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Contents

No.		Gazette No.	Page No.
	GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS		
Trade, Industry and Competition, Department of / Handel, Nywerheid en Kompetisie, Departement van			
4473	Competition Act, 89 of 1998, as amended ("the Act"): Publication of the polymers market inquiry draft terms of reference in terms of section 43(B) of the Act	50378	3

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 4473 **26 March 2024**

PUBLICATION OF THE POLYMERS MARKET INQUIRY DRAFT TERMS OF REFERENCE IN TERMS OF SECTION 43(B) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED)

Notice is hereby given that the Competition Commission ("the Commission") will conduct an inquiry into the polymers market in terms of section 43B of the Competition Act, 89 of 1998, as amended ("the Act"). The Draft Terms of Reference ("the ToR") for the market inquiry are set out below for public comments.

In terms of sections 43B(2) and 43B(4) of the Act, the Commission must publish a notice in the Government Gazette announcing the establishment of the market inquiry, "*setting out the terms of reference for the market inquiry and inviting members of the public to provide information to the market inquiry" and "must include, at minimum, a statement of the scope of the inquiry, and the time within which it is expected to be completed*".

Public comments are invited on the draft scope of the inquiry on or before Tuesday, 14 May 2024. Written submissions can be sent to ccsa@compcom.co.za for attention of Ms. Mapato Ramokgopa and Ms. Nonkululeko Moeketsi.

competitioncommission
south africa

MARKET INQUIRY INTO THE POLYMERS INDUSTRY

TERMS OF REFERENCE

DRAFT FOR PUBLIC COMMENT

28 MARCH 2024

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Table of Contents

1. INITIATION OF AND LEGAL BASIS FOR THE MARKET INQUIRY 3

2. BACKGROUND TO THE SOUTH AFRICAN POLYMERS INDUSTRY 4

3. RATIONALE FOR THE POLYMERS MARKET INQUIRY 6

4. SCOPE OF THE POLYMERS INDUSTRY INQUIRY 16

5. OUTCOME OF THE INQUIRY 18

6. INQUIRY TIMELINES AND PROCESS..... 19

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1. INITIATION OF AND LEGAL BASIS FOR THE MARKET INQUIRY

1.1. The Competition Commission ("the Commission") will conduct a market inquiry into the South African polymers industry, covering the whole polymers value chain, from inputs, such as, coal and crude oil, to end products, such as, plastic pipes. The polymers industry market inquiry ("the Polymers Market Inquiry") will consider if adverse effects are present in the polymers value chain arising from any feature or combination of features that impedes, restricts or distorts competition.

1.2. The Polymers Market Inquiry is initiated in terms of section 43B(1)(a) of the Competition Act 89 of 1998 ("the Act"), as amended, on the basis that the Commission has reason to believe that there exist market features which impede, distort or restrict competition in the South African polymers industry. These reasons are set out below along with the draft scope of the inquiry. Public comments are invited on the scope of the inquiry on or before **Tuesday, 14 May 2024.**

1.3. The Terms of Reference ("ToR") are published in terms of section 43B (2) of the Act read together with section 43B(4). In terms of section 43B(2) and section 43(B)(4) of the Act, the Commission must publish a notice in the Government Gazette announcing the establishment of the market inquiry at least 20 business days before the inquiry commences, "*setting out the terms of reference for the market inquiry and inviting members of the public to provide information to the market inquiry"* and *"must include, at minimum, a statement of the scope of the inquiry, and the time within which it is expected to be completed*". In accordance with these provisions, this ToR sets out the draft scope for the Polymers Market Inquiry.

1.4. Although the ToR delimit the scope of the market inquiry as currently envisaged, additional and related matters not identified herein may arise during the conduct of the inquiry. If the Commission believes that the ToR should be amended in any way,

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either through the addition of new matters or exclusion of matters currently identified herein, the ToR may be amended in terms of section 43B (5) of the Act.

1.5. Upon completing the market inquiry and in accordance with section 43C of the Act, the Commission will publish a report of the inquiry in the Gazette and will also submit the report to the Minister of Trade, Industry and Competition.

2. BACKGROUND TO THE SOUTH AFRICAN POLYMERS INDUSTRY

2.1. Polymers are an essential input into many strategic and core segments of the South African economy. In 2021, plastics contribution to the South African economy and manufacturing sector was 1.9% and 15.9%, respectively[1]. The plastics industry also employs around 60 000 people, with almost 1 800 companies, and the majority of these companies are SMEs[2].

2.2. Because of the importance of polymers to the South African economy, the South African polymers value chain and the competitive dynamics therein are one of the Commission's key focus areas for competition intervention and enforcement. In terms of the Commission's prioritisation framework for competition law enforcement, intermediate industrial products have been identified as a priority.

Polymers Industry Value Chain

2.3. Main inputs for polymers production in South Africa are produced from coal and crude oil. Although not currently being used in South Africa, natural gas can also be used to produce these inputs. When coal and crude oil are refined to produce fuel, feedstock propylene and feedstock ethylene are also produced in the process. SAPREF (before

[1]An analysis of the South African Plastic Industry data published in November 20222 by Plastics SA.
[2]Who Owns Whom: Manufacture of plastics and plastic products in South Africa. SicCodes: 33430 and 33800.

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its closure in 2022), Sasol (i.e. Sasol Synfuels) and NATREF are some of the players at this level of the value chain.

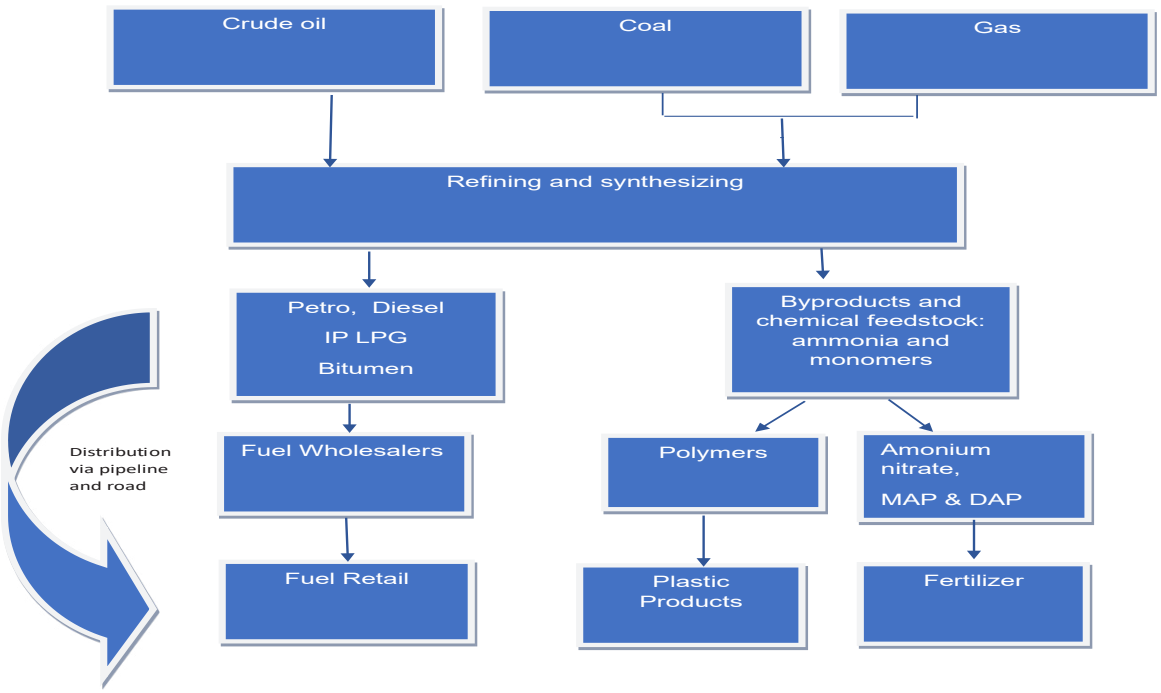
2.4. Feedstock is further processed to produce monomers, (i.e. ethylene and propylene). SAPREF (before its closure in 2022) and Sasol are some of the players at this level of the value chain.

2.5. Monomers are further processed to produce polymers. Polymers produced in South Africa include polypropylene ("PP"), and polyethylene, which includes low-density polyethylene ("LDPE"), linear low-density polyethylene ("LLDPE"), polyvinyl chloride ("PVC"), polyethylene terephthalate ("PET") and high-density polyethylene ("HDPE"). Sasol and Safripol are some of the players that operate at this level of the value chain.

2.6. Plastic converters use polymers to produce plastic products (e.g. HDPE and PVC pipes, packaging materials etc.), which are then sold to intermediate or end consumers. There are close to 1 800 plastic converters in South Africa, and some of these include, Pailpac, Polyoak, Marley Pipe Systems, Swan Plastics, MacNeil Plastics, Amitech Industrial and Petzetakis Africa. Imports also play a role at this level of the value chain. The above levels of the value chain are outlined in the figure below.

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Figure 1: The polymers value chain



Source: Mondliwa (2018)[3]

3. RATIONALE FOR THE POLYMERS MARKET INQUIRY

3.1. The purpose of the Polymers Market Inquiry is to examine whether there are any features in the polymers industry which impede, distort or restrict competition in the South African polymers value chain.

3.2. The Commission endeavours to use competition law and policy in a manner that proactively regulates markets in the polymers industry.

Challenges facing the South African polymers industry

[3] Mondliwa. P, (2018): An assessment of capabilities, diversification and market power in South African manufacturing, with special reference to the plastic industry.

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3.3. After 1994 the South Africa industrial policy identified the need to retain and increase South Africa's natural resource advantage, and also to encourage the transfer of that natural resource advantage through to the growth of downstream industries. It is not clear at this stage if this has been achieved in the polymers industry. Some studies are of the opinion that the plastic industry has not benefitted much from the cheap feedstock produced in South Africa.

3.4. South Africa has many capabilities in producing a range of polymers and basic plastic products. However, there appears to be blockages in growing this industry. Some studies show that high prices for monomers and polymers are one of the aspects that constraint growth of the plastics manufacturing sector in South Africa for several years[4].

3.5. A study shows that a number of problems in the polymers industry emanate from the pricing of inputs for the plastic conversion sector. The study also shows that despite being identified as one of the lowest cost producers of polymers, and the polymers industry also being identified as one of the industrial growth drivers in the country, South Africa's plastic conversion sector has been underperforming relative to its global peers. The plastic industry had been growing until 2002, then it stagnated. For example, the sector grew by 5.6% per annum from 1994 to 2002[5]. However, after around 2002, the picture changed. Several additional studies also showed that when some of the players in the industry changed their pricing model for polymers and started charging import parity prices around 2002, prices for local polymers increased to around 20% to 30% higher than international prices.

[4]Mofo L. (2020). Future-proofing the plastics value chain in Southern Africa; UNU- WIDER Working Paper 2020/148
[5]Bell, J Monaco L, and Mondliwa. P (2021). An Assessment of Backward Linkages from Polymers and Forward Linkages to the Automotive Industry.

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3.6. Studies have shown that after 2002, the plastic sector started performing poorly. One example relied upon is that employment growth decreased from 3.4% between 1994 and 2002, to only 0,5% between 2002 and 2019[6]. Studies also suggest that the worsening performance has seen the industry produce fewer complex products and become less diversified. For example, the bulk (around 49%) of plastic products produced in South Africa fall in the packaging category, and there is very little on other categories, such as, homeware and vehicle parts (for example, plastic bumpers).

3.7. Studies also show that because local prices for polymers were higher than what is being charged in other countries (at least 20%), South Africa experienced an influx of imports of plastic product relative to exports. One study shows plastic manufacturing sales grew by 85.6% between 2002 to 2019, while imports grew rapidly in the same period and accounted for a 330.8% increase[7].

3.8. Publicly available information also shows that the low margins in the plastic conversion sector, which is partly caused by high input costs, has partly compromised plastic converters' ability to invest in up-to-date equipment. As a result, these firms could be missing out on opportunities for innovation and development for the domestic manufacturing of plastic goods.

3.9. Consequently, prices for polymers could have negatively affected the price and competitiveness of the domestic production of a variety of plastic products. This may have also led to loss of local market share to imports and weakening competitiveness.

3.10. The section that follows, which is based on the Commission's previous and ongoing investigations, and publicly available information, provides the basis upon which the

[6] Bell, J Monaco L, and Mondliwa. P (2021). An Assessment of Backward Linkages from Polymers and Forward Linkages to the Automotive Industry.

[7] Mofo L. (2020). Future-proofing the plastics value chain in Southern Africa; UNU- WIDER Working Paper 2020/148.

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Commission has reasons to believe that there may be a feature or combination of features in the polymers industry that impede, distort, or restrict competition in the polymers value chain.

A. Inputs and raw materials

3.11. South Africa uses coal and crude oil to produce raw materials (i.e. feedstock) used in the production of polymers. Findings and concerns in respect of raw materials insofar as it relates to coal and crude oil are as follows:

Market Concentration

3.11.1. The coal market is concentrated. The Commission's concentration tracker report noted that the coal mining sector in South Africa is dominated by five entities. These five account for approximately 74% of the country's total saleable coal production. However, despite the huge coal reserves, and the fact that there are several coal producers, there is only one entity that supplies feedstock from coal in South Africa. Concentration levels in the crude oil market are also high as the industry is dominated by a few companies.

3.11.2. High levels of concentration at the raw materials level (coal and crude oil) of the value chain may strengthen the market power for players at this level of the value chain. This may further give room to players at this level of the value chain to supply raw materials at uncompetitive prices.

Barriers to entry

3.11.3. There are several barriers to entry faced by firms intending to mine and supply coal in South Africa. For example, a new entrant is required to comply with various legislative requirements. In addition, high start-up capital is required.

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3.11.4. With regard to the crude oil industry, substantial start-up capital is required. The long time it takes to acquire key licences and regulatory clearance is also a barrier to entry.

3.11.5. High barriers to entry in the raw materials market may have the effect of reinforcing market power. This may allow the current market players to sell these raw materials at higher prices.

3.12. *Concerns arising from the feedstock level of the value chain are as follows*:

Market Concentration

3.12.1. Currently there is only one firm that supplies feedstock ethylene in South Africa. There are also no imports of the product in the country.

3.12.2. There are only two entities that supply feedstock propylene in South Africa. In addition, although South Africa has four crude oil refineries, the Commission understands there is only one crude oil refinery that provides feedstock used to produce polymers.

3.12.3. High concentration levels at this level could also be worsened by the increasing number of refineries that are shutting down operations. Currently, of South Africa's six refineries only three are operational.

3.12.4. High concentration levels at this level of the value chain may raise competition concerns as this may give market power to players at this level to charge uncompetitive prices to customers.

Feedstock pricing

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3.12.5. In determining feedstock prices, in some instances the industry bases its decision on the "fuel alternative value". This may result in higher prices being charged to customers.

Barriers to entry and expansion

3.12.6. Refineries require very high start-up capital, and without any support (such as state support) many firms may find it difficult to raise the required capital.

3.12.7. High barriers to entry may have the effect of reinforcing market power and allowing firms to sell feedstock at higher prices to customers.

B. Production of monomers and polymers

3.12. *Concerns arising from the monomer level of the value chain are as follows*:

Market Concentration

3.12.8. The monomers market is highly concentrated. The Commission understands that there is not more than two entities in South Africa which produce ethylene and propylene. There are no imports of ethylene and propylene.

3.12.9. High levels of concertation may give players at this level of the value chain market power to charge prices that are above competitive levels.

Access to inputs at a reasonable price

3.12.10. Successful operation in the monomers market depends on a firm's ability to access feedstock propylene and ethylene at reasonable prices. South Africa has insufficient volumes of feedstock ethylene. As a result, ethylene feedstock suppliers may have market power, which they may abuse by selling feedstock ethylene at prices that are not competitive.

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3.12.11. Although South Africa has abundant feedstock propylene not much is available to customers and new entrants.

3.12.12. Lack of access to sufficient feedstock restricts expansion and entry in the market, and this may strengthen the current suppliers' market power, and ability to charge uncompetitive prices to customers.

High prices

3.12.13. Currently there is one supplier of ethylene and propylene in South Africa. As a result of this high concentration levels, there is room to potentially exercise market power, which may result in uncompetitive pricing.

Publicly available information shows that propylene prices in South Africa may not be based on actual costs, but prices charged in other countries. Such studies have also shown that although South Africa may have feedstock cost advantages associated with coal, propylene prices in the market appear to remain high.

3.12.14. High prices for propylene and ethylene raises input costs for downstream products i.e. PP, polyethylene and plastic products. This is potentially detrimental to consumers as high prices redistribute consumer surplus to producers.

Barriers to entry in the propylene and ethylene markets

3.12.15. The Commission's previous investigations have shown that barriers to entry in this market are high. For example, a reliable and secure long-term source of feedstock is crucial for the success of any ethylene and propylene purification projects. A firm intending to enter the market for production of ethylene is unlikely to obtain feedstock ethylene because supply is limited.

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3.12.16. There is only one supplier of feedstock ethylene in South Africa, and available feedstock propylene is already committed.

3.12.17. A substantial amount of capital is required to set up an ethylene and propylene plant.

3.12.18. The barriers to entry, as explained above, may have the effect of strengthening market power for the remaining players in the market, giving such players the ability to charge high prices to customers.

3.13. Concerns arising from the polymers level of the value chain are as follows:

Market concentration

3.13.1. With regard to polyethylene and PP there are only two local suppliers. The balance is met through imports.

3.13.2. High concentration levels may give players at this level of the value chain market power which can be used to charge prices that are not competitive.

Access to inputs

3.13.3. To produce PP and polyethylene one requires propylene and ethylene, respectively. There is only one local supplier and the available volumes of ethylene in South Africa are not sufficient for all the players.

3.13.4. With regards to propylene, currently there is only one supplier in South Africa. However, although there are more volumes of propylene produced in South Africa, there appear to be restrictions on the amount of propylene available to customers.

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3.13.5. Insufficient volumes of propylene and ethylene may restrict entry, and this may also have an effect of reinforcing the market power for the current players in the PP and polyethylene markets.

High prices

3.13.6. Some studies are of the opinion that high polymers prices in South Africa dates back to around 2002, when the industry appeared to have changed its pricing for PP, from export parity to import parity pricing. This switch may have resulted in substantial increases in the local price for PP. For example, one of the studies argue that, as a result of import parity pricing, local PP prices were around 25% higher than prices in other countries[8]. The change in the pricing to import parity is also likely to explain what appear to be an increase in imports for PP and polyethylene between 2002 and 2022.

Barriers to entry

3.13.7. The markets for the production of PP and polyethylene have high barriers to entry. Access to raw materials and high capital costs create high barriers to entry in the PP and polyethylene markets. Propylene and ethylene produced in South Africa is already committed, hence an entrant may not easily have access to these inputs.

3.13.8. Some players in the polymers value chain are vertically integrated, as they operate at various levels of the value chain. This raises barriers to entry as new entrants may need to enter at more than one level of the value chain.

[8] Leveraging plastics linkages for diversification: An assessment of backward linkages from polymers and linkages to the automative industry by Bell, Monaco and Mondliwa (2019).

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3.13.9. High barriers to entry may have an effect of strengthening market power to the current players and this may allow such players to exploit customers through uncompetitive prices for both polyethylene and PP.

C) Plastic converters

3.14. Concerns arising from the plastic converters level of the value chain are as follows:

Concentration levels

3.14.1. The plastic converters industry has almost 1 800 players. Although the market is not overly concentrated, the Commission's 2021 Concentration Report identified a few highly concentrated segments, which include, PET bottles, supply of HDPE bottles for homecare and personal care, and for beverages, supply of food grade chips using PET bottles and plastic refuse bags.

Input costs

3.14.2. Some studies have expressed the opinion that, despite South Africa being a country in which the production cost of polymers is low, the South African plastic sector does not seem to have benefitted from such an advantage. One study found that, although the main input costs for the production of polymers was 25% lower than in some countries, polymers prices in South Africa were 20% higher than those countries. This may have affected the competitiveness of South African plastic converters.

3.14.3. Some studies have also expressed the view that the change in the pricing of polymers from export parity to import parity since around 2002 may have significantly increased the price of inputs for local plastic converters. This is so because, polymers are by far the largest input cost for plastic converters, contributing, at least 40% of polymers' total production costs.

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3.14.4. Studies have also expressed an opinion that high input costs in the plastic sector may have resulted in the sector becoming less diversified and producing less complex plastic products. Further, the view expressed is that the local plastics industry's competitiveness has weakened and has resulted in an influx of imports relative to exports.

Government intervention in the polymers industry

3.15. The plastics sector has been identified as a priority sector by the government, partly due to its relatively high employment multipliers. Interventions in the industry has mainly taken the form of ad hoc initiatives and the application of some cross-cutting policy interventions.

3.16. Although the Industrial Policy Action Plan (IPAP) includes references to the plastics industry and a number of action programmes have been implemented these appear not to fully address features that may impede competition in the industry. In addition, the Plastics Industry Master Plan for Growth does not seem to fully address features that may impede competition in the industry.

3.17. As a result, although there have been different interventions from the government these do not appear to have adequately addressed features that may impede, distort or restrict competitiveness in the polymers industry as outlined above.

4. SCOPE OF THE POLYMERS INDUSTRY INQUIRY

4.1. Consistent with section 43B of the Act, the Polymers Market Inquiry will focus on whether there are any features that may impede, distort or restrict competitiveness in the polymers industry. The Polymers Market Inquiry will be confined to two levels of the polymers value chain namely: (i) the raw materials/inputs level, and (ii) the monomers and polymers levels.

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4.2. The themes of the inquiry will be categorised as follows:

Inputs and raw materials level of the value chain

4.2.1. With respect to feedstock ethylene and feedstock propylene, the inquiry's objective will be on fostering effective competition and elimination of barriers to entry and expansion by conducting and considering an:

4.2.1.1. Assessment of barriers to entry and expansion of the raw materials market (i.e. coal, crude oil and natural gas) that supply feedstock;

4.2.1.2. Assessment of barriers to entry and expansion for the feedstock ethylene and feedstock propylene markets; and

4.2.1.3. Assessment of price setting mechanisms for feedstock ethylene and feedstock propylene. This will encompass assessing how feedstock prices are set and whether such prices are close to competitive levels.

Monomers and polymers level of the value chain

4.2.2. With respect to the monomers and polymers level of the value chain, the inquiry's objective will be on fostering effective competition and elimination of barriers to entry and expansion by conducting and considering an:

4.2.2.1. Assessment of price setting mechanisms for propylene and PP and whether these products are priced competitively;

4.2.2.2. Assessment of price setting mechanisms for ethylene and polyethylene and whether these products are priced competitively;

4.2.2.3. Assessments of barriers to entry (e.g. regulatory; vertical integration) facing local manufacturers/suppliers of propylene and PP; and

4.2.2.4. Assessments of barriers to entry (e.g. regulatory and vertical integration) facing local manufacturers/suppliers of ethylene and of polyethylene.

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5. OUTCOME OF THE INQUIRY

5.1. In terms of section 43C of the Act, if the Commission establishes that there is an adverse effect on competition, it must determine the action that must be taken. In addition, it must determine:

5.1.1. Whether it must make recommendations to any Minister, regulatory authority or affected firm to take action to remedy, mitigate or prevent the adverse effect on competition; and

5.1.2. If any such action must be taken, the action that must be taken in respect of what must be remedied, mitigated or prevented.

5.2. In terms of section 43D of the Act, the Commission has a duty to remedy adverse effects on competition. The Commission may, in relation to each adverse effect on competition, take action to remedy, mitigate or prevent the adverse effect on competition.

5.3. Any action taken in terms of remedying an adverse effect on competition must be reasonable and practicable, taking into account relevant factors, including:

5.3.1. The nature and extent of the adverse effect on competition;

5.3.2. The nature and extent of the remedial action;

5.3.3. The relation between the adverse effect on competition and the remedial action;

5.3.4. The likely effect of the remedial action on competition in the market that is the subject of the market inquiry and any related markets;

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5.3.5. The availability of less restrictive means to remedy, mitigate or prevent the adverse effect on competition; and

5.3.6. Any other relevant factor arising from any information obtained by the Commission during the market inquiry.

5.4. Further, on the basis of information obtained during the inquiry, the Commission may initiate a complaint and enter into a consent order with any respondent, with or without conducting any further investigation;

5.4.1. Initiate a complaint against any firm for further investigation;

5.4.2. Initiate and refer a complaint directly to the Competition Tribunal without further investigation;

5.4.3. Take any other action within its powers in terms of the Act recommended in the report of the inquiry; or

5.4.4. Take no further action.

5.5. Any interested person who is materially and adversely affected by a determination of the Commission in terms of the above outcomes, may, within the prescribed period, appeal against that determination to the Competition Tribunal.

6. INQUIRY TIMELINES AND PROCESS

6.1. The public is invited to submit comments on these draft Terms of Reference by **Tuesday, 14 May 2024**. Written submissions can be sent to ccsa@compcom.co.za for attention of Ms. Mapato Ramokgopa and Ms. Nonkululeko Moeketsi. All submissions will be reviewed, and a final Terms of Reference published by the Commission.

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6.2. The Polymers Market Inquiry will commence 20 days after the publication of the final Terms of Reference and the final report will be completed within 18 months as per the statutory requirements of 43B(2) and 43B(4)(a) respectively.

6.3. Details on the administrative phases of the inquiry along with Guidelines for Participation will be made available on the Commission's website once the final Terms of Reference are published. At that point, members of the public and businesses will be invited to provide written representations and information to the inquiry.

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