RESEARCH REPORT

THE SOUTH AFRICAN AGRICULTURAL INDUSTRY IN CONTEXT

CHAPTER 1:INTRODUCTION

South Africa's agricultural sector employs about 30 per cent of the country's workforce, providing work opportunities for more than one million people with between 5 and 6 million dependents; many people, not formally employed, depend to some extent on agricultural production for their survival (BTT 1996: 17).

The purpose of this paper is to provide a perspective of the current dynamics of the agricultural sector in South Africa against the background of the evolution of South Africa's agricultural sector, the regulation, eventual deregulation of agricultural marketing and the broader policy environment that shaped it. Here, agricultural co-operatives are central to the process.

While it is very difficult to isolate the effect of domestic market deregulation from other developments, such as the relaxation of exchange controls, international trade liberalisation, movements in world prices, and fluctuating production conditions, this paper will analyse the trends within the agricultural industry post-regulation. In particular, an analysis of mergers and acquisitions that have taken place during the period 1999 – 2006 will unpack the effect of deregulation on the market structure within the agricultural industry. It will be illustrated that post-regulation, market players have re-positioned themselves strategically in the market to adapt to the changing environment, which now include international competitors as well as other domestic competitors such as commercial banks who have entered the market for the provision of financial products in the agricultural industry. In this regard, trends in terms of horizontal integration, vertical integration and strategic diversification will be highlighted.

In addition to the above, this study will attempt to portray the current structure of the market for co-operative services, concentrating in particular on the industries where giant converted co-operatives such as Afgri and Senwes is active. Lastly, the assessment of business forms within the agricultural industry (including co-operatives and converted co-operatives) from a competition policy perspective, coupled with jurisdiction issues, will be discussed.

The paper is structured as follows: Chapter 2 introduces the concept of agricultural co-operatives, a business form within the industry, which played a pivotal role in its evolution. Chapter 3 presents a historical background of the agricultural co-operatives and the agricultural sector. Chapter 4 will analyse the effect of deregulation on the agricultural industry, while chapter 5 examines the current structure of the market for co-operative services. Finally, chapter 6 provides a competition policy perspective on the business forms within the agricultural industry, while chapter 7 concludes.

CHAPTER 2: THE DEFINITION AND STRUCTURE OF CO-OPERATIVES

2.1 What is a Co-operative?

Co-operation is defined as a group of people working together on a voluntary basis, in order to achieve a common purpose. A co-operative (co-op) may therefore be defined as –

"A…. business undertaking whereby a group of individuals strive on a voluntary basis to meet their mutual economic and social needs in such a way that the economic advantages derived there-from are greater than that which the individual could achieve on his own."[1]

In South Africa a co-operative is a stand-alone legal entity that is managed by a board of directors elected by the co-operative's members.

2.2 Characteristics of a Co-op

It should be clear, from the above, that co-operatives have unique characteristics, which set them apart from other types of business undertakings. According to CIPRO, these characteristics are the following:

(a) Firstly a co-operative is established by a group of individuals, therefore a single person would not be able to form a co-operative. He would have to form a company or close corporation.

(b) Secondly the group should work together on a voluntary basis as is implied by the word co-operation.

(c) Thirdly the group wishing to form the co-operative must have a mutual or common need or purpose for forming the co-operative. If every member of the group has his or her own needs, it will not be possible to incorporate a co-operative for such

1 "What is a Co-operative?" CIPRO, Dept of Trade and Industry

a group.

(d) Fourthly this common or mutual need should be capable of being met more economically by the group rather than by the individual. If the individual can attain the goal with the same effectiveness as the group there is no necessity for a co-operative. This can be referred to as the economic characteristic of a co-operative. For instance a group of farmers might establish a co-operative to purchase their farming requisites on a collective basis. By combining their order they are able to purchase in bulk and obtain a better price from the suppliers than would have been possible if the purchases were made on an individual basis. Therefore by mustering their bargaining power the farmers would be able to obtain economic benefits for themselves.

(e) Finally the activities undertaken by the co-operative should be to the mutual benefit of all the members of the co-operative. In the example mentioned above, each farmer will benefit by purchasing his inputs through his co-operative.

If all the above-mentioned elements or characteristics are not present a co-operative cannot be formed. It may therefore be said that these characteristics determine what a co-operative is.

2.3 Co-operative principles

Like all forms of business undertakings, co-operatives are also guided by principles.

The Rochdale Society of Equitable Pioneers first set out the Co-operative principles in 1844.[2] Originally there were a large number of principles but those have gradually been reduced to the following basic principles, which are universally applicable to co-operatives.

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2 The modern co-operative movement was founded by a co-operative, which was established by the Rochdale Pioneers in England during 1844. Factory workers who were struggling to make a living formed this co-operative. The object of this undertaking was to provide consumer goods to its members at reasonable prices. Traditionally therefore co-operatives usually originate from an economic need which arises from the hardship or suffering of people - hence the adage "co-operatives are born out of necessity".

(a) Democratic Control

The highest authority in a co-operative is vested in the members through a general meeting. The overriding principle here is that of proportionality, that is, the member who puts the most into the co-operative e.g. by way of doing the most business with the co-operative, should also receive the greatest benefit from the co-operative e.g. by way of bonus (See principle (b)) as well as votes in a general meeting, and conversely he should also make the largest contribution to the capital of the co-operative.

(b) Distribution of Profits based on Patronage

The patronage or the value of business done by a member with his co-operative is the basis on which the co-operative distributes its profits and not by way of dividends on shares.

(c) Financing of Co-operatives

The capital contributed by members of co-operatives may comprise any of the following: [3]

a. entrance fees;
b. membership fees or subscriptions;
c. the consideration for membership shares or additional shares in a co-operative’
d. member loans; and
e. funds of member

To become a member of a cooperative and to share in the advantages that loyal membership brings, one must invest in the cooperative. These investments can be compared to the membership fees one has to pay to join a private club. Unlike a company or a close corporation, one does not earn dividends (the way in which

3 Co- operatives Act no 14 of 2005

companies divide their profits) on the basis of the member's size of investment in the cooperative, but on the basis of how much business one has done with the cooperative. At the end of every financial year, if capital is not urgently required for other purposes, the members may decide to divide the profit that was made during the year among them. This is done as a percentage of the business that one has done with the cooperative. The more business one has transacted through the cooperative, the higher one's bonus will be (Department of Agriculture, 2000).

Members are often reluctant to recapitalise their co-ops, because they do not see a decent return on their money. If the member/shareholder of a co-op invests R100 in a co-op today, it will still be worth R100 in 50 years. A shareholder in a company can obtain dividends and the potential for capital growth. [4]

(d) Open and Voluntary Membership

Open membership means that everyone who fulfils the requirements for membership (e.g. only farmers may become members of a primary agricultural co-operative) and who can contribute and can obtain an advantage from the activities undertaken by the co-operative should be entitled to become a member of the co-operative on a voluntary basis. Discrimination on whatever basis therefore has no place in a co-operative.

Section 3 (1) (a) of the Co-operatives Act[5] elaborates on the fact that membership of the co-operative is open to persons who can use the services of the co-operative and who are willing and able to accept the responsibilities of membership.

According to the Co-operatives Act[6], a member may withdraw his or her membership in a co-operative by written notice to the co-operative. Further, the co-operative must within a reasonable period, but not longer than two years after the date a member's withdrawal becomes effective, repay the member the nominal value of that member's

4 "Are large agricultural co-operatives a dying species?", Agri TV
5 No. 14 of 2005: Co-operatives Act, 2005
6 Ibid

shares; all other amounts held to the member's credit including any member loan and any interest accrued on those amounts up to the date of payment.

(e) Business with Members only

A co-operative is established by its members, to service their mutual needs. It is therefore an organization established by its members for their mutual benefit. Theoretically therefore a co-operative should conduct its business with members only. The whole idea of an organization for self-help is shattered once non-members are allowed to participate in its activities. The principle of open membership should eliminate to a large extent the necessity for non-member business as it makes it possible for non-members to become members of the co-operative. The principle of doing business with members only can however give rise to the downfall of especially agricultural co-operatives in poor agricultural years because it implies that the clients of the co-operative shall be its members only. Economic realities therefore resulted in the slight amendment of this principle in order to extend the clientele of co-operatives to ensure their survival.

(f) Autonomy

Co-operatives are autonomous undertakings, controlled and owned by their members. Agricultural co-operatives do not form part of the public sector. In South Africa they have been promoted as instruments of policy to build up infrastructure in the rural areas as well as to serve as channels for supplying financial assistance to farmers. They nevertheless remain autonomous and form part of the private sector.

2.4 Comparison between Co-operatives and Companies

In order to emphasise the unique character of co-operatives the areas of difference and similarity are set out in the table 1 below:

Table1: Comparison between Co-operatives and Companies

DIFFERENCES		
	CO-OPERATIVES	**COMPANIES**
Distribution of profits	a) Interest on portion of capital provided by member b) Bonuses on patronage proportion	a) Dividends on share capital
Voting power (Control)	a) One man one vote, or b) Voting based on patronage proportion	a) Voting power based on shareholding
Value of shares	a) Capital investments do not appreciate in value	a) Shares can appreciate in value
Buying back of shares	a) Co-operatives may buy back investments/capital from their members	a) May not buy back their own shares
Purpose of membership	a) To obtain a service	a) To make a profit on an investment

SIMILARITIES	
CO-OPERATIVES	**COMPANIES**
Have legal identity	Have legal identity
Have limited liability	Have limited liability

Source: CIPRO

2.5 Statistics

Table 2 illustrates that the total number of agricultural co-operatives registered increased over the past two years. It is also evident that a large part of the registrations can be attributed to the wine, sub-tropical fruit and mixed farming sub-sectors. However, the total number of agricultural co-operatives registered remains insignificant when compared to the total number of commercial farming units in South Africa, which can be attributed to the significant conversion of co-operatives to companies, as discussed in chapter 4 of this document.

Table2: AGRICULTURAL STATISTICS FOR CO-OPERATIVES: 2001-2004

AGRICULTURE	2001	2002	2003	2004
Total nr. Reg. as at end of previous year	220	256	290	369
New registrations	49	41	87	98
Struck off register	13	7	8	8
TOTAL	**256**	**290**	**369**	**459**
Reason for striking off register				
Liquidation	2	2	8	3
Amalgamation	2	2	0	2
Conversion to other type	0	1	0	1
Conversion to company	9	5	8	2

TOTAL FOR GROUPS IN AGRICULTURE (South Africa)	**2003**	**2004**
Wine	**67**	**63**
Farming (Mixed)	**71**	**165**
Meat	**16**	**14**
Timber	**5**	**5**
Packers	**1**	**4**
Grain & Oil	**15**	**17**
Cold Storage	**2**	**2**
Deciduous Fruit	**10**	**2**
Sub-Tropical Fruit	**4**	**4**
Bacon & Ham	**1**	**1**
Tobacco	**6**	**5**
Insurance	**5**	**5**
Citrus Fruit	**15**	**17**
General	**16**	**20**
Ostrich	**3**	**3**
Sugar	**2**	**2**
Dairy Products	**3**	**3**
Transport	**2**	**2**
Leasing	**2**	**2**
Cotton	**1**	**1**
Agric Hauler	**1**	**1**
Veterinary & Insemination	**1**	**1**

Fresh Produce			**2**	**2**
Dried Fruit			**1**	**1**
Farming Requisites			**13**	**13**
Financial			**1**	**1**
Potatoes			**1**	**1**
	2001	**2002**	**2003**	**2004**
Agriculture (SA)	154	188	267	355
Agriculture (Homelands)	102	102	102	102
Total Agric	**256**	**290**	**369**	**459**
TOTAL NUMBER OF CO-OPS REGISTERED				
	2001	**2002**	**2003**	**2004**
AGRICULTURE	256	290	369	459
TRADING	1636	3110	3330	3751
TOTAL	**1892**	**3400**	**3699**	**4210**
TOTAL COMMERCIAL FARMING UNITS IN SOUTH AFRICA	**44 072**	**45 818**	**44 531**	**46 048**
TOTAL NUMBER OF CO-OPS REGISTERED AS A % OF TOTAL COMMERCIAL FARMING UNITS IN SOUTH AFRICA	**4%**	**7%**	**8%**	**9%**

Source: CIPRO

2.6 International significance of co-operatives

The International Co-operative Alliance is an international organization which promotes co-operatives on a worldwide basis and which regards itself as the final definer of co-operatives.

The International Co-operative Alliance (ICA)[7]

Founded in 1895, the International Co-operative Alliance is an independent, non-governmental organisation, which unites, represents and serves co-operatives

7 http://www.ica.coop/ica/

worldwide. It is the largest non-governmental organisation in the world.

ICA members are national and international co-operative organisations in all sectors of activity including agriculture, banking, fisheries, health, housing, industry, insurance, tourism and consumer co-operatives. Currently, ICA has 221 member organisations from 88 countries, representing more than 800 million individuals worldwide.

ICA's priorities and activities centre on promoting and defending the Co-operative identity, ensuring that co-operative enterprise is a recognised form of enterprise that is able to compete in the marketplace.

- ICA raises awareness about co-operatives and it helps individuals, government authorities and regional and international institutions understand the co-operative model of enterprise.

- It provides political support as well as technical expertise to its members.

- ICA provides its members with key information, best practice and contacts by publishing information and organising meetings and workshops.

- ICA provides technical assistance and promotes capacity building to co-operatives through its development programme.

Proof that co-operatives, particularly in the agricultural sector, are significant economic actors in national economies can be obtained from the following statistics[8]:

- In Benin, FECECAM, a savings and credit co-operative federation provided USD 16 million in rural loans in 2002.
- In Brazil, co-operatives are responsible for 72% of the wheat production, 44% of barley, 43% of soy, 39% of milk, 38% of cotton, 21% of coffee and 16% of maize. Agricultural co-operatives exported over USD 1,3 billion.
- Canadian maple sugar co-operatives produce 35% of the world's maple sugar production.

8 Statistics obtained from the International Co-operative Alliance.

- In Cyprus, the co-operative movement handled 35% of all marketing of agricultural produce.
- Finnish co-operative groups within Pellervo were responsible for 74% of the meat products, 96% of dairy products; 50% of the egg production, 34% of forestry products and handled 34.2% of the total deposits in Finnish banks.
- In Japan, the agricultural co-operatives report outputs of USD 90 billion with 91% of all Japanese farmers in membership.
- In Kenya, co-operatives have 70% of the coffee market, 76% dairy, 90% pyrethrum, and 95% of cotton.
- In Korea, agricultural co-operatives have a membership of over 2 million farmers (90% of all farmers), and an output of USD 11 billion. The Korean fishery co-operatives also report a market share of 71%.
- In Latvia, the Latvian Central Co-operative Union is responsible for 12.3% of the market in the food industry sector.
- In Norway, dairy co-operatives are responsible for 99% of the milk production; consumer co-operatives held 25% of the market; fisheries co-operatives were responsible for 8.7% of total Norwegian exports; forestry co-operatives were responsible for 76% of timber and that 1.5 million people of the 4.5 million Norwegians are member of co-operatives.
- In Poland, dairy co-operatives are responsible for 75% of dairy production.
- In Slovenia, agricultural co-operatives are responsible for 72% of the milk production, 79% of cattle; 45% of wheat and 77% of potato production.
- In Uruguay, co-operatives produce 90% of the total milk production, 340% of honey and 30% of wheat. 60% of co-operative production is exported to over 40 countries around the world.
- In the United States, approximately 30% of farmers' products in the US are marketed through 3,400 farmer-owned co-operatives.
- In South Africa, approximately 20% of farmers' debt was financed by Agricultural co-operatives during the period 1990 – 2000[9].

9 Statistics obtained from Agricultural Statistics of the National Department of Agriculture, http://www.nda.agric.za/docs/abstract2002/preface.htm

CHAPTER 3: THE EVOLUTION OF AGRICULTURAL CO-OPERATIVES IN SOUTH AFRICA

The evolution of South African agricultural co-operatives has to be viewed in the context of the evolution of South Africa's agricultural sector, the regulation, eventual deregulation of agricultural marketing in South Africa and the broader policy environment that shaped it. The purpose of this section is to provide such a historical context. Accordingly, this section will unpack the deregulation process of the agricultural sector, followed by agricultural co-operatives against the background of deregulation in this sector in order to place it in its historical, political and economic context.

3.1 Deregulation process of the agricultural sector

The process of deregulation of the production and marketing functions of commercial agriculture in South Africa, to accommodate a relatively unsophisticated emerging farming sector and international trade obligations has required sensitive adjustment while trying to secure reasonable stability and sustainability. Similar to (Bayley, 1997), this section will analyse the evolution of agriculture within the following time periods:

1. Prior to 1910
2. 1910 to World War II
3. The late 1940's to 1980
4. 1980 to 1994
5. 1994 to 1999

1. Prior to 1910

By the early 1860's, agricultural production in South Africa was sufficient to meet the consumption requirements of the population. Farming in much of the interior could be characterized, as subsistence-based and commercially oriented agricultural production was largely limited to the coastal areas. The main exception was wool farming, which extended into South Africa's southern interior. Wheat, fruit, butter, beef and maize were produced for internal consumption, whilst wool, wine, hides and ostrich feathers were produced for export (Wilson 1971 in Bayley, 1997).

2. 1910 to World War II

The most important pieces of legislation during this period included the Land Bank Act and Land Settlement Act, both of 1912, the Land Acts of 1913 and 1936, the Co-operative Societies Acts of 1922 and 1939, the Natives Administration Act of 1927, and the Marketing Act of 1937 (Vink, 1993 in Bayly, 1997).

Table 3: Summary of some of the most important legislative developments affecting the South African agricultural marketing system (1910 – 1937)

Year	Legislation
1912	The Land Bank Act
1922	The Co-operatives Act
1923	Beef Export Bounties Act
1924	Wine and Spirits Control Act
1925	Amendment of 1922 co-operatives Act to provide for compulsory co-operation
1926	Sugar Prices Act Perishable Products Export Control Act
1929	The Wall Street Crash
1930	Wheat Importation Restriction Act Dairy Industry Control Act Agricultural Warehouse Act
1931	Flour and Meal Importation Restriction Act. Mealie Control Act Export Subsidies Act
1932	Tobacco Control Act Meat Trade Control Act
1934	The Viljoen commission of Inquiry into Co-operation and Agricultural Credit Marketing Act
1937	The Marketing Act
1968	Re-promulgated Marketing Act
1996	Marketing of Agricultural Products Act 47

Source: Bayley,1997

3. The late 1940's to 1980

Economic growth rates of 5% p.a. until 1970 and 3% p.a. for the next decade were achieved in spite of a number of problems with the economy. The most important of these from an agricultural perspective were the inflation of the early 1970's and growing concentration in the various parts of agro-industry, the latter being largely a result of policies aimed at industrialisation through import substitution (Vink, 1993 and Kassier, 1992 in Bayley, 1997).

Vink (1993) identifies the main features of white agriculture during this period as being the mechanization of the commercial agricultural sector, and a growth in the level of subsidies to white farmers. Subsidisation took many forms, and included disaster relief, research, interest rate subsidies and price supports through an increasingly regulated agricultural marketing system.

There were also extensive forced removals into increasingly consolidated homeland areas. It is estimated that in the twenty years from 1960 approximately 3.5 million people were forcibly resettled in these areas, causing severe population pressure and massive social dislocation (Vink and van Zyl, 1998 in Bayley, 1997)

These developments had a number of important impacts on the agricultural sector:

- A very high degree of institutional duplication resulting in a significant fiscal cost and additional restrictions on the internal movement of agricultural commodities in South Africa.
- The creation of a dualistic agricultural sector;
- South Africa became a net exporter of food whilst a high proportion of its population was food insecure;
- Farm input prices rose quicker than product prices;
- Environmental damage (both in commercial and homeland areas); and
- A significant increase in the real level of land prices.

The Marketing Acts of 1937 and 1968 were an integral part of a legislative framework that was designed to advance the interests of the white agricultural sector at the expense of the African farming sector. Table 5 provides a timeline on the expansion of controlled marketing in terms of the 1937 Act.

Table 5: The expansion of controlled marketing in terms of the 1937 Act

Year	Expansion
1938	The Dairy Products Marketing Scheme (replaced by a new scheme in 1940), the Mealie Control Scheme (replaced by a new scheme in 1939 and 1940), the Wheat Control Scheme, and the South African Dried Fruit Scheme.
1939	The Tobacco Control Scheme, the South African Deciduous Fruit Regulatory Scheme, the South African Citrus Scheme (replaced by a new scheme in 1947) and the Chicory Control Scheme.
1939 - 1945	For much of the war time period the powers and functions of the control boards were greatly expanded, but by the use of War Emergency Measures rather than the 1937 Marketing Act.
1944	The 1944/45 marketing year was the first time that the Mealie Control Scheme was used to enforce a single channel marketing system for maize.
1953	Establishment of Maize board's Stabilisation Fund.
1951-1957	Control boards instituted for potatoes, oilseeds (sunflower and groundnuts), Lucerne seed, eggs, rooibos tea, dried beans, drinking milk and bananas.
1957	Sorghum incorporated into the Maize Scheme
1963	Canning Scheme (peaches, apricots and pears) established
1968	Karakul Scheme established
1972	Mohair Scheme and Wool Scheme established
1974	Cotton Scheme established

Source: Bayley 1997

4. 1980 to 1994

Agricultural policy changed in the early 1980's. Indeed, Vink (1993) argues strongly that the extent of deregulation during the 1981's and early 1990's is significant (comparable to developments in Chile and New Zealand) but frequently under estimated. Policy change in the 1980s was driven by a number of factors[10]:

10 "The domestic politics of agricultural trade policymaking in South Africa", Aaron Griffiths, 2003, part of the DFID-funded globalisation and poverty research programme

- Wider fiscal considerations
- The realization that overall productivity for controlled major subsectors (such as maize) was growing only slightly or remained stagnant while that of uncontrolled sectors (horticulture, poultry meat) was increasing
- Pressures from commercial farmers and industrial interests that were not served by the controlled system
- Successful legal cases against the control boards
- The flourishing of parallel trade in some commodities, which undermined the effectiveness of controls
- Pressures and agreements during the GATT negotiations for tariffication and abolition of quantitative controls on imports (FAO 1995). In line with international trends, a general process of tariffication (i.e. tariffs replacing quantitative import restrictions, or unit quotas) began in 1985, but was applied to agricultural commodities only in 1992.

The process of policy reform started outside of the agricultural sector, and took place in three main areas:

- As a result of the work of the De Kock Commission on monetary policy and the monetary system, the South African Financial system was liberalized from the late 1970's onwards. The value of the Rand declined during the 1980's with the result that input prices rose quicker than product prices. At the same time, the reforms meant that the Land Bank could no longer access funds in the money markets at preferential interest rates.
- By the mid 1980's controls over the movement of labour had been lifted. This led to a significant migration from rural areas to urban areas within South Africa, and from other parts of Southern African to the rural urban areas of South Africa.
- Micro-economic deregulation led to an increase in informal economic activity.

There were a significant number of developments within the agricultural sector, including the following:

- A move to more market related pricing practices by some control boards, and deregulation of parts of the agricultural marketing system, in terms of the 1968 Marketing Act and other legislation. A detailed mapping of this process is presented in table 6.
- Reforms to the tax treatment of agriculture;
- A decrease in the level of budgetary transfers to commercial agriculture, (although off budget commitments, such as government guarantees of debt arising from drought increased) whilst transfers to the homeland departments of agriculture increase proportionately.
- In 1991 the Land Act and related legislation was repealed; and
- The start of the tariffication of agricultural import protection measures for a number of commodities following the Uruguay Round of the GATT.

Table 6: Important marketing reforms up to 1993

Commodity	Reforms
Maize	Prohibition on the building of grain silos repealed. A change in the pricing policy (1987), and the scrapping of price control on maize meal
Winter Cereals	Phasing out of bread price subsidy (by 1991). Abolition of remaining controls over the pricing of bread and flour, and registration of millers and bakers lifted (1991)
Oilseeds	Abolition of import control measures on oil cake and fishmeal.
Wool, sorghum and Leaf Tobacco	Abolition of single channel marketing arrangements
Deciduous Fruit	Free issue of domestic marketing permits.
Citrus Fruit	Domestic market control abolished (1990)
Red meat	Restrictions on the movement of livestock from uncontrolled to controlled areas were abolished (1992). Abolition of restrictive registration of producers, abattoir agents, butchers, dealers, processors and importers.
Milk and butter fat	Abolition of consumer price control on fresh milk (1983) and butter and cheese (1985). Price stabilization activities halted (1992)
Potatoes, dry beans, eggs, bananas, and chicory	The five control boards responsible for these products were closed down in 1993.
Wine	The production quota system was abolished in 1992
Sugar	The cane quota system was reformed in 1990.
Ostriches	The Klein Karoo Agricultural Co-operative's single channel in terms of the co-operatives Act terminated (1993).

Source: Bayley, 1997

This first phase of policy shifts until 1994 occurred within the existing public sector institutional structure. The main role players involved in the sector, namely the Department of Agriculture, the Control Boards charged with responsibility for marketing of farm products, etc. remained in place despite the general relaxation of State intervention in the sector.

4. 1994 to 1999

The government of national unity, elected in 1994, ushered in a new era of policy changes across the entire range of government functions. In agriculture, however, at least some direct policy changes had to wait until 1996, i.e. until after the withdrawal of the National Party from the GNU.

Within the agricultural sector the main developments during this period were as follows[11]:

i. Land reform initiatives included land restitution, land redistribution and tenure reform programmes. This initiative, launched in 1994, was aimed at settling small farmers on viable farming operations in the commercial farming areas. Recent reviews of the programme show that the pace of reform has been slow, and have resulted in a reorientation of the programme away from a strict focus on poverty alleviation (Bayley, 1997).

ii. Trade policy reform. The new South African government embarked on a process of trade policy reform that aimed to reverse decades of 'inward industrialisation' strategies. The distinguishing characteristic of the reform policy was a willingness to expose businesses in the country to tariffs that were often below the bound rates negotiated in the Uruguay Round of the GATT. Whereas agricultural trade had been managed through quantitative controls, the Marrakech Agreement called for the tariffication of all agricultural goods, and a phased reduction in the tariffs. South Africa also participated in the renegotiation of the Southern African Customs Union treaty, agreed to the new SADC trade protocol, and negotiated a free

11 Source: Bayley, 1997

trade agreement with the EU. In all these cases, South Africa agreed in principle to liberalise agricultural trade further. Finally, South Africa gained membership of the Cairns Group, thus signalling its intention to unilaterally liberalise its trade regardless of the progress made by the developed countries in withdrawing farm support programmes (Bayley, 1997).

iii. Labour market reform. While labour legislation governing working conditions, wage rates, etc. has progressively become applicable to the agricultural sector over a period of more than a decade, certain aspects of the land reform programme have also impacted on the manner in which labour is managed in the agricultural sector. Here specific mention should be made of the introduction of legislation that governs the occupational rights of workers who live on farms (Bayley, 1997).

iv. Infrastructure programmes in the rural areas that are aimed at the provision of social services (welfare benefits, and health and education services) and physical infrastructure, including water, energy and transport and telecommunications services. These have been accompanied by a transformation of the system of local government in the country, and steps to focus the attentions of local authorities more on development issues. The purpose of these policy reforms, as far as agriculture was concerned, was to correct the injustices of past policy, principally through land reform, to get the agricultural sector on a less capital-intensive growth path, and to enhance the international competitiveness of the sector. More generally, these policies all formed important cornerstones of the government's rural development strategy (Bayley, 1997).

v. Institutional restructuring in the public sector, including the 'provincialisation' of the Department of Agriculture, a change in the relationship between the Department and farmer lobby groups, the reorientation of the mission of the Agricultural Research Council, (established in 1993), the restructuring of important statutory bodies with a development mandate in the rural areas generally such as the Development Bank of Southern Africa and the Land Bank, and changes in the institutions governed by the Marketing Act as discussed below (Bayley, 1997).

vi. The conversion of a significant number of South Africa's large co-operatives into companies (see section 3.2).

vii. An acceleration of the deregulation of statutory interventions in agricultural markets, culminating in the Marketing of Agricultural Products Act 1996, in terms of which the 1968 Marketing Act and the various pieces of homeland marketing legislation were repealed. In addition, the control boards closed down; the objective of the repeal was the promotion of a free market in agricultural products (Bayley, 1997). With the repeal of this Act in 1996, state recognition of all single-marketing channels was formally withdrawn, and the respective marketing boards were disbanded, as described below[12]:

Canning Fruit

The Canning Fruit Board was disbanded and the Scheme repealed on 30 September 1997. The functions previously performed by the Board were taken over by the following institutions:

- The Canning Fruit Forum (representing directly-affected groups)
- APGA (Apple and Pear Growers' Association) which has been changed to the Canning Fruit Producers' Association
- SAFVCA (SA Fruit and Vegetable Canning Association)

Citrus

On 11 June 1998, the then Citrus Board did the official hand-over to the Citrus Board Liquidation Committee. The Citrus Scheme was extended until July 2001 to finalise all outstanding matters.

The Citrus Growers' Association of Southern Africa (CGASA) was formed. It represents the citrus growers in South Africa. The Citrus Industry Trust was also formed.

12 www.namc.co.za

Cotton

On 5 January 1998 the Cotton Board was disbanded. A Section 21 Company named Cotton SA was established, representing all the role-players in the industry, which also acts as Forum.

All the assets of the Board were transferred to the approved Cotton Trust. The Cotton Scheme lapsed on
5 January 1998.

Dairy

On 5 January 1998 the Milk Board was disbanded and the Scheme repealed. SAMFED (SA Milk Federation) was formed to co-ordinate industry matters.

It is made up as follows:

- The Milk Producers' Organisation (MPO)
- The SA Milk Organisation (SAMO)
- The National Milk Distributors Association (NMDA)

Deciduous Fruit

A Liquidation Committee replaced the Deciduous Fruit Board on 5 January 1998.

New industry structures include:

- Deciduous Fruit Industry Forum, a Section 21 Company
- The Deciduous Fruit Producers' Trust (DFPT)
- The Deciduous Fruit Exporters' Forum
- The Deciduous Fruit Industry Trust

The Deciduous Fruit Scheme was extended until 31 July 2001 and the Deciduous Fruit Liquidating Committee finalised some outstanding issues relating to assets of the Board and Unifruco.

Sorghum

The Sorghum Board was disbanded on 8 September 1997. The following organisations took over the functions performed by the Board:

- Sorghum Forum, representing directly-affected groups
- Sorghum Trust

The Sorghum Scheme was repealed on 30 September 1997.

Lucerne Seed

The Lucerne Seed Board was disbanded on 30 August 1997 and the Scheme repealed. The Lucerne Seed Industry Forum, representing the directly affected groups, the Lucerne Seed Industry Research and Development Trust and the Lucerne Seed Industry Organisation, a section 21 Company, were established.

Maize

The Maize Scheme was extended until 31 July 2001. The Maize Board was engaged in the liquidation process of the Board, finalising financial and legal obligations with regard to outstanding levies.

A Maize Trust was formed and is fully operational.

The South African Grain Information Service (SAGIS), a Section 21 Company, was formed and funded by the grain and oilseeds industries to manage the information function.

Meat

A Liquidation Committee replaced the Meat Board at the end of November 1997. The Meat Forum, Meat Industry Trust and the South African Meat Industry Company (SAMIC), a Section 21 Company, were established.

The Meat Scheme was extended until 31 July 2001, while the Liquidation Committee finialised the Board's financial and legal obligations with regard to outstanding levies.

Mohair

The Mohair Board was disbanded and the Scheme was repealed on 31 December 1997.

A Mohair Trust and a Section 21 Company named Mohair SA were established.

Oilseeds

The Oilseed Board closed its doors on 30 September 1997. The Oilseeds Scheme was repealed on 31 March 1998, after all outstanding levies had been collected.

The Oilseeds Forums for Sunflower Seed, Groundnuts and Soya Beans were established, as well as an Oil and Protein Seed Development Trust.

Winter Cereals

The Executive Committee of the Wheat Board managed the liquidation process. The Winter Cereal Scheme was extended until 31 July 2001. The Wheat Forum, representing the directly affected groups in the winter cereal industry, already existed at the time the deregulation process started.

The Winter Cereal Research and Development Trust, and the Winter Cereal General Trust were formed, and were later changed to one Winter Cereal Trust.

Wool

A Liquidation Committee replaced the Wool Board on 31 August 1997. The Wool Scheme was extended until 31 July 2001. The Wool Forum, the Wool Trust and Cape Wool SA (a Section 21 Company), were established.

The National Wool Growers' Association (NWGA), and Wool South Africa (WSA) represent the wool growers.

3.2 Agricultural co-operatives and deregulation

People all over the world have found different ways to co-operate in the production and distribution of goods and services, across different types of economic systems. But particular forms of such co-operation were formalized in nineteenth century Europe, against the backdrop of the Industrial Revolution and significant social change. These co-ops were seen as social and economic alternatives to the impacts of emergent industrial capitalism (Philip, 2003).

South Africa's agricultural co-operative movement was born in the early 1900s to provide commercial farmers with collective buying, marketing and organizational power. It focused on input supplies and joint marketing of production; and also established processing co-ops such as in the wine and spirits sector. They became a powerful lobby for agriculture, holding a virtual monopoly in key agricultural sectors, backed by ready access to finance through the Land Bank, and with effective control of the Marketing Boards that regulated prices until this system was dismantled post-1994 (Philip, 2003). At the turn of the century, the co-operative movement was not a significant force in South African agriculture. But by the mid 1990's the co-operative movement was a dominant force not just in the agricultural marketing system, but also more widely in the rural economy.

Previously, giant co-operatives and regulatory boards dominated the agricultural sector. The primary function of the co-operatives was the marketing of agricultural output. However, the actual activities of the co-operatives tended to span all functions necessary to produce the product and bring it to market – financing, storage, processing, packaging, distribution, sales and exports. Producers within a specific agricultural sub-sector had to be members of the co-operative. Although the precise details of the system varied across the range of agricultural products, as a rule the producers were, on pain of criminal sanction, obliged to sell their entire crop to the relevant co-operative, which, in turn, committed itself, in the good and bad years, to purchase the entire crop of their members. This was the system known as single-channel marketing, with the particular Board as the regulating authority and the co-operative as the channel (see Competition Tribunal case no: 04/IR/Oct/1999, 1).

Government promoted the co-operative movement in the following ways[13]:

The Land Bank Act of 1912.

Up until the mid 1980's, the Land Bank lent money to farmers and co-operatives at rates of interest that were cheaper than those available from commercial banks. The Land Bank was prohibited from making such concessionary finance available to business organizations that were not organized along co-operative lines

The Co-operatives Act of 1922

The 1922 Act provided for the establishment of limited liability co-operatives. An amendment to the act provided for the 'lien', whereby farmers owing money to the co-operatives were obliged to deliver their crop to the co-operative. Thus the co-operatives' structural advantages in the provision of agricultural inputs through the Land Bank Act were translated into advantages in the handling of agricultural produce.

The vesting of statutory marketing powers in agricultural co-operatives

There are a number of examples. Over and above the Wine and Spirits Act of 1924, and the controls over tobacco through seven co-operatives, the Klein Karoo co-operative enjoyed statutory powers over the marketing of ostriches and ostrich products between 1958 and 1993.

Representation on the control boards

The 1937 Act stipulated that producer representatives on any control board should enjoy an outright majority. In practice many producer representatives on control

13 Source: Bayley, 1997

boards were directors of the larger co-operatives. Co-operatives were also represented on the boards in their own right as board agents.

Control board appointment and remuneration policies for their agents

The boards pursued policies towards the appointment and remuneration of agents, which favoured co-operative interests and made it increasingly difficult for non co-operative agents to survive. Tinley (1940) highlights the decision by the Wheat Board to appoint co-operative agents in most areas even though private dealers were ready and willing to perform the same task at a 'considerably lower commission'. Meanwhile control boards reimbursed their agents' financing costs on the assumption that they could access Land Bank loans for such purposes (at discounts to other sources of finance). Only co-operatives could access such loans, putting non-co-operative agents at a tremendous disadvantage. According to Kassier (1986), the 1937 Act saved the co-operative movement.

The silo building loan programme

In the context of the sheltered environment provided by the control board system the silo building loan programme allowed co-operative agents of the boards to build up a huge marketing infrastructure in their own name (see Bayley 1997).

Direct financial support from government

For example, for a number of years the government subsidised the Northern Transvaal Co-operative (NTK) to a very significant degree.

The tax status of co-operatives

Prior to 1977, agricultural co-operatives were only required to pay income tax on profits arising from dealings with non-members. Since then co-operatives have been taxed at the company tax rate of 35%, although even in 1996 section 27 of the Income Tax Act granted co-operatives a number of special concessions relating to the treatment of capital investments and depreciation (Amin and Bernstein 1996 in Bayley, 1997).

The channeling of drought relief to farmers through the co-operatives

Over many years, but particularly since 1983, statutory emergency relief schemes enable indebted farmers, who might otherwise have gone out of production, to continue purchasing agricultural inputs from their co-operative.

The Co-operatives Act no 14 of 2005

One of the biggest issues facing co-operatives is the new Co-operatives Act no 14 of 2005. Responsibility for co-operatives in government has been transferred from the Department of Agriculture, where these responsibilities were based in the past, to the Department of Trade and Industry, where a Co-operative Enterprise Development Division has now been established. The new co-operatives Act was passed into law in 2005.

The Act clearly outlines its purpose as encompassing the following:

(a) Promoting the development of economically sustainable co-operatives, thereby increasing the number and variety of economic enterprises operating in the formal economy;
(b) Encouraging persons and groups who subscribe to values of self-reliance and self-help, and who choose to work together in democratically controlled enterprises, to register co-operatives in terms of the Act;
(c) Enabling such co-operative enterprises to register and acquire a legal status separate from their members;
(d) Promoting greater participation by black persons, especially those in rural areas, women, and persons with disability and youth in the formation of and management of co-operatives.
(e) Establishing a legislative framework that will preserve the co-operative as a distinct legal entity.

(f) Facilitating the provision of support programmes that target co-operatives, specifically co-operatives that create employment or benefit disadvantaged groups.

(g) Facilitate the provision of support programmes that target emerging Cooperatives, specifically those co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas and that promote equity and greater participation by its members;

(h) Ensure the design and implementation of the co-operative development support programmes by all the agencies of national departments including but not limited to Khula, NEF, NPI, SEDA, IDC, SAQI, SABS, CSIR, PIC, DBSA, SALGA and SETA'S, and compliance with uniform norms and standards prescribed by this Act;

(i) Ensure the design and implementation of the co-operative support measures across all spheres of government, including delivery agencies, and adherence to a uniform framework of established norms and standards that reflect fairness, equity, transparency, economy, efficiency, accountability and lawfulness; and facilitate the effective co-ordination and reporting mechanism across all spheres of government through the department.

The Act defines a co-operative as "an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise and which is organized and operated on co-operative principles"

The Act provides for cooperatives to be legal entities with limited liability and with the explicit understanding that they are to be underpinned by sound business principles. This legislation applies to all types of co-operatives, including agricultural, transport, financial, housing and others.

With the deregulation of the agricultural sector, a number of cooperatives converted to companies. Converting a co-op to a corporation, subject to the provisions of the Companies Act rather than the Cooperatives Act, invariably involved a change of ownership. The advantage of this conversion includes the expanded range of products and services typically offered by companies such as Afgri. On the financial side, these would include crop insurance, the ability to hedge input costs (such as diesel) and personal financial planning for the farmer. On the technical side, the services include precision farming techniques and access to cutting edge feed, plant and seed technologies. On the retail side, farmers get access to keener pricing through bulk buying and wide retail store distribution.

CHAPTER 4: THE EFFECT OF DEREGULATION ON THE AGRICULTURAL INDUSTRY

It is very difficult to isolate the effect of domestic market deregulation from other developments, such as the relaxation of exchange controls, international trade liberalisation, movements in world prices, and fluctuating production conditions. Nevertheless, the response to date of farmers and the private sector to the reforms has been impressive. This section will analyse the trends within the agricultural industry post-regulation, as well as the effect of deregulation on the market structure within the agricultural industry by analysing mergers and acquisitions that has taken place during the period 1999 – 2006.

4.1 Trends in the agricultural industry post-deregulation[14]

The effects of deregulation differ between the field crop, the horticultural and the livestock subsectors of agriculture, partly because of their different modes of production, and partly because the nature of control under the old Act differed between different commodities. Therefore, when analyzing the effects and impact of deregulation on the agricultural industry, effects should be considered for:

· Field crops farming systems
· Livestock farming systems
· Horticultural farming systems

Field crops

The most important implication of the change in trade policy on field crops is that prices of the latter generally adjusted downwards to world market levels, and has thereafter fluctuated with the world market price. Commercial farmers have shifted quite rapidly to minimum and low-tillage production systems, and in certain cases even to no-till practices. The result has been a rapid decline in the use of inputs such as fertilisers, insecticides and herbicides, of tractors, combine harvesters and other implements, and of fuel in field crop production This has been accompanied by an on-

14 This section includes many conclusions drawn by Nick Vink in "The influence of policy on the roles of agriculture in South Africa", pp 6-12, TIPS forum, 2003

farm shift in field crop production to better quality soils, and a sectoral shift in production out of more marginal areas such as the western parts of the North West and Free State provinces (mainly maize), and the north-western and south eastern parts of the Western Cape province (wheat). A further effect has been the adoption of crop rotation regimes, for example the introduction of crops such as medics and lupins into wheat systems in the Western Cape province and the gradual introduction of precision farming technologies. These locational and cropping pattern effects have allowed farmers to maintain total output of the major field crops while ploughing less land.

That said, the process of deregulation of the agricultural marketing system encompassed more than just a change in the trade regime. The most important changes also included the abolition of pan-territorial and pan-seasonal pricing mechanisms, the subsequent changes to physical access to the market and to the food processing sector and a range of institutional impacts.

Some of the most important developments can be summarized as follows:

- As stated above, most of the major agricultural products were previously sold under a 'single channel fixed price' marketing regime, characterised by pan-territorial and pan-seasonal pricing. The main consequence of pan-territorial prices was that farmers closer to the market were effectively cross-subsidising those further away that faced higher transport costs. The main result of pan-seasonal pricing was that no grain was stored on-farm, and that the entire crop was sold immediately after harvest. This had a tendency to cause havoc on the money markets, especially when the maize crop was harvested, as farmers were paid in full on delivery to the cooperatives. The result was an over-supply of storage capacity, arguably also incorrectly located. With the deregulation of the agricultural sector, prices have started to become regionally differentiated to reflect transport costs and regional variations in demand and supply. (Vink, 2003),

- With deregulation, the major grain industries (maize, wheat) became more differentiated as the location of production shifted in response to differential prices across space and over time. One of the first results was an increasing proportion of the maize crop now milled by small-scale millers, both on- and off- farm (industry estimates suggest this can be as high as 30% of the crop). This has impacted the rural areas in three ways. First, there are increased opportunities for small and medium scale businesses in processing and distributing maize and maize products. This increased activity in the rural areas has provided a stimulus to rural economies. Second, there has been a marked increase in agro-tourism throughout the country. While agro-tourism has long been a feature of the wine industry, there has been a marked increase in farm stores, farm stays, etc. in most parts of the country. Third, small-scale farmers have, in theory at least, better access to the market than before, since the cooperatives that acted as agents under the single channel schemes, would only take delivery in bulk. However, the slow pace of land reform means that few new entrants to agriculture have been able to take advantage of these benefits. (Vink, 2003)

- The abolition of pan-territorial and pan-seasonal pricing has also had interesting consequences for the rural finance sector. Under the control schemes, the Control Boards appointed agents, mostly farmer co-operatives, to carry out the physical functions of receipt of the crop, payment, storage, and onward consignment to the processors. These input supply co-operatives therefore became effective regional monopolies, which enabled them to become preferred suppliers of seasonal credit to farmers. They generally used the Land Bank as their preferred source of funds. With deregulation, however, the commercial banks have been able to expand their share of this market. In particular, the major players in this market now include BOE Bank, Absa Bank, FNB, Afgri operations, Senwes and the Landbank, as discussed in chapter 5 below.
- A final consequence of the abolition of pan-territorial and pan-seasonal pricing has been the advent of a wide range of strategies (increased part-time farming, contract farming, strategic selling throughout the season, price hedging, etc.) and institutions (the agricultural futures market, or SAFEX, grain trading firms, brokerage firms, etc.) that have enabled farmers to participate in the market with greater certainty and lower transactions costs. These institutional

changes have generally served to lower the transactions costs of market participation.

Livestock

The most important implication of the change in trade policy on the livestock industry is that South Africa has in the process increased its imports of animal feeds based on oilseeds. One of the possible locational effects of these imports has been a shift in the dairy industry to the coastal regions, i.e. to production systems based on natural pasturage.

Pre-deregulation, control over the livestock industry was exercised in terms of a wide range of marketing control schemes. Red meat and eggs were controlled under 'surplus removal (price support)' schemes, whereby a floor price was set, with the relevant Board responsible for manipulating supply in order to maintain prices above this floor. In the case of red meat, the main consuming areas were designated as 'controlled' areas, and meat could only be sold there under a permit. Meat could also only be slaughtered in approved abattoirs, most of which were in the controlled areas. This created an artificial shortage in the consumer market and an artificial surplus in the producing areas, with the result that the holders of permits gained windfall rents. Wool and milk were controlled under 'single channel pool' schemes. The major sources of animal feeds were also controlled, with maize under a single channel fixed price scheme, and oilseeds and lucerne under single channel pool schemes. The poultry industry was never subjected to statutory control. The effects of deregulation on the livestock subsector have received relatively little attention, partly because of the heterogeneity of the sector, and partly because of the lack of reliable data, especially on consumption of red meat. Some effects include:

- An increase in the proportion of red meat sold in the informal sector directly into poor urban and peri- urban communities. Live sheep and cattle are bought on the farm, or even delivered to these townships, and slaughtered at the roadside, where the meat is sold raw or cooked in various forms. While it is known that this trade makes up a substantial proportion of total red meat sales, its exact magnitude has not been estimated. Similarly, there is an active market in pig and poultry by-products such as offal, chicken heads and feet.

- Deregulation resulted in a rapid increase in the number of smaller abattoirs in the rural areas, mostly on- farm facilities that are combined with retail outlets or that supply directly to retailers in the formal market. One of the results is that the large metropolitan abattoirs are all running at less than a third of capacity, leading to severe financial problems for the holding company, Abakor [15].

Horticulture

Most of South Africa's fresh vegetable and subtropical fruit industry escaped controls under the old agricultural marketing regime, while the domestic market for fresh deciduous and citrus fruit was deregulated in the 1970s. Hence, the focus here is on exports of deciduous and citrus fruit. These products were marketed under 'single channel pool' schemes, whereby producers had to channel their produce into a pool operated by a statutory monopoly empowered by the Deciduous Fruit and Citrus Control Boards respectively. The main implications of the deregulation of these industries include the effect on the quality and quantities exported, as well as the destination of exports:

- The first effect of deregulation in the fruit export industries was the entry of literally hundreds of marketers, and hence a sharp decline in price and in quality delivered into a global market characterised by a rising demand for new products and a stagnant demand for conventional cultivars. In this regard, the apple industry was hardest hit, and experienced a decline in exports in the period immediately after deregulation in the mid to late-1990s. As apples are grown in only a few specialised areas, these areas experienced a negative impact on farmer incomes and employment, while the impact on the wider

15 Abakor was established as a public company in terms of the Abattoir Industry Act of 1976 to provide slaughtering services to the government. Abakor also processes and markets offal. It holds 50 per cent in Abaros Joint Venture and 100 per cent of Bio-Lush (Pty) Ltd. The company's assets decreased by 37,4 per cent, from R264,5 million in 1998 to R165,5 million in 1999. Long-term liabilities decreased from R51,8 million in 1998 to R30,8 million in 1999 and turnover declined from R290,5 million in 1998 to R139,6 million in 1999, mainly due to the sale of capital assets. Company losses amounted to R79,6 million in 1999, compared with R29,6 million in 1996.

economy was limited. Nevertheless, total fruit exports increased in volume and value in the post-deregulation era. Under the new, deregulated trading regime, producers were more exposed to the shifting demand for new fruit types and varieties. While this had a negative impact on sales in the short term, it has also resulted in a new investment boom as farmers have shifted replanting and new plantings to reflect this change in demand. In the citrus industry, for example, the Western Cape producing area has been favoured over Mpumalanga, Limpopo and Eastern Cape provinces, as the demand shifted to easy-peelers, which are more suited to the climate, with the result that the Western Cape has become the largest source of citrus exports.

- A further result of deregulation is that farmers are now better able to withstand shocks in individual markets. While the bulk of deciduous fruit and citrus exports are still destined for the UK market, the concentration of exports has diminished considerably, with new markets being exploited in Eastern Europe, South and East Asia, the Middle East and Africa.
- Producers' ability to shift a wider variety of products to a wider range of markets has also provided a measure of protection against competition from heavily subsidised producers in northern hemisphere countries. New technologies have resulted in an extension of the production and marketing season for these producers, thereby closing the 'marketing windows' for counter-seasonal southern hemisphere countries. This advantage has been partially offset by new storage and shipping technologies for South African producers, but the reduction in state support for research and development presents a real threat to the deciduous fruit and citrus industries.
- The wine industry has also undergone radical structural changes. Exports have, for example, increased by more than threefold over the past decade, and from less than 10% of the total harvest to more than a third. These changes have been driven by investment to replace current production capacity and to create new capacity. In the wine industry, this implies a smaller total crop, as high-yielding grape varieties are replaced by low- yielding 'noble' cultivars. This also implies that the area under vines has grown only slowly, as most of the investment is targeted at replanting. Nevertheless, new areas in the Western Cape, including the Malmesbury district on the West Coast, and the

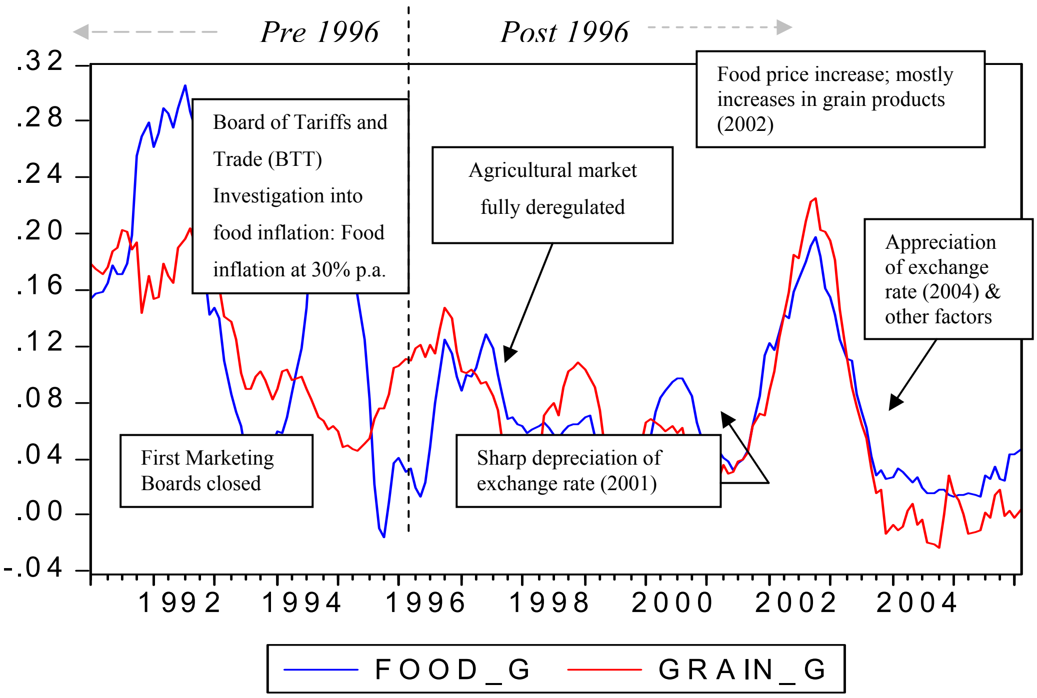
Southern Cape have been the focus of a rapid expansion in wine grape production. At the same time the processing capacity of the industry has also been expanded, with new wineries been set up, mostly in the traditional high-quality producing areas of Stellenbosch and Paarl. The past decade has seen a rapid increase in the cash loans business as the banking sector was deregulated and commercial banks failed to move into the low-income market. While most cash loans are supplied in urban areas, anecdotal evidence shows that many borrowers use the funds in small businesses, including distribution and retailing of fresh produce (vegetables, meat, fruit) in the poor urban and peri-urban areas.

- There has also been an increase in the volume of business conducted through the microlending industry, in this case also in the rural areas. As is common in other parts of Africa, a relatively small proportion of these funds are borrowed for farming purposes, but here there is also evidence that some of these funds are being invested in small scale processing, distribution and retailing of fresh produce.

4.2 Trends in basic food prices pre-and post-deregulation

One of the main objectives of agricultural deregulation in South Africa has been to promote competition and reduce costs throughout the various agricultural products' supply chains for the benefit of consumers as well as farmers. To illustrate the impact of deregulation on basic food prices, a long-term perspective on food price inflation is provided. The question to be answered here is whether deregulation has reduced food price inflation and as such benefited the majority of poor consumers for whom food constitutes an important part of total expenditure. The trend is illustrated in figure 1, which shows the trends in food inflation and grain products' inflation in conjunction with the process of deregulation. Overall, figure 1 indicates a lowering in the rate of food inflation and a reduction in the variability of food prices post 1996 compared to the period 1992 - 1996. However, again we have to note that it is very difficult to isolate the effect of domestic market deregulation from other developments, such as the relaxation of exchange controls, international trade liberalisation, movements in world prices, and fluctuating production conditions.

Figure 1: Food price inflation and deregulation



Source: Based on Vink & Kirsten (2002)

As explained in chapter 3, farmers did not have to market their produce after it was harvested under the regulated market system (prior to 1996). This was done through a single marketing channel, of which the respective marketing boards were the single buyers. Agricultural cooperatives acted as agents to the marketing boards. As a result, farmers received a guaranteed fixed price for their products irrespective of the transaction costs incurred and benefited from high accessibility to affordable credit loans (Chabane 2002). Attempts to modify the price setting process within the framework of a single-channels system in the early 1990s exacerbated the government's financial drain, and brought pressures for more fundamental reform (Bernstein 1996; Wright and Nieuwoudt 1993; World Bank 1994). It is evident from figure 1 that the annual increase in consumer prices for food has been much lower since the process of dismantling of Boards was initiated. In addition, figure 1 also illustrates a significant increase in food prices related to the weakening of the exchange rate in 2001, demonstrating the sensitivity of South African food prices to external shocks under deregulation.

4.3 The effect of deregulation on the agricultural market structure: Mergers and Acquisitions

The most general trend in the agricultural market structure post regulation relates to the conversion of agricultural co-operatives to companies, as explained in chapter 3. Examples of such players are Pioneer, which was formed from the merger of the Sasko and Bokomo co-operatives, Clover and Afgri. In addition, various mergers and acquisitions have taken place within the agricultural industry in response to a change in the market structure and field of competitors following deregulation. This section will analyse the mergers and acquisitions that took place during the period 1999 – 2006 to provide a background of the amount of vertical and horizontal integration that has taken place during this period. In addition, this will provide a broader picture of the trends in the industry, particularly against the background of deregulation in the market. Table 7 provides a detailed analysis of mergers and acquisitions notified at the Competition Commission in this market for the period 1999 – 2006.

Table 7: Analysis of mergers and acquisitions for the period 1999 – 2006

Case number	Parties	Activities pre-merger		Rationale for the merger
		Product	**Geographic region**	
Competition Board, 1997	Pioneer Foods			
	Sasko Co-operative Bokomo Co-operative	Sasko: milling and baking Bokomo: interests in milling, baking, poultry, animal fees and branded consumer goods		
69/AM/Dec01 (Merger approved with conditions, see case umber 2002 Aug 203)	Astral Foods Ltd The Astral Group controls Meadow Feeds (Pty) Ltd, Nutec SA, Ross Poultry, County Fair, Earlybird and Central Analytical Labs.	Animal feed market	KZN	Aviagen (Ross Scotland) has made it clear in discussions with Astral that in order of Afiagen to obtain an adequate return on its South African investment in Ross Poultry Breeders (RPB), RPB would have to acquire a greater market share.
	National Chick Ltd	Animal feed market Producer of day-old chicks	KZN	
2002 Aug 203 (See case number	Executives and KZN Independent Milling (Pty) Ltd	Management buyout		Management buyout pursuant to an order by the Competition Tribunal in the merger between Astral and Natchix.

69/AM/Dec01)	Nutrex, controlled by Astral foods Ltd	Animal feed market	KZN	
11LM/Feb02	OTK Agri Products Trading, a division of OTK Ltd.	Agri Finance – Providing financial and business solutions to farmers, traders, processors andusers of agricultural products; Agri Requisites – Providing agricultural inputs to primary producers through a network of outlets; and Agri Products – Providing quality control, logistics and marketing solutions to all participants in the provision of agricultural services and products. In this regard they have interests in the cotton, animal feed and broiler sectors.		
	Farm feed services, a division of Aribrand Trading (Pty), subsidiary of Afribrand Holdings	Trade of soya oilcake, maize, wheat, soya beans, wheat bran, sorghum, cottonseed and fishmeal.		
23/LM/Apr02	Pioneer Foods (Pty) Ltd	Pioneer owns five business divisions, namely Sasko Milling and Baking (producing wheaten flour, maize flour, breads, bake mixes, pasta and rice), Pioneer Agri (farming and selling of commercial eggs and broilers, manufacture of animal foods), Bokomo Branded Foods (hot and ready-to-eat cereals and other breakfast products, frozen foods, jams and preserves, glazed fruits and bottled fruit and vegetables, Bokomo Africa (chicken farming, milling and baking in other African countries) and Craft Box Packaging (corrugated carton production).	South Africa	As part of its strategic diversification, Pioneer seeks to further broaden its offering of consumer products in order to become more competitive. In a highly competitive retail market, shelf space is everything and it is hard to compete with a limited range of brands. Since SAD has a

	SAD Holdings Limited	SAD operates in various business areas through its various subsidiaries. These markets include nuts, vinegar, dried flowers, dried fruit, wine, food enhancers, soup, beans, noodles, dehydrated vegetables and salads.	South Africa	thriving export business, Pioneer hopes to expand internationally. It states that with its economies of scale as a result of their sales and merchandising, marketing and distribution activities in the market, it will complement the activities of SAD. SAD views the merger as enhancing its ability to compete effectively in the food sector by boosting its status from a medium-sized enterprise to achieve the critical mass necessary to be able to compete effectively as a large player, both vis-à-vis other food manufacturers, as well as retailers. It cannot continue to stand alone if it wants to complete its capital expansion programme for manufacturing.
71/LM/Sep02	Acquiring: Afgri operations	Market for co-operative services, including financial services products, trading of agricultural commodities, handling and storage facilities, manufacture and distribution of animal feeds, operating retail outlets, marketing of farming equipment as well as the sale and distribution of crop care products. The kinds of crop produced in Afgri's service area, were mainly sunflower, maize, wheat cotton and the selling of dry beans to commercial farmers.	Free State, Mpumalanga, Gauteng, Limpopo and Kwa – Zulu Natal provinces.	According to the parties the area where Laeveld operates is one of the most stable agricultural areas in South Africa and the products that are produced are different to the products in OTK'S current area which will be advantageous for the overall spread of OTK'S risk.
	Target Laeveld Korporatiewe Beleggings	Market for co-operative services, including the marketing of dry-bean seed and lemon oil, selling of various farming requisites, financing of crop. Multiplication and processing of dry beans on contract. Laeveld mainly produced sugar cane, citrus, bananas, macadamia, pecan nuts as well as the multiplication and processing of dry beans on contract.	Lowveld area of Mpumalanga. Limpopo	

2003March 427	Acquiring: NTK Limpopo Agri Limited	Primary and secondary acquiring firms not active in any market		Settlement agreement of dispute pertaining to the repayment of loans by NTK and NPC to the Land Bank. Transaction was a restructuring of already existing entities.
	Target: Northern Transvaal Co-operative Limited National Potato Co-operative Limited	General retail of agricultural input commodities and equipment Retail of mechanical agricultural equipment and spare parts Grain storage Milling operations Cold storage of seed Manufacturing and distribution of potato and charcoal bags Management of fresh produce market		
2003 May 475	Acquiring: NTK Limpopo Agric Limited	Production of animal feed	Eastern Cape	MFC wanted to penetrate the Alexandria area, east of PE
	Target: Bulkop Feeds (Pty) Ltd	Production of animal feed	Eastern Cape	
2003 Jun 496	Acquiring firm: Statusfin Financial services (Pty) Ltd	Input finance Short term insurance Corporate financial consultant services Management services Manufacturing and distribution of: Full fat soya products, Gardening products, Commercial wheat seed, Pet products, Agricultural related products, Silo management services, Grain procurement services, Agricultural marketing, IT services to agri-businesses/		Statusfin has decided to purchase the financing and the insurance businesses, which forms part of its core business, from NTK. Statusfin is better placed to provide the financial services to NTK's customers due to the fact that NTK's core business is not the provision of these services and due to its financial difficulties.

	Target firm: The financial services business of the Noord Trnasvaalse Kooperasie Beperk and Natus Fnancial Brokers (Pty) Ltd	Input finance Insurance brokering		
2003 Sep 649 (joint venture)	Unigrain Commodities	Newly formed joint venture	Western Cape	Afrigrain, as part of its corporate strategy planning, has decided to increase the company's profitability (while limiting risk) by entering into a strategic alliance with a well-established player in the wheat market.
	Afrigrain (Pty) Ltd Unigrain Cape (Pty) Ltd	Marketer and trader in wheat, barley Ad hoc marketing and trading of maize, canola, feed grain and sunflower seeds	Western Cape	
2004 Jan 1390	Afrigrain (Pty) Ltd	Newly formed joint venture	Western, Northern and Eastern Cape	Restructuring of a joint venture enterprise.
	Unigrain Commodities	Marketer and trader in wheat, barley Ad hoc marketing and trading of maize, canola, feed grain and sunflower seeds	Western Cape	

17/LM/Mar04	Acquiring: Afgri operations	Market for package of co-operative services, including financial services products, trading of agricultural commodities, handling and storage facilities, manufacture and distribution of animal feeds, operating retail outlets, marketing of farming equipment as well as the sale and distribution of crop care products.	Free State, Gauteng	For its part Afgri has been keen to maker further acquisitions both to expand its geographic footprint and to increase its customer base. Natalagri also owns assets that Afgri is keen to control including its silos, which are well located for the export market. Natalagri has in recent years been experiencing cash flow problems in part due to an unsuccessful acquisition. Placed under pressure by its funders, the co-operative's management recommended to members that they sell the business.
	Target: Natal Agricultural Co-operative	Market for package of co-operative services, including financial services products, trading of agricultural commodities, handling and storage facilities, manufacture and distribution of animal feeds, operating retail outlets, marketing of farming equipment as well as the sale and distribution of crop care products.	KZN	
46/LM/Jun04	Pioneer Foods (Pty) Ltd	Pioneer operates in the food industry and its core business is that of milling and baking. It supplies ingredients such as flour, bread and confectionary, baking mixes, coatings and baking aids to the baking industry and commodities such as eggs, chickens (broilers), animal-feed, dog foods, corrugated cartons, dried fruit, nuts and raisins. It also sells a variety of branded goods, one of those being glazed fruits, which is sold under its Sugarbird brand	South Africa	Bromor is selling Moir’s because its products do not strategically fit with Bromor’s focus on confectionary and beverage products. According to Pioneer the transaction would increase its range of value added branded goods. The products are also complementary to its core business.
	John Moir’s, a division of Bromor Foods (Pty) Ltd	Moir’s manufactures and supplies products such as baking powder and other baking aids, instant hot sponge pudding, desiccated coconut, dairy creamers, various essences, luxury fruit cake mixes and glazed fruit under the well-known Moir’s brand	South Africa	

57/LM/Aug04	Acquiring: Astral Operations (Afgri)	Fully integrated broiler producer and operator, producing day-old chicks and broilers, as well as process, pack, distribute and sell chicken products.	Gauteng	The acquisition enables Astral to transfer the expertise, which County Fair has acquired in supplying fresh chicken products to the Western Cape region, to Easrlybird. Afgri has indicated that, in future, it intends to enter the broiler market on its own and would thereby create its own feed customer.
	Target: Earlybird Farm (Pty) Ltd (Afgri)	Fully integrated broiler producer and operator, producing day-old chicks and broilers, as well as process, pack, distribute and sell chicken products.	Western Cape	
60/LM/Aug04	Acquiring: Pioneer Foods	Hatching and sale of day old pullets Rearing and sale of point of lay hens Production and selling of commercial eggs Sale of liquid egg *** Pioneer did not acquire certain of Golden Lay's point of lay facilities and none of its pullet production facilities.	Western and Eastern Cape	Pioneers' rationale for the transaction was to obtain a larger share of the egg market in Gauteng and KZN. Golden Lay's rationale for this transaction was to reduce its operational risks and to turn its owners' investment into cash.
	Target: Golden Lay Farms Ltd, Golden Lay Farms KZN (Pty) Ltd, Golden Lay Foods (Pty) Ltd	Hatching and sale of day old pullets Rearing and sale of point of lay hens Production and selling of commercial eggs Sale of liquid egg	Gauteng and KZN	
107/LM/Dec04	Acquiring Afgri Operations	Market for package of co-operative services, including financial services products, trading of agricultural commodities, handling and storage facilities, manufacture and distribution of animal feeds, operating retail outlets, marketing of farming equipment as well as the sale and distribution of crop care products.	Free State, Gauteng, KZN	According to the parties, Afgri is the only shareholder with sufficient resources to assist Nedan Oil in expansions.

	Target: Nedan Oil Mills	Supply of refined edible oils, bulk fats protein for human consumption (supplied in bulk) and protein for animal feed (supplied in bulk).		
55/LM/Aug04	Pioneer Foods (Pty) Ltd	Pioneer is a highly diversified food group, comprising three business divisions – staple foods; branded products and another "unallocated" division which includes carton manufacturing, insurance and corporate services.		Confidential
	Accolade Trading Company (Pty) Ltd	Accolade's business comprises the purchasing and packaging and selling of dried beans, rice and peas as well as other edible foodstuffs.		
2005 Sep 1860	Acquiring: Overberg Agri Beleggings (Pty) Ltd	The provision of spare parts and repair services, grain storage facilities (silos) to farmers and grain purchasers, sale of farming implements, fertilizer, fuel, animal feeds, lubricants, seed, building materials, veterinary products and several other farming requisites through retail outlets, sale of corn and grain seed, fuel depots, spare parts for tractors and other implements and insurance.		Overberg Agri Beleggings wished to diversify its operations beyond its agricultural activites.
	Target: Promeal (Pty) Ltd Promeal Properties (Pty) Ltd	Manufacturing and marketing of pet food		
2005 Dec 2059	Acquiring: Synapp International	Broiler production market	Northwest and Free State	Merger will enable Synapp to have a secure source of poultry feed. Senwes advises that Senwesko Voere was not operating profitable.
	Target: Senwesko Voere (Senwes)	Manufacturing of poultry feed	Gauteng	

2006 Jan 2096	Acquiring: Cargill cotton	Trading of agricultural commodities in South Africa including maize, wheat, soya beans, cotton and other agricultural commodities. In particular, production and sale of cotton lint and cottonseed.		From Cargill's perspective, the proposed transaction will give it access to more cotton lint to trade and export and will provide Cargill with access to ginning facilities in South Africa which it did not previously have. Afgri accesses the international cotton market through intermediaries/brokers adding to the non-profitability of the cotton business for Afgri. Afgri has accordingly decided to exit the cotton market.
	Target Afgri operations (cotton business)	Procurement of cotton from farmers, the processing (using gins) and marketing of cotton products (cotton lint and cotton seed) in Southern Africa.	Southern Africa	
12/LM/Mar03	Target: Tiger Brands Limited	Tiger Brands and its various subsidiaries are involved in the production, and distribution of various branded food products including Ace maize meal, beverages, consumer, and, to a limited degree, pharmaceutical and critical care hospital products.	South Africa	The rationale for the transaction is that Foodcorp is disposing all non-core business ventures while Tiger Brands, on the other hand, is keen to have sole ownership and management of the business.
	Acquiring: Enterprise Foods (Pty) Ltd	Enterprise manufactures chilled processed meat and canned meat products.	South Africa	
74/LM/Sep04	Acquiring: Rainbow Farms (Pty) Ltd	Rainbow Farm is a fully integrated broiler producer that breeds and rears its own poultry, processes the chicken, and markets fresh, frozen, value added and further processed chicken nationally and internationally. Rainbow sells these products under brands such as Farmer Brown, Rainbow and Bonny to local retailers and wholesalers of food services and through export channels. Rainbow Farm also produces animal food under the Epol brand.	National	According to the parties, the acquisition of Vector will allow Rainbow to gain control of the route to market and customer centered initiatives, thereby ensuring Rainbow's long-term survival.

	Target: Vector Logistics (Pty) Ltd	Vector provides specialist logistic services to the food and food-related industries across the retail, wholesale and food service sectors. Vector also provides services such as warehousing, selling, order processing, delivery, merchandising and field marketing, credit management and administration.	National	
68/LM/Dec01	Unitrans Motors (Pty) Ltd	Distribution of vehicles of a number of different manufacturers in terms of franchise agreements through motor vehicle dealerships.	National	According to the parties, Senwes has invested in several so-called "platteland" dealerships, which have not generated sufficient returns and are detracting from Senwes' agricultural focus, hence its desire to get out of motor retailing.
	Motor division of Senwes ltd	Distribution of vehicles of a number of different manufacturers in terms of franchise agreements through motor vehicle dealerships.	Free State, North West, Northern Cape	
2006Jan2074	Kaap Agri Bedryf Beperk	The supply of farming requisites and packaging materials through retail trading stores offering a variety of retail products; Selling and repairing of tractors and other farming equipment through workshops; The processing of grain seed, handling and storing producers' grain products via silos; Marketing services such as advice and marketing and hedging options to producers; Facilitation of agreements entered into between the producers of grain, grain traders or millers; Purchasing and selling of grain for its own account; Offering of short-term insurance broking and financing services to its customers; The manufacturing and distribution of irrigation equipment; and The making of production loans to producers.		The parties put forward as a rationale for this transaction that Kaap Agri has a number of trading stores, mostly in the Western Cape, and also in the Northern Cape. The majority of the NLK trading stores are situated along the N7. Acquiring the NLK trading stores on the N7 completes the logistical supply chain of Kaap Agri. NLK is allegedly in financial difficulties and cannot be operated profitably any longer. In order to sustain its business and ensure the continued operation of its trading stores it wishes to sell its business to Kaap Agri.
	Namakwalandse Landboukoporasie Beperk (NLK)	To operate retail branches in smaller towns in the northern part of Western Cape and Northern Cape; The conduct of a mechanization manufacturing, repair and jobbing plants; Purchasing and selling of Lucerne for its own account; Receipt, sorting, packaging and selling of beans; Provides insurance brokering services to its customers; and Provides two abattoirs in Vredendal and Springbok.		

2004 Dec 1327	Kaap Agri Beperk	Boland Agri is a shelf company, which has been created for the purposes of the present transaction and as such does not provide any services or products.	Western Cape, Northern Cape	
	WPK Landbou Beperk and Boland Agri (Eiendoms) Beperk	Financial services (including credit and insurance products) Handling and storage facilities; Operating retail outlets; Provision of packaging materials for deciduous fruit and grapes; Farming equipment; Sale and distribution of crop care products Boland Agri provides very similar services than WPK however services a different geographic market. In summary Boland Agri operates 11 retail outlets.		
2005Nov1981	Afgri operations limited	Market for co-operative services, including financial services products, trading of agricultural commodities, handling and storage facilities, manufacture and distribution of animal feeds, operating retail outlets, marketing of farming equipment as well as the sale and distribution of crop care products. The kinds of crop produced in Afgri's service area, were mainly sunflower, maize, wheat cotton and the selling of dry beans to commercial farmers.	Mpumalanga, Gauteng, Free State	The parties put forward as the rational for this transaction that Afgri wishes to participate in the broiler market as it contributes 40% of the total market for protein for human consumption and consumes over 50% of animal feed produced by the formal animal feed industry. It also needs to participate in this industry to ensure growth for its animal feed business.
	Daybreak farms	Fully integrated broiler producer, which markets a full range of frozen, fresh and value-added chicken products.	Gauteng	

Analysis of mergers and acquisitions for the period 1999 – 2006 (cont.)

Table 7 above provides an analysis of the mergers and acquisitions notified with the Competition Commission in the agricultural industry during the period 1999 to 2006. It is clear that there have been a lot of transactions during this period. Post-regulation, market players have re-positioned themselves strategically in the market to adapt to the changing environment, which now include international competitors as well as other domestic competitors such as commercial banks who have entered the market for the provision of financial products in the agricultural industry. This section will analyse the trends these transactions demonstrate in terms of horizontal integration, vertical integration and strategic diversification, respectively.

Horizontal integration

Horizontal integration relates to the expansion of a firm at the same level in the value chain. Table 7 above illustrates that a relatively large amount of horizontal integration has taken place in the maize supply chain. The rationales of these transactions are mainly a combination of the following:

1. Large players in the market are increasing their market shares or entering other geographic markets, where they were previously not active. In addition, players are strategically organizing themselves to be stronger and more competitive in the deregulated market.

2. Some players are selling certain divisions that do not fall within their core business. In addition, smaller players are no longer financially viable.

Examples of these types of mergers include[16]:

- OTK Agri/Farm Feed services

16 Additional information on these transactions is provided in table 7 of this report.

- Afgri/Laeveld Korporatiewe Beleggings
- NTK Limpopo Agric Ltd/Bulkop Feeds (Pty) Ltd
- Statusfin Financial services (Pty) Ltd/Noord Transvaalse Kooperasie Beperk and Natus Financial Brokers (Pty) Ltd
- Afrigrain (Pty) Ltd/Unigrain Cape (Pty) Ltd
- Afgri operations/Natal Agricultural Co-operative
- Pioneer/Golden Lay
- Cargill cotton/Afgri operations
- Tiger Brands Ltd/Enterprise Foods (Pty) Ltd
- Kaap Agri/ NLK

Vertical integration

Vertical integration describes a situation where a firm has its interests diversified into related activities. It is basically a linkage between producers and distributors to final consumers.

An example of vertical integrated companies in the South African maize market relates to the dominant silo companies. In addition to supplying production inputs, the silo companies, more specifically OTK, NWK, Afgri and Senwes also own large farms as well as milling companies. For example, in 2002, OTK Holdings owned at least 5 milling companies (Mc Gregor, 2002). In the past, these companies had the responsibility of distributing Land Bank loans to farmers. These loans were for the purpose of financing the purchase of inputs needed for production – seeds, pesticides, machinery, equipment and fertilizers. Although the Land Bank no longer provides these loans to them, they have secured other sources of finance and still act as creditors to farmers. One of the conditions of these loans is often that farmers have to carry out repayments in the form of crops in lieu of cash. This leads to a situation where the companies who are the main suppliers of production inputs are also the main receivers of the resulting output. Because these silo companies provide inputs to a large number of farmers they are able to purchase these inputs in bulk and therefore save on the input costs.

Another example of vertical integration in the South African maize market would be the fact that Metro, a large food wholesale company which supplies most black retailers, is owned by Premier Group Limited, one of the corporate giants of milling (Bernstein, 1996).

Backward integration into production of the input ensures supplies and reduces the cost of coordinating activities at different stages of production. This puts potential new entrants at a cost disadvantage and increases their sunk costs.

Table…illustrates that a relatively large amount of vertical integration has taken place in the maize supply chain. The rationales of these transactions are mainly a combination of the following:

1. Market players want to ensure input supplies upstream, as well as a market downstream.

2. Some players are selling certain divisions that do not fall within their core business. In addition, smaller players are no longer financially viable.

Examples of these types of mergers include[17]:

- Afgri/Nedan Oil Mills
- Synapp international/Senwesko Voere
- Rainbow Farms/Vector Logistics (Pty) Ltd
- Afgri/Daybreak

Strategic Diversification

Table…illustrates that a relatively large amount of strategic diversification has taken place in the market. These transactions do not involve vertical of horizontal integration. The rational

17 Additional information on these transactions is provided in table 7 of this report.

for these transactions are generally that the larger players in the market are incorporating other products into their business to increase profits and diversify risks.

Examples of these types of mergers include[18]:

- Pioneer/SAD
- Pioneer/John Moir's
- Pioneer/Accolade
- Overberg Agri beleggings (Pty) Ltd, Pomeal (Pty) Ltd
- Unitrans/Senwes

It is clear from the above that Pioneer is actively diversifying its business. Pioneer was formed from the merger of the Sasko and Bokomo co-operatives. Sasko was primarily active in milling and baking, while Bokomo had diverse interests in milling, baking, poultry, animal fees and branded consumer goods. Today, milling and baking still account for 70% of Pioneer's activities, despite it being a highly diversified food group, housing 20 well-known brands[19].

4.4 Conclusion

The deregulation process of the agricultural sector has involved hardship and an exit from both primary and secondary agriculture of many of the smaller, less competitive family farming businesses. The tariff structure that has resulted from the changes in trade policy in South Africa generally affords greater protection to value-added products as compared to commodities.

One result is that farmers generally sell their products into oligopolistic markets, and buy their inputs from oligopsonistic suppliers, which adversely affects their terms of trade. Commercial farmers have been able to counter these effects by increasing multifactor productivity.

18 Additional information on these transactions is provided in table 7 of this report.
19 Competition Tribunal case number 23/LM/Apr02

Bernstein argued that in the maize sector, for instance, that the abolition of statutory controls would lead to an increase in the concentration of power, or at the very least a maintenance of the status quo. High levels of concentration exist within the sector, and while deregulation was aimed at getting the state out of the market, this would offer only ‘the most frail defences against the increasing concentration of both co-operative and corporate capital, and of their mutual accommodation’ (1996: 140). Indeed, Bernstein argued that ‘deregulation’ – the reduction of statutory controls – opens the way to new [private] forms of market regulation by private and public actors (Bernstein 1996: 138; and Williams et al. 1998: 79). Co-operatives, for instance, were converted into companies, but many retained the old articles of association. Farmers remained obliged to sell their produce to the former co-operatives.
This system is beginning to break down, since this came under the scrutiny of competition authorities, as discussed in chapter 6. Notwithstanding, it is recommended that all dominant corporatised co-ops and existing co-ops scrutinize their Articles of Association and constitutions respectively, to ensure that historic anticompetitive behavior is not retained in the current regime (Griffiths, 2003).

The objectives of deregulation in the agricultural industry included to[20]:

- achieve a more efficient use of South Africa’s agricultural resources;
- increase investment and employment in agricultural marketing activities;
- lower real food prices;
- contribute to a further fall in real land prices;
- effect a shift in responsibility for managing agricultural risk from government to the private sector;
- place less of a burden on government finances;
- reduce the scope for legal challenges to the system;
- conserve political and bureaucratic time and energy formerly spent on price setting;
- restrict opportunities for rent-seeking by vested interests (Bayley 2000: 2).

20 Griffiths, A, “ The domestic politics of Agricultural Trade Policy making in South Africa”, 2003

However, from the above it is clear that in some cases, not all participants in this industry are gaining from the current regime. Here, the role of competition policy is imperative to promote competitive and efficient domestic markets.

CHAPTER 5:CURRENT STRUCTURE OF THE MARKET FOR CO-OPERATIVE SERVICES

As stated in chapter 4, market players (including co-operatives) in the agricultural industry have re-positioned themselves strategically in the market to adapt to the changing deregulated environment, which now include international competitors as well as other domestic competitors. This section will attempt to portray the current structure of the market for co-operative services, concentrating in particular on the industries where giant converted co-operatives such as Afgri and Senwes is active.

5.1 Structure of the market for co-operative services

In South Africa, co-operatives (and converted co-operatives) provide services in various markets such as field crops, horticulture and livestock. For illustration purposed, this chapter will, however, concentrate largely on the market structure of co-operative services in the market for field crops (see Competition Tribunal case number 71/LM/Sep02).

Figure 2 below provides an illustration of the bigger picture of the market(s) in which agricultural co-operatives (and converted co-operatives) are active. It is important to note that large players, such as Afgri and Senwes are active in various complementary markets, which jointly provides a package of services to a client base. At a certain level, these players compete with one another for this client base. However, it seems that there is no exclusivity between these players and there customers who would be free to procure from a rival firm.

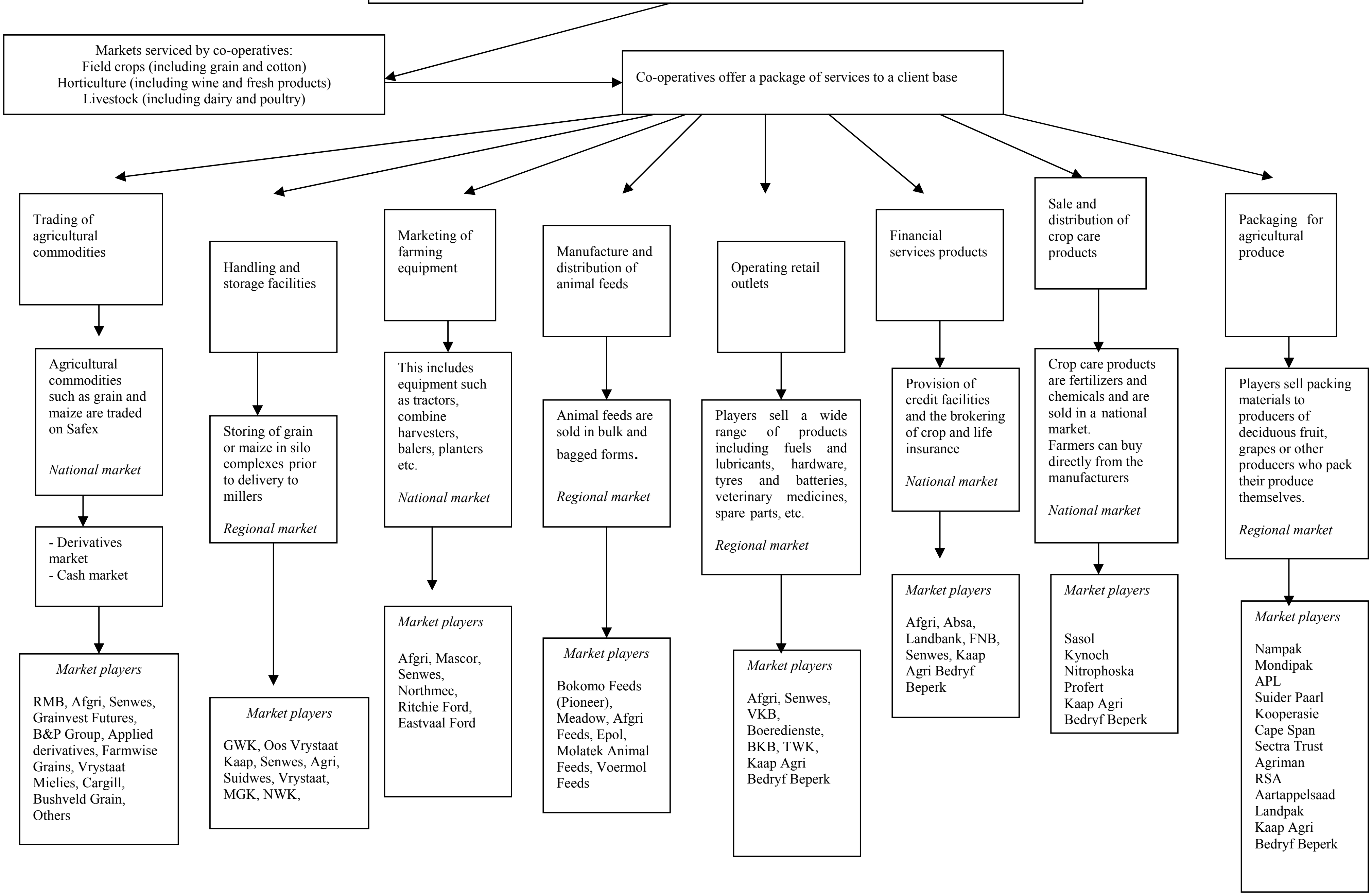
The principle categories of co-operative services include:

- Trading of agricultural commodities
- Handling and storage facilities
- Marketing of farming equipment
- Manufacture and distribution of animal feeds
- Operating retail outlets
- Financial services products

- Sale and distribution of crop care products
- Packaging of agricultural produce.

In addition to the above, figure 2 also provide a list of the competitors in these markets.

Figure 2: The big picture: Market for co-operative services



5.2 National and provincial market players

Figure 2 above illustrates that the geographic markets of some of the principle categories of co-operative services are regional. This section will break down the major market players within these categories per province.

Table 8 below provides an indication of the national and provincial players in the market for co-operative services. In addition, an estimation of the concentration of producers (farmers) per province is provided. It is clear that producers of grain products are concentrated in the North West and the Free State[21]. In addition, table 8 that Senwes is a dominant figure in the North West, and that Afgri is present in most of the provinces of South Africa.

In addition, figure 3 provides a clear geographic picture of the players in the market for the handling and storage of grain. Again, the dominance of Senwes in the North West province, and the national presence of Afgri are apparent.

21 For further reference, the land utilisation in South Africa per province is provided in Annexure A

Table 8: National and provincial players in the market for co-operative services

<table>
<tr><th rowspan="2">Producer concentration per province</th><th rowspan="2">Province</th><th colspan="9">National and provincial players in the market for co-operative services</th></tr>
<tr><th>Trading of agricultural commodities (Derivatives market)

National market</th><th>Handling and storage facilities</th><th>Broiler production and operation

National market</th><th>Marketing of farming equipment

National market</th><th>***Manufacture and distribution of animal feeds***</th><th>***Operating retail outlets***

Local market (area immediately surrounding the stores)</th><th>***Financial services products***

National market</th><th>***Sale and distribution of crop care products***

National market</th><th>***Packaging for agricultural produce***

Regional</th></tr>
<tr><td>All products: 11%
Animal production: 2%
Grain products: 5.1%</td><td>Western Cape</td><td rowspan="3">Players:

Rand Merchant Bank

Afgri operations

Senwes

Grainvest Futures

B&P Group Financial Services

Applied Derivatives

Farmwise</td><td>Afgri, 2 silos
Overberg Agri
MKB
Kaap Agri Bedryf Beperk
SSK
Tuinroete Agri
Villiersdorp</td><td rowspan="3">*Players:*

Daybreak
Synapp (Chubby chick & Country Bird)
Rainbow
Astral
Tydstroom
Rocklands
Argy
Others</td><td rowspan="3">*Players:*

Afgri
Mascor
Senwes
Northmec
Ritchie Ford
Eastvaal
Ford</td><td>Meadow
Epol
Bokomo (Pioneer)
KBF
Queensfood</td><td>NLK, North
Overberg Agri
MKB
Kaap agri
SSK</td><td rowspan="3">*Players*

BOE Bank

Afgri operations

Absa Bank

Landbank

FNB

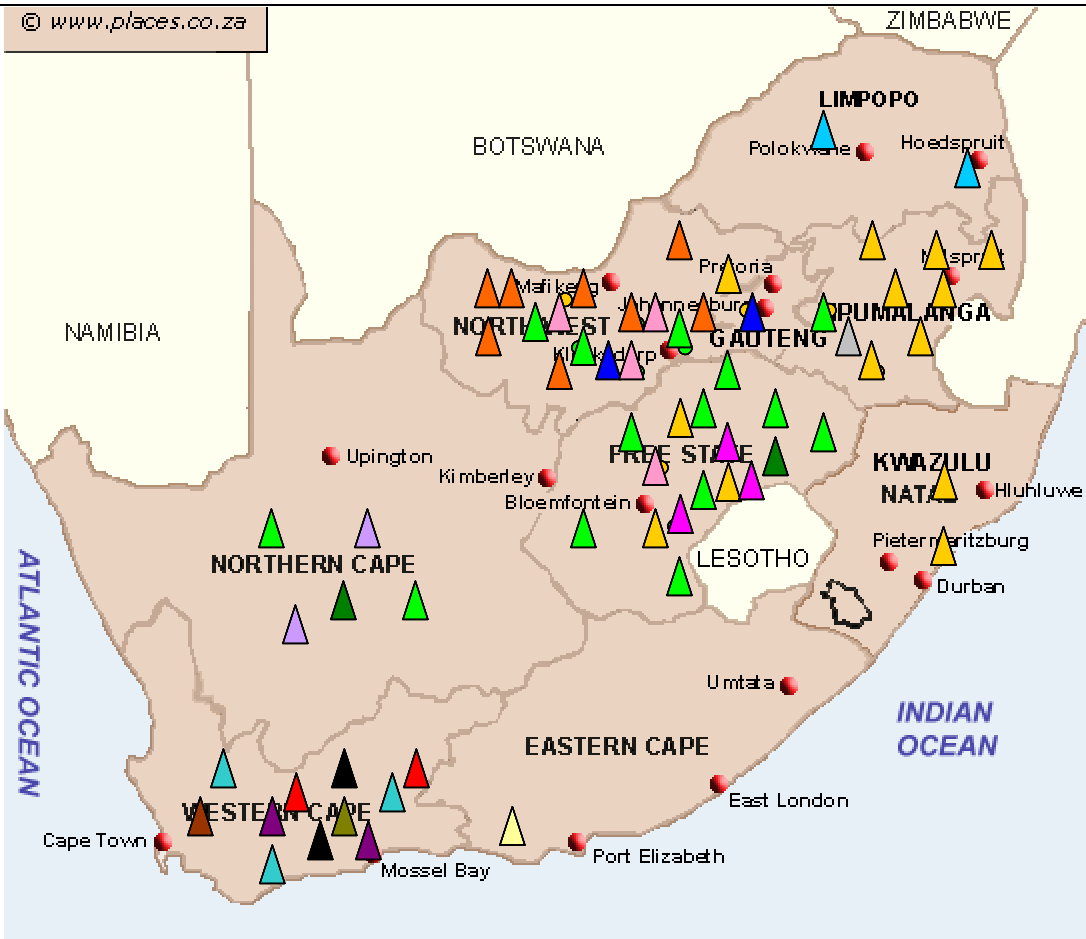
Senwes

Kaap Agri Bedryf Beperk</td><td rowspan="3">*Players*

Sasol
Kynoch
Nitrophoska
Profert
Afgri
Kaap Agri
Bedryf Beperk</td><td>Nampak
Kaap Agri
Bedryf Beperk
Mondipak
API</td></tr>
<tr><td>All products: 29%
Animal production: 48%
Grain products: 6.2%</td><td>Northern Cape</td><td>GWK Beperk
Oos Vrystaat Kaap
Senwes</td><td>Topkos
Saldanha</td><td>NLK
Senwes, 3 stores
GWK
OVK</td><td>Nampak
Kaap Agri
Bedryf Beperk
Mondipak
API</td></tr>
<tr><td>All products: 12%
Animal production: 13%
Grain products: 35.1%</td><td>Free State</td><td>Afgri operations
Oos Vrystaat Kaap
Senwes
Suidwes
Vrystaat
Suidwes</td><td>Nelko
Allem
Nutrifeed
Thys Pottas
Afgri operations
Synapp
Meadow
Leo Superkos
Tip Top
Kaap Agri Bedryf Beperk</td><td>Afgri (East & West, total of 11 stores)
Senwes, 17 stores
VKB (East Free State)
OTK
Boeredienste</td><td>Nampak
Mondipak
Smaller regional players</td></tr>
</table>

All products: 15% Animal production: 16% Grain products: 0.8%	Eastern Cape	Grains Vrystaat Mielies Gargill RSA Bushveld Grain Others	Humansdorp			Meadow Rocklands Bokomo George (Pioneer) HMD Coop Homemix ECAC Paterson Rocklands Epol Berlin Afgri Luserntek Other	Afgri (1 store)			Nampak Mondipak Smaller regional players
All products: 11% Animal production: 4% Grain products: 3.3%	KZN		Afgri operations			Afgri operations Meadow Epol Kynoch	Afgri (12 stores)			Nampak Mondipak Smaller regional players
All products: 5% Grain products: 4% Grain products: 21.8%	Mpumalanga		(Gauteng and surrounding area) MGK Afgri operations Senwes NTK NWK TWK			Molatek Bokomo (Pioneer) Tau Meule Afgri	Afgri (East & West, total of 23 stores) TKW BKB			Nampak Mondipak Smaller regional players
All products: 10% Animal production: 6% Grain products: 1.4%	Limpopo									Nampak Mondipak Smaller regional players
All products: 1% Animal production: 1% Grain products: 3.7%	Gauteng					Meadow Epol Sernic Afgri	Afgri, total of 14 stores Senwes, 1 store MGK			Nampak Mondipak Smaller regional players
All products: 10% Animal production: 7% Grain products: 22.6%	North West		MGK (Prodsure) NWK Senwes Suidwes			Meadow Epol Tau Meule Campeon Agrichicks Rustia Afgri operations Synapp Voermol Lubern Veekos Kaap Agri Bedryf Beperk	Afgri, 2 stores Senwes, 12 stores MGK NWK			Nampak Mondipak Smaller regional players

Figure 3: Geographic location of dominant players in the market for the handling and storage of grain.



- Afgri silos
- Suidwes silos
- TWK Bpk silos
- Senwes silos
- GWK Beperk silos
- MGK (Prodsure) silos
- Noord Transvaalse Kooperasie silos
- NWK silos
- OVK silos
- Vrystaat silos
- Overberg Agri silos
- Humansdorp silos
- MKB silos
- Kaap Agri silos
- SSK silos
- Tuinroete Agri silos
- Villiersdorp silos

CHAPTER 6: AGRICULTURAL CO-OPERATIVES AND COMPETITION ANALYSIS

6.1 Competition assessment of cases involving agricultural co-operatives

Since existing co-operatives involve acting in unison by people that are naturally supposed to be competing, policies aimed at their promotion may be seen by some as being opposed to the spirit of competition. At first glance, the promotion of co-operation might seem at odds with the Competition Act (promotion of competition).

However, collaboration among potential competitors is also possible through other arrangements such as joint ventures, business contracts and mergers and acquisitions, as it is through co-operatives and corporatised co-operatives, without necessarily falling foul of the Act. Such collaboration may *inter alia* increase market access or even result in efficiencies that are beneficial without necessarily falling foul of the Act. Where they affect competition, they may be justified on efficiency or other gains outweighing the anti-competition effects. Where it results in conduct that is a prohibition under the Act, an exemption may be granted if it meets the criteria set out in the Competition Act[22].

Thus, from a competition policy perspective, co-operatives and converted co-operatives, like any other business entity, can be assessed from three dimensions: *collusion; abuse of dominance; and mergers and acquisitions*. These are discussed below.

- **Collusion**

Whilst the structure of co-operatives may not necessarily be anticompetitive, it is the conduct of such co-operatives that needs to be regulated. Thus, the focus of the competition authorities would be more on the conduct and the Commission will always scrutinize such structures to ensure that they do not become breeding ground for cartels and collusive behaviour. For instance, co-operative arrangements should not involve an obligation to charge identical prices. In other words, conventional price

22 Section 10 and Schedule 1 of the Competition Act

fixing cartels cannot hide under the guise of co-operatives. Such activity should be prohibited even under co-operative structures.

- **Abuse of dominance**

One of the reasons for establishing co-operatives, especially marketing ones, is the need to protect weaker players from powerful ones. However, it is possible, through amalgamations or internal growth, for a cooperative to expand to formidable scales resulting in the concentration of market power. Further, anticompetitive exclusionary arrangements with suppliers or customers may occur.

If not properly regulated or assessed, the conduct of co-operatives may result in market foreclosure. The risk of market foreclosure exist in markets where there is vertical integration, increased barriers to entry, and where access to co-operatives have grown to become an essential prerequisite for operating in those markets.

In the large merger between Afgri Operations Ltd and Natal Agricultural Co-operative Ltd, the Tribunal elaborated on the issue of barriers to entry that resulted from the previous highly regulated agricultural sector where co-operatives were organised as local monopolies. Two economists who have written recently on these markets have expressed the view that there is a relationship between concentration in the silo market and wheat prices.

In the one paper prepared for the Competition Commission during its investigation into food prices, Professor Herman van Schalkwyk from the University of the Free State quotes the National Agricultural Marketing Council, which believes that:

"the current level of geographic concentration is unhealthy and given the pivotal position of the bulk silo infrastructure in the deregulated markets for maize and wheat it would be preferable for government to be pro-active rather than reactive in the situation"[23]

23 Competition Issues in the South African Agricultural Sector by the Chair in International Agricultural Marketing & Development, p188

The second paper written by Neo Chabane of the University of Witwatersrand, expresses the concern that:

"A recent trend in the agricultural sector has been increasing economies of scale. At the same time, the ownership of silos has become more concentrated. The buying up of small farms and silos has led to a situation where oligopoly conditions exist in the maize market. These conditions may enable collusion."[24]

"It is important to recognise, however, that the firms operating the silos do not necessarily own the grain which is stored. Owners, whether farmers or traders, pay fees for grain storage. But, the silos do have a very important role as market makers, posting prices for the purchase of grain. This function and the way in which information is shared amongst them require further investigation. As already noted, it is also the vertical integration and the combination of related activities which makes the silos so pivotal in the market."[25]

It is evident from the above that some co-operatives, particularly in the South African grain sector, possess key infrastructure or storage facilities, which creates barriers to entry, and could provide an opportunity to foreclose other players from the market. However, in the large merger between Afgri operations limited and Natal Agricultural Co-operative limited the tribunal pointed out that, particularly in the case of silos, while the industry has been deregulated, facilities are likely to continue as regional monopolies due to the considerable investment required to erect new silos, and the fact that the existing facilities appear to be operating below full capacity.

Notwithstanding, the Commission is currently investigating allegations that a dominant player in the grain industry is allegedly "coercing" farmers not to deal with competitors.[26] This investigation has not yet been finalized.

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24 "Markets, efficiency and public policy – an evaluation of recent influences on price in the maize market and government responses", CSID Research Project, Neo Chabane, University of Witwatersrand, p13
25 Chabane op cit page 14 in 17/LM/Mar04
26 CTH Trading v Senwes (2004Dec1332)

On 8 April 2002, Tribunal granted an application for interim relief in Jakobus P Bezuidenhout vs Patensie Sitrus Beherend (PSB). [27] The Tribunal found that the respondent (a citrus packinghouse) was in violation of Section 8(d)(i) of the Competition Act insofar as the Respondent's Articles of Association effectively required its customers (its farmer members) not to deal with a competitor (any other packinghouse). In particular, article 112 required its customers, who are also its members, not to deal with a competitor. In addition, the respondent confirmed, as stated in the Articles of Association that restrictions were imposed on the sale of shares in that it had to have the identity of the purchaser approved by the respondent's Board of Directors. It was also submitted that the Board would be unlikely to approve a sale to any one other than an existing shareholder. The Articles of Association also stipulated that a selling member would only be allowed to effect transfer when he made good his share of the outstanding capital liability or if the purchaser of the shares agreed to assume that liability. Here, it was the link between the farmer's function in his capacity as farmer and his duties in his capacity as shareholder that the Commission wanted to impugn in terms of Section 8(d)(i).

The respondent's defence of this arrangement was that he had to accept a commitment when a loan to support a capital expansion programme was obtained. According to him this effectively required that his shareholders guarantee a regular income stream in order to honour this commitment. In this regard, the shareholders needed to guarantee their crop, as they are incapable of providing the necessary financial guarantees. The Tribunal did not accept that an exclusionary act – the requirement that its members deliver their crop to the respondent – is a pre-requisite for the raising of capital.

In addition to the above, the Commission also argued that the requirement of the Articles of Association that each producer/member had to deliver his crop to Patensie related to the fixing of a trading condition, in contravention of Section 4(1)(b)(i). However, the Tribunal concluded that in order for a "trading condition" to be hit by this section of the act it should explicitly constitute an agreement that seeks to limit output. This particular requirement of the Articles of Association could also relate to

[27] 37/CR/Jun01

the fixing of a discount structure or repayment condition and the Tribunal accordingly dismissed the charge under Section 4(1)(b).

The Tribunal accordingly granted interim relief and ordered PSB to refrain from enforcing its option to purchase the claimant's citrus crop in accordance with its articles of association. Patensie appealed this finding to the Competition Appeal Court. The Appeal Court delivered its judgement on 7 July 2003 in which it upheld the decision of the Tribunal. This was the second application for interim relief brought before the Tribunal in which the provisions of the articles of association of a company converted from an agricultural co-operative were alleged to be anticompetitive. The first related to South African Raisins (Pty) Ltd vs SAD Holdings Ltd[28], where a would-be competitor filed a complaint and application for interim relief to prevent enforcement of the new company's exclusive supply agreements. The abuse of dominance of which the claimants were complaining (i.e. the restrictive provisions in the first respondent's articles of association alleged to require or induce grapes-for-raisins producers not to deal with the first claimant) was clearly located in the first of these markets, namely the grapes-for-raisins market. The Tribunal was persuaded by the claimants' arguments that the real effect of the following Articles of Association was to exclude or severely discourage producers from delivering to the first claimant:

<u>Article 6.1,</u> which provided that only shareholders in the first respondent may deliver agricultural products to the SAD group, of which the second respondent is part. A person who was not a shareholder of the first respondent and who wished to deliver products to the SAD group was compelled to purchase at least one share from another shareholder.

<u>Article 88.2</u> provided that a producer who was a shareholder of the first respondent and who delivered agricultural products of a specific type to the SAD group was obliged to deliver all its agricultural products of that type to SAD, failing which certain penalties would apply at the discretion of the board of directors of the first respondent.

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[28] 04/IR/Oct/1999

Article 88.3 gave the board of directors of the first respondent the authority to impose the fines referred to in Article 88.2 and provided that a shareholder who transgressed was also liable for any loss or damage that the first respondent could have suffered as a result.

Article 88.5 provided that, if a shareholder did not comply with its obligations or undertakings towards the first respondent, all monies owing and due and payable in future to the SAD group by such shareholder would immediately become due and payable.

Article 21 gave the board of director the discretion to refuse to allow the transfer of shares in the first respondent.

The respondents provided an efficiency defence in the form of economies of scale, but did not provide any evidence to support their assertion. They merely stated that large-scale production is of the utmost importance, which is true for all enterprises that wish to compete internationally. Accordingly, the Tribunal granted an application for interim relief.

- **Mergers and acquisitions**

Chapter 8 of the Co-operatives Act of 2005 provides for the amalgamation of two or more co-operatives, provided the new entity would still comply with the requirements of a co-operative in terms of the Co-operatives Act. Schedule 1(h) further provides for the takeover or acquisition of interests or shares by a co-operative in trusts, companies or other juristic persons or partnerships.

These clearly are activities that would constitute mergers and would be subject to the scrutiny of the Competition Act. If thresholds determined in Notice 254 of 2001 were met, these activities would require notification to the Commission as required in Chapter 3 of the Competition Act.

Further, it is not indicated whether the formation of a co-operative would include a transfer of businesses of separate entities into the co-operative, or whether the entities so coming together would only provide financial contribution with no transfer of their respective businesses or a part thereof, for instance a marketing division of an entity.

To the extent that it would involve transfer of business or a part thereof, such transfers would fall squarely within the definition of a merger as defined in section 12 of the Competition Act. If thresholds were met, notification to the Commission would be compulsory before such structure were implemented.

Previous jurisprudence show that all merger cases involving agricultural co-ops were analysed against the hypothesis of a substantial lessening of competition post-merger, which is the methodology employed in merger investigations of all industries. Notwithstanding, important issues were highlighted in the large merger between Afgri Operations Ltd and Natal Agricultural Co-operative Ltd, and some will be discussed below:

Firstly, the Tribunal cautioned the Commission not to identify more substitutes than in reality exist for customers of agricultural co-ops, who may prefer, partly owing to convenience and partly through the operation of loyalty incentive schemes, to buy a package from one supplier. Concerns were expressed that rivals of Afgri could be excluded by tying up an additional customer base through the use of loyalty schemes. However, the Tribunal was satisfied that the addition of Natalagri's customer base was unlikely to have this effect.

Secondly, the process of defining the geographic market uncovered that the tariffs and fee structures of firms that provide commercial silo facilities are similar, due to the fact that Safex[29] provides a recommended tariff. This tariff is calculated annually after negotiations that take place between the millers and the silo owners in a committee known as the Grain Industry Committee. The price arrived at by this committee then becomes the Safex tariff. The Safex tariff while non-binding in nature does appear to influence the manner in which firms price their handling tariffs.

29 Safex is the acronym for the South African Futures Exchange a registered exchange that inter alia serves as a market for the trading of grain futures.

Thirdly, as mentioned in section 6.3 of this report, concerns were expressed about the market power of silo owners in the grain industry, particularly in light of the fact that these are agricultural markets that may affect the prices of foodstuffs purchased by the most vulnerable customers. However, due to the *de minimis* increment in concentration brought about by the merger, the possible competition concerns relating to this level of the market were not viewed as merger-specific.

Similar to South Africa, co-op mergers in the EU are assessed to determine whether they may be expected to result in a substantial lessening of competition. The fact that the merging parties is co-ops active in the agricultural sector has no influence on the analysis or outcome.

6.2 Jurisdiction

- Jurisdiction of the South African Competition Authorities

The jurisdiction of the South African Competition Authorities in the agricultural sector has been challenged. Some agricultural producers maintained that they should be exempted from the Competition Act of 1998 because of section 3(1) d in the first version of the act. An example is the case where SA Dried Fruit (SAD), a former agricultural co-op launched an appeal after the competition Tribunal granted an order for interim relief to a smaller raisin producer. The SAD claimed that it is exempted from the Competition Act (1998) because it is subject to the Marketing of Agricultural Produce Act of 1996. This Act gives the Minister certain powers to determine the optimal way of marketing agricultural products. Section 3(1) d of the Competition Act was duly amended in 2000 to confer concurrent jurisdiction in instances where another regulatory scheme applies to competition matters.

In the application for interim relief in the case of Jakobus P Bezuidenhout vs Patensie Sitrus Beherend (PSB), the respondent urged the Tribunal to view the agricultural sector as a "special case". The respondent argued that the industry is cyclical, subject to unforeseen price fluctuations and other vagaries beyond the control of the borrower or lender of capital. The Tribunal replied strongly in arguing that the argument may have carried weight previously, when co-operatives were first established. They stated that all commodity markets are subject to price fluctuations and many to the vagaries of the weather and other uncontrollable natural forces.

It should further be noted that without competition in food production there would be less incentive for farmers to offer better produce to their customers and, ultimately, to consumers. Anti-competitive agreements and abuses of dominant market positions increase prices and harm consumer choice as well as making the supply chain less efficient and undermining the performance of the economy as a whole. In addition, an undertaking for the purposes of competition law relates to any natural or legal person engaged in economic activity, regardless of its legal status and the way in which it is financed. An undertaking includes companies, partnerships and individuals operating as sole traders, charities and trade associations. Any activity consisting of offering goods or services on a market is an economic activity. Agriculture is an economic activity and farmers and their co-operatives are undertakings or associations of undertakings. Therefore, from a competition policy perspective, co-operatives, like any other business entity, can be assessed from three dimensions: *restrictive practices; abuse of dominance; mergers and acquisitions*.

For comparative purposes, the jurisdiction of the European Competition Authorities will be discussed in section 7.2.

- **Jurisdiction of the European Office of Fair Trading (OFT)**[30]

An exclusion exists from the European Competition Act for agreements between farmers or farmers' associations (or associations of such associations) which:

- concern the production or sale of agricultural products (including livestock, dairy, meat and fish products as well as fruit and vegetables and other crops), or
- the use of joint facilities for the storage, treatment and processing of agricultural products.

30 Office of Fair Trading, "Frequently asked questions: how does co-operation between farm businesses fit in with competition law", OFT740, July 2004

However, the exclusion only applies if the agreements meet certain conditions. The main ones being:

- the agreements are only between farmers or associations of farmers. For example, an agreement between a group of dairy farmers and milk processors would not come within the exclusion, nor would an agreement between livestock farmers and slaughterhouses
- crucially, the agreement does not involve an obligation on the farmers to charge identical prices for their products. Arrangements whereby farmers agree to sell through a co-operative and take whatever price the co-operative realises in the market should, however, benefit from the exclusion.

The OFT can withdraw the agricultural exclusion where it considers that the co-operation is likely or intended substantially and unjustifiably to prevent, restrict or distort competition. The OFT would give the parties an opportunity to discuss the operation of the agreement before withdrawing the exclusion

As a rule, if the parties to an agreement are competitors that have together less than a 10 per cent market share, there will be no appreciable restriction of competition. Undertakings in a vertical (supplier/buyer) relationship may in addition benefit from an exemption (and currently an exclusion).

However, agreements that involve price fixing or market sharing will be regarded as being likely to restrict competition appreciably even where the combined market share is low. Market sharing occurs where undertakings agree that they will not compete on some territories, type of customer or some other criterion.

The agricultural exclusion does not apply to the prohibition on abuse of a dominant position.

In this context, abusive conduct may be conduct, which exploits consumers either through excessively high prices or discriminatory prices, or anti-competitive conduct against actual or potential rivals. Examples of the latter are:

• predatory behaviour

• some vertical restraints, unduly limiting competitors' access to the market, and

• in some circumstances refusing to supply existing or potential customers, without justification.

CHAPTER 7:CONCLUSION

The objectives of deregulation in the agricultural industry included to:

- achieve a more efficient use of South Africa's agricultural resources;
- increase investment and employment in agricultural marketing activities;
- lower real food prices;
- contribute to a further fall in real land prices;
- effect a shift in responsibility for managing agricultural risk from government to the private sector;
- place less of a burden on government finances;
- reduce the scope for legal challenges to the system;
- conserve political and bureaucratic time and energy formerly spent on price setting;
- restrict opportunities for rent-seeking by vested interests (Bayley 2000: 2).

However, the deregulation process of the agricultural sector has involved hardship and an exit from both primary and secondary agriculture of many of the smaller, less competitive family farming businesses. The tariff structure that has resulted from the changes in trade policy in South Africa generally affords greater protection to value-added products as compared to commodities. One result is that farmers generally sell their products into oligopolistic markets, and buy their inputs from oligopsonistic suppliers, which adversely affects their terms of trade. Commercial farmers have been able to counter these effects by increasing multifactor productivity.

From the above it is clear that in some cases, not all participants in this industry are gaining from the current regime. Here, the role of competition policy is imperative to promote competitive and efficient domestic markets. Indeed, Bernstein argued that 'deregulation' – the reduction of statutory controls – opens the way to new [private] forms of market regulation by private and public actors (Bernstein 1996: 138; and Williams et al. 1998: 79). Co-operatives, for instance, were converted into companies, but many retained the old articles of association. Farmers remained obliged to sell their produce to the former co-operatives. This system is beginning to break down, since it came under the scrutiny of competition authorities. Notwithstanding, it is recommended that all dominant converted co-operatives and existing co-ops scrutinize their Articles of Association and constitutions respectively, to ensure that historic anticompetitive behavior is not retained in the current regime.

ANNEXURE A: LAND UTILIZATION IN SOUTH AFRICA

Land utilisation in South Africa (Farm land, ha)	
Total RSA	
Western Cape	11,560,609
Northern Cape	29,543,832
Free State	11,760,100
Eastern Cape	14,817,723
KwaZulu-Natal	6,529,315
Mpumalanga	4,978,827
Limpopo	10,548,290
Gauteng	828,623
North West	10,098,473
Total	*100,665,792*
Developing Agriculture in former homelands	
Western Cape	-
Northern Cape	-
Gauteng	-
Free State	188,100
Eastern Cape	4,001,856
KwaZulu-Natal	3,089,912
Mpumalanga	492,507
Limpopo	3,394,518
North West	3,312,873
Total	*14,479,766*
Commercial Agriculture	
Western Cape	11,560,609
Northern Cape	29,543,832
Free State	11,572,000
Eastern Cape	10,815,867
KwaZulu-Natal	3,439,403
Mpumalanga	4,486,320
Limpopo	7,153,772
Gauteng	828,623
North West	6,785,600
Total	*86,186,026*

Total commercial farming units (number)	
Western Cape	7,185
Northern Cape	6,114
Free State	8,531
Eastern Cape	4,376
KwaZulu-Natal	4,038
Mpumalanga	5,104
Limpopo	2,915
Gauteng	2,206
North West	5,349
Total	*45,818*

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