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Competition Law Enforcement in Informal Markets – Contribution from South Africa

- Session III -

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More documentation related to this discussion can be found at: oe.cd/cleim.

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Competition Law Enforcement in Informal Markets

- Contribution from South Africa –

1. Introduction and context

1. This document is a reply to the OECD's call for country contributions for Session III of the Global Forum on Competition to be held on 1-2 December 2025, under the theme *"Competition Law Enforcement in Informal Markets"*

2. The document outlines the Commission's experience and efforts in enforcing competition law in informal markets. For purposes of this document, the term 'informal markets' bears the meaning outlined in the OECD's call for contributions, adapted from International Labour Organization "ILO", which is *"all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs"*

3. The experience of the Commission is that the informal economy includes both informal businesses/actors (which align with product markets) as well informal settlements (aligning with geographic markets), whether or not the businesses operating in these markets are formal or informal. As such, the Commission's contribution covers informal businesses as well as businesses (formal and informal) operating in informal settlements, including in townships.

4. The document is structured as follows:

- Section A: Measuring the Size of Informal Markets;
- Section B: Factoring Informal Markets into Competition Analysis; and
- Section C: Enforcing Competition Law in the Informal Markets

2. Section A: Measuring the Size of Informal Markets

5. Informal markets are an important component of the South African economy and present as a means for large sections of the population to access goods and services and are also an important consideration for the Competition Commission South Africa (Commission) in competition law enforcement activities. The South African economy is characterized by entrenched informality, particularly in township and rural economies, where common barriers to formality include regulatory complexity, lack of finance, and the dominance of established formal players.[1] In South Africa, a 'township' describes a

[1] International Labour Organisation. 2021. Identifying barriers to formalisation: A snapshot of key challenges in South Africa's informal economy; Moyo, B. 2022. Factors affecting the probability of formalizing informal sector activities in Sub Saharan Africa: evidence from World Bank enterprise surveys. Emerald. Available at: https://www.emerald.com/ajems/article-pdf/13/3/480/114398/ajems-06-2021-0304.pdf

dense urban settlement, usually built at a distance from centers of commercial and industrial activity.[2] These areas are characterized by high degrees of informality, with unplanned settlements, no title deeds, and lack of infrastructure and access to basic services. There also tends to be a large number of informal businesses as described in the OECD's call for contributions in these areas.

6. Measuring the size and scope of such markets poses distinct methodological challenges. While traditional labour force surveys, such as Statistics South Africa's (StatsSA) Quarterly Labour Force Survey (QLFS), capture employment-based dimensions of informality, they often omit turnover, margins, and firm-level dynamics. As such, complementary sectoral research, market inquiries, and dedicated consumer and business surveys are critical to provide a more complete picture.

7. Stats SA's QLFS is (Stats SA) is the main source of formalized data available in South Africa to identify and quantify the informal sector and informal employment.[3] The QLFS distinguishes between (i) informal-sector jobs, being those in businesses that are not registered for tax or value-added-tax (VAT), often very small operations, and (ii) informal employment referring to jobs where workers do not have legal or social protection, such as written contracts or benefits, even if the business itself is formally registered. The classification criteria, as part of the QLFS, depends on enterprise registration and tax status, workplace characteristics, and the nature of employment arrangements.[4] These statistics provide estimates of headcounts and shares of employment associated with informality; however, turnover, prices and margins of informal firms are not directly measured by QLFS.[5]

8. Beyond labour surveys, sectoral statistics and market inquiries could also assist in inferring the size of informal channels indirectly. For example, the Commission's Fresh Produce Market Inquiry (FPMI) explicitly notes that the estimated R53 billion annual size of the commercial fresh-produce market excludes informal sales and exports, signaling the measurement gap between formal channel estimates and reality.[6] In practice, public-price series (e.g., fresh-produce market prices) and data from industry association could be used together with QLFS indicators to approximate the footprint of informal trade.

9. The Commission is also currently fielding two complementary surveys to improve identification and measurement in townships and rural markets, namely (i) a Township Business research piece to profile ownership (including HDP status), registration/tax formality, enterprise type, business activities, multi-ownership and owner location; and (ii) a Township Consumer research study to try and capture purchasing and switching behavior in basic everyday goods and services categories (such as groceries, pharmacies, pathology, primary medical services).

[2] Cities Support Programme (CSP), Philip, K. 2018. Township economic development – A framework for the development of metro strategies. Township Economies Series #5.

[3] Statistics South Africa (2024) Quarterly Labour Force Survey. Pretoria: Stats SA. Available at: https://www.statssa.gov.za/?page_id=1854&PPN=P0211

[4] Statistics South Africa (2024) Quarterly Labour Force Survey. Pretoria: Stats SA. Available at: https://www.statssa.gov.za/?page_id=1854&PPN=P0211

[5] Statistics South Africa (2024) Quarterly Labour Force Survey. Pretoria : Stats SA. Available at: https://www.statssa.gov.za/?page_id=1854&PPN=P0211

[6] Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Non-Confidential), 13 January 2025. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf

10. These research studies utilize surveys which are constructed by a structured sampling frame with selected towns and townships and combine online recruitment with in-person fieldwork. This research has been designed to produce comparable data (which is spatially referenced) that can help map the footprint and linkages of informal activity, from both township business and township consumer angles.[7] The Business Survey sample consists of 55,2% of responding firms operating in small towns/rural areas while 44,8% operate in townships.[8] 27,8% of the businesses are informal (not registered) and 59,8% are independent registered businesses, with national chains accounting for about 9,5% and franchisees 2,9%.[9]

11. These figures, and further survey-based insights could provide a base against which the Commission can map informal business and gauge the size of informal markets. Reports from independent industry research firms as well as business publications are also useful in determining the size of informal markets. For example, the GRMI cited a report by survey firm Nielsen, which estimated the total number of informal food retailers in South Africa at around 14 000 in 2017.[10] There are a growing number of marketing surveys of townships by formal businesses aiming to service townships and of informal traders by upstream suppliers of FMCG.[11]

12. In its daily operations, the Commission has so far used case work (e.g., merger investigations) and market inquiries under Chapter 4A of the Competition Act to identify the existence and scope of informal activity within markets. Typically, identification occurs when informality emerges in case work and inquiries as a competitive constraint to formal businesses, or as markets with potential or opportunities to advance the country's developmental objectives such as inclusive growth. Case work and market inquiries combine public calls for information, hearings, site visits, questionnaires and requests for information, and where necessary Section 49A summons for information.[12]

13. Below are some illustrative examples:

- Grocery Retail Market Inquiry (GRMI), 2019: The inquiry's methodology included site visits, surveys, and hearings to understand township and informal retail dynamics (e.g., spaza shops).

[7] RedFlank. 2022. Project Inception report – Survey of Township and Rural Town Businesses Demographics and Ownerships ("Business Survey") (28 February 2025); RedFlank. 2022. Project Inception report – Survey of Township and Rural Town Consumers Geographics Source of Goods and Services ("Consumer Survey") (28 February 2025).

[8] RedFlank. 2025. Township Business Survey – unpublished dataset, Question 1 (with 382 respondents)

[9] RedFlank. 2025. Township Business Survey – unpublished dataset, Question 5 (with 241 respondents)

[10] Competition Commission South Africa (2019) Grocery Retail Market Inquiry – Final report (non-confidential). Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf

[11] For example, see https://www.standardbank.co.za/static_file/South%20Africa/PDF/Township/Standard_Bank_Township_Informal_Economy_Report_October_2025.pdf

[12] Competition Act 89 of 1998 (as amended), Section 49A ; Competition Commission South Africa (2019) Grocery Retail Market Inquiry – Final report (non-confidential). Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf

- Public Passenger Transport Market Inquiry, 2021: The Commission ran extensive public hearings nationally (including modalities relevant to minibus taxis and other semi-formal services), capturing how informal services constrain or are constrained by formal operators.[13]
- Fresh Produce Market Inquiry (FPMI) 2025: The inquiry combined targeted information requests, farmer workshops/site visits, and public hearings. It explicitly highlighted data gaps with informal sales channels and the implications for market structure and outcomes.[14]

14. Key challenges observed by the Commission in its work regarding the measurement of market sizes in informal markets include:

- reluctance to participate, given perceived enforcement risks;
- heterogeneity issues (small, mobile, seasonal, cash-based trade in informal markets); and
- location – some informal businesses do not have visible presence (physical or online, some operate from home, while others do not have an address at all).

15. The Commission aims to mitigate these challenges through combining evidence from multiple methods (surveys, observation, hearings, and linking with formal-channel data), as well as employing legal powers when necessary to compel information from formal counterparties interacting with informal segments.[15] The Commission can use various sources of information for insight into informal firms, which would generally include:

- Stats SA (QLFS concepts/definitions; employment levels by sector/industry; community survey/census for spatial patterns);[16]
- Sector regulators and administrative registries relevant to the market under study – for example, provincial and municipal operator licences in public transport; municipal trading permits in retail and street trading; agricultural market agents' data and the Agricultural Produce Agents Council (APAC) in fresh produce[17]; the

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[13] Competition Commission South Africa (2021) Public Passenger Transport Market Inquiry. Available at: https://www.compcom.co.za/public-passenger-transport-market-inquiry-2/. Also referred to as the Land Based Public Passenger Trasport Market Inquiry.

[14] Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Non-Confidential), 13 January 2025. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf; Competition Commission South Africa (2025) Fresh Produce Market Inquiry. Available at: https://www.compcom.co.za/fresh-produce-market-inquiry/

[15] Competition Commission South Africa (2023) FPMI Guidelines for Participation. Available at: https://www.compcom.co.za/wp-content/uploads/2023/03/FPMI-Guidelines-for-Participation-22Mar2023.pdf; Competition Act 89 of 1998 (as amended), Section 49A, Sections 46 – 49, Chapter 4A (Market Inquiries).

[16] Statistics South Africa (2024) Quarterly Labour Force Survey. Pretoria: Stats SA. Available at: https://www.statssa.gov.za/?page_id=1854&PPN=P0211

[17] Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Non-Confidential), 13 January 2025. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf;

Independent Communications Authority of South Africa (ICASA) for telecommunications; the National Credit Regulator (NCR) for credit;[18]

- Industry associations and platform operators (evidence on volumes, participation, fees, access conditions);[19]
- Firm counterparty data obtained through inquiries, requests, and/or summons to infer the size and role of informal suppliers, customers, or competitors; and
- Complaints and stakeholder submissions collected during inquiries and case work; and
- Specialist consulting firms in the private sector, for specialized expertise in a certain topic/business that the Commission is looking into (such as with the Township and Rural Economy study, where a consulting firm will assist in constructing and conducting the business and consumer surveys for more micro-level and specific data).

16. The Commission also relies on cooperation with other organizations to enhance data collection and accuracy. Section 21(1)(h) of the Competition Act ("the Act") allows the Commission to negotiate MoU's with domestic bodies where concurrent mandates or data-sharing are beneficial.[20] An overview of MoUs with sector regulators is published by the Commission.[21] Examples of MoUs, relevant to data and sector insights, include:

- International Trade Administration Commission (ITAC) MoU: involves cooperation and information exchange pertinent to trade and imports/exports, which can be useful where informal markets interact with imported goods streams;
- National Agricultural Marketing Council (NAMC) MoU: involves cooperation on agricultural markets, information sharing and joint research – relevant to fresh produce and smallholder participation where informal channels are significant;
- National Consumer Commission (NCC) MoU: involves coordination on matters implicating consumer protection and market practices, which can assist insights into retail or trading issues that often involve informal operators or their consumers.

17. In addition, the Commission can use platforms such as roundtable discussions with organizations who are interested in the informal sector. For example, in June 2025, the Advocacy division of the Commission convened a multi-stakeholder round table under the theme "Unlocking Economic Potential: A Collaborative Roundtable on Supporting Spaza Shops". Inter alia, the round table explored opportunities for greater coordination across initiatives aimed at supporting spaza shops. This was attended by about 14 stakeholders,

[18] ICASA. 2025. Regulating the Communications Sector in the Public Interest. Available at: https://www.icasa.org.za/ ; National Credit Regulator. 2025, Available at: https://www.ncr.org.za/

[19] Examples include National Small Business Chamber (NSBC), and certain industry-specific associations such as the Liquified Petroleum Gas Safety Association of Southern Africa (LPGSASA), and the Franchising Association of South Africa (FASA).

[20] Competition Act, 89 of 1998 (as amended), Section 21 (1)(h) and Section 82(1)-(3).

[21] Competition Commission South Africa. 2025. MoUs with Sector Regulators. Available at: https://www.compcom.co.za/mou/ ; https://www.compcom.co.za/mou-with-sector-regulators-in-south-africa/

including the revenue collector (SARS[22]), the registrar of companies (CICP[23]), the Department of Small Business Development, and a major bank, among others. These institutions have data and insight into the activities of informal business. These cooperation mechanisms complement the Commission's Chapter 4A market inquiry powers (including Section 43B initiation and Section 49A summons) to secure data, convene hearings, and obtain information otherwise unavailable from informal markets themselves.[24]

3. Section B: Factoring Informal Markets into Competition Analysis

18. The Commission has had to analyze markets in which the formal and informal market participants coexist. The Commission in the Retail Grocery Market Inquiry ("GRMI") segmented the retail level of the value chain between the formal and informal channels. The sale of grocery products takes place through both the formal and informal retail channels. The formal retail segment is characterized by the presence of the incumbent national supermarket chains, specialty stores and the emerging retailers, while the informal segment mostly has a presence of small and independent retailers including general dealers and spaza shops[25], among others.[26]

19. The GRMI found that while there is competitive interaction between the formal and informal stores, the competition is asymmetrical, as the inquiry found that informal stores do not exert a strong competitive restraint on national supermarkets.[27] This finding is conclusive with case precedent in merger cases in retail markets. This is mainly because the informal segment typically serves as a convenient shopping option, with a limited range of stock/options, catering for the needs of the local community and are used by customers on a need basis to refill/restock certain items.

20. These previous conclusions, however, are not cast in stone, and the Commission will continue to probe the competition strength between informal and formal as the strength of competition may vary on a case-by-case basis. This is even more so considering that the responses to the Commission's Consumer Survey on the direct question of whether informal and formal are substitutable indicates high overall substitutability across various markets, with more than 60% of responses indicating overall substitutability. However, it is noted that responses to subsequent questions pertaining to reasons for the perceived substitutability are at odds with the perceived high substitutability, suggesting low levels of substitution. Amongst others, the reasons cited for the perceived limited substitutability include that the two serve different purpose or need; informal has limited variety of products; and informal often falls short in terms of product quality. As such, while the

[22] South African Revenue Services.

[23] Companies and Intellectual Property Commission.

[24] Competition Act, 89 of 1998 (as amended), Chapter 4A, Section 43B, Section 49A.

[25] Spaza shops are the small street shops or supermarket outlets, predominantly found in South Africa's Black populated areas or townships.

[26] Competition Commission South Africa (2019) Grocery Retail Market Inquiry – Final report (non-confidential). Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf

[27] Competition Commission South Africa (2019) Grocery Retail Market Inquiry – Final report (non-confidential). Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf

survey provides a reference point for competition analysis broadly, careful examination of the competitive strength continues to be required on a case-by-case basis.

21. In agriculture, the Fresh Produce Market Inquiry (FPMI) demonstrated that municipal fresh produce markets remain as key nodes for both formal supermarkets and informal vendors, yet smallholder and historically disadvantaged farmers face systemic barriers, including limited finance, discriminatory conduct by agents, and outdated municipal infrastructure.[28] Informal traders rely heavily on these wholesale platforms for affordable supply, meaning their competitiveness is tied to structural conditions in formal value chains.[29] Similarly, the Public Passenger Transport Market Inquiry (PPTMI) documented the coexistence and issues between informal minibus taxis and formal buses/rail, showing how subsidies, licensing and taxi rank management and governance can shape their competitive interaction.[30]

22. The Commission's Township Business survey appears to corroborate these dynamics, with preliminary results pointing to procurement frictions such as higher costs from small order sizes, a lack of nearby suppliers, and supplier preferences or exclusive arrangements favoring larger businesses.[31] When considering relocating to a formal premises, respondents most often cite high rentals, exclusivity or preference for established brands, and information gaps about requirements as key obstacles.[32] Digital routes for township businesses appear to be mediated by formality and capability, with many non-adopters highlighting limited know-how, infrastructure constraints and platform requirements as key reasons for not selling their products online.[33] Together, these findings (although preliminary) reinforce that informal traders are part of formalized upstream and facility nodes, and that the main competition concerns appear to arise from exclusionary terms and governance set by formal actors rather than from market power within informal segments.

23. Another insight from the preliminary survey result is that informal township and rural businesses mainly source from medium-sized formal wholesalers or buyer groups, and from small formal suppliers, with large formal wholesalers and retailers also a common source (and small informal suppliers are mentioned as a far less option) – a pattern which shows that even informal retailers are typically part of formalized upstream procurement channels.[34]

[28] CCSA. 2025. Competition News - Newsletter, May 2025.

[29] In interpreting outcomes at municipal markets, we therefore treat supermarket buyers and independent chains as formal participants, and hawkers/bakkie traders as informal participants linked to those formal nodes.

[30] CCSA. 2021. Competition News – Newsletter, April and June 2021; CCSA. 2021. Conclusion of the Land Based Public Passenger Transport Market Inquiry (March 2021). Government Gazette, No. 44469.

[31] RedFlank. 2025. Township Business Survey – unpublished dataset, Question 14 (with 221 respondents)

[32] RedFlank. 2025. Township Business Survey – unpublished dataset, Question 21 (with 117 respondents)

[33] RedFlank. 2025. Township Business Survey – unpublished dataset, Question 16 (with 201 respondents)

[34] Survey evidence shows that township/rural businesses primarily source from medium-sized formal wholesalers or buyer groups (34.8%) and small, formal suppliers (33.9%), with large formal

24. In its assessment of merger cases, market conduct cases and market inquiries, the Commission has considered the informal economy when conducting a competition analysis. The methodologies used are consistent with international best practice. Where there is interaction between the formal and informal markets, tools such as the SSNIP test are applied against robust demand-side and supply-side assessments, and product quality and range (supply-side) and consumer behavioral patterns (demand-side) often play a critical role in determining whether these should be in the same or separate markets.

25. In practice, in markets where informal players interact directly with formal players, the Commission would first establish whether the informal players exert any competitive restraint on formal players. For example Shoprite's acquisition of Massmart's Cambridge, Rhino and selected retail stores in 2022,[35] which was conditionally approved by the Commission, with particular attention paid to local grocery retail overlaps.[36] The case shows that in markets serving township and peri-urban consumers, which typically include informal settlements, large supermarket chains directly compete with each other, but must also be viewed in the context of some competitive pressure from local low-cost retailers.[37]

26. In these assessments, the Commission also pays attention to the unique market characteristics affecting informal markets. The way a sector works helps determine whether informal suppliers are counted as part of the market or seen only as minor players with negligible competitive impact. To factor in the specificities of a given sector when analyzing informal markets, the Commission considers the following, *inter alia*, industry characteristics (understand the sector's production processes, supply chain features, distribution networks, subsidies or licences etc.); consumer behavior (analyze consumer preferences, consumer switching, consumer needs, brand loyalty etc.); regulatory environment (regulatory requirements in the given sector, such as product certifications, compliance standards etc.), and product quality and standards (assess if informal firms can provide goods or services of comparable quality and reliability to formal firms, and whether differences in quality, warranties, standards, or after-sales service affect substitutability and the extent of competitive pressure they exert).

27. In the fresh produce sector for example, perishability and the role of National Fresh Produce Markets (NFPMs) as price-discovery platforms shape analysis. The FPMI documented how hawkers and bakkie traders[38] provide low-income access and exert local

wholesalers/retailers (27.6%) also prominent; small, informal suppliers were cited by 19.5% [Survey Q12, with 221 respondents]

[35] Cambridge and Rhino stores are formal retail outlets – where we refer to spaza shops and similar outlets in surrounding catchments, these are treated as informal channels that may exert localised, often limited, competitive pressure.

[36] CCSA. 2022. Media Statement (May 2022) - COMMISSION RECOMMENDS CONDITIONAL APPROVAL OF THE MERGER BETWEEN SHOPRITE SUPERMARKETS (PTY) LTD ("SHOPRITE SUPERMARKETS") AND MASSMART HOLDINGS LIMITED ("MASSMART"). Available at: https://www.compcom.co.za/wp-content/uploads/2022/05/Media-Statement-Shoprite-Massmart-20-May-2022.pdf

[37] CCSA. 2022. Media Statement (May 2022) - COMMISSION RECOMMENDS CONDITIONAL APPROVAL OF THE MERGER BETWEEN SHOPRITE SUPERMARKETS (PTY) LTD ("SHOPRITE SUPERMARKETS") AND MASSMART HOLDINGS LIMITED ("MASSMART"). Available at: https://www.compcom.co.za/wp-content/uploads/2022/05/Media-Statement-Shoprite-Massmart-20-May-2022.pdf

[38] Bakkie is a South African term for a small, normally one-ton capacity, pickup truck. The term 'bakkie traders' refer to traders who buy directly from farms or from fresh produce markets and sell on the side of the road to customers that include the general public and other street traders.

price discipline, even if formal buyers dominate volumes; and the standards and governance at the NFPMs also affect SME/HDP and informal participation in this sector.[39] In the transport sector, within land-based public transport, subsidies and licensing regimes and taxi-rank governance drive the intensity of rivalry between formal buses/rail and informal minibus taxis.[40]

28. As regards remedy design, where an infringement is identified in informal markets or affecting informal businesses, remedy design considers the characteristics of these markets and/businesses. The Commission in the GRMI found that there has been decline or exit of spaza shops and independent retailers resulting from the entry of the national supermarket chains into township areas and this has shifted the competitive landscape in those areas.[41] Municipalities tended to provide infrastructure for national grocery stores due to their payment of municipal taxes and levies whilst infrastructure for the informal traders was ignored as they did not pay taxes. National chains were also favoured in respect of operating hours for liquor trading. To remedy this, the GRMI recommended several initiatives, including the following:

- Infrastructure for informal trading areas (water, public toilets, lighting) and a relaxation of zoning regulations and operating hours;
- government establishing distribution centers located in peri- and non-urban areas to service small and independent retailers;
- government establishing an incentive program to provide seed finance to private businesses that aim to offer support to small informal spaza shops.

29. The FPMI's recommendations included municipal NFPM governance upgrades and retail-side transparency and other measures intended to improve participation and price discipline where hawkers and bakkie traders are important channels. The remedies are framed to strengthen platform governance and transparency that informal actors depend on.[42]

30. Designing remedies that take informal markets into account presents challenges because the constraints facing smaller or informal actors are highly sector-specific and often structural, with regulations imposed at a municipal level across 247 municipalities. Similarly, in advocacy interventions like school uniforms, remedies required adjusting entrenched procurement practices across thousands of schools, each governed by independent School Governing Bodies, making consistent application of competitive principles particularly difficult.[43] Monitoring these remedies has also proven demanding. Effective oversight requires verifying compliance across decentralized networks where enforcement capacity is thin and data on informal market outcomes is limited. More

[39] Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Non-Confidential), 13 January 2025. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf

[40] Competition Commission South Africa (2021) Public Passenger Transport Market Inquiry: summary of findings and recommendations (Gov. Gazette No. 44469, 23 April 2021).

[41] Competition Commission South Africa (2019) Grocery Retail Market Inquiry – Final report (non-confidential). Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf

[42] Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Non-Confidential), 13 January 2025. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf

[43] CCSA. 2021. Competition News March 2021. Available at: https://www.compcom.co.za/wp-content/uploads/2021/03/CompCom-Newsletter-March-2021.pdf

broadly, data scarcity in informal markets hampers the Commission's ability to measure the direct impact of remedies on prices, market entry, and consumer choice, which necessitates complementary tools for monitoring.

4. Section C: Enforcing Competition Law in the Informal Markets

31. The Commission enforces the Act across both formal and informal segments, targeting conduct and market features rather than legal form. The Competition Act applies to "*all economic activity within, or having an effect within*" South Africa and it defines a 'firm' to include a natural person, partnership or trust. This would mean that informality of status (e.g., absence of company or tax registration) does not place conduct beyond the reach to the Act, where economic activity and effects are present.[44] The Commission's enforcement focus in informal markets typically seeks to address market failures such as exclusionary or exploitative conduct by formal actors that harms informal traders and low-income consumers.

32. For instance, the PPTMI examined the mini-bus taxis, metered taxis and e-hailing – sectors with significant informality. The Inquiry identified competition problems, including barriers to entry, exclusion at facilities, and governance failures in associations, and recommended regulatory and pro-competitive reforms in cooperation with the Department of Transport and provincial regulators.[45] Similarly, in the FPMI, which covered farm-to-market channels with large HDP/SME participation (often informal at farmgate or municipal market stages), the Commission found high mark-ups and access barriers, and proposed various recommendations, including measures for municipal markets, market agents and retailer access, explicitly citing the informal/SME groups.[46]

33. In the Online Intermediation Platforms Market Inquiry, it was found that black-owned and township businesses were largely absent from the B2C platforms because SMEs were charged disproportionately high fees relative to national chains (Property and Used Car classified platforms, along with food delivery platforms), were simply not prioritized in the onboarding process (eCommerce) and delivery excluded operations in informal township areas (food delivery). For township entrepreneurs in food delivery, the Inquiry found that the refusal of national chains to contract with local delivery services in townships hindered expansion of these businesses to compete with national and international players. Remedies to address exclusion of black-owned and township businesses included an end to price discrimination on platform fees, changes to franchise agreements to allow for local delivery contracting and commitments across all platforms to onboard and promote black-owned and township businesses. For instance, the largest eCommerce platform has subsequently onboarded 800 new businesses and started a Township project to assist those businesses to reach a national market.

34. Beyond market inquiries, the Commission has used guidelines and advocacy to open opportunities for SMEs and informal operators. The Automotive Aftermarket Guidelines (2020/2021) require OEMs to permit independent repairers and non-OEM parts

[44] Competition Act 89 of 1998 (as amended). Section 3 Application of the Act, p.23.

[45] Competition Commission South Africa (2021) Public Passenger Transport Market Inquiry: summary of findings and recommendations (Gov. Gazette No. 44469, 23 April 2021).

[46] Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Exec. Summary & Gazette notice); Reuters (18 June 2024) report on provisional findings.

- which benefits thousands of small, semi-formal and informal workshops.[47] Further, the amendments to the Act, and subsequent Buyer Power and Price Discrimination Regulations strengthen protection for SME/HDP suppliers into grocery and agro-food chains where informal and micro-enterprise participation is common.[48]

35. While the Commission actively enforces competition law on informal markets, doing so does not come without challenges. The Commission typically faces procedural challenges when conducting investigations that involve informal economic actors, including the following:

- Identifying ‘firms’: although the Act’s definition of ‘firm’ covers unregistered traders and associations, practical identification is difficult where there is no registered address or digital identification available.[49]
- Association governance and representation: in sectors like mini-bus taxis, trade associations may be unincorporated, and their governance structures could be unclear. For the Commission, ensuring proper representation, providing notices in the appropriate language(s), and securing participation can be challenging and resource intensive.[50]
- Evidence gathering: Dawn raids and searches are provided for by the Act, but the evidence in informal markets is often limited due to cash transactions, and minimal records – which highlights the value of market inquiries as a tool for building evidence on a certain sector and designing remedies when case-specific proof is challenging.[51]

36. Often, enforcing competition law in informal markets requires cooperation with other organizations. Given that informal markets are often characterized by overlapping mandates – such as licensing, safety, tax, and trading regulation – effective coordination is essential to avoid duplication and ensure that remedies have practical effect.

37. The Public Passenger Transport Market Inquiry (PTMI) demonstrated the value of joint engagement with the Department of Transport on licensing and taxi rank access issues, while the Fresh Produce Market Inquiry (FPMI) highlighted effective collaboration with the Agricultural Produce Agents Council (APAC) and the Department of Agriculture to address structural barriers at municipal fresh produce markets.[52]

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[47] Competition Commission South Africa (2021) Guidelines for Competition in the South African Automotive Aftermarket. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2021/07/Guidelines-for-Competition-in-the-South-African-Automotive-Aftermarket.pdf

[48] Government Gazette (South Africa). 2019. Competition Act (89/1998): Guidelines for Participation in the Grocery Retail Sector Market Inquiry. Government Notice No. 1316, Government Gazette No. 42760, 25 October. Pretoria. Available at: https://www.gov.za/sites/default/files/gcis_document/201910/42760gon1316.pdf

[49] Competition Act 89 of 1998 (as amended). Section 3 Application of the Act, p.23.

[50] Competition Commission South Africa (2021) Public Passenger Transport Market Inquiry: summary of findings and recommendations (Gov. Gazette No. 44469, 23 April 2021).

[51] Competition Act 89 of 1998 (as amended). Sections 46 – 49A.

[52] Competition Commission South Africa (2021) Public Passenger Transport Market Inquiry. Available at: https://www.compcom.co.za/public-passenger-transport-market-inquiry-2/; Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Non-Confidential), 13 January 2025. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf; Competition

38. There has also been cooperation between the Commission's Advocacy Division and the Department of Small Business Development (DSBD), which reflects South Africa's broader institutional strategy to support participation by small, micro and potentially informal businesses. In relation to policy development, in 2023/2024, the Advocacy Division submitted a detailed policy response to the DSBD's draft South African SMMEs and Co-operatives Funding Policy. This intervention highlighted the need for a coordinated national framework for SME finance, emphasizing timely payments, access to insurance, and transparent databases, while ensuring that competition policy concerns were embedded in small business support measures. By contributing to the design of funding policies, the Commission helped ensure that developmental initiatives did not inadvertently entrench exclusionary practices or create bottlenecks for informal and historically disadvantaged enterprises.[53]

39. Recently, in June 2025, the Advocacy division of the Commission cooperated with 14 stakeholders in a multi-stakeholder roundtable under the theme *"Unlocking Economic Potential: A Collaborative Roundtable on Supporting Spaza Shops*" to discuss *inter alia*, challenges faced by spaza shops preventing their growth. In attendance were the revenue collector, SARS, and the registrar of companies, CICP. Collaboration with these two entities may enhance competition law enforcement in informal markets as the Commission may gain access to the databases of these entities to understand, inter alia, the sizes of these markets, but also, through learning from the experiences of these entities to understand the challenges faced by actors in informal markets.

40. At the international level, forums such as the OECD and UNCTAD, have provided platforms for knowledge-sharing and methodological development, particularly in relation to buyer power and access to formal value chains for informal suppliers.[54] These experiences suggest that cooperation works best when objectives are shared (e.g., competition, safety, and transformation).

41. Despite these successes, several impediments continue to constrain effective cooperation. A major factor highlighted by SARS that makes cooperation difficult, or the fruits of cooperation difficult to reap, is that informal actors tend to be reluctant to participate in forums where SARS is involved for fear of enforcement actions – they fear that they may be found by SARS to be not tax compliant, and SARS may penalize them. From the Commission's Township Business survey, provisional evidence points to township businesses noting that tax (SARS) compliance requirements area overly complex and administratively burdensome, that labour-law obligations are too costly, and that infrastructure shortfalls (such as unreliable utilities and inadequate facilities) prevent businesses from meeting health-and-safety, and environmental standards.[55] These findings point to why inter-agency collaboration and guidance matter for effectiveness in informal

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Commission South Africa (2025) Fresh Produce Market Inquiry. Available at: https://www.compcom.co.za/fresh-produce-market-inquiry/

[53] CCSA. 2025. Annual Report 2023/24. P.54-54. Available at: https://www.compcom.co.za/annual-reports/ ; Department of Small Business Development (2023) Draft South African SMMEs and Co-operatives Funding Policy. Government Gazette No. 48483, Notice R.3353 of 2023

[54] OECD (2010) Competition Policy and the Informal Economy: Key findings, summary and notes, OECD Roundtables on Competition Policy Papers, No. 100; UNCTAD (2023) Competition law enforcement issues raised by monopsonies, report of the Intergovernmental Group of Experts on Competition Law and Policy.

[55] RedFlank. 2025. Township Business Survey – unpublished dataset, Question 28 (with 176 respondents)

settings, as well the need for coordinated remedies with regulators and municipalities that could reduce procedural barriers, without affecting consumer protection.

42. Fragmented municipal responsibilities for permits, trading spaces, and market infrastructure frequently lead to enforcement gaps and inconsistent implementation.[56] In addition, restrictions on data-sharing, whether due to confidentiality provisions or privacy legislation, reduce the ability of agencies to coordinate investigations.[57]

43. There is no easy remedy to these problems, but legal frameworks would need to be refined to make enforcement more practical, while institutions would need better coordination and new methodological tools to generate reliable evidence in context where formal data is limited. Stronger institutional coordination is important. Many of the barriers faced by informal traders stem from fragmented governance at municipal level, where the responsibilities for trading permits, markets and enforcement are spread across various departments.[58] Formal agreements or coordinated frameworks between the Commission, national departments and municipalities could assist in the remedies and recommendations from market inquiries actually being put into practice at a more local level.[59]

44. For example, in the FPMI, the Commission highlighted how municipal fresh produce markets often operate in ways which disadvantage small farmers, such as through high fees, agent practices or opaque rules around access.[60] The inquiry's recommendations could be directly actioned via an agreement with municipalities to update their market-agent rules, fee structures and access conditions, which would improve conditions for informal and small fresh produce suppliers.

45. The Commission is mindful of the challenges in enforcing competition law in informal markets, in particular the limited information about them. It is envisaged that the Business and Consumer surveys will play an important role in bridging the information gap

[56] South African Local Government Association (2020) Policy Guidelines for Enabling Governance of Informal Trading in Public Spaces. Pretoria: SALGA. Available at: http://gtac.gov.za/wp-content/uploads/2022/02/Policy-Guidelines-for-Enabling-Governance-of-Informal-Trading-in-Public-Spaces.pdf : Sepadi, M.M. (2025) "An integrative review of global and South African evidence on local governance of informal trade", Journal of Urban Policy Studies, vol. 14.

[57] OECD (2024a) The intersection between competition and data privacy, OECD Working Paper. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/06/the-intersection-between-competition-and-data-privacy_b5ac1ae6/0dd065a3-en.pdf; OECD. 2022. International Regulatory Co-operation in Competition Law and Chemical Safety. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/12/international-regulatory-co-operation-in-competition-law-and-chemical-safety_0ec3a005/23f53a28-en.pdf

[58] South African Local Government Association (SALGA), Department of Cooperative Governance and Traditional Affairs (CoGTA), Department of Small Business Development (DSBD), South African Cities Network (SACN) & Department of Trade, Industry and Competition (the dtic) (2020). Policy guidelines for enabling governance of informal trading in public spaces. Available at: https://www.gtac.gov.za/wp-content/uploads/2022/02/Policy-Guidelines-for-Enabling-Governance-of-Informal-Trading-in-Public-Spaces.pdf

[59] Lesofe, I. & Tetani, S. 2024. Using market inquiries: A sharper tool for competition authorities. Available at: https://www.compcom.co.za/wp-content/uploads/2024/08/S-Tetani-and-I-Lesofe-Using-market-inquiries_-A-sharper-tool-for-competition-authorities.pdf

[60] Competition Commission South Africa (2025) Fresh Produce Market Inquiry: Final Report (Non-Confidential), 13 January 2025. Pretoria. Available at: https://www.compcom.co.za/wp-content/uploads/2025/01/CC_FPMI-Final-Non-Confidential-Report-2025.pdf

and provide the Commission with more insight into the nature of these markets and the different competition and regulatory barriers faced by actors in these markets.

46. For example, insights from the Consumer Survey relating to transport modes and travel distances for customers to get to their providers of goods and services equip the Commission with a richer market definition background for various sectors of the economy. The survey also gathers insight into the challenges customers face in these markets, and high prices of goods and services are cited as one of the challenges for various product categories. This would assist the Commission approach cases with some degree of understanding of the issues in the markets. Similarly, insight into the regulatory barriers indicated in the results of the Business Survey are a good tool for the Commission in efforts to lower barriers for businesses in informal markets.