

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 723

13 August 2021



MEMORANDUM OF UNDERSTANDING
("MoU")

Between

THE COMPETITION COMMISSION OF SOUTH AFRICA
("the Commission")

A juristic person established in terms of section 19 of the Competition Act, No 89 of 1998 as amended ("**the Competition Act**") and herein represented by **MR TEMBINKOSI BONAKELE** in his capacity as the Commissioner of the Competition Commission of South Africa

and

THE NATIONAL AGRICULTURAL MARKETING COUNCIL
("NAMC")

A statutory body established in terms of the Marketing of Agricultural Products Act No. 47 of 1996 as amended herein represented by **DR SIMPHIWE NGQANGWENI** in his capacity as Chief Executive Officer of the NAMC.

(Hereinafter jointly referred to as "the Parties")

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1. PREAMBLE

WHEREAS the Commission is a juristic person established in terms of section 19 of the Competition Act No. 89 of 1998, as amended ("the Competition Act");

WHEREAS the Commission is mandated to, *inter alia*, investigate and evaluate restrictive practices, abuse of dominant position, exemptions and mergers, as well as conducting market inquiries; and to promote the efficiency, adaptability and the development of the South African economy;

WHEREAS the NAMC is a statutory body established in terms of section 3 of the Marketing of Agricultural Products Act No. 47 of 1996 ("the MAP Act"), as amended;

WHEREAS the function of the NAMC in terms of section 9 read with section 11(2) of the MAP Act is to investigate the establishment, continuation, amendment or revocation of statutory measures affecting the marketing of agricultural products, evaluating the desirability, necessity or efficiency and if necessary, proposing alternatives and reporting thereon to the Minister for agriculture. It may also undertake investigations and advise the Minister regarding agricultural marketing policy and coordinate such policy in relation to national, economic, social and development policies and international trends and developments;

WHEREAS the NAMC promotes South African research interests in agriculture and may exchange information with government, research institutions, business, industry and international partners that has value in predicting the future commercial behaviour of competitors, future development trends or market conditions;

WHEREAS the Parties recognise that their respective mandates are mutually reinforcing and should thus encourage the optimal utilisation of the most effective remedies available between them, as the case may be;



WHEREAS the parties recognise the potential to leverage on areas of convergence and mutual interest;

WHEREAS the purpose of this MoU is to outline the collaboration between the Parties in consulting one another on matters of mutual interest effectively carry out their powers and duties ensuring that markets in the agriculture, food and agro-processing sectors operate efficiently and competitively for the benefit of industry, consumers and society in general;

AND WHEREAS the Parties acknowledge that the content of this MoU is in the context of and subject to all legislation, as amended from time to time, applicable to a Party;

THEREFORE, the Parties agree to enter into this MoU and record the terms of their agreement as follows:

2. INTERPRETATION

In the interpretation of any terminology used in this MoU, any word or expression to which a meaning is assigned in the Competition Act and the MAP Act has the meaning assigned to it unless otherwise specified.

In this MoU, unless inconsistent with the context, the following words and expressions shall bear the meanings set out below and derivative expressions and words will have corresponding meaning:

2.1 **"Commlasion"** means the Competition Commission of South Africa, a juristic entity established in terms of section 19 of the Competition Act;

2.2 **"Competition Act"** means the Competition Act, No 89 of 1998 as amended;

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- 2.3 **"MAP Act"** means the Marketing of Agricultural Products Act No. 47 of 1996;
- 2.4 **"MoU"** means this Memorandum of Understanding;
- 2.5 **"NAMC"** means a statutory body established in terms of section 3 the Marketing of Agricultural Products Act No. 47 of 1996;
- 2.6 **"Parties"** means the NAMC and the Commission.

3. OBJECTIVE AND SCOPE OF THE MOU

- 3.1 The Parties have identified four (4) key areas of mutual interest and co-operation; namely (i) research, (ii), policy making, (iii) advocacy efforts and (iv) investigations in the agricultural and food and agro-processing sectors in South Africa.
- 3.2 This MoU is entered into to establish the manner in which the Parties will interact and cooperate with each other to enable them to, *inter alia*:
- 3.2.1 **Conduct research:** promoting co-operation and collaboration between them in areas of mutual interest, including any joint research studies that they may agree to undertake, sharing of data and information collected from industry players and intelligence (such as market structure and price considerations) with each other;
- 3.2.2 **Consult and coordinate their activities on policy matters:** consult each other on regulatory aspects in the agricultural and food and agro-processing sector, applying a consistent interpretation and application of competition and agricultural marketing policy principles when exercising their respective powers and functions, sharing information with each other that will inform their policy work;
- 3.2.3 **Partner on advocacy projects:** partnering on non-enforcement activities such as advocacy projects;

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3.2.4 **Conduct Investigations:** providing each other with the necessary information, advice and inputs during their case investigations, review of merger transactions and exemption applications.

3.3 This MoU does not affect the independence of the Parties in respect of fulfilling their mandate in terms of the respective legislation with which they must comply.

4. PRINCIPLES OF COOPERATION

4.1 In order to achieve the purposes of this MoU, the Parties have adopted and will comply with the principles of co-operation set out below:

4.1.1 the Parties will cooperate with each other in mutual trust and good faith;

4.1.2 the Parties will assist and support each other in respect of agreed upon services and commitments between them in terms of this MoU;

4.1.3 the Parties will consult each other, transfer knowledge and share information on matters of mutual interest;

4.1.4 the Parties will participate in each other's processes in an advisory capacity or obtain the other's input on an aspect within the technical competence of the other;

4.1.5 the Parties will share each other's available resources in order to bring the provisions of this MoU into full effect, provided that such a process is reasonable, shall not compromise the independence of either of the Parties and does not contravene any statute with which the Parties must conform; and

4.1.6 the Parties will avail to each other the necessary support for the successful performance of the tasks and programmes envisaged in this MoU.

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- 4.2 When the Parties participate in each other's processes or obtain each other's inputs as contemplated in clause 4.1.4, they shall do so at no cost to each other and they shall act as expeditiously as circumstances permit.

5. PROJECTS AND EVENTS

- 5.1 When the Parties enter into any specific co-operation (such as a project or special event) within the framework of this MoU, the Parties shall sign a separate project plan, which shall be added as an addendum to this MoU, and which stipulates their obligations with respect to such co-operation.

- 5.2 The Project Plan shall be developed jointly by the Parties as and when necessary, and which will describe:

5.2.1 the specific activities to be carried out by the Parties, individually and/or jointly, under this MoU; and

5.2.2 the intended contributions of each Party.

- 5.3 Either Party may propose a Project Plan, which will only be carried out upon approval by both Parties.

- 5.4 The parties shall agree on payment of the costs associated for the execution of any such specific co-operation on a project-by-project basis.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Each Party agrees that it shall not use the name, logo and trademarks of the other Party or any abbreviation thereof without the other Party's prior written consent. Consent shall not be unreasonably withheld.

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- 6.2 When making reference to this MoU, each Party undertakes to use the other's name in good faith, reflecting accurately the agreed upon nature of the collaboration contemplated in this MoU, and only in relation to or furtherance of this MoU.
- 6.3 All intellectual property rights, which may be developed pursuant to or in connection with a project or specific event, shall be jointly owned by the Parties.
- 6.4 For avoidance of conflict, Intellectual Property created by either of the Parties prior to, or independent of, this partnership (including any pre-existing methodology and/or tools used by the Parties) will remain the property of the Party responsible for the creation of the Intellectual Property.

7. ESTABLISHMENT OF THE JOINT WORKING COMMITTEE

- 7.1 A Joint Working Committee ("the Committee") constituted by at least three (3) representatives of the Commission and the NAMC, as nominated by the respective Parties, shall be established pursuant to this MoU and shall function on an on-going basis.
- 7.2 The functions of the Committee shall be to:
- 7.2.1 manage and facilitate co-operation and consultation in respect of matters dealt with by each Party in terms of this MoU;
 - 7.2.2 facilitate and manage joint projects undertaken in terms of this MoU;
 - 7.2.3 propose, when necessary, any amendment of or supplementation to this MoU;
 - 7.2.4 advise management of both the Commission and the NAMC on issues affecting competition in the agriculture and food and agro-processing sectors, as the case may be, and make recommendations on how to deal with same.

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- 7.3 The Committee shall meet regularly, but no less than once per quarter, to ensure both Parties are aware of developments in areas of common interest.

8. INSTITUTIONAL CONTACT PERSONS

- 8.1 For purposes of this MoU:

8.1.1 The Divisional Manager: Advocacy will be the main contact person at the Commission.

8.1.2 The Division Senior Manager will be the main contact person at the NAMC.

- 8.2 Should the Parties have to exchange information, as a result of discussions at the Committee, the processes set out in this MoU shall be followed.

9. EXCHANGE OF INFORMATION

- 9.1 The Parties may, in the manner set out below, request assistance from each other and exchange information as may be necessary to give effect to this MoU.

- 9.2 The Parties may inform each other of any decision or judgment that either of them has taken in respect of the anticompetitive practice or conduct involving the same respondent, in so far as it pertains to competition and agricultural marketing matters.

- 9.3 To facilitate communication and to ensure continuity in the co-operation between the Parties, each Party has designated the contact person as set out in clause 8, for communications under this MoU.

- 9.4 A Party requesting assistance shall make its request for assistance in writing by sending it to the contact person of the other Party. The request must provide:

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- 9.4.1 a description of both the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance;
- 9.4.2 any information in the possession of the requesting party that might assist in identifying such information; and
- 9.4.3 the desired period of time for the reply.

10. CONFIDENTIALITY

- 10.1 Any information shared by the Commission and the NAMC pursuant to this MoU shall be used only for lawful supervisory or statutory purposes.
- 10.2 Any request made by either Party for confidential information in possession of the other, shall be dealt with in accordance with the procedures set out in the parties' respective enabling legislation or policies or procedures.
- 10.3 The party providing confidential information pursuant to this MoU shall clearly indicate what information is identified as confidential to the requesting party.
- 10.4 The parties shall ensure that confidential information accordingly disclosed to them remains confidential and is not placed in the public domain through any negligent or willful conduct on its behalf.
- 10.5 To the extent permitted by law, the Commission and the NAMC shall hold confidential all information received from each other pursuant to this MoU and shall not otherwise disclose such information to any third party, without the written consent of the other party, except in the following circumstances:

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- 10.5.1 when required to do so by the law or an order of a Court or a Tribunal; or
- 10.5.2 where the information is required to be disclosed to government or regulatory bodies; or
- 10.5.3 where the information, prior to disclosure to the third party requesting it, has become available to the public without any act, default or omission of any Party of its obligations hereunder.
- 10.6 The Commission and the NAMC shall, prior to disclosing confidential information or a part thereof when required to do so by the law or an order of a Court or a Tribunal, notify each other of the law or an order of a Court or Tribunal requiring such disclosure.
- 10.7 The sharing of confidential information, in accordance with this MoU, relies on the assurances given in 10.1, 10.2, 10.3, 10.4 and 10.5 above and shall not constitute a waiver of any legally recognisable grounds for refusing disclosure of information.
- 10.8 Where confidential information is disclosed either by the Commission or NAMC in contravention of this MoU, such disclosing party shall be solely liable in law for such disclosure.
- 10.9 Any of the Parties may in its discretion decline a request for confidential information made in terms of this MoU.
- 11. GENERAL PROVISIONS**
- 11.1 Each Party will, with regard to the implementation of this MoU and any activities arising from it, bear its own expenses, unless otherwise agreed upon by the Parties.
- 11.2 The provision of, or request for information under this MoU may be denied:
- 11.2.1 where compliance would require the Commission or the NAMC to act in a manner that would violate the applicable law;

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11.2.2 under circumstances where there is an imminent risk to national security; or

11.2.3 when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

11.3 No provision of this MoU shall give rise to a right on the part of any person, entity or organ of state other than the Commission and the NAMC, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MoU.

11.4 The provisions set forth under clauses 9 and 10 must prevail with respect to any information provided or actions taken under this MoU prior to its termination.

11.5 The Parties shall consult each other before either of them issues a media statement concerning any matter emanating from this MoU.

12. NON-VARIATION

12.1 This MoU constitutes the whole of the agreement between the Parties relating to the subject matter hereof.


12.2 No amendment or consensual cancellation of this MoU or any term thereof, including this clause shall be binding unless recorded in a written document signed by duly authorised representatives of both Parties.

13. COMMENCEMENT AND TERMINATION

13.1 This MoU comes into effect on the date on which it is last signed by the persons authorised to act on behalf of the Parties.

13.2 This MoU shall remain in force until it is amended or repealed by both Parties acting jointly.

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- 13.3 The termination of this MoU will not prejudice the completion, in accordance with their terms, of any ongoing projects or activities under this MoU unless otherwise agreed to by the Parties at or after termination of this MoU.

14. REVIEW OF THE MOU

- 14.1 This MoU shall, on an ongoing basis, be reviewed to accommodate developments incidental to matters that require co-operation between the Parties. The review shall take into account prevailing legal precedents, legislative amendments, promulgation of regulations, and policy reviews, as the case may be.

15. DISPUTE RESOLUTION

- 15.1 Any dispute or difference arising from the interpretation, application and/or implementation of this MoU, shall be resolved amicably through consultation or negotiations between the Parties. In the event of such dispute, the representatives of the Parties as stated in clause 8 shall meet with the view of resolving the impasse.
- 15.2 Should the Parties fail to resolve the dispute as set out clause 15.1 above, such dispute shall be dealt with in accordance with Intergovernmental Relations Framework Act 13 of 2005.

16. DOMICILIUM CITANDI ET EXECUTANDI

- 16.1 The Parties choose the following addresses as their respective domicilium citandi et executandi for purposes of this MoU:

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**The Competition Commission**

The DTI Campus

Mulayo (Block C)

77 Meintjies Street,

Sunnyside,

Pretoria

Contact person: Ms Khanyisa Qobo

NAMC

536 Francis Baard Street

Arcadia

Pretoria

Contact person: Dr Simphiwe Ngqangweni

17. SIGNATURES

- 17.1 The signatories hereof, being duly authorised thereto, by their signatures hereto confirm their acceptance of the contents hereof and recommend the adoption thereof, for and on behalf of the parties represented by them.

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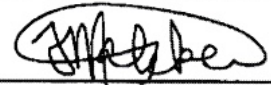



Thus Signed at Pretoria on this the 28th day of May 2021.


DR SIMPHIWE NGQANGWENI

For and on behalf of the National Agricultural Marketing Council

In the presence of witnesses:

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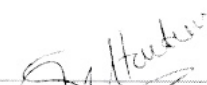
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Thus Signed at PRETORIA on this the 11 day of JUNE 2021.


MR TEMCINKOSI BONAKELE

For and on behalf of the Competition Commission of South Africa

In the presence of witnesses:

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