



## SAPOA LEGAL AFFAIRS

### Fresh Produce Market Inquiry (“FPMI”)

As you are aware, the Competition Commission published its provisional report on the Fresh Produce Market Inquiry (“FPMI”) on 18 June 2024 (“**the Provisional Report**”). SAPOA did not participate in the fourteen month-long FPMI as it was not invited to do so by the Commission, nor was it aware that the FPMI would be seeking any form of action from it. However, a short while before the publication of the Provisional Report, the Commission approached SAPOA and advised us that the Provisional Report would include references to SAPOA and involve SAPOA in one of its recommended remedial actions.

In our engagements with the Commission prior to the publication of the Provisional Report, we made it clear that we would not be able to engage meaningfully with the Commission without a full understanding of the nature of the concerns on the part of the FPMI and the harm which the Commission is seeking to remedy within the context of the recommended action referring to SAPOA. We were advised that we would have an opportunity to comment on, and engage with, the Commission following the publication of the Provisional Report.

On 13 January 2025, the Competition Commission completed its market inquiry into the Fresh Produce market in South Africa. This inquiry, which commenced 31 March 2023, was aimed at identifying whether the fresh produce market is characterised by any features which impede competition, particularly for small businesses (SMEs) and businesses owned by historically disadvantaged persons (HPDs).

As part of the market inquiry process, which includes engagements with industry stakeholders, the Commission first approached SAPOA in April 2024, shortly before the publication of the inquiry’s Provisional Report, which essentially serves as a draft of the Final Report. The Provisional Report proposed remedial action which would require that property owners, who are members of SAPOA, must allocate a minimum amount of retail space for challenger retailers of fresh produce. SAPOA, with the assistance of our legal advisors, undertook extensive engagements with the Commission, explaining why such a

#### **SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION NPC t/a SAPOA – REG NO 1966/008959/08**

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remedy would be detrimental to the retail property industry, and likely to result in unintended consequences for other retailers who are SMEs or HDPs but did not retail fresh produce.

As a result of the various engagements with SAPOA, the Commission has ultimately amended the final remedies which apply to the property industry, in its Final Report. These remedies now read as follows:

***Remedy 26: Recommendation***

*The SAPOA should promote industry initiatives aimed at facilitating entry by potential new entrants for the formal retail of fresh produce (or related products)*

***Remedy 27: Recommendation***

*Certain large and/or strategic property owners (namely: Accelerate Property Fund, Atterbury Property, City Property Administration, Hyprop Investment, Mowana Properties, Old Mutual Property, Pareto, Redefine, Resilient Property Fund, SA Corporate Real Estate and Vukile Fund) should use reasonable commercial endeavours to provide vacant floor space to SME retailers, on terms and conditions that are acceptable to both parties.*

These remedies indicate a significant softening of the remedy as articulated in the inquiry's provisional report. These do not impose an undue burden on any property company to give preference or special treatment to fresh producers' retailers which are SMEs. It is also important to note that the Commission has now framed these remedies as "recommendations" and has not imposed them as remedial actions, as was the case in the Provisional Report. There are therefore no consequences for non-compliance. However, we encourage the relevant property companies engage with any prospective tenants which are fresh produce retailers that are SMEs, in good faith, to demonstrate to the Commission the industry's support of increased competition in the retail space.

The Commission has indicated that it is likely to remain interested in the retail property space and may engage with SAPOA (or property owners) further in future. It is therefore useful that despite the lack of consequences for non-compliance with the Commission's recommendations, all affected stakeholders endeavour to comply in order to continue establishing goodwill with the competition authorities.



Overall, SAPOA is satisfied with the outcome of the inquiry and its engagements with the Commission as the recommendations are in line with our advocacy and have avoided any undue burden on SAPOA, and its members.

If you have any questions on the inquiry or the recommendations by the Commission, please feel free to contact me.