of the Commission, SALGA advises and encourages that the Commission approaches municipalities that own/ operate Fresh Produce Markets directly as they are in a better position to provide more accurate details. The list is provided in **Table 2** above. The Fresh Produce Market Association may also be of assistance in this regard.

SALGA, as the single voice of local government, is therefore able to support the work of the Commission in that:

- SALGA has a clear strategic role to play in representing the interests of local government within the system of government as a whole on the one hand, and supporting its members to fulfil their developmental obligations, on the other;
- SALGA is an active participant in the intergovernmental relations (IGR) system to provide a common position on numerous issues and to voice local government interests, as well as provide solutions to the challenges facing local government more generally;
- It must further be noted that SALGA advocates, represents, supports, and facilitates information amongst municipalities in all Constitutionally designated functions of Local Government, including the Municipal Fresh Produce Markets
- In light of the FMPs being a Local Government function in terms of Schedule 5, Part B of the Constitution, SALGA undertakes to support the work of the Commission through:
 - Providing support to the Commission with respect to data collection and information gathering;
 - Mobilising all SALGA members to give the Commission full cooperation throughout the course of the FPMI inquiry
 - Intervening where the Commission may be struggling to access the required information from the Municipalities or National Fresh Produce Market Councils (NFPMCs)
 - Working with the Commission to implement the recommendations emanating from the Inquiry