



**For Immediate Release**

**18 June 2024**

**REMARKS BY THE CHAIRPERSON OF THE FPMI, DEPUTY COMMISSIONER OF THE COMPETITION COMMISSION, MR HARDIN RATSHISUSU, ON THE OCCASION OF THE MEDIA BRIEFING ON THE OFFICIAL PUBLICATION OF THE PROVISIONAL REPORT BY THE FRESH PRODUCE MARKET INQUIRY, HELD ON 18 JUNE 2024**

## **BACKGROUND**

The Competition Commission of South Africa (“the Commission”) initiated the Fresh Produce Market Inquiry (“FPMI” or “the Inquiry”) in terms of the Competition Act 89 of 1998, as amended (“the Competition Act”). The Commission had reason to believe that there may be features in the fresh produce market that could impede, restrict or distort competition, with specific focus on significant fresh produce. The main purpose of the Inquiry is therefore to examine whether any features in the fresh produce value chain impede, restrict, or distort competition in the market.

In terms of scope, the Inquiry is focused on five fruits, namely, apples, citrus (particularly oranges and soft citrus), bananas, pears and table grapes, and six vegetables, namely, potatoes, onions, carrots, cabbage, tomatoes and spinach. Prior to the commencement of the Inquiry, the Commission had extensive consultations with stakeholders on the scope of the inquiry through the publication of the draft terms of reference and subsequent engagements.

The Inquiry received comments from 9 stakeholders being industry associations, processors, civil society and other organisations, wholesalers, and others.

The Inquiry further engaged 15 stakeholder across the value chain. These stakeholders included government departments, retailers, regulators and other industry bodies.

The Inquiry collected information and evidence using various methods. The Inquiry published Statement of Issues, outlining some of the key issues for consideration by the Inquiry, on the Commission’s website and also invited stakeholders to comments. In addition, the Inquiry sent out request for information to more stakeholders across the fresh produce value chain. The Inquiry also held workshops with smallholder

farmers in various location in South Africa namely Thohoyandou, Tzaneen and Giyani in Limpopo, Keiskammahoek in the Eastern Cape, Tugela Ferry in KwaZulu-Natal and Vredendal in the Western Cape.

Prior to finalising the Provisional Report, the Inquiry also engaged most stakeholders that are affected by the provisional findings, recommendations and remedial actions.

The Inquiry assessed the fresh produce value chain from input level up to retail and wholesale. In doing so, the Inquiry sought to identify any market features or a combination of features that may distort, restrict or distort competition in various markets along the fresh produce value chain. The Inquiry also assessed the level and extent of HDP/SME participation in various markets.

The market size of the domestic fresh produce market in South Africa is currently estimated at over R53 billion annually (circa R21 billion for fresh produce sold through national fresh produce markets and circa R32 billion through formal retail). This figure excludes export, direct sales and farm-gate sales.

## **WHOLESALE/NFPMS**

Starting with the wholesale, the Inquiry found that the state of NFPMS infrastructure is concerning. The Inquiry's assessment of output markets for farmers revealed various concerns relating to the retail and wholesale level. The Inquiry also found that, although NFPMS generate enough revenue to sustain themselves, profits generated are not ringfenced to cater for current and future capital expenditures. Although these assessments were mainly for the top 4 NFPMS, these problems are prevalent at all NFPMS.

The Inquiry also found inconsistencies in the NFPMS bylaws. This is a particular concern especially for the smallholder, HDP/SME farmers, who may be required to comply with different set of rules across various NFPMS. Difference in trading hours, for example, may imply that certain farmers are not able to access their ideal markets and be forced to sell through markets closer to them. This therefore may lead to distorted competition between farmers.

The Inquiry also found that HDP/SME farmers find it difficult to sell their produce in the NFPMS, despite being the least costly route to market. It has been estimated that less than 1% of gross value of sales in the NFPMS come from smallholder or HDP/SME farmers. The HDP/SME market agents also find it difficult to enter and grow in the NFPMS. Where entry occurs, this is limited and survival rate is low.

The Inquiry also found high levels of concertation with respect to the market for market agencies operating at the NFPMS. Related to this, there is a concern on structural linkages between market agents. This structural linkage has an effect of chilling competition between market agencies in a highly concentrated market, regardless of the measure of concentration employed.

Some questionable practices of the market agents were also uncovered. These practices have the likely effect of distorting market outcomes. In order to resolve instances of practices such as stock reservation

and credit sales, the industry regulator together with NFPMs needs to play an active oversight role. However, the Inquiry raised a conflict of interest in the composition of APAC council in relation to the fresh produce representatives.

## **RETAIL PRICE**

In relation to retail prices for fresh produce under consideration, the Inquiry found instances of high mark-ups. High mark ups that retailers are able to sustain over a period of time could be a good indicator of lack of competition. Following preliminary engagements with retailers, the Inquiry is continuing to analyse the data and further engagements with these retailers will take place after the publication of this Provisional Report.

The Inquiry also found that since the Grocery Retail Market Inquiry and following disbandment of the exclusive leases, there has not been new entry to challenge the top 4 retailers being the emerging challenger retailer) in shopping centres. The Inquiry confirmed that the structure of the retail landscape especially in respect of national supermarket chains has not changed.

These four retailers account of a substantial share of the national grocery retail market share. The Inquiry further found that prices of fresh produce are not transparent enough such that they allow for consumers to reasonably compare prices in-store and across retailers. This is because pricing of fresh produce is not on per kilogram basis but per unit basis (e.g. 7 kg potatoes). Lastly, there is still a slow progress in integrating SME/HDP farmers into various retailers supply chain.

## **INPUTS**

In relation to input level of the value chain, the Inquiry assessed markets for fertilisers, agrochemicals and seeds. In essence, South Africa relies extensively on imports of these key produce. This makes the agricultural sector in South Africa exposed to global risks. This has been observed during Covid-19 period and the events in Ukraine.

The agrochemical sector in South Africa is moderately concentrated with various domestic and global players. However, the Inquiry found that the majority of active ingredients are imported from abroad. Similar to fertiliser, the domestic farming sector is exposed to developments elsewhere as well as currency risks. Nonetheless, the Inquiry found that some firms in the sector engage in practices or conduct that may distort competition. This centres mostly around the use of territorial allocation in their distribution agreements with retailers.

In the seeds industry, the Inquiry found instances where a firm appears to be involved in charging farmers what could be characterised as exploitative prices. The Inquiry noted that price increases for certain seeds where this firm has high market shares.

In addition, access issues have also been uncovered in relation to seed potatoes. This problem relates to early termination of seed variety before expiry of its plant breeders' rights to ensure that competitors do not get hold of it after expiry. Linked to this, is the challenge where ARC is facing funding challenges following withdrawal of some industry associations who previously played a key role in funding the organization, particularly with potato gene bank. As such, the defunding of the ARC by various industry associations has wider implications.

## **BARRIERS TO ENTRY**

Barriers to entry in the value chain, especially at the farming level, is plagued by many problems. Access to finance remains one of the most important elements to successfully participate in farming. However, the Inquiry found the interdependence between access to finance and access to water.

In order to alleviate the concerns, the Inquiry has identified 29 practical and reasonable actions, being eight (8) remedial actions and twenty-one (21) recommendations that could address distortions in the fresh produce market.

## **PROVISIONAL FINDINGS AND RECOMMENDATIONS**

### **National Fresh Produce Market**

The Inquiry found that the state of NFPMs infrastructure, as widely reported, is deteriorating and problems associated with maintenance of these key public goods are prevalent. The Inquiry also found that, although NFPMs generate enough revenue to sustain themselves, profits generated are not ringfenced to cater for current and future capital expenditures. Although this assessment was mainly for the top 4 NFPMs, these problems are prevalent at all NFPMs.

*Provisional Recommendation: Municipalities, in collaboration with SALGA, should change the operating and governance models for NFPMs and adopt the following in line with the municipal legislative framework (including Municipal Finance Management Act and Municipal Systems Act):*

The corporatisation of NFPM operations through SOCs owned by municipalities with particular emphasis on the need for accounting separation (i.e. a separate budget, procurement lines and accountability through a stable board of directors); and/or

The creation of Public Private Partnerships with municipalities retaining ownership of the NFPMs infrastructure.

*Provisional recommendation: the Municipalities should ringfence profits earned from the market to fund capital expenditure and, where feasible, increase budget allocations for NFPMs, over and above the revenue generated by the NFPMs.*

The Inquiry also provisionally found that HDP/SME farmers find it difficult to sell their produce in the NFPMs, despite them being the least costly route to the markets. It has been estimated that less than 1% of gross value of sales in the NFPMs come from smallholder or HDP/SME farmers and Market Agents.

Provisionally recommendation: All NFPMs to set targets to increase annual sales of small-scale and HDP farmers through NFPMs. These targets should be a minimum of 10% increase annually in sales from SME and HDP farmers combined.

The Inquiry also found inconsistencies in the NFPM bylaws.

Provisional recommendations: Municipalities should, within 3 years, harmonise the bylaws with respect to the (i) trading hours, (ii) passing of risk from farmer to buyer, (iii) market agent rules, (iv) use of cold storage and ripening facilities, (v) dispute resolution and appeal processes and (vi) rules around conflict of interest in respect of the NFPMs. In addition, SALGA, local municipalities and all NFPMs should, following harmonization, revise bylaws every 3 years to keep up with the developments in the economy.

The Inquiry further found that HDP and SME Market Agents do not have access to the mostly traded fresh produce at the NFPMs. In this regard, the Inquiry recommend measure to ensure access to the produce.

Provisional recommendation: NFPMs must put in place a programme for (i) introduction of new HDP market agents (where there is none) and (ii) ensuring that the HDP market agents have access to highly traded produce, namely potatoes, onions, tomatoes, and bananas at all NFPMs.

Provisional recommendation: Large established farmers must put in place a programme for (i) introduction of new HDP market agents (where there is none) and (ii) ensuring that the HDP market agents have access to highly traded produce, namely potatoes, onions, tomatoes, and bananas at all NFPMs.

Provisional recommendation: APAC must develop a quantifiable HDP salesperson development programme (to develop skills and contribute to the successful new entry of HDP market agencies). Priority must be given to the existing salespersons from market agencies that are wholly owned by HDPs.

Provisional recommendation: Dominant market agents by either product line or overall market share per major NFPM, namely RSA Group, Subtropico, Grow Group, Dapper and Prinsloo and Venter Market Agents, must enter into management agreements with SME or HDP market agents for skills transfer as well as training on managing the fresh produce market agency business.

Provisional recommendation: DALRRD must, within 3 years, amend the APA Act to confer powers to APAC to regulate market agencies' HDP ownership and participation. This should be in line with the AgriBEE Broad-Based Black Economic Empowerment Framework for Agriculture.

## **Market Agents**

The Inquiry also found high levels of concentration with respect to the market for market agencies operating at the NFPMs. Related to this, there are concerning structural linkages between African Rainbow Capital, Subtropico and RSA Group. These structural linkages have an effect of chilling competition between Subtropico and RSA Group. The Inquiry also found that smallholder, HDP or SME farmers could face relatively high commission fees when engaging market agents.

Provisional recommendation: DALRRD should amend the APA Act within 3 years to allow for regulating the maximum commission fee which may be charged by market agents (i.e. place an effective cap on commission fees), such that the revised cap should not lead into increases in the current commission fees and should provide for discounts. In addition, the costs associated with transport, palletising and packaging, should be negotiated or set outside of the commission fee structure.

Provisional recommendation: APAC and the NFPMs management must use advocacy measures to educate farmers that they can negotiate lower commissions with market agents and either that a maximum fee applies or that they cannot be forced to accept an ostensible standard commission rate.

Provisional remedial action: African Rainbow Capital should divest its shareholding in either Subtropico or RSA Group. The buyer of divested shares must be a firm wholly owned and/or controlled by HDP.

Some practices of the market agents were also uncovered. These practices include stock reservation, agents having possession of buying cards, after-hours trading, and credit sales. These practices have the likely effect of distorting market outcomes where they are practiced.

Provisional recommendation: APAC must develop and enforce a code of Good Practice governing these practices, in accordance with the relevant provisions of APA Act, for market authorities and market agents to comply with.

The Inquiry found conflict of interest in the composition of APAC council in relation to the fresh produce representatives. This may imply that the Registrar of APAC may not be able to exercise his/her duties of disciplining market agencies, if found to be engaged in undesirable practice, as she/he reports to a council that the same market agents are appointed to.

The Inquiry makes a provisional finding that the composition of APAC, insofar as fresh produce members is concerned, creates a conflict of interest by having market participants exercise oversight over the

executive officials of the sector regulator. This is particularly concerning given highly concentrated nature of the market agency market with few firms controlling a substantial share of fresh produce trade.

Furthermore, that the lack of adequate rotation of the fresh produce members on APAC excludes SME and/or HDP representation.

Provisional recommendation: DALRRD should, as part of the current legislative amendments concerning Agricultural Produce Agents Act, review the composition of the APAC members to minimise conflicts of interest on market agents. In addition, amendments should also include rotating the membership of APAC members to include small or 100% HDP-owned market agents.

### **Retailers**

In relation to retail, the Inquiry makes a provisional finding that the lack of transparency in unit *pricing* (per kg/g) distorts competition in that consumers are less able to compare pricing between retailers. It is important that this concern be remedied as this will allow consumers to compare pricing of differentiated products instore and across the retailers.

Provisional remedial action: Retailers (Woolworths, Shoprite, Spar, Food Lover's Market and Pick n Pay) ensure that, in addition to unit prices displayed on various fresh produce, there should also be **per kg or gram** pricing displayed below the unit prices in their stores.

The Inquiry also provisionally found that the national retailer's market is highly concentrated with the top four retailers commanding a substantial share of the market. Despite elimination of exclusivity clauses in shopping centre lease agreements, there has not been any meaningful entry in the retailing space. There is a need to enhance competition in this market which will likely lead to more price competition between retailers.

Provisional recommendation: The dtic must set-up a fund to assist new entrants in the retailing of fresh fruits and vegetables in shopping centres.

Provisional remedial action: The South African Property Owners Association (and its members) and other large owners of retail property should commit to make available a minimum allocation of retail space available to enable effective entry of new entrants including HDP and SME and well as emerging challenger retailers for fresh produce in the shopping centres and/or malls.

***Market dynamics of key inputs (fertiliser, seeds & agrochemicals)***

In relation to fertilisers, the Inquiry makes a provisional finding that South Africa's reliance on imports exposes the fresh produce supply chain, and the agricultural sector broadly, to global price fluctuations thereby creating uncertainty in the market.

*Provisional recommendation: The dtic implement measures to support the local/domestic fertiliser industry where there is domestic capability.*

In relation to agrochemicals, the Inquiry provisionally finds that the territorial allocation clauses contained in the distribution agreements between Bayer and several of its appointed distributors limits competition between appointed distributors and ultimately limit the farmer's choice.

*Provisional remedial action: The Inquiry requires, as a remedial action, that Bayer remove the territorial clauses from its distribution agreements with appointed distributors.*

In relation to seeds, the Inquiry found instances of high mark-ups for Starke Ayres. In addition, the Inquiry also found that in the recent past, prices for certain seeds supplied by this company namely tomatoes, spinach and cabbage experienced high price increases. This are seeds where this company has relatively high market shares.

*Provisional remedial action: Starke Ayres should reduce the mark-ups of cabbage, spinach and tomato seeds to the average of the mark-up of its entire seeds category.*

The Inquiry further finds that the withdrawal of funding by certain industry association such as Hortgro will have a negative impact on the ability of ARC to deliver on its mandate. This may lead to market distortions in that it makes farmers dependent mostly on the use of protected varieties and small-scale, SME or HDP farmers may be excluded due to affordability.

*Provisional recommendation: DALRRD should ensure adequate funding for the ARC to maintain the gene bank.*

*Provisional recommendation: The Agricultural Input Control, a directorate under DALRRD, should collaborate with private firms in the industry or industry bodies to build capacity at the AIC.*

*Provisional recommendation: DALRRD should ensure that seed companies sponsor new entrants when testing varieties for South African conditions.*



The Inquiry also considered the usage of Plant Breeders Rights in relation to Simba, a subsidiary of PepsiCo. The Inquiry noted an apparent strategy by Simba, who develops its own varieties, and discontinue use of a closed variety before expiry of its Plant Breeders' Right. It seemingly replaces that variety with its new (fully protected) variety. This strategy, means that access to a variety (which will imminently be open) may be limited through the removal of the genetic material.

The Inquiry engaged Simba which denied that it stops a variety before the expiry of PBR. The Inquiry considered Simba's submission but remains unconvinced particularly because as it stands, there is no access to this cultivar even if farmers may try to obtain it. In light of this, the Inquiry makes a provisional finding that Simba's decision to discontinue the FL2006 without making this cultivar available to the market distorts competition. This is mainly because the competitors of Simba or new entrant will not have access to this variety.

*Provisional remedial action: Simba should make available to the ARC its potato variety FL2006 gene material to the Agricultural Research Council for preservation and ensuring that it is available to any member of the public.*

*Provisional recommendation: DALRRD should consider measures to open up access to FL2006 potato variety.*

In relation to cooperatives the Inquiry makes a provisional finding that the current role of co-operatives does not enable sufficient support or benefits to SME and/or HDP farmers. Another concern with co-operatives is that they are not very effective in current form and there is a need to formalise them by considering independent third-party administrator who manages the co-op on behalf of members, similar to the grocery buying group-model.

*Provisional recommendation: DALRRD should develop a single programme which leverages existing structures (such as co-ops and extension officers) to provide support to small scale farmers in relation to technical advice, marketing and the benefits of bulk-purchasing.*

### **Barriers to entry**

The Inquiry noted that most of the large formal retailers offer more favourable terms to small scale farmers that have joined their respective supplier development programmes (SDP). Whilst current efforts by retailers are noted, the Inquiry finds that the SME and/or HDP farmers still constitute a relatively small proportion of retailers' procurement spent of fresh produce. The Agriculture and Agroprocessing Master Plan (AAMP) echoes similar supplier development solutions. In relation to interventions in the agro-processing value chains, the Master Plan requires the expansion of supplier/enterprise development programs of supermarkets and large agro-processors to build supplier capabilities at the local (district),

national and regional levels. It sets a target of a 3% spend of Net Profit After Tax (NPAT) by retailers and agro-processors on enterprise development programmes.

*Provisional remedial actions (27): Retailers (Woolworths, Shoprite, Spar, Pick n Pay and Food Lover's Market) expand their existing supplier development programmes (which already focusses on allowing SME/HDP access) in line with the commitments of the AAMP, namely a 3% spend of Net Profit After Tax (NPAT) on their SDPs, alternatively, an increase in supplier development baseline by 10% annually for a period 5 years.*

Barriers to entry in the value chain, especially at the farming level, is plagued by many problems. Access to finance remains one of the most important element to successfully participate in farming. However, the Inquiry found the interdependence between access to finance and access to water. Some of the loans declined were declined by the banks solely on the basis that the farmer did not have access to water rights. However, the Inquiry found that the DWS appears to be fast tracking its water application process to cater for the demand.

The Inquiry makes a provisional finding that the delays in the implementation of the Blended Finance Scheme disproportionately affects SME and HDP farmers.

*Provisional recommendation: In this regard, the Inquiry's provisional recommendation is that DALRRD, Land Bank and commercial banks should work jointly to fast track and accelerate the implementation of the blended finance scheme. This blended finance scheme should also cater for costs of agricultural project's feasibility studies including water licensing and acquisition of land.*

*Provisional recommendation: The Department of Water and Sanitation should continue its efforts to fast track the licensing regime, including the pre-application phase.*

### ***Immediate steps***

The following are immediate dates that are important:

We shall publish the Provisional Report on the Inquiry's website later today; and

Stakeholders have four weeks, until 16 July 2024, to provide comments on the Provisional Report, its provisional findings and provisional remedial actions and recommendations.

***Conclusion***

I wish to thank all stakeholders for their continued support and participation in the Inquiry process. I further wish to encourage stakeholders to constructively engage the provisional report and the associated remedial actions and recommendations. The Inquiry's technical team remains available to attend to any stakeholder queries.

I want to take this opportunity to thank everyone who made it for this occasion.

Thank you.