

# Potchefstroom College of Agriculture Student Exposure Programme

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**competition commission**  
south africa

# Outline

- I. INTRODUCTION TO THE COMMISSION
- II. RESTRICTIVE HORIZONTAL PRACTICES
- III. RESTRICTIVE VERTICAL PRACTICES
- IV. ABUSE OF DOMINANCE
- V. EXEMPTIONS
- VI. MERGERS
- VII. MARKET INQUIRIES
- VIII. ADVOCACY
- IX. CONCLUSION



# I. INTRODUCTION TO THE COMMISSION



# 1. Mandate

The Competition Commission is a statutory body constituted in terms of the Competition Act, No 89 of 1998 by the Government of South Africa empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy.

## 2. Objectives of the Competition Act

- **To promote and maintain competition in order to:**
  - Promote efficiency and development of the economy;
  - Provide consumers with competitive prices and product choices;
  - Ensure SMEs an equitable opportunity in the economy;
  - Advance economic welfare of South Africans;
  - Expand opportunities for South African participation in world markets;
  - Promote greater spread of ownership, in particular HDI's.

# 3. Functions

## 1. Enforcement

- **Prosecution of anti-competitive behaviour**
  - Cartels
  - Vertical Restraints
  - Abuse of dominance
  - Exemption Applications

## 2. Mergers & Acquisitions

- **Prevent market concentration through control**
  - Review of Merger applications
  - Approvals, Approvals with conditions, Prohibitions

## 3. Market Inquiries

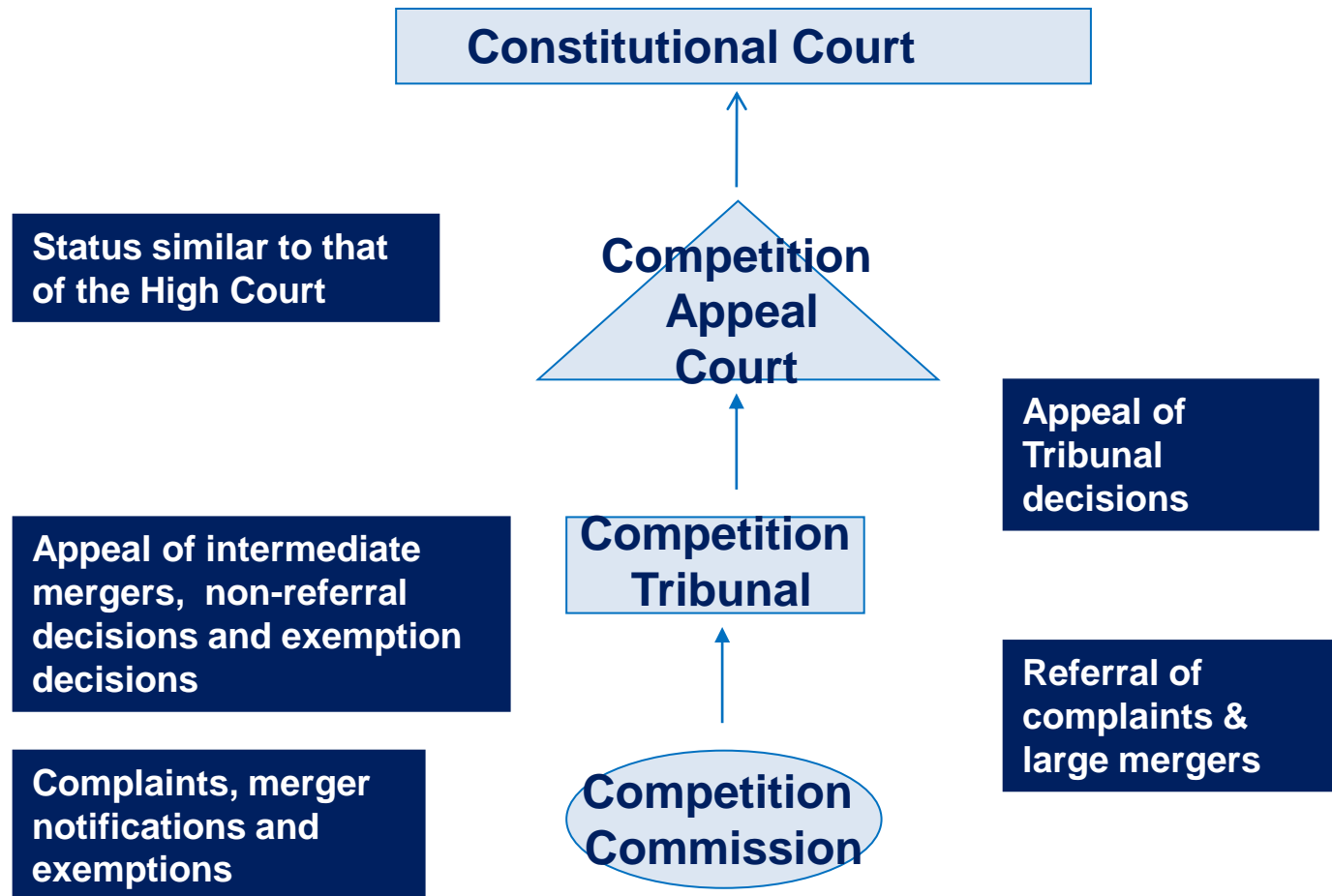
- General probe into state of competition in a market without investigating a particular firm.

## 4. Advocacy

- **Advocacy for pro-competitive conduct**
  - Case/ Sector Advocacy
  - Stakeholder Relations (incl. international)
  - Policy Reviews

# 4. Structure of Competition Authorities

- The Competition Commission is one of three statutory bodies constituted in terms of the Competition Act, No 89 of 1998.



# 5. Priority Sectors

- **Agriculture, food and agro-processing**
- Construction services, property and infrastructure
- Healthcare
- Banking and financial services
- Energy
- Manufacturing
- Information and communication technology and digital markets
- Transport and automotive



## II. RESTRICTIVE HORIZONTAL PRACTICES



# 6. Restrictive Horizontal Practices

## Cartel Conduct

- **What is a Cartel?**
  - An agreement (usually secret) by which firms fix prices or divide the market or rig tenders.
  - The purpose is to raise prices and increase profits by eliminating or reducing competition.
- **Why are cartels prohibited?**
  - Higher prices for goods and services - are directly damaging to the consumers
  - The firms involved in the cartel are less likely to strive for efficiency or to be innovative
- **What action can be taken against colluders?**
  - Impose administrative penalties against contravening firms
  - Impose criminal liability
  - Impose Remedies to address the harmful effects of the prohibited conduct
  - Example of a cartel: Bread Cartel

# III. RESTRICTIVE VERTICAL PRACTICES



# 7. Restrictive Vertical Practices

- **Vertical Arrangements**

- Agreements between parties in a vertical relationship
- Agreements between a firm, its customers, its suppliers
- Agreement substantially preventing or lessening competition
- Case example: Westgrow Potatoes

# IV. ABUSE OF DOMINANCE



# 8. Abuse of Dominance

- Abuse of dominance is broadly divided into exploitative and exclusionary abuses.
  - Excessive Pricing
  - Refusal to grant access to an essential facility
  - Exclusionary Acts (other than those listed below)
    - Requiring / inducing a supplier/customer not to deal with a competitor
    - Refusal to supply scarce goods to a competitor
    - Tying of unrelated goods or services
    - Predatory Pricing
  - Imposing unfair prices or trading conditions on SMEs or firms owned or controlled by HDI's in Ministerial designated sectors
  - Price Discrimination (prices, discounts, payment terms)
- Case Example: Covid-19 price gouging

# V. EXEMPTIONS



# 9. Exemptions

- **What is an Exemption?**

- Tool used to provide protection or immunity for firms from enforcement action by the Commission
- Commission may grant an exemption if the agreement or practice concerned contributes to the following objectives:
  - *Maintenance or promotion of exports*
  - *Promotion of the ability of effective entry into, participation in or expansion within the market by SMEs of HDIs to become competitive*
  - *The economic development, growth, transformation or stability of any industry designated by the Minister*
  - *The competitiveness and efficiency gains that promote employment or industrial expansion*
- Firm or group of firms that engages in conduct that contravene any provisions of the Act and can show that they contribute to one of the objectives outlined above, may apply for an exemption
- Examples of exemptions: citrus, squid and lobster



# VI. MERGERS



# 10. Merger Control

- A merger occurs when one or more companies directly or indirectly acquires or establishes direct or indirect control over the whole business (or part) of another company
- Buying of shares and assets, joint ventures, amalgamation of companies
- Merger notification thresholds
- The Commission has the power to approve, prohibit or impose conditions
- Conditions are imposed on mergers which have an impact on public interest (employment, ability of SMEs and HDIs to participate)
- Several development funds have been established through merger conditions
- Examples of development funds in agriculture:
  - R250 million Agro-Processing Competitiveness Fund
  - R500 million Old Mutual fund;
- The Commission conducts impact assessments to measure or estimate the effectiveness, benefits or value of the funds

# VII. MARKET INQUIRIES



# 11. Market Inquiries

- The Commission may conduct an inquiry into the general state of competition in a market if it has reason to believe that certain features of a market restricts or distorts competition
- The recommendations made are binding on stakeholders and Government and must be implemented
- The Commission has conducted Market Inquiries in the following markets;
  - Banking Services;
  - Liquefied Petroleum Gas (LPG);
  - **Grocery Retail;**
  - **Fresh product markets;**
  - Data Services;
  - Healthcare;
  - Public Passenger Transport.

# 12. Market Inquiries

- The Grocery Retail market inquiry resulted in the following recommendations:
  - Government should facilitate the establishment of distribution centres for SMMEs and wholesalers. Government should establish incentive programmes to finance businesses that support spaza shops.
  - National retailers must stop enforcing exclusive agreements against SMMEs, speciality stores and other grocery retailers. National retailers must not enter into exclusive lease agreements with shopping centres/malls.
  - All spheres of Government must coordinate to ensure coherent legislation that facilitates the effective trade of business.
  - Suppliers of FMCGs must ensure equal trading terms of retailers, wholesalers and buyer groups. Enterprise development programmes of the national retailers should be formalized and strengthened.
- The Grocery Retail Report is available at: <https://www.compcom.co.za/retail-market-inquiry/>

# 13. Market Inquiries

- The Commission released the terms of reference for the South Africa Fresh Produce Market Inquiry on 15 March 2022. The scope of the inquiry includes:
  - Efficiency of the value chain
  - Market dynamics and impact of key inputs for growers
  - Small and HDP growers and participation
  - Barriers to entry in relation to the regulatory environment
- The Terms of Reference is available at: <https://www.compcom.co.za/fresh-produce-market-inquiry/>

# VIII. ADVOCACY



# 14. Advocacy

- Advocacy entails promoting competition compliance through non-enforcement means
- Involves public education and awareness on competition issues and the benefits of competition
- Example of advocacy initiatives by the Commission:
  - **Agriculture (access to funding, inputs, infrastructure and routes to market)**
  - Construction Sector
  - Automotive aftermarket
  - Banking (Conveyancing)
  - School Uniform
  - Women Empowerment



# 15. Research Project

- The Commission engaged with various black and emerging farmers to understand their challenges in agriculture
- Barriers to entry: access to finance, inputs and infrastructure and routes to market
- Methodology: Data collection, desktop research, questionnaires and interviews with relevant stakeholders
- The research exposed the barriers to entry and measures to bolster efforts from industry players to address them.
- The research papers are accessible at: <https://www.compcom.co.za/working-paper-series/>

# 16. Food price monitoring report

- In 2020, following the onset of Covid-19 and widespread complaints of food price escalations, the Commission developed the quarterly essential food price monitoring report
- Focused on tracking the impact of the pandemic and the economic crisis on food markets (such as dairy, ginger, garlic, onions, tomatoes and potatoes, cooking oil and beef prices) and the trends of small-scale farming
- The quarterly reports are assessable at: [https://www.compcom.co.za/wp-content/uploads/2022/08/EFPM-Report\\_Aug-2022.pdf](https://www.compcom.co.za/wp-content/uploads/2022/08/EFPM-Report_Aug-2022.pdf)
- Memorandum of Agreement signed with Pick n Pay to cap ginger and garlic prices

# IX. CONCLUSION



# 17. Conclusion

- Current interventions are aimed at addressing anti-competitive conduct of firms and ensuring increased participation by emerging players
- Finance, access to inputs and markets remain a critical challenge for new entrants and emerging farmers
- Promote growth by addressing effects of anti-competitive conduct (price gouging) on prices of agricultural produce and inputs
- Complementary industrial and agricultural policies and support active rivalry, entry and growth of new entrants and emerging farmers

# THANK YOU

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