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***“Enforcement of competition policy in the retail
sector”***

Contribution

by

South Africa

The views expressed are those of the author and do not necessarily reflect the views
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Enforcement of competition policy in the retail sector

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“Enforcement of competition policy in the retail sector”*

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1. Introduction

The United Nations Conference on Trade and Development (“UNCTAD”) has invited members to participate in the roundtable discussions relating to the “Enforcement of competition policy in the retail sector”. This note is prepared to assist in these discussions.

We begin this submission by providing an overview of the background and evolution of the grocery retail sector in South Africa and how the sector fits into broader government policy discussions.

The South African grocery retail sector is an important component of the Industrial Policy Action Plan and National Industrial Policy Framework.¹ A key characteristic of the sector is its strong linkages with important upstream manufacturing, processing and farming value chains and with the ultimate end consumer, making the sector critical for employment creation and poverty eradication.

The wholesale and retail sector is the fourth largest contributor to South African Gross Domestic Product.² Retail enterprises employ 20% of the total economically active workforce of the country.³

¹ The Industrial Policy Action Plan is an industrial action plan compiled by the Department of Trade and Industry. It aims to promote diversification in the economy, promote a labour-absorbing industrialisation path, contribute to industrial development in other African countries, and facilitate a movement towards a knowledge economy. The National Industrial Policy Framework is the policy framework underpinning the Industrial Policy Action Plan.

² Wholesale and Retail Sector Education and Training Authority. (2013). Sector Skills Plan 2011-2016, page 1. www.wrseta.org.za

³ Statistics South Africa. (2014). “Quarterly Sales and Employment Statistics, January 2014”. www.statssa.gov.za

The sector is concentrated, with analysts estimating that the four largest supermarket chains operating in South Africa collectively account for between 80% and 90% of food and grocery sales within South Africa.⁴ These levels of concentration have been achieved through the national supermarket chains' organic expansion and diversification plans, mergers and acquisitions of small independent retailers and franchised models in recent years.⁵

The sector is also characterised by a number of small and independent players. A recent update of the South African Retail Sector Skills Plan 2011 – 2016 reported that 87% of registered enterprises in the retail sector consists of small and micro enterprises, compared with 9.5% medium size and 4.5% large corporate enterprises.⁶ Moreover, there are a number of informal traders operating in the sector, with the Sector Skills Plan also estimating that only 66% of operational traders are formally registered, thereby suggesting that there are over 100 000 informal traders in this sector.⁷

The pre-1994 retail landscape in the township, peri-urban, rural areas was dominated by small, mainly informal retail businesses offering basic products and services to a relatively low income consumer market. These businesses served as convenience shops to primarily lower income groups.⁸

Since the late 1990s, township residents have experienced a substantial economic uplift. Many township consumers that were previously in the low income consumer group are now in the middle-income consumer group resulting in a significant

⁴ Barclays (2014), South Africa food and general retail industry update. Retail Round-up: Market share growth becoming more important. Page 10. The report estimated the size of the sector to be in the region of R215 billion per annum. See also Who Owns Whom Wholesale and Retail of Food Report (2014) page 3.

⁵ As evidenced by the following mergers assessed by the Commission: Shoprite Checkers (Pty) Ltd/ Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd (47/LM/Jun05); CBW Holdings (Pty) Ltd/ Kwambonambi Cash and Carry (Pty) Ltd (108/LM/Dec06); Pick n Pay Retailers Ltd (Pty) Ltd and Trio Belville (Pty) Ltd (LM242Mar15); Mystic Blue Trading 62 (Pty) Ltd and The Rhino Group (35/LM/Apr11); Shoprite Checkers (Pty) Ltd/Gaterite Hypermarket (018226); Shoprite Checkers (Pty) Ltd/Metcash Seven Eleven (Pty) Ltd (30/LM/Apr11); Pick n Pay Retailers (Pty) Ltd / Boxer Holdings (Pty) Ltd (52/LM/Jul02); Masscash Holdings (Pty) Ltd / Franklin George Larkins Trading (73/LM/Jun08); Business Venture Investments no 1347 (a subsidiary of Massmart Holdings) and Astor Group & Others 83/LM/Dec09

⁶ Wholesale and Retail Sector Education and Training Authority. (2013). Sector Skills Plan 2011-2016, page 6. www.wrseta.org.za

⁷ Wholesale and Retail Sector Education and Training Authority. (2013). Sector Skills Plan 2011-2016, page 47. www.wrseta.org.za

⁸ Grocery Retail Sector Market Inquiry Terms of Reference, page 4. As discussed later in this document, the Competition Commission ("the Commission"), in its exercise of its powers under section 43B of the Competition Act No 89 of 1998 ("the Competition Act"), published a notice that it would conduct a market inquiry into the grocery retail sector ("the Inquiry"). The Notice as well as the Terms of Reference were published in the Government Gazette, Volume 604, on 30 October 2015, No. 39347 (p73-p82).

increase in their spending. This increase in spending, together with the fact that many urban retailing areas are becoming saturated, has caused national supermarket chains to look elsewhere for their market expansion strategies and thus expand into these areas.⁹

The movement of national supermarket chains into the townships, peri-urban and rural areas mainly through the construction of shopping centres has affected small, informal and independent retailers in a number of ways. Studies carried out in different townships in South Africa have confirmed that the number of informal businesses decreased immediately after the national supermarket chains moved into townships. For example, in a study by the Bureau of Market Research, in the Soshanguve township (north of Pretoria, South Africa), a significant proportion of informal businesses interviewed confirmed a decrease in their business activities during the 6 month period since the opening of a shopping centre in the Soshanguve area. The study found that 75% of informal businesses located less than 1 km from the centre (or about 15 minutes walking time) reported a decline in their profits while only 36,8% of those located between 4 and 5 km (approximately 1 hour's walk) from the centre experienced a drop in their profitability.¹⁰

The views of researchers differ as regards the state of small informal businesses in townships, peri-urban and rural areas.

As a general trend, studies have found that small informal businesses in townships, peri-urban and rural areas show relatively high attrition rates.

Statistics South Africa's ("Statssa") Survey of Employers and the Self-Employed ("SESE") reveals an overall decrease in the number of persons running informal businesses from 2,3 million in 2001 to 1,5 million in 2013. In 2009, the number of persons running informal businesses stood at 1,1 million, increasing with only 400 000 to 1,5 million in 2013. The number of persons running informal businesses is therefore still substantially lower than that achieved in 2001.¹¹

Data collected by Nielsen suggests an overall increase in the number of small independent retailers in townships, peri-urban and rural areas from 34 000 stores to 134 000 stores in the last 20 years.¹²

⁹ Grocery Retail Sector Inquiry Statement of Issues, July 2016, page 14. <http://www.compcom.co.za/retail-market-inquiry/>

¹⁰ BMR Unisa (2007), The impact of retail development in emerging markets on small township retailers. Research Report No 359. Page 43

¹¹ Statssa (2013), Rise in informal businesses accessed at <http://www.polity.org.za/article/rise-in-informal-businesses-stats-sa-2014-08-14> on 05/04/2016 at 16:14.

¹² Nielsen (2016), South Africa's not so traditional, traditional trade, available at <http://www.nielsen.com/ssa/en/insights/reports/2016/south-africas-not-so-traditional-traditional-trade.html>. The data referred to by Nielsen is in respect of what it terms "traditional trade", which includes i) physical bricks and mortar outlets with a fixed location; (ii) informal, independently owned

Some researchers have hinted at a ‘rebirth’ of profitable and sustainable independent retail outlets in South Africa, citing growth of buying groups as being indicative of the fact that the independent retailers they supply are also growing, and becoming more profitable and sustainable.¹³ However, some sector analysts have attributed the diminishing wholesale market to a decline in the informal and independent customer base as a result of the move by larger formal retailers into the areas historically serviced by informal and independent retailers.¹⁴

Given the importance of the sector, the South African Competition Commission (“the Commission”) has, and continues to, actively regard the South African grocery retail sector, which will be discussed in further detail below. Most recently, the Commission initiated a market inquiry into the South African grocery retail sector (“Inquiry”), which is currently ongoing.¹⁵

2. Competition cases

2.1. *The Supermarkets Investigation (Case Number: 2009Jun4482)*

Overview

In June 2009, the Competition Commissioner initiated an investigation into the South African retail industry against four major supermarket chains¹⁶ and two major wholesaler-retailers¹⁷, for alleged contraventions of South Africa’s Competition Act No 89 of 1998 (“Competition Act”). The contraventions related to anti-competitive horizontal, vertical and abuse of dominance conduct in relation to the retail of food.

The initiation of this investigation was prompted by a scoping study undertaken by the Commission, which examined the agricultural inputs, processing and retail levels of the value chains. This scoping study used publically available information in order to identify whether there were likely to exist competition concerns in the retail sector.

During the course of its investigation, the Commission considered numerous factors that could potentially raise competition concerns and concluded that the greatest concerns were to be found in the prevalence of exclusive lease agreements entered

outlets; and (iii) outlets which stock at least one consumer goods product, selling directly to customers.

¹³ <http://www.shoppingandretail.co.za/2014/June/IndependentOutlets.php>, as cited in das Nair, R. & Chisoro, S. (2015) The expansion of regional supermarket chains: Changing models of retailing and the implications for local supplier capabilities in South Africa, Botswana, Zambia, and Zimbabwe. WIDER Working Paper 2015/114. Helsinki: UNU-WIDER. Pages 12 and 13.

¹⁴ Ibid, page 10.

¹⁵ The Inquiry was initiated on 27 November 2015 and will be completed on 29 May 2017.

¹⁶ Pick ‘n Pay; Shoprite Checkers; Woolworths; and Spar.

¹⁷ Massmart and Metcash.

into between property developers and national supermarket chains.¹⁸ In general, exclusive clauses in lease agreements restrict the landlord from leasing out space in the same shopping centre to potentially competing retailers, whether it is a retailer whose primary business is the sale of foodstuffs, a café or delicatessen which sells fresh fish or meat, grocery, fresh fish shop, butchery, bakery, liquor store or a fruit and vegetable shop. These exclusive lease agreements were aimed at protecting anchor tenants in the shopping centres in which they applied.

The Commission's investigation revealed that this practice raises barriers to entry into the grocery retail sector. However, the investigation did not find sufficient evidence to meet the tests set out in the Competition Act to demonstrate substantial anti-competitive effects. The Commission subsequently non-referred the matter in January 2014.

In spite of its non-referral of this matter, the Commission remained concerned with the potential dampening effects of the exclusive leases on competition, particularly in relation to small competitors and potential entrants. Since its non-referral of the investigation, the Commission embarked on advocacy efforts and has imposed conditions to the approval of mergers in the sector to persuade participants in the sector to change the practice of entering into exclusive lease agreements by default for each new development. However, despite the Commission's efforts, the conduct persists, as evidenced by further complaints received from market participants since the previous investigation.¹⁰

It is, in part, for this reason that the Commission initiated the Inquiry in November 2015. The Commission has identified this Inquiry as the appropriate route to address the issue of long term exclusive leases, as well as other potential barriers in the sector, given the failure of its previous efforts.

The section below provides an overview of market inquiries and how they differ from the Commission's normal investigations, followed by further details as regards the promulgation of the Inquiry, the Inquiry scope and analytical approach, and further details as regards the Inquiry processes and information gathering tools.

2.2. The Grocery Retail Market Inquiry (Case Number: 2015Jun0358)

Overview of market inquiries and how they differ from the Commission's investigations

The Commission's powers to conduct market inquiries, as contained in the Competition Amendment Act, Act No. 1 of 2009, came into effect on 1 April 2013.

¹⁸ Specifically how such exclusivity clauses are negotiated, monitored, enforced and renewed.

In particular, Chapter 4A of the Competition Act enables the Commission to conduct market inquiries in respect of the “*general state of competition in a market for particular goods or services, without necessarily referring to the conduct of any named firm*”.¹⁹

The inquiry provisions in the Competition Act allow the Commission to probe markets where there is no evidence of outright prohibited practices taking place, but where market outcomes indicate a lack of effective competition or where there are concerns about the extent, nature and effectiveness of competition. The Commission can probe these aspects of a market broadly, without identifying specific conduct by any particular firm, as it must do in enforcement investigations.

In addition, the provisions allow the Commission to make a broader range of evidence-based recommendations to address any factors that the inquiry believes may stifle competition within a sector. These may include, amongst other things, recommendations for new or amended policy, legislation or regulations, and recommendations to other regulatory authorities in respect of competition matters.

It is for these reasons that the Commission views the Inquiry as the appropriate route to address its concerns as regards the grocery retail industry.

Promulgation and Purpose of the Grocery Retail Inquiry:

In accordance with section 4A of the Competition Act, the Commission has initiated the Inquiry in order to:

- Understand how the grocery retail sector operates because the Commission has reason to believe that there exist features or a combination of features in this sector that may prevent, distort or restrict competition; and
- To pursue the purpose of the Competition Act, as listed in section 2 of the Act, namely²⁰ to promote competition in South Africa in order to achieve a number of public interest goals. These public interest goals include, amongst others: (i) providing consumers with competitive prices and product choices; (ii) promoting small and medium-sized enterprises’ participation in the economy; (iii) promoting a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons; and (iv) promoting employment and advance the social and economic welfare of South Africans.

¹⁹ Section 43A of the Competition Act 89 of 1998, as amended.

²⁰ As listed in section 2 of the Act.

The public interest objectives contained in the Competition Act, as set out above, are reflected in the preamble and purpose of the Competition Act and are explicitly detailed in sections of the Act dealing with the assessment of exemptions, mergers, and more recently, market inquiries.

These provisions are one of the ways in which the Competition Act differs from those enacted in other jurisdictions, in that it goes beyond the assessment of the traditional welfare effects of a transaction or conduct, which typically includes an analysis of allocative, productive and dynamic efficiencies, by also pursuing broader policy goals such as a more equitable allocation of resources and to address “*issues of distribution and power*”.²¹

Hodge, Goga and Moahloli (2009) provides further context to the differences between the consideration of issues of public interest in South Africa compared to that of certain developed countries in the context of merger review as follows:

*“Given the potential for mergers to impact on government policy objectives, many other jurisdictions including the UK, Germany and Canada provide a mechanism for politicians to overturn otherwise anti-competitive mergers under particular circumstances. One concern is that this leaves the competition process, which should ideally be independent, open to some form of government interference. The South African Competition Act is unusual in that it has provided mechanisms to resolve conflicts between policy and competition, but has limited the discretionary component by placing the responsibility for determining whether a merger is required for public interest objectives in the hand of the independent competition authorities.”*²²

The Inquiry’s analysis of the grocery retail sector will in all instances be guided by the public interest provisions contained in purpose of the Competition Act, as set out above.

The Inquiry scope and analytical approach

The Inquiry Terms of Reference define the grocery retail sector to include all shops that predominantly sell fast-moving consumer goods (for example food, toiletries and liquor), whether as wholesalers, retailers or both. In other words, they encompass all kinds of shops, from small²³ informal businesses²⁴ such as street traders, hawkers,

²¹ Eleanor M. Fox in *Antitrust, Economic Development and Poverty: The Other Path*, (2007) SJLTA Vol. 13, page 211

²² James Hodge, Sha’ista Goga, Tshepiso Moahloli in: *Public interest provisions in the South African Competition Act – A Critical Review*, (2009) Competition Policy, Law and Economics Conference 2009, page 2.

²³ For the purposes of this Inquiry, small, medium and micro enterprises or businesses (“SMMEs”) are defined in line with the National Small Business Amendment Act 26 of 2003 (“National Small Business

spaza shops²⁵ and small independent grocery stores²⁶ to supermarket chains²⁷ and wholesale groups or outlets.

The Inquiry's assessment excludes products such as hardware, clothing and household appliances, and is mainly (but not exclusively) interested in small and independent grocery retailers in townships, peri-urban areas, rural areas and the informal economy.²⁸

In line with the Inquiry's Terms of Reference, the Panel will assess competition in the grocery retail sector under the six objectives outlined below.

Objective 1: The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy.

In particular, the panel will seek to answer the extent to which:

- the entry of supermarket chains in townships, peri-urban areas and rural areas and the informal economy has led to a decrease or increase in the number and performance (turnover) of small and independent retailers in these areas;
- the barriers faced by small and independent retailers are likely to inhibit their ability to effectively respond to the competitive pressures faced by them from supermarket chains;

Act") and refer to a small enterprise or business, whether or not incorporated, which consists mainly of a person carrying on small business concerns in any economic sector or incorporated mainly for the purpose of promoting the interests of small businesses. SMMEs are further categorized as survivalist, micro, very small, small and medium enterprises, as determined by the number of employees, value of assets and the total turnover generated by the business, as set out in the National Small Business Act.

²⁴ For the purposes of this Inquiry, "informal businesses", "informal economy" or "informal sector" refers to businesses defined as micro and small enterprises that often exist partially or fully outside government regulation, taxation and observation. Businesses that operate in the informal economy are usually small in size and mostly run from people's homes or located on public streets and municipal land zoned for informal business activities.

²⁵ For the purposes of the Inquiry, "street traders and hawkers" are defined as businesses that sell or trade goods as vendors in a public road or place and "spaza shops" are defined as small to medium sized general retailers selling daily goods and necessities usually in a township or informal settlement.

²⁶ For the purposes of this Inquiry, "independent retailers" are defined as (i) businesses that are privately owned and that do not belong to, or are not associated with, a larger supermarket chain or group; or (ii) a small supermarket chain with no more than three branches.

²⁷ For the purposes of this Inquiry, "national supermarket chains" (whether made up of independent retailers or not) refer to grocery retailers that are not classified as SMMEs, and that have more than three branches, outlets or franchisees in South Africa.

²⁸ CCSA, Grocery Retail Sector Market Inquiry, Terms of Reference, at paragraph 4.1.

- the entry of national supermarket chains in townships, peri-urban areas and rural areas and the informal economy has led to a decline or increase in employment levels in these areas; and
- the entry of national supermarket chains in townships, peri-urban areas and rural areas and the informal economy has benefited or harmed consumers and led to increased or decreased efficiencies.

Objective 2: The impact of long term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on local competition in the grocery retail sector.

More specifically, the Panel will seek to answer the following:

- the prevalence and duration of exclusive lease agreements entered into between property developers and national supermarket chains in South Africa, by also seeking to understand the role of financiers in these agreements on competition in the grocery retail sector;
- the extent to which long term exclusive lease agreements entered into between property developers and national supermarket chains have excluded small businesses and larger competitors or potential competitors from entering malls, and from competing effectively by depriving them access to suitable retail space;
- the extent to which the use of exclusive lease agreements has contributed to the high level of concentration in the sector; and
- the extent to which long term exclusive lease agreements entered into between property developers and national supermarket chains have benefited or harmed consumers and led to increased or decreased efficiencies.

Objective 3: The impact of the dynamics of competition between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy on competition. Under this objective, the panel will seek to answer the following:

- the reasons as to why foreign national operated retailers have been perceived to be more successful than local national operated retailers, and the factors contributing to this perceived success;

- the barriers faced by local national operated retailers that are likely to inhibit their ability to effectively respond to the competitive pressures faced by them from foreign national operated retailers;
- the effects (positive or negative) of the dynamics of competition between foreign national operated retailers and local national operated retailers on the operations of local national operated retailers, including, amongst others, the actions taken by local national operated retailers in response to such competition, such as diversifying their product and service offerings, closing down their retailing businesses and becoming landlords to foreign national operated retailers instead;
- the effects (positive or negative) of the dynamics of competition between foreign and local national operated retailers on consumers, notably in respect of product choice, product prices, convenience and service;
- the effects (positive or negative) of the dynamics of competition between foreign and local national operated grocery retailers on local producers and manufacturers, buyer groups, wholesalers and upstream suppliers; and
- the effects (positive or negative) of the dynamics of competition between foreign and local national operated retailers on employment in the sector.

Objective 4: The impact of regulations, including, amongst others, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.

The Panel will prioritise the review of regulations that are likely to have the following unintended effects on competition in the grocery retail sector:

- regulations that have the effect of limiting the number and range of small and independent retailers in specific areas;
- regulations that have the effect of limiting the ability of small and independent retailers to compete effectively;
- regulations that lead to the reduction in incentives of small and independent retailers to compete effectively;
- regulations that limit choice and information available to consumers;

- regulations that create uncertainty amongst small and independent retailers regarding the requirements they are expected to comply with in order to trade and compete effectively;
- regulations that are onerous, time consuming and costly to comply with;
- regulations that are excessively enforced even for insignificant transgressions, thereby restricting the participation of small and independent retailers in the market; and
- regulations that are not enforced, poorly enforced or selectively and corruptly enforced, thus creating uncertainty and an uneven playing field between small and independent retailers in townships, peri-urban and rural areas.

In assessing these regulations, the Panel will have due regard to the objectives of the regulations and where applicable, will identify unnecessary restraints and make recommendations to develop alternative, less restrictive regulations that still achieve the objectives of those regulations.

Objective 5: The impact of the buyer power of buyer groups and other large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.

Under this objective, the Panel aims to identify buyer groups that operate in the South African grocery retail sector, so as to better understand the competitive benefits or harm of the buyer groups, insofar as they affect small and independent retailers in townships, peri-urban areas, rural areas and the informal economy. The Panel's assessment will focus on the following:

- the efficiencies arising from the impact of buyer groups, and the extent to which these are passed onto consumers;
- positive and negative effects of buyer groups on the ability of small and medium sized retailers to effectively compete in the sector, by either reducing or increasing the barriers faced by them to enter into and expand in the grocery retail sector;
- the positive and negative effects of buyer groups on consumer prices and product choices; and

- the positive and negative effects of buyer groups on employment.

In addition, the Panel will assess the extent to which there is unequal bargaining power between suppliers and large purchasers of FMCG products, whether such unequal bargaining power has been abused and, if so, the impact of this on competition in the grocery sector and, ultimately, the end consumers. In doing so, the Panel will focus on the following:

- the efficiencies arising from the impact of the buyer power of large purchasers of FMCG products, and the extent to which these are passed onto consumers;
- the effects of the buyer power of large purchasers of FMCG products on the ability of small and medium sized as well as independent retailers and their buyer groups to effectively compete in the sector, and the extent to which this leads to increased barriers faced by these retailers to enter into and expand in the grocery retail sector;
- the positive and negative effects of buyer power of large purchasers of FMCG products on consumer prices and product choices;
- the positive and negative effects of buyer power of large purchasers of FMCG products on employment.

Objective 6: The impact of certain identified value chains on the operations of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.

Under this objective, the Panel will assess the impact of certain identified value chains on the operations of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.

The Panel will identify the relevant value chains to be assessed during the course of the Inquiry based on the criteria, which will be determined by the Panel taking into account views from stakeholders, findings from past studies (both local and international), as well as preliminary findings of the Inquiry.

In selecting the relevant value chains to be assessed, the Panel will prioritise the following:

- products that are identified as the most important contributors to the turnover of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy; and
- products that provide the greatest potential for poverty reduction and employment opportunities.

The Panel's evaluation of the relevant value chains would include an examination of all of the relevant levels of the identified value chains to determine the following:

- the effects of the degree of competition and existence of any structural and behavioural barriers to competition in the value chain that are likely to have an effect on the quality, volumes and prices of the relevant products available to small and independent retailers in townships, peri-urban areas, rural areas and the informal economy, and, ultimately, to end consumers in these areas;
- the effects of the barriers to competition on employment in the various levels of the value chains will also be examined;
- the relevant levels of the value chain that will be examined would include, where applicable, the primary producers, manufacturers or processors and retailers of the identified products, as well as any other intermediaries relevant to the value chain in question.

In all instances, the Inquiry's analysis of the grocery retail sector under the six objectives will be guided by the purpose of the Competition Act²⁹, as discussed above.

Procedural aspects and outcomes of the Inquiry

The Inquiry Panel, which is tasked with co-ordinating the Inquiry, consists of Professor Halton Cheadle (Chairman), Ms. Lulama Mtanga (Competition Law specialist) and Mr. Lumkile Mondli (Economist). A technical team, comprising economists and lawyers, has been appointed from the Commission's staff to support the Inquiry Panel in collecting and analysing all available information in the grocery retail sector that is relevant to the Inquiry's objectives.

The Inquiry is vested with various powers with which to gather information, including: general research, literature reviews, information requests, meetings, site visits, issuing summons for information and appearance, interrogations, calls for submissions, and public hearings.

²⁹ As listed in Section 2 of the Competition Act.

The Inquiry is currently in its information-gathering phase, which will conclude in February 2017. This includes, amongst other things, site visits to townships, peri-urban and rural areas throughout South Africa to gather information regarding the barriers and challenges faced by small and independent retailers in these areas. The Inquiry will also make use of survey providers to supplement these site visits with quantitative data for small and independent retailers, as well as consumers in these areas.

Thereafter, the Inquiry will engage in data analysis and formal public hearings. The Inquiry will submit a report outlining its assessment and recommendations to the Minister of Economic Development on 29 May 2017.

Upon completion of the Inquiry, the Commission will be able to take any of the following actions:

- Initiate a complaint and enter into a consent order with any respondent, with or without conducting any further investigation;
- Initiate a complaint against any firm for further investigation;
- Initiate and refer a complaint directly to the Competition Tribunal without further investigation;
- Take any other action, within its powers in terms of the Competition Act, which has been recommended in the Inquiry's report; or
- Take no further action.

The Inquiry has, and will continue to, engage with the public at each milestone of the Inquiry, and encourages public participation to a greater extent as that is what is required by the Competition Act. It is the Inquiry's practice to publish non-confidential versions of all submissions made by stakeholders to increase transparency, and to allow stakeholders to comment on each others' submissions.

By maximising public participation, the Inquiry hopes it will facilitate the collection of accurate data relating to issues that plague the grocery retail sector, and in so doing improving the Inquiry's chances of formulating informed recommendations in order to remedy such issues.

In conducting the Inquiry, the panel and technical team will also actively engage competition authorities and policy makers internationally to learn from the challenges their countries' grocery retail sectors, and the measures they have put in place to address those challenges.

Summary

The grocery retail sector important part of the South African economy, and an important component of the country's Industrial Policy Action Plan and National Industrial Policy Framework.

The unique landscape of the South African economy still sees many citizens who are surviving on low incomes and in remote areas. Their ability to both: economically access food and basic products to survive; and participate in the South African economy is of utmost importance. Indeed, the purpose of the Competition Act (as discussed above) is informed by such considerations to enable an equitable opportunity for all to participate in the economy, which necessitates a reduction of barriers to entry and to encourage entrepreneurship.

Research suggests that the grocery retail sector is highly concentrated and that barriers to enter and expand in this sector are high. These barriers to entry and expansion exacerbate the socio-economic plight of the local population, which is further compounded by the high incidence of attrition of small and independent retailers within townships, peri-urban areas and rural areas.

The Commission has actively regarded the South African grocery retail sector, but previous investigations and advocacy efforts in the sector have failed. The Inquiry is hoped to be the appropriate tool with which to investigate, understand and address its concerns in the sector, as the parameters of investigation and scope for evidence-based remedies at its disposal are much broader than the parameters relating to complaints investigation under the Competition Act.