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COMPETITION

The Competition Commission turnips the heat on fresh produce – 10 things you should know

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Fresh Produce Market Inquiry

On 14 February 2023, the Competition Commission of South Africa ("**Commission**") published in the Government Gazette the final Terms of Reference ("**ToR**") for its market inquiry into the Fresh Produce Market of South Africa ("**FPMI**").

In terms of section 43B(1)(a) of the Competition Act, No. 89 of 1998, as amended ("**Competition Act**"), the Commission may conduct a market inquiry if it has reason to believe that any feature or combination of features of a market for any goods or services impedes, distorts or restricts competition within that market. The Commission may also conduct a market inquiry in order to achieve the purposes of the Competition Act.

Here are the 10 top things that you should know about the FPMI:

1. What comprises fresh produce?

Fresh produce includes fruit and vegetables, whether processed or not. The main fruits produced and consumed in South Africa include apples, bananas, oranges (and other citrus), stone fruit, pears, avocados, grapes and nuts. The main vegetables include potatoes, onions, tomatoes, sweetcorn, carrots and cabbage.

2. Which industry will be investigated?

Firms in the different levels of the fresh produce value chain. The food industry is comprised of a complex network of producers (farmers), wholesalers, distributors, processors and retailers, with varying levels of vertical integration. Therefore, the expectation is that the Commission will have to focus on particular issues in order to meet the statutory deadline for completing the FPMI.

3. What has the Commission's study into concentration levels found?

The Commission's study into levels of concentration in the South African economy[1] has revealed high levels of concentration and that the industry is in decline in terms of farming units.

4. Will the Commission be investigating high prices?

Yes. The information gathered by the Commission from existing research indicates that the cost of fresh produce has largely been increasing above inflation levels. The ToR notes that farmers have raised concerns with the Commission regarding the widening of the farmgate price to retail price margins. The Commission, however, acknowledges in the ToR that an understanding of the reasons for the ostensible high prices of fresh produce in South Africa is required and will be addressed by the FPMI. The Commission also notes that the COVID-19 pandemic (and associated supply chain disruptions) impacted on supply and demand within the fresh produce market and resulted in volatility[2]. Such volatility could have appreciably affected fresh produce prices and it would, therefore, be prudent for the Commission to consider the wide range of factors at the different levels of the fresh produce value chain which could affect prices.

5. What are some of the main challenges faced by fresh produce farmers (especially emerging and small-scale farmers)?

The main challenges relate to insufficient finance, technical capabilities, lack of operational knowledge, the inability to create scale economies, low bargaining power, a lack of market access and access to important production inputs (like quality seeds and fertilisers[3]).

6. What are some of the other challenges facing fresh produce farmers?

Further challenges include poor infrastructure (such as limited storage facilities) and logistics (such as the state of road and rail systems), unsustainable farming practices which have caused the degradation of agricultural soils and climate change. A further key input into the production of fresh produce is, of course, water which is regulated by the National Water Act, No. 36 of 1998[4].

7. Will the FPMI investigate the impact of Eskom on the production of fresh produce?

No, the ToR do not specifically mention the effect of power cuts on farming activities.

The ToR do, however, confirm that the Commission will be giving specific consideration to the barriers faced by farmers. The FPMI will, therefore, be considering the broader regulatory framework and barriers to entry and expansion which inhibit small farmers from transitioning to commercial farmers, including issues such as access to financial support, equitable access to water resources and access to land (as a resource and separate from considerations of expropriation).

8. What is the scope of the FPMI?

The FPMI will focus on particular issues at each level of the fresh produce value chain. The FPMI is expected to investigate, amongst others, seed and farming equipment suppliers, providers of finance to farmers, cooperatives (including former cooperatives in the public sector), the fresh produce markets in South Africa (including potentially the fresh produce national produce markets in Johannesburg, Tshwane, Cape Town and Durban), retailers, wholesalers and processors.

9. What are the main themes that the Commission has identified in the ToR?

1. The efficiency of the value chain with an emphasis on the dynamics around fresh produce market facilities.
2. Market dynamics of key inputs and its impact on producers (i.e. farmers).
3. Barriers to entry, expansion and participation.

10. How long will it take to complete the FPMI?

18 months. However, the Commission may apply to extend the completion of a market inquiry for a reasonable period.

Conclusion

The Commission's market inquiry is a wide ranging investigation into the state of competition within the fresh produce industry and seeks to understand any market features that affect pricing and challenges faced by farmers (especially small-scale and emerging farmers). The Commission is of the view that such an inquiry is warranted because of the importance of the sector to the national economy and its contribution to employment, but also because of the contribution by the sector to the nutrition and welfare of South Africans.

Since food security is a topical issue, the expectation is that the Commission will receive a good response to its invitation for members of the public, businesses, associations, government departments and agencies to provide written representation and information to the FPMI. Members of the public and businesses, thus, have the opportunity to bring relevant issues to the attention of the FPMI for consideration during its investigation.

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[1] *Measuring Concentration and Participation in the South African Economy: Levels and Trends*, Main Report November 2021.

[2] In the ToR the Commission notes that more than half of the excessive pricing investigations conducted by the Commission relating to COVID-19 concerned basic food and fresh produce.

[3] Other inputs mentioned in the ToR are agro-chemicals such as herbicides, pesticides and fungicides, farm equipment and irrigation equipment.

[4] The Preamble to the National Water Act acknowledges the National Government's overall responsibility for and authority over the nation's water resources and their use, including the equitable allocation of water for beneficial use.



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