

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

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***competition*commission**
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SOUTH AFRICAN FRANCHISE MARKET INQUIRY

DRAFT TERMS OF REFERENCE

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1. INITIATION OF AND LEGAL BASIS OF THE MARKET INQUIRY

- 1.1. The Competition Commission (“the Commission”) will conduct a market inquiry into the Franchise Sector in South Africa (“the Franchise Market Inquiry”). The Franchise Market Inquiry is initiated in terms of section 43B(1)(a) of the Competition Act 89 of 1998, as amended (“the Act”), on the basis that the Commission has reason to believe that there are market features that may impede, distort or restrict competition in the South African Franchise Business Market.
- 1.2. In terms of section 43B(2) of the Act, read together with section 43B(4), the Commission must publish a notice in the Gazette announcing the establishment of a market inquiry. This notice must be published at least 20 business days prior to the commencement of the inquiry. The notice must set out the Terms of Reference (“ToR”) for the inquiry and invite members of the public to provide information. At a minimum, the ToR must include a clear statement of the scope of the inquiry and the expected timeframe for completion. During this period, the public is invited to comment on the draft ToR and to make written submissions by **07 August 2026**.
- 1.3. While the ToR defines the initial scope of the market inquiry, it is not exhaustive and only sets out the parameters currently envisaged. Additional or related matters may arise during the course of the inquiry. Should the Commission consider it necessary to amend the ToR, whether by adding new matters or excluding those initially identified, such amendments will be made in accordance with section 43B(5) of the Act and will be formally published and communicated as required.
- 1.4. In accordance with section 43C of the Act, upon completion of the market inquiry, the Commission will publish a report of the inquiry in the Gazette and submit the final report to the Minister of Trade, Industry and Competition.
- 1.5. The information contained in these draft ToR is accurate to the best of our knowledge at the date of publication. Market conditions, ownership structures, control arrangements, and other material facts may change after publication. Participants are accordingly requested to promptly notify the Commission of any information relating to them that renders any part of the ToR inaccurate, incomplete, or outdated, including any changes in ownership, control,

or other material circumstances relevant to the ToR.

2. BACKGROUND TO THE SOUTH AFRICAN FRANCHISE MARKET

- 2.1 A franchise is a business whereby the owner licenses its operations, along with its products, branding, and knowledge in exchange for a franchise fee. The franchisor is the business that grants licenses to franchisees. Franchising is a method of expanding a business and distributing goods and services through a licensing relationship between a franchisor and a franchisee.¹ In principle, this arrangement brings both parties together for their mutual economic benefit. Franchisors benefit by growing and expanding their business without the need to invest large capital amounts to open new stores whilst franchisees benefit through buying into an already well-established business model and brand.²
- 2.2 Franchisees are required to comply with a franchise agreement which sets out how the franchise must be operated and managed. Although, operating under the franchisor's brand name, the franchisee remains fully responsible for establishing the franchise outlet, bearing the associated risks and costs of opening and managing the business. Franchise businesses are found across almost all sectors in South Africa, including agriculture, mining, manufacturing and industrial services, office buildings, home services, fast food and restaurants, health, beauty and body culture, education and learning, retail and direct marketing services sectors.
- 2.3 There are more than 800 franchisor brands active in South Africa, with more than 3 500 franchisees and more than 30 000 franchise outlets across the country. Furthermore, South Africa has the second highest contribution of franchising to national output in the world and is the only emerging market in the top five.³ According to Franchise Association of South Africa's ("FASA's") 2023 database and survey, the fast foods and quick service restaurants account for the largest share of the franchising business (19%). Other notable sectors include retail (17%), building, office, and home services (12%), automotive products and services (10%) and childcare education and training (7%).⁴

¹ International Franchise Association. (2018). What is A Franchise? at: <https://www.franchise.org/what-is-a-franchise> and Dube, Mara and Ntimane. (2019). Perceptions of franchise stakeholders on trust in franchising relationships. Available at https://www.ajhtl.com/uploads/7/1/6/3/7163688/article_16_vol_9_1_2020_uj.pdf.

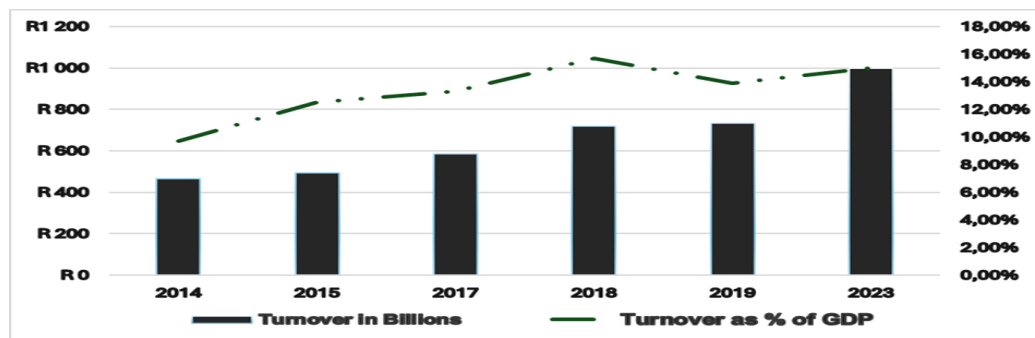
² Brown. A. (2023). Evaluation of competition concerns regarding franchise agreements where franchisors determine prices for franchisees. Available at <https://wiredspace.wits.ac.za/server/api/core/bitstreams/9481508e-286f-4403-88fa-b153feff9dc9/content>

³ Klinger. B. (2022). More (Inclusive) Entrepreneurship in South Africa: The Role of Franchising. Available at <https://growthlab.hks.harvard.edu/files/growthlab/files/2022-06-cid-fellows-wp-137-south-africa-franchising.pdf>

⁴ The Franchise Association of South Africa's (2023) eighth independent franchise survey, sponsored by Absa.

- 2.4 FASA estimates that in 2023, the franchise industry's turnover was approximately R999 billion, representing approximately 15% of South Africa's total GDP of R6 660 billion in 2022.⁵ Figure 1 below depicts the estimated turnover generated by the franchise industry and its contribution to GDP overtime.

Figure 1: Estimated turnover generated by the franchise system and contribution to GDP overtime (2014 – 2023)



Source: Compiled by the Commission using several publications that are based on FASA surveys overtime

- 2.5 It is further estimated that the franchise industry employs about 500 000 people, accounting for approximately 5% of total employment in South Africa.⁶ Franchise employment is particularly important as it offers both formal and low-skilled jobs, which have been challenging for other sectors of South African economy to generate.⁷ Sanlam and FASA indicate that 85% of franchise concepts in South Africa are home-grown and have the export potential.⁸

3. RATIONALE FOR THE FRANCHISE MARKET INQUIRY

- 3.1 Sections 43B(1)(a)(i) and (ii) of the Act empower the Commission to initiate a market inquiry if it believes that certain features or combination of features in a market for any goods or

⁵ See Franchise Association South Africa. (2023). Franchising, pg. 7 – 8. Available at https://issuu.com/sundaytimesza/docs/franchising_dec_2023?fr=xKAE9_zU1NQ and FASA: "Why is franchising in South Africa a sustainable business model". (2024).: <https://www.fasa.co.za/franchising-in-south-africa-a-sustainable-business-model/>

⁶ Franchising Plus. (2023). A Comprehensive Overview of the South African Franchise Industry: Stability, Growth, and Future Prospects. Available at: [Franchising Plus](https://www.fasa.co.za/franchising-plus). Also see FASA (2025): "Can franchising in South Africa keep up with global growth". <https://www.fasa.co.za/can-franchising-in-south-africa-keep-up-with-global-growth/>

⁷ Franchise Association South Africa & Sanlam (2018) Franchise Survey.

⁸ Franchise Association South Africa & Sanlam. (2018) Franchise Survey

services impede, distort or restrict competition within that market; or to fulfil the objectives of the Act. Key goals highlighted in section 2 of the Act include:

- 3.1.1 Ensuring that small and medium-sized enterprises have a fair chance to participate in the economy; and
- 3.1.2 Promoting a greater spread of ownership, especially by increasing the ownership levels of historically disadvantaged persons.⁹

3.2 Against this background, 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 (“SMEs”) in owning and operating franchise businesses; and (iii) negatively affect the increased ownership of franchise businesses by historically disadvantaged persons (“HDPs”).

3.3 The following section sets out the basis on which the Commission believes there may be one or more features in the Franchise sector that impede, distort, or restrict competition and/or limit the equitable participation and ownership of SMEs and HDPs in franchising.

3.4 **Franchising is an Underutilised Pathway for SMEs and HDPs into the Formal Economy**

3.5 Franchising allows a franchisee to invest in a business with an established track record, a good reputation and many years of operation.¹⁰ Although there are barriers faced by SMEs and HDPs in accessing finance for entry and effective participation in franchising (discussed below in detail), these barriers appear to be comparably lower than those encountered by other types of businesses established without the benefit of the franchise system or model. This is partly due to the credibility conferred by the vetting process before approving a potential franchisee as well as the support offered to the franchisee.¹¹

3.6 Given the nature of the model in franchising, they are considered an important entry point for SMEs and HDPs. Due to the lower risks involved with establishing a franchise branch,

⁹ Sections 2(1)(e) and (f) of the Act, respectively.

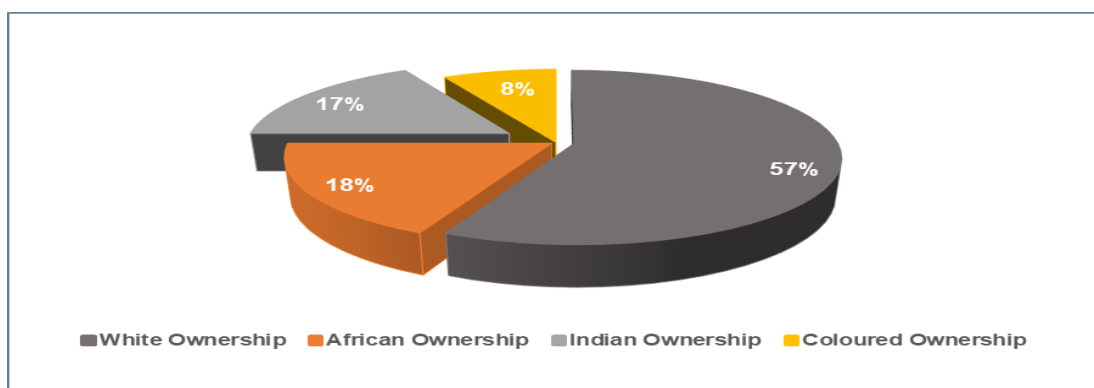
¹⁰ Consumers are already familiar with the brand and various products offered under the brand name.

¹¹ Menzies, D. (2017). Types of funding available for franchisees. (Online) Available at: <https://www.entrepreneurmag.co.za/advice/franchising/franchiseeadvice/>

from a financing perspective, banks and other financial institutions are more willing to provide funding to these types of businesses. In other words, the franchise business model plays a crucial role in facilitating the entry of SMEs and HDPs by enabling access to secure funding, which they generally struggle to obtain in other sectors. When considered from this point of view, franchising has the potential to contribute meaningfully to economic transformation by promoting inclusion and effective participation of HDPs and SMEs in the formal economy. Additionally, franchising can play an instrumental role in addressing the skewed ownership patterns present in the South Africa economy.

- 3.7 Despite the enormous potential that the South African franchising system has in terms of contributing to economic transformation and inclusion, the Commission has observed that the entry and participation of SMEs, especially HDP businesses, in franchising is still slow and at lower levels. By "lower levels," this refers to both the limited number of HDP-owned and SME-operated franchises compared to their representation in the broader economy, and the restricted scale or depth of their engagement within the franchising sector. This indicates that while some participation exists, it is not yet proportional or reflective of the broader demographic landscape, limiting the overall impact on economic inclusivity and transformation. Moreover, the franchise sector still reflects skewed racialised patterns of ownership. For instance, a survey by FASA shows that the ownership of franchise outlets in South Africa is by far dominated by white owned businesses. The results of this survey are depicted in Figure 2 below.

Figure 2: Franchisee Ownership Patterns by Race, in Terms of Franchised Outlets 2023



Source: *The Franchise Association of South Africa's (2023) eighth independent franchise survey*

- 3.8 As can be seen from figure 2, Africans account for only 18% of the ownership of franchise

outlets. Indian ownership accounts for 17%, Coloured ownership accounts for 8% and White ownership sits at 57%.¹²

3.9 The imbalances in ownership patterns should be viewed and understood in the context of South African population demographics, which reveal a significant under-representation of HDPs in the ownership of franchise outlets.¹³ The low level of participation by Africans in the ownership within the franchise sector attests the reality that it remains highly untransformed, despite the opportunities it offers to promote inclusivity and drive economic transformation.

3.10 It has also been observed that franchise ownership is largely concentrated among wealthy, educated professionals, who can leverage their savings and networks to meet the high capital requirements for acquiring franchise outlets, which in turn limits broader and more inclusive African participation in the sector and its contribution to inclusive ownership in the economy.¹⁴ Consequently, the most disadvantaged groups in society, such as women and young aspiring entrepreneurs with skills but limited financial resources remain largely excluded from entry and meaningful participation in franchising.

3.11 The Commission considers it imperative to preserve and optimise the South African Franchising sector in a manner that facilitates the entry and effective participation of SMEs and HDPs in line with the Act's purpose and objectives.

3.12 Market Features in the Franchise Businesses

3.13 There appear to be market features in the Franchising sector that create barriers that hinder or impede the entry, effective participation and expansion of SMEs, in particular HDP owned businesses. These market features, as discussed below, may impede, distort or restrict

¹² Franchise Association South Africa. (2023) Franchising. Available at https://issuu.com/sundaytimesza/docs/franchising_dec_2023?fr=xKAE9_zU1NQ and The Franchise Association of South Africa's (2023) eighth independent franchise survey

¹³ HDPs accounts for more than 90% of the population [Africans (81.7%), Coloured (8.5%) and Indian/Asian (2.6%)].

¹⁴ Klinger. B. (2022). More (Inclusive) Entrepreneurship in South Africa: The Role of Franchising. Available at <https://growthlab.hks.harvard.edu/files/growthlab/files/2022-06-cid-fellows-wp-137-south-africa-franchising.pdf>

competition.

Power of Franchisors and Concentration Levels

- 3.14 Several complaints filed with the Commission by franchisees point to a power imbalance between franchisors and franchisees, as well as the challenges franchisees face in negotiating equitable terms.¹⁵ In this context, franchisees are typically subjected to restrictive and potentially exploitative practices by the franchisors, who exert significant control over their operations and supply chains. This creates power imbalances that favour franchisors, who appear to use this power to impose unfavourable terms in franchise agreements, or to engage in practices that structure the franchisor-franchisee relationship in ways that limit the ability of SME and HDP franchise businesses to compete effectively, participate fully, and expand within their markets.
- 3.15 The power imbalance between franchisors and franchisees has also been observed in other jurisdictions. For instance, the FTC's research into franchise agreements highlights concerns about this imbalance of power during franchise negotiations. Franchise agreements are typically presented as non-negotiable, "take-it-or-leave-it" contracts, which franchisees must accept to enter the market. This lack of bargaining power can lead to agreements that are heavily skewed in favour of the franchisor. Franchisees have reported feeling pressured to sign agreements quickly, without the opportunity to negotiate terms or seek adequate legal counsel.¹⁶ Such practices create an environment where potential franchisees may not be fully informed of the risks involved, which can negatively affect their competitiveness upon entering the market.
- 3.16 The Commission has observed a rising number of mergers and acquisitions in well-established franchise sectors, where franchisees sell their businesses to franchisors or other well established national chains. Between 2017 and 2024, the Commission considered approximately 41 acquisitions of franchise businesses in the grocery retail; and food and beverages sectors. These mergers involved large national franchise brands. Notably, the Commission has also noted a significant increase in such franchise acquisitions post the Covid-19 pandemic. The annual average number of franchise merger and

¹⁵ For example, see Commission Case No: 2025Jan0047 and 2025Apr0013.

¹⁶ FTC. 2024. Issue Spotlight: Risks to Small Business Success in Franchising (12 July 2024). Available at: https://www.ftc.gov/system/files/ftc_gov/pdf/Franchise-Issue-Spotlight.pdf

acquisition transactions in the two sectors increased from about 3 transactions per year during the 2017 to 2019, to around 10 transactions per year during the post-Covid period, from 2021 to 2023.

- 3.17 The pattern of concentration through acquisitions compounds concerns regarding the power exercised by franchisors, which may allow them to impede, distort or restrict competition in their markets, and increase barriers to entry, participation and expansion for SMEs and HDPs.

Finance and /or Funding Terms and Conditions

- 3.18 Franchising opportunities for HDPs may be limited because of franchise funding requirements imposed by either franchisors or credit financiers. For instance, the upfront capital contribution required directly from a prospective franchisee can hinder the entry and participation of HDP businesses, especially when this contribution represents a significant portion of the total value of the franchise business. Research indicates that, in some instances, this up-front capital equity is imposed as a requirement by the franchisors themselves and not by the credit financiers and is viewed by franchisors as a demonstration of commitment on the part of the franchisee.

- 3.19 In its guidelines to an aspiring franchise owner seeking franchise finance, one credit financier notes that *“most franchises will require you to invest at least 50% of the entire investment needed for the franchise by using your own unencumbered funds. The potential franchisee can then apply for finance for the remainder 50% of the investment.”* The credit financier further explains that unencumbered funds refer to *“free cash that is not bonded or borrowed from anyone. This could include the proceeds of a pension payment, money in the bank, an investment available for drawing or cash from selling another asset”*.¹⁷ This position is also confirmed by FASA which states that the *“franchisee is required to have at least 50% of total investment in unencumbered and secured deposit to buy a Franchise”*.¹⁸ FASA further notes that *“many potential franchisees lack the capital required to invest in a franchise and ... there is still a need for more robust financial support mechanisms from both private and*

¹⁷ Capitec (2024) “How to apply for franchise finance. Follow these steps once you're ready to apply for franchise finance, and make sure you have the standard requirements ready” <https://www.capitecbank.co.za/business/transact/franchising/how-to-apply-for-franchise-finance/>

¹⁸ Franchise funding, loan applications and franchisor compliance (2021): <https://www.fasa.co.za/franchise-funding-loan-applications-and-franchisor-compliance/>

public sectors".¹⁹

3.20 The Commission notes that these onerous monetary requirements especially those imposed by franchisors, which are likely to have unintended (or intended) effect of excluding certain groups of persons from entry and participation in franchising, including skilled and talented entrepreneurs who may not have substantial financial resources. Such requirements appear to pose a significant barrier for HDPs and may contribute to the slow transformation observed above. There may be alternative and less exclusionary ways to assess a prospective franchisee's commitment, other than requiring them to personally finance 50% of the investment.

Franchise Agreements' Terms and Conditions and Practices

3.21 In recent years, numerous reports have highlighted significant challenges within the franchise system, largely stemming from relationship failures between franchisors and franchisees.²⁰ The Commission has also received complaints from franchisees alleging, among other issues, unfair trading terms and conditions.²¹ In particular, franchisors appear to use the terms of franchise agreements, and /or other practices, to exert undue influence over franchisees' operations in ways that unjustifiably limit franchisees' ability to compete effectively and, in turn, to participate in and expand within their markets. Examples of such unfair terms and /or practices include but are not limited to:

3.21.1 Restrictive supply requirements and conditions imposed by franchisors that compel franchisees to purchase products and /or stock exclusively from preferred or approved suppliers, or the franchisor itself, even where cheaper substitutes exist.²² These supply conditions restrict franchisee's ability to source competitively priced goods elsewhere, which can undermine their price competitiveness in the market and also reduce their

¹⁹ See FASA: Why is franchising in South Africa a sustainable business model (2024): <https://www.fasa.co.za/franchising-in-south-africa-a-sustainable-business-model/>

²⁰ Dube, Mara and Ntimane. (2019). Perceptions of franchise stakeholders on trust in franchising relationships. Available at https://www.ajhtl.com/uploads/7/1/6/3/7163688/article_16_vol_9_1__2020_uj.pdf.

²¹ Over and above complains filed with the Commission see: Financial Mail. 2024. *[Name of the Franchisor removed by the Commission] franchise fracas heads to court*. Accessed at: <https://www.businesslive.co.za/fm/money-and-investing/2024-02-22-pick-n-pay-franchise-fracas-heads-to-court/>; Daily Maverick. 2024. *Judge rules for embattled [Name of the Franchisor removed by the Commission] after franchisee says group crippled its business*. Accessed at: <https://www.dailymaverick.co.za/article/2024-02-25-judge-rules-for-embattled-pick-n-pay-after-franchisee-says-group-crippled-its-business/>

²² IOL. 2022. *Pick n Pay township business franchise 'a big fraud' – trader*. Accessed at, <https://www.iol.co.za/sundayindependent/news/pick-n-pay-township-business-franchise-a-big-fraud-trader-a00a8f78-4e04-4214-aaa6-c65411f92ac8>

- profit margins, and ultimately threaten their sustainability and price competitiveness;
- 3.21.2 Franchisors failing to pass on supplier discounts and rebates to franchisees, despite franchisees contribution to securing these benefits.²³ This concerns franchisors receiving rebates and discounts from approved suppliers, which do appear to be passed on to franchisees. These rebates and discounts also create an incentive for franchisors to require franchisees to use approved suppliers even in instances where viable alternative suppliers exist;
- 3.21.3 Non-negotiable pricing, promotions, and other corporate strategies set by the franchisor that may not reflect the franchisee's local market conditions or operational goals.²⁴ This includes instances where franchisees are compelled to accept fixed pricing and promotional terms without regard to their financial position or local market dynamics. The Commission is aware of instances where franchisors require franchisees to sell products at or below cost prices.²⁵ There are also pricing discount models by the franchisors that prioritise sales volumes over profit margins, resulting in financial distress and debt accumulation for franchisees. Such conduct is likely to undermine the franchisees' ability to sustain their operations;²⁶ and
- 3.21.4 Burdensome and discriminatory franchise fee and royalty arrangements, with some franchisees reportedly exempt or charged reduced rates.²⁷ This relates to instances where franchisees are given unequal treatment as far as the payment of franchising fees is concerned in that there are franchisees that are not required to pay these fees or, at the very least, are charged lower fees. This unequal treatment of franchisees is likely to affect the competitiveness of franchisees that are required to pay [higher] franchising fees and this may distort competition. The situation may be worsened if the fees paid by these franchisees are excessively high, intensifying the competitive disadvantage.

²³ Complaint bundle, Mr Pilane Kwakwa complaint against PnP, p.5-11.

²⁴ Pick and Pay Retailers Proprietary Limited v Kemptongate Foodlane Proprietary Limited and Others (2024-012775) [2024] ZAGPJHC 208 (23 February 2024). See also Financial Mail. 2024. Pick n Pay franchise fracas heads to court. Accessed at: <https://www.businesslive.co.za/fm/money-and-investing/2024-02-22-pick-n-pay-franchise-fracas-heads-to-court/>; and Daily Maverick. 2024. Judge rules for embattled Pick n Pay after franchisee says group crippled its business. Accessed at: <https://www.dailymaverick.co.za/article/2024-02-25-judge-rules-for-embattled-pick-n-pay-after-franchisee-says-group-crippled-its-business/> [Financial Mail. 2024. Pick n Pay franchise fracas heads to court. Accessed at: <https://www.businesslive.co.za/fm/money-and-investing/2024-02-22-pick-n-pay-franchise-fracas-heads-to-court/>]

²⁵ In one of the complaints filed with the Commission, a franchisee operating in a township alleges that they were forced by the franchisor to purchase excessive stock comprising largely of products on special promotions. This ultimately forced the franchisee to sell these products below cost thereby incurring substantial financial losses.

²⁶ See Commission Case No: 2025Jan0047. The name of the Complainant and Respondent removed.

²⁷ Complaint bundle, Mr Pilane Kwakwa complaint against PnP, p21.

3.22 The Commission understands that some of the practices described above have allegedly caused financial distress and debt accumulation among franchisees. In certain instances, franchisees have allegedly been forced to down-size or shut down completely.²⁸ The exit of franchisees as a result of oppressive and unfair trading terms imposed by franchisors is likely to reduce competition within the franchise sector. This may also negatively affect transformation efforts by limiting the participation and growth of SME and HDP franchise businesses. Such practices have the potential to hinder these businesses from expanding within their markets.

Exploitation of Information Asymmetries

3.23 Some franchisors appear to project an overly optimistic or misleading view to attract prospective franchisees. Case studies illustrate that some franchisors exploit information asymmetry (stemming from their greater knowledge and control over financial resources and corporate strategies) to the detriment of franchisees who lack comparable insights. This practice can undermine the ability of the prospective franchisees to make informed decisions before committing to and may negatively affect their viability once operating the business.

3.24 Reported court judgments reveal how certain franchisors have exploited information asymmetries, arising from their superior knowledge of financial performance and corporate strategy to the detriment of less-informed franchisees.²⁹ Similarly, a complaint filed by an HDP franchisee against a franchisor presented business plans and projections that were allegedly grossly inaccurate and promising outcomes that were never realized. In other words, franchisors have provided misleading information that undermines the prospective franchisee's ability to make informed decisions. The Commission notes that in 2019, FASA reported that a common complaint from franchisees involved franchisors failing to disclose the true financial position of the franchise being sold or proceeding with sales without providing an up-to-date disclosure document, or any disclosure at all.³⁰

3.25 This occurs despite franchisors legally required to provide prospective franchisees with a

²⁸ IOL. 2022. *Pick n Pay township business franchise 'a big fraud' – trader*. Accessed at, <https://www.iol.co.za/sundayindependent/news/pick-n-pay-township-business-franchise-a-big-fraud-trader-a00a8f78-4e04-4214-aaa6-c65411f92ac8>.

²⁹ Good Future Trading and Projects 264 CC v Scooters Pizza (Pty) Ltd (60085/2014) [2018] ZAGPPHC 631 (16 February 2018).

³⁰ The Franchise Association of South Africa. 2019. Franchise compliance lacking despite CPA protection. Available at [Franchise compliance lacking despite CPA protection - Franchise Association South Africa](#).

Franchise Disclosure Document (“FDD”) in line with the Consumer Protection Act no 60 of 2008, before any agreements are signed.³¹ Although the FDD is intended to ensure transparency and promote informed decision-making, prospective franchisees often struggle to fully understand the implications of their commitments.

3.26 The provision of misleading information and overstated projections is also likely to distort competition between franchisors in the sale of franchise business opportunities. Once a buyer commits to purchasing a franchise, they often become locked-in and may face substantial costs if they wish to switch to a different franchise. If franchisees are unfairly treated or misled about the financial health of the franchise they intend to acquire, they may struggle to compete effectively against their counterparts who benefit from such practices. Ensuring fair competition and equitable access to franchising opportunities is essential for fostering economic growth, reducing inequality, and supporting small business development.

4. SCOPE OF THE FRANCHISE MARKET INQUIRY

4.1 Consistent with section 43B of the Act, the Franchise Market Inquiry will examine whether there are any features that may impede, distort or restrict competition within the franchise sector. It will assess the current state of competition and whether any market features hinder or impede the entry, expansion and effective participation of SMEs and HDPs. The Franchise Market Inquiry will focus on three broad themes, namely: (i) finance, funding and terms and conditions, (ii) franchise agreements’ terms and conditions and practices and (iii) exploitation of information asymmetries.

Finance, Funding and Terms and Conditions

4.2 To promote inclusiveness in franchise business ownership, the Franchise Market Inquiry will assess the requirements set by creditors and/or franchisors for SMEs and HDPs to access franchise finance. This investigation will include, but is not limited to, an assessment of the following:

- 4.2.1 Funding and finance qualification criteria for franchise finance and the impact on the entry and effective participation of SMEs and HDPs in franchise businesses;
- 4.2.2 The application processes for SMEs and HDP businesses, including the types of

³¹ Regulation 3 of the Consumer Protection Act Regulations. Available at: <https://thence.org.za/cpa-regulations-2/#:~:text=3.,to%20meet%20the%20promised%20standards.>

- information and documentation required when applying for franchise finance;
- 4.2.3 Terms and conditions applicable to SMEs and HDPs businesses that qualify for franchise finance. The assessment in this regard will consider the extent to which such terms and conditions may be inhibiting a more inclusive franchise sector, including the growth and expansion of HDP owned franchisees; and
- 4.2.4 The potential for introducing more innovative and alternative financing options in franchising to reduce the prospective owner's up-front capital contribution.

Franchise Agreements' Terms and Conditions and Practices

- 4.3 The Franchise Market Inquiry will assess how franchise agreements, and related practices, may influence the franchisor-franchisee relationship and their potential effects on the ability of SME and HDP franchise businesses to compete, participate, and expand their respective markets. This will include but is not limited to:
- 4.3.1 Examining the nature of the terms and conditions in franchising arrangements;
- 4.3.2 Assessing the impact of the terms and conditions on competition, including their effect on the participation and expansion of SMEs and HDPs;
- 4.3.3 Evaluating the extent to which the terms and conditions are standardised or vary between franchisees, and the justification for any differential treatment; and
- 4.3.4 Assess the rationale and justifications for the terms and conditions.

Exploitation of Information Asymmetries

- 4.4 The Franchise Market Inquiry will assess the extent to which franchisors may be distorting the true value of their franchise outlets and the potential impact on SME and HDP franchise business owners. The assessment will also include a determination of whether measures can be implemented to enhance transparency and support informed decision-making by franchisees.

Sectoral Focus: The Franchise Sectors

- 4.5 The Commission's concerns about SME and HDP participation and ownership patterns in the franchising extend across all sectors.
- 4.6 International experience demonstrates that franchising arrangements can raise competition

concerns across a wide range of sectors:

- 4.6.1 Several European competition authorities have investigated complaints about restrictive terms in franchise agreements, particularly in the fast-food sector.³²
- 4.6.2 The Japan Fair Trade Commission has examined similar concerns in the convenience store retail sector.³³
- 4.6.3 In the United States, a 2024 *Spotlight Issue* report published by the Federal Trade Commission identified twelve commonly recurring restrictive practices among franchisors, spanning multiple sectors of the economy.³⁴
- 4.6.4 The UK's Competition and Markets Authority and the Australian Competition and Consumer Commission both enforce regulatory frameworks that promote pro-competitive franchising practices across all industries.³⁵
- 4.7 Accordingly, the Commission's mandate in section 43B(1)(a)(i) and (ii) of the Act supports a broad sectoral investigation of the franchise sector in South Africa. Based on current information, the Commission may focus the Franchise Market Inquiry on sectors that appear to have greater potential to influence market dynamics. Table 2 below lists the categories or areas that are likely to have a greater impact.

Table 2: Sectors of Focus For the Franchise Market Inquiry and Examples of Firms / Brands

Category	Examples
Fast Food	This refers to fast food restaurants chains. Examples include but are not limited to: Chicken Licken, KFC, Kauai, McDonalds South Africa, Barcelos Flamed Chicken, Roman's Pizza, Pizza Perfect.
Construction	This refers to construction and hardware stores. Examples include but are not limited to: Italtile Retail, CTM, Talisman Hire, Mica Investments.
Automotive	This refers to automotive stores offering parts and car service such as break-pads exchange, wheel bearing, wheels change. Examples include but are not limited to: Midas, Hi-Q Automotive, HJ Bosch & Sons Panel beaters, Midas, PG Glass, Battery Clinic, Super Quick.
Grocery	This refers to grocery stores. Examples include but are not limited to: Pick n Pay, Spar, Food Lovers Market, Shoprite Holdings (via OK Franchise division).

³² *McDonald's faces competition complaint in Europe.* (BBC News). Available at: <https://www.bbc.com/news/business-35289959>; USA Today. 2017. *McDonald's accused of antitrust practices in France, Italy and Germany.* Available at: <https://www.usatoday.com/story/money/2017/04/04/mcdonalds-accused-antitrust-practices-france-italy-and-germany/99995178/>

³³ Lexology. 2023. *Spotlight: restrictive agreements and dominance in Japan.* Available at: [Spotlight: restrictive agreements and dominance in Japan - Lexology](https://www.lexology.com/library/detail.aspx?l=62d57d7fe90e071e7b13109fVABEO_Guidance.pdf)

³⁴ *FTC Issues Spotlight: Risks to Small Business Success in Franchising.* Available at: https://www.ftc.gov/system/files/ftc_gov/pdf/Franchise-Issue-Spotlight.pdf

³⁵ *Vertical Agreements Block Exemption Order - CMA Guidance.* Available at: https://assets.publishing.service.gov.uk/media/62d57d7fe90e071e7b13109fVABEO_Guidance.pdf and Franchising Code of Conduct. Available at: <https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct>.

Fuel Stations	This refers to the grocery and fast-food stores located within the fuel station. Examples include but are not limited to: Astron Energy, Engen Petroleum, BP South Africa and Shell Retail. It is noted that these stations are regulated and a retail license from the Department of Mineral Resources and Energy is required.
Health and Beauty	This refers to health and beauty stores. Examples include but are not limited to: Legends Barbershop, Revive Herbal Health and Sorbet.

Source: Compiled by the Commission, categorisation and Firms or Brands largely based on FASA database of areas or sectors where its accredited members participate.³⁶

5. MARKET INQUIRY TIMELINES AND PROCESS

- 5.1 The public is invited to submit comments on these draft Terms of Reference by **16h00 on 07 August 2026**. Written submissions can be sent to MolebohengM@compcom.co.za and KhomotsoM@compcom.co.za for attention of Ms. Moleboheng Mhlathi or Ms. Khomotso Modjadji. All submissions will be reviewed, and a final Terms of Reference published by the Commission.
- 5.2 The Franchise 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 outlined earlier. Details on the administrative phases of the inquiry, along with Guidelines for Participation, will be made available on the Commission's website following the publication of the final Terms of Reference. At that time, members of the public and businesses will be invited to submit written representations and information to the inquiry.

[END]

³⁶ For instance see <https://www.fasa.co.za/franchise-members/categories/retail-and-direct-marketing/> and <https://www.fasa.co.za/franchise-members/>

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 7630

26 June 2026



***competition*commission**
south africa

SOUTH AFRICAN FRANCHISE MARKET INQUIRY

DRAFT TERMS OF REFERENCE

12 MAY 2026

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1. INITIATION OF AND LEGAL BASIS OF THE MARKET INQUIRY

- 1.1. The Competition Commission (“the Commission”) will conduct a market inquiry into the Franchise Sector in South Africa (“the Franchise Market Inquiry”). The Franchise Market Inquiry is initiated in terms of section 43B(1)(a) of the Competition Act 89 of 1998, as amended (“the Act”), on the basis that the Commission has reason to believe that there are market features that may impede, distort or restrict competition in the South African Franchise Business Market.
- 1.2. In terms of section 43B(2) of the Act, read together with section 43B(4), the Commission must publish a notice in the Gazette announcing the establishment of a market inquiry. This notice must be published at least 20 business days prior to the commencement of the inquiry. The notice must set out the Terms of Reference (“ToR”) for the inquiry and invite members of the public to provide information. At a minimum, the ToR must include a clear statement of the scope of the inquiry and the expected timeframe for completion. During this period, the public is invited to comment on the draft ToR and to make written submissions by **13 July 2026**.
- 1.3. While the ToR defines the initial scope of the market inquiry, it is not exhaustive and only sets out the parameters currently envisaged. Additional or related matters may arise during the course of the inquiry. Should the Commission consider it necessary to amend the ToR, whether by adding new matters or excluding those initially identified, such amendments will be made in accordance with section 43B(5) of the Act and will be formally published and communicated as required.
- 1.4. In accordance with section 43C of the Act, upon completion of the market inquiry, the Commission will publish a report of the inquiry in the Gazette and submit the final report to the Minister of Trade, Industry and Competition.
- 1.5. The information contained in these draft ToR is accurate to the best of our knowledge at the date of publication. Market conditions, ownership structures, control arrangements, and other material facts may change after publication. Participants are accordingly requested to promptly notify the Commission of any information relating to them that renders any part of the ToR inaccurate, incomplete, or outdated, including any changes in ownership, control,

or other material circumstances relevant to the ToR.

2. BACKGROUND TO THE SOUTH AFRICAN FRANCHISE MARKET

- 2.1 A franchise is a business whereby the owner licenses its operations, along with its products, branding, and knowledge in exchange for a franchise fee. The franchisor is the business that grants licenses to franchisees. Franchising is a method of expanding a business and distributing goods and services through a licensing relationship between a franchisor and a franchisee.¹ In principle, this arrangement brings both parties together for their mutual economic benefit. Franchisors benefit by growing and expanding their business without the need to invest large capital amounts to open new stores whilst franchisees benefit through buying into an already well-established business model and brand.²
- 2.2 Franchisees are required to comply with a franchise agreement which sets out how the franchise must be operated and managed. Although, operating under the franchisor's brand name, the franchisee remains fully responsible for establishing the franchise outlet, bearing the associated risks and costs of opening and managing the business. Franchise businesses are found across almost all sectors in South Africa, including agriculture, mining, manufacturing and industrial services, office buildings, home services, fast food and restaurants, health, beauty and body culture, education and learning, retail and direct marketing services sectors.
- 2.3 There are more than 800 franchisor brands active in South Africa, with more than 3 500 franchisees and more than 30 000 franchise outlets across the country. Furthermore, South Africa has the second highest contribution of franchising to national output in the world and is the only emerging market in the top five.³ According to Franchise Association of South Africa's ("FASA's") 2023 database and survey, the fast foods and quick service restaurants account for the largest share of the franchising business (19%). Other notable sectors include retail (17%), building, office, and home services (12%), automotive products and services (10%) and childcare education and training (7%).⁴

¹ International Franchise Association. (2018). What is A Franchise? at: <https://www.franchise.org/what-is-a-franchise> and Dube, Mara and Ntimane. (2019). Perceptions of franchise stakeholders on trust in franchising relationships. Available at https://www.ajhtl.com/uploads/7/1/6/3/7163688/article_16_vol_9_1_2020_uj.pdf.

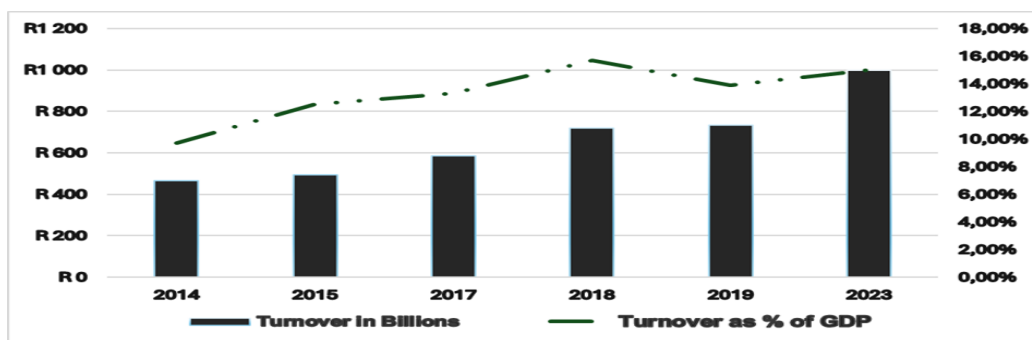
² Brown. A. (2023). Evaluation of competition concerns regarding franchise agreements where franchisors determine prices for franchisees. Available at <https://wiredspace.wits.ac.za/server/api/core/bitstreams/9481508e-286f-4403-88fa-b153feff9dc9/content>

³ Klinger. B. (2022). More (Inclusive) Entrepreneurship in South Africa: The Role of Franchising. Available at <https://growthlab.hks.harvard.edu/files/growthlab/files/2022-06-cid-fellows-wp-137-south-africa-franchising.pdf>

⁴ The Franchise Association of South Africa's (2023) eighth independent franchise survey, sponsored by Absa.

2.4 FASA estimates that in 2023, the franchise industry's turnover was approximately R999 billion, representing approximately 15% of South Africa's total GDP of R6 660 billion in 2022.⁵ Figure 1 below depicts the estimated turnover generated by the franchise industry and its contribution to GDP overtime.

Figure 1: Estimated turnover generated by the franchise system and contribution to GDP overtime (2014 – 2023)



Source: Compiled by the Commission using several publications that are based on FASA surveys overtime

2.5 It is further estimated that the franchise industry employs about 500 000 people, accounting for approximately 5% of total employment in South Africa.⁶ Franchise employment is particularly important as it offers both formal and low-skilled jobs, which have been challenging for other sectors of South African economy to generate.⁷ Sanlam and FASA indicate that 85% of franchise concepts in South Africa are home-grown and have the export potential.⁸

3. RATIONALE FOR THE FRANCHISE MARKET INQUIRY

3.1 Sections 43B(1)(a)(i) and (ii) of the Act empower the Commission to initiate a market inquiry if it believes that certain features or combination of features in a market for any goods or

⁵ See Franchise Association South Africa. (2023). Franchising, pg. 7 – 8. Available at https://issuu.com/sundaytimesza/docs/franchising_dec_2023?fr=xKAE9_zU1NQ and FASA: "Why is franchising in South Africa a sustainable business model". (2024).: <https://www.fasa.co.za/franchising-in-south-africa-a-sustainable-business-model/>

⁶ Franchising Plus. (2023). A Comprehensive Overview of the South African Franchise Industry: Stability, Growth, and Future Prospects. Available at: [Franchising Plus](#). Also see FASA (2025): "Can franchising in South Africa keep up with global growth". <https://www.fasa.co.za/can-franchising-in-south-africa-keep-up-with-global-growth/>

⁷ Franchise Association South Africa & Sanlam (2018) Franchise Survey.

⁸ Franchise Association South Africa & Sanlam. (2018) Franchise Survey

services impede, distort or restrict competition within that market; or to fulfil the objectives of the Act. Key goals highlighted in section 2 of the Act include:

- 3.1.1 Ensuring that small and medium-sized enterprises have a fair chance to participate in the economy; and
 - 3.1.2 Promoting a greater spread of ownership, especially by increasing the ownership levels of historically disadvantaged persons.⁹
- 3.2 Against this background, 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 (“SMEs”) in owning and operating franchise businesses; and (iii) negatively affect the increased ownership of franchise businesses by historically disadvantaged persons (“HDPs”).
- 3.3 The following section sets out the basis on which the Commission believes there may be one or more features in the Franchise sector that impede, distort, or restrict competition and/or limit the equitable participation and ownership of SMEs and HDPs in franchising.
- 3.4 **Franchising is an Underutilised Pathway for SMEs and HDPs into the Formal Economy**
- 3.5 Franchising allows a franchisee to invest in a business with an established track record, a good reputation and many years of operation.¹⁰ Although there are barriers faced by SMEs and HDPs in accessing finance for entry and effective participation in franchising (discussed below in detail), these barriers appear to be comparably lower than those encountered by other types of businesses established without the benefit of the franchise system or model. This is partly due to the credibility conferred by the vetting process before approving a potential franchisee as well as the support offered to the franchisee.¹¹
- 3.6 Given the nature of the model in franchising, they are considered an important entry point for SMEs and HDPs. Due to the lower risks involved with establishing a franchise branch,

⁹ Sections 2(1)(e) and (f) of the Act, respectively.

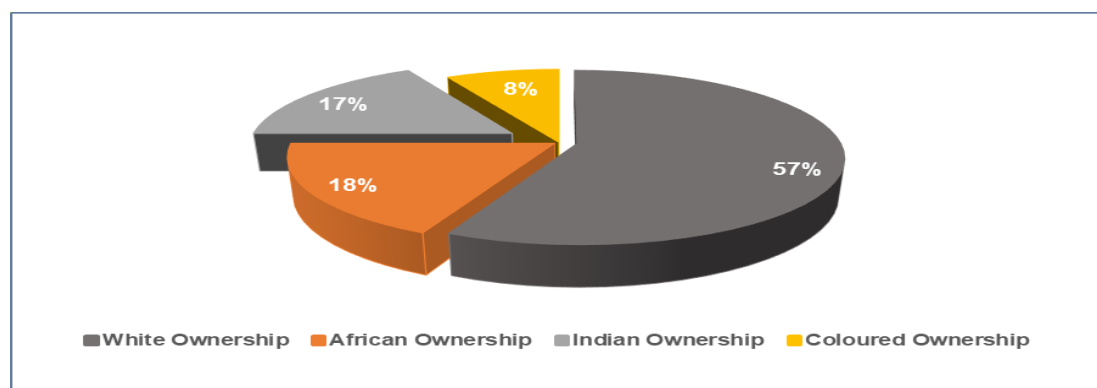
¹⁰ Consumers are already familiar with the brand and various products offered under the brand name.

¹¹ Menzies, D. (2017). Types of funding available for franchisees. (Online) Available at: <https://www.entrepreneurmag.co.za/advice/franchising/franchiseeadvice/>

from a financing perspective, banks and other financial institutions are more willing to provide funding to these types of businesses. In other words, the franchise business model plays a crucial role in facilitating the entry of SMEs and HDPs by enabling access to secure funding, which they generally struggle to obtain in other sectors. When considered from this point of view, franchising has the potential to contribute meaningfully to economic transformation by promoting inclusion and effective participation of HDPs and SMEs in the formal economy. Additionally, franchising can play an instrumental role in addressing the skewed ownership patterns present in the South Africa economy.

- 3.7 Despite the enormous potential that the South African franchising system has in terms of contributing to economic transformation and inclusion, the Commission has observed that the entry and participation of SMEs, especially HDP businesses, in franchising is still slow and at lower levels. By "lower levels," this refers to both the limited number of HDP-owned and SME-operated franchises compared to their representation in the broader economy, and the restricted scale or depth of their engagement within the franchising sector. This indicates that while some participation exists, it is not yet proportional or reflective of the broader demographic landscape, limiting the overall impact on economic inclusivity and transformation. Moreover, the franchise sector still reflects skewed racialised patterns of ownership. For instance, a survey by FASA shows that the ownership of franchise outlets in South Africa is by far dominated by white owned businesses. The results of this survey are depicted in Figure 2 below.

Figure 2: Franchisee Ownership Patterns by Race, in Terms of Franchised Outlets 2023



Source: The Franchise Association of South Africa's (2023) eighth independent franchise survey

- 3.8 As can be seen from figure 2, Africans account for only 18% of the ownership of franchise

outlets. Indian ownership accounts for 17%, Coloured ownership accounts for 8% and White ownership sits at 57%.¹²

3.9 The imbalances in ownership patterns should be viewed and understood in the context of South African population demographics, which reveal a significant under-representation of HDPs in the ownership of franchise outlets.¹³ The low level of participation by Africans in the ownership within the franchise sector attests the reality that it remains highly untransformed, despite the opportunities it offers to promote inclusivity and drive economic transformation.

3.10 It has also been observed that franchise ownership is largely concentrated among wealthy, educated professionals, who can leverage their savings and networks to meet the high capital requirements for acquiring franchise outlets, which in turn limits broader and more inclusive African participation in the sector and its contribution to inclusive ownership in the economy.¹⁴ Consequently, the most disadvantaged groups in society, such as women and young aspiring entrepreneurs with skills but limited financial resources remain largely excluded from entry and meaningful participation in franchising.

3.11 The Commission considers it imperative to preserve and optimise the South African Franchising sector in a manner that facilitates the entry and effective participation of SMEs and HDPs in line with the Act's purpose and objectives.

3.12 Market Features in the Franchise Businesses

3.13 There appear to be market features in the Franchising sector that create barriers that hinder or impede the entry, effective participation and expansion of SMEs, in particular HDP owned businesses. These market features, as discussed below, may impede, distort or restrict

¹² Franchise Association South Africa. (2023) Franchising. Available at https://issuu.com/sundaytimesza/docs/franchising_dec_2023?fr=xKAE9_zU1NQ and The Franchise Association of South Africa's (2023) eighth independent franchise survey

¹³ HDPs accounts for more than 90% of the population [Africans (81.7%), Coloured (8.5%) and Indian/Asian (2.6%)].

¹⁴ Klinger. B. (2022). More (Inclusive) Entrepreneurship in South Africa: The Role of Franchising. Available at <https://growthlab.hks.harvard.edu/files/growthlab/files/2022-06-cid-fellows-wp-137-south-africa-franchising.pdf>

competition.

Power of Franchisors and Concentration Levels

3.14 Several complaints filed with the Commission by franchisees point to a power imbalance between franchisors and franchisees, as well as the challenges franchisees face in negotiating equitable terms.¹⁵ In this context, franchisees are typically subjected to restrictive and potentially exploitative practices by the franchisors, who exert significant control over their operations and supply chains. This creates power imbalances that favour franchisors, who appear to use this power to impose unfavourable terms in franchise agreements, or to engage in practices that structure the franchisor-franchisee relationship in ways that limit the ability of SME and HDP franchise businesses to compete effectively, participate fully, and expand within their markets.

3.15 The power imbalance between franchisors and franchisees has also been observed in other jurisdictions. For instance, the FTC's research into franchise agreements highlights concerns about this imbalance of power during franchise negotiations. Franchise agreements are typically presented as non-negotiable, "take-it-or-leave-it" contracts, which franchisees must accept to enter the market. This lack of bargaining power can lead to agreements that are heavily skewed in favour of the franchisor. Franchisees have reported feeling pressured to sign agreements quickly, without the opportunity to negotiate terms or seek adequate legal counsel.¹⁶ Such practices create an environment where potential franchisees may not be fully informed of the risks involved, which can negatively affect their competitiveness upon entering the market.

3.16 The Commission has observed a rising number of mergers and acquisitions in well-established franchise sectors, where franchisees sell their businesses to franchisors or other well established national chains. Between 2017 and 2024, the Commission considered approximately 41 acquisitions of franchise businesses in the grocery retail; and food and beverages sectors. These mergers involved large national franchise brands. Notably, the Commission has also noted a significant increase in such franchise acquisitions post the Covid-19 pandemic. The annual average number of franchise merger and

¹⁵ For example, see Commission Case No: 2025Jan0047 and 2025Apr0013.

¹⁶ FTC. 2024. Issue Spotlight: Risks to Small Business Success in Franchising (12 July 2024). Available at: https://www.ftc.gov/system/files/ftc_gov/pdf/Franchise-Issue-Spotlight.pdf

acquisition transactions in the two sectors increased from about 3 transactions per year during the 2017 to 2019, to around 10 transactions per year during the post-Covid period, from 2021 to 2023.

- 3.17 The pattern of concentration through acquisitions compounds concerns regarding the power exercised by franchisors, which may allow them to impede, distort or restrict competition in their markets, and increase barriers to entry, participation and expansion for SMEs and HDPs.

Finance and /or Funding Terms and Conditions

- 3.18 Franchising opportunities for HDPs may be limited because of franchise funding requirements imposed by either franchisors or credit financiers. For instance, the upfront capital contribution required directly from a prospective franchisee can hinder the entry and participation of HDP businesses, especially when this contribution represents a significant portion of the total value of the franchise business. Research indicates that, in some instances, this up-front capital equity is imposed as a requirement by the franchisors themselves and not by the credit financiers and is viewed by franchisors as a demonstration of commitment on the part of the franchisee.
- 3.19 In its guidelines to an aspiring franchise owner seeking franchise finance, one credit financier notes that *“most franchises will require you to invest at least 50% of the entire investment needed for the franchise by using your own unencumbered funds. The potential franchisee can then apply for finance for the remainder 50% of the investment.”* The credit financier further explains that unencumbered funds refer to *“free cash that is not bonded or borrowed from anyone. This could include the proceeds of a pension payment, money in the bank, an investment available for drawing or cash from selling another asset”*.¹⁷ This position is also confirmed by FASA which states that the *“franchisee is required to have at least 50% of total investment in unencumbered and secured deposit to buy a Franchise”*.¹⁸ FASA further notes that *“many potential franchisees lack the capital required to invest in a franchise and ... there is still a need for more robust financial support mechanisms from both private and*

¹⁷ Capitec (2024) “How to apply for franchise finance. Follow these steps once you're ready to apply for franchise finance, and make sure you have the standard requirements ready” <https://www.capitecbank.co.za/business/transact/franchising/how-to-apply-for-franchise-finance/>

¹⁸ Franchise funding, loan applications and franchisor compliance (2021): <https://www.fasa.co.za/franchise-funding-loan-applications-and-franchisor-compliance/>

public sectors".¹⁹

3.20 The Commission notes that these onerous monetary requirements especially those imposed by franchisors, which are likely to have unintended (or intended) effect of excluding certain groups of persons from entry and participation in franchising, including skilled and talented entrepreneurs who may not have substantial financial resources. Such requirements appear to pose a significant barrier for HDPs and may contribute to the slow transformation observed above. There may be alternative and less exclusionary ways to assess a prospective franchisee's commitment, other than requiring them to personally finance 50% of the investment.

Franchise Agreements' Terms and Conditions and Practices

3.21 In recent years, numerous reports have highlighted significant challenges within the franchise system, largely stemming from relationship failures between franchisors and franchisees.²⁰ The Commission has also received complaints from franchisees alleging, among other issues, unfair trading terms and conditions.²¹ In particular, franchisors appear to use the terms of franchise agreements, and /or other practices, to exert undue influence over franchisees' operations in ways that unjustifiably limit franchisees' ability to compete effectively and, in turn, to participate in and expand within their markets. Examples of such unfair terms and /or practices include but are not limited to:

3.21.1 Restrictive supply requirements and conditions imposed by franchisors that compel franchisees to purchase products and /or stock exclusively from preferred or approved suppliers, or the franchisor itself, even where cheaper substitutes exist.²² These supply conditions restrict franchisee's ability to source competitively priced goods elsewhere, which can undermine their price competitiveness in the market and also reduce their

¹⁹ See FASA: Why is franchising in South Africa a sustainable business model (2024): <https://www.fasa.co.za/franchising-in-south-africa-a-sustainable-business-model/>

²⁰ Dube, Mara and Ntimane. (2019). Perceptions of franchise stakeholders on trust in franchising relationships. Available at https://www.ajhtl.com/uploads/7/1/6/3/7163688/article_16_vol_9_1__2020_uj.pdf.

²¹ Over and above complains filed with the Commission see: Financial Mail. 2024. *[Name of the Franchisor removed by the Commission] franchise fracas heads to court*. Accessed at: <https://www.businesslive.co.za/fm/money-and-investing/2024-02-22-pick-n-pay-franchise-fracas-heads-to-court/>; Daily Maverick. 2024. *Judge rules for embattled [Name of the Franchisor removed by the Commission] after franchisee says group crippled its business*. Accessed at: <https://www.dailymaverick.co.za/article/2024-02-25-judge-rules-for-embattled-pick-n-pay-after-franchisee-says-group-crippled-its-business/>

²² IOL. 2022. *Pick n Pay township business franchise 'a big fraud' – trader*. Accessed at, <https://www.iol.co.za/sundayindependent/news/pick-n-pay-township-business-franchise-a-big-fraud-trader-a00a8f78-4e04-4214-aaa6-c65411f92ac8>

- profit margins, and ultimately threaten their sustainability and price competitiveness;
- 3.21.2 Franchisors failing to pass on supplier discounts and rebates to franchisees, despite franchisees contribution to securing these benefits.²³ This concerns franchisors receiving rebates and discounts from approved suppliers, which do appear to be passed on to franchisees. These rebates and discounts also create an incentive for franchisors to require franchisees to use approved suppliers even in instances where viable alternative suppliers exist;
- 3.21.3 Non-negotiable pricing, promotions, and other corporate strategies set by the franchisor that may not reflect the franchisee's local market conditions or operational goals.²⁴ This includes instances where franchisees are compelled to accept fixed pricing and promotional terms without regard to their financial position or local market dynamics. The Commission is aware of instances where franchisors require franchisees to sell products at or below cost prices.²⁵ There are also pricing discount models by the franchisors that prioritise sales volumes over profit margins, resulting in financial distress and debt accumulation for franchisees. Such conduct is likely to undermine the franchisees' ability to sustain their operations;²⁶ and
- 3.21.4 Burdensome and discriminatory franchise fee and royalty arrangements, with some franchisees reportedly exempt or charged reduced rates.²⁷ This relates to instances where franchisees are given unequal treatment as far as the payment of franchising fees is concerned in that there are franchisees that are not required to pay these fees or, at the very least, are charged lower fees. This unequal treatment of franchisees is likely to affect the competitiveness of franchisees that are required to pay [higher] franchising fees and this may distort competition. The situation may be worsened if the fees paid by these franchisees are excessively high, intensifying the competitive disadvantage.

²³ Complaint bundle, Mr Pilane Kwakwa complaint against PnP, p.5-11.

²⁴ Pick and Pay Retailers Proprietary Limited v Kemptongate Foodlane Proprietary Limited and Others (2024-012775) [2024] ZAGPJHC 208 (23 February 2024). See also Financial Mail. 2024. Pick n Pay franchise fracas heads to court. Accessed at: <https://www.businesslive.co.za/fm/money-and-investing/2024-02-22-pick-n-pay-franchise-fracas-heads-to-court/>; and Daily Maverick. 2024. Judge rules for embattled Pick n Pay after franchisee says group crippled its business. Accessed at: <https://www.dailymaverick.co.za/article/2024-02-25-judge-rules-for-embattled-pick-n-pay-after-franchisee-says-group-crippled-its-business/> [Financial Mail. 2024. Pick n Pay franchise fracas heads to court. Accessed at: <https://www.businesslive.co.za/fm/money-and-investing/2024-02-22-pick-n-pay-franchise-fracas-heads-to-court/>]

²⁵ In one of the complaints filed with the Commission, a franchisee operating in a township alleges that they were forced by the franchisor to purchase excessive stock comprising largely of products on special promotions. This ultimately forced the franchisee to sell these products below cost thereby incurring substantial financial losses.

²⁶ See Commission Case No: 2025Jan0047. The name of the Complainant and Respondent removed.

²⁷ Complaint bundle, Mr Pilane Kwakwa complaint against PnP, p21.

3.22 The Commission understands that some of the practices described above have allegedly caused financial distress and debt accumulation among franchisees. In certain instances, franchisees have allegedly been forced to down-size or shut down completely.²⁸ The exit of franchisees as a result of oppressive and unfair trading terms imposed by franchisors is likely to reduce competition within the franchise sector. This may also negatively affect transformation efforts by limiting the participation and growth of SME and HDP franchise businesses. Such practices have the potential to hinder these businesses from expanding within their markets.

Exploitation of Information Asymmetries

3.23 Some franchisors appear to project an overly optimistic or misleading view to attract prospective franchisees. Case studies illustrate that some franchisors exploit information asymmetry (stemming from their greater knowledge and control over financial resources and corporate strategies) to the detriment of franchisees who lack comparable insights. This practice can undermine the ability of the prospective franchisees to make informed decisions before committing to and may negatively affect their viability once operating the business.

3.24 Reported court judgments reveal how certain franchisors have exploited information asymmetries, arising from their superior knowledge of financial performance and corporate strategy to the detriment of less-informed franchisees.²⁹ Similarly, a complaint filed by an HDP franchisee against a franchisor presented business plans and projections that were allegedly grossly inaccurate and promising outcomes that were never realized. In other words, franchisors have provided misleading information that undermines the prospective franchisee's ability to make informed decisions. The Commission notes that in 2019, FASA reported that a common complaint from franchisees involved franchisors failing to disclose the true financial position of the franchise being sold or proceeding with sales without providing an up-to-date disclosure document, or any disclosure at all.³⁰

3.25 This occurs despite franchisors legally required to provide prospective franchisees with a

²⁸ IOL. 2022. *Pick n Pay township business franchise 'a big fraud' – trader*. Accessed at, <https://www.iol.co.za/sundayindependent/news/pick-n-pay-township-business-franchise-a-big-fraud-trader-a00a8f78-4e04-4214-aaa6-c65411f92ac8>.

²⁹ Good Future Trading and Projects 264 CC v Scooters Pizza (Pty) Ltd (60085/2014) [2018] ZAGPPHC 631 (16 February 2018).

³⁰ The Franchise Association of South Africa. 2019. Franchise compliance lacking despite CPA protection. Available at [Franchise compliance lacking despite CPA protection - Franchise Association South Africa](#).

Franchise Disclosure Document (“FDD”) in line with the Consumer Protection Act no 60 of 2008, before any agreements are signed.³¹ Although the FDD is intended to ensure transparency and promote informed decision-making, prospective franchisees often struggle to fully understand the implications of their commitments.

3.26 The provision of misleading information and overstated projections is also likely to distort competition between franchisors in the sale of franchise business opportunities. Once a buyer commits to purchasing a franchise, they often become locked-in and may face substantial costs if they wish to switch to a different franchise. If franchisees are unfairly treated or misled about the financial health of the franchise they intend to acquire, they may struggle to compete effectively against their counterparts who benefit from such practices. Ensuring fair competition and equitable access to franchising opportunities is essential for fostering economic growth, reducing inequality, and supporting small business development.

4. SCOPE OF THE FRANCHISE MARKET INQUIRY

4.1 Consistent with section 43B of the Act, the Franchise Market Inquiry will examine whether there are any features that may impede, distort or restrict competition within the franchise sector. It will assess the current state of competition and whether any market features hinder or impede the entry, expansion and effective participation of SMEs and HDPs. The Franchise Market Inquiry will focus on three broad themes, namely: (i) finance, funding and terms and conditions, (ii) franchise agreements’ terms and conditions and practices and (iii) exploitation of information asymmetries.

Finance, Funding and Terms and Conditions

4.2 To promote inclusiveness in franchise business ownership, the Franchise Market Inquiry will assess the requirements set by creditors and/or franchisors for SMEs and HDPs to access franchise finance. This investigation will include, but is not limited to, an assessment of the following:

- 4.2.1 Funding and finance qualification criteria for franchise finance and the impact on the entry and effective participation of SMEs and HDPs in franchise businesses;
- 4.2.2 The application processes for SMEs and HDP businesses, including the types of

³¹ Regulation 3 of the Consumer Protection Act Regulations. Available at: <https://thence.org.za/cpa-regulations-2/#:~:text=3.,to%20meet%20the%20promised%20standards.>

- information and documentation required when applying for franchise finance;
- 4.2.3 Terms and conditions applicable to SMEs and HDPs businesses that qualify for franchise finance. The assessment in this regard will consider the extent to which such terms and conditions may be inhibiting a more inclusive franchise sector, including the growth and expansion of HDP owned franchisees; and
- 4.2.4 The potential for introducing more innovative and alternative financing options in franchising to reduce the prospective owner's up-front capital contribution.

Franchise Agreements' Terms and Conditions and Practices

- 4.3 The Franchise Market Inquiry will assess how franchise agreements, and related practices, may influence the franchisor-franchisee relationship and their potential effects on the ability of SME and HDP franchise businesses to compete, participate, and expand their respective markets. This will include but is not limited to:
- 4.3.1 Examining the nature of the terms and conditions in franchising arrangements;
- 4.3.2 Assessing the impact of the terms and conditions on competition, including their effect on the participation and expansion of SMEs and HDPs;
- 4.3.3 Evaluating the extent to which the terms and conditions are standardised or vary between franchisees, and the justification for any differential treatment; and
- 4.3.4 Assess the rationale and justifications for the terms and conditions.

Exploitation of Information Asymmetries

- 4.4 The Franchise Market Inquiry will assess the extent to which franchisors may be distorting the true value of their franchise outlets and the potential impact on SME and HDP franchise business owners. The assessment will also include a determination of whether measures can be implemented to enhance transparency and support informed decision-making by franchisees.

Sectoral Focus: The Franchise Sectors

- 4.5 The Commission's concerns about SME and HDP participation and ownership patterns in the franchising extend across all sectors.
- 4.6 International experience demonstrates that franchising arrangements can raise competition

concerns across a wide range of sectors:

- 4.6.1 Several European competition authorities have investigated complaints about restrictive terms in franchise agreements, particularly in the fast-food sector.³²
- 4.6.2 The Japan Fair Trade Commission has examined similar concerns in the convenience store retail sector.³³
- 4.6.3 In the United States, a 2024 *Spotlight Issue* report published by the Federal Trade Commission identified twelve commonly recurring restrictive practices among franchisors, spanning multiple sectors of the economy.³⁴
- 4.6.4 The UK's Competition and Markets Authority and the Australian Competition and Consumer Commission both enforce regulatory frameworks that promote pro-competitive franchising practices across all industries.³⁵
- 4.7 Accordingly, the Commission's mandate in section 43B(1)(a)(i) and (ii) of the Act supports a broad sectoral investigation of the franchise sector in South Africa. Based on current information, the Commission may focus the Franchise Market Inquiry on sectors that appear to have greater potential to influence market dynamics. Table 2 below lists the categories or areas that are likely to have a greater impact.

Table 2: Sectors of Focus For the Franchise Market Inquiry and Examples of Firms / Brands

Category	Examples
Fast Food	This refers to fast food restaurants chains. Examples include but are not limited to: Chicken Licken, KFC, Kauai, McDonalds South Africa, Barcelos Flamed Chicken, Roman's Pizza, Pizza Perfect.
Construction	This refers to construction and hardware stores. Examples include but are not limited to: Italtile Retail, CTM, Talisman Hire, Mica Investments.
Automotive	This refers to automotive stores offering parts and car service such as break-pads exchange, wheel bearing, wheels change. Examples include but are not limited to: Midas, Hi-Q Automotive, HJ Bosch & Sons Panel beaters, Midas, PG Glass, Battery Clinic, Super Quick.
Grocery	This refers to grocery stores. Examples include but are not limited to: Pick n Pay, Spar, Food Lovers Market, Shoprite Holdings (via OK Franchise division).

³² *McDonald's faces competition complaint in Europe.* (BBC News). Available at: <https://www.bbc.com/news/business-35289959>; USA Today. 2017. *McDonald's accused of antitrust practices in France, Italy and Germany.* Available at: <https://www.usatoday.com/story/money/2017/04/04/mcdonalds-accused-antitrust-practices-france-italy-and-germany/99995178/>

³³ Lexology. 2023. *Spotlight: restrictive agreements and dominance in Japan.* Available at: [Spotlight: restrictive agreements and dominance in Japan - Lexology](https://www.lexology.com/library/detail.aspx?l=62d57d7fe90e071e7b13109fVABEO_Guidance.pdf)

³⁴ *FTC Issues Spotlight: Risks to Small Business Success in Franchising.* Available at: https://www.ftc.gov/system/files/ftc_gov/pdf/Franchise-Issue-Spotlight.pdf

³⁵ *Vertical Agreements Block Exemption Order - CMA Guidance.* Available at: https://assets.publishing.service.gov.uk/media/62d57d7fe90e071e7b13109fVABEO_Guidance.pdf and Franchising Code of Conduct. Available at: <https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct>.

Fuel Stations	This refers to the grocery and fast-food stores located within the fuel station. Examples include but are not limited to: Astron Energy, Engen Petroleum, BP South Africa and Shell Retail. It is noted that these stations are regulated and a retail license from the Department of Mineral Resources and Energy is required.
Health and Beauty	This refers to health and beauty stores. Examples include but are not limited to: Legends Barbershop, Revive Herbal Health and Sorbet.

Source: Compiled by the Commission, categorisation and Firms or Brands largely based on FASA database of areas or sectors where its accredited members participate.³⁶

5. MARKET INQUIRY TIMELINES AND PROCESS

- 5.1 The public is invited to submit comments on these draft Terms of Reference by **16h00 on 13 July 2026**. Written submissions can be sent to ccsa@compcom.co.za for attention of Ms. Moleboheng Mhlati. All submissions will be reviewed, and a final Terms of Reference published by the Commission.
- 5.2 The Franchise 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 outlined earlier. Details on the administrative phases of the inquiry, along with Guidelines for Participation, will be made available on the Commission's website following the publication of the final Terms of Reference. At that time, members of the public and businesses will be invited to submit written representations and information to the inquiry.

[END]

³⁶ For instance see <https://www.fasa.co.za/franchise-members/categories/retail-and-direct-marketing/> and <https://www.fasa.co.za/franchise-members/>