REPORT ON THE INVESTIGATION INTO FRESH PRODUCE MARKETING

REPORT 1
JOHANNESBURG FRESH PRODUCE MARKET

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Introduction

Following complaints by the National Fresh Produce Forum and a number of farmers as to the operation of the Johannesburg fresh produce market, the Minister of Agriculture concurred with the viewpoint of the National Agricultural Marketing Council (NAMC), that it should consider the operation of the National Fresh Produce Markets (NFPMs) in general and the Johannesburg market in particular. This report considers the Johannesburg market.

This report takes the aims of the Marketing of Agricultural Products Act, 1996, as its starting point. A committee was established by the NAMC[1] to consider whether the Johannesburg market promotes the efficient marketing of fresh produce between the producer and the consumer.

Therefore, the committee felt that it should consider the following questions.

1. How does the Johannesburg market compare to the alternative marketing channels for fresh produce in South Africa?

2. Is it one of a number of distribution channels competing on an equal footing, or is it in some way dominant?

3. If there is dominance of some sort, is it supported by statute in any way?

4. How does the market operate? Is there ease of entry to the market, whether as a producer, an intermediary or a buyer? If there is not ease of entry, how is entry determined, and how are the privileges of entry prevented from being excessive?

5. How are prices determined on the market? Is the price formation process efficient, equitable and transparent?

6. Who owns the market? Is there a conflict of interest or any other problem arising form ownership?

Johannesburg market in context.

The Johannesburg market is the biggest of 14 NFPMs. In the 1996/97 financial year it handled 762 0000 tonnes of produce with a value of R929 million. Fruit and vegetable producers have a choice of marketing channel; one or more of the NFPMs or other fresh produce markets, selling their produce direct to larger intermediaries such as chain stores, or selling their produce at the local level. The proportion of fresh produce that goes through NFPMs is falling relative to other channels. However, prevailing prices at the NFPMs, particularly Johannesburg market, appear to serve as the reference point for price negotiations for transactions outside the NFPMs.

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[1] In terms of Section 7 of the Marketing of Agricultural Products Act, 1996.

The committee believes that the old Commission for Fresh Produce Markets Act, which was repealed in 1992 and which controlled the establishment of markets historically, contribute to only one market being operated in Johannesburg. Fresh produce agents had an exclusive right to sell produce on the market. Given the limited availability of floor space, it is clear that agents in fact had access to a protected sales environment.

It is theoretically possible for new markets to be established in the Greater Johannesburg Metropolitan Council area. However, according to the Market Master any new market would have to operate in terms of the Metropolitan Council by-laws, and the land used would have to be rezoned. City Ordinances required that the permission of the Metropolitan Council be given before a new market can be established. Given the income that the Johannesburg market generates, and the Metropolitan Council's difficult financial situation, it would appear unlikely that the Metropolitan Council would encourage the establishment of alternative markets. However, there are areas which are close to the Johannesburg market, (Alberton for example) which do not fall under the jurisdiction of the Greater Johannesburg Metropolitan council. As a result, there is little to stop the establishment of rival markets relatively close by, except the commercial risks that inevitably arise from challenging an established market.

Johannesburg market in action

The producer dispatches his or her produce to the market. Delivery notes are taken to the market's office block for input onto the market's computer system. The agents logs onto the markets computer system and enters the details of the goods he/she has received. Buyers walk from hall to hall with laminated computer coded buying cards. These buying cards are issued by the market to buyers when the market has received either a bank guarantee p to a specific limit, or a bank guaranteed cheque or cash. When a buyer and an agent agree on a price or some produce, the agent swipes the laminated card onto the system and inputs information concerning the sale onto the computer. This automatically results in the appropriate amount of money being debited form the buying card. The computer generates documentation which allows the buyer to take the produce past the doorman and out of the market.

The computer system keeps the market authorities informed as to what gross sales revenue is due to the account of which producer. At the end of each day the market's computer system prints out a summary of the sales transacted per agent. The market deducts its commission of 5% of sales revenues before cheques are made out to the agents. The agents commission is negotiable and reportedly does not exceed 7,5% (5% in the case of potatoes) of the gross sales revenue they generated. The agents are responsible for paying the producers, within 15 days, the money owed to them, net of the agent's commission. The agents have to manage their trust accounts in accordance with the Agricultural Produce Agents Act (Act 12 of 1992).

The institute of Market Agents of South Africa (IMASA) states that "market agents provide producers with a host of different professional services and they have been instrumental in the establishment of effective marketing strategies for farmers". Not all agents operate in all of the halls. Thirteen agents handle fruit, 12 agents handle vegetables, whilst 13 agents handle potatoes and onions. It is the view of IMASA that market agents generate the sales on the market, and that it is the responsibility of the market authorities to provide services and facilities that allow the market agents to perform their role as well as possible. The market authorities are accountable to the Greater Johannesburg Metropolitan Council for the way the market is run. In particular they are responsible for ensuring that the rules of the market and the city by-laws that relate to the market are observed.

Wholesalers are one of the biggest categories of buyer on the market. Some are based on the market's premises and some are based away form the market. Those wholesalers based at the market are known as platform traders. They make their money from buying in bulk and selling to retailers and hawkers in smaller quantities.

A clear tension exists between the market agents (and their representatives) and the market authorities. This should not be particularly surprising. The collection of the market's revenue is reliant upon the agents utilizing the official computerized sales system. There is also a natural tension between the market authorities and the Agricultural Produce Agents Council (APAC). Responsibilities at the market are split between the two. APAC has a statutory responsibility to regulate the operation if fresh produce agents. The market authorities are responsible for ensuring that the agents observe the rules of the market. Agents are not supposed to advantage one producer at the expense of another in the course of their trading activities.

The activities of the market agents are largely governed by the Agricultural Produce Agents Act, 1992 (the "Agents Act"). The Agents Act, in contrast to its predecessor, shifted the onus for regulating the occupation of agent from the Government to the industry itself. Although the actual regulation of the agents are technically divorced from each other, in practice the actual operating conditions on the markets obviously impacts on the implementation of the Agents Act.

Recent reports by the Office of the Auditor-General and the Office for Serious Economic Offences identified a number of weaknesses in the implementation of many parts of the system described earlier. It should be noted that the second report was instigated under the auspices of the Agricultural Produce Agents Act and that this act contains a secrecy clause which prohibits the release of the report unless for official purposes. Since the reports were completed, the Johannesburg Metropolitan Council appointed a new Market Master with effect from November 1996. There has been significant effort to respond to the findings of the two reports, although the market authorities argue that resource constraints have to a very significant degree hampered these efforts. Furthermore, they disagree with criticism in the report with regard to the use of own buying cards by agents as a means for providing buyers with credit.

A number of other issues were raised with the committee by various parties, such as the way that floor space on the market is allocated to agents, the ownership of interest on monies in trust accounts, the problems that the market authorities have in accessing the market's surplus revenue, and security concerns.

Price formation.

Factors influencing price determination reportedly include; prices the previous day, prices and quantities on other markets, number of buyers, enquiries form buyers, quantity sold the previous day, and the day of the week. As the Human sciences Research Council (HSRC, 1991) points out, "the subjective perception and judgement of salesmen, based on their experience, play a decisive role in their evaluation of the factors. Certain salesmen also indicated that to a large extend they rely on intuition or "gut feeling".

Those who favour the current agent based arrangement (IMASA, the APAC, and the Market Master) argue that the South African system is unique and viewed with envy by the farmers in other countries where markets are mainly wholesale in nature. It is argued that the current system favours small producers because in terms of their code of conduct agents are meant to treat all their principals equally. However, such a perspective may be disputed. Furthermore, there is concern in some quarters that the commissions received by the market and the agents are excessive and are to the detriment of producers and consumers alike. Other concerns relate to the degree of competition on the market, grading problems, and the way in which agents deal with the removal of spoiled produce from the market, all of which could imply inefficient pricing.

It is important to recognise that competition works on two levels at the Johannesburg market. First, there is the degree to which agents compete to get the farmers' business. Secondly, there is competition between agents for sales to buyers.

The many farmers who supply the Johannesburg market have relatively limited choice of agents. IMASA and the market authorities argue that agents compete vigorously for business, but the committee is not convinced that this indeed the case.

Although buyers on the market also face a limited number of agents, it would appear that the implications for competitive price formation between agents and buyers are less serious than one might first suppose. This is because the deal with one of approximately 300 salesmen who operate on the market. However, whilst agents are able to get access to price and volume information from the market computer, this information is not freely available to buyers. Contact with IMASA, agents and buyers on the market floor has done nothing to convince the committee that the price formation process is anything but skewed (in terms of information availability) at best, and at worst based on ubiquitous "gut feel".

In terms of the Agricultural Produce Standards Act, nobody marketing agricultural produce is obliged to undertake grading. However, if agricultural produce is labeled as, for example, grade 1, then the produce must conform to that specification. Unfortunately the consensus amongst many of the role players is that the grading of fresh produce delivered to the Johannesburg is inconsistent.

The market keeps figures that indicate the proportion of fresh produce that is removed form the market by agents, with the approval of the market authorities, because it has gone bad. The figures show that between 1% and 2% (by mass) of fresh produce has to be removed to be destroyed. According to market authorities, agents are generally reluctant to inform a farmer that his or her produce ahs gone bad. As a result, agents often prefer to pay the farmer the average price for the day. This implies three things. First, although the percentage removed are relatively low, it indicates that buyers are paying prices which on average are higher that would be if the market were to clear properly. Secondly, to the extent that the agents generate sufficient resources from their commissions to be able to afford to pay farmers market average prices on produce that could not be sold, it may be that the commission they charge farmers includes an element of abnormal profit. Thirdly, if an agent pays some farmers in full for produce that goes bad, but not others, it would again imply that gents are breaking their code of conduct, in terms of which they undertake to treat all farmers equally.

The APAC argues that one of the advantages of the current system is that agents are obliged to act as an agent if requested by a produce, and to treat all producers equally irrespective of the quantity of produce that they deliver to the market. However, small consignments may well be considered as a nuisance, especially if they are not graded. As a result such consignments may be sold with little effort to attain the best possible price. Small buyers may also find that salesmen are more concerned with dealing with larger buyers, so that they adopt a "take it or leave it" attitude in price negotiations. The committee is of the opinion that, practically speaking, the small buyer is forced to purchase produce form wholesalers who must add on their margin to the price at which they purchased from the agents.

Ownership and control at the Johannesburg market.
If there is one thing that just about every submission to the commission agrees upon, it is that the current structure of ownership and management at the Johannesburg market needs to be changed. This is essentially because the Metropolitan Council's financial problems have led to a freeze in posts and capital expenditure at the market which have had serious consequences for the way it functions. However, within this context it would appear that a number of different groups are vying for control and influences in the way that the Johannesburg market is run. The market authorities report that there is a strong feeling within the industry that some statutory body, independent of the industry, should retain ownership to ensure that the market authorities continue to manage the market in an impartial and objective manner.

Discussion and analysis – the viewpoint of the Committee.
The committee is particularly concerned about the following:

- the untransparent, apparently inefficient, and subjective price formation process and as a result the possibility that the current system may, in certain circumstances, either inflate consumer prices, or negatively affect producer prices;

- the privileged, and largely uncontested position of the agents who bear no price risk and appear, as a result, to take a large commission relative to their exposure;

- the possibility that agents do treat producers differently (e.g. with regard to the way in which farmers are remunerated for produce that has gone bad, and the speed with which farmers are remunerated);

- that fact that the current system might not sufficiently cater for smallscale producers and buyers who have little choice but to deal with relatively large, volume drive agents;

- that fact that the market infrastructure and facilities are insufficient for smallscale buyers;

- that fact that there are apparently significant barriers to entry for prospective new agents; and

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

There are really two main options. The first is that the existing out of hand sales system is retained but better resourced, in particular with a view to ensuring a more competitive market structure and more efficient price formation. There would need to be tighter proactive control by both the Market Master and the APAC over agents.

The alternative is to have the agent based system competing with a wholesale system and possibly an auction system on the same market, as per the unimplemented recommendation of the 1991 HSRC study.

Recommendations.
The committee makes the following recommendations.

1. That the National Minister of Agriculture approach the Greater Johannesburg Metropolitan Council and express concern over the way that the financial difficulties of the Metropolitan Council are having a severely negative impact on the Johannesburg market which is of national importance.

2. That the Metropolitan Council should, as soon as possible, take the appropriate steps to give market management financial independence, and the authority to manage the market without reference to the Metropolitan Council. There is no compelling reason why the Metropolitan Council should continue to won the Johannesburg market, but, if it does, ownership and management should be split.

3. Any moves to commercialise or privatize the market in accordance with recommendation 2 should be designed in such a way that the market is managed in a neutral and objective way that is not beholden to any narrow set of vested interests.

4. The market authorities should invest time and money in upgrading the operations of the market. In particular, money should be spent on improving the fabric of the market, especially security and wholesale facilities, and the computer system handling sales, so that real time price and volume information is available to buyers and sellers. Sufficient staff should be employed to improve the policing of the system and aspect such as grading. Furthermore, steps should be taken to increase the number of agents and reduce the barriers to entering the market as an agent, both in the way that floor space is allocated, and in terms of the Act 12 of 1992.

5. The Johannesburg market should allow wholesalers on the market to receive fresh produce directly form producers. Such an initiative should be handled in such a way as to ensure that activities (transaction price, volumes sold, stocks on hand) of such wholesalers are captured by the market's information system.

6. APAC should make producers aware that the ownership of interest earned on monies in trust accounts does not lie with agents as of right, but is a matter for negotiation between producer and agents.

7. APAC should make producers aware that the level of commission that is deducted by agents is a matter for negotiation.

8. APAC should ensure that agents do not operate in a way that advantages some producers over others (as per code of conduct). In particular, where an agent pays a producer for produce that has gone bad on the market, he or she should be obliged to do the same for all such producers. If an agent pays money to a producer for produce sold on the market on a daily basis, such a facility should be available to all producers with whom the agent deal. Where an agent pays over interest on a trust account to a producer, all producers should be entitled to such interest payments.

9. 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.

10. The composition of the Agricultural Produce Agent Council should be broadened

further than is currently contemplated in the Amendment Bill so that there is a better balance between the representation of agents, producers and the public interest.

11. The APAC should ensure that the onus is on agents to keep proper records rather than on the producer to prove wrong doing on the part of the agent.

12. The Minister of Agriculture should issue a public statement clarifying the situation with regard to statutory and voluntary levies. Furthermore, where levies have been collected after 6 January 1998, without the consent of the producer, such levies should, as far as is possible, be refunded to the relevant producers. The NAMC should take note that there is a danger that applications for relatively small levies may in actual fact provide the recipient with the information required to enforce non statutory initiatives to manage the supply of produce onto markets, and to collect " voluntary" levies.

13. The secretary clause in Act 12 of 1992 should be removed.

14. The report of the Auditor-General, and the Office for Serious Economic Offences should be made public as soon as possible.

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1. Introduction.

1.1. Why the Section 7 Committee was established.

The 15 National Fresh Produce Markets have traditionally handled the bulk of all domestically consumed fresh produce. By far the biggest of these markets is the Johannesburg market. Since the early 1990s there have been complaints by producers as to the way the market operated. In particular producers have been concerned that they have not been getting the appropriate payments due to them for produce sent to the market. Such complaints have been accompanied by significant publicity.

In November 1995 the Greater Johannesburg Metropolitan Council requested the Auditor-General's Office to investigate the various allegations. It reported in early 1996. This was followed up in December 1996 by a report by Ernst and Young on behalf of the Office for Serious Economic Offences (OSEO). Both reports made recommendations, although a lack of evidence prevented the Auditor General and OSEO from following up the reports with legal action. The recommendations in the two reports have prompted some actions by the Metropolitan Council and subsequently the market authorities as well as the Agricultural Produce Agents Council (APAC). Nevertheless, the Minister of Agriculture has received complaints from the National Fresh Produce Forum, as well as a small number of producers. In response to these complaints the Minister of Agriculture concurred with the viewpoint of the National Agricultural Marketing Council that it should consider the operation of the National Fresh Produce Markets in general and the Johannesburg market in particular. Accordingly the NAMC established a committee in terms of section 7 of the Marketing of Agricultural Products Act, 1996, to consider these matters. This report considers the Johannesburg market. A second report will consider issues that cut across all the National Fresh Produce Markets (NFPMs).

1.2. Committee's overall terms of reference.

- To investigate the operations of the Johannesburg Fresh Produce Market, particularly its efficiency and accessibility by all market participants.

- To investigate the legal status of the NFPMs (in particular whether they should be overseen locally or nationally) and suggest appropriate measures.

- To determine the roles of the APAC, the Director of the Market, and the market agents, focusing on how they have executed their roles in terms of the governing legislation.

- To determine the need to amend the Agricultural Produce Agents Act, 1992.

- To determine the need for enlarging the current market facilities and/or the establishment of additional markets.

- To make recommendations to the Minister of Agriculture as to the appropriate course of action.

1.3. Acknowledgements.

The committee would like to express its appreciation for the cooperation and assistance it has received from the Johannesburg Market Master, Mr Tony Thompson, and his staff, the Johannesburg branch of the Institute of Market Agents of South Africa (in particular Mr Julian Van der Nat and Mr Peter Venter), and the Agricultural Produce Agents Council (Mr Eric Johnson). The committee would also like to thank those individuals who have taken the time and trouble to give the committee the benefit of their insights and opinions on the operations at the Johannesburg market, whether at the meeting held at the market on 1 April 1998, during visits to the market by members of the committee, or in other meetings with the committee.

1.4. The committee's analytical points of departure.

Section 2 of the Marketing of Agricultural Products Act, 1996, is of particular relevance to this investigation. It sets out the objectives of the act: improved market access; the efficient marketing of agricultural produce; the viability of the agricultural sector; and the optimization of export earnings. Section 2 also states that no intervention in terms of the act should be approved if it does not substantially advance one or more of these aims without being substantially detrimental to any of the aims or food security, employment levels or fair labour practice. This report takes such a perspective (and the implicit trade offs contained therein) as its starting point.

More specifically the committee was concerned to consider the following questions.

- Does the Johannesburg Fresh Produce Market promote the efficient marketing of fresh produce between the producer, the market intermediaries, and the end consumer?

- Does it facilitate the transmission of clear signals from consumer to producer concerning the quantity and quality of fresh produce supplied by the producer?

Therefore the committee felt that it should consider a number of important subsidiary questions, which in turn form the structure of this report.

1. How does the Johannesburg Fresh Produce Market compare to the alternative marketing channels for fresh produce in South Africa?

2. Is it one of a number of distribution channels competing on an equal footing, or is it in some way dominant?

3. If there is dominance of some sort is it supported by statute in any way?

If the Johannesburg market is not dominant and not protected in any statutory way then, to the extent that it tries to support or perpetuate price formation arrangements which are inefficient or inequitable for one or more parties, it should logically fall into disuse. However, if it has a pre-eminent position which is founded in any way on some sort of statutory support or privilege (implicit or explicit, past or present) then the precise way that the Johannesburg market operates becomes that much more important. Additional and related questions that the report considers are as follows.

4. How does the market operate? Is there ease of entry to the market, whether as a producer, an intermediary or a buyer? If there is not ease of entry, how is entry determined, and how are the privileges of entry prevented from being excessive.

5. How are prices determined on the market? Is the price formation process efficient, equitable and transparent?

6. Who owns the market? Is there a conflict of interest or any other problem arising from ownership?

1.5 Structure of the paper.

The paper's structure is based around a consideration of the issues referred to in section 1.4. Section 2 places Johannesburg market in its macro context. The relationship between the Johannesburg market and the other distribution channels for fresh produce in South Africa is considered, as is the legal status of Johannesburg market. Conclusions are drawn as to the influence of the Johannesburg market on the other marketing chains, and the degree to which this is due to any sort of statutory privilege.

Section 3 looks at how the Johannesburg market operates, and sets out the division of responsibilities between the market master and the APAC. There is a summary of operational difficulties that have been identified by previous investigations as well as new ones which have been raised with this committee.

Section 4 considers the way that prices are generated at the Johannesburg market, and whether they are arrived at efficiently, equitably, and transparently. Section 5 looks at who owns and controls the market, and considers whether this gives rise to conflicts of interest or any other problems. Section 6 draws together and discusses the main issues, whilst sections 7 and 8 give the committee's conclusions and recommendations respectively.

2. Johannesburg market in context.

2.1. Johannesburg market and the other distribution channels for fresh produce in South Africa.

Marketing is an important consideration for those involved in the production of any agricultural commodity. It is particularly important for producers of fresh fruit and vegetables. The highly perishable nature of fresh produce means that it cannot be held back from the market (if for example prices become unattractive) once it is harvested because its quality will rapidly deteriorate. Unsurprisingly such considerations have a significant impact on prices. Seasonality of production, and the susceptability of a large percentage of the crop to short term climatic events add to the instability of spot prices. Individual sellers have very little market power, if any.

The Johannesburg market is one of 15 NFPMs[2]. In 1993 the 15 NFPMs handled 2,3 million tonnes of produce worth R 1 867 million (LAPC 1993). By the 1996/97 financial year this figure had risen 2.7 million tonnes with a value of R 2 960 million. Johannesburg market is the biggest of the NFPMs and in 1996/97 handled 762 000 metric tonnes of produce with a value of R 929 million (28% and 31% respectively of the national totals for the fresh produce markets).

Fruit and vegetable producers have a choice between utilizing one or more of the NFPMs, selling their produce direct to larger market intermediaries outside of the NFPMs (such as chain stores or the companies contracted by them to pack and supply fresh produce, or large wholesalers), or selling their produce at the local level (retail outlets, road stalls, hawkers, and local farmers' markets). The larger direct buyers, particularly chain stores, are notoriously demanding of their suppliers, and require a consistent supply of large volumes of good quality produce. It is reported (HSRC, 1991) that in the majority of cases prevailing prices at the NFPMs serve as the reference point for price negotiations when direct sales take place. The committee's contacts with industry role players in the course of its investigation support the HSRC's assertion in this regard[3].

In 1989 NFPMs accounted for 64% (by value) of domestic sales of fresh produce by the producer (HSRC, 1991). The HSRC estimated that the balance went directly from the producer to the trade without going through the NFPMs. About 60% of such direct sales were to wholesalers, 28% to retailers, and 12% through informal trade (road stalls and hawking).

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[2] The other 14 operate at Cape Town, Durban, Pretoria, Port Elizabeth, Pietermaritzburg, Bloemfontein, East London, Kimberley, Klerksdorp, Uitenhage, Springs, Vereeniging, Welkom, and Witbank.

[3] For example, one pre-packer explained that the prices he pays to farmers are based on a weighted average Johannesburg market price for the previous week, with a premium added because he takes the best quality produce (the packer sends the remaining produce that he receives from farmers to an agent at the Johannesburg market). The multiples with which the packer deals also pay him prices which are linked to the Johannesburg market and which include negotiated margins. The packer argued that it cannot be any other way. If the prices he pays to farmers are not linked to the Johannesburg market he will find that the farmers who supply him will take their produce elsewhere (e.g. direct to the market). If the prices he receives from the multiples he supplies are not similarly linked to the market, their sales of pre-packed produce will lose market share to loose produce. The packer acknowledged that there is a paradox. Those who deal directly with farmers have to encourage them not to use the fresh produce market, but at the same time they need the market because it provides a useful reference price.

LAPC (1993) reports that in the 15 years to 1993 the value of fresh produce marketed directly has grown quicker than that at the NFPMs. Every indication that the committee received during its investigations appear to confirm this trend, although the very fact that sales are direct makes it very difficult to come by accurate figures of the volumes passing through direct channels.

2.2. The legal status of Johannesburg market.

The Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992), *inter alia* repealed the Commission for Fresh Produce Markets Act, 1970. The latter act regulated the establishment and operation of NFPMs such as the Johannesburg market. In terms thereof permission had to be obtained to operate a market and only one market was allowed for the Johannesburg area.

With the repeal of the Act in 1992 the operation of the market is being governed by municipal by-laws. In terms thereof no person other than an agent or person acting on behalf of such agent may sell produce on the market floor [Section 13(1)]. There are some exceptions, notably to wholesalers (who are not answerable to any body except the Market Master) acting on the market with produce bought from the floor [Section 41(1) and (2)]. However, in the majority of cases this means that only agents are allowed to sell on the market.

These agents and their salespersons operate on the authority of permits issued by the Market Master who may refuse to issue such permits if he or she is of the opinion that the particular person is unsuitable (with reference to the market rules and the relevant by-laws). The issuing of new permits also appears to be coupled to the availability of space on the market floor, i.e. once a permit is issued the agent also gets the exclusive right to use space allocated to him or her (Section 15).

The hours of sale on the market are determined by the Market Master, and no product may be sold outside such hours without the permission of the Market Master [Section 28(1)]. Agents must issue sales notes in respect of produce for each consignment. No payment for produce may be made to anybody but the Market Master (Section 31). The payment must be made in cash, unless the buyer made arrangements for deferred payment on submission of suitable guarantees. Produce may not be removed from the market floor unless a copy of the sales note accompanies the produce.

In terms of Section 79(14)(a) of Local Government Ordinance of 1939, all revenue collected from the operation of the market has to be kept in a separate account and may not, without the consent of the Administrator (read Premier of Gauteng), be utilized for any other purpose not related to the market. If such permission has not been obtained, it would make the utilization of such monies unlawful and tantamount to theft.

2.3. The degree to which the influence of the Johannesburg market is based on statutory privilege (past or present).

From the above it seems clear that the old Commission for Fresh Produce Markets Act which controlled the establishment of markets historically could have led to only one market being operated in Johannesburg. Coupled to the fact that, apart from wholesalers operating on the market, nobody other than agents were allowed to sell produce on the market, it becomes apparent that fresh produce agents had an exclusive right to sell produce on the market. Coupled to the limited availability of floor space it is clear that some privileged agents in fact had access to a protected sales environment. It should also be noted that the buying of agencies was allowed. In other words the ownership of an agency could change but this would not be accompanied by a resultant loss of floor space.

It is theoretically possible for new markets to be established in the Greater Johannesburg Metropolitan Council area. However, according to the Market Master any new market would have to operate in terms of the market by-laws, and the land used would have to be rezoned. City Ordinances require that the permission of the Metropolitan Council be given before a new market can be established, although if permission is refused an appeal could be lodged with the Administrator (i.e. the Premier of Gauteng). Given the income that the Johannesburg market generates, and the Metropolitan Council's difficult financial situation it would appear unlikely that the Metropolitan Council would want to encourage the establishment of alternative markets. However, there are areas which are close to the Johannesburg market, (Alberton for example) which do not fall under the jurisdiction of the Greater Johannesburg Metropolitan Council[4].

Hence, whatever the attitude of the Greater Johannesburg Metropolitan Council to the establishment of new markets in its area, there is little to stop the establishment of rival markets relatively close by, except the commercial risks that inevitably arise from challenging an established market.

2.4. Control boards and levies.

The 1968 Marketing Act, which provided for the establishment of control boards and the collection of statutory levies, was repealed by the Marketing of Agricultural Products Act,1996. However, it is important to understand how the four control boards concerned with Fresh Produce interacted with the Johannesburg market.

Until the mid 1980s the Citrus Board operated a single channel marketing arrangement for both domestic sales and sales overseas. Citrus that was not suitable for export was sent to the NFPMs. There were only two Citrus Board agents on the Johannesburg market. This controlled marketing arrangement also facilitated the collection of statutory levies. Between the mid 1980s and 1997 the Citrus Board continued to operate a single channel export arrangement but relaxed controls on the domestic marketing of citrus.

The Banana Board established seven ripening centres. Whilst farmers were able to market their own bananas in growing areas, only the Board could market bananas outside of these areas. The Banana Board set its own prices and worked through a limited number of agents on the various NFPMs until 1985 when it established its own agency to control the flow of bananas to the domestic market.

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[4] Indeed, the lack of reinvestment in the Johannesburg market and the resulting deterioration in the overall infrastructure of the market (resulting from the Metropolitan Council's financial difficulties) appear to have prompted some of the agents on the market to consider relocation to a nearby site.

The Potato Board used statutory levies, collected at the NFPMs, to finance its surplus removal scheme, which was designed to protect a floor price. Surplus potatoes were then reportedly sent to former homelands such as Transkei and Ciskei.

The Deciduous Fruit Board operated single channel marketing arrangements on the domestic (until the mid 1980s) and overseas markets (until 1997). It made certain products, which were not suitable for export, available to the NFPMs at certain times of the year.

The various NFPMs were useful vehicles for controlled marketing by the various Boards concerned with fresh produce. The practice of appointing a limited number of agents made it easier to set prices, negotiate lower levels of commission, whilst the *modus operandi* of the NFPMs, including the Johannesburg market, facilitated the collection of statutory levies even when the direct involvement of the various boards on the domestic market was limited.

With the repeal of the 1968 Marketing Act the Johannesburg Fresh Produce Market reports that it no longer deducts statutory levies from the trust cheques that it issues to agents. However, it does deduct voluntary levies for a number of commodities (such as onions, tomatoes, potatoes, and garlic). Any organization which would like to claim a voluntary levy has to furnish letters from individual farmers authorizing the Johannesburg market to make the appropriate deductions.

3. Johannesburg market in action.

3.1. How does the market operate?

Figure 1 is a simplified schematic representation of the flow of fresh produce, information, and money between the four principal interested parties; the producer, the agent, the buyer, and the market authorities. The following numbered points relate to the numbering in Figure 1.

1. The producer (who has already established contact with one or more of the agents on the market) dispatches his or her produce to the market.

2. The guard at the market gate stamps all three copies of the delivery note (containing the producer's name, agents name, date, quantity and type of produce) and retains one copy. From 0600 to 1400 every day, once an hour, delivery notes are taken to the market's office block for input onto the market's computer system. Meanwhile the driver has taken the produce to the designated agent.

3. The agent counts and unloads the produce (any agreed differences between the actual quantities and the details on the delivery note are noted on the delivery note).

4. The agent logs onto the market's computer system and enters the details of the goods he has received. The computer issues the agent with a goods received number (GRN) corresponding to the delivery note.

5. Once the agent has received a GRN from the computer he is free to start selling the produce to buyers. Buyers walk from hall to hall with laminated computer coded buying cards. These buying cards are issued by the market to buyers when the market has received either a bank guarantee up to a specified limit, or a bank guaranteed cheque or cash.

6. When a buyer and an agent agree on a price for some produce, the agent swipes the laminated card onto the system and inputs information concerning the sale (the GRN of the produce and the price) onto the computer. This automatically results in the appropriate amount of money being debited from the buying card. The computer generates a market sales note (MSN) and a removal note (RN). This documentation allows the buyer to take the produce past the doorman and out of the market.

7. The computer system keeps the market authorities informed as to what gross sales revenue is due to the account of which producer. This can then be taken from the revenue received directly from the buyers.

8. At the end of each day the market's computer system prints out a summary of the sales transacted per agent. A cheque is made out to the agent . The cheques are printed with the narration "For Trust Account Only", so that cheques are only deposited in the agent's trust account. The cheques to the agent are net of the market's commission. The market is entitled to deduct 5% of the gross sales revenue it handles as commission to cover its own expenses in maintaining the market and the system.

9. The Agents' commission is negotiable and reportedly does not exceed 7,5% (5% in the

case of potatoes) of the gross sales revenue they generate[5].

10. The agents are responsible for paying the producers the money owed to them, net of the agent's commission. The agents have to manage their Trust accounts in accordance with the Agricultural Produce Agent's Act (Act 12 of 1992). Agents are required to effect payment to producers within 15 days of a particular consignment being fully sold.

Produce that remains on the trading floor at the close of trading may be sold on the following day. It should be noted that if produce is unsold or spoiled it may either be removed from the floor by the agent and destroyed, or taken back by the producer. In the former case the agent needs the permission of the producer and must attain certain approvals and certification from the market authorities. A removal or rejection slip is filled in and cross referenced with the appropriate GRN.

3.2. The roles, responsibilities and interests of the different institutions and interest groups regarding the Johannesburg market.

<u>The producers.</u>

Producers are the source of the fresh produce that is marketed on the Johannesburg market. The producer has the right to expect the highest possible average price (net of deductions and losses on the market) that prevailing market conditions justify. In turn this means that the producer has a legitimate expectation that the agents with whom he deals will, at all times, act in his best interests, and that deductions for commissions will be pitched at as competitive (i.e. low) a level as possible.

<u>The end consumer.</u>

It is assumed that the end consumer interest lies in having access to a diversity of grades of fresh produce at competitive prices from a diversity of sources.

<u>The agents and the Institute of Market Agents of South Africa (IMASA)</u>.

The Institute of Market Agents of South Africa states (page 4 of submission to this committee) that "market agents provide producers with a host of different professional services and they have been instrumental in the establishment of effective marketing strategies for farmers...Some of these services include:

- Development of production planning strategies for farmers;
  (having the right product at the right place at the right time)
- Packaging;
- Transportation;
- Off-loading and stacking;

[5] The degree to which the level of agents' commission is flexible is an important issue and is considered in more detail later on in the report.

- Provision of cold storage and or ripening services[6];
- Promotion strategies;
- Professional sales functions;
- Delivery of produce to buyers;
- Accurate accounting functions;
- Procurement of produce - establishment and maintenance of a broad producer base;
- Establishment and maintenance of a broad buyer base".

Agents operate on behalf of producers who wish to sell their produce through the market. As they occupy a position of very considerable trust, the activities of agents are regulated in terms of Act 12 of 1992. This act provides for the establishment of an Agricultural Produce Agents Council which *inter alia* has the job of policing the activities of the agents so as to ensure that the rules within, and promulgated in terms of the Act, are properly observed. This act is considered in more detail later in this report.

IMASA is the organization which represents most of the agents operating on South Africa's fresh produce markets. It claims a membership of 86 market agents who are collectively responsible for 95% of sales generated on NFPMs and employ 3 800 staff. It further claims that all of the 18 agents on the Johannesburg market are members. Not all agents operate in all of the halls. 13 agents operate in the fruit halls, 12 agents operate in the vegetable hall, whilst 13 agents sell potatoes and onions.

The market authorities.

It is the view of IMASA that market agents generate the sales on the market, and that it is the responsibility of the market authorities to provide services that allow the market agents to perform their role as well as possible. It states that the services traditionally performed by market management include:

"- Sufficient physical facilities, (i.e. buildings and roadways);
- Effective security and protection of assets and persons;
- Hygienic storage facilities (cold stores and ripening);
- Cashiering facilities;
- Extended cash payment systems (credit);
- Electronic sales processing system;
- Compilation and dissemination of sales statistics;
- Market promotion and advertising".

The market authorities are accountable to the Greater Johannesburg Metropolitan Council for the way the market is run. In particular they are responsible for ensuring that the rules of the market and the city by-laws that relate to the market are observed.

The Market Master states that the allocation of space between agents is regularly reviewed on the basis of both the mass and the value of fresh produce handled by agents in the period under review. Applicants who wish to become agents must have a fidelity fund certificate (issued in terms of Act 12 of 1992) and must convince the Market Master that they represent sufficient

[6] Most of the cold storage facilities at the Johannesburg market are owned and operated by the market authorities. However, a number of agents have established some cold storage facilities on the floor of the market.

farmers who will send sufficient volumes of fresh produce to the market to justify the allocation of floor space. However he indicated that where there is an opportunity to make the profile of the market's agents more representative this particular criteria is not applied as strictly[7].

The wholesalers.

Wholesalers are one of the biggest categories of buyer on the market. Some are based on the market's premises and some are based away from the market. Those wholesalers based at the market are known as platform traders. They make their money from buying in bulk and selling to retailers and hawkers in smaller quantities.

The taxi and bakkie operators.

Taxis and bakkies operate at the market premises. They provide transport facilities for the smaller scale buyers who need to get the fresh produce they purchase at the market to the point of sale to the end consumer.

3.3. Division of responsibilities between the Market Master and the Agricultural Produce Agents Council.

It is important to note that a clear tension exists between the market agents (and their representatives) and the market authorities. This should not be particularly surprising. The collection of the market's revenue is reliant upon the agents utilizing the official computerized sales system. There is also a natural tension between the market authorities and the Agricultural Produce Agents Council (APAC). Responsibilities at the market are split between the two. APAC has a statutory responsibility to regulate the operation of fresh produce agents. The market authorities are responsible for ensuring that the agents observe the rules of the market.

Clearly market agents play a key role in the operation of the market. It is important to emphasize that the market agent is meant to act on behalf, and in the interests, of the producer whose produce he/she is selling. Agents are also not supposed to advantage one producer at the expense of another in the course of their trading activities.

It is particularly important that produce is handled by agents within the system operated by the market authorities. If this requirement is not adhered to then a number of problems arise. First, producers cannot be sure at what price their produce was actually sold, which means that they cannot check that they have been paid the appropriate amount by their agent. Secondly, because the market's revenue base is directly related to the value of produce traded on the

[7] Mr Nedzanani, who is the market's first black agent, started operating as agent on 21 May 1998. He expressed the opinion that in the past couple of years the market authorities have been keen to facilitate the transformation of the Johannesburg market. For example when the Simpson agency closed down the resulting space was reserved for black agents. This prompted Mr Nedzanani (who had many years of experience on the market, more latterly as a salesman) to apply to become an agent. Indeed, given that new agents need to demonstrate that they will be able to bring sufficient volumes of fresh produce to the market, it would appear that in practice the only way for individuals to be in a position to establish a new agency is to have built up a loyalty amongst farmers whilst working as a salesman for another agency.

market, any bypassing of the system implies a loss of revenue to the market.

The activities of the market agents are largely governed by the Agricultural Produce Agents Act, 1992 (the "Agents Act"). The Agents Act was promulgated as the successor of the Agricultural Produce Agency Sales Act, 1975. The Agents Act, in contrast to its predecessor, shifted the onus for regulating the occupation of agent from the Government to the industry itself. Accordingly the Agents Act works on similar principles as the Estate Agents Act, the Architects Act and so forth.

Methodology of regulation.

The Agents Act applies to agents dealing with the products listed in the Schedules thereto. Of interest is that the Act applies to an agent as envisaged in Common Law; that is somebody who buys or sells the listed products on behalf of somebody else. Accordingly the agent is supposed to act on behalf of or on the instruction of a principal and not in his or her own interest. It also means that the Act does not apply to wholesalers or other vendors actually obtaining ownership of the produce. This does not, however, mean that the Act never applies to wholesalers. From an agency angle it does, for example by prohibiting an agent to act as wholesaler.

What is also of interest is that the Act applies to two totally different categories of agent, namely livestock agents and fresh produce agents. To overcome the inherent differences in these two professions use is made of two executive committees, consisting of the two groupings, although both sit on one board named the Agricultural Produce Agents Council. Effectively this means that one in practice has two "boards", one for livestock agents and one for fresh produce agents, acting under the auspices of the Council.

Fresh produce agents as a general rule operate on fresh produce markets. However, the Act in theory relates to agents operating in other venues as well, and not only on markets. In other words, if a fresh produce vendor operates on a street corner in an agency capacity, his or her actions would be subject to the control of the Council.

This is of importance as it is not commonly realized that the actual regulation of the markets and the regulation of the agents are actually divorced from each other and that the one in theory has little to do with the other. In practice, however, the actual operating conditions on the markets obviously impacts on the implementation of the Agents Act. A good example is the operating of the computer system by the Market Authorities. Although it is the Agents Act which primarily governs the keeping of trust accounts by agents and the depositing of monies therein, the market governs the sale of produce and the flow of monies through the computer system operated by it, thus creating an area of mutual "responsibility". The Johannesburg market primarily functions under by-laws and if there is a contradiction between these and the Agents Act, the Agents Act should prevail as a result of it being legislation of national rather than local origin.

The Agents Act to a large extent also operates through subordinate legislation called "rules", which are divided into a code of conduct, fidelity fund requirements, security given by agents, the sale process, control and administration of trust accounts and miscellaneous provisions.

The more important provisions of the Agents Act

Apart from the definition of "agent", as discussed above, the more important aspects of the Agents Act can be summarized as follows.

1. The constitution of the Council, which consists of two officials, two producers nominated by the SAAU (one livestock and one fresh produce), four acting as fresh produce agents and four acting as livestock agents. The Constitution is being reviewed and is the subject of draft legislation (which is dealt with later in this section).

2. The executive committees of the Council, consisting of the respective members of the different categories set out above, which handle all the affairs (save disciplinary matters) of the two categories of agents.

3. The objectives of the Council, which are to regulate the occupation of agent, and to maintain and enhance the status and dignity of agents. Interestingly the objectives do not mention anything explicitly to do with the interests of the producer, in whose interests the agent is supposed to act.

4. The funding of the Council, which is derived from monies paid by agents towards the fidelity fund and application fees to be an agent. The Council may, with the approval of the Minister, use some of the monies in the fidelity fund to combat expenses.

5. The establishment of a fidelity fund and the issuing of fidelity fund certificates. The fund is primarily intended to compensate farmers as a result of any failure by agents to comply with the Act and agents make a yearly contribution thereto.

6. The prohibition to act as agent unless he or she is the holder of a fidelity fund certificate. This means that an agent has to possess a fidelity fund certificate before he/she is allowed to act as agent and receive commission.

7. The giving of security by new agents in addition to fidelity fund payments.

8. The keeping of accounts, and especially a Trust Account in which all proceeds of sales have to be paid. The Trust Account has to be kept separate from the business and other accounts of the agent.

9. The promulgation of rules of which the more important are the rules of conduct and the rules relating to the operation of the trust account (the documentation that must be maintained and the sale procedures, etc.).

10. The "teeth" of the Council, in terms of which it is empowered to hold inquiries and to reprimand, impose conditions and restrictions and to withdraw the fidelity certificate of the agent concerned.

<u>Possible future amendments</u>

Various amendments to the present Agents Act are proposed to enhance its functioning. These are contained in an Amendment Bill which is to go before Cabinet in the near future. Of more importance to the investigation are the following provisions.

1. The extension of fidelity fund certificates to both agents and salesman. This should overcome the present problems experienced with so-called “sub-agencies”; that is, instances where it is not totally clear whether a person is acting as agent or employee.

2. The amendment of provisions stipulating the financial guarantees that agents are meant to provide.

3. The issuing of fidelity certificates to people deemed to be agents. Presently the Council can only effectively act against agents already registered, and this opens the door for speedier action against those resisting registration.

4. The imposition of monetary penalties in addition to the “teeth” the Council has. This is reportedly the sort of punishment of which agents take most notice.

3.4. Operational problems identified by previous reports.

It is in the context of the observations in sections 3.1, 3.2 and 3.3 that the issues identified by the two reports, referred to earlier, should be viewed. The two reports identified weaknesses in the implementation of many parts of the system described earlier. For example, they suggested that there should be more spot checks on agents, better security to prevent produce from bypassing the system in any way and the misuse of buying cards, and more effort put into reconciling incoming fresh produce with outgoing produce. The monitoring of produce being removed from the market to be destroyed was found to be poor. The computer system needed upgrading, not least because when the computer system crashes the back up system appears to be unable to cope. In short the checks and balances within the system appeared to be breaking down.

A disturbing feature of the two reports was the impression given that agents were testing the system to see what they could get away with. Agents kept insufficient records, particularly when the computer system broke down, to allow for the substantiation of transactions to which they were party.

A worrying conclusion of the second report was that the APAC experiences difficulties in disciplining members. It was recommended that the APAC should be more pro-active in their regulation of the market agents.

Some of the specific areas of concern identified by the two reports can be listed as follows.

3.4.1 Conflicts of interest.

The Ernst and Young report was concerned that the significant degree of cross holdings between the owners of the 18 Market Agents (5 groupings of agents accounted for 84% of market share) was not common knowledge on the market. The Market Master reports that the following cross ownership of agencies currently exist:

- Botha and Roodt Market Agencies wholly owns Marco Market Agencies;
- R.S.A. Market Agents owns Ability Broker;

- Dapper Agencies are shareholders in Wempro Market Agents.

The management and owners of certain agencies held interests in businesses which could result in a conflict of interest. Certain of these interests sold or purchased from the affiliated agent.

A number of agents advanced funds to producers. As a result of having an interest in recovering such an advance the agent might not treat all his producers equally (which would imply a breach of the agents' code of conduct).

There was concern expressed at the use of "own buyer cards" by agents without disclosure of the circumstances of such use (to cover up a shortage, to facilitate a shortage, or to facilitate the extension of credit by the agent to a buyer) being disclosed to the principal. The use of such cards to facilitate the provision of credit by the agent to the buyer is of particular concern. It implies that the agent takes ownership of the produce and becomes the *de facto* principal. IMASA argues that the provision of credit allows for the expansion of sales volumes. However, it would appear that credit provision is more naturally the function of the larger wholesalers, who take full ownership of the product.

It was found that late trades (i.e. a sale being effected after close of business and only being recorded the following day) were not distinguished from normal trades, and did not contribute to the price formation process.

3.4.2. Insufficient records.

It was found that agents did not retain sufficient supporting documentation to substantiate transactions in which they received payment for produce they sold on the market making it impossible to quantify the full extent of possible discrepancies.

3.4.3 Undisclosed revenue/purchases for own account.

The report identified 5 cases where the payments received from buyers differed from the amount disclosed to the market and the producer. Purchases for own account were also identified, but the agent had retained insufficient documentation to allow for the quantification of the extent of such purchases.

3.4.4. Trust accounts

Where the agent had failed to pay the producer unclaimed trust moneys for more than five months, these should have been paid to the APAC in terms of the Act. The report found that 10 agents had failed to pay over a total of R237 381 of such moneys.

The report found that the bank charges recovered from producers, as calculated by the Market were not the actual bank charges incurred by agents.

3.4.5. Regulators.

The reports were critical of market management for the systems it had in place to ensure that the agents were implementing the market's sales system. It was critical of the APAC for the difficulties it was having in disciplining its members and noted that to a large degree this was because of insufficient evidence put before it, and a reliance on external reports.

3.5. Responses to the findings of the two reports.

Since the reports were completed the Johannesburg Council appointed a new Market Master with effect from November 1996. It would appear that there has been a significant effort to respond to the findings of the two reports, although the market authorities argue that resource constraints have to a very significant degree hampered these efforts. Furthermore, there are areas where the market contests the findings of the report.

Until quite recently there were four different types of buying cards being used at the market. However, there are now only two types of card being used and the intention is to phase out the use of the casual deposit card in the near future.

The market authorities do not consider the use of own buying cards and the provision of credit by agents as a problem. The Market Master states that every time an own buying card is used such a transaction routinely comes to the attention of the market authorities who ensure that the producer is paid the average price achieved by the consignment. This minimizes the scope for the agent to buy from a farmer cheaply and sell it on at a profit. This practice is viewed as increasing turnover and simultaneously protecting the market from having to take on certain credit risks (such as accepting personal cheques). It is not seen as interfering with the principal-agent relationship.

With regard to the removal and destruction of produce the market authorities state that they have instituted the recommendations made. In addition, the sales system has been adjusted to cater for transparent *ex gratia* payments. The market authorities make the point that when shortages are booked up the price is not determined at the agents discretion - it must be the average price for the day as determined by the market.

The market authorities do not believe that the practice of late sales is in any way detrimental to the producers. Documentation for late sales has reportedly been improved, and market personnel must authorize any late sale. The Market Master can order an agent to compensate producers if he (the Market Master) is unhappy with the sale. There is a request to create posts in the market authority structure to facilitate the adequate supervision of late trades, although this has been held up by the financial problems in the Metropolitan Council.

The market authorities recognize that the ideal would be to allow longer trading hours, but claim that they are stymied by the by-laws regulating the market.

The market authorities are aware of the fact that the computer system is inadequate, and have sought to rectify the situation. Attempts to implement a new system have been hampered by the problems in accessing the reserve funds that were built up by the market for infrastructural development.

The market feels that it was part of the terms of reference of the Ernst and Young report to either substantiate or disprove the allegations made. However, the market feels that the investigation did not go far enough, and that as a result the report merely recommends a further more detailed investigation.

The market authorities view the insufficiency of records in a serious light and believe the APAC should be responsible for ensuring that agents keep complete and adequate records.

The accusations of fraud were not substantiated by the two reports. The market authorities and the Agents' Council do not believe that the value of any fraud committed on the market could be near the value alleged. Both parties do, however, recognize that there were weaknesses in the system that could have allowed fraud to occur. Both parties believe that these weaknesses have been addressed, or would be if the funds built up by the market could be accessed.

The APAC states that it responded to the findings of the report in 3 ways. First, it sent out the relevant parts of the report to agents for their response. Secondly the APAC referred the report to its legal advisors who recommended further investigation. The APAC has sent in auditors Coetzee and Johnson to conduct audits as a basis for further disciplinary measures. Subsequently the APAC has withdrawn the fidelity fund certificates of the agent W.L. Ochse and the agent Egoli (a subsidiary of W.L. Ochse), although this decision is being appealed through the courts. Other hearings are pending, and the APAC reports that it has recently appointed six firms of accountants to carry out surprise stock checks on agents. Thirdly the APAC took note of aspects of the report which commented directly on the way APAC carries out its statutory mandate.

The APAC states that it does not have problems policing agents. It believes that it is effective and makes its presence felt in the industry.

3.6. Additional issues raised with the committee.

3.6.1. Allocation of floor space.

Floor space at the Johannesburg market is allocated to agents based on turnover. Turnover represents both value and volume traded. This system of allocation has a few inherent drawbacks, the most obvious of which is the difficulty any new agent would have to gain access to the market. However, recent developments would appear to indicate that the market authorities are now more sensitive to the need to make it easier to establish new agencies.

3.6.2. Ownership of interest on money in trust accounts.

The ownership of interest in trust accounts has been raised as an issue. APAC states that this issue has nothing to do with Act 12 of 1992, but that as far as it is concerned such interest belongs to the agent in question. APAC states that it would be a very difficult issue to regulate, because, for example, an agent could agree with his bank that an account would carry less interest in exchange for an arrangement whereby no bank charges are deducted from the agent's accounts. However APAC goes on to argue that bigger farmers (accounting for perhaps 80% of sales) demand that their sales revenue is electronically transmitted to them within 24 hours of their produce being sold. The Market Master confirms that sales revenue should not be lying around in interest bearing accounts for long because the market gives agents their trust cheques the day after the produce is sold. He suggests that one way round this difficulty could be for the market to organize its systems so that the market pays the producer directly[8].

If sales revenue net of commission belongs to the farmer it seems logical to the committee that any, in the absence of any agreement to the contrary, interest on such money in trust accounts should be the property of the farmer, and not a matter that is negotiable.

3.6.3. Old produce competing with new.

Concern was expressed that old produce that is not sold on the day it arrives at the market is kept for several days, and as a result drags down the price of newly delivered produce. It is suggested by at least one role player that there should be a limit on the number of days that fresh produce can be kept on the market. However, there are at least two problems with this. An inflexible limit on the length of time that produce may be kept on the market could not adequately take account of the degree to which such produce is kept in cold storage facilities. It could also result, on average, in higher producer prices for that proportion of produce which is sold.

3.6.4. Market revenues not available for the maintenance of market facilities.

Whilst the construction of a number of wholesale facilities is generally welcomed, and has relieved a lot of the congestion on the platforms outside the fresh produce halls, IMASA is very concerned that insufficient of the revenues generated by the market's 5% commission are being reinvested in the market's facilities. IMASA cites a number of deteriorations in the fabric of the market (e.g. pot holes in areas used by fork lift trucks, and leaks of ammonia from the cold storage facilities) which could cause serious injury or even fatality on the market. Other concerns include the urgent need to update the ageing computer system. Indeed the situation is getting so bad that there is increasing talk that some of the bigger agents may be enticed to a new market which could be established close to the Johannesburg market but out of the Greater Johannesburg Metropolitan Council area.

The Market Master is clearly distressed at this state of affairs and appears to be very keen to rectify the deteriorating situation but cites his inability to get Council approval to access the market's surplus revenue.

[8] The Market Master recognises however that this would make the market subject to the scrutiny of the APAC. Furthermore there would most likely be resistance from agents, because such a system would oblige agents to declare how much commission is due to them for each farmer. For obvious reasons agents would be senstive to the possibility that such information might not be kept fully confidential.

3.6.5. Security.

The issue of security at the market has been raised as a cause for concern. The security of cash and people is at risk due to the fact that the market does not have the funds to supply adequate security for buyers, agents, personnel and others on the market.

3.6.6. Sales that by-pass the market.

Concern has been expressed that agents sometimes arrange for produce to be sent directly from the farmer to the buyer without going through the market. This is more efficient because it reduces transport and handling costs, but detrimental to the system as it currently operates. This is because it tends to be the best quality produce that is dealt with in this way and the price formation process is less transparent than on the market. Because the sales are not handled through the market the market loses out on commission. Furthermore, the number of buyers on the market is reduced and the market moves towards being more residual in nature. The Market Master is very clear that, when detected, such direct sales result in warnings to the salesman in question in the first instance, and thereafter are likely to result in the individual in question being removed from the market by the market authorities.

4. Price formation.

4.1. Price formation at the Johannesburg market.

For much of this century prices for fresh produce were generated at municipal markets through the operation of auctions (HSRC, 1991). However, problems were encountered with the auction system which resulted in the appointment of a number of commissions of inquiry. For example, sellers would use reserve prices so as to inflate prices. As the volumes of fresh produce on the municipal markets grew so some auctioneers would offer larger lots to save time. However this discouraged smaller purchasers such as retailers, with the result that buying power on the markets became concentrated in the hands of a relatively small number of wholesalers, and price competition between buyers diminished.

The Johannesburg market now uses the so called out of hand sales system whereby prices are negotiated between buyers and sellers. Originally such transactions occurred if there were no auction bids, or if prices were felt by sellers to be too low (HSRC, 1991). In the 1970s Cape Town market decided to dispense with auction sales, and use only the out of hand sales system. The other markets followed suit. However, it was difficult to establish the prices at which transactions were taking place (particularly important if produce is sold by agents on behalf of producers, and/or if market commissions are based on the value of sales conducted at the market). As a result the new system brought with it increased control over stocks and sales by the market authorities. Factors influencing price determination reportedly include the following;

- prices the previous day,
- prices and quantities on other markets,
- number of buyers,
- enquiries from buyers,
- quantity sold the previous day, and
- day of the week.

As the HSRC (1991) points out, "the subjective perception and judgement of salesmen, based on their experience, play a decisive role in their evaluation of the factors. Certain salesmen also indicated that to a large extent they rely on intuition or 'gut feeling'".

Those who favour the current agent based arrangement (IMASA, the APAC, and the Market Master) argue that the South African system is unique and viewed with envy by farmers in other countries where markets are wholesale in nature. It is argued that the current system favours small producers because in terms of their code of conduct agents are meant to treat all their principals equally. However such a perspective may be disputed (see section 4.6.). Furthermore there is concern in some quarters that the commissions received by the market and the agents are excessive and are to the detriment of producers and consumers alike (see section 4.2). Other concerns relate to the degree of competition on the market (section 4.3.), grading problems (section 4.4.), and the apparent inability of the market to clear properly (section 4.5.) all of which could imply inefficient pricing.

4.2. Some theory.

The competitiveness and efficiency of any market is related to the actual or potential number of buyers, sellers, and market intermediaries (agents and market authorities) involved in that market, and the quality of market information available to them. Even where there are few buyers, if they know that if they offer prices which are unrealistically low they will encourage the rapid entry of new buyers into the market it will keep them competitive. In other words a market that is concentrated but contestable can be competitive.

Theory tells us that prices on the Johannesburg market will be generated by the level of aggregate demand for fresh produce in Johannesburg and surrounding areas and its interaction with the quantity of fresh produce supplied to the market. Only when the price of a particular commodity on another NFPM is higher than the price on Johannesburg plus transport and handling costs between Johannesburg and the other market (or *vice versa*) would arbitrage take place. Indeed, the Market Master reports that there are individuals who will, for example, buy fresh produce on the Johannesburg market so that they can sell it at a profit on the Durban market, although he reports that the volumes in question are relatively low. He believes that in practice farmers are slower to react to price differentials between the different NFPMs.

Even so farmers will adjust the volumes that they send to the different markets. A farmer will calculate the price he expects at different markets and deduct transport costs from the farm to each market. The farmer will send his fresh produce to the market where the expected price (net of transport costs) is highest. Bigger farmers may spread their price risk by sending produce to two or more markets even when they expect a higher net price on one market relative to all the others. Obviously price expectations are not always fulfilled.

4.3. The degree of competition on the market.

An important point to recognize is that competition works on two levels at the Johannesburg market. First, there is the degree to which agents compete to get the farmers' business. Secondly, there is the price formation process between agents and buyers.

Any farmer wishing to make use of the market must agree terms with one of the agents, of which one of the most important will be the level of commission. The many farmers who supply the Johannesburg market have a relatively limited choice of agents. One of the most difficult aspects of the committee's investigation has been with regard to establishing the degree to which agents compete with each other by reducing the level of commission that is charged. The committee's concern operates at two levels. First are agents in a position to extract abnormal profits? Alternatively are agents inefficient with high cost structures that mean that although profit levels are not abnormal they all charge 7,5% commission? At least one role player was of the view that because the agents are not trained in business management they are indeed inefficient managers, given the way they manage their fork lifts and crews, and schedule deliveries from producers. Either way farmers may find that the commission they are charged is unnecessarily high.

The Market Master is of the view that agents do compete in terms of the level of commission they charge. He is further of the opinion that if sufficient farmers are unhappy with the commissions they are charged they always have the option of banding together to form a cooperative agency, and states that he is not averse to making floor space available to such newcomers. IMASA also argues that the level of commission is negotiable. It states that the main factors that determine how far an agent will reduce his commission for a particular farmer relate to the volumes of fresh produce that a farmer can supply, and the degree to which the farmer makes a point of trying to get the level of commission as low as possible.

However, agents with whom the committee have had contact tended to indicate that the level of commission rarely differed significantly from 7,5% (a level which itself is a hangover from old legislation). Indeed, one agent argued that even with a 7,5% commission margins are tight, and that the reason that the agent Simpsons went out of business was because it was giving deductions on its commission.

Although buyers on the market also face a limited number of agents, it would appear that the implications for competitive price formation between agents and buyers are less serious than one might first suppose. This is because the buyers can deal with one of approximately 300 salesmen who operate on the market. Each salesman works on behalf of an agent and most work on a commission basis. Whilst they do not have the authority to negotiate the level of commission with the farmers their agency serves they do negotiate prices with the buyers. However, even though there are many more salesmen than agents this does not necessarily mean that price formation is efficient. Grading needs to be of a good standard (see section 4.4.), but it is also important that price formation is based on key market information, such as the level of demand, the stocks of certain produce that are available on the market, and the price levels at which sales are currently taking place. Whilst agents are able to get access to price and volume information from the market computer, this information is not freely available to buyers. Contact with IMASA, agents and buyers on the market floor has done nothing to convince the committee that the price formation process is anything but skewed (in terms of information availability) at best, and at worst based on the ubiquitous "gut feel". The extent to which fresh produce has to be removed to be destroyed would be one indication as to how well the market clears (see section 4.5).

4.4. Grading.

One of the necessary preconditions for efficient price formation is that both the buyer and the seller must have a good understanding of the essential characteristics of the commodity that they are trading. Hence the grading of fresh produce is an important aspect of the marketing of fresh produce at the Johannesburg market. Buyers will want to know that when they buy grade 1 potatoes for a grade 1 price they are getting the qualities associated with grade 1 potatoes. Otherwise they are paying too much for the consignment in question and in future will have to spend more time on each transaction, or simply identify a source of supply where the grading is more accurate.

In terms of the Agricultural Produce Standards Act nobody marketing agricultural produce is obliged to undertake grading. However, if agricultural produce is labelled as, for example, grade 1, then the produce must conform to certain specifications. Unfortunately the consensus amongst many of the role players is that the grading of fresh produce on the Johannesburg market is inconsistent. One agent stated that one farmer's grade 3 tomatoes were as good as many other farmers' grade 1 tomatoes, and that many farmers lack the ability to pack and grade their produce properly. The Market Master points out that the degree to which prices for the same grade of a particular commodity fluctuate during the day tends to support the view that the grading is not as accurate as it should be. The only organization that has graders on the market is Potato South Africa, but the Market Master is of the opinion that they could be stricter. He sees the solution as being the employment of market personnel to check on the grading of produce, but cites current financial difficulties as a constraint.

4.5. The removal of spoiled produce from the market.

The market keeps figures that indicate the proportion of fresh produce that is removed from the market by agents, with the approval of the market authorities, because it has gone bad. The figures show that between 1% and 2% (by mass) of fresh produce has to be removed to be destroyed.

Percentage (by mass) of fresh produce removed from the Johannesburg market to be destroyed - by month.

Month	%age removed	Month	%age removed
May '97	1.03%	November '97	2.11%
June '97	0.92%	December '97	1.83%
July '97	1.00%	January '98	1.75%
August '97	1.66%	March '98	1.32%
September '97	2.06%	April '98	1.09%
October '97	1.52%	May '98	0.86%

Source: Johannesburg market.

Unsurprisingly, the percentages rise in the summer months[9]. Interestingly, agents are generally reluctant to inform a farmer that his or her produce has been allowed to go bad. As a result agents often prefer to pay the farmer the average price for the day. This implies two things. First to the extent that produce remains on the market floor long enough to go bad this suggests that the market is not clearing properly and that pricing is inefficient. In particular it indicates that buyers are paying prices which on average are higher than would be if the market were to clear properly. Secondly, to the extent that the agents generate sufficient resources from their commissions to be able to afford to pay farmers market average prices on produce that could not be sold it would appear that the commission they charge farmers does include abnormal profit.

4.6. How accessible is the market?

This section considers in turn how easy it is for new producers, agents, and buyers to participate in the Johannesburg market.

Any producer who wishes to market his or her produce at the market must utilize the services of an agent. Hence any new producer must identify an agent and engage his/her services. New buyers are also free to utilize the market. If they deposit money with the market authorities they can buy produce in an unrestricted way by drawing down their deposit. However in both instances there is an issue relating to scale.

[9] The Market Master has investigated the possibility of installing climate control in the produce halls, but clearly resource constraints preclude taking the idea any further.

The APAC argues that one of the advantages of the current system is that agents are obliged to act as an agent if requested by a producer, and to treat all producers equally irrespective of the quantity or quality of produce that they deliver to the market. However, Langley et al (LAPC 1993) argue that "the current role players and practices at the NFPMs are geared to serve the needs of the larger and commercialized producer rather than the small black farmer". In many respects it is only natural that a salesman will give priority to the sale of a big consignment of good quality vegetables. Small consignments may well be considered as a nuisance, especially if they are not graded (Rademeyer 1993, and LAPC 1993). As a result such consignments may be sold with little effort to attain the best possible price. If one considers that market access is directly related to net producer prices at the market, then this is a serious issue.

Small buyers may also find that salesmen are more concerned with dealing with larger buyers, so that they adopt a "take it or leave it" attitude in price negotiations. Indeed, one agent argued 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. Furthermore 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, so the agent argues, is another source of tension between agents/salesmen and small irregular buyers that can easily be misinterpreted as discrimination.

Practically speaking the small buyer is forced to purchase produce from wholesalers who must add on their margin to the price at which they purchased from the agents. However, time is saved because wholesalers generally have a better range of produce than most agents located in one place, and the smaller buyer can pay cash rather than having to queue up for a buying card at a cashier in the halls. IMASA argue that wholesalers are more user friendly for smaller buyers, particularly since the wholesale facilities were completed.

In some respects it is not surprising that the scale of production or purchasing will affect price. Inevitably there are economies of size at work. However, it does highlight the crucial role played by the market agent.

The number of market agents on Johannesburg market is limited. Furthermore the Market Master reports a degree of cross ownership between the different market agents. Even so, APAC argues that no agent is big enough to manipulate the market. Both APAC and the Market Master make the observation that competition between the various market agents is keen - to the extent that agents will reportedly ring farmers to report shortcomings with the way the farmer's agent is selling his produce.

APAC argues that it would like to see as many market agents operating as possible but that the limiting factor on the Johannesburg market is floor space, the allocation of which is the responsibility of the market authorities. However, any new agent (at whatever NFPM) must be registered with the APAC. Until recently this required the provision of substantial bank guarantees by the prospective agent (R 10 000 plus 1,5% of the first R 1 million turnover, and 1% of all subsequent turnover, although this arrangement is reportedly under review.

The committee is of the opinion that, whether because of lack of floor space or other barriers, it is clear that the establishment of new agents on the Johannesburg market has been a relatively unusual event.

5. Ownership and control at the Johannesburg market.

If there is one thing that just about every submission to the committee agrees upon, it is that the current structure of ownership and management at the Johannesburg market needs to be changed. However, within this context it would appear that a number of different groups are vying for control and influence in the way that the Johannesburg market is run.

As things stand the market is owned by the Greater Johannesburg Metropolitan Council, to whom the market authorities are directly accountable. The Market Master is of the opinion that the market does not form part of the core business of the Council, and that there is a tendency (particularly prevalent in the past couple of years) for bureaucratic and financial problems within the Council to hamper the efficient management, operation, and upgrading of the market, despite the market's appropriation account (which receives the 5% commission money paid to the market) being in a healthy surplus position (approximately R 87 million). For example, the Council's freeze on posts and capital expenditure is cited as the reason for many of the difficulties currently facing the market (the cessation of building work, a precarious security situation and delays in installing a new computer system). Indeed a proposal is being submitted to the Council for the corporatisation of the Johannesburg market. In terms of the proposal the Council would remain as the owner of the market, and could even (with the Premier's permission) retain the market surplus of R 87 million. However, the plan would require that the Council undertake "to allow the Market to finance projects out of operating estimates through lease back, rental, or the raising of loans on the Market's account, so that the enhancements may proceed".

The market authorities report that there is a strong feeling within the industry that some statutory body, independent of the industry, should retain ownership to ensure that the market authorities continue to manage the market in an impartial and objective manner.The market authorities propose that ownership and management of the market be separated legally from the overall Council operation. To this end the Council could set up a company, operating in terms of the Companies Act. The board would be made up of representatives of the various interest groups at the market with the Council representative having the casting vote.

However, it would appear that at least two sets of interests within the industry would like to take things further. IMASA, for example, believes that market agents should own and run the market, although they state that if other interests absolutely have to be involved then the agents would be satisfied with only a majority interest in the market. Furthermore, IMASA believes that the cold-store and ripening facilities that are currently owned and operated by the market should be controlled by the market agents. Meanwhile producer bodies, such as Potato South Africa, would like to have more of a say in the way that the market is managed.

APAC is keen to see the privatization of management at the market as it will become more business oriented and operate for longer hours.

6. Discussion and analysis - the viewpoint of the Committee.

The committee is particularly concerned about the following:

- the untransparent, apparently inefficient, and subjective price formation process and as a result the possibility that the current system may, in certain circumstances, either inflate consumer prices, or negatively affect producer prices;

- the privileged, and largely uncontested position of the agents who bare no price risk and appear, as a result, to take a large commission relative to their exposure;

- the possibility that agents do threat producers differently (e.g. with regard to the way in which farmers are remunerated for produce that has gone bad, and the speed with which farmers are remunerated).

- the fact that the current system might not sufficiently cater for small scale producers, who have little choice but to deal with relative large volume driven agents;

- the fact that the market infrastructure and facilities are insufficient for small scale buyers;

- the fact that in practice there seem to be significant barriers to entry for prospective new agents; and

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

As a result there is a need to review the current arrangements for marketing fresh produce in Johannesburg. The rest of this section considers the implications of alternative approaches and what the advantages and disadvantages compared to the current system would be.

Option A. Allow the emergence of alternative markets which could provide a competitive alternative to Johannesburg market.

To the extent that alternative markets were able to establish themselves this would provide buyers and producers alike with a real choice for accessing the biggest market in southern Africa without necessarily having to deal directly with larger retail chains who in turn base their prices on those coming out of the Johannesburg market. It would not matter whether these markets were based on auctions, full and final prices offered by wholesalers or out of hand sales by agents. The choice available to buyers and producers would serve to discipline the Johannesburg market.

Option B. Retain the existing system but improve price formation.

Under this option the agents system could be retained so long as certain improvements were made. There would need to be tighter pro-active control by both the Market Master and the APAC over agents and their room for defrauding the system. A 7,5% agent commission seems excessive, particularly when one considers that most of the produce is through the hands of the agent within two days, and that the agent bares no price risk on the fresh produce handled. Therefore initiatives could be taken to improve the competitive structure of the Johannesburg market, in particular by increasing the number of agents operating on the market.

Another very important improvement to the existing system could be to strengthen the objectivity and efficiency of price formation through the closer policing of grading and the provision of accurate market information.

Whilst agents may well be able to take into account the factors listed in section 4 in the process of arriving at a price, it is very subjective and prone to inaccuracies (e.g. there may appear to be a lot of produce on the market floor, but much of it may already have been sold).

However, the information system used by the market authorities (described in section 3.1.) to ensure that both the producers and the market get the revenues that are due to them would appear to hold a possible answer. When produce arrives at the market it is in the main already graded. Arrival and sale details are all put on computer. It should be possible to constantly update the computer regarding the volumes of different grades of different types of produce that has come onto the market. Such volumes would be adjusted downwards with every sale recorded. In this way the market could provide buyers and agents (possibly by means of strategically located screens) with real time information as to the quantity of different grades of different types of produce that is available on the market and the prices at which produce is being sold (e.g. a rolling 15 minute weighted average of prices for a particular grade of commodity).

If each NFPM had such a system then the Johannesburg market could report volumes and prices at all other NFPMs up on the screen at the same time. This would provide another useful reference price and would make it clear when there is an opportunity to arbitrage between the markets.

Option C. Force the existing agent based system to compete with alternative systems operating on the Johannesburg market.

The third option is to have the agent based system competing with a wholesale system and possibly an auction system on the same market, as per the unimplemented recommendation of the 1991 HSRC study. It would still be necessary to regulate the activities of the agents (trust accounts, etc.) through a revised APAC, but producers and buyers would have a choice of between utilizing agents or wholesalers. As is currently the case, agents would be prohibited from having any interest in a wholesaling business, so as to avoid potential conflicts of interest.

Just as the system currently records the arrival of produce at the market, and the agent to whom it is being sent, so in future the system could record the arrival of fresh produce destined for wholesalers. All buyers would use buying cards (as opposed to cash) on the market and all transactions would have to be effected through the computer system. In such a way the market would still be able to maintain information system (prices, volumes, and stock on the market) as envisaged under option B.

The market authorities would still have the ability to deduct its 5% commission form the revenue generated on the market. Even so the replacement of the 5% commission by a standard charge per unit are of floor space might be preferable. Floor space is one of the market's limiting factors. It would seem to be sensible to generate revenue for the market in a way that is designed to encourage the efficient use of floor space. At the moment floor space is allocated on the basis of both volume and value of fresh produce handled by an agent. Hence there is a present only a partial link the allocation of floor space and its productive use.

The three options considered.

Option A assumes that there is a freedom to set up an alternative market in Johannesburg, and that planning permission and city by-laws will not obstruct the process of competition. It would be very difficult, and not necessarily desirable for the national government to be meddling in city council matters. Furthermore, Johannesburg market has a very significant head start on any potential rivals. It already has a critical mass of market volume and investment. Under such circumstances any investment in a new market of any significance would be large and risky.

There are no longer any statutory instruments at a national level that could be used to restrict the establishment of new markets. Although Johannesburg market has a tremendous head start over any potential new rivals because of the way relevant legislation was implemented in the past, it would appear that the threat that a new market might be established is now real and is concentrating the minds of those responsible for the Johannesburg market. Whilst the Johannesburg market has certain historical advantages over potential rivals, it also has certain disadvantages, such as the way it is incorporated into the structures of the Greater Johannesburg Metropolitan Council.

A situation whereby it is possible for new markets to be established is desirable whether the *status quo* on the market is maintained or options B and C acted upon.

Option B implies a better resourced and therefore better enforced system compared to the *status quo*. Price formation would be more transparent and related to market fundamentals rather than "gut feel". It would make it more likely that the market would clear. It would also mean that price formation outside of the market would be that much more efficient (to the extent that the Johannesburg market prices are indeed used as a reference for pricing direct sales). However, even if additional agents were allowed onto the market so that the agent system was made that much more competitive, it would still be very difficult to judge whether the commissions charged by agents are high when compared to alternative systems, such as the wholesale system.

Option C would allow farmers to decide whether dealing directly with wholesalers on the market would be advantageous or not compared to dealing with agents. They would also be forced to compete against wholesalers.

Comparison of wholesalers and agents.

Characteristic	Agents	Wholesalers
Price risk.	All price risk lies with the farmers until the agents sells the produce.	The wholesaler pays a full and final price to the farmers – the wholesaler takes all subsequent price risk.
Financing cost.	The farmer receives payment only once the agent has sold	Indeterminate. The wholesaler pays a full and

	the produce and so bears the cost of financing.	final price, but who bears the financing cost depends upon how quickly the farmer is paid.
Accepting produce.	In terms of their code of conduct they are obliged to try and sell all produce sent by the farmer.	Under no obligation to buy – they can decide which produce they will buy and which they will not.
Source of income.	Deduct a negotiated commission as a percentage of sales revenue.	No commission - will try to achieve a margin between price at which purchase produce form farmer and price at which sell too buyer. No margin guaranteed – hence the existence of price risk.
Acting in whose best interests?	Supposed to act in the best interests of the farmer. Supposed to treat all farmers equally in terms of code of conduct.	Acts in the best interests of the wholesaler – under no obligation to treat farmers equally.
Provision of credit buyers.	Currently do – but should not (in opinion of the committee).	Free to provide credit to buyers.
Guarantee of payment.	Systems in terms of Act 12 of 1992 supposed to guarantee that farmers is properly remunerated.	No legal entity other than the farmer is responsible for ensuring/guaranteeing that he/she is paid as agreed.

At present much of the fresh produce sold on Johannesburg market is handled by wholesalers , but because agents are the only people on the market allowed to receive produce directly from farmers, the wholesalers on the market must source all such produce from the agent, implying double handling in between the farmer and wholesaler's customer.

Both agents and wholesalers only act in their capacities in the expectation of making money. Agents deduct a negotiated level of commission, whilst wholesalers try to make money through the margin between the price at which they buy and the price at which they sell. Both agents and wholesalers would have to pay the market (on the same basis) to cover the cost of the infrastructure to provide by the market (floor space, security, cold storage etc.) whether this is charged as a percentage of the value of transactions 9as at present) or as a charge per unit area of floor space.

Farmers would have a choice, not just between different agents, but between agents and wholesalers. This would make it easier to determine how competitive is a particular level of agent commission. At present the committee, as referred to earlier, has the impression that the commission deducted by agents is relatively high, but it can only ever be an impression when there is no reliable yard stick against which a comparison can be made.

Both the Market Master and IMASA are very firm in arguing against such a development. They argue that whereas agents are obliged to receive produce from any producer, wholesalers can accept or reject the offer of produce. This they argue will operate against the interests of smaller producers who are less likely to be able satisfy the quality requirements of wholesalers. However, the committee has already argued that there are economies of scale on both the buying and selling side under the current system. The committee does not believe that the scale problems would be any more significant under option C compared to the existing system. What is critical is to ensure that whatever system predominates, the requirements of smaller scale buyers and producers are met.

Apart from political dialogue the National Minister of Agriculture currently has limited means at his disposal for pursuing any of the options set out above. Existing legislation is of little help unless amended and there is little scope for the use of financial incentives to the city council from the National Department of Agriculture.

However, when the 1970 Act was repealed it did not result in deregulation (and freedom of entry onto the Johannesburg market - as appears to have been intended). It simply allowed the Greater Johannesburg Metropolitan Council (who own the market and had already in place many by-laws) greater discretion in managing its asset. It decided not to allow freedom of entry onto the market for non agents, so “deregulation” never happened.

6.5 Areas of concern whatever option is selected.

Apart from improving the objectivity and transparency of price formation on the market (as explained above) there are a number of areas that need attention whichever option is selected.

6.5.1 Act 12 of 1992.

The indications are that until recently the APAC has been reactive rather than pro-active, although this is partly because of the way that the Act is written. However, APAC has lately taken some action against some agents, and the Act is being amended. The primary role of the APAC is *inter alia* to protect the interests of producers who are obliged to use agents if they wish to access the Johannesburg market. It would appear to be logical that the APAC should be constituted so that there are more producer representative. Furthermore, producer representatives should only be appointed if they do not have an interest in a market agency.

A bill to amend Act 12 of 1992 is being processed by Parliament, but unfortunately it envisages agent representation remaining at three and producer representations rising to only two persons. Furthermore, the composition of APAC could be usefully broadened to include other role players with an interest in the public good.

As was stated earlier, the impression that is derived from the two official reports into the Johannesburg market is that the main reason for there having been no prosecution is that insufficient records were available to the investigators to form the basis for prosecution. The onus of proof should not lie with a producer to demonstrate that he/she may have been defrauded by an agent. The onus of proof should be on the agent to demonstrate that all his paper work and records are in order. Fines for paper work that is out of order should be prohibitive.

It is the opinion of the committee that Act 12 of 1992 should stipulate that interest on monies in trust accounts belong to the producer.

6.5.2 Ownership and management of the market.

It would appear to make sense to delink the market management from the Greater Johannesburg Metropolitan Council, on condition that market management remains neutral (and is perceived as such) and independent of the various vested interests (in particular agents and producer organizations). An arrangement that would allow for the timely reinvestment of the market's financial surplus and the hiring of the necessary staff without reference to a statutory structure, such as the Greater Johannesburg Metropolitan Council, (which appears to be in serious financial difficulty) is particularly necessary.

The fact is that many of the problems brought to the committee's attention could be resolved with the well managed application of sufficient financial resources (which the market appears to be quite capable of generating for itself). The Johannesburg market is a multi million Rand business. Even with the best will in the world local government structures (especially those under severe financial pressure) are not suited to the efficient management of such a business.

However, how one implements such principles must be informed by the structure of market power (and statutory) relationships in the market. The idea that IMASA or any of the market agents should be sold a controlling interest in the management of the market, appears to be opportunistic. If the experience of the APAC to date is anything to go by it is hard to see how the market agents would be able to manage all the potential conflicts of interest that would arise.

6.5.3 Deduction of levies.

The repeal of the 1968 Marketing Act means that any beneficiary of a statutory levy must reapply for the authority to collect it in terms of the Marketing of Agricultural Products Act 1996. However, there is concern that, in principle, it is possible that small statutory levies may be used in an attempt to secure additional "voluntary" levy financing under false pretences through the same collection channels, or at least as a means to confirm the volumes that a particular producer is putting through the market. Such information could be used in an attempt to "co-ordinate" marketing or as a means for checking that producers are paying the appropriate amount of voluntary levy.

There would appear to be a strong case for the Minister of Agriculture to publicize the fact that as things stand there are no statutory levies in force on any variety of fresh produce with effect from 6 January 1998. Furthermore where any levy deductions have been made from producer payments at fresh produce markets subsequent to that date, producers should make sure that such deductions do not exceed what the producer has authorized.

7. Conclusions.

By commenting on the specifics of the Johannesburg market in this report the committee does not wish to be interpreted as necessarily implying that it sees a future for fresh produce markets. This is one of a number of broader questions that the committee will consider in its second report. Furthermore, the committee is acutely aware that although the role of the National Agricultural Marketing Council is to advise the National Minister of Agriculture in actual fact, as things stand, the National Minister has no direct legal powers in affecting how the Johannesburg market is managed. Nevertheless, the committee draws the following conclusions from the aforegoing analysis.

The Johannesburg market is a large and complex business enterprise. It is the largest of the National Fresh Produce Markets (NFPM) and has an annual turnover of almost R 1 billion. Although the NFPMs have traditionally been the principal marketing channel for the majority of the fresh produce consumed in South Africa, the impression within the industry is that an increasing share of domestically consumed fresh produce is being marketed directly between producer and buyer without going through the NFPM system. Even so, it would appear that prices generated on the Johannesburg market serve as the key reference point for price negotiations for directly market fresh produce.

The Johannesburg market has an historical advantage over any fresh produce markets that could try to establish themselves as competitors in serving the Greater Johannesburg area. It has had many years to build up its volumes whilst certain legislation (such as the Commission for Fresh Produce Market Act, 1970) was used, *inter alia*, to prevent the establishment of rival markets. Although the 1970 Act was repealed in 1992, the establishment of a new market in the Greater Johannesburg Metropolitan Council area is still subject to the zoning regulations and by-laws of the Metropolitan Council, which itself owns the Johannesburg market. However, there are a number of areas close to the Johannesburg market that fall outside of the jurisdiction of the Greater Johannesburg Metropolitan Council, so that in theory there is nothing to prevent the establishment of a market to challenge Johannesburg market. Indeed, for a number of reasons it would appear as if such an investment is being considered in certain quarters.

The Johannesburg market uses the out of hand sales system which is based on the operation of market agents. These agents act as the intermediary between producers and buyers and are obliged to operate in the producer's best interests. The number of agents is limited. There are 18 in total, although not all agents handle fruit, vegetables, and potatoes. Agents have to conform to the requirements of the Agricultural Produce Agents Act, 1992, and to the rules of the market. Space on the floor of the market is limited and is allocated by the Market Master on the basis of the actual or expected mass and value of fresh produce that an agent handles. Traditionally new agents on the market have been the exception rather than the rule. However, the Market Master, who was appointed in late 1996, appears to be keen to see new agents establish themselves. This is borne out by recent developments on the market. However, as in many sectors of the economy, the fact remains that the only practical way for a new agent to become established is by gaining exposure to, and establishing a good reputation in, the fresh produce trade.

There are no restrictions (apart from an obligation to observe the market's rules) on farmers who wish to deliver to produce to an agent on the market. Neither are new buyers prevented from utilizing the market. However, it would appear to be an inescapable fact of life that larger producers and buyers enjoy economies of scale in their dealings with agents, although smaller buyers have the option of buying from the wholesalers on the market.

The Johannesburg market takes 5% commission on the gross value of fresh produce that is sold on its premises. Agents charge producers up to a further 7,5% on turnover (5% for potatoes). These maxima appear to be a hangover from legislation that has long since been repealed. However, no more than 13 agents deal in any one commodity type. In addition there is a degree of cross ownership between agents. Although IMASA and the Market Master are of the opinion that agents do compete in terms of the commission they charge producers other role players assert that this does not happen to a significant extent. The committee recognizes that both the market and the agents perform a function for which it is appropriate that there should be a charge. However, the committee is concerned that there are too few agents on the market to allow producers to negotiate competitive commissions. Such concern is accentuated by the impression derived form the reports of the Auditor General's office and OSEO that agents test the system to see what they can get away with.

A number of the concerns raised by the two reports appear to have been dealt with. Those that have not been adequately dealt with seem, by and large, to be constrained by resources. This one exception is the use of own buyer cards by agents for the provision of credit buyers. The reports were critical of this practice and argued that the agents for the provision of credit buyers. The reports were critical of this practice and argued that the agents providing credit in this way may find themselves with a conflict of interest between acting in the best interests of producers and in a way that favours buyers so as to facilitate the recovery of money that has been lent. Furthermore, the use of own buying cards implies that the agent becomes the principal. Furthermore, the use of own buying cards implies that the agent becomes the principal. Neither the market authorities nor the APAC seem to feel that this situation gives rise to any sort of difficulty, so long as skimming does not take place. As a result nothing has been done to prohibit credit provision by agents.

Furthermore, it would appear that agents may often act contrary to their code of conduct, insofar as they treat producers differently in terms of the way producer losses are reimbursed in an *ad hoc* way for produce that has gone bad, and the way that some farmers receive their payment quicker than others. To the extent that this part of the code of conduct is not observed, smaller scale producers will find themselves at a disadvantage.

Although there are only 18 agents on the market, these agents employ over 300 salesmen, most of whom work for the agent on a commission basis. Therefore, it would appear that price formation is far more competitive than the number of agents might initially suggest (although salesmen have the discretion to negotiate prices with buyers they do not have the authority to negotiate the level of commission and other agency conditions with farmers). However, the committee concluded that price formation is not equitable and is relatively inefficient. This is because although agents and their salesmen have access to some market information from the market's computer system, this is not available to buyers. Furthermore, with the exception of potatoes, the grading of many types of fresh produce arriving on the market is reportedly of a low standard.

The Johannesburg market is owned by the Greater Johannesburg Metropolitan Council. Unfortunately the Metropolitan Council is in severe financial difficulties. The result is that even though the Johannesburg market more than covers it costs (indeed it generates impressive surpluses) it is affected by the Council's freezing of posts and freezing of capital expenditure, and is unable to use the capital surpluses that it generates. The result is that the fabric and facilities of the market are deteriorating to such an extent that there is talk of a new market being established nearby. Resource constraints would appear to be at the root of most of the Johannesburg market's difficulties. A new computer system is urgently needed (it crashes regularly), as are investments in new buildings, facilities security arrangements, and the maintenance of the market's fabric. The Market Master is keen to employ more staff which would allow him to better police the activities of the agents, and, for example to improve the grading of fresh produce on the market.

The committee is concerned that the constitution of the APAC is unduly dominated by representatives of agents and feels that the Bill to amend Act 12 of 1992 does not go far enough in addressing this problem. The committee also feels that, given the position of trust enjoyed by agents, the APAC should ensure that the onus is on agents to maintain sufficient paper work to prove that they are acting in the best interest of the producer. The secrecy clause in Act 12 (which prevented the publication of the OSEO report, for example) is an additional source of concern to the committee. Where official reports are prompted by widely expressed concerns they will do little to allay such concerns if they are not made public. As a result, the matter is not seen to be resolved.

Furthermore, the committee feels that insofar as interest accrues on money held by agents in trust accounts, such interest should, in the absence of any agreement to the contrary, most naturally accrue to the producer. At the very least producers should be made aware that this is an aspect of their agreement with their agent which is negotiable.

Until recently statutory levies were deducted by the Johannesburg market in terms of section 84 of the Marketing act of 1968. Voluntary levies continue to be collected by the market. The committee is concerned that there may be a lack of clarity amongst some producers as to the precise nature of levies that are deducted.

Over and above any reaction to the above concerns, it is important to ensure that the establishment of new markets in and around Johannesburg is not unduly obstructed. Furthermore, the Johannesburg market should improve that way it operates (in particular through removing the loop holes in the system, improving grading, providing real time market information to improve price formation, and facilitating the establishment of a greater number to improve price formation, and facilitating the establishment of a greater number of agents on the markets. Such improvements should preferably be undertaken in the context of the market allowing wholesalers on the market to receive produce directly from farmers. This would provide direct competition for agents on the market.

8. Recommendations.

The committee makes the following recommendations.

1. That the National Minister of Agriculture approach the Greater Johannesburg Metropolitan Council and express concern over the way that the financial difficulties of the Metropolitan Council are having a severely negative impact on the Johannesburg market which is of national importance.

2. That the Metropolitan Council should, as soon as possible, take the appropriate steps to give market management financial independence, and the authority to manage the market without reference to the Metropolitan Council. There is no compelling reason why the Metropolitan Council should continue to won the Johannesburg market, but, if it does, ownership and management should be split.

3. Any moves to commercialise or privatize the market in accordance with recommendation 2 should be designed in such a way that the market is managed in a neutral and objective way that is not beholden to any narrow set of vested interests.

4. The market authorities should invest time and money in upgrading the operations of the market. In particular, money should be spent on improving the fabric of the market, especially security and wholesale facilities, and the computer system handling sales, so that real time price and volume information is available to buyers and sellers. Sufficient staff should be employed to improve the policing of the system and aspect such as grading. Furthermore, steps should be taken to increase the number of agents and reduce the barriers to entering the market as an agent, both in the way that floor space is allocated, and in terms of the Act 12 of 1992.

5. The Johannesburg market should allow wholesalers on the market to receive fresh produce directly form producers. Such an initiative should be handled in such a way as to ensure that activities (transaction price, volumes sold, stocks on hand) of such wholesalers are captured by the market's information system.

6. APAC should make producers aware that the ownership of interest earned on monies in trust accounts does not lie with agents as of right, but is a matter for negotiation between producer and agents.

7. APAC should make producers aware that the level of commission that is deducted by agents is a matter for negotiation.

8. APAC should ensure that agents do not operate in a way that advantages some producers over others (as per code of conduct). In particular, where an agent pays a producer for produce that has gone bad on the market, he or she should be obliged to do the same for all such producers. If an agent pays money to a producer for produce sold on the market on a daily basis, such a facility should be available to all producers with whom the agent deal. Where an agent pays over interest on a trust account to a producer, all producers should be entitled to such interest payments.

9. 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.

10. The composition of the Agricultural Produce Agent Council should be broadened further than is currently contemplated in the Amendment Bill so that there is a better balance between the representation of agents, producers and the public interest.

11. The APAC should ensure that the onus is on agents to keep proper records rather than on the producer to prove wrong doing on the part of the agent.

12. The Minister of Agriculture should issue a public statement clarifying the situation with regard to statutory and voluntary levies. Furthermore, where levies have been collected after 6 January 1998, without the consent of the producer, such levies should, as far as is possible, be refunded to the relevant producers. The NAMC should take note that there is a danger that applications for relatively small levies may in actual fact provide the recipient with the information required to enforce non statutory initiatives to manage the supply of produce onto markets, and to collect " voluntary" levies.

13. The secretary clause in Act 12 of 1992 should be removed.

14. The report of the Auditor-General, and the Office for Serious Economic Offences should be made public as soon as possible.

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