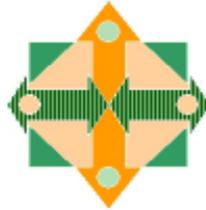


Section 7 Investigation: National Fresh Produce Markets

The National Agricultural Marketing Council



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1 LIST OF ACRONYMS

Agricultural Produce Agents Act, No. 2 of 1992	APAAct
Agricultural Produce Agents Council	APAC
Black economic empowerment	BEE
Broad-based black economic empowerment	BBBEE
Chief Executive Officer	CEO
Deciduous Fruit Producers Trust	DFPT
Fresh produce market	FPM
Hazard Analysis and Critical Control Point	HACCP
Human Sciences Research Council	HSRC
Institute of Market Agents of South Africa	IMASA
Institute of Market Masters of South Africa	IMSA
National African Farmers Union	NAFU
National Agricultural Marketing Council	NAMC
National Department of Agriculture	DoA
National fresh produce market(s)	NFPM(s)
Previously disadvantaged individual	PDI
Public–private partnership	PPP
Potatoes South Africa	PSA
Service delivery agreement	SDA
Service level agreement	SLA
Tomato Producers Organisation	TPA

Agricultural Produce Agency Sales Act, No. 12 of 1975

Agricultural Produce Agents Act, No. 12 of 1992

Agricultural Products Standards Act, No. 119 of 1990

Companies Act, No. 61 of 1973

Competition Act, No. 89 of 1998

Constitution of the Republic of South Africa Act, No. 108 of 1996

Demarcation Act, No. 27 of 1998

Labour Relations Act, No. 66 of 1995

Marketing of Agricultural Products Act, No. 47 of 1996

Local Government: Municipal Finance Management Act, No. 56 of 2003

Local Government: Municipal Systems Act, No. 32 of 2000 (as amended by Local Government: Municipals Systems Amendment Act, No. 44 of 2003)

Preferential Procurement Policy Framework Act, No. 5 of 2000

Public Finance Management Act, No.1 of 1999 (as amended by Public Finance Management Act, No. 29 of 1999)

Local Government: Municipal Structures Act, No. 117 of 1998

3 EXECUTIVE SUMMARY

Introduction

At the request of the Minister of Agriculture the NAMC launched a Section 7 Committee¹ investigation to look at the current state of the fresh produce marketing system in South Africa, focusing on national fresh produce markets (NFPMs). The investigation was launched mainly due to:

- Concerns regarding the apparent slow pace of transformation of NFPMs
- Market access problems highlighted by black producers
- Concerns regarding the apparent declining competitiveness and efficiency of NFPMs (as a marketing channel) in the light of their important role in:
 - Providing a service to low-income consumers and the informal sector
 - Providing a service to consumers, producers and other stakeholders in South Africa

Approach

The investigation has followed a three-phase approach:

- **Phase one** – identifying the problem. In February 2006 the Committee invited formal written submissions from all interested parties based on a clearly defined set of guidelines/questions.
- **Phase two** – gathering evidence. Based on the comments made in February 2006, the Committee prioritised certain areas for further research. It also met with various groupings including municipalities and black role-players.
- **Phase three** – confronting the evidence and making recommendations to the Minister. The Committee convened a workshop with all role-players in November 2006 to test draft proposals and to get final comments.

From the written comments received, the Committee identified five key themes, which provided the framework for the rest of the investigation, namely:

1 A committee established in Terms of Section 7 of the Marketing of Agricultural Products Act (1996) to advise the Council. The Council is responsible for appointing committee members, ensuring that all directly affected groups are, where possible, represented.

- Ownership and management
- Legal framework
- The commission system
- Market access and transformation
- Infrastructure

In addition to inviting written comments, the Committee also met with stakeholders, including various municipalities and black role-players, to discuss specific aspects of the investigation.

In arriving at the recommendations presented in this document, guided by the terms of reference outlined above, the Committee tried to address the following overall objectives:

- Ensuring the long-term competitiveness of NFPMs and effective supply chain management
- Facilitating transformation of NFPMs in line with government objectives and guidelines
- Flexibility – NFPMs should be in a position to adapt to the changing demands of customers
- Where possible, facilitating the standardisation of legislation across NFPMs

National fresh produce markets in perspective

NFPMs are an integral, although diminishing part, of the price-making, distribution and marketing of fresh produce in South Africa. There are 18 commission-driven NFPMs in South Africa, with the Johannesburg Fresh Produce Market (FPM) being the largest (35% market share). It should be noted that the four largest NFPMs (Johannesburg, Tshwane, Cape Town and Durban) represent more than 74% of turnover and volume throughput at all NFPMs.

Since deregulation in 1996/1997, very little volume growth has occurred on NFPMs. However, over the same period, overall production of fresh produce has increased substantially. National production figures for potatoes show that NFPMs, including Johannesburg FPM, have steadily lost market share since 1996/1997. However, the most significant market share loss for NFPMs has occurred in the fruit sector.

The performance of NFPMs relative to the production growth in the agricultural sector indicates that NFPMs are finding it difficult to grow their operations and respond to the challenges of a deregulated agricultural sector. Throughputs of most of the smaller NFPMs indicate downward trends.

Global trends

Research undertaken by the NAMC reveals that, while ownership of wholesale markets has tended to remain in the public (local government) domain internationally, the management models used vary, and the level of influence in the actual operations is on the decline. The trend in fresh produce marketing is from the traditional wholesale markets towards supermarket chains. This is already evident in the UK and South America, where supermarket chains have vertically integrated into a complex supply network and are rapidly increasing their market share. South Africa is expected to follow this trend. It is therefore necessary that the government take measures to protect the small farmers from the potential negative consequences of this trend.

Ownership and management

The Section 7 Committee met with various municipalities during 2006. The focus of these discussions was on the question of ownership and management of NFPMs. In general, the municipalities consulted indicated that they supported the principle of separation of ownership and management. It also came to light that a number were already engaged in a process of separating ownership and management.

Research undertaken by the NAMC highlights a number of possible models with regard to ownership and management of NFPMs, namely:

- Department/business unit option
- Corporatisation
- Municipal entities
- Public entities
- Divestiture/private entity
- Municipal public–private partnerships (PPPs)
- A combination of the above

However, in considering the future management and ownership of NFPMs the Committee focused its attention on four possible models, namely:

- Departmental option
- Municipal entity option
- National entity option
- Private entity option

Departmental option

This option implies that normal day-to-day business improvements may take place, but that no real intervention with regard to throughput will occur. In this option both the property (land, buildings and other improvements) and the operation of the fresh produce market business are owned by the municipality.

The following NFPMs are currently managed as departments of their respective municipalities:

- Tshwane
- Durban
- Springs
- Pietermaritzburg
- East London
- Bloemfontein
- Klerksdorp
- Port Elizabeth
- Welkom
- Vereeniging
- Kimberley
- Witbank

Municipal entity option

Here the operation, systems, employees and movable assets of the fresh produce market are transferred to a municipal entity, but not the property (land, buildings and other improvements). The shareholding in a municipal entity, which is a private company incorporated in terms of the Companies Act, can take various permutations. The company is a municipal entity as long as one or more municipalities collectively hold effective control in the business. In this option the property is leased on an arm's length basis from the municipality. A municipal entity cannot enter into a PPP, thus the property can only be leased in terms of a normal business lease of property and no real risk transfer to the municipal entity can take place.

The Johannesburg FPM (a private company in terms of the Companies Act) and Kei (Umtata) Market (a Section 21 Company in terms of the Companies Act) are municipal entities in terms of the Municipal Systems Act.

National entity option

The features of a national entity are as follows:

- The business of the NFPMs is transferred to a national entity.
- The municipalities get rewarded for the assets transferred in terms of a predetermined valuation formula.
- The market property is leased from the municipalities by the national entity.
- The lease of the property should be in terms of a predetermined formula taking cognisance of local property lease conditions.

There are no NFPMs currently operating in terms of this model.

Private entity

This option entails selling the business (operation) without attempting to improve the business first, and leasing the property to future operators or other tenants as part of a separate contractual arrangement. This may be a PPP arrangement in itself and needs to be considered in terms of the PPP provisions of the Municipal Finance Management Act.

The following private markets were identified in the course of the investigation:

- Epping Market
- Nelspruit Market
- Uitenhage Market
- George Market
- Mpumalanga Market
- Ugu Market
- NewMarket Market
- Noordeinde Market
- Philippi Market

Legal framework

The marketing of fresh produce on the NFPMs is principally regulated by two sets of legislation, the Agricultural Produce Agents Act, 1992 (APA Act) and Municipal bylaws.

APA Act

The Committee is of the opinion that possible amendments to the APA Act should be considered with a view to restructuring the composition of the executive committees and possibly overhauling the enforcement of regulatory mechanisms in the APA Act by the Agricultural Produce Agents Council (APAC) in order to ensure effective regulation of fresh produce agents.

Municipal and other relevant legislation

NFPMs fall within the sphere of local government and are functional areas of exclusive executive and administrative municipal competence. Since most of the municipal services or functions contained in Part B of Schedules 4 and 5 of the Constitution (with the exception of basic municipal services) appear to be services or functions which municipalities may elect to provide, it is also possible for a municipality to decide not to undertake a particular function or service. Due to the complicated nature of the legislation and the uncertainty around the process and applicability of Section 78 of the Municipal Systems Act investigations to various services, it has been suggested that a Senior Advocate be approached for an opinion on this particular matter.

Municipal participation in NFPMs

Section 156(2) of the Constitution provides that a municipality may make and administer bylaws for the effective administration of matters listed in part B of Schedules 4 and 5 of the Constitution. The view of a number of stakeholders is that current NFPM bylaws are archaic and do not take account of legislative and institutional changes, and accordingly their effectiveness is questioned. It is thus suggested that a new set of bylaws be drafted in terms of the current legislative environment. Should a coordinating body or institution for NFPMs be established (as recommended by the Section 7 Committee), the drafting of a common set of bylaws for the regulation of NFPMs by municipalities throughout South Africa would be an effective way to regulate the industry while ensuring a consistent and uniform approach to the regulation of NFPMs and the implementation of the coordinating body. In order to achieve this it would be necessary to undertake a nationwide rationalisation of all market-related bylaws.

The commission system

The Committee acknowledges that the commission system plays an important role and has a valued and unique place with regard to NFPMs. It was, however, recommended that the wholesale system also be accommodated. A proposal on how this could be achieved

was tested with role-players at a workshop held on 14 November 2006. Role-players agreed that the wholesale and commission systems are two fundamentally different systems and it would therefore be difficult to introduce the same rules for both systems and expect wholesalers and commission agents to compete on the same footing. Accordingly, it was agreed that markets should decide individually which system they would adopt as the primary system. Provision should be made for a secondary system on the same site, but not on the same floor.

Price trends and market integration in selected fresh produce markets in South Africa

Research commissioned by the NAMC found that, in general, when prices are high on NFPMs, volumes for the products traded are low and vice versa. This seems to suggest that the price formation functions effectively. The research also indicated that price transmission is not equal in magnitude across markets. There could be many reasons for this, but sufficient detailed information on supply and demand in specific regions could unfortunately not be obtained to further investigate these. The Section 7 Committee would therefore like to highlight this lack of information as something that needs to be addressed as soon as possible so that further research in this area can be undertaken.

The price discovery mechanism

The Committee recognised the vital role of the current price discovery mechanism in price determination. It was felt, therefore, that it was in the national interest for the system to be retained and if possible strengthened. It was recommended that the current system be reviewed to ensure that it is able to keep track with technological developments and customers' requirements.

Market access and transformation

The Section 7 Committee consulted black role-players from Johannesburg, Tshwane and Cape Town NFPMs in August and September 2006. In general, black stakeholders expressed the view that no meaningful transformation had so far taken place on NFPMs at the level of commission agent. The fact that there were, at that stage, only 12 black agents (out of a total 106 agents on all NFPMs) responsible for approximately 1% of turnover, was seen as evidence of the lack of real transformation. It was felt that the current commission system to a certain extent entrenched the existing skewed situation as it was designed originally to protect the interests of white farmers and was not geared to the introduction of

black role-players. A number of black role-players were of the opinion that firm, enforceable, industry-specific targets were needed with regard to transformation and that preferential treatment (incubation) and incentives were needed to assist new entrants.

Informal traders are important role-players on NFPMs and are responsible for as much as 63% of market turnover at the Johannesburg FPM. In discussions with the Committee, black informal traders expressed the need for training in business and financial skills. It was also felt that NFPMs should provide an environment conducive to business growth and expansion so that informal traders, should they so wish, would be able to develop to the point of becoming a wholesaler or commission agent over time.

Infrastructure

Most role-players agreed that markets are in poor condition and need upgrading. It was stressed that NFPMs could no longer offer efficient and commercially competitive services to farmers or buyers with the existing facilities. Role-players had varying views on how infrastructure backlogs should be addressed.

Recommendations

Based on the outcome of the research and consultations with stakeholders, and guided by the comments received in January 2006, the Committee arrived at a series of proposals. As outlined in each of the relevant sections in this report, these were then tested with industry role-players at a workshop held on 14 November 2006. Through the discussions held the Committee was able to refine its proposals and arrived at the final recommendations outlined below.

Ownership and management

1. Ownership and management of fresh produce markets should be separated. Alternative models should be considered depending on the circumstances at an individual market level.
2. A coordinating mechanism or body should be created to coordinate certain matters related to national fresh produce markets. The Committee is of the opinion that there is a need for some degree of coordination across markets with regard to:
 - Addressing transformation objectives
 - Optimising resources and reducing costs for customers

- Food safety and traceability requirements as well as the implementation and enforcement of regulations regarding quality standards.
- The rationalisation and standardisation of legislation
- Addressing infrastructure backlogs and ensuring that adequate planning is done for future requirements

This body could be introduced in terms of statutory provisions (such as the Marketing of Agricultural Products Act 1996) and it is proposed that it should be responsible for implementation of the Section 7 Committee recommendations.

3. The proposed coordinating body should forge closer relations with local government.
4. A senior advocate should be approached for an opinion on the process and applicability of Section 78 of the Municipal Systems Act (dealing with investigations into services).
5. A national food distribution strategy should be drafted by the National Department of Agriculture in cooperation with stakeholders.

Legal framework

6. A review and redrafting of all FPM related legislation should be undertaken. It is proposed that this be undertaken by a committee/ working group made up of experts. The following, among other things, should be addressed:
 - Rationalisation of market-related bylaws
 - Review of the APA Act to address, among other things:
 - Structure and representation of APAC and its committees
 - Enforcement mechanisms
7. The proposed coordinating body should coordinate efforts to ensure that FPMs are able to meet food safety and quality standards requirements.

The commission system

8. The Section 7 Committee is of the opinion that there is room for both the wholesale and commission system on NFPMs, although it is acknowledged that they are different systems and should be kept separate. The two systems should, however, be accorded equal recognition. The following recommendations are therefore made:
 - The choice of which system to adopt as the primary system should be made at an individual market level. Provision could be made for a secondary system on the same site but not on the same floor.
 - The current system of recovering marketing costs should be reviewed and a more progressive and competitive system should be introduced.
 - Contractual arrangements for intermediaries should be introduced, providing for:

- a. Limited license period with periodic reviews
 - b. Performance criteria
 - c. Transformation criteria
 - Market authorities should be strengthened through the regulatory framework and appropriate systems should be introduced to deal with illegal practices.
 - Commission agents should not be able to purchase produce from themselves.
 - The provision of credit should not be the core business of commission agents (although it is acknowledged that there is a need for agents to provide credit to retain certain buyers).
 - Market authorities should consider discounting market dues with regard to direct marketing to make these deals more attractive.
9. There is a need for a transparent price transmission system across markets (collective price transmission). The best way to achieve this should be investigated, with recognition that a number of initiatives to this end have already been undertaken.

Market access and transformation

10. The need for broad transformation targets has been agreed upon. The exact levels of these targets should be further examined. They should eventually be lobbied at a local level and each market should determine what is suitable. The proposed coordinating body should be involved in the lobbying and implementation process. The proposed targets (to be achieved by 2014) include:
- a. 30% of volumes to be traded through black commission market agents
 - b. At least 25% of existing agencies to have BEE involvement/ participation
 - c. Every market to identify five black salespeople of repute and ability to become market agents
 - d. 50% of market masters to be black
11. A package of measures to assist black traders on markets should be put together and lobbied at each market. The proposed body should coordinate this activity.

Infrastructure

12. Infrastructure backlogs on markets should be addressed and a detailed needs assessment undertaken. The latter should also take into account the suitability of the current location as well as the structure of FPMs (in terms of the ideal future format).

1. INTRODUCTION

1.1 Why the Section 7 Committee¹ was established

In 1997 concerns regarding the South African fresh produce marketing system were brought to the attention of the National Agricultural Marketing Council (NAMC). Two Section 7 Committee investigations were launched in response, namely:

- An investigation looking specifically at the operation of the Johannesburg Fresh Produce Market (completed in 1998)
- A second, more general, investigation looking at fresh produce marketing in South Africa (completed in 2000)

The respective committees made certain recommendations to the Minister of Agriculture based on their findings. A number of these were implemented (or are in the process of being implemented). Certain recommendations could not, however, be implemented for various reasons and these are discussed in more detail later in the report.

At the request of the Minister of Agriculture, the NAMC launched a follow-up Section 7 Committee investigation to look at the current state of the fresh produce marketing system in South Africa, focusing on national fresh produce markets (NFPMs) and developments since the earlier investigations. The investigation was launched mainly due to:

- Concerns regarding the apparent slow pace of transformation of NFPMs
- Market access problems highlighted by black producers
- Concerns regarding the apparent declining competitiveness and efficiency of NFPMs (as a marketing channel) in the light of their important role in:
 - Providing a service to low-income consumers and the informal sector
 - Providing a service to consumers, producers and other stakeholders in South Africa

1 A committee established in Terms of Section 7 of the marketing of Agricultural Products Act (1996) to advise the Council. The Council is responsible for appointing committee members, ensuring that all directly affected groups are, where possible, represented.

1.2 Members of the Section 7 Committee

The following persons were appointed to the Section 7 Committee:

Ms D Ndaba	Chairperson of the Section 7 Committee Vice-Chairperson: NAMC
Dr ASM	Karaan Chairperson: NAMC
Mr F Lawrence	NAMC Council Member
Mr TC Steyn	Consultant
Mr PM Mathe	NAFU
Mr P. Botha	IMASA
Mr S. Tulsiram	IMSA/APAC
Mr B. Magabe	CEO: Johannesburg Fresh Produce Market
Mr R. Mokoena	National Department of Agriculture
Mr S. Mantata	National Department of Agriculture
Mr T. Radebe	Mandela Market – Johannesburg Fresh Produce Market (representing black informal traders)
Mr C. Gladwin	NAMC Secretariat

1.3 Terms of reference

The terms of reference for the investigation were as follows:

Overall objective

- To consider the role of national fresh produce markets (NFPMs) within the broader context of fresh produce marketing in South Africa

Specific objectives

- To analyse the functioning of the current marketing system, taking into account global trends and national and international best practice, in terms of, among other things, the following:
 - Changes to the marketing system over time
 - Management and ownership

- Location
- Infrastructure
- Legislation
- Price formation and price discovery
- Value adding
- Food safety and traceability
- Transformation and black economic empowerment (BEE)
- Market access
- Risk management
- Logistics and distribution of fresh produce through the country.
- Market share
 - To assess market access to the NFPMs for black producers and agents
 - To examine the developments and appropriateness of legislation pertaining to NFPMs and, where necessary, to recommend the possible amendment of this legislation
 - To examine the role of NFPMs with regard to food security and in terms of providing a service to low-income consumers and the informal sector
 - To examine the current role of government on all levels (national, provincial and local) with regard to NFPMs
 - To record strategic developments in NFPMs
 - To ascertain to what extent the recommendations embodied in the previous NAMC reports have been adopted and implemented

Outcome

- To make recommendations to the Minister for Agriculture and Land Affairs with regard to enhancing the role of NFPMs in serving consumers, producers and other stakeholders in South Africa
- To prepare an implementation plan detailing how the proposed recommendations could be implemented

1.4 Approach

The investigation has followed a three-phase approach:

- **Phase one** – identifying the problem. In February 2006 the Committee invited formal written submissions from all interested parties based on a clearly defined set of guidelines/questions.
- **Phase two** – gathering evidence. Based on the comments made in February 2006, the Committee prioritised certain areas for further research. It also met with various groupings including municipalities and black role-players.

- **Phase three** – confronting the evidence and making recommendations to the Minister. The Committee convened a workshop with all role-players in November 2006 to test draft proposals and to get final comments.

Written comments from stakeholders

In February 2006 the Committee invited written inputs from stakeholders based on a set of guidelines provided. Inputs were received from the following individuals and organisations:

- Johannesburg Fresh Produce Market
- Tshwane Fresh Produce Market
- Port Elizabeth Fresh Produce Market
- George National Fresh Produce Market
- Institute of Market Masters of South Africa (IMSA)
- Deciduous Fruit Producer Trust (DFPT)
- Institute of Market Agents of South Africa (IMASA)
- Potatoes South Africa
- The Competition Commission of South Africa
- ZZ2/Bertie van Zyl
- Tomato Producers' Organisation
- Noordelike Uiekomitee
- South African Avocado Growers' Association
- RSA Agents
- AG-BIZ CDI

From the written comments the Committee identified five key themes, namely:

- Ownership and management of NFPMs
- Legal framework
- The commission system
- Transformation and market access
- Infrastructure

These themes provided the framework for rest of the investigation and are explored in more detail below.

Consultations

In addition to inviting written comments, the Committee also met with stakeholders to discuss specific aspects of the investigation. The Committee met with a number of municipalities in July and August 2006 to discuss the investigation, in particular the question of the separation of ownership and management of NFPMs. The following municipalities were consulted:

- Manguang (Bloemfontein)
- Cape Town
- Buffalo City (East London)
- Tshwane
- Johannesburg

In August and September 2006 the Committee consulted black stakeholders from Johannesburg, Tshwane and Cape Town FPMs. These consultations were in the form of a facilitated discussion focusing on the most important issues identified.

Workshop on draft proposals – 14 November 2006

The purpose of the workshop was for the Section 7 Committee to present its draft position to stakeholders for discussion before presenting findings and final recommendations to the Minister of Agriculture. A presentation was given providing background to the investigation and outlining the proposed recommendations. The floor was then opened for facilitated discussion and questions based on the five key issues identified by the Committee

The proposals presented and the outcome of the discussions are discussed later in this report when the key issues are examined in more detail.

1.5 Overall objectives

In arriving at the recommendations presented in this document, guided by the terms of reference provided above, the Committee tried to address the following overall objectives:

- Ensuring the long-term competitiveness of NFPMs and effective supply chain management
- Facilitating transformation of NFPMs in line with government objectives and guidelines
- Flexibility – NFPMs should be in a position to adapt to the changing demands of customers
- Where possible, facilitating the standardisation of legislation across NFPMs

1.6 Structure of the report

The report is structured as follows:

- **Section 1:** Provides background regarding the objectives and methodology of the investigation as well as the composition of the Section 7 Committee.

- **Section 2:** Gives a brief introduction to, and outlines the most important findings of, previous investigations looking at NFPMs.
- **Section 3:** Provides a brief overview of the current status of NFPMs.
- **Section 4:** Highlights global trends with regard to fresh produce markets (FPMs).
- **Section 5:** Examines the question of ownership and management of FPMs in greater detail.
- **Section 6:** Looks at the legal framework surrounding FPMs.
- **Section 7:** Examines the commission system in greater detail and makes proposals regarding possible future arrangements on FPMs.
- **Section 8:** Looks at market access and transformation on FPMs.
- **Section 9:** Deals with infrastructure on FPMs.
- **Section 10:** Outlines the Committee's recommendations

2. PREVIOUS INVESTIGATIONS

In November 1995, the Greater Johannesburg Metropolitan Council requested the Auditor-General to investigate certain allegations regarding the way the Johannesburg FPM operated. Among other things, producers had voiced concern regarding alleged insufficient payment for produce delivered to the market. Ernst and Young undertook a follow-up investigation on behalf of the Office for Serious Economic Offences in 1996. Both investigations identified weaknesses in the implementation of elements of the operating system of the Johannesburg FPM. The investigations found that in general the checks and balances within the system appeared to be breaking down. Some of the specific areas highlighted included:

- The need for more spot-checks on agents
- The need for better security to prevent produce from bypassing the system and the misuse of buying cards
- Greater efforts needed to reconcile incoming and outgoing fresh produce
- Poor monitoring of produce being removed from the market to be destroyed
- The need to upgrade the computer system
- The need for the Agricultural Produce Agents Council (APAC) to be more proactive in their regulation of market agents

Due to a lack of evidence, neither of these earlier investigations was followed up with legal action, although a number of steps were taken by the Metropolitan Council, market authorities and APAC to deal with the areas of weakness highlighted.

2.1 NAMC Section 7 Investigation: Report 1 (Johannesburg FPM)

In January 1998, the NAMC established a committee, in terms of section 7 of the Marketing of Agricultural Products Act, 1996, to investigate fresh produce marketing in South Africa. It was decided to divide the investigation into two phases. The first concentrated on the operation of the Johannesburg FPM, and was completed in September 1998. The second phase looked at all NFPMs.

The first investigation was initiated after a number of concerns regarding operations on the Johannesburg FPM were brought to the attention of the Minister of Agriculture. The investigation attempted to answer the following two fundamental questions:

- Did the Johannesburg FPM promote the efficient marketing of fresh produce between the producer, the market intermediaries, and the end-consumer?
- Did it facilitate the transmission of clear signals from consumer to producer concerning the quantity and quality of fresh produce supplied by the producer?

The committee highlighted a number of issues of concern in the final report, namely:

- The non-transparent, apparently inefficient and subjective price formation process and as a result the possibility that the current system might, in certain circumstances, either inflate consumer prices or negatively affect producer prices
- The privileged and largely uncontested position of the agents, who bore no price risk and appeared, as a result, to take a large commission relative to their exposure
- The possibility that agents did, in fact, treat producers differently (e.g. with regard to the way in which farmers were remunerated for produce that had gone bad, and the speed with which farmers were remunerated)
- The fact that the current system might not sufficiently cater for small-scale producers and buyers, who had little choice but to deal with relatively large, volume-driven agents
- The fact that the market infrastructure and facilities were insufficient for small-scale buyers
- The fact that there were apparently significant barriers to entry for prospective new agents

- The lack of reinvestment (and consequent deterioration) in the market's infrastructure in general.

The committee recommended, among other things, that market management be given financial independence and the authority to manage the market. Some of the other recommendations that are worth highlighting were that:

- The market authorities invest time and money in upgrading the operations of the market, especially security and wholesale facilities, and the computer system handling sales
- The Johannesburg market should allow wholesalers on the market to receive fresh produce directly from producers
- APAC should make producers aware that the level of commission deducted by agents was a matter for negotiation
- APAC should ensure that agents did not operate in a way that advantaged some producers over others (as per code of conduct)
- The market authorities and APAC should immediately terminate the use of own buying cards by agents and the provision of credit by agents to buyers
- The composition of the Agricultural Produce Agent Council should be broadened further than was contemplated in the Amendment Bill so that there was a better balance between the representation of agents, producers and the public interest.

The report was generally well received and most of the recommendations were accepted. The Minister of Agriculture at the time, in a letter to the Greater Johannesburg Metropolitan Council, confirmed that all the recommendations of the first report had been accepted and that they enjoyed his full support in terms of implementation.

The Greater Johannesburg Metropolitan Council decided in October 1999 that the market should be corporatised. A number of the other recommendations were implemented, with a few exceptions such as the recommendation regarding wholesalers.

2.2 NAMC Section 7 Investigation: Report 2 (fresh produce marketing)

The second phase broadened the investigation to national level, and included evaluating the current marketing systems for fresh produce, with particular reference to the NFPMs. The aim was to make recommendations that would increase efficiencies and market access (particularly for small-scale producers and traders) in this sector.

The NAMC Section 7 Committee investigating fresh produce marketing in South Africa (Report 2) made a number of recommendations to the Minister of Agriculture. The most important of these were the following:

- NFPMs should allow other intermediaries, such as wholesalers, to operate on the market floor and to receive fresh produce directly from producers.
- If other intermediaries were allowed to enter the market, NFPMs should be responsible for capturing all the relevant information.
- The NFPMs should supply real-time price and volume information, and disseminate it as widely as possible.
- All markets should disclose standardised and correct information. This should be the responsibility of the market masters.
- The need for infrastructure, the availability of information to small-scale fresh produce producers, intermediaries and buyers and the monitoring of problems pertaining to market access for small-scale farmers, intermediaries and buyers should be referred to the NAMC Market Access Steering Committee.
- The Institute of Market Masters of South Africa should hold a workshop, facilitated by the NAMC, to review the system of floor space allocation and to devise practical and objective alternative allocation methods to facilitate market access.
- Ownership and management of all NFPMs should be separated in order to achieve efficient business practices. The role-players and market authorities of each market should determine which process might achieve this.
- Market management should ensure compliance with grading and food safety requirements. The National Department of Agriculture's Directorate of Plant Health and Quality should be approached to fulfil its responsibility in terms of the Agricultural Product Standards Act.
- The National Department of Agriculture and the Department of Trade and Industry should establish the planned Agricultural Export Council in order to facilitate the coordinated promotion of South African produce as soon as possible.

The NAMC undertook a series of visits to local authorities and market management across the country between 2001 and 2004 to follow up on the implementation of the above recommendations. The extent to which the recommendations had been implemented varied greatly from market to market. In general the recommendations regarding other intermediaries operating on the market floor were not implemented, while a number of municipalities were either investigating the possible separation of ownership and management of markets or had already taken steps towards implementation. However, responsibility for implementation of a number of the recommendations fell outside the jurisdiction of market authorities and lay instead with the national government, local authorities or other bodies or institutions.

3. NATIONAL FRESH PRODUCE MARKETS IN PERSPECTIVE

NFPMs form an integral although diminishing part of the price-making, distribution and marketing of fresh produce in South Africa. There are 18 commission-driven NFPMs in South Africa, with Johannesburg FPM being the largest (35% market share).

Table 1: Total turnover, volume handled and rand per ton achieved (1997/1998)

1997/1998	Turnover		Volume		Rand per ton
Johannesburg	1,004,608,052.00	31.37%	807,278	28.34%	1,244
Tshwane	502,319,639.56	15.69%	427,227	15.00%	1,176
Cape Town	422,276,714.90	13.19%	383,810	13.47%	1,100
Durban	317,899,326.00	9.93%	277,629	9.75%	1,145
Springs	151,379,724.00	4.73%	141,362	4.96%	1,071
East London	119,648,865.00	3.74%	110,839	3.89%	1,079
Port Elizabeth	104,762,464.97	3.27%	112,769	3.96%	929
Pietermaritzburg	117,888,082.51	3.68%	109,783	3.85%	1,074
Klerksdorp	108,543,780.06	3.39%	109,590	3.85%	990
Bloemfontein	104,191,105.91	3.25%	96,424	3.39%	1,081
Welkom	64,086,996.35	2.00%	68,989	2.42%	929
Vereeniging	64,204,543.96	2.01%	71,997	2.53%	892
Nelspruit	34,045,753.00	1.06%	34,311	1.20%	992
Kimberley	32,833,334.73	1.03%	34,946	1.23%	940
Witbank	27,058,538.34	0.85%	29,893	1.05%	905
Uitenhage	15,320,559.02	0.48%	19,705	0.69%	777
Umtata	0.00	0.00%	0	0.00%	0
Polokwane	11,110,193.94	0.35%	11,946	0.42%	930
	3,202,177,674.25		2,848,498		1,124

Source: Tshwane Fresh Produce Market

Table 2: Total turnover, volume handled and rand per ton achieved (2000/2001)

2000/2001	Turnover		Volume		Rand per ton
Johannesburg	1,214,466,287.00	32.24%	838,442	29.44%	1,448
Tshwane	594,713,706.74	15.79%	445,421	15.64%	1,335
Cape Town	501,271,984.64	13.31%	364,238	12.79%	1,376
Durban	364,315,019.63	9.67%	270,640	9.50%	1,346
Springs	192,914,249.76	5.12%	155,770	5.47%	1,238
East London	115,161,797.86	3.06%	91,743	3.22%	1,255
Port Elizabeth	116,235,099.08	3.09%	110,008	3.86%	1,057
Pietermaritzburg	135,108,731.39	3.59%	107,939	3.79%	1,252
Klerksdorp	139,351,551.65	3.70%	124,523	4.37%	1,119
Bloemfontein	114,391,784.25	3.04%	91,961	3.23%	1,244
Welkom	74,646,007.76	1.98%	64,694	2.27%	1,154
Vereeniging	70,638,941.02	1.88%	69,064	2.42%	1,023
Nelspruit	46,407,155.24	1.23%	34,459	1.21%	1,347
Kimberley	36,941,267.38	0.98%	30,634	1.08%	1,206
Witbank	19,059,159.50	0.51%	18,543	0.65%	1,028
Uitenhage	18,188,578.00	0.48%	18,420	0.65%	987
Umtata		0.00%		0.00%	
Polokwane	12,734,901.39	0.34%	11,939	0.42%	1,067
	3,766,546,222.29		2,848,438		1,322

Source: Tshwane Fresh Produce Market

Table 3: Total turnover, volume handled and rand per ton achieved (2005/2006)

2005/2006	Turnover		Volume		Rand per ton
Johannesburg	2,141,159,889.00	35.23%	926,663	32.40%	2,311
Tshwane	1,025,260,759.97	16.87%	471,510	16.49%	2,174
Cape Town	793,946,923.70	13.07%	364,893	12.76%	2,176
Durban	568,394,936.29	9.35%	270,226	9.45%	2,103
Springs	262,599,424.63	4.32%	141,113	4.93%	1,861
Pietermaritzburg	210,649,292.59	3.47%	107,394	3.76%	1,961
Bloemfontein	186,325,417.21	3.07%	92,620	3.24%	2,012
East London	179,842,882.89	2.96%	87,862	3.07%	2,047
Klerksdorp	173,482,376.49	2.85%	98,843	3.46%	1,755
Port Elizabeth	168,430,679.20	2.77%	83,860	2.93%	2,008
Welkom	106,839,320.63	1.76%	56,724	1.98%	1,883
Vereeniging	103,098,991.90	1.70%	69,907	2.44%	1,475
Kimberley	52,164,107.68	0.86%	28,342	0.99%	1,841
Uitenhage	28,878,649.31	0.48%	18,016	0.63%	1,603
Witbank	27,495,096.13	0.45%	15,771	0.55%	1,743
Umtata	22,536,225.69	0.37%	11,909	0.42%	1,892
George	13,340,369.36	0.22%	7,108	0.25%	1,877
Nelspruit	12,408,767.40	0.20%	7,119	0.25%	1,743
Polokwane	0.00	0.00%	0	0.00%	0
	6,076,854,110.07		2,859,880		2,125

Source: Tshwane Fresh Produce Market

From Tables 1 and 2 above it can be seen that between 1998 and 2001, turnover at NFPMs increased by 18% overall and 6% per annum. Volume throughput showed no increase and rand per ton increased by 18%. The Johannesburg FPM increased its market share by 1% over the same period while both Tshwane FPM and Cape Town (Epping) FPM maintained their positions with no increase in turnover.

Table 3 provides the same information for 2005/2006. Annual turnover at all markets increased from 2000/2001 to R6,07 billion, with the Johannesburg FPM increasing its market share in terms of turnover to 35,23% and its market share in terms of volume handled to 32,40% – an increase of 2,99% and 2,96% in turnover and tonnage handled, respectively. Tshwane FPM also increased its market share over the same period by approximately 1%. During this period Umtata Market commenced business and Polokwane FPM closed its doors to business. The turnover of all NFPMs, over the five year period, grew by 61%, equating to an average annual growth of approximately 12% per annum. The volume throughput increased by 0,4% and the rand per ton value increased by 60%. It should be noted that the four largest NFPMs represent more than 74% of turnover and volume throughput at all NFPMs.

From the above it can be seen that, since deregulation in 1996/1997, very little volume growth has occurred on NFPMs. However, over the same period overall production of fresh produce has increased substantially. A comparison of the above figures and overall national production figures shows that NFPMs are steadily losing market share in the fresh produce sector. National potatoes and fruit production figures are examined in further detail, as these two products make up more than 50% of the income and throughput handled at NFPMs. Specific reference is made to Johannesburg FPM as it represents 35% of the turnover of NFPMs and is therefore a significant role-player.

National production figures for potatoes are presented in Figure 1 below. From the graph it is clear that NFPMs, including Johannesburg FPM, have steadily lost market share since 1996/1997 (when deregulation began). This downward trend would seem to be irreversible, and although the long-term trend line representing the period 1991/1992 to 2004/2005 for NFPMs is moving slightly upward, the trend since 1996/1997 is actually downward. More significant is the fact that potatoes represent approximately 25% of NFPM commission income. In the case of Johannesburg FPM it represents approximately 24% of the commission income. The smaller the market the bigger the potato percentage of income tends to be.

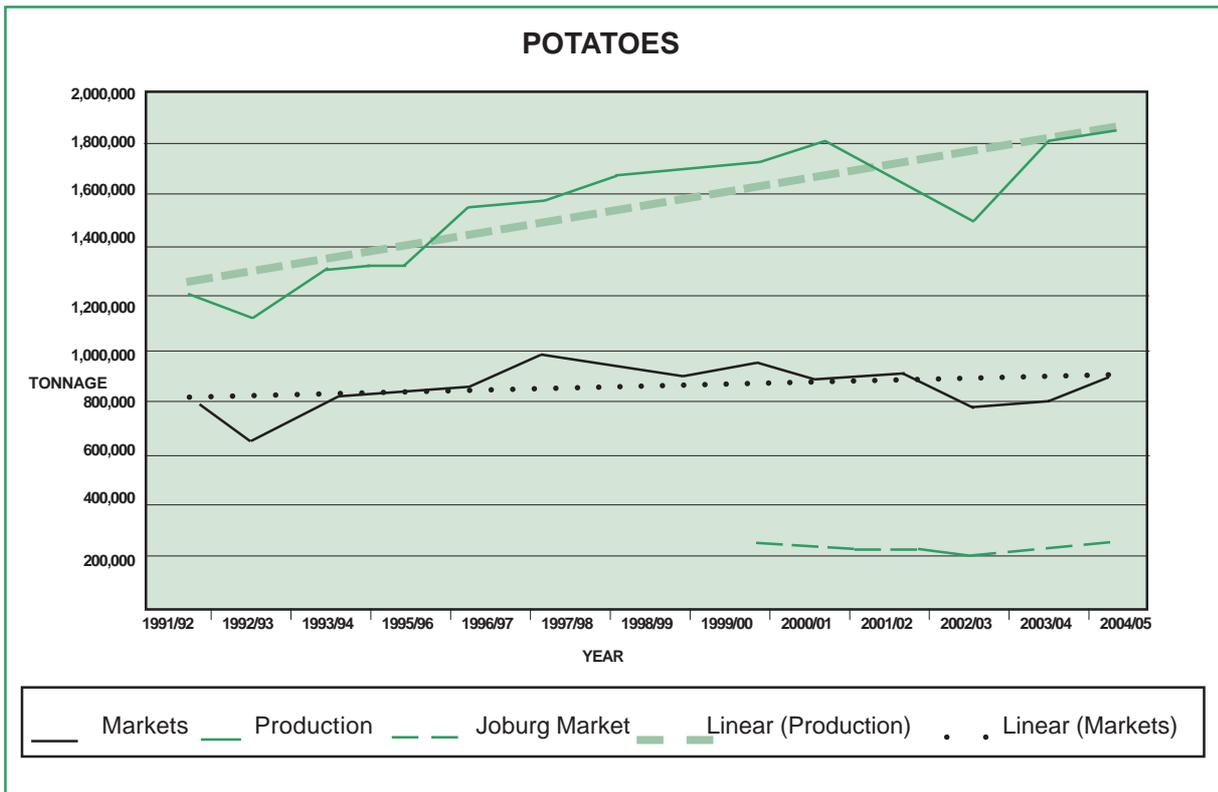


Figure 1: National production figures for potatoes

Source: National Department of Agriculture

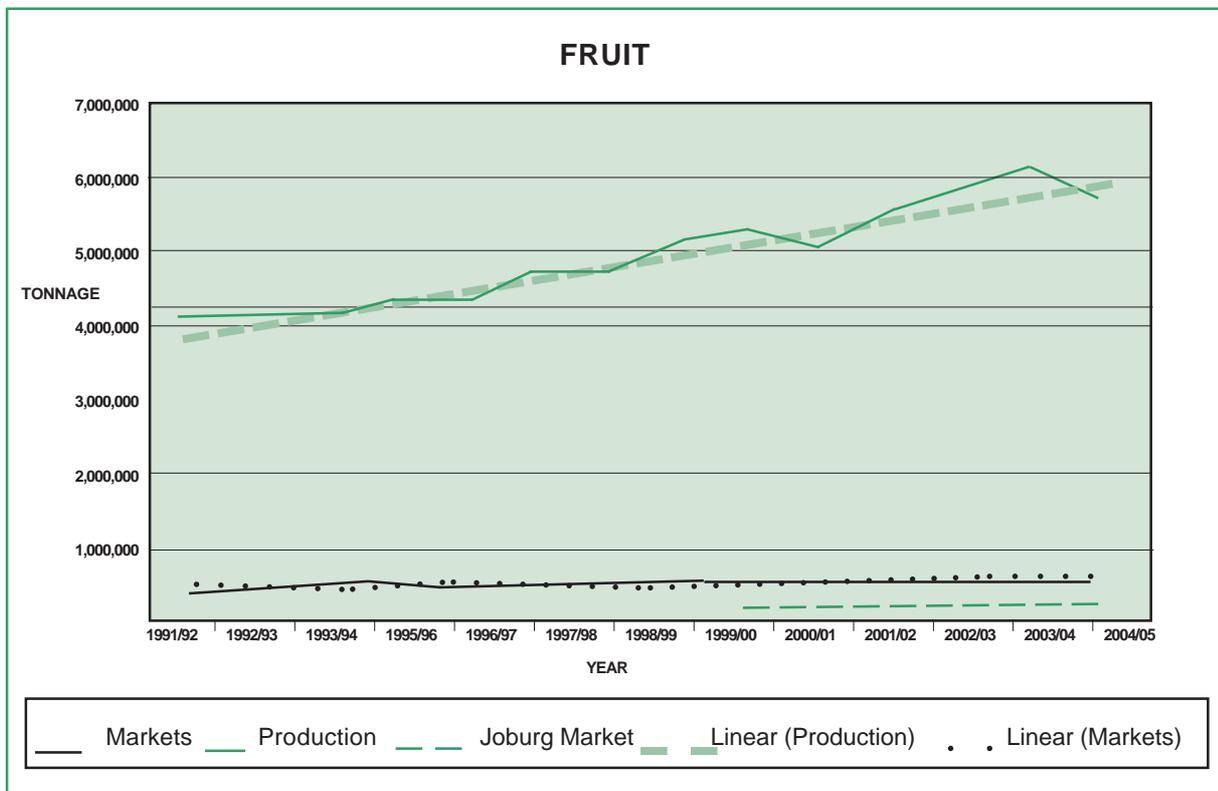


Figure 2: National production figures for fruit

Source: National Department of Agriculture

However, the most significant market share loss for NFPMs occurred in the fruit sector, as illustrated in Figure 2. Fruit sales represent approximately 30% of NFPMs' commission income. Most fruit produced in South Africa is destined for the export market or sold directly to retailers on a fixed consignment basis. NFPMs, for various reasons including their ownership and institutional structure and agent arrangement, cannot effectively participate in these marketing chains.

A look across all product groups traded reveals that NFPMs are losing market share in terms of 75% of their commission income generating business. The produce most affected is the high value produce, with the exclusion of potatoes where commission income equates on average to 85% of total NFPM income. Vegetables are the only produce group handled at NFPMs where throughput growth remained in line with national trends.

The performance of NFPMs relative to the production growth in the agricultural sector indicates that NFPMs are finding it difficult to grow their operations and respond to the challenges of a deregulated agricultural sector. Throughputs of most of the smaller NFPMs indicate downward trends.

4. THE ROLE OF FRESH PRODUCE MARKETS IN FOOD SECURITY

Fresh produce markets can play a role in food security of households in two main ways: firstly, as an outlet where farming households can sell their surplus produce and earn income to buy food; and secondly, as a supplier to informal fresh produce marketers or so-called "hawkers", who earn a living by selling their produce in the cities and townships. There is, however, scant empirical evidence that quantifies food security benefits from either of these two ways. Where that evidence exists, it is mixed and does not measure food security benefits at household level but gives a general indication of certain linkages that exist between households and the fresh produce markets. For example, a study by Mavhandu, Van Rooyen and Van Schalkwyk (1998) found that 10% of sampled informal fresh produce traders in Kagiso sourced their produce from the Johannesburg FPM. The same study also found that 94% of informal fresh produce traders in another township, Orange Farm, sourced their produce from the Johannesburg FPM.

Despite lack of clear empirical evidence, it can be reasonably safely extrapolated, nevertheless, that FPMs do play a certain role in household food security through the above-mentioned linkages. Although this seems to be the case, there are indications that that this role may be declining, relatively speaking. There has recently been a decline in the use of fresh produce markets as an avenue for producers to dispose of their produce. An aggregate for the six most important vegetables (potatoes, tomatoes, cabbage, onions,

pumpkins and carrots), which account for 84% of fresh produce sold on the basis of volume sold on fresh produce markets, shows a clear decline in the share of total production that is traded through fresh produce markets (Louw et al., 2004).

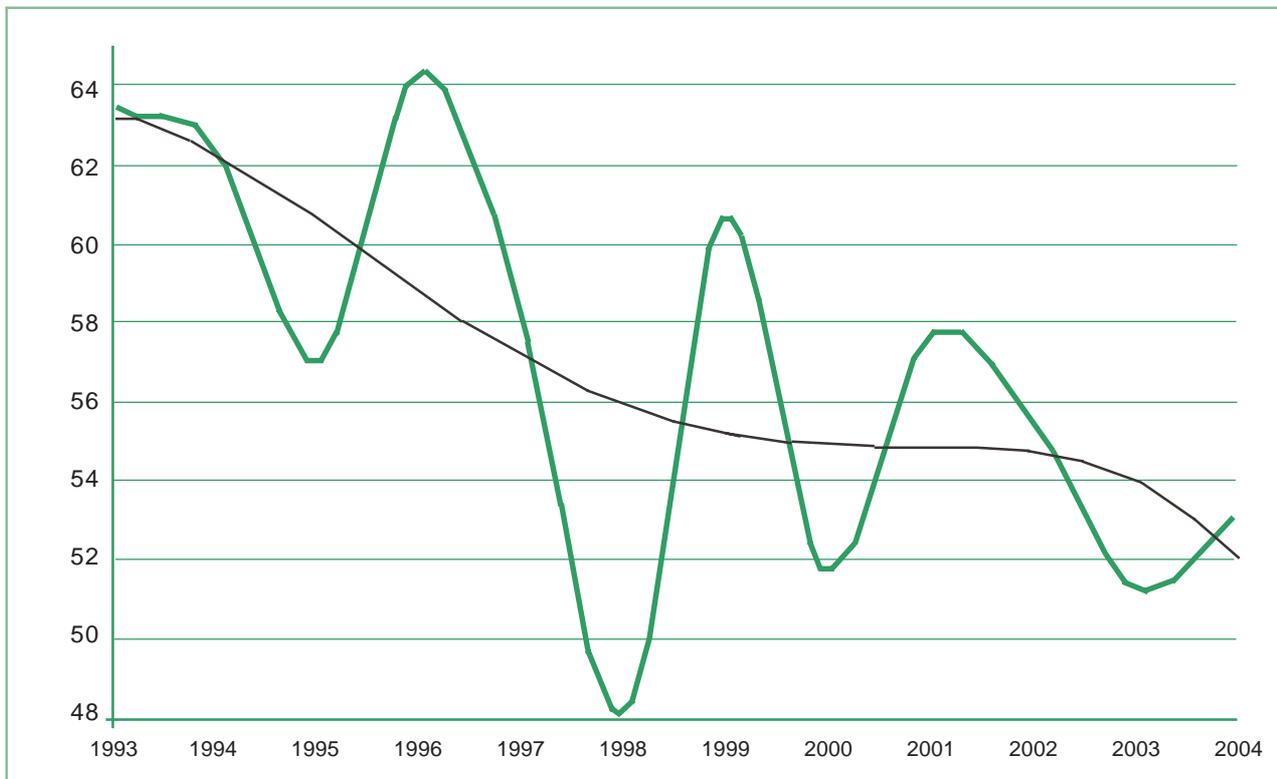


Figure 3: Fresh produce markets' share of marketing channel of total production for potatoes, tomatoes, cabbage, onions, pumpkins and carrots

Source: DoA, 2006

Figure 3 graphically illustrates this trend. It can be deduced that the share of total production that is traded through fresh produce markets has declined from 64% to 53% in recent times.

The declining share of total production that is traded through fresh produce markets is ascribable to a movement by buyers (supermarkets, wholesalers and processors) to procure produce directly from producers.

5. GLOBAL TRENDS

Research undertaken by the NAMC reveals that while ownership of wholesale markets has tended to remain in the public (local government) domain internationally, the management models used vary, and the level of influence in the actual operations is on the decline.

The trend in the developing economies of South America and South East Asia show striking similarities to the situation in South Africa. On the supply side, large producers have an upper hand in accessing market information, production technologies, conforming to product standards and meeting supplying required volumes. Thus they are better able to access markets. The situation is, however, worsening for small farmers as the markets slowly consolidate in favour of privately run supermarkets rather than the public (municipal) markets. The paranoia over food safety does not appear to have set in in these markets as it has in the developed world, as consumers are not as willing to pay the required premiums. Thus, as in South Africa, quality and standards vary widely.

Small producers in Europe appear not to have the same market access problems. Instead, rapidly expanding supermarkets threaten the existence of both the wholesalers and retail (street) markets. This trend is a result of the traditional/cultural approach to procuring fresh produce, especially in southern Europe.

Access to information on the entire market has proven to be a key to a transparent pricing mechanism. This appears to be easier to achieve where public authorities are still involved in transactions. Prices are ultimately influenced by supply and demand conditions and manifest in auctions, where large numbers of buyers and sellers exist, and through negotiations, particularly at the farm gates, between farmers and merchants, farmer organisations and other interested players.

Legislative control of the actual market processes is limited. However, many laws have been put in place to ensure food hygiene with varying degrees of rigidity. Legislation has also been used to establish markets, protect them from competition and gather the funds for their regeneration.

From the foregoing it is evident that the trend in fresh produce marketing will be from the traditional wholesale markets towards supermarket chains, as is already evident in the United Kingdom and South America, where supermarket chains have vertically integrated into a complex supply network and are rapidly increasing their market share. South Africa is expected to follow this trend because traditional markets are not considered an integral part of the “food distribution network and quality of life” as is the case in some parts of Europe, and neither does the country have wet markets which form part of its culture and heritage, as is the case in Asia. It is therefore necessary that the government take measures to protect the small farmers from the impending disaster. It should be noted that government needs to work with the private sector to regulate fresh produce marketing.

6. OWNERSHIP AND MANAGEMENT

6.1 NAMC Fresh Produce Investigations 1 and 2

The first NAMC Section 7 Investigation in 1998, which focused on the Johannesburg FPM, recommended that the market management be given financial independence, and the authority to manage the market. The Greater Johannesburg Metropolitan Council corporatised the market in October 1999. The Second NAMC Section 7 Committee investigation (concluded in 2000), which looked at all NFPMs, went on to recommend that ownership and management of all these markets should be separated in order to achieve efficient business practices. It was further recommended that the role-players and market authorities of each market should determine which process might best achieve this. The report was published in December 2000 and a working group was established to discuss the more contentious recommendations.

At a working group meeting held on 18 April 2001 it was pointed out that separation of ownership and management had already been achieved on a number of markets, including Johannesburg, Nelspruit and Polokwane markets. The working group urged the NAMC to encourage other local authorities to follow suit. It was agreed that the NAMC would arrange meetings with various local authorities to discuss this and other recommendations.

The NAMC undertook a series of visits to local authorities and market management across the country between 2001 and 2004 to follow up on the implementation of the recommendations of the second report, in particular the recommendation regarding the separation of ownership and management of NFPMs. The table below summarises the responses from some of the municipalities visited. It is obvious from the table that municipalities did not follow one approach with regard to the separation of ownership and management.

Table 4: Status of implementation of recommendation regarding separation of ownership and management – responses received from market management (1994)

FRESH PRODUCE MARKETS	Recommendations regarding separation of ownership and management on NFPMs
JOHANNESBURG	Yes, market has been corporatised.
PRETORIA	No, presently awaiting corporate guidelines, market is currently operated as a closed account.
CAPE TOWN	Yes, business operations of the market sold to the private sector.
DURBAN	No, Do not foresee separation from Municipality in near future.
PORT ELIZABETH	No. Market coordinating committee to be formed, the intention is to ultimately separate management from ownership.
KLERKSDORP	No, Agree with recommendation but still considering the options.
VEREENIGING	No, Committee to investigate: Process has begun, likely to be 100% ownership by Council, management will be separated for decision making.
KIMBERLEY	No, Council appointed consultants to handle this recommendation.

6.2 Challenges to implementation of recommendations

Research undertaken by the 2006 Section 7 Committee highlighted the following problems and challenges in implementing the recommendations of the second NAMC report dealing with the separation of ownership and management:

- A market is defined in the Constitution as a Schedule 5B function, which gives a municipality executive and legislative authority over it. Therefore municipalities need to be motivated in some way or another to initiate the investigation of separation of ownership and management.
- The legislation to implement a separation of ownership and management is extremely cumbersome, which makes these transactions costly.
- Many municipalities do not explore the legislation to its full extent and therefore embark on a process that does not achieve the desired outcome. It is important that municipalities be guided through the process.

- The separation of ownership and management is not a key performance indicator for senior management at municipalities. It is therefore unlikely that a champion will be appointed for a project of this nature.
- The question of whether ownership of the market lies with local or district municipalities is not clear and some local municipalities are not favourably disposed to surrendering the function to the district municipality. It is unlikely that separation of ownership and management will be addressed at specific markets if this issue has not been resolved.
- The costs of these transactions are not proportional to the size of the market.
- Labour unions may not be in favour of the separation of ownership and management of markets as any restructuring could be viewed as privatisation. No clear labour solution exists. Transferring labour to a private entity may be a very costly exercise.
- Politicians and management officials have their focus elsewhere due to greater needs in other municipal functions.
- There are no national guiding principles and objectives to provide guidance to municipalities regarding separation of ownership and management.
- The value proposition and local economic development benefits of correctly restructuring NFPMs have not been properly explained to municipalities. Municipalities can:
 - Improve their financial position by restructuring markets
 - Improve BEE participation in the ownership of the business
 - Get immediate local economic development benefits
 - Reduce the risks associated with the business of NFPMs
 - Contribute to the sustainability of the market by placing it in the correct competitive position

6.3 Comments from stakeholders

The Section 7 Committee requested written comments from stakeholders on a number of issues related to the investigation, including the question of ownership and management of NFPMs. Without exception, all the comments received supported the recommendation that management and ownership of NFPMs be separated. Comments centred on the process of separating ownership and management. The following is a summary of some of the issues raised by stakeholders:

- Pitfalls to the implementation of the NAMC Report 2 recommendations were not investigated and decision-makers in municipalities were not consulted.
- The market owner's role is to provide a suitable structure and a business environment where agents and buyers can do business in a proper and orderly way.

- Privatisation of certain markets did not fulfil its purpose. The overall image, effectiveness and cleanliness are deteriorating and basic conditions regarding food safety are neglected.
- In most cases, the markets are owned by municipalities that generally have proven incapable of good management of the fresh produce markets, as it is not their core business.
- Municipalities should create public–private partnerships (PPPs) between the role-players on markets and the current market owners and in so doing the management of markets should be streamlined and focused as a matter of urgency. Markets (management and agents) need to urgently develop a shared vision regarding the future of each market.
- The following should apply to the separation of ownership and management of markets:
 - Ownership of infrastructure to remain in the hands of local government
 - Management to be vested in an independent legal entity, separate from local government
 - That privatisation not be advocated
 - That the transformation objectives of government be accommodated in the service level agreement (SLA) that would be concluded between the municipality and the legal entity tasked to manage the market
 - That the process to separate management and ownership of markets become national policy with time frames included in the policy
- It is not necessary that one model be applied to all markets.
- All markets must be ring-fenced and have full delegations/authority to manage their finances independently of the respective municipality.
- No example worldwide where markets are fully owned by municipality could be described as a best practice situation.
- PPPs are not ideal and are best described as interim measures. PPP markets also losing market share.

As mentioned above, the Section 7 Committee met with various municipalities during 2006. The focus of these discussions was on the question of ownership and management of NFPMs. In general the municipalities consulted indicated that they supported the principle of separation of ownership and management. It also came to light that a number were already engaged in a process towards the separation of ownership and management. The most important issues raised during these meetings are summarised below:

- The principle of separation of ownership and management was accepted. It was not, however, clear what vehicle would best achieve this.
- Ideally there should have been a communication from the Minister of Agriculture to municipalities regarding the investigation and the possible implications.
- The route of a PPP (supported by a number of role-players) introduced various complexities in terms of the Municipal Finance Management Act and there

were several hurdles to implementation. The process could therefore take two to three years to complete. Many municipalities would prefer a “softer” option.

- The power vested in the NAMC to implement its recommendations was questioned. The NAMC pointed out that it is an advisory body and that responsibility for implementation of its recommendations lay outside of its field of responsibility.
- The slow pace of transformation on NFPMs was highlighted. It was questioned whether the route of privatisation would be able to achieve BEE. The importance of markets in the government’s drive to establish black farmers was also mentioned.
- Municipalities should retain some kind of strategic control to ensure that the economic objectives and priorities were not overtaken in the process.
- The question of possible management models should be dealt with at a higher level through the South African Local Government Association (SALGA).
- Municipalities had an extended political mandate which included developmental issues. Any proposed management model would have to take this into account. In addition, any potential change in terms of management of the market would have to provide tangible benefits to the municipality compared with the status quo.
- NFPMs are currently prevented from trading outside municipal boundaries in terms of the Municipal Finance Management Act.
- Whatever model is applied in terms of ownership and management of markets, it is important that uniform governance models and standards are applied within the municipality, i.e. corporatised entities within the municipality should play by the same rules with regard to reporting and income generated going to the Central Treasury, among other things.
- Strong and efficient markets have an important role in food security. A national framework is needed in this regard.

6.4 Ownership and management models

Section 156(1) of the Constitution states that a municipality has executive authority in respect of, and the right to administer, local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and any other matter assigned to it by national or provincial legislation. Markets are included in Part B of Schedule 5, and as such municipalities are entitled to administer them and may pass bylaws for this purpose.

Section 155(7) of the Constitution provides that the national and provincial spheres of government have the legislative and executive authority to see to the effective performance

by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1). The term “local government matters” refers to those matters listed in Part B of Schedules 4 and 5 to the constitution and therefore includes markets.

Municipalities generally participate in fresh produce markets in three capacities, namely as regulators and administrators, as owners and providers of infrastructure, or as operators of markets. Research undertaken by the NAMC highlighted a number of possible models with regard to ownership and management of NFPMs, namely:

- Department/business unit
- Corporatisation
 - Municipal entities
 - Public entities
- Divestiture/private entity
 - Municipal PPPs
- A combination of the above

Each of the possible models poses unique problems and challenges. For example, the more an entity moves from the public sector to the private sector, the more risk is transferred from the municipality to the private party. However, each of these movements closer to the private entity generates its own challenges. It would also not be possible to select only the most desirable characteristics from each of the models due to the dynamic composition of each model. From this it is evident that a model most suited to service delivery would ultimately have to be selected and the related shortcomings would have to be accommodated within the related business models.

Department/business unit

Section 76 of the Municipal Systems Act sets out the various service delivery mechanisms which are available to municipalities in the provision of municipal services. These service delivery mechanisms or options are categorised into internal and external mechanisms.

A department is an internal service delivery mechanism and is the most common institutional mechanism used by municipalities to provide their fresh produce market function. It is a distinct, usually specialised division of a municipality. In this option both the property (land, buildings and other improvements) and the operation of the fresh produce market business are owned by the municipality. The following distinguishing characteristics of departments can be highlighted:

- They constitute principal administrative organs functioning within and as part of municipalities and as such they do not exist as separate legal entities.

- Departments specialise in the provision of particular municipal services (e.g. the distribution and supply of electricity services).
- Departments' financial activities and records form part of the municipality's own financial records, and departmental budgets must be approved and form part of the municipalities' overall budgeting process.
- Departments are institutional arrangements where the responsibility for the delivery of a particular service or the execution of a function (FPM management in this instance) is borne in part by the relevant departments and in part by other supporting executing bodies. Departments and sections operating within the administration of a municipality (e.g. payroll services provided by the Human Resources Department, information technology services and support provided by the Information Management Department and financial and treasury services provided by the Finance Department). As a result, FPMs which are managed as departments are dependent upon other departments and sections within their municipalities. As such various departments become responsible for or contribute to or detract from the performance of the fresh produce undertaking of the municipality, as each department has its own priorities, goals and objectives which are not necessarily geared towards the promotion of effective NFPMs.
- A department is not ring-fenced in terms of its assets, liabilities, income, expenditure, rights and obligations. As a result productivity and asset return ratios are not calculated or considered.
- Accountability for and delivery of the various support services which comprise a fresh produce market undertaking are therefore divided between different administrative departments within a municipality's administration and the management focus of a department may thus become diffused.
- The performance measurement of a department is normally blurred and in many cases non-existent, or it is not aligned with that of the department's primary function.
- All risks relating to the delivery of a department's service are the responsibility of the municipality.
- A department is an internal service delivery mechanism in terms of the Municipal Systems Act and accordingly is jurisdictionally bound. The geographical jurisdiction of a municipality is set by the Demarcation Act while other legislation, such as the Constitution and the Structures Act, determines its legal jurisdiction and capacity.

Like a department, a business unit operates within the overall administration of a municipality, but is distinguishable from the other functions/services operated by the municipality because it is ring-fenced to a greater extent than a department. This enables management to conduct greater strategic planning in relation to specific products and/or services, competitors and industry dynamics. A business unit can encompass an entire

department (e.g. the Local Economic Development Department) or can simply be a smaller part of a department set up to perform a specific task (e.g. the management of the property portfolio of a municipality, the FPM). Further, a business unit has its own focused business strategy and objectives. Its objectives and strategies should, however, still be in congruence with the overall strategy of the municipality.

From the above-mentioned description it can be deduced that a business unit should, in essence, be financially and operationally ring-fenced, have its own business plan and sub-set of financial statements and be responsible for all aspects of the specific operation. However, it remains an internal service delivery mechanism, as described in Section 76(a) of the Municipal Systems Act, with no legal separation (i.e. it does not have a separate legal personality) and therefore no risk transfer can take place. A business unit is not, however, commonly used by municipalities as an internal service delivery mechanism to provide any services/functions.

Section 77 of the Municipal Systems Act lists the occasions when municipalities must review and decide on mechanisms to provide municipal services. Such review must take place in respect of a municipal service provided through an internal or external mechanism, in certain specific circumstances. A review must also take place when a new municipal service is to be provided. The review must take place in terms of a Section 78 Municipal Systems Act investigation.

The following NFPMs are managed as departments of their respective municipalities:

- Tshwane
- Durban
- Springs
- Pietermaritzburg
- East London
- Bloemfontein
- Klerksdorp
- Port Elizabeth
- Welkom
- Vereeniging
- Kimberley
- Witbank

Research undertaken by the NAMC reveals that the above 12 NFPMs do not appear to be keeping up with national trends and are not generating a substantial operating surplus (with the exception of Tshwane and Springs). Substantial maintenance and capital expenditure backlogs also exist.

Corporatisation – municipal entities

Section 86B of the Municipal Systems Act makes provision for the following kinds of municipal entities:

- A private company established by one or more municipalities or in which one or more municipalities have acquired or hold an interest
- A service utility established by a municipality
- A multi-jurisdictional service utility

Section 86C governs a municipality's participation in municipal entities. A private company which is a municipal entity must restrict its activities to the purpose for which it is used by its parent municipality and has no competence to perform any activity which falls outside the functions and powers of its parent municipality. This being the case, an FPM in the form of a municipal entity will not have true autonomy and will be unable to operate outside of the area of jurisdiction of its parent municipality, in that its activities are restricted to those of its parent municipality.

In this option the operation, systems, employees and movable assets of the FPM are transferred to a municipal entity, but not the fixed property (land, buildings and other improvements). The shareholding in a municipal entity, which is a private company incorporated in terms of the Companies Act, can take various permutations and the company is a municipal entity as long as one or more municipalities collectively hold effective control in the business. In this option the property is leased on an arm's length basis from the municipality. A municipal entity cannot enter into a PPP, thus the property can only be leased in terms of a normal business lease of property and no real risk transfer can take place to the municipal entity.

A municipal entity is presently not very common as an institutional service delivery mechanism for South African municipalities. The City of Johannesburg is the municipality that has probably relied most on this external mechanism. This is due in part to the fact that municipal entities are still a relatively new phenomenon and their creation requires extensive institutional capacity and structural changes within municipalities to enable them to be managed and monitored effectively.

The Johannesburg FPM (a private company in terms of the Companies Act) and Kei (Umtata) Market (a Section 21 Company in terms of the Companies Act) are municipal entities in terms of the Municipal Systems Act. Section 21 companies are not catered for in the Municipal Systems Act. If a municipality has such an arrangement it has to report it to the National Treasury in terms of Section 178 (2) of the Municipal Finance Management Act.

The Johannesburg FPM was corporatised as part of the City of Johannesburg's iGoli 2002 plan. iGoli aimed to put in place "sensible" structures to deliver services at greater levels of efficiency than in the past. Corporatising the Johannesburg market was intended to preserve and improve it in two ways. In the first place, it was estimated that at least R50 million in infrastructure investment was needed to keep the market attractive to wholesalers and buyers over the next few years. Corporatisation was seen as a way of protecting the available surplus and guaranteeing that resources would be invested in necessary extensions and upgrading. Secondly, corporatising the market allowed for more focused management and introduced a board of directors with fresh ideas and business acumen. Operating systems were improved and information technology systems were upgraded.

In the City of Johannesburg, corporatisation entailed turning a number of existing metropolitan functions into business units. Unlike agency services, these functions are able to raise some of their own revenue. However, unlike utility services, they may never completely recover their own costs and will continue to draw on metro subsidies for the foreseeable future. In common with utilities and agencies, these units have a separate legal identity as private companies or, in some instances, Section 21 (not for gain) companies.

The Johannesburg FPM outperforms all other NFPMs and generates a substantial profit and positive cash flow. The market entered into a service delivery agreement (SDA) with the City of Johannesburg and has to prepare an annual business plan which is strictly monitored by the Shareholder Unit of the City. The City is earning a handsome amount from the business through interest and capital payments in the initial shareholders' and conduit loans.

The main obstacle for Johannesburg FPM is the fact that it is also jurisdictionally bound and that it operates within very strict municipal legislative confines in an extremely dynamic and competitive industry. The market's operational performance has improved substantially since its incorporation as a company, but its growth is hampered by its institutional ownership structure.

Corporatisation – public entities

The Municipal Finance Management Act provides that a private company is a public entity, to which the Public Finance Management Act applies, if ownership control in the company, within the meaning of the Public Finance Management Act, is held by a national or provincial organ of state.

A public entity is defined as a national or provincial public entity. A national public entity means:

- (a) a national government business enterprise; or
- (b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is—
 - (i) established in terms of national legislation;
 - (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
 - (iii) accountable to Parliament;

The provisions of the Public Finance Management Act applicable to public entities are in respect of entities listed in Schedules 2 and 3 of the Public Finance Management Act. The Minister of Finance must, by notice in the national Government Gazette, amend Schedule 3 to include in the list all public entities that are not listed and may make technical changes to the list. It is interesting to note that the Public Finance Management Act does not contain express provisions regarding a national department establishing a company or acquiring shares in a company.

The Public Finance Management Act contains various restrictive and onerous provisions in respect of the functioning of public entities, specifically with regard to financial and reporting obligations. Much like a municipal entity, a public entity will not have true autonomy in the way that would be required for the business of an NFPM to truly flourish as an independent and self-standing enterprise.

Divestiture

A private company, as defined in the Companies Act, is a company whose ownership and control vest in private sector third parties as opposed to the government or a municipality. Private companies may issue shares and debentures and have shareholders, and are managed by a board of directors. Their shares do not trade on public exchanges and are not offered to the public or issued through an initial public offering. In general, the shares of these businesses are less liquid and the values are difficult to determine.

When a municipal service delivery mechanism is reviewed by a municipality in terms of the Municipal Systems Act, one of the options available to the municipality is to enter into an SDA with a private entity, described in the Municipal Systems Act as any other institution, entity or person legally competent to operate a business activity. When considering an SDA with a private entity, a municipality's supply chain policies and procedures have to be strictly implemented and such SDA cannot be concluded unless the provisions of Chapter 8 of the Municipal Systems Act have been complied with, including the provisions dealing with competitive bidding (see Section 83 of the Municipal Systems Act).

Public–private partnerships

This form of institutional model in the context of municipalities falls within the ambit of Section 120 of the Municipal Finance Management Act. Section 120 and the said regulations deal with the conditions and processes for the establishment of a PPP. Section 120(1) provides that a municipality may enter into a PPP but only if it can demonstrate that the agreement will provide value for money to the municipality, be affordable for the municipality and transfer appropriate technical, operational and financial risk to the private party. The applicability of all of the Sections in Chapter 8 of the Municipal Systems Act will depend largely on the form of the PPP in question and its structuring. A PPP agreement entered into between a municipality and a private party must also comply with the basic requirements of PPP agreements as set out in Section 5 of the regulations.

A sale of the FPM business, coupled with the lease of the municipal property in the form of the market land and associated buildings/assets, thus fits the criteria for a PPP agreement with regard to the lease section of the property (e.g. Epping FPM). In this regard the municipalities in question may wish to enter into long-term leases with the private parties in question. This will ensure a long term-revenue stream back to the municipality in respect of the lease, which would contain escalation provisions and/or market performance linked criteria as well as social and economic goals and objectives that are important to the municipality.

A municipal entity may only be a party to a PPP agreement initiated, procured and entered into by its parent municipality. The role of bylaws in this process must not be underestimated in that the bylaws, if correctly drafted, can provide for the proper functioning of NFPMs.

The following private markets were identified in the course of the investigation:

- Epping Market
- Nelspruit Market
- Uitenhage Market
- George Market
- Mpumalanga Market
- Ugu Market
- NewMarket Market
- Noordeinde Market
- Philippi Market

Mpumalanga Market (in Nelspruit), Ugu Market (in Port Shepstone), NewMarket Market (in Cape Town) and Noordeinde Market (in Port Elizabeth) are new markets and their statistics are not part of the NFPM statistics as yet. It is the prerogative of the owners to participate in the national statistics. Philippi Market (in Cape Town) was planning to commence operations in the near future.

The above markets operate as companies with shares held by private businesses and individuals. Normally the business operation is owned by the afore-mentioned private companies and the land is rented from the private sector, the local municipality or the district municipality. None of the private markets have a long enough trade record to provide an indication of real performance. Epping Market was sold to the private sector through a competitive bidding process.

The Epping FPM (Cape Town) is presently the third largest market in South Africa. It was managed traditionally as a city-owned facility. After an internal restructuring process at the City of Cape Town in 2001, the Epping Market was identified as a non-core element of the City of Cape Town's operations. Consultants were appointed to investigate future institutional options for Epping Market. The following options were identified:

- Corporatisation
- Sale of the business operation with a lease of land and building
- Sale of the business operation with a separate sale of the land and buildings
- Sale of the business operation combined with the sale of the land and buildings

The option decided on in the end was the sale of the business operation coupled with a lease of land and buildings.

The following lessons were learned during the Epping Market transaction:

- The legislative environment to complete a transaction of this nature is extremely complex.
- Labour should be informed early on in the process and should participate where applicable. It is important that their fears be addressed upfront and with due care.
- The industry (producers, agents and buyers) should be well informed about the process.
- The municipality must be clear on what it wants from the transaction – clear goals and objectives should be set for the transaction as these will inform the overall transaction process and direction.
- There are not many interested investors other than those directly involved at the market. With the sale of Epping Market's operations the transaction adviser needed to motivate the transaction substantially. Prospective investors need to be well informed about the operations and sale process of the relevant market.
- There are risks of collusion by industry players in a divestiture process.
- In order to facilitate a municipal council decision with regard to the future of the market, the municipality had to be educated and guided about the operation of the market and the industry dynamics.

- The transaction adviser should be involved in the handover process (post-transaction support) and not discontinue its involvement with the signing of the documents.
- It must be ensured that due process is followed as it is likely that the municipality will be challenged in court on one transactional issue or another.
- The municipality must have the capacity to manage the lease to its full benefit.

Models considered by the Committee in its deliberations

From the various models outlined above the Committee, in considering the future management and ownership of NFPMs, focused its attention on four possible models, namely:

- Departmental option
- Municipal entity option
- National entity option
- Private entity option

Departmental option

This option implies that normal day-to-day business improvements may take place, but that no real intervention with regard to throughput will occur. In this option both the property (land, buildings and other improvements) and the operation of the fresh produce market business are owned by the municipality.

Municipal entity option

Here the operation, systems, employees and movable assets of the fresh-produce market are transferred to a municipal entity, but not the fixed property (land, buildings and other improvements). The shareholding in a municipal entity, which is a private company incorporated in terms of the Companies Act, can take various permutations and the company is a municipal entity as long as one or more municipalities collectively hold effective control in the business. In this option the property is leased from the municipality on an arm's length basis. A municipal entity cannot enter into a PPP, thus the property can only be leased in terms of a normal business lease of property and no real risk transfer can take place to the municipal entity.

National entity option

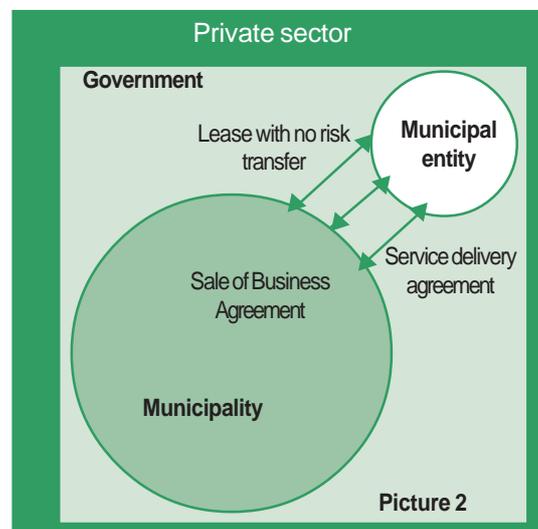
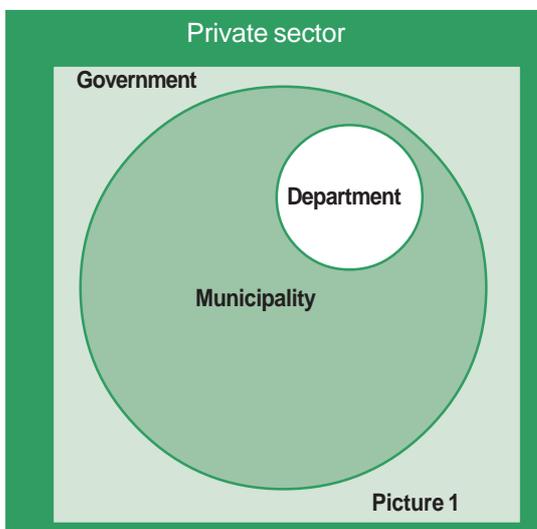
The features of a national entity are as follows:

- The business of the NFPMs is transferred to a national entity.
- The municipalities get rewarded for the assets transferred in terms of a predetermined valuation formula.
- The NPFM property is leased from the municipalities by the national entity.
- The lease of the property should be in terms of a predetermined formula taking cognisance of local property lease conditions.

Private entity

This option entails selling the business (operation) without attempting to improve the business first, and further entails leasing the property to future operators or other tenants as part of a separate contractual arrangement. This may be a PPP arrangement in itself and needs to be considered in terms of the PPP provisions of the Municipal Finance Management Act.

In summary, therefore, there are various options a municipality can use in order to effectively render services to the community. Each of the ownership and management models in operation relating to FPMs brings its own dynamics to the fresh produce market industry. This is the result of each municipality having authority over the FPM operating within its own jurisdiction and these markets are thus not regulated in the same manner in that different “rules of the game” are applicable. It is evident that each of the models implemented has a track record and cognisance should be taken of both the advantages and disadvantages when the future of FPMs is considered.



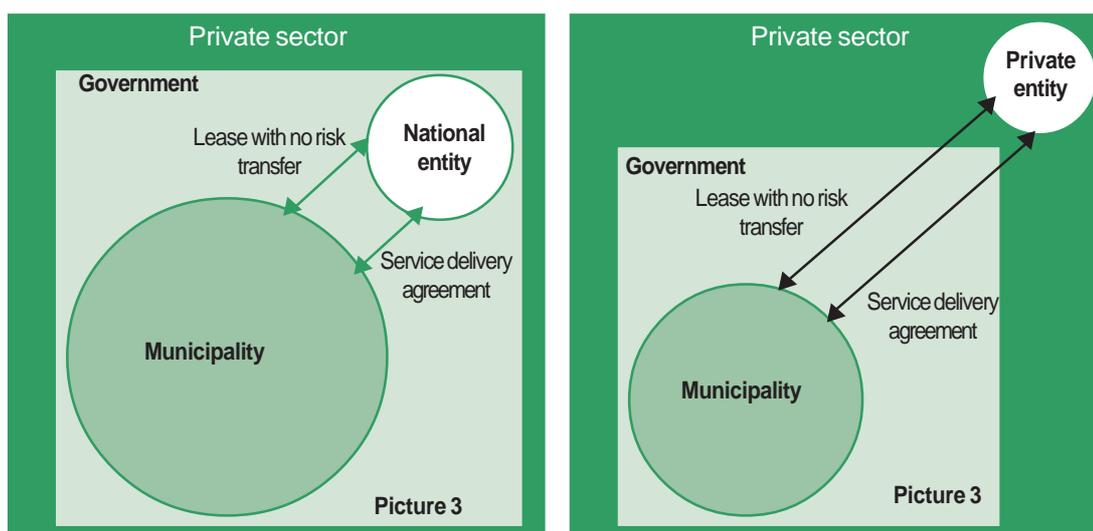


Figure 4: Possible institutional models

6.5 Section 7 Committee recommendations presented at workshop of 14 November 2006

Proposals

The Committee presented proposals to stakeholders at a workshop held on 14 November 2007. The Committee's point of departure in arriving at the proposals was that:

- Ownership and management of markets should be separated to achieve efficient business practices.
- The role of market management is to facilitate trade, i.e. to create an environment conducive to trading for its customers (not to be involved in trading itself).
- There is a need for some degree of coordination of activities across markets so as to:
 - Address important transformation objectives in a coordinated manner
 - Optimise resources and reduce costs for customers
 - Address food safety and traceability requirements as well as the implementation and enforcement of regulations regarding quality standards
 - Rationalise and standardise legislation
 - Coordinate efforts to address infrastructure backlogs and ensure adequate planning is done for future requirements
- Markets should "belong to" the stakeholders.
- Markets are important public utilities and should be retained as such.

Recommendation 1: That a process be initiated to create a **publicly owned national entity** to be responsible for the management of fresh produce markets nationally.

In looking at the various models that could be applied, the Committee focused in particular on national and private (PPP) entity models. The Committee identified the publicly owned national entity model as the model that would best address the need for coordination as outlined above. It was, however, recognised that its implementation would involve a number of challenges, including the fact that the legal structure for implementation of this model does not currently exist.

The Committee also recognised that, in terms of the Constitution, municipalities have executive and legislative authority over markets and this proposal would have to meet with their approval. Implementation of this model would therefore require a consensus-driven approach in partnership between local government, national government and other stakeholders.

Risk would be transferred to the national entity from the current owners (municipalities), while municipalities would remain the owners of infrastructure, including the property, and would be co-owners of the national entity together with the national government.

All stakeholders would be represented on the Board of the proposed institution while the national entity would remain in the hands of national and local government.

Recommendation 2: That a national food distribution strategy be drafted by national government in collaboration with all stakeholders that locates and details the role of FPMs in the overall food supply chain.

The Committee was not aware of any existing government or industry policies or strategies that locate and describe the role of markets in the broader agri-food sector.

Outcome

Stakeholders agreed that some degree of coordination was needed with regard to FPMs. It was mentioned that the role of government was to create a conducive environment for the operation of FPMs and, where necessary, to regulate certain aspects. However stakeholders in general did not support the proposed introduction of a national entity to undertake the coordination role or to manage markets.

- It was felt that an alternative vehicle should be looked at to play the envisaged regulatory and coordination role.
- It was also felt that insufficient details had been provided about how the envisaged entity would be created and operated.

- It was felt that alternative models should be considered depending on the circumstances at the individual market level. PPPs would be one such model.

It was agreed that a national food distribution strategy should be drafted. The view was expressed that this process should be driven by the Department of Agriculture.

7. LEGAL FRAMEWORK

The marketing of fresh produce on NFPMs is regulated principally by two sets of legislation: the Agricultural Produce Agents Act, 1992 (APA Act) and municipal bylaws. The APA Act, No. 12 of 1992, *inter alia* repealed the Commission for National Fresh Produce Markets Act, 1970. The latter regulated the establishment and operation of NFPMs. In terms thereof permission had to be obtained to operate a market. As a result of the repeal of the Act in 1992, the operation of NFPMs is now governed by municipal bylaws.

The APA Act applies to any person acting as an agent and therefore does not deal with markets *per se*. However, according to the second NAMC Report on Fresh Produce Marketing (2000), the Act influences how markets operate as certain practices are followed to accommodate the requirements of the Act, such as the requirement that agents have trust accounts. Agents operate on behalf of producers who wish to sell their produce through the market. The APA Act sets out the code of conduct for how fresh produce agents are supposed to act in order to safeguard their principals, but it does not prescribe or regulate the place from which agents operate. The latter is governed through bylaws that differ slightly from city to city.

The bylaws that are currently in place have certain things in common, such as the following:

1. Only agents (and the market director) are allowed to offer a product for sale on the market floor. Sales to wholesalers, among others, have to go through the agency process, in other words, no direct sales are allowed.
2. The market director determines the hours of sale, thus he or she controls the hours of business. Apart from having an influence on marketing *per se*, this also has secondary consequences, for example on after hours trading and the rules that apply to such trading.
3. It is implied in the bylaws that sales may only take place between an agent and a buyer, in accordance with the principles underlying commission sales.
4. The bylaws set out various other aspects relating to the marketing of the products, for example the cleanliness of the premises, vehicles and containers, the use of the sales floor, other people on the market and so forth.

7.1 NAMC Fresh Produce Investigations I and II

The first NAMC report (1998) highlighted the view, expressed by a number of stakeholders at the time of the investigation, that Agricultural Produce Agents Council (APAC) had been reactive rather than proactive in the performance of its duties, although it was acknowledged that this was partly because of the way that the Act had been written. It was also pointed out, however, that APAC had recently taken action against certain agents, and the Act was, at the time, in the process of being amended. The Committee further recommended that APAC be constituted to include more producer representatives as well as other role-players. The view was also expressed that in the case of an export agent allegedly defrauding a producer, the onus of proof should lie with the agent (rather than with the producer) to demonstrate that all the relevant paper work and records were in order. Finally the committee recommended that Act 12 of 1992 should stipulate that interest on monies in trust accounts belonged to the producer.

The second NAMC report (2000) recommended that market management should ensure compliance with grading and food safety requirements. It was further recommended that the Department of Agriculture's Directorate of Plant Health and Quality be approached to fulfil its responsibility with regard to grading in terms of the Agricultural Product Standards Act. The committee went on to recommend that the Minister should have direct representation on APAC and that the APA Act be applied to all agents dealing in agricultural produce. The committee finally recommended that the NAMC should continuously monitor the application of the APA Act and municipal bylaws to ensure their continued relevance.

The amended APA Act (Agricultural Produce Agents Amendment Act, No. 47 of 2003), in line with the above recommendations, introduced a third executive committee for export agents and introduced additional members to the Council including a consumer representative, two Ministerial representatives and two additional producer representatives.

7.2 Comments from stakeholders

The following is a summary of the comments received from role-players in 2006 relating to the legal environment.

General

A number of stakeholders expressed the view that the legislation needed to be reviewed to make it more efficient. It was felt that legislation should:

- Be uniform
- Applicable to all
- Facilitate good governance and compliance

APA Act

One of the major NFPMs expressed the view that the current constitution of APAC greatly hindered the effective functioning of the APA Act. They were of the opinion that appointing agents to oversee agents constituted a conflict of interests, and that APAC should be restructured to exclude agents from the Council (except in a consultative capacity).

A producer organisation maintained that existing legislation was not adequately implemented and that there was not always the necessary cooperation between market management, agents and APAC to deal with irregularities.

At the “All Fresh 2006 Conference”, agents expressed the view that APAC would be more effective if it was made up (constituted) of only agents. The example of other professional councils, such as medical and legal councils, was cited. Agents also expressed the view that APAC had the necessary teeth, in terms of a set of rules and a code of conduct. It was mentioned that individuals had been jailed for contravening the Act, although it was a costly process to institute proceedings against offenders.

One of the producer organisations noted that the present Registrar of APAC seemed to involve himself only with agencies registered with his office. It was felt that private enterprise (suppliers and buyers) should be involved in the management of FPMs to oversee and also share in the responsibility of compliance with the Act.

Municipal bylaws

The Competition Commission was of the opinion that competition at the level of commission agent could be enhanced by lowering the barriers of entry to the market for operating as an agent through a regular process in which both existing and potential agents applied for the position at least every five years. Agents could then be appointed according to competitive business criteria such as performance, experience and BEE.

One of the larger commission market agencies asserted that existing bylaws related to NFPMs were antiquated, outdated and to a large extent ignored. It was felt that they hindered the efficient functioning of NFPMs and should therefore be repealed at the same time as ownership and management of markets were separated. In their opinion, existing health and safety laws were sufficient.

Product standards

The Deciduous Fruit Producers Trust (DFPT) pointed out that the recently updated deciduous fruit regulations made provision for classified (class 1 & 2) products. They expressed the view that only classified products should be allowed on market floors. The Institute of Market Agents of South Africa (IMASA) also expressed the view that products sold on NFPMs should have quality standards to ensure buyer confidence, maintenance of standards and competitiveness.

One of the major NFPMs expressed concern about the fact that, with the exception of the potato industry (through Prokon), there was a vacuum with regard to the enforcement of legislation pertaining to product standards. They recommended that central government should coordinate the implementation of such legislation and provide a national service. This view was supported by one of the major market agents.

One of the producer organisations pointed out that the second NAMC report recommended that market management should ensure compliance with grading and food safety standards, while the Department of Agriculture should fulfil its responsibility in terms of the APA Act. In their opinion, these recommendations had not, however, been implemented.

Food safety

A number of stakeholders felt that food safety should become a major focus area for markets and that government should play a leading role (through appropriate legislation and enforcement of regulations). One of the producer organisations pointed out that the Department of Health had devolved its responsibilities for residue testing of produce to local authorities, whereas in their opinion this was an issue of national importance. It was felt that, apart from isolated instances, the consumer currently had no guarantee of the safety of local or imported produce.

IMASA pointed out that a number of markets did not meet Hazard Analysis and Critical Control Point (HACCP) and other hygiene/safety standards which were the norm elsewhere. A number of stakeholders agreed that it was the responsibility of market management to ensure that facilities complied with HACCP requirements. Markets should, however, cater for commercial and small-scale emerging farmers in terms of food safety. A producer organisation pointed out that stringent traceability and food safety systems would possibly be to the detriment of small growers. Systems to protect consumers against improper use of agrochemicals should, therefore, in their opinion, be kept as simple as possible.

A number of stakeholders, including various producer organisations, expressed the view that producers or their agents should be responsible for any certification required by central government. One of the major markets felt that local authorities/market owners should be responsible for testing certification on an ad hoc basis to ensure compliance. Non-compliance could be referred back to the producer and regulator for further action.

7.3 APA Act

Three executive committees exist within APAC, one of them dealing with matters relating to fresh produce agents. The fresh produce executive committee is made up of the three persons representing fresh produce agents on APAC. The executive committees may, between meetings of APAC, exercise all the powers and functions of the Council itself with regard to their respective occupations. The Committee was of the opinion that it is undesirable for the same persons dealing with the regulation and having the functions and powers relating to the regulation of fresh produce agents to be fresh produce agents. It was felt that this form of self-regulation could lead to a lack of impartiality which, in turn, could undermine effective regulation.

As mentioned above, commission agents argued that a similar situation applied to other professional councils, such as the medical and legal councils. In addition they argued that APAC would be more effective if it was constituted exclusively of agents. While it was felt that representation of fresh produce agents in regulatory structures was necessary and was to be welcomed, it was equally necessary and desirable to ensure representation by other interested parties, such as agricultural producers and operators of fresh produce markets or their representative bodies. It was important to ensure that the regulator was both impartial and seen to be impartial.

The Committee also noted that the Produce Agents Fidelity Fund currently only catered for certain forms of transgression by fresh produce agents relating to direct financial misconduct, such as theft or fraud, in relation to their principals. The Fund did not, however, cover instances where an agent acted in contravention of his or her licence requirements or acted interchangeably as both agent and principal for his or her own benefit, to the detriment of producers and other market participants.

The Committee was therefore of the opinion that possible amendments to the APA Act should be considered with a view to restructuring the composition of the executive committees of APAC and possibly overhauling the enforcement of regulatory mechanisms in the APA Act by APAC in order to ensure effective regulation of fresh produce agents.

The APA Act provides that no person shall perform any act as a fresh produce agent unless he or she is the holder of a fidelity fund certificate issued to him or her and every employee contemplated in the definition of fresh produce agent. Section 16(10) explains

that a fidelity fund certificate will automatically lapse when the fresh produce agent becomes disqualified as contemplated in Subsection 6 or if the agent ceases to act as an agent. The question therefore arises as to when it would be deemed that an agent has ceased to act as such. Outside of the scenario where a fresh produce agent is disqualified or where he or she voluntarily ceases to act as an agent, a fresh produce agent can conceivably continue to act as an agent for as long as he or she so wishes. In the opinion of the Committee, this could pose a barrier to entry to new entrants wishing to operate as fresh produce agents as only a certain number of agents can operate on any specific market floor. More importantly, however, since licences are not issued for any specific period, APAC is not able to re-evaluate or assess the performance, conduct and knowledge of fresh produce agents at regular intervals, thus depriving it of an important regulatory tool.

The APAC also has disciplinary jurisdiction over all fresh produce agents, no matter where the conduct which is improper (or allegedly is so) is perpetrated. Although the APA Act and the rules in respect of fresh produce agents provide measures for enforcement and procedures to regulate the business of a fresh produce agent, the actual enforcement will depend largely on the stance and objectivity of APAC or the executive committee in question as well as on the resources and capacity of APAC and the executive committee to undertake such enforcement.

7.4 Municipal and other relevant legislation

As mentioned earlier, in terms of the Constitution, NFPMs fall within the sphere of local government and are functional areas of exclusive executive and administrative municipal competence. Since most of the municipal services or functions contained in Part B of Schedules 4 and 5 of the Constitution (with the exception of basic municipal services) appear to be services or functions which municipalities may elect to provide, it is possible for a municipality to decide not to undertake one or more of these functions or services while still administering and regulating (through bylaws) the performance of such function or service by third parties operating within its municipal area of jurisdiction. According to legal advice obtained on the matter as part of this investigation, the provision, operation and administration of FPMs does not constitute a basic municipal service and as such is a function or service which a municipality can elect not to provide itself or through an external service provider, but which it may nevertheless administer and regulate – as is the case with the FPM in the City of Cape Town. This is a crucial distinction for FPMs. Due to the complicated nature of the legislation and the uncertainty around the process and applicability of Section 78 of the Municipal Systems Act investigations to various services, it was suggested that a senior advocate be approached for an opinion on this particular matter.

The Municipal Structures Act was established to provide for, inter alia, the establishment of municipalities in accordance with the requirements relating to the categories and types of municipalities created by the Constitution, the appropriate divisions of functions and powers between such categories of municipality, the regulation of the internal systems of municipalities and matters connected therewith.

The Competition Act regulates various aspects of competition law. Section 81 provides that the Competition Act binds the state, and Section 12 is of particular importance as it deals with mergers. Section 12 of the Competition Act provides that a merger occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm. Whether or not it is necessary to notify the Competition Commission of a proposed merger depends on its size. Depending on the route followed in respect of the future corporate and institutional structuring of NFPMs in South Africa, it will be necessary to determine whether any structure in question will constitute a notifiable transaction for the purposes of the Competition Act.

7.5 Municipal participation in NFPMs

As mentioned above, municipalities generally participate in NFPMs in three capacities, namely as regulators and administrators, as owners and providers of infrastructure, and as operators of markets. Section 156(2) of the Constitution provides that a municipality may make and administer bylaws for the effective administration of matters listed in part B of Schedules 4 and 5 of the Constitution. Therefore, bylaws are no longer considered to be “secondary” or “subordinate” legislation and thus have the same force of law as national and provincial legislation, the only proviso being that in the event of a conflict between provincial and national legislation, national legislation will prevail. The view of a number of stakeholders is that current NFPM bylaws are archaic and do not take account of legislative and institutional changes. Their effectiveness is therefore questioned, and it is suggested that a new set of bylaws be drafted to align with the current legislative environment.

Should a national framework for NFPMs be established, the drafting of a common set of bylaws for the regulation of NFPMs by municipalities throughout South Africa would be an effective way to regulate the industry while ensuring a consistent and uniform approach to the regulation of NFPMs and the implementation of the national framework. In order to achieve this it would be necessary to undertake a nationwide rationalisation of all market-related bylaws.

7.6 Section 7 Committee recommendations presented at workshop of 14 November 2006

Proposals

Recommendation 3: That a common set of bylaws be drafted for the regulation of fresh produce markets.

The Committee was of the opinion that a nationwide rationalisation of all market-related bylaws would have to be undertaken. This was seen as a high priority for NFPMs.

Recommendation 4: That the Agricultural Products Agents Act be reviewed as a matter of urgency.

The Committee was of the opinion that this review should look at, inter alia:

- Structure of and representation on the APAC and its committees
- Enforcement mechanisms

Recommendation 5: That the envisaged national entity be given the responsibility of ensuring that FPMs are able to meet food safety requirements and that regulations regarding quality standards be implemented and enforced in cooperation with the relevant regulatory authorities.

Outcome

It was agreed that a common set of bylaws should be drafted. It was, however, pointed out that bylaws would only be necessary if municipalities run the markets.

It was agreed that the proposed review of the APA Act should be undertaken as a matter of urgency. The review should also look at the possibility of separating the three areas/industries regulated (namely fresh produce, red meat and fruit export). APAC should play a more active role in training and skills development.

It was agreed that coordination with regard to food safety requirements and regulations regarding quality standards was necessary, that it was a priority issue, and that it should be dealt with by the organisation or structure that was identified to play a coordinating and regulatory role with regard to FPMs.

8. THE COMMISSION SYSTEM

8.1 NAMC Fresh Produce Investigations I and II

The first NAMC investigation considered three options in looking at the most appropriate arrangement for the Johannesburg FPM – firstly to allow the emergence of alternative markets which could provide a competitive alternative to the Johannesburg FPM; secondly to retain the existing system but improve price formation; and thirdly to force the existing agent-based system to compete with alternative systems operating on the present Johannesburg market. The last-mentioned would mean that the existing agent-based system would compete with a wholesale system and possibly an auction system on the same market. The 1991 Human Sciences Research Council (HSRC) investigation recommended the same system for all NFPMs, but this was never implemented.

The NAMC's Section 7 Committee was of the opinion that this latter option would allow farmers to decide whether or not dealing directly with wholesalers on the market would be advantageous compared to dealing with agents. It would also force agents to compete against wholesalers. The committee pointed out that although much of the fresh produce sold on the Johannesburg market was handled by wholesalers, agents were the only people on the market who were allowed to receive produce directly from farmers. This therefore implied double handling between the farmer and wholesaler's customer. According to this third option farmers would have a choice, not just between different agents, but between agents and wholesalers. The committee argued that this would make it easier to determine how competitive a particular level of agent commission was. The committee was further under the impression that the commission deducted by agents was relatively high (although it was admitted that there was no reliable yardstick against which a comparison could be made). It was, however, emphasised that, irrespective of the predominating system, the requirements of smaller-scale buyers and producers should be met.

The committee recommended in its final report that the Johannesburg market should allow wholesalers on the market to receive fresh produce directly from producers, on condition that the activities of wholesalers (transaction price, volumes sold and stocks on hand) were captured by the market's information system. Importantly, the committee also acknowledged that the Minister of Agriculture had limited means at the time to pursue this course of action. It was admitted that existing legislation was of little help unless amended. The committee concluded that the repealing of the Commission for National Fresh Produce Markets Act (1970) did not lead to deregulation and freedom of entry onto the Johannesburg market. In their opinion it simply gave the Johannesburg Metropolitan Council greater discretion in managing its asset.

In the report on the second Section 7 Investigation (2000), the committee stated that it had not heard any arguments that would persuade it to “review or withdraw its recommendation” that the market floor be opened to all intermediaries (on all NFPMs). It was felt that increasing the levels and diversity of competition between intermediaries on the market floor would ease many of the problems faced by the producer, the buyer, the intermediaries and the market authorities. The committee was of the opinion that other intermediaries, in addition to wholesalers, should be encouraged to participate, and that the reintroduction of auctions on the market floor should be entertained as an option. It was, however, emphasised that the existing information system should be retained and all intermediaries should be compelled to give information to the market authorities for publication. The committee concluded that NFPMs would continue to lose their relevance as a marketing channel if this sort of competition and experimentation were not permitted.

8.2 Comments from stakeholders

The commission system

The Institute of Market Masters of South Africa (IMSA) (as well as a number of individual markets that submitted comments) agreed that the existing commission marketing system should be retained. However, imperfections should be improved and provision made for the wholesale system. The following principles were proposed for the possible introduction of the wholesale system:

- Overriding principle: commission market agents and wholesalers should be governed by the same rules.
- Wholesalers should be required to pay the same rate as market dues that would apply to a producer or supplier using a commission market agent. Wholesalers would pay market dues on the selling price.
- Wholesalers should be permitted to trade on the same market floor as commission market agents.
- Wholesalers should trade on the same basis as commission agents in respect of sales via the current computer system. This would imply that wholesalers would not be permitted to receive cash on the sales floor.
- An intermediary could be either a wholesaler or a commission market agent but not both.
- Wholesalers should be required to lodge a guarantee or cash deposit.
- Market management should decide on the number of wholesalers that would be permitted to trade on the market, with a strong emphasis being placed on previously disadvantaged (black) wholesalers.

One of the larger commission agencies expressed the view that the recommendation made in the second NAMC report (i.e. that measures be enacted to ensure competition between intermediaries while safeguarding both producers and buyers) stopped short of detailing the measures, and was therefore incomplete and not based on sound marketing and economic principles. In their view this was why it had not been implemented. IMASA was of the opinion that the commission system remained fundamental to price formation and financial security for farmers. In their view wholesaling could be conducted nearby but not on the market floor. This view was echoed by the Competition Commission, certain producer organisations, a commission agent as well as some of the smaller markets. They were of the opinion that the introduction of wholesalers on the market floor could eventually lead to the demise of commission market agents. This would negatively impact on the price formation mechanism (which relied on the availability of information regarding supply and demand). Interestingly, IMASA expressed the view that the introduction of wholesalers on markets would enhance price formation and discovery.

Potatoes South Africa (an influential producer organisation) indicated that a survey undertaken in various supermarkets had revealed that prices at these outlets were significantly higher than prices paid on commission markets. In their opinion this demonstrated that the commission system was still the best option for consumers and informal buyers in terms of price. This view was supported by a large producer who maintained that South Africa's fresh produce industry produced food at price levels that were regarded as the lowest in the world, and the commission agent system and NFPMs were the most important factors in this regard. The same producer also suggested that there might be a role for NFPMs and commission agents to service retailers and chain stores at reduced remuneration in order to maintain information capturing and management functions. It was felt that this would enhance the role of NFPMs as a hub for transacting.

Tshwane Market pointed out that the survival of the current system would depend on the ability of commission markets to adapt to the challenges and demands of modern consumerism and to find an answer to the onslaught of the direct marketing channel. One of the larger market agents felt that the commission system was under threat because, on certain markets, it was not kept within acceptable rules and its principles were being eroded. It was suggested that the system could be improved and that this process could involve taking into consideration some of the current deviations from the "pure" commission system. A system of risk sharing between agent and principal could be utilised if required. The Northern Onion Committee, representing a group of onion farmers, maintained that the commission system was under "pressure" because certain agents had engaged in activities outside the scope of a market agent. They felt that the existing rules with regard to commission agents needed to be more effectively enforced.

A number of stakeholders expressed concern about the perceived high costs involved in marketing through a commission market and felt that this should be further investigated.

Price discovery mechanism

The Competition Commission mentioned that it was important for market participants to be aware of the provisions of the Competition Act, and the fact that price fixing between competitors would constitute a contravention of the Act.

IMASA pointed out that price formation was the fundamental purpose of a commission market and that it was vital to protect and strengthen this function by improving services and facilities on markets. Tshwane Market stated that the price formation and discovery system employed by markets remained the most efficient system to move produce from the producer to the end consumer at the best possible price. In their opinion the loss of market share by NFPMs had not impacted on this function, although if this trend were to continue it could reach a stage where this function would no longer be relevant.

A prominent commission agency argued that markets that had not done enough to attract the necessary concentration of buyers and sellers would eventually lose their effectiveness in discovering prices. Market management should focus more on this aspect and should ensure level playing fields for trading to take place efficiently.

Potatoes South Africa asserted that large fresh produce markets were still relevant with regard to price forming, while smaller markets were essential price followers. This view was supported by the Tomato Producers' Association (TPA), who commented that recent experience had demonstrated that Johannesburg and Tshwane Markets were essentially price forming markets (Cape Town and Durban to a lesser extent). The remaining markets in their view were price followers. Both these producer organisations agreed, however, that transparency regarding information on volumes and prices was essential to preserve the price formation function.

The TPA and a major producer agreed that commission agents that had left NFPMs and established wholesale operations near existing FPMs were not adding value but rather exploiting market inefficiencies. Profits generated were at the expense of producers while these wholesale operators did not create value for the consumer. They felt that electronically linking net price per kilogram, intermediate gross price per kilogram and retail price to market information systems and sharing it with agents would enhance the price formation and price discovery mechanisms.

8.3 Price trends and market integration at NFPMs

The NAMC commissioned research to investigate the following in selected NFPMs for certain fruit and vegetables:

- The interaction between demand and supply
- The level of price volatility
- The level of market integration

Cabbage, carrots, pumpkins, onions, potatoes and tomatoes were included in the research. The fruit kinds included were avocados, bananas, oranges and pears. The research focused on the Durban, Bloemfontein, Port Elizabeth, Pietermaritzburg, Kimberley, Cape Town, Tshwane and Johannesburg FPMs. In certain cases markets had to be omitted from the analysis due to paucity of data, in that there was not enough information available to conduct the different analyses.

The results of the study can be summarised as follows:

- Prices of the selected fresh produce and volumes sold on the NFPMs are strongly negatively correlated. Low volumes sold during certain periods on NFPMs can be linked to low availability of the products during certain periods. Since the information shows a strong negative correlation one can postulate that the NFPMs play a significant role in the price formation of the fresh produce investigated.
- The investigation into price volatility shows that in the vegetable category, pumpkins displayed the highest price volatility. Avocados displayed the highest price volatility in the fruit category. Overall, the price volatility for avocados is the highest of all the fresh produce investigated, followed by (in declining order) oranges, pumpkins, cabbages, tomatoes, onions, carrots, potatoes, bananas and pears.
- The factor that influences the level of price volatility of most of the products on most of the NFPMs is real prices. In all the cases where the real price of the product was found to significantly influence the level of volatility, the influence was found to be positive. The positive influence suggests that the volatility will increase with an increase in the real price of the specific product on the specific FPM.
- Overall the volume of fresh produce sold was found not to have an influence on the change in volatility of prices in most NFPMs. The volume sold only had a significant influence on the change in price volatility for bananas in the Kimberley FPM and oranges in the Pietermaritzburg and Durban FPMs. In terms of these markets the influence was found to be negative, which suggests that the volatility decreases with an increase in the volume sold.
- When looking at the level of price volatility between the NFPMs included in the study, Kimberley was found to have a higher level of price volatility for most fresh produce. The market in Durban was found to be the second most volatile, followed by (in declining order) Port Elizabeth, Tshwane, Cape Town, Bloemfontein, Johannesburg, and Pietermaritzburg, which was found to be the least volatile.

- The levels of volatility in the four larger markets (i.e. Johannesburg, Cape Town, Tshwane and Durban) were found to be higher than in the four smaller NFPMs (Kimberley, Port Elizabeth, Pietermaritzburg and Bloemfontein) for bananas, potatoes, pumpkins and tomatoes (except Cape Town in the case of tomatoes).
- For avocados, oranges, and onions the levels of volatility in the smaller NFPMs were found to be higher than in the larger markets (except oranges in Durban and onions in Tshwane).
- In the case of pears, cabbages and carrots it is difficult to conclude with a high degree of certainty that the levels of volatility in a market of a particular size differ from the levels of volatility in a market of a different size.
- NFPMs are in general better integrated for the fruits than for the vegetables investigated. Market integration was low for only two fruits for three market pairs, whereas for vegetables six market pairs showed low market integration (three for tomatoes, one for potatoes, one for carrots and one for cabbage).
- On average it takes 46 days for markets to restore spatial price equilibrium after a price shock in the Johannesburg FPM. However, on a product and NFPM-specific basis large deviations exist from the average, in that some NFPMs for certain products take a lot longer to restore spatial price equilibrium.

From the research undertaken it is clear, therefore, that in general when prices are high on NFPMs, volumes for the products traded are low and vice versa. This seems to suggest that the price formation functions effectively. The research also indicates that price transmission is not equal in magnitude across markets. There could be many reasons for this but sufficient detailed information on supply and demand in specific regions could unfortunately not be obtained to further investigate these. The present Section 7 Committee would like therefore to highlight this lack of information as something that needs to be addressed as soon as possible so that further research in this area can be undertaken.

8.4 Section 7 Committee recommendations presented at workshop of 14 November 2006

Proposals

Recommendation 6: That the current commission system be retained but that competition be further stimulated by the introduction of wholesalers on the market floor.

The Committee acknowledged that the commission system played an important role and had a valued and unique place with regard to NFPMs. It was nevertheless recommended that the wholesale system also be accommodated under the following conditions:

- It was essential that commission agents and wholesalers be able to compete with each other on a fair and transparent basis.
- Wholesalers should operate from the same floor as commission market agents.
- The current system of recovering marketing costs should be reviewed and a more progressive and competitive system should be introduced.
- Contractual arrangements for intermediaries should be introduced to provide for:
 - Limited license period with periodic reviews
 - Performance criteria
 - Transformation criteria
- Wholesalers should trade on the same basis as commission market agents in respect of sales via the current computer system. Wholesalers must disclose their sales figures, and these must be processed by the market authorities information systems.
- An intermediary could be either a wholesaler or a commission market agent but not both.
- Commission market agents and wholesalers should be treated equally as far as bylaws are concerned.

Recommendation 7: That the price discovery mechanism be retained and strengthened.

The Committee recognised the vital role of the current price discovery mechanism in price determination. It was therefore in the national interest for the system to be retained and if possible strengthened. Accordingly, it was recommended that the current system be reviewed to ensure that it was able to keep abreast of technological developments and customer requirements.

Outcome

The following concerns were raised regarding the proposed introduction of wholesalers on the market floor:

- The wholesale system had originated from countries that were not self-sufficient with regard to fresh produce and had to import. The system was therefore not suited to South Africa, which was self-sufficient with regard to fresh produce.
- The commission system was better suited for empowerment than the wholesale system as the capital requirements were not as severe. In addition, the commission system was more suited to fragmentation on the production side.
- It was suggested that the wholesale and commission systems were two fundamentally different systems and it would therefore be difficult to introduce the same rules for both systems and expect wholesalers and commission agents to compete on the same footing.

- The key to successful empowerment would be through creating sustainable markets, not through the introduction of a parallel wholesale system.
- Markets should decide individually which system they would adopt as the primary system. Provision could be made for a secondary system on the same site but not on the same floor.
- There was a case for wholesalers on smaller markets and also for sourcing certain categories of product so that the product offering on the market could be more attractive.

Some additional issues were raised, including the following:

- Market authorities needed to be strengthened through the regulatory framework and appropriate systems were needed to deal with illegal practices such as skimming.
- It was agreed that commission agents should not be able to purchase produce from themselves.
- It was agreed that the provision of credit should not be the core business of commission agents (although it was acknowledged that there is a need for agents to provide credit to retain certain buyers).
- There was support for the idea that agents should be allowed to do direct marketing to be more cost-effective (i.e. the produce is not physically handled on the market floor, but the transaction goes through the system). The advantage would be cost saving, while the disadvantage would be that the market might lose the producer and quality control could become more difficult.

The possibility of introducing a live trading screen was discussed. It was mentioned that standards in terms of product grading were not applied uniformly across markets and that this could result in confusion if live trading information was provided. It was mentioned that at present real time prices and volumes were only available to commission agents.

It was agreed, however, that the price discovery mechanism should be reviewed to ensure that it was able to keep abreast of technological developments and customer requirements.

9. MARKET ACCESS AND TRANSFORMATION

9.1 NAMC Fresh Produce Investigations I and II

The first NAMC report (1998), which looked specifically at the Johannesburg FPM, found no evidence of any restrictions on farmers who wished to deliver produce to an agent on the market. Similarly new buyers were not prevented in any way from utilising the market. The report did, however, highlight the fact that larger producers and buyers enjoyed economies of scale in their dealings with agents (although smaller buyers had the option of buying from the wholesalers on the market). The report also expressed the view that the manner in which floor space was allocated on the Johannesburg FPM was a barrier to entry. Floor space was allocated to agents based on turnover (which represents both value and volume traded).

The second report (2000) highlighted a number of constraints faced by small-scale producers that hindered market access and inhibited the viability of farmers:

- Transport
- Storage
- Market infrastructure
- Market information
- Extension services
- Poor condition or absence of roads
- Discrimination
- Distance from processing facilities
- Telecommunication
- Training and education
- Access to electricity
- Finance
- Lack of capacity in representative organisations

The question of floor space allocation was also highlighted as a matter of concern. The committee expressed the view that all persons should have equitable access to floor space on NFPMs. It was felt that the existing system of allocation was too ad hoc and open to abuse, as new entrants were effectively subject to the “good will” and intentions of the market authority. This could also potentially result in the sub-optimal use of the available floor space.

The committee made the following recommendations related to market access:

- The national government should commit itself and the necessary resources to achieve market access objectives.
- The need for infrastructure, the availability of information to small-scale fresh produce producers, intermediaries and buyers and the monitoring of problems pertaining to market access for small-scale farmers, intermediaries and buyers should be referred to the NAMC Market Access Steering Committee.
- IMSA should hold a workshop, facilitated by the NAMC, to review the system of floor space allocation and to devise practical and objective alternative allocation methods to improve market access.
- Every market master should identify issues that impeded access to the market and ways of overcoming these issues.

9.2 Comments from stakeholders

Market access

IMSA expressed the view that the recommendation of the second NAMC report (that each market should identify issues that impeded access to the market and determine ways of overcoming these issues) should be regarded as a normal business practice. One of the prominent market agencies was of the opinion that market access objectives had not been clearly set out together with all the role-players and a programme of implementation had not been worked out.

A number of role-players expressed the view that there were currently no barriers to access at NFPMs that prevented access for either the farmer or the buyer. However, small-scale farmers lacked the necessary infrastructure and knowledge to access FPMs. This view was supported by a number of stakeholders (including Potatoes South Africa, Tshwane FPM, IMASA, IMSA and AG-BIZ CDI). It was stated that emerging farmers experienced difficulty in competing with established commercial entities due to lack of quality of product and packaging as well as sufficient and sustainable volumes. The following challenges facing emerging farmers were identified:

- Lack of infrastructure – electricity, transport, buildings, equipment etc. – on their farms
- Lack of finance
- Lack of marketing knowledge/information on markets
- Lack of production knowledge
- Lack of business knowledge
- Inadequate or indifferent extension services

- Lack of critical mass to achieve continuity of supply, keenest prices and services
- Lack of quality
- Inability to market and brand produce
- Inability to package product

A number of issues were raised that should be taken into account in addressing the above challenges, including the following:

- Business linkages (between farmers and the rest of the farming fraternity) and cooperatives were important.
- Business motives should be at the root of empowerment initiatives.
- NFPMs should engage in certain activities on an integrated basis (e.g. supply network structured in terms of transport availability along major routes).
- The system of farming projects managed by committees was cumbersome, slow and totally inadequate for modern farming needs.

The following possible solutions were proposed:

- Depots should be set up (with computer facilities providing access to market prices and information) where farmers could bring products, have them packed and loaded onto suitable transport for the market.
- A Marketing Extension Officer (with production knowledge and training on relevant marketing issues) should be based at each depot.
- “Champion” farmers should be identified who could be trained, sponsored, mentored and supported to demonstrate the benefits of private initiative and hard work.
- “Train the Trainers” initiatives should be undertaken to empower Agricultural Extension Officers with fresh produce marketing knowledge.
- Provision should be made for packing and sorting facilities on markets to assist small-scale and black producers.
- Lack of information on markets could be remedied by arranging tours to markets, briefing sessions and market information brochures.
- Inability to package, market and brand produce could be addressed through training, obtaining advice from a market agent and setting up a cooperative.
- A farmers’ cooperative could provide the necessary infrastructure to consolidate and transport produce of small-scale farmers or black producers
- Market authorities and agents could assist by providing guidance and market information.
- Established producers could assist by developing the skills of small-scale farmers and black producers and by mentoring such farmers until they were ready to operate independently.

- Market agents should make special efforts to sell the small farmers' produce quickly and efficiently at the highest prices. They should communicate back to the farmer and should get payment to the farmer as quickly as possible
- Provision should be made available for packing and sorting facilities on markets to assist small-scale and black producers. The Provincial Departments of Agriculture should assist in this process in order to create collection or delivery points from where produce from emerging farmers could be transferred to the market.
- Networks of trust were needed between role-players to enhance market access for previously disadvantaged individuals (PDIs) through provision of more floor space and market facilities in the market area.

A number of role-players expressed the view that government should drive the various processes necessary to assist small-scale and black farmers with market access by creating an enabling environment and funding where necessary.

One of the prominent market agents pointed out that although 15% (total cost of marketing through FPMs – market dues plus commission) could be seen as costly to the smaller farmer, generally his or her product was more difficult and costly to handle. However, the same amount was paid by the large farmer, whose produce was fully palletised, sorted by grade, colour and size. In marketing through FPMs the smaller farmers and buyers had been able to interact with their larger counterparts and many had been able to grow and prosper.

One of the larger producers expressed the view that replacing commission agents with wholesalers would decrease accessibility to broadly placed, low-cost distribution centres (like NFPMs). It was felt that with proper service level agreements in place between parties, transaction costs could be managed downward, thereby ensuring the survival of most FPMs.

Transformation

One of the smaller markets was of the opinion that commercial producers were willing to supply products to black salespersons and black agencies. However very few of these agencies currently existed. The view was expressed that emerging markets (such as the N2 markets) should be supported as they would lead the process of “uplifting” emerging farmers.

Tshwane Market pointed out that transformation had made significant progress at local authority/market management level, whereas progress at market agent level had been slow. The following reasons were given for this slow progress:

- There was a lack of skills within the industry
- PDIs lacked resources.
- Farmers appointed market agents on the basis of trust and track record.
- There was a vacuum on how to assist black market agents to become independent and financially sustainable.
- The local authority's role in how to empower BEE agents was not clearly defined. In this regard care should be taken to ensure that the impartiality of market management was not compromised.

A number of role-players expressed the view that existing black agencies had so far received relatively little support from market authorities and government. In their opinion market management and agencies should drive the process of transformation on markets. It was proposed that a targeted programme be developed to assist black agents (as the commission system worked against the introduction of black agents due to the supplier/agent relationship that is built up on trust over a long period of time).

IMASA was of the opinion that the lack of black market agents was not a racial issue and that the trust relationship between farmer and market agent took time develop. It was pointed out that successful black agents had managed to effectively link with an existing larger agency for administrative and other support and had persevered and slowly built up their client base.

IMSA accepted that markets should have a diverse workforce and a management echelon that reflected the local demographics. The organisation recommended that training and mentorship programmes be implemented and that a conscious effort be made to address the gender imbalances. All market agents trading on a market should comply with the concept and principles of BBBEE (broad-based black economic empowerment). In addition, an alternative marketing system (wholesale system) would address the demographic imbalances that currently exist among commission market agents. IMSA recommended that a targeted training programme be instituted for black salespersons. Participants should ideally include 50% females. The training programme should be driven by IMSA (using government funding) in consultation with IMASA. It was also recommended that a targeted skills programme for independent black traders (buyers) should be implemented.

One of the prominent market agencies held that transformation at NFPMs was indeed taking place, although at a slower pace than expected by government. Transformation at market management level was taking place and in some instances this was happening too fast, thus creating an "experience vacuum". It was felt that existing transformation efforts by agents were not being recognised or acknowledged. It was pointed out that the incidence of salespeople of colour on markets had increased dramatically over the past ten years.

The same agency was of the opinion that supply by producers to black agents was only a problem when black agents did not perform as well as or better than a competitor. It was acknowledged that there were proportionately not enough black market agents and that the situation needed to be corrected. However, market management should encourage, motivate and lead by example, by providing correctly equipped people for the job of managing markets. Market agents should, in their view, progress and train more black people in all aspects of their business, take them out into the production areas and help them to gain acceptance.

Potatoes South Africa stated that markets should continue as a point of purchase for small buyers as part of the markets' BEE exercise. Market management should ensure that emerging market agencies were accommodated on the market floor and that established market agencies complied with the transformation process regarding the representation of PDIs in their businesses. Black agencies should build relationships with farmers and market themselves to these farmers. The possibility of giving incentives to farmers who supplied black agencies was mentioned.

A number of role-players expressed the view that transformation was the responsibility of all role-players. Supporting programmes and projects (supported by the broader industry and grants from donor organisations and government) should be facilitated by the relevant authorities and industry leaders.

9.3 Consultations with black role-players

As mentioned earlier in this report, the Section 7 Committee consulted black role-players from Johannesburg, Tshwane and Cape Town NFPMs in August and September 2006.

Commission agents

In general black stakeholders expressed the view that no meaningful transformation had so far taken place on NFPMs at the level of commission agent. The fact that there were, at that stage, only 12 black agents (out of a total 106 agents on all NFPMs) responsible for approximately 1% of turnover, was seen as evidence of the lack of real transformation. It was felt that the current commission system to a certain extent entrenched the existing skewed situation as it was designed originally to protect the interests of white farmers and was not geared to the introduction of black role-players. A number of black role-players stated that firm, enforceable industry specific targets were needed with regard to transformation and that preferential treatment (incubation) and incentives were needed to assist new entrants.

The following challenges facing black commission agents were highlighted:

- The establishment of a farmer base was difficult. Most existing large commercial farmers already had relations with large agents. Only commercial producers could at present supply the needed continuity. Costs of business were high in terms of travelling and marketing.
- Established market agents cannibalised the farmer base (of black agents).
- Bigger agents did not adhere to APAC rules.
- Low turnover due to a smaller farmer base increased cash flow problems.
- Black agents were unable to attract good sales people and competent administrative staff since the latter needed to be given financial incentives and guarantees that small incoming agents could not afford.
- Access to sufficient floor space was problematic.
- Access to floor equipment such as forklifts was required.
- Emerging farmers who wanted to link to the black agents often had logistical problems. Current established transporters were reluctant to service them or coerced them to use an agent of their choice.
- Black agents faced the same market facilities costs (e.g. storage, rental) as established market agents.
- There was no avenue to lobby for solutions to common challenges facing small agents.
- Oligopolistic practices were disguised under relationships between producer and established agents.
- The transformation agenda of the market authority to integrate emerging agents fully into the market was not fully supported.
- Significant incentives were required to attract experienced sales staff.
- Producers expected impossible prices from emerging agents, sometimes above market averages.
- The cost of registration with APAC (agency and salespeople) was the same as for commercial agents.
- There was a lack of transformation within APAC.
- Difficulties were encountered in securing financing – banks did not know the industry
- Networks had to be built up, which proved to be very difficult in practice.
- Very few black salespersons operated on the market floor.

- The following proposed solutions to address the above challenges were highlighted:
- Support (appropriate mechanisms and policies) and training were needed, especially regarding business skills.
- APAC/IMASA could adopt a model together with the respective market authority for supporting emerging agents.

- Buying set-asides of big retail corporates could be used to support emerging agents.
- Test runs could be conducted on split loads from big producers to be shared with emerging agents.
- An appeal could be made to the goodwill of industry participants to transform instead of waiting for injunctions from government.
- Genuine BEE deals should be established between big and currently disadvantaged agents.
- Industry should create its own scorecard for benchmarking performance.

Producers

Role-players referred to the significant challenges facing black producers at present. These have already been adequately discussed under market access above and are therefore not mentioned here. Concern was also expressed about the existing perception that product from emerging producers did not receive the same treatment as that of commercial producers. The first NAMC report expresses the view that it is “natural” for a salesperson to give priority to the sale of a large consignment over a smaller one. It is further mentioned that small consignments could be considered a nuisance (especially product that is not graded). These consignments may therefore “be sold with little effort to attain the best possible price”.

A further matter for concern was the perception among a number of market participants that product from black producers was of inferior quality. Transport and packaging were highlighted as the most significant cost areas for black producers, while the most significant constraint for producers was seen as access to financing.

Informal traders (hawkers)

Informal traders are important role-players on NFPMs. It is estimated that on average 35% of sales at markets are to the informal sector. At smaller markets it can be as much as 50%, while at Johannesburg FPM it is estimated that 63% of market turnover is derived from the informal sector.

The informal traders consulted as part of the investigation expressed a need for training in business and financial skills. It was also felt that NFPMs should provide an environment that was conducive to business growth and expansion. The informal trader should be able to develop to the point of becoming a wholesaler or commission agent over time.

In general there appeared to be a significant lack of trust between the informal traders and commission agents. There was a perception of price discrimination towards informal traders on the part of white commercial agents (based on the volume of business and

possibly also race). This was not true of all agents, and only certain agents were regarded as being guilty of these practices. There was also a perception of discrimination with regard to the quality of product and in terms of service provided. As mentioned earlier this could, to some extent, relate to the economies of scale enjoyed by large commercial buyers in their dealings with agents. The first NAMC report (1998) mentions that, during consultations with stakeholders, one of the agents pointed out that many buyers do not understand that they will pay a higher unit price for one unit than a bigger buyer who takes 500 units, and that this leads to misunderstandings, and accusations of bias and discrimination. It is also mentioned “that when a particular commodity is in short supply agents argue that if they wish to build up a loyal buying base then they must hold back a proportion of their supplies for their regular buyers. Otherwise when a particular commodity is in over supply they will have even more difficulty in clearing their stock.” This was, according to the agent, a source of potential tension between agents/salesmen and small irregular buyers and could easily be misinterpreted as discrimination.

Other areas of concern for informal traders were the need for coordination and communication between informal traders and the lack of transport to carry produce from the market.

9.4 Section 7 Committee recommendations presented at workshop of 14 November 2006

Proposals

Recommendation 8: The proposed national entity should coordinate and drive efforts to bring about transformation (in line with BBBEE) on FPMs and monitor implementation.

The Committee recognised that the establishment of such an entity would be a complex process and would take some time to facilitate, and that urgent interventions were needed in the interim, including the following:

- A package of measures to be designed (in collaboration with APAC, IMASA, Market Management, National Department of Agriculture and NAMC) to address the current problems experienced by existing black agencies, that could include:
 - Reducing market dues for a limited period (2% instead of 5%)
 - Subsidisation of APAC registration fees
 - Training in business/ financial skills
 - Assistance with securing financing
- Coordination of training efforts across markets for informal traders on business skills

- Coordination of efforts to develop appropriate infrastructure for informal traders on FPMs
- Ensuring the establishment of codes with regard to AgriBEE that were unique to the industry and in line with the current realities and challenges
- Introduction of proposed transformation targets for FPMs to be achieved by 2014:
 - 30% of volumes to be traded through black commission market agents
 - At least 25% of existing agencies to have BEE involvement/ participation
 - Every market to identify five black salespeople of repute and ability to become market agents
 - 50% of market masters to be black

Recommendation 9: That wholesaling be introduced in parallel to the commission sales system.

The Committee was of the opinion that wholesaling should be introduced as an alternative trading system. This system was less dependent on the establishment and nurturing of relationships between intermediaries and suppliers and could prove to be a more viable channel for successful empowerment. The Committee believed, however, that efforts to establish successful black agencies should be continued.

Outcome

It was agreed that transformation was necessary. The view was expressed that transformation at the level of commission agent had taken place in the last five to ten years but this had not necessarily been recognised by government.

It was mentioned that market authorities could look at the proposed reduction in market dues as a possible means of incentivising suppliers to support black commission agents. The view was expressed that it was, however, more important to assist black agents to become administratively efficient. In general the proposal to introduce a package of measures to support black commission agents was supported.

10. INFRASTRUCTURE

10.1 NAMC Fresh Produce Investigations I and II

In the first NAMC report (1998), concern was expressed that insufficient revenue generated by the Johannesburg Market (in terms of the 5% commission) was being reinvested in the market's facilities. It was recommended that the market authorities should invest time and money in upgrading the operations of the market (including security, the wholesale facilities and the computer system handling sales).

The second report (2000) recommended that the need for infrastructure for small-scale farmers, intermediaries and buyers should be referred to the NAMC Market Access Steering Committee.

10.2 Comments from stakeholders

Most role-players (including IMASA, IMSA, George FPM, DFPT, Tshwane FPM, RSA Market Agents, SAAGA, PSA, TPA and ZZ2) agreed that markets were in a poor condition and in need of upgrading. The following areas that required attention were highlighted:

- Existing market infrastructure was old and did not conform to food safety standards. Future developments with regard to infrastructure should consider the implications of food safety and the impact of loading facilities within markets.
- Decision making and implementation with regard to infrastructure had so far been too slow to address the fast changing needs of buyers and sellers, resulting in a loss of market share.
- Controlled climate for different sections – markets were generally in a state of disrepair. Cold storage needed to be improved on most markets.
- Ripening facilities could be improved on most markets. Management of the cold storage and ripening facilities on most markets was not adequate.
- Stockpiling – stock should move in and out as quickly as possible.
- Sales floors should be temperature controlled.
- Safety and cleanliness were a huge problem, especially with regard to old premises that needed refurbishment.
- It was stressed that NFPMs could no longer offer efficient and commercially competitive services to farmers or buyers with the existing facilities.

- Quality control laboratories should fall under a national body that should set a uniform, national standard for the management of such laboratories. Quality control laboratories could improve the business and status of markets if managed and used effectively.
- Current market infrastructure was not conducive to the maintenance of fruit quality. Produce should be sold by displaying samples, with the remainder of the produce being kept under appropriate climate control. Sufficient cold storage facilities for each product type for short-term storage and daily sales should be in close proximity to the trading area.
- Improvements in technology could allow buyers in general and large buyers in particular to move through the system more efficiently – an example was electronic scanning.

Role-players had varying views on how infrastructure backlogs should be addressed. IMASA, SAAGA and Tshwane FPM were of the opinion that responsibility for the upgrading of market infrastructure lay with the market owner. SAAGA expressed the view that if a market was operated on sound business principles, capital investment would be a necessary part of the business strategy. However, Tshwane FPM pointed out that most local authorities faced cash flow problems and would utilise funds generated by markets to fund priorities that had a higher rating than markets. They recommended therefore that all markets be ring-fenced to ensure that their funds were not diverted and were used by the market owner to effect the necessary improvements and restore ailing markets to a healthy condition. IMASA, on the other hand, recommended that a once-off grant from national government be allocated to effect a modernisation initiative for all markets. George FPM proposed that the Section 7 Committee should investigate the collapse of infrastructure on each market and should communicate with local government structures. ZZ2 were of the opinion that the process to modernise facilities with present ownership and management structures was too cumbersome and was, in fact, part of the problem, causing the increasing irrelevance of some NFPMs. The view was expressed that the process would be facilitated by market forces and private enterprise if changes were made to these structures.

10.3 Section 7 Committee recommendations presented at workshop of 14 November 2006

Proposals

Recommendation 10: That infrastructure backlogs on markets should be addressed and a detailed needs assessment undertaken.

The Committee saw this as the role of the proposed national entity. It was recognised that the establishment of such an entity would be a complex and time-consuming undertaking. It was therefore recommended that the NAMC together with the National Department of Agriculture should facilitate a detailed infrastructure needs assessment.

Outcome

The proposal that a detailed needs assessment be undertaken was supported. This should also take into account the suitability of the current location as well as the structure of FPMs (in terms of the ideal future format).

11. RECOMMENDATIONS

The approach followed by the Section 7 Committee in undertaking the investigation was to invite comments from interested parties on a broad range of topics related to NFPMs, guided by a framework document. The topics had been identified from previous investigations and through consultation with industry experts on the Section 7 Committee. These comments were used to prioritise areas for further research, namely:

- Ownership and management
- Legal framework
- The commission system
- Market access and transformation
- Infrastructure

Based on the outcome of the research, consultations with stakeholders and guided by the comments received in January 2006, the Committee arrived at a series of proposals. As outlined in each of the relevant sections earlier in this report, these were then tested with industry role-players at a workshop held on 14 November, 2006. Through the discussions held the Committee was able to refine its proposals and arrived at the final recommendations outlined below.

Ownership and management

1. Ownership and management of fresh produce markets should be separated. Alternative models should be considered depending on the circumstances at an individual market level.
2. A coordinating mechanism or body should be created to coordinate certain matters related to national fresh produce markets. The Committee is of the opinion that there is a need for some degree of coordination across markets with regard to:

- Addressing transformation objectives
- Optimising resources and reducing costs for customers
- Food safety and traceability requirements as well as the implementation and enforcement of regulations regarding quality standards
- The rationalisation and standardisation of legislation
- Addressing infrastructure backlogs and ensuring that adequate planning is done for future requirements

This body could be introduced in terms of statutory provisions (such as the Marketing of Agricultural Products Act 1996) and it is proposed that this body should be responsible for implementation of the Section 7 Committee recommendations.

3. The proposed coordinating body should forge closer relations with local government.
4. It is proposed that a senior advocate be approached for an opinion on the process and applicability of Section 78 of the Municipal Systems Act (dealing with investigations into services).
5. A national food distribution strategy should be drafted by the National Department of Agriculture in cooperation with stakeholders.

Legal framework

6. A review and redrafting of all FPM related legislation should be undertaken. It is proposed that this be undertaken by a committee/ working group made up of experts. The following, among other things, should be addressed:
 - Rationalisation of market-related bylaws
 - Review of the APA Act to address, among other things:
 - Structure and representation of APAC and its committees
 - Enforcement mechanisms
7. It was agreed that the proposed coordinating body should coordinate efforts to ensure that FPMs are able to meet food safety and quality standards requirements.

The commission system

8. The Section 7 Committee is of the opinion that there is place for both the wholesale and commission systems on NFPMs although it is acknowledged that they are different systems and should be kept separate. The two systems should, however, be accorded equal recognition. The following recommendations are therefore made:
 - The choice of which system to adopt as the primary system should be made at an individual market level. Provision could be made for a secondary system on the same site but not on the same floor

- The current system of recovering marketing costs should be reviewed and a more progressive and competitive system should be introduced
 - Contractual arrangements for intermediaries should be introduced, providing for:
 - a. Limited license period with periodic reviews
 - b. Performance criteria
 - c. Transformation criteria
 - Market authorities should be strengthened through the regulatory framework and appropriate systems should be introduced to deal with illegal practices.
 - Commission agents should not be able to purchase produce from themselves.
 - The provision of credit should not be the core business of commission agents (although it is acknowledged that there is a need for agents to provide credit to retain certain buyers).
 - Market authorities should consider discounting market dues with regard to direct marketing to make these deals more attractive.
9. There is a need for a transparent price transmission system across markets (collective price transmission). The best way to achieve this should be investigated, with recognition that a number of initiatives to this end have already been undertaken.

Market access and transformation

10. The need for broad transformation targets has been agreed upon. The exact levels of these targets should be further examined. They should eventually be lobbied at a local level and each market should determine what is suitable. The proposed coordinating body should be involved in the lobbying and implementation process. The proposed targets (to be achieved by 2014) include:
- a. 30% of volumes to be traded through black commission market agents
 - b. At least 25% of existing agencies to have BEE involvement/ participation
 - c. Every market to identify five black salespeople of repute and ability to become market agents
 - d. 50% of market masters to be black
11. A package of measures to assist black traders on markets should be put together and lobbied at each market. The proposed body should coordinate this activity.

Infrastructure

12. Infrastructure backlogs on markets should be addressed and a detailed needs assessment undertaken. The latter should also take into account the suitability of the current location as well as the structure of FPMs (in terms of the ideal future format).

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