The Fine Print on South Africa’s Franchise Market Inquiry

How the Draft Terms of Reference Shape the Inquiry and Stakeholder Engagement

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The publication by the Competition Commission of the draft terms of reference (“ToR”) of its proposed inquiry into the South African franchising market initiates a regulatory process that is set to reach across several sectors and include consultation with multiple stakeholders. The ToR is the first indication of how the Commission currently understands the franchise market and the issues it considers most important to investigate and address.

The draft ToR for the proposed Franchise Market Inquiry (“FMI”) sets out the Commission’s preliminary views and invites stakeholders to submit comments by 7 August 2026. This is the first opportunity for stakeholders to shape how the Commission understands the franchising market and the issues it chooses to prioritise for investigation. The concerns identified at this stage often shape the evidence sought and questions asked of stakeholders, and ultimately, the recommendations and remedies that emerge from the inquiry. The draft ToR suggests that the inquiry may be shaped as much by questions of participation and market outcomes as by traditional competition concerns, making early, evidence-based engagement particularly important.

Why an Inquiry Into the Franchise Market?

The FMI appears to be driven by the Commission’s concern that franchising is economically significant but may not be delivering broad-based participation in practice. The draft ToR records a substantial economic footprint, with more than 800 franchisor brands, over 3,500 franchisees and approximately 30,000 franchise outlets across the country. The FMI will examine whether features of the franchise sector may restrict competition, and limit Small and Medium Enterprises (“SMEs”) participation and ownership by historically disadvantaged persons (“HDPs”).

The draft ToR frames franchising as a potentially important route into business ownership for SMEs and HDPs, while identifying concerns around limited SME and HDP entry, skewed ownership patterns, franchisor-franchisee power imbalances, funding barriers, restrictive agreement terms and information asymmetries.

The inquiry is therefore positioned as a broader assessment of whether features of the franchise model may be limiting competition, SME participation and HDP ownership in the market.

What Will Be Investigated?

The Commission has identified three broad themes for investigation:

— Finance, funding and terms and conditions: The requirements set by creditors and/or franchisors for SMEs and HDPs to access franchise financing.

— Franchise agreements' terms and conditions and practices: How these influence the franchisor-franchisee relationship and the ability of SME and HDP franchise businesses to effectively compete and grow.

— Exploitation of information asymmetries: The extent to which franchisors may be misrepresenting the value of their franchise outlets, and how this affects SME and HDP franchise business owners.

Taken together, these themes indicate that the inquiry is focused on market structure as well as the conditions affecting how franchisees access opportunities and operate within franchise systems.

Several of the practices identified in the draft ToR (e.g. exclusive supply obligations, approved supplier arrangements, pricing and promotional requirements, and royalty structures) are vertical restraints that can have legitimate efficiency rationales, including brand protection, quality control and preventing free riding. A central economic question for the inquiry will be to distinguish these procompetitive justifications from terms that foreclose rivals, soften competition or shift undue risk onto franchisees. Submissions are likely to be most persuasive where they engage with this trade-off directly and support their positions with evidence.

Who Will Be Involved?

Although the inquiry covers the broad franchise market, the Commission has indicated that it may focus the FMI on sectors identified as having greater potential to influence market dynamics. These sectors include fast food, construction, automotive, grocery, fuel stations, and health and beauty, with implications for franchisors, franchisees, funders and industry associations.

How Will This Process Likely Unfold?

Market inquiries typically follow a structured process, with opportunities for stakeholders to engage with the Commission at several points throughout. It commences 20 days after publication of the final ToR and must be completed within 18 months, unless the Minister of Trade, Industry and Competition grants an extension. Important opportunities for stakeholders to shape the inquiry arise at earlier stages, when the inquiry's scope, focus areas and analytical framework are still being developed.

Key Stages of the Market Inquiry Process and Considerations for Stakeholders:

1. Terms of Reference

— The draft ToR outlines the market, rationale, and preliminary issues identified for investigation, along with the inquiry's scope, exclusions and expected completion date. Stakeholders may submit comments, after which a final ToR is published.

— Stakeholders should assess whether the draft accurately reflects how the sector operates, and identify any factual inaccuracies, omissions or areas where the proposed scope could have unintended consequences. This is the earliest opportunity for stakeholders to provide input into how the inquiry frames the issues it will investigate and to explain their position to the Commission.

2. Launch and Statement of Issues

— After further ToR comments are considered, a statement of issues ("SoI") may be published, outlining the Commission's framework, focus areas and stakeholder questions. The draft SoI may later be revised into a Final SoI based on the feedback received.

— The SoI indicates the issues around which the Commission will likely request evidence and data from stakeholders. Stakeholders should identify which of these issues pertain to their business and what type of evidence they would require to support their position.

3. Call for Submissions and Request for Information

- The Commission typically invites stakeholder submissions on the issues raised in the ToR and SoI and sends requests for data and information to stakeholders.
- Stakeholders should start the process of gathering data and information promptly to ensure that gaps are identified early and can be addressed in time. Submissions to the Commission should be carefully compiled and reviewed to ensure they are founded in sound economic theory, accurate, easy for the Commission to use, and provide robust and sufficient evidence to support stakeholders' assertions.

4. Public Hearings

- Stakeholders can be called to present to the Commission, who may pose questions to stakeholders. In-camera hearings, individual meetings, interviews, site visits, or targeted requests for information may follow.
- Stakeholders should treat the hearings as an opportunity to clearly explain the industry and their views to the Commission and the public.

5. Provisional Report

- The provisional report sets out the Commission's preliminary findings and recommendations, with stakeholders invited to comment.
- Stakeholders must carefully consider the draft findings, recommendations and remedies to determine whether they are founded in facts and sound economic principles, and how they would affect their business if implemented. Where these raise material concerns, stakeholders must submit strong arguments and robust evidence to the Commission in support of their objections.

6. Final Report

- The final findings, recommendations and remedies may differ from those in the provisional report, depending on the evidence and submissions received.
- Stakeholders must consider the practical implications of the final recommendations and remedies, including implementation requirements and timelines, necessary changes to their business strategy, consequences for commercial arrangements and future regulatory engagements.

Final Thoughts

The publication of the draft ToR marks an important stage in the inquiry process. Beyond setting out the Commission's preliminary concerns, it provides stakeholders with an opportunity to comment on how the market is characterised, the issues identified for investigation and the direction of the inquiry.
This is particularly important given the Commission's strengthened powers following the 2019 amendments to the Competition Act, under which market inquiry findings can result in binding remedial action.
Evidence-based engagement can help address genuine concerns while reducing the risk of remedies with unintended consequences.

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