

# STANDING COMMITTEE ON APPROPRIATIONS

Contribution of the Competition  
Commission to Growth, SME  
participation and transformation

**30 OCTOBER 2020**



**competition commission**  
south africa

# DELEGATION

1. Mr Tembinkosi Bonakele – Commissioner
2. Mr Hardin Ratshisusu – Deputy Commissioner
3. Mr James Hodge – Chief Economist
4. Ms Khanyisa Qobo – Divisional Manager: Advocacy
5. Ms Mapato Ramokgopa – Divisional Manager: Office of the Commissioner

# OUTLINE

1. MANDATE
2. COMPETITION AND GROWTH
3. INSTRUMENTS TO AID GROWTH, PARTICIPATION AND TRANSFORMATION
4. RECOVERY PLAN
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6. PRIORITISATION AND FOCUS IN MEDIUM TERM
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# MANDATE

The Competition Commission is empowered by the Competition Act to promote and maintain competition in South Africa, in order to:

- promote the efficiency, adaptability and development of the economy
- provide consumers with competitive prices
- promote employment and the economic welfare of citizens
- expand participation in world markets
- ensure SMEs have equitable opportunities to participate in the economy
- promote the greater spread of ownership

The Competition Act was recently amended to enhance the Commission's ability to address concentration and promote participation in the economy by SMEs and historically disadvantaged persons

# COMPETITION AND GROWTH

Greater competition forces greater efficiency and innovation from firms, and in so doing reduces prices to the benefit of other firms in the economy (using intermediate products), delivery by the state (purchasing products and services) and consumers

A more competitive economy results in higher growth and job creation by enhancing the ability of domestic firms to replace imports and expand exports. Greater innovation also creates new opportunities for businesses.

The Competition Act seeks to also ensure that such growth is more inclusive, addressing past exclusion through actively promoting transformation and SME participation as public interest objectives in its enforcement actions

In contrast, an uncompetitive economy suffers from high prices and the erection of barriers to entry / expansion by other firms

# INSTRUMENTS TO AID COMPETITION, PARTICIPATION & TRANSFORMATION

## **Merger control**

- Mandatory notification of mergers over a threshold prevents the acquisition of market power through acquisitions
- Actively ensures mergers do not result in a negative impact on the public interest, incl. employment, SME participation and the greater spread of ownership.
- Amendments enable the public interest to be actively promoted.

## **Enforcement against abuse of dominance**

- Powers to investigate and prosecute conduct by dominant firms that exploits customers (excessive pricing) or excludes rivals from competing (e.g. margin squeeze or denying access to customers)
- Amendments strengthen the ability to act on abuse against SMEs and historically disadvantaged firms as customers (unfair price discrimination raising their costs) and suppliers (abuse of buyer power to impose unfair prices and trading conditions)

# INSTRUMENTS TO AID COMPETITION, PARTICIPATION & TRANSFORMATION

## **Enforcement against cartel activity**

- Effective leniency and detection programmes to prosecute firms colluding to raise prices to consumers, the state and other firms

## **Grant exemptions to conduct supporting development**

- Authority to exempt firm conduct from the Act where it is found to support economic development & stability, as well as greater participation by SMEs and historically disadvantaged persons
- Amendments enable block exemptions for sectors or groups

## **Market Inquiries**

- Proactive tool to conduct an inquiry into a sector where there are features that prevent or hinder both competition and the participation of SMEs and historically disadvantaged persons
- Amendments provide powers to impose legally binding remedies to address the market failings identified

# RECOVERY PLAN

The Economic Reconstruction and Recovery Plan emphasizes amongst other things

- Promoting employment
- Promoting industrial development through import substitution and export promotion
- Promoting infrastructure investment
- Focus on development of SMEs, as well as rural and township economies
- Reduced data costs and expanded access to digital infrastructure

In fulfilment of its mandate, the Commission has made huge contributions to economic growth, participation and transformation in recent years and will continue to do so as it prioritises its work to support the economic reconstruction and recovery programme



# RECENT CONTRIBUTIONS

## **Covid19 emergency enforcement**

- Massive enforcement effort to investigate and prosecute price gouging deterred exploitation of consumers
  - Over 1700 complaints received, 30 settlements/prosecutions
  - Advocacy effort with larger retailers and food suppliers saw price restraints during lockdown level 5
  - Currently focused on prosecuting excessively priced PPE procurement by the state
- Exemptions to support the emergency response
  - Healthcare providers to coordinate on testing and treatment
  - Banks to coordinate on firm and individual debt relief packages
  - Retailers and Retail property to facilitate relief for SME tenants and rental payment holidays
- Essential food price monitoring
  - Tracking the price movements of essential food products in wholesale and retail markets to identify areas for intervention
  - Intervened rapidly & successfully in the dairy sector where processors sought to unfairly reduce prices to farmers

# RECENT CONTRIBUTIONS

## Data Market Inquiry

- Identified excessive and anti-poor pricing resulting in consent agreements to lower prices by 35% and zero-rate education & government services
  - Original estimates were an immediate R6bn saving for consumers but the shift online during Covid means this is far more significant
- Pursuing legislative changes to promote competition with DCDT
- Initiatives to support fibre broadband access and public WiFi

## Grocery Retail inquiry

- Consent agreements with national retailers to remove exclusive leases, opening up opportunities for SMEs and specialist line stores to access thousands of shopping centres nationally
- Recommendations to support independent retail in township economies being taken forward by an intergovernmental group, incl. incentives, infrastructure provision and removing regulatory barriers

# RECENT CONTRIBUTIONS

## Health Market Inquiry

- Establishing a Multilateral Forum for negotiating maximum prices for the treatment of Prescribed Minimum Benefits
- Recommendations that will facilitate the transition to the NHI, including outcomes monitoring, health technology assessment and value-based pricing, non-PMB reference prices

## Merger control

- Employment conditions saved in excess of **45 000** jobs in 2019/20
- Other public interest conditions ensure localization of supply, SME development and transformation
  - E.g. recent Pepsico/Pioneer Food Group merger had acquirer commit investment of R6.5bn in expansion of local operations incl. a R600m Fund to promote SMEs in the supply chain & an employee share scheme
  - *Kwande Capital / Nampak* saw the entry of the first black-owned firm into glass manufacturing with commitments to expand capacity

# RECENT CONTRIBUTIONS

## Cartel enforcement

- Enforcement continues to capture cartels exploiting state tenders which raises costs for infrastructure and delivery
  - Extensive construction cartels for state infrastructure were prosecuted resulting in over **R1,5 billion** in administrative penalties.
- Currently prosecuting banks found to be colluding in Rand currency trading which impacts all international transactions

## Advocacy

- Strategy for the regulation of digital market competition & part of the Intergovernmental Fintech Working Group to promote Fintech
- Secured the appointment of black-owned firms to panels of the major banks (conveyancing work)
- Research into eliminating barriers to emerging farmers and barriers to increased SME & community participation in the Forestry value chain

# MEDIUM TERM PRIORITISATION

The Commission medium term strategic plan is aligned to support the economic recovery programme through the prioritization of:

- Alignment of priority sectors for enforcement to the current Industrial Strategy
- Prioritisation of enforcement efforts that reduce concentration and enhance participation by SMEs and historically disadvantaged persons
- Prioritisation of enforcement that promotes cheaper and universal access to essential goods & services by citizens

Aside from delivering on its enforcement mandate, the Commission plays an important advocacy role in ensuring that policy development and implementation supports competitive market outcomes. It will be strongly focused on the important areas of market reform during the reconstruction period.

# MEDIUM TERM PRIORITISATION

Some of the priority sectors and focus include:

- Food & agro-processing of essential foodstuffs
  - There is huge potential for growth, participation and employment, but market concentration at different points in the value chain hinder the potential. Concentration in the supply of inputs raises farming costs, concentration in processing shifts risks onto farmers and, along with concentration in retail, excludes new entrants and participation by SMEs and historically disadvantaged persons
- Digital infrastructure and markets
  - 4IR holds real promise for innovation and growth, but the emergence of market power in digital platforms and infrastructure risks reducing this potential. Powerful platforms are gate-keepers to consumers that may support domestic business or exclude and exploit them. The transition to fiber/5G infrastructure requires support for a more competitive market structure if data costs are to be reduced substantially.
- Energy and renewables
  - The development of alternative energy sources and new markets for energy will require oversight to ensure fair access to the grid and competitive bidding given the experience in energy markets globally

# MEDIUM TERM PRIORITISATION

- **Transport**
  - Restrictions on warranties and replacement parts in automotive aftermarkets raise the costs of repair and service plans, as well as exclude historically disadvantaged persons from this sector. The Commission is pursuing a code of conduct to lower costs and enhance participation & competition.
  - The rebuilding of the airline industry will require careful oversight to ensure competitive outcomes to support the tourism industry.
- **Healthcare**
  - The Covid crisis has exposed weaknesses in medical equipment & PPE markets and highlighted how the high cost of pharmaceuticals can hinder access to health. Following the inquiry into providers, the Commission will shift focus to addressing pharmaceutical pricing and equipment markets.
- **Manufacturing**
  - The Commission will be supporting the industrial masterplan process through appropriate exemptions and advocacy around the plan design. Competitive intermediate input pricing has remained an important area for enforcement in order to unlock the potential of downstream industries.

# FOOD PRICE MONITORING

The Commission has since the beginning of Lockdown monitored food market pricing to understand retail level inflation and the need for enforcement action.

The second Essential Food Price Monitoring report was published in September 2020 and it covered the following aspects:

- 1) Examination of fresh produce market volatility and differentials across markets nationally
- 2) Examination of the farm gate to shelf price gap at the advent of the crisis and beyond for some key food items using StatsSA survey raw data.
- 3) Continued monitoring of the movements in grains and fresh produce prices in the wholesale and commodity trading markets

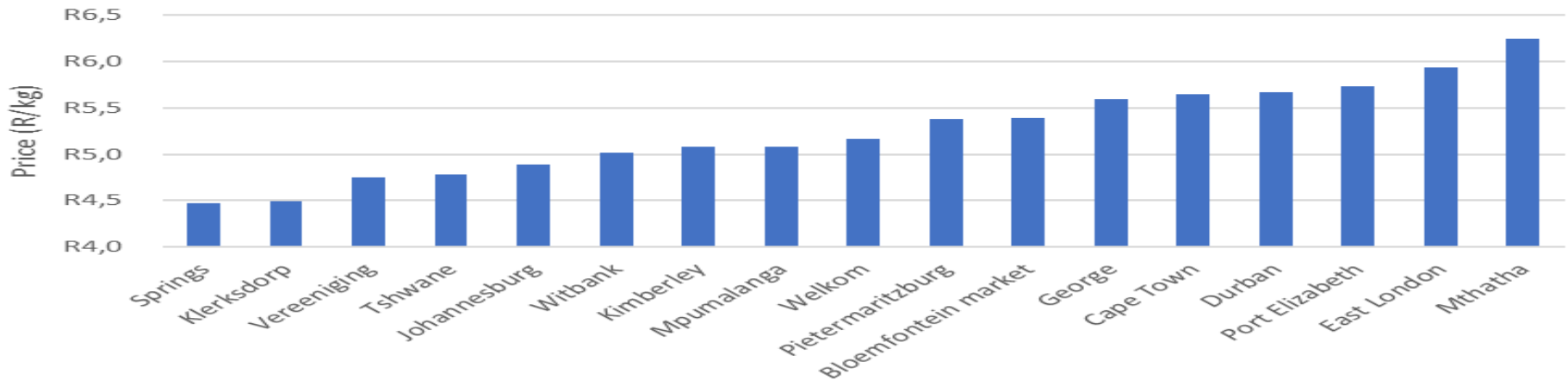
The report is available at: <http://www.compcom.co.za/wp-content/uploads/2020/09/Essential-Food-Pricing-Report-September-2020.pdf>



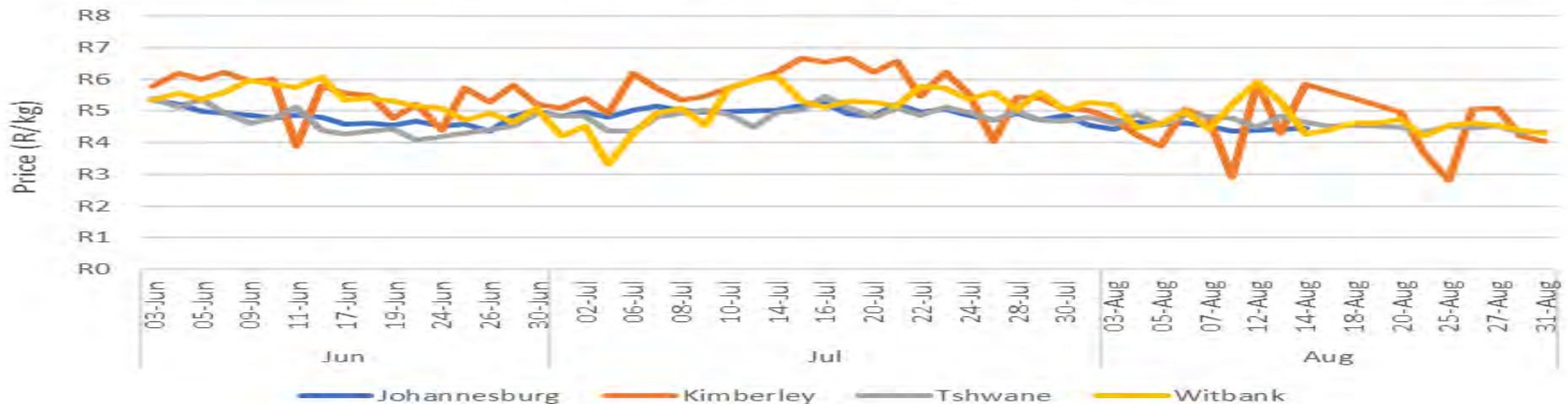
# FOOD PRICE MONITORING (Cont...)

Finding: There is much more variability in pricing in smaller less liquid markets and large differentials across markets nationally (e.g. onions)

Onion prices across markets

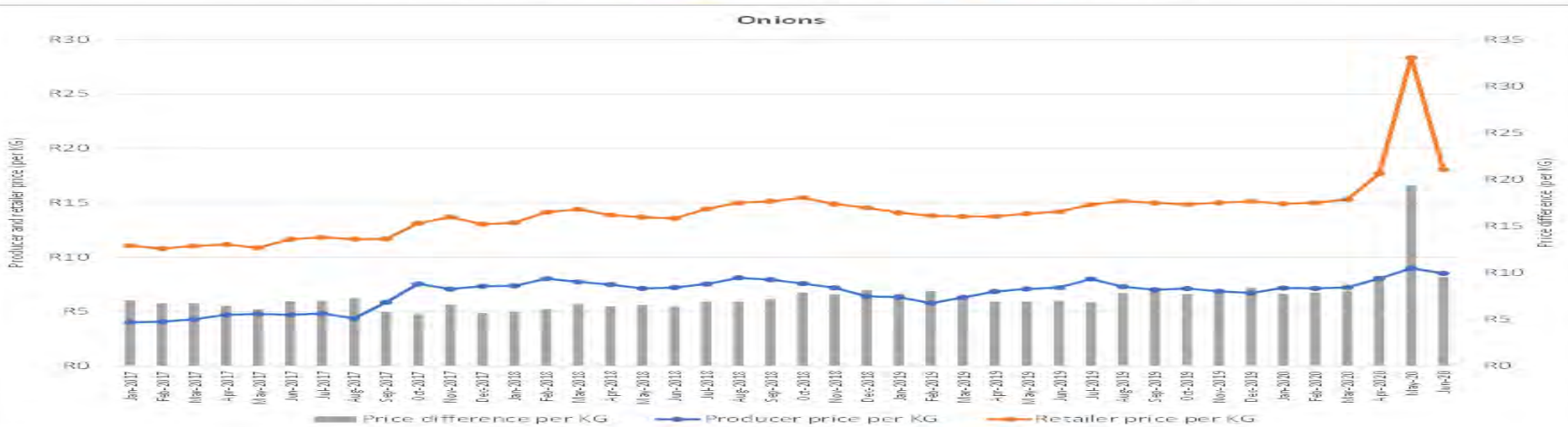
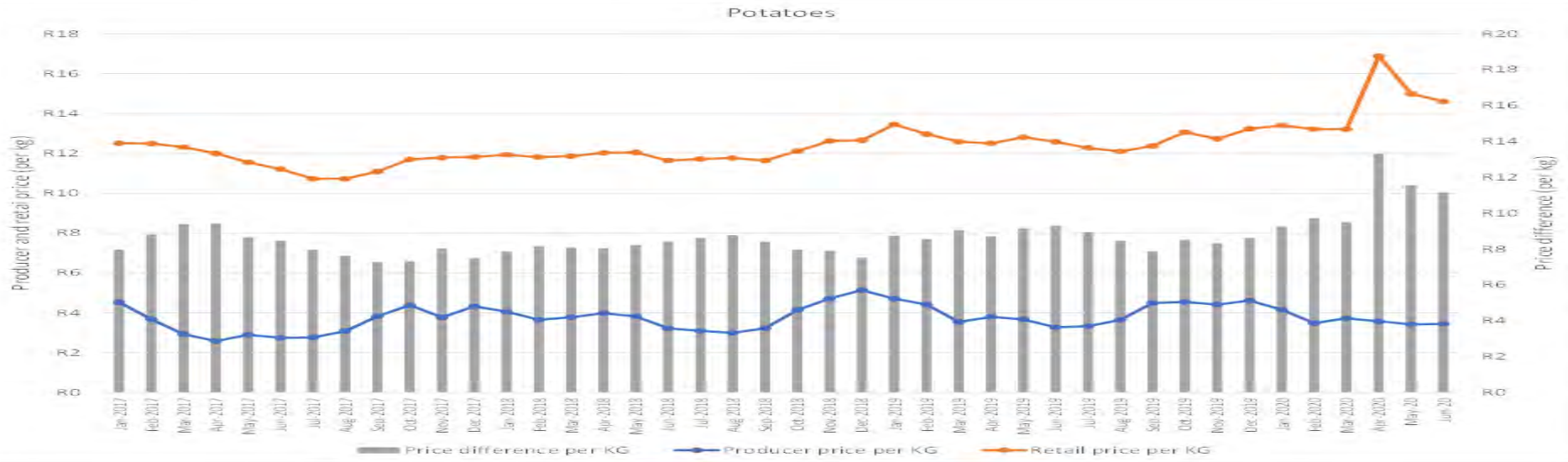


Onion prices, 3 June - 31 August 2020



# FOOD PRICE MONITORING (Cont...)

Finding: some evidence from StatsSA that the retail-wholesale margin ballooned on some essential items in phase 5 lockdown



# CONCLUSION

The Commission has played a vitally important role in the growth and transformation of the economy given its mandate and instruments. Competitive markets with low barriers to new entry and expansion are essential elements to deliver on inclusive growth.

The Commission quickly re-prioritized to respond to the Covid crisis and its work has been central in limiting the economic fallout. The Commission's priorities for the medium term are aligned with the economic recovery programme.

Covid has not directly impacted on the ability of the Commission to delivery on its mandate and priorities this year due to a seamless move to a virtual office and a huge effort from staff. However, budgetary constraints and reduced fee income from merger filings will impact on the ability to engage in enforcement action in the future given the substantial costs of litigation and the need to staff market inquiries.

**THANK YOU!**

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