



COMPETITION LAW ALERT

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The Competition Commission's inquiry into the fresh produce market

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The Competition Commission's inquiry into the fresh produce market

The Competition Commission has launched a public market inquiry into the fresh produce market to examine whether or not there are any features in the value chain which lessen, prevent or distort its competitiveness.

By way of background, in November 2021, the Commission published a study on the levels of concentration in the South African economy. The purpose of the study was to assess patterns of concentration and participation. It revealed that while large farms make up just 6,5% of all farms in South Africa, they accounted for 67% of total income in 2017/18. There was also a significant reduction in the number of farming units over the course of two decades.

Following the arrival of the COVID-19 pandemic and the declaration of the National State of Disaster, the Commission investigated a large number of complaints relating to "price-gouging conduct". Basic food and fresh produce products accounted for the vast majority of complaints and subsequent investigations.

In terms of the Commission's records, of the 1,254 excessive pricing investigations related to COVID-19, 713 related to basic food and fresh produce. This highlights the

importance of fresh produce as well as the potential for abusive conduct where market circumstances change.

The investigations and research conducted by the Commission also highlight various challenges faced by fresh produce farmers. These challenges include, but are not limited to: insufficient financial and technical capabilities, a lack of operational knowledge, the inability to create economies of scale, low bargaining power, a lack of market access, and climate change.

On 25 March 2022, the Commission published the draft terms of reference for the Fresh Produce Market Inquiry.

The Commission has stated that the Fresh Produce Market Inquiry is fundamental to understanding the state of competition within the industry, the market features affecting price outcomes, and the challenges currently faced by farmers. The Commission has further highlighted the importance of the fresh produce sector to the South African economy and to the nutrition and welfare of South African citizens.

The Commission has noted in the draft terms of reference that agriculture plays an important role in the South African economy as it contributes to food production, job creation, raw material supply to the agro-industrial and manufacturing sectors, as well as export-driven foreign exchange income. The Commission has prioritised the food and agro-processing sector in its Prioritisation Framework since 2008 due to the sector being a source of staple food and the its potential to create job opportunities – thereby serving as a driver of inclusive growth in the economy.

THEMES TO BE CONSIDERED IN MARKET INQUIRY

The Fresh Produce Market Inquiry will focus on particular issues present at each layer of the value chain. The scope of the inquiry will cover aspects from the sale of fresh produce by the farmer to the customer (where a customer is defined as "the retailer, processor or export market").

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In particular, the Commission has identified the following themes for determining which features of the market may impede, restrict or distort competition and market outcomes:

- Efficiency of the value chain: This theme is centred around determining how the value chain and differing levels of concentration at various levels, including route to market, impact on prices and efficiency, with a focus on the fresh produce market.
- Market dynamics and the impact of key inputs for growers: The key inputs for growers include fertilizers, seeds, agrochemicals and farm equipment, which are, to a large extent, imported or priced based on international base prices and could lead to significant cost effects for growers. This theme is centred around the upper end of the production value chain.
- Small and historically disadvantaged growers and participation: This theme focuses on the lower end of the production value chain. The enquiry will assess the barriers to entry specifically facing small and historically disadvantaged growers and issues around access to the fresh produce market or retailers through contract farming.
- Barriers to entry in relation to the regulatory environment: This theme centres around the broad regulatory environment present in the fresh produce market.

The Commission has stated that the scope of the inquiry will not include the interaction of retailers and end consumers and the sale and distribution of processed products by food processors.

Members of the public are invited to submit comments on the draft terms of reference by 25 April 2022, following which the Commission will review the submissions and publish final terms of reference.

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