

GUIDANCE NOTE

Competition Commission Inquiry into the Franchise Market

The Competition Commission of South Africa has published for comment its draft Terms of Reference for a market inquiry into the South African franchise industry.

The purpose of the Franchise Market Inquiry is to assess whether there are any market features that (i) impede, distort or restrict competition in the franchise sector; (ii) hinder the entry, growth and meaningful participation of small and medium enterprises in owning and operating franchise businesses and (iii) negatively affect the increased ownership of franchise businesses by historically disadvantaged persons.

The Competition Commission therefore believes that there may be one or more features of the franchise market that impede, distort or restrict competition, or limit the equitable participation and ownership of SMEs and HDPs in franchise businesses. In its investigation the Competition Commission will, *inter alia*, investigate the power of franchisors and the concentration level of franchise ownership; the financing and/or funding terms and conditions for investing in franchise businesses and review the terms and conditions of franchise agreements.

With regard to the terms, conditions and practices contained in franchise agreements, the Competition Commission will concentrate on:

- A review of any restrictive supply chain requirements imposed by franchisors that compel franchisees to purchase certain products and stock exclusively from the franchisor;
- Franchisors failing to pass on supply discounts and rebates to franchisees;
- Non-negotiable pricing, promotions and other corporate strategies set by the franchisor that may affect the franchisee's local market conditions or operational goals; and
- Burdensome and discriminatory franchise fees and royalty arrangements.

Should you require any advice with regard to your franchising terms and conditions in terms of the proposed market inquiry or require representation, kindly contact Thomson Wilks. Our competition and franchising law teams are ready to assist both franchisors and franchisees in understanding their rights and obligations under the inquiry process.

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