# TABLE OF CONTENTS

Table of contents ........................................................................................................................................... i
List of Tables .................................................................................................................................................... vi
List of Figures .................................................................................................................................................. viii
List of Abbreviations..................................................................................................................................... xii
Glossary............................................................................................................................................................ xvi
EXECUTIVE SUMMARY ................................................................................................................................. xxi

1 MARKET INQUIRY PROCESS ..................................................................................................................... 1
  1.1 Background ........................................................................................................................................... 1
  1.2 Structure of the report ......................................................................................................................... 3

2 BACKGROUND TO THE SOUTH AFRICAN GROCERY RETAIL SECTOR .................................................... 4
  2.1 Structure of the South African grocery retail sector ........................................................................... 4
  2.2 The informal grocery retail sector in South Africa ............................................................................ 7
  2.3 The formal grocery retail sector in South Africa ............................................................................... 7
  2.4 Types of shopping centres ................................................................................................................ 11
  2.5 Market shares and concentration ..................................................................................................... 14
  2.6 Barriers to entry in the South African grocery retail sector ............................................................ 15
  2.7 Employment within the South African grocery retail sector ............................................................ 16
  2.8 Consumer behaviour within the grocery retail sector ..................................................................... 17
  2.9 Scope of analysis .................................................................................................................................. 21

3 VALUE CHAINS ANALYSIS AND THE COMPETITIVE PLACEMENT OF SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY ........................................................................................................... 24
  3.1 Introduction .......................................................................................................................................... 24
  3.2 Methodology ........................................................................................................................................ 25
  3.3 Value Chain Governance .................................................................................................................... 27
  3.4 The Positioning of Spaza Shops in Formal Value Chains .................................................................. 32
  3.5 Competitive Strategy Analysis .......................................................................................................... 37
  3.6 Issues and constraints affecting business operations of spaza shops ............................................ 39
  3.7 Consumption patterns in townships .................................................................................................. 49
  3.8 Conclusion .......................................................................................................................................... 57

4 THE IMPACT OF THE EXPANSION, DIVERSIFICATION AND CONSOLIDATION OF NATIONAL SUPERMARKET CHAINS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS AND RURAL AREAS AND THE INFORMAL ECONOMY ........................................................................................................... 60
  4.1 Introduction .......................................................................................................................................... 60
4.2  The expansion, diversification and consolidation of national supermarket chains into townships, peri-urban areas and the rural areas ................................................................. 61
4.3  The impact of national supermarket chains on the performance and the number of small and independent retailers .................................................................................. 63
  4.3.1  Trends in the entry and exit of small independent stores ........................................ 63
  4.3.2  Barriers and constraints affecting business operations of spaza shops............. 76
4.4  The impact of the entry of national supermarket chain stores in townships, peri-
urban areas and rural areas on employment ............................................................................. 83
4.5  The impact of the entry of national supermarket chain stores in townships, peri-
urban areas and rural areas on consumers ..................................................................................... 85
4.6  Preliminary findings .............................................................................................................. 92
5  THE IMPACT OF LONG-TERM EXCLUSIVE LEASE AGREEMENTS ENTERED INTO
BETWEEN PROPERTY DEVELOPERS AND NATIONAL SUPERMARKET CHAINS AND
THE ROLE OF FINANCIERS IN THESE AGREEMENTS ON COMPETITION IN THE
GROCERY RETAIL SECTOR ............................................................................................... 94
  5.1  Introduction ......................................................................................................................... 94
  5.2  Role players in the development of shopping centres ...................................................... 95
  5.3  Lease agreements between tenants and property developers ........................................ 99
  5.4  Exclusive lease agreements ............................................................................................... 99
  5.5  The role of financiers, property developers and national supermarket chains in
exclusive lease agreements ........................................................................................................ 100
  5.6  The duration of exclusive lease agreements ..................................................................... 103
  5.7  The prevalence of exclusive lease agreements ............................................................... 104
  5.8  Review of lease agreements submitted to the Inquiry .................................................. 104
  5.9  The extent to which exclusive lease agreements exclude small businesses and
potential competitors from entering shopping centres and becoming effective competitors
to the national supermarket chains ......................................................................................... 106
  5.10 The extent to which exclusive lease agreements have contributed to the high level
of concentration in the formal grocery retail sector ............................................................... 118
  5.11 The extent to which long-term exclusive lease agreements have benefited or
harmed consumers .................................................................................................................... 119
  5.12 Justifications for exclusive lease agreements ................................................................. 120
  5.13 Waivers of exclusive lease agreements .......................................................................... 122
  5.14 Other barriers to entry and expansion in shopping centres ......................................... 128
  5.15 International experience on exclusive leases in grocery retail markets .................... 131
  5.16 Preliminary findings ......................................................................................................... 132
6  THE IMPACT OF THE DYNAMICS OF COMPETITION BETWEEN LOCAL AND
FOREIGN NATIONAL OPERATED SMALL AND INDEPENDENT RETAILERS IN
TOWNSHIPS, PERI-URBAN AREAS, RURAL AND THE INFORMAL ECONOMY ON
COMPETITION .................................................................................................................. 133
6.1 Introduction .................................................................................................................................................. 133
6.2 Studies on the interaction between local and foreign owned informal grocery retail operations .................................................................................................................................................. 136
6.3 The reasons why foreign owned spaza shops are perceived to be more successful than local owned spaza shops .................................................................................................................................................. 137
6.4 Barriers faced by local nationals to compete with foreign nationals ................................................................................................................................................. 154
6.5 Various actions taken in response to competition from foreign owned spaza shops .................................................................................................................................................. 157
6.6 Impact of the dynamics of competition between local and foreign national operated small and independent retailers on consumer welfare ................................................................................................. 159
6.7 Impact of the dynamics of competition between local and foreign national operated small and independent retailers on impact on employment ................................................................................................................................................. 160
6.8 Preliminary findings .................................................................................................................................................. 161

7 THE IMPACT OF REGULATIONS, INCLUDING, AMONGST OTHERS, MUNICIPAL TOWN PLANNING AND BY-LAWS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY 163

7.1 Introduction .................................................................................................................................................. 163
7.2 The South African Regulatory Framework ................................................................................................................. 166
7.3 Analysis of applicable categories of regulations ................................................................................................................. 173
7.4 Preliminary findings .................................................................................................................................................. 203

8 THE IMPACT OF THE BUYER POWER OF BUYER GROUPS AND OTHER LARGE PURCHASERS OF FMCG PRODUCTS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY 206

8.1 Introduction .................................................................................................................................................. 206
8.2 Market dynamics in the township and rural areas before 1994 and the relationship between retailers and suppliers in the grocery sector ................................................................................................................................................. 208
8.3 Buyer groups in South Africa ................................................................................................................................................. 210
8.4 Preliminary findings regarding buyer groups ................................................................................................................. 219
8.5 Buyer Power in the South African Grocery Retail Sector ................................................................................................................. 221
8.6 The assessment of buyer power ................................................................................................................................................. 228
8.7 Preliminary findings on buyer power ................................................................................................................................................. 260

9 PRELIMINARY FINDINGS AND RECOMMENDATIONS OF THE GROCERY RETAIL MARKET INQUIRY ................................................................................................................................................. 264

10 Annexure 1: Market inquiry process ................................................................................................................................................. 291
10.1 Grocery Market Inquiry Phases ................................................................................................................................................. 291
10.2 Site visits and re-visit schedules ................................................................................................................................................. 302
10.3 Targeted consultations ................................................................................................................................................. 302
10.4 Overview of consultations phases 1 and 2 ................................................................................................................................................. 303
Annexure 7: Objective Four - The impact of regulations, including, amongst others, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy ................................................................. 461

16.1 OECD toolkit methodology ................................................................................. 461
16.2 Studies into the regulatory framework and actions taken to reduce the regulatory burden ..................................................................................................................... 464
16.3 Overview of stakeholder submissions ................................................................. 470
16.4 Various categories in the City of Cape Town zoning scheme .......................... 477

Annexure 8: Objective Five: The impact of the buyer power of buyer groups and other large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy ................................................. 480

17.1 Literature Review on Buyer Groups ................................................................. 480
17.2 Types of rebates .................................................................................................. 491
17.3 Description of Rebates by Different Suppliers .................................................. 504
17.4 Disaggregated milk (fresh and long life products) rebate analysis – differential treatment between retailers and buyer groups .................................................... 513
17.5 Disaggregated sparkling soft drink products rebate analysis – differential treatment between retailers and buyer groups ................................................................. 519
17.6 Disaggregated washing powder rebate analysis – differential treatment between retailers and buyer groups ................................................................. 523
17.7 Disaggregated cooking oil rebate analysis – differential treatment between retailers and buyer groups ................................................................. 526

REFERENCES ............................................................................................................ 529
LIST OF TABLES

Table 2.1: Classification of shopping centres in South Africa ........................................ 12
Table 2.2: Market shares in the formal grocery retail sector 2015 .................................. 15
Table 3.1: Focus Areas for Survey Collection .................................................................. 26
Table 3.2: Summary of procurement practices per product .......................................... 33
Table 3.3: Hypothesis related to growth and proximity of spaza shops to supermarket ... 46
Table 3.4: Estimation Results of Binary Probit model .................................................. 55
Table 4.1: Descriptive price statistic of spaza shops ...................................................... 71
Table 4.2: Descriptive price statistics of supermarkets .................................................. 72
Table 4.3: Average spaza shop price disaggregated by supermarket proximity .......... 73
Table 4.4: Top five products purchased by type of retailer .......................................... 76
Table 5.1: FLM's barriers to entry due to exclusive lease agreements ....................... 114
Table 5.2: Justifications for exclusive lease agreements offered by national supermarket chains .......................................................... 120
Table 5.3: Instances where exclusivity was waived to allow other national supermarket chains to trade .................................................................................. 122
Table 6.1: Average operating hours of local and foreign owned spaza shops ............. 142
Table 6.2: Average operating hours of local and foreign owned spaza shops ............. 142
Table 6.3: Possible counterfeit products identified in the informal market ................. 147
Table 8.1: Comparison of highest and lowest rebates offered to retailers for 2017 ........ 238
Table 8.2: Example of how rebates contribute the selling price of a product ............. 253
Table 8.3: [%] breakdown of the cost and selling price for sunflower oil .................. 254
Table 10.1: Site Visit Schedule .................................................................................... 302
Table 10.2: Inquiry site re-visit schedule ..................................................................... 302
Table 12.1: Difference testing by distance between price levels of spazas ............... 341
Table 12.2: Variable and Coding Description of Probit Model .................................. 342
Table 12.3: Frequencies of Independent Variables in Model ..................................... 343
Table 12.4: [%] market shares per customer ............................................................... 359
Table 12.5: Market shares for the years 2012 -2015 .................................................... 360
Table 12.6: Market shares for washing powder brands ............................................... 360
Table 12.7 Contribution of oil seeds to the gross value of agriculture in South Africa ... 375
Table 12.8: Provincial Production of Oilseds - Average 2015-2017 ......................... 380
Table 12.9: Soya and Sunflower Processing Capacity .................................................. 382
Table 12.10: Average Oilseed Crushing Yields .............................................................. 382
Table 12.11: Average retail price of sunflower oil (December 2012 to December 2017) ..... 388
Table 12.12: The estimated market shares for the refining and supply of refined bulk sunflower oil based on annual volumes sold in 2014 and 2015 ........................................ 389
Table 12.13: Distribution of raw milk producers / farmers, per province form January 2009 to January 2017 ................................................................. 394
Table 12.14: South African milk production output for the period 2000 - 2014 ........... 395
Table 12.15: Market shares of milk processors, per region, according to the value chain analysis.......................................................... 396
Table 12.16: Market shares of milk processors, per region, according to [%] merger analysis .......................................................... 397
Table 12.17: Average retail prices of fresh and long life milk (1L), period 2011 – 2016 .... 401
Table 12.18: Average retail prices of fresh milk (2L), period 2011 – 2016 ................. 401
Table 14.1: [%] exclusivity provisions in head leases as at December 2017 .................. 434
Table 14.2: [%] stores in South Africa ....................................................................... 435
Table 14.3: [%] stores in South Africa ....................................................................... 435
Table 14.4: [X] exclusivity provisions as at 4 May 2018 ................................. 436
Table 17.1: Breakdown of [X] Customers by Volume and Value for 2017 .................. 520
Table 17.2: [X] top 20 customers by revenue 2015 - 2017 ................................... 521
LIST OF FIGURES

Figure 2.1: The South African grocery retail sector value chain........................................... 5
Figure 2.2: Supermarkets across South Africa ........................................................................ 7
Figure 2.3: Shoprite in Paledi Mall, Mankweng, Limpopo ....................................................... 8
Figure 2.4: Mr Solly Lekgae in the first Pick n Pay Spaza-to-shop conversion in Soweto .... 9
Figure 2.5: Woolworths at Engen ............................................................................................. 10
Figure 2.6: An example of Pick n Pay's diversification strategy .................................................. 11
Figure 2.7: Respondents who have visited the following outlet types within two weeks ...... 18
Figure 2.8: Types of shopping missions per different outlet types .......................................... 19
Figure 2.9: From whom newly opened supermarkets took market share ................................ 20
Figure 2.10: Reasons for going to the nearest mall/shopping centre ....................................... 21
Figure 2.11: Location of the closest supermarket .................................................................... 21
Figure 3.1: % of cluster's primary reason for sourcing bread from wholesalers or suppliers 34
Figure 3.2: % of cluster's primary reason for sourcing cooking oil from wholesalers .......... 34
Figure 3.3: % of cluster's primary reason for sourcing milk from wholesalers ..................... 35
Figure 3.4: % of sample that ranked selected products as most important product in their store........................................................................................................................................ 36
Figure 3.5: Positioning of spaza shops in the value chain ......................................................... 37
Figure 3.6: Constraints experienced by spaza shops ................................................................. 40
Figure 3.7: Primary Concern/Business Constraint Reported by Spaza Owners (open-ended questions) ...................................................................................................................................... 41
Figure 3.8: Percentage of Sample's Level of Agreement with "There is space for spazas and supermarkets in townships" .......................................................................................................................... 43
Figure 3.9: Percentage of Sample's Level of Agreement with "The presence of a large retailer makes it difficult for my business to grow" .................................................. 43
Figure 3.10: Percentage of Sample's Level of Agreement with "My business benefits from being close to a large grocery retailer" ........................................................................ 44
Figure 3.11: Percentage of Cluster's Level of Agreement with "My Business Benefits from Being Close to a Large Grocery Retailer" ........................................................................... 45
Figure 3.12: Percentage of Cluster's Level of Agreement with "The presence of a large retailer makes it difficult for my business to grow" .................................................. 45
Figure 3.13: Percentage of Sample's Level of Agreement with "Large local grocery retailers are an attractive source for food/grocery supplies" ...................................................... 47
Figure 3.14: Percentage of Cluster's Level of Agreement with "Large local grocery retailers are an attractive Source for Food/Grocery Supplies" ......................................................... 48
Figure 3.15: Income Distribution of the Sample ........................................................................ 50
Figure 3.16: Primary Source of Income .................................................................................... 51
Figure 3.17: Primary and Secondary Considerations for Spaza Shopping ............................. 51
Figure 3.18: Primary and Secondary Considerations for Shopping at Supermarkets ............ 52
Figure 3.19: Frequency of Purchases at Different Outlets ......................................................... 52
Figure 3.20: Percentage of monthly food expenditure at different outlets ............................. 53
Figure 3.21: Level of Agreement with "I shop around between spazas to find the best price" ........................................................................................................................................ 54
Figure 3.22: Level of agreement with "I shop around between spazas and supermarkets to find the best price" .................................................................................................................. 54
Figure 3.23: Retail Format Choice Disaggregated by Product .................................................. 55
Figure 4.1 Trends in the entry and exit of spaza shops in selected surveyed areas .......... 66
Figure 4.2: Consumer perception of the number of small retailers in their neighbourhoods. 69
Confidential

Figure 4.3: Outlet price difference.

Figure 4.4: Percentage of small business operators in agreement with "I set my product prices based on prices in national supermarket chains".

Figure 4.5: Percentage of cluster level agreement with "I set my product prices based on prices in large supermarkets".

Figure 4.6: Formal and informal employment in retail trade as a percentage of total employment.

Figure 4.7: Employment at a local mall – customers’ responses.

Figure 4.8: Total average proportion of total household consumption expenditure attributed to Food and non-alcoholic beverages by race.

Figure 4.9: Total average annual income by race.

Figure 4.10: Walking and driving distance in minutes to the nearest local supermarket.

Figure 4.11: Reasons consumers shop at national supermarkets.

Figure 4.12: Frequency of grocery shopping by type of retailer.

Figure 4.13: Other consumer activities at the mall while shopping.

Figure 6.1: Top ten purchased items at local owned spaza shops.

Figure 6.2: Top ten purchased items at foreign owned spaza shops.

Figure 6.3: Counterfeit razor blades, (genuine brand examples on the top left). Note the altered spelling – “Mirona” (bottom right) and SuperMarx (bottom centre).

Figure 6.4: Genuine Rizlas (Top Left) and counterfeit versions. Note old packaging in centre column, and removal of brand name (top-centre).

Figure 6.5: Consumer preference for spaza shops by nationality.

Figure 6.6: Source of money to start the business.

Figure 6.7: Why consumers prefer to buy at local spaza shops.

Figure 6.8: Why consumers prefer to buy at foreign owned spaza shops.

Figure 6.9: Spaza outlets that employ one person or more, by nationality and the number of South African jobs they create.

Figure 7.1: Average consumer travel times to and from their place of work.

Figure 8.1: [K] milk volumes (in litres) and revenue contribution (in Rand) from top 10 customers for period 2017.

Figure 8.2: [K] 1litre long life milk aggregated rebates by customer for 2017.

Figure 8.3: Comparison of rebates to [K] largest customers in 2017.

Figure 8.4: [K] handwashing powder volumes purchased (in Kg) and revenue contributed (in Rands) by top 10 customers for 2017.

Figure 8.5: [K] 2kg hand washing powder aggregated rebates and individual rebates offered to top 10 customers for 2017.

Figure 8.6: [K] 2L cooking oil volumes (in litres) and revenue (in Rands) for 2017.

Figure 8.7: [K] 2L cooking oil aggregated rebates and individual rebates offered to top 10 customers in 2017.

Figure 11.1: Shoprite stores across South Africa.

Figure 11.2: Pick n Pay and Boxer stores across South Africa.

Figure 11.3: Spar stores across South Africa.

Figure 11.4: Woolworths Food stores across South Africa.

Figure 11.5: Makro, Game and Cambridge Foods stores across South Africa.

Figure 11.6: Food Lover’s Market stores across South Africa.

Figure 11.7: Choppies stores across South Africa.

Figure 11.8: The South African Retail Sector.

Figure 12.1: Maize hectares required to equal 6 months income equivalent of alternative employment.

Figure 12.2: Value chain for the manufacture of washing powder and other detergents.
Figure 17.7: [X] 1 litre long life milk individual rebates by customer for 2017
Figure 17.8: [X] Milk 6 X 1 litre aggregated rebates in 2017
Figure 17.9: [X] aggregated rebates for all products for 2017
Figure 17.10: [X] 2 litre Full Cream aggregated rebates for 2017
Figure 17.11: [X] 1 Litre Long Life aggregated rebates in for 2017
Figure 17.12: Comparison of rebates to [X] largest customers in 2017
Figure 17.13: [X] rebates by category (2017)
Figure 17.14: Comparison of rebates to [X] largest customers in 2017
Figure 17.15: [X] rebates by category (2017)
Figure 17.16: [X] 2kg handwashing powder volumes (in kg) and revenue contribution (in Rand) from top 10 customers for period 2017
Figure 17.17: [X] 2kg handwashing powder aggregated rebates and aggregate rebates excluding distributors and Tally rebate by customer for 2017
Figure 17.18: [X] 2kg handwashing powder individual rebates by customer for 2017
Figure 17.19: [X] 2kg handwashing powder volumes purchased (in Kg) and revenue contributed (in Rands) by top 10 customers for 2017
Figure 17.20: [X] 2kg hand washing powder aggregated rebates and individual rebates offered to top 10 customers for 2017
Figure 17.21: [X] handwashing powder volumes (in kg) and revenue (in Rands) for 2017
Figure 17.22: [X] hand washing powder aggregated rebate and individual rebates by customer for 2017
Figure 17.23: [X] cooking oil volumes (in litres) and revenue (in Rands) for 2017
Figure 17.24: [X] 2L cooking oil aggregated rebates and individual rebates offered to top 10 customers in 2017
Figure 17.25: [X] cooking oil volumes (in kg) and revenue (in Rands) for 2017
Figure 17.26: [X] 2L cooking oil aggregated rebates and individual rebates offered to its top 10 customers in 2017
LIST OF ABBREVIATIONS

“ACCC”: Australian Competition and Consumer Commission

“ACHIB”: African Council of Hawkers and Informal Business

“ADs”: Appointed Distributors

“APAP”: Agricultural Policy Action Plan

“BATSA”: British American Tobacco South Africa

“BCC”: Bibi Cash and Carry

“CBD”: Central Business Districts

“COGTA”: Corporate Governance and Traditional Affairs

“DAFF”: Department of Agriculture, Forestry and Fisheries

“DC”: Distribution Centre

“DCCN”: Devland Cash and Carry Nelspruit

“DEDAT”: Department of Economic Development and Tourism

“DESTEA”: Department of Economic Development, Small Business Development, Tourism and Environmental Affairs

“DFIs”: Development Finance Institutions

“DoH”: The Department of Health

“DPME”: Department of Performance, Monitoring and Evaluation

“DSBD”: Department of Small Business Development

“DTI”: the Department of Trade and Industry

“EDD”: Economic Development Department

“EST”: Elite Star Trading

“FCD Act”: Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972
“FMCG”: Fast Moving Consumer Goods

“FLM”: Food Lover’s Market

“GDED”: Gauteng Department of Economic Development

“GLA”: Gross Lettable Area

“IBC”: Independent Buying Consortium

“ICC”: Independent Cash & Carry Group

“IDC”: Industrial Development Corporation

“IPAP”: Industrial Policy Action Plan

“ITUP”: Informal Traders Upliftment Project

“KCT”: Khayelitsha Community Trust

“KVI”: Key Value Item

“KZN”: KwaZulu-Natal

“KZN-YC”: KZN Youth Chamber of Commerce and Industry

“LCC”: Limpopo Cash and Carry

“LIDC”: International League of Competition Law

“LSM”: Living Standards Measure

“MFN”: Most Favoured Nation

“NAMC”: National Agricultural Marketing Council’s

“NCB”: National Credit Bureau

“NCC”: National Consumer Commission

“NIBUS”: National Informal Business Upliftment Strategy

“OECD”: Organisation for Economic Cooperation and Development

“OFT”: The Office of Fair Trading
“PDs”: Producer Distributors

“RCC”: Riviera Cash and Carry

“SAB”: South African Breweries

“SABEPCO”: South African Bulk Entrepreneurs Primary Cooperative Organisation

“SACSC”: The South African Council of Shopping Centres

“SAFEX”: South African Futures Exchange

“SALGA”: South African Local Government Association

“SAMILCO”: South African Milk Co-operative

“SAPOA”: South African Property Owners Association

“SAPS”: South African Police Service

“SARS”: South African Revenue Services

“SATA”: South African Trading Association

“SCOB”: Somali Community Board of South Africa

“SEFA”: Small Enterprise Finance Agency

“SEIAS”: Socio-Economic Impact Assessment System

“SLF”: Sustainable Livelihoods Foundation

“SMME”: Small Medium and Micro Enterprises

“SOI”: Statement of Issues

“SOILL”: Southern Oil (Pty) Ltd.

“SPLUMA”: Spatial Planning and Land Use Act, 16 of 2013

“SSM”: Super Save Malelane

“SSP”: Super Save

“StatsSA”: Statistics South Africa
“TIPS”: Trade and Industrial Policy Strategies

“ToR”: Terms of Reference

“UHT”: Ultra High Temperature

“UKCC”: UK Competition Commission

“UK CMA”: United Kingdom Competition and Markets Authority’s

“UMS”: Unitrade Management Services

“VTA”: Voluntary Trading Association

“WRSETA”: Wholesale and Retail Sector Education
GLOSSARY

“Anchor tenant” refers to the main tenants, usually national supermarket chains, in a shopping centre whose prestige and brand recognition attracts not only retail customers but also other tenants.

“Back-end margin” refers to the aggregate of all the rebates and allowances that the retailers receive from the suppliers of fast moving consumer goods.

“Base rental” refers to the rent payable by a tenant based on the rate of rent per square metre of the store.

“Buyer power” refers to a situation where a retailer (or a group of retailers) is able to obtain from a supplier, more favourable terms than those available to other retailers.

“By–laws” refers to laws which are passed by the executive council of a municipality to regulate the affairs and the services it provides within its area of jurisdiction.

“Commuter populations” refers to people who work in towns and cities (urban areas) whilst living in township areas.

“Counterfeit goods” refers to products that are fakes or unauthorized replicas of the real product. The products are often produced with the intent to take advantage of the superior value of the imitated product.

“Financiers” include the “big four” banks i.e. Standard Bank of South Africa Limited (“Standard Bank”), Nedbank Group Limited (“Nedbank”), First National Bank which is a division of First Rand Limited (“FNB”) and the Amalgamated Banks of South Africa (“ABSA”). In addition to the big four, financiers include Grindrod Bank, Investec Private Bank SA etc. which, in addition to funding and developing their own shopping centres, offer financial services to third party businesses and individuals who either want to build new shopping centres or purchase existing ones.

“Footfall” or “Foot traffic” refers to the number of people entering a shop or shopping area in a given time.

“Foreign national(s)” refers to any person who is not a South African citizen nor does not have a permanent residence permit issued in terms of the Immigration Act.

“Foreign trader” refers to a foreign national operating a spaza shop.
“Foreign owned spaza shops” refers to spaza shops owned and/or operated by foreign nationals.

“Front-end margin” refers to the difference between the invoice price (including any on-invoice discounts) and the selling price of a product.

“Gross leasable area” or “GLA” refers to the amount of floor space available for tenant occupancy to be rented in a commercial property such as a shopping centre.

“Informal economy” refers to economic activities that are unregistered (not incorporated), unregulated and unrecorded for taxation purposes.

“Informal sector” refers to marginalised, informal enterprises, operating within the informal economy.

“Line tenant” refers to smaller tenants in a shopping mall who occupy less space than anchor tenants.

“Living Standards Measure” or “LSM” refers to a marketing and research tool used to classify standard of living and disposable income.

“Local owned spaza shops” refers to spaza shops owned and/or operated by South African citizens.

“Local traders” refers to South African citizens who are citizens by virtue of them being born in the Republic or is a citizen by virtue of descent, as defined in the South Africa Citizenship Act No. 88 of 1995. The term local traders shall exclude those who received citizenship from naturalisation.

“Long-term exclusive lease agreements” refers to contracts entered into between property developers and national supermarket chains which have clauses within the lease agreement that generally restricts the landlord from leasing out space in the same shopping centre to potentially competing retailers.

“Municipality” means a municipality as envisaged in terms of section 155 (1) of the Constitution of the Republic of South Africa and for the purposes of this Inquiry’s recommendations, includes the Municipal Council and the Municipal Manager, where the context so requires.

“National supermarket chains channel” refers to the retail distribution of FMCG through the incumbent national supermarket chains.
“National supermarket chains” is limited to Shoprite Holdings Limited (“Shoprite”), The Spar Group Limited (“Spar”), Pick ‘n Pay (Pty) Ltd, and Woolworths Holdings Limited.

“Non-urban areas” refers to townships, peri-urban and rural areas.

“OECD” refers to the Organisation for Economic Cooperation and Development; of which South Africa is a key partner.

“Peri-urban” areas refers to a location adjoining an urban area between suburbs and the countryside.

“Property developers” refers to entities that are involved in the business of leasing or purchasing land with the intention to renovate or develop for retail business. The developments range from shopping centers, regional and mega malls etc. In the context of this Inquiry, will also include firms that do not own shopping centres but offer property services which include retail property management.

“Real estate investment trust company” refers to a company listed in the real estate investment trusts sector of the Johannesburg Stock Exchange and includes companies such as Emira Property Group, Liberty Two Degrees, Redefine Properties and Resilient Property Income Fund.


“Retailer” refers to a firm selling groceries and household goods at the retail level.

“Rural” refers to the countryside, especially areas of predominant agricultural production.

“Shopping centre” refers to a group of retail and other commercial establishments that is planned, developed, owned and managed as a single property, typically with on-site parking provided.

“Small independent retailers” refers to are privately owned single-store operations or more that do not belong to a larger chain or group owned by an individual, a family or by two persons in partnership. These may, inter alia, include butcheries, bakeries, delicatessens, fresh and non-fresh grocers and fish mongers.
“Spaza shop” refers to generally unregistered, and therefore informal in nature, retailers of FMCG offering convenience shopping to households located around them and usually run from home.

“Speciality store” refers to a retail store within the grocery retail sector that focuses on a specific product category such as butcheries, bakeries, delicatessens, liquor stores, and greengrocers.

“Street traders or hawkers” refers to a person who sells FMCG in the street, either from a stall or van or with their goods laid out on the pavement.

“Supermarket” refers to a store devoted to the retail sale of groceries and household goods and which stocks a range of products from more than 15 product categories.

“Township” refers to urban areas that were set aside during the period of Apartheid for non-white population groups.

“Survivalist” in the context of this Inquiry refers to a micro enterprise, in particular a spaza shop business, run by a sole proprietor, which provides a minimum livelihood for the entrepreneur and his or her family.

“Tenant mix” refers to the selection and location of tenants to maximize the income of the landlord and stimulate business in general.

“Trading density” is the sales turnover achieved per rentable square metre in a particular store or shopping centre. Trading densities are indicative of the profitability of the store or shopping centre.

“Turnover rental” is a percentage of a tenant’s turnover that is payable as rent. Tenants are expected to pay the higher of either turnover rental or base rental. Turnover rental is only payable when the agreed percentage of turnover is larger than the basic rental payable by the tenant.

“Urban areas” refers to areas relating to or located in a city.

“Wholesaler” refers to a firm which purchases FMCGs from suppliers in order to on-sell to independent retailers, and/or directly to end consumers (what is known as cash and carry or hybrid store), to spaza shops and hawkers etc. who in turn sell to consumers.

“Wholesale channel” refers to the wholesale distribution of FMCGs, the activities of which are largely carried out by buyer groups and cash and carries and/or hybrid stores.
“Zoning” refers to the process by which a municipality divides land into zones (such as residential, industrial, business etc.) in terms of which land uses are permitted or prohibited.
EXECUTIVE SUMMARY

1. On 30 October 2015, the Competition Commission ("the Commission") gave notice in the Government Gazette ("Gazette") announcing the establishment of the Grocery Retail Sector Market Inquiry ("the Inquiry") in terms of Section 43B(2) of the Competition Act no 89 of 1998 (as amended) ("the Act"). The Gazette set out the Terms of Reference ("ToR") which would guide the work of the Inquiry. On 15 July 2016, the Inquiry published the Statement of Issues ("SoI") which set out the Inquiry’s analytical framework so as to focus on those issues that the Inquiry envisaged to be the most relevant in answering the questions arising from the ToR. The SoI also sought to reflect the Inquiry’s initial view of the appropriate framework for the conduct of the Inquiry.

2. The Commission initiated the Inquiry in order to:

   2.1 understand how the grocery retail sector in South Africa operates because the Commission had reason to believe that there exist features or a combination of features in this sector that may prevent, distort or restrict competition; and

   2.2 to achieve the purpose of the Act.

3. Specifically, based on the ToR and the SoI, the Inquiry sought to determine:

   3.1 the impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy. This is dealt with in objective one;

   3.2 the impact of long term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on local competition in the grocery retail sector. This is dealt with in objective two;

   3.3 the impact of the dynamics of competition between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy on competition. This is dealt with in objective three;
3.4 the impact of regulations, including, inter alia, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy. This is dealt with in objective four;

3.5 the impact of buyer groups and buyer power of the national retail chains on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy. This is dealt with in objective five; and

3.6 the impact of certain identified value chains on the operations of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy. This is dealt with in objective six.

4. In conducting this Inquiry due regard was given to ensuring that the processes followed were both thorough and fair. In doing this, the Inquiry reached out to numerous stakeholders operating at different levels of the grocery retail value chain across South Africa and received both written and oral submissions. The stakeholders that participated included the national supermarket chains, small and independent retailers, spaza shop owners, suppliers, consumers, local authorities, and government departments. The Inquiry received more than 500 submissions from the main parties, held over 80 round-table discussions as well as public hearings in the Western Cape, KwaZulu Natal, and Gauteng. These public hearings were supplemented with six mini-public hearings in Limpopo, Mpumalanga, Northern Cape, Eastern Cape and the North West. In addition, the Inquiry also conducted site visits to spaza shop owners, grocery retailers, wholesalers and other stakeholders at a number of sites in towns and cities where local grocery retailing issues had been brought to its attention.

5. Broadly, the Inquiry found that there is a combination of features in the South African grocery retail sector that may prevent, distort or restrict competition. In particular, there are three principal areas of concern that warrant remedial action, namely long term exclusive lease agreements and buyer power; competitiveness of small and independent retailers; and the regulatory landscape.
Market structure and the Inquiry’s scope of analysis

6. The Inquiry considered the market structure of the South African grocery retail sector and found that it is broadly split between formal and informal segments. In the formal segment, the Inquiry found that there are a number of suppliers of fast moving consumer goods (“FMCG products”) and a few national supermarket chains, hybrid wholesalers as well as emerging challenger retailers. In the informal segment, the Inquiry found that there are a number of independent wholesalers and retailers (e.g. general dealers, spaza shops and hawkers).

7. At the supplier level of the South African grocery retail sector, there are a number of firms who manufacture and supply various FMCG products to different retail platforms. These suppliers are of varying size, with a limited number of large multi-product firms.

8. In the formal retail channel, there are about seven national supermarket chains comprised of four incumbent firms and about three emerging challenger retail operations. The incumbents generally have a retail presence across the country whilst the emerging challenger retailers are present in specific parts of South Africa. The broader wholesale and independent retail channel is made up of a number of independent firms including wholesalers, general dealers, buyer groups (who represent wholesalers, among others), right down to spaza shops.

9. There is very limited information regarding the levels of concentration in the broader South African grocery retail sector. However, what is clear is that the supplier level of the value chain is characterised by the presence of a large number of players active in the various sub-sectors with a few large multi-product firms. Data from Statistics South Africa ("StatsSA") indicates high levels of concentration in the formal retail channel in that the national supermarket chains, namely, Shoprite, Pick n Pay, Spar and Woolworths collectively have a market share of 72%.

10. The levels of concentration in the formal retail channel, in particular, are also reinforced by the high levels of barriers to entry that seem to exist at this level of the value chain. It is common cause that entry at this level requires the acquisition of land and buildings which necessitates significant capital
expenditure in order to make entry, the realisation of significant economies of scale and scope, the establishment of an extensive distribution network in order to be competitive, and compliance with stringent regulatory requirements in order to remain operational. The Inquiry also found that the formal segment is characterised by high barriers to entry and expansion at the supplier level of the value chain.

11. The Inquiry also established that the national supermarket chains are vertically integrated in that they act as both distributor and retailer of groceries. This vertical integration appears to confer some competitive advantage as there is recognition that such strategies yield efficiencies in the distribution system and savings for suppliers. This vertical integration does not appear altogether unique to the national supermarket chains as there are some buyer groups that have also adopted this strategy and established their own central distribution centres while some of the buyer groups have members who also own distribution centres.

12. The above entry and competitive conditions are applicable to all players that are active in the formal retail channel. Similarly, the conditions of entry and competition that prevail in the informal retail channel are also similar irrespective of where these players are located.

13. It is the view of the Inquiry that the market structure of the South African grocery retail sector, as alluded to above, creates a conducive environment for a significantly altered bargaining framework between the national supermarket chains and their suppliers (be it suppliers of FMCG products or property developers). This altered bargaining framework leads to distortions in competition between the national supermarket chains, emerging challenger retailers and those firms that are active in the wholesale, independent retail channel.

14. From a customer perspective, the purchasing decisions (underpinned by demand-side considerations) made by consumers across LSM groups tend to be informed by the same factors, namely price, availability, convenience or quality. It is for this reason that low income households, for example, appear to rely on both spaza shops and the national supermarket chains for their grocery needs. For those customers that reside in non-urban areas, the national supermarket chains and spaza shops serve a useful substitutable and
complementary purpose. It seems that consumers shop at spaza shops (where they generally spend less than 40% of their budget) for the convenience of location and trading hours relevant mostly for day-to-day items, whilst they shop at the national supermarket chains for weekly and monthly shopping where price, variety, quality and packaging size matter. In non-urban areas, spaza shops serve a useful convenience role (akin to that of convenience stores in the garages located in the urban areas).

15. This consumer dynamic is expected given that there is acknowledgement that asymmetrical competition dynamics exist between large national supermarket chains and independent grocery retailers in the informal retail channel. Consumers may find that large national supermarket chains are substitutes for independent grocery retailers under certain conditions, particularly where a large national supermarket chain is able to service the convenience aspect that spaza shops, for example, have traditionally filled.

16. With this background in mind, the scope of analysis adopted by the Inquiry was premised on the view that the products and services provided by grocery retailers (both formal and informal, in their respective categories) are provided under similar entry and competitive conditions in South Africa. As a result of these considerations, the scope of analysis for the Inquiry is the broad grocery retail sector in South Africa.

17. We now turn to the findings of the Inquiry in light of its objectives.

*Long-term exclusive lease agreements, buyer power and their distortions on competition between grocery retailers*

18. First, when viewed within a bargaining framework, there appears to be a sustained pattern of behaviour by the national supermarket chains and their counterparts (whether property developers or suppliers of FMCG products) that:

18.1 enables or results in the exercise of market power by the national supermarket chains to the exclusion of smaller, independent stores as well as emerging challenger retailers such as OBC, Choppies, Fruit and Veg and Food Lovers Market; and
18.2 creates a conducive environment for the exercise of buyer power, with its concomitant distortion of competition between the national supermarket chains, wholesalers and independent retailers.

19. This pattern manifests itself in respect of long-term exclusive leases in shopping centres and the payment of rebates by suppliers to the national supermarket chains, both of which have the effect of:

19.1 reinforcing the levels of concentration in the formal retail segment;

19.2 entrenching incumbency by the national supermarket chains; and

19.3 raising barriers to entry for small and independent retailers and thus removing a crucial element for competition in the retail ecosystem i.e. emerging challenger retailers.

20. Cumulatively, the exclusionary effects arising from this pattern have resulted in restricted consumer choice.

The impact of long-term exclusive lease agreements on competition in the grocery retail sector

21. The bargaining power possessed by the national supermarket chains (as anchor tenants) manifests itself in the requirement for exclusivity in lease agreements. For example, while some of the national supermarket chains alleged that the financiers of property developments required such exclusivity, the Inquiry established that this is not the case.

22. The Inquiry established that financiers typically require property developers to secure national supermarket chains as anchor tenants that will remain operational in the development for the duration of the loan repayment period, which is usually 10 years before they are willing to finance a development.

23. The Inquiry found that national supermarket chains (as anchor tenants) exploited this requirement by requiring exclusivity, claiming that this is to protect their investment and compensate them for accepting the risk of paying rent for 10 years, irrespective of the success of the mall.

24. The Inquiry established that there is a pattern of sustained use of long-term exclusive lease agreements by the national supermarket chains in shopping
centres across South Africa. The pattern of these long-term exclusive lease agreements appears to have persisted over long periods of time with the initial lease period being generally 10 years. When regard is given to the renewal clauses in these lease agreements, some of these contracts could endure for a period of at least 30 years.

25. The Inquiry found that given the high levels of concentration in the formal retail channel, which the incumbent national supermarket chains account for a significant portion thereof, the foreclosure effects that arise as a result are significant. Whilst the historic focus of the effect of exclusive leases was on competition between the national chains, the Inquiry has focused on the effect of such leases on the entry and expansion of smaller challenger retail chains and independent stores, including specialist retailers. The Inquiry has found that exclusive leases have substantially hindered the emergence of challenger retail chains to the main four national retailers, and also served to prevent economic participation by small independent retailers, including specialist retailers. This was confirmed by the evidence gathered by the Inquiry.

26. The Inquiry established that the vast majority of Shoprite and Spar leases, and a majority of Pick n Pay leases, contain exclusivity provisions. Woolworths leases do not contain explicit exclusivity provisions. However, the Inquiry found that its leases do incorporate aspects that the Inquiry considers to have similar effects to exclusivity provisions. A number of small independent retailers and the emerging challenger retailers brought forth evidence of their inability to access the shopping centre environment across the country as a result of the long-term exclusive lease agreements. Property developers also affirmed the view that these long-term exclusive lease agreements foreclose the would-be entrants from entering the shopping centre environment in competition with the national supermarket chains. Woolworths also acceded to the foreclosure effects that arise as a result of these exclusive lease agreements.

27. Much has been made, by the national supermarket chains, of the fact that the emerging challenger retailers or small specialist stores could and are able to grow outside of the shopping centre environment. The Inquiry also established that these emerging challenger retailers and independent stores have been forced to seek alternative avenues in order to compete in the South African grocery retail sector. The Inquiry finds it concerning that their growth and competitive ability has been substantially limited because of exclusion from the
shopping malls. Notably, the Inquiry established that consumers generally spend a significant portion of their grocery expenditure in shopping centres. It is this custom that small and independent retailers and the emerging challenger retailers are deprived of as a result of being foreclosed from shopping centres.

28. The Inquiry is concerned that the observed pattern of the use of long-term exclusive lease agreements serves to sustain and entrench incumbency and the current levels of concentration in the South African grocery retail sector. In essence, current exclusive leases prevent emerging chains from developing to the point that they can suitably play the anchor tenant role in new developments, which means the same four retail chains are the only candidates, perpetuating and entrenching their cumulatively dominant position. Furthermore, given the slightly different LSM or consumer targeting of these chains, there would typically only be a couple that might be appropriate for any single new development given its location and target market.

29. The Inquiry found that the foreclosure effects arising from the use of exclusive long-term lease agreements are also aided and abetted by the presence of usage clauses stipulating the purpose of the space that is being leased and limitations to the landlord’s right of letting the rental space. In this regard, the Inquiry established that the usage clauses essentially stipulate not only its current business activities but also the national supermarket chains could potentially engage in at the shopping centre. For example, this goes as far as including the sale and hire of video recorders and accessories, electronics and communications, for example.

30. The Inquiry found that this conduct is akin to the national supermarket chains carving out potential product markets they wished to enter into in the future without explicitly prohibiting property developers from leasing out rental space to suppliers of these particular products. The Inquiry was provided with evidence of instances where retailers in these carved out potential product markets would be allowed to operate in the shopping centre environment. However, their tenancy would be immediately terminated by the property developers once the national supermarket chain decided to expand into these carved out product markets. Some of the limitations to the landlord’s right to let included the requirement that property developers must consult the national supermarket chains on the tenant mix and any future developments that may impact on same by a property developer. The usage clauses further stipulate...
the location and size of potentially competing stores that could be allowed in a shopping centre.

31. The national supermarket chains provided a number of reasons in justification of long-term exclusive lease agreements. These justifications ranged from the view that exclusivity is aimed at compensating the national supermarket chains for having committed to a long-term agreement with its concomitant success risk factors, to compensation for the investments made.

32. The Inquiry found that the justifications provided by the national supermarket chains are not compelling for a number of reasons. For one, this is because, although historically the national supermarket chains did not possess sufficient information and tools to gauge the economic viability of the areas they were entering into and thus relied on exclusivity as a means of protecting themselves, this is no longer the case. With the proliferation of information and the sophistication of economic tools, national supermarket chains are not only able to assess realistically the viability of opening a store in a particular location, evidence before the Inquiry indicates that a detailed and intensive viability assessment is made by these national supermarket chains before entering into a lease. Furthermore, risk is also reduced for these chains through negotiating low rental rates and transferring more of the development costs onto other tenants, reducing the need for exclusivity clauses. However, most importantly, all businesses take on investment risk as part of doing business and the ability of the national retail chains to transfer this risk to property developers and other tenants simply reflects their considerable market power. After all, other tenants are not able to mitigate such risks in the same manner.

33. The Inquiry found evidence showing instances in which the national supermarket chains waived exclusivity provisions in order to allow competitors (including other national supermarket chains, specialty stores and in limited instances, the emerging challenger retailers) to access the shopping centre environment. Whilst some national supermarket chains are becoming more lenient regarding the enforcement of exclusivity against small and specialist stores, the Inquiry remains concerned that they still require limitations on the size of these competing line tenants. The Inquiry found that the restrictions on size have the effect that these competing line tenants cannot effectively compete and grow their businesses beyond the required floor space imposed by the national supermarkets.
34. Similarly, while in some large shopping centres there has been a relaxation of the enforcement of exclusivity provisions, such that competing anchor tenants may be present, there is very limited evidence of the emerging anchor retailers such as OBC, Fruit and Veg City, Liquor City and Choppies, being allowed to enter shopping centres. This may be because they lack the negotiating power to force entry into larger malls in competition with the anchor tenant, or a more deliberate strategy by the current dominant chains to keep such emerging challengers small by denying them entry specifically. Entry by these emerging challenger retailers into the formal grocery retail segment in South Africa has largely been outside shopping centres and with time, for a very few such as Food Lovers Market and Fruit and Veg City, into the shopping centres. The Inquiry found that this conduct effectively maintains the incumbency of the national supermarket chains in the shopping centres and retail supermarket trade more generally given the importance of shopping centres for consumer shopping expeditions.

35. The national supermarket chains tendered undertakings to the Inquiry in terms of which they sought to waive the enforcement of exclusivity provisions in their lease agreements. These waivers had conditions ranging from the type of products sold (in the case of speciality stores) to the size (both in terms of revenue and lease space) and location of the potential competitors concerned. The Inquiry found it challenging to establish consensus between the national supermarket chains in respect of the conditionalities for the waiver of exclusivity provisions.

36. In summary, the Inquiry found that the pattern of the sustained use of exclusive long-term contracts has not only restricted competition and given rise to consumer harm, but it also goes against the objectives of the Act which seek to, amongst others, to realise inclusive economic participation. The Inquiry is particularly concerned that these practices have effectively excluded widespread participation in the retail sector in South Africa where barriers to entry should be low and participation possible. This fundamentally undermines the objectives of the Competition Act and broader national economic policy aimed at facilitating transformation and economic inclusion.

37. In addition, the Inquiry was made aware of allegations that line tenants are not only affected by exclusive lease agreement clauses but by other terms that property developers enforce on them such as high rental costs. In this regard,
it was argued that property developers are forced to transfer costs for managing the shopping centre onto the line tenants to appease the requirements of the anchor tenants for low rental rates. This is akin to the waterbed effect identified in academic literature. The Inquiry is concerned that the high cost of rental for the smaller tenants limits their ability to effectively compete and grow their businesses. This applies to existing tenants that are not direct competitors to the national retail chains due to the exclusive leases, but would also apply to smaller specialist stores or challenger chains in the event that they gained entry in future. The Inquiry is therefore concerned that simply eliminating exclusive leases may still not achieve greater levels of competition and economic participation if these businesses are saddled with high rental costs relative to the national chains.

**Buyer power and its impact on competition in the South African grocery retail sector**

38. The Inquiry found that the presence of buyer groups in the South African grocery retail sector has beneficial competition outcomes for members (generally traditional and hybrid wholesalers as well as independent grocery retailers), who largely operate in the informal retail trade segment. In particular, buyer groups enable wholesalers and independent retailers that lack scale economies to be able to amass their purchasing power in bargaining with suppliers. The Inquiry established that buyer groups play a pivotal role in improving the competitiveness of wholesalers and independent retailers.

39. It is against this finding that the Inquiry assessed the bargaining dynamics between the suppliers of FMCG products and the national supermarket chains as well as the buyer groups. The Inquiry sought to determine whether the exercise of buyer power by the national supermarket relative to that of buyer groups and wholesalers serving smaller retailers had an effect on competition at the grocery retail level of the value chain.

40. The Inquiry found that the structure of the South African formal grocery retail segment is characterised by factors that are conducive to the existence of an unequal bargaining framework between the national supermarket chains and suppliers, especially relative to wholesalers and buyer groups. The Inquiry established that the national supermarket chains are a critical route to market for the suppliers of FMCG products, based on revenue and volume
contributions. With few exceptions, there was evidence in relation to the inability of FMCG suppliers to walk away from negotiations with national supermarket chains and the rigidity of trading terms, particularly as it relates to the composition and quantum of same. In this context, the national supermarket chains are able to extract more favourable trading terms than those customers in the informal segment (i.e. buyer groups, independent retailers etc.).

41. The findings of the Inquiry suggest that there is no clear rationale that explains the difference in the quantum of the rebates paid to the national supermarket chains in comparison to those obtained by those customers in the informal segment other than simply differential buyer power. In some instances, even where the national supermarket chains were not the largest customers, they were still able to extract better and more favourable trading terms than buyer groups, who would be the larger customers in those particular instances. This differential treatment is indicative of the exercise of buyer power.

42. In particular, the national retail chains have moved to demanding rebates to cover the costs of certain retail store level activities, such as merchandising, store openings and refurbishment, advertising and promotion, access to shelf space and category management, etc. The primary discriminatory effect of these rebates is that they are by their very nature not made available to wholesalers and buying groups servicing the independent retailers, because the wholesalers do not serve the retail store function given their lack of vertical integration. The implication is that independent retailers, which also incur these self-same costs as the national retail chains, do not benefit from similar rebate categories and therefore are placed at a material disadvantage to the national chains.

43. The Inquiry is thus of the view that these rebates are more favourably offered to the national supermarket chains, which resultantly reduce their costs of offering FMCG products and thereby maintain their market positions and providing an unfair competitive advantage over the independent retailers. The costs of the independent retailers, owing to their lack of vertical integration with wholesalers, are not reduced to the same extent. The independent retailers incur all these costs with no rebates, even in instances where they otherwise qualify for the rebates by virtue of conducting the activities to ultimately place product on shelf like the national supermarket chains. This ultimately impedes these independent retailers’ ability to compete and grow.
44. Furthermore, whilst some of these rebates paid by FMCG suppliers appeared to be underpinned by productive efficiencies (such as in the case of distribution allowances, for example), there were some which did not appear to have any efficiency or beneficial justification other than simply a reflection of buyer power by the national chains. In this context, the Inquiry found mixed evidence about the pass-through of rebates to the final prices paid by consumers. This is particularly concerning given that some suppliers factor in the cost of these rebates onto the price paid by the national supermarket chains for the products. This could potentially have a price-raising effect on the cost of products to the detriment of consumer welfare where such rebates are not passed through. Further to this, there is a lack of transparency regarding back-end margins.

45. The Inquiry is of the view that cumulatively, the South African grocery retail sector possesses features and characteristics that are conducive to the exercise of buyer power and the indicative evidence obtained through the rebate analysis attests to the exercise of such power to the detriment of independent retailers and smaller retail chains, and potentially to consumers too.

46. The Inquiry noted that spaza shops and independent retailers in peri-urban areas developed at a point in time where, as a result of the apartheid regime’s spatial policies and construction of the economic landscape, there was no closer competition to contend with both from national supermarket chains nor foreign nationals in the immediate vicinity. Subsequent to democracy, this economic landscape has been slowly changing in these areas.

47. In particular, the Inquiry found that the entry of the national supermarket chains into township areas has shifted the competitive landscape in those areas such that the observed decline or exit of spaza shops and independent retailers can partly be attributed to this phenomenon. The Inquiry also found that as spaza shops and independent retailers were grappling with this changing competitive dynamic, there was, simultaneously, increasing competitive pressure from foreign-owned spaza shops that have displaced locals in some cases.

48. The Inquiry found that spaza shops and independent retailers serve a critical role in the grocery retail ecosystem, particularly for those that reside in peri-
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and non-urban areas. Despite the lower prices offered by supermarket chains, spaza shops offer convenience in terms of longer trading hours, proximity of location and also offer products in smaller quantities making them affordable to poor consumers who would not otherwise afford to purchase bulk products from supermarket chains. This convenience role is akin to smaller convenience stores of the national chains and petrol station forecourts that have proliferated in wealthier areas. As a result, there continues to be a role for spaza shops despite the entry of supermarket chains into these peri-urban and non-urban areas.

49. Further, and most importantly, the Inquiry is of the view that spaza shops and independent retailers are a crucial tool for the realisation of the objectives of the Competition Act. Specifically, spaza shops and independent retail operations are part of the suite of avenues available for the achievement of broader and inclusive economic participation given the lower entry barriers into these types of businesses. This also provides the potential to build one’s own business and accumulate capital rather than simply engage in salaried employment.

50. It is the view of the Inquiry that the entry of national supermarket chains into townships and rural areas has had both negative and positive effects. From a consumer perspective, their entry has provided closer proximity to the source of weekly and/or monthly shopping activities given the range and lower pricing of larger supermarket chains. Historically consumers from township areas would have travelled greater distances to frequent these chains for such shopping expeditions, incurring greater costs in terms of time and transport money.

51. From a small and independent business perspective the evidence is often mixed. The more convenient location of the national supermarket chains means that some convenience shopping which would have occurred at the spaza shops has now shifted to the larger retail chains, negatively affecting the spaza shops. The Inquiry established that overall, there has been a decline in the number of small independent grocery retailers operating in non-urban areas following the entry of national supermarket chains in these areas. However, the shorter shopping hours, single location on the periphery of the peri-urban areas and big box format means that these supermarket chains have not displaced all convenience shopping, especially for smaller daily top-up shopping by
commuters that may leave and return outside of shopping hours or those located further from the supermarket store.

52. This shift in the competitive landscape has required that local spaza shops respond by adapting their own business models and even locations within peri-urban areas in order to continue to be relevant to consumers in those areas. This may include longer opening hours or a change in products stocked in order to fulfil the convenience role more appropriately. Location also becomes more important. This may involve moving further from the new supermarket location, but the Inquiry also found that those spaza shops and independent retailers that are located closer to the shopping centres have sometimes benefitted from the increased foot traffic in that area.

53. The challenges from a changed competitive environment due to large supermarket chains entering peri-urban areas for local spaza shops are compounded by the additional challenge of new entry by foreign-owned nationals into these same areas. The Inquiry found that local spaza shops also face competition from a growing number of foreign owned spaza shops and independent retailers that are generally perceived to be cheaper than most local-owned spaza shops by consumers. As a result, foreign owned shops often perform better in comparison to local-owned small businesses, especially in the context of the broadening footprint of national supermarket chain stores in these areas where changes to business models are required.

54. The Inquiry found that there are numerous factors that are perceived to contribute to the success of foreign owned spaza shops, based on consumer surveys, targeted engagements and public forum discussions. These factors, amongst others, included efficiencies in the procurement of goods from cooperative arrangements (both horizontal and vertical), greater convenience through longer trading hours, stock diversity and product packaging, but also greater price competition from trading in counterfeit goods.

55. The Inquiry found that foreign owned spaza shops and independent retailers in many instances employ horizontal (operational ties) and vertical (spaza shops linked to wholesalers) cooperative strategies to compete. At a horizontal level, the Inquiry established that separate but allied retail outlets share opportunities for bulk purchasing and synergizing deliveries as well maintaining ‘multiple retail outlets’ under central control. From a vertical perspective, the Inquiry
found that foreign owned spaza shops may in some cases be linked to specific wholesalers, some of which are also foreign owned. This provides these spaza shops with the opportunity for preferential pricing. In contrast, most local-owned spaza shops and small grocery retailers are family owned and operate on a standalone basis. This approach to conducting business not only inhibits local-owned businesses from raising capital for expansion but also deprives them of the ability to realise economies of scale in respect of purchasing and transport costs.

56. In relation to stock diversity, product choice and packaging, the Inquiry found that foreign owned spaza shops offer customers a wider variety of products and volumes whilst local spaza shop owners admitted that their shops have less stock in comparison. This effectively means that local owned spaza shops are not able to fully cater to the demand from customers as opposed to the foreign owned spaza shops.

57. The Inquiry found that trade in counterfeit goods confers some form of price advantage to those that engage in the sale of such goods as opposed to those competitors that do not. Further to the unfair competitive advantage, there are broader negative ramifications for the fiscus in terms of lost tax revenue and the increased burden that is likely to be placed on the public healthcare sector. The Inquiry found that while local-owned spaza shops also traded in counterfeit products, the sale of such goods appeared to be more prevalent in foreign owned spaza shops. This unfair competitive advantage was also confirmed by the observed trends in consumer preferences as they appear to prefer foreign owned spaza shops due to, amongst others, lower prices.

58. Having regard to the emerging competitive pressures from both the national supermarket chains and the foreign nationals faced by small and independent retailers, the Inquiry noted that South African spaza shops and independent retailers have struggled to adapt to the changes in the competition dynamics. The Inquiry found that the challenges facing spaza shops in particular, and which are said to have contributed to the difficulty to adapt to changes in competition, include amongst others:

58.1 The inability to adequately tap into the economies of scale and scope in procurement offered by buyer groups and larger wholesalers due to the smaller and informal nature of these retailers relative to even
independent retail stores that make use of buyer groups. The lack of cooperation amongst South African spaza shops unlike those of foreign nationals also prevents them from taking advantage of the opportunities for bulk buying at more competitive prices.

58.2 The inability to tap into credit markets due to again the small and informal nature of these businesses. This feature means there is typically a lack of verifiable performance information and systems in place which result in information asymmetries with potential providers of credit, including the buyer groups but also financial institutions and development finance providers. The lack of credit limits the ability to ensure greater stock levels and variety to meet the convenience requirements of customers. The lack of social networks of cooperation as an alternative such as those used by foreign-owned shop owners also closes out this alternative.

58.3 The need for greater levels of professionalisation and improved business management skills in the context of more sophisticated competitors entering these areas of operation and the need to adapt the businesses to such competition.

59. In addition to the challenges above, the Inquiry found that the regulatory environment is not conducive to supporting the sustainable competitiveness of these micro-enterprises in competition to supermarket chains, and in many cases actively undermines their ability to respond to the changing competitive environment.

60. For example, the Inquiry found that local authorities impose restrictive apartheid-era trading times that are at odds with the convenience role that spaza shops and independent traders are best positioned to target. This is especially important in the context of the entry of supermarket chains as the spaza shops need to position themselves firmly as convenience options in order to survive and thrive. This also creates an asymmetry between those shops willing to not comply with the trading hours and/or pay enforcement officials to ignore the lack of compliance. Such shops are able to gain an advantage in servicing consumer demand to the detriment of those that comply, which also undermines the transition of these businesses from informal to formal enterprises.
61. Similarly, in relation to liquor regulation, the Inquiry found that there is differential treatment of small and independent traders relative to the national supermarket chains for which longer trading hours are provided for. This enables the national supermarket chains to be able to service demand in those periods in which the small and independent traders are not able to trade. This confers upon the national supermarkets a level of competitive advantage that is not available to the small and independent traders.

62. In addition, the Inquiry found that the regulatory processes for trading are burdensome for small traders, particularly in relation to zoning and land use. The Inquiry found that the cost and time constraints associated with rezoning of property, depending on the location of the land, are onerous for micro-enterprises and could have a negative impact on potential entrepreneurs. This is especially in the context where shop owners may need to relocate in response to the entry of supermarket chains and would require new sites zoned for business use.

63. More generally on zoning and trading hours, the Inquiry found that many municipalities seek to use these laws to push out informal traders in favour of the supermarket chains and formal independent stores which they favour because they see them as contributing to municipal taxes. However, the Inquiry notes that the informal businesses also contribute to municipal development and the welfare of their residents in terms of providing economic participation for their owners and convenient shopping for their customers. In addition, these businesses can only be developed into formal tax-paying operations if they are provided with the necessary support from municipalities to develop and grow.

Recommended remedial action

64. Having regard to the foregoing, the Inquiry recommends a number of remedial actions that may rectify the circumstances identified above that have the effect of preventing and distorting competition in the South African grocery retail sector, and inhibiting the effective participation of South African spaza shops and independent retailers in this sector.

65. Broadly, the required remedial actions comprise a suite of interventions ranging from (i) changes in firm behaviour in order to ameliorate the distortions in competition in relation to long-term exclusive lease agreements and buyer
power; (ii) support mechanisms to bolster the sustainable competitiveness of small and independent retailers; and (iii) modernisation of the regulatory landscape in order to create a conducive environment for the optimal functioning of competition.

66. **Single Implementing Government department.** It is recommended that a single government department be entrusted as the implementing agency to oversee an implementation plan to support the development of small retail and address concerns in respect of the large national supermarket chains. Whilst some of the concerns may be addressed through enforcement action by the Commission, many cannot and require a champion to ensure systemic and coordinated action, including by that of industry and other government departments. Such an implementing department, which might be the Department of Trade and Industry, would need to put in place the following:

66.1 A Code of Conduct for the grocery retail market, including both retailers but also other participants in the value chain such as property developers and large suppliers;

66.2 An Ombudsman to mediate and resolve disputes in respect of the Code of Conduct and other recommendations emanating from this Inquiry;

66.3 An Industry Fund to provide financial support and incentives for the various initiatives identified within these recommendations, as well as capacity to assess funding initiatives; and

67. The establishment of an inter-governmental committee to direct and coordinate action by different government departments in terms of the regulatory and other actions recommended by this Inquiry.

68. **Exclusive leases.** In order to remedy the distortions to competition as a result of the use of long-term exclusive lease agreements, the Inquiry recommends the following:

68.1 As of the date of publication of this report, the incumbent national supermarket chains (Shoprite, Pick n Pay, Woolworths, Spar (including their subsidiaries) and their successors must, with immediate effect, cease from enforcing exclusivity provisions, or provisions that have a substantially similar effect, in their lease agreements against speciality
stores. This also applies to other provisions which serve to restrict the product lines, store size and location within the shopping center for speciality stores.

68.2 No new leases or extensions to leases by the incumbent national supermarket chains may incorporate exclusivity clauses (or clauses that have substantially the same effect) or clauses that may serve to restrict the product lines, store size and location of other stores selling grocery items within the shopping center.

68.3 The enforcement of exclusivity by the incumbent national supermarket chains (Shoprite, Pick n Pay, Woolworths, Spar (including their subsidiaries) and their successors as against other grocery retailers (including the emerging challenger retailers) must be phased out within three years from the date of the publication of the Inquiry report.

69. These recommendations permit the phase out of existing exclusive agreements where appropriate whilst setting the platform for a future where such agreements do not exist to restrict entry and expansion by specialist and emerging retail chains into shopping malls nationally.

69.1 The immediate cessation of exclusivity as against speciality stores is warranted given that these restrictions have serious detrimental effects on broadening participation in the economy by SMEs and firms owned by historically disadvantaged persons. The elimination of such exclusivity is also unlikely to severely impact on the operational viability of national supermarket chains given their small and specialist nature.

69.2 Regarding existing lease agreements, the Inquiry was careful to avoid any commercial upheaval (for both the national retail chains and property developers) that could result from an immediate cessation of such conduct. This alignment with the contracting between anchor tenants and property developers also means there is likely to be less disruption to those contractual arrangements.

69.3 Moving forward, the Inquiry sees no possible efficiency rationale that outweighs the exclusionary effect of exclusive leases. South Africa is already endowed with ample shopping mall complexes, and there are plenty of potential anchor tenants willing to take on the risk of new
developments if they add value to the community without having to require exclusivity. For this reason, no new exclusive leases or extensions to leases are permitted.

70. The recommendations set out in paragraph 66 above must be contained within an agreed industry code of Conduct in order to ensure that they apply equally to all national chains. This will provide each national chain the comfort that they will not be disadvantaged by signing up to the Code because their competitors cannot then gain an unfair advantage through non-compliance.

70.1 Whilst a voluntary industry code is desirable from many perspectives, and some progress has already been made in this regard, the Inquiry also recommends legislative or enforcement action if this is not feasible.

70.2 The inclusion of the industry code in respect of exclusive leases within the broader Code of Conduct envisaged above, even if it is imposed by the single implementing department. This is still desirable as disputes may still arise as to the implementation or interpretation which are more efficiently resolved by an Ombudsman than the Commission. Such disputes may include whether other provisions have substantially the same effect or restrict entrants based on location, size or product lines.

70.3 Failing a voluntary or regulatory code, the Commission has the option to initiate and refer the collective exclusionary effect of exclusive leases nationally by the incumbent supermarket chains on emerging retail chains and the participation of SMEs and firms owned by historically disadvantaged persons. As outlined above, the Inquiry finds that the effect on these competitors has been substantial.

71. **Buyer power and rebates.** Rebates are an entrenched business practice that may be difficult to move away from without material commercial upheaval for both supermarket chains as well as certain suppliers. The Inquiry thus invites further submissions on potential solutions that might enable a movement towards a more non-discriminatory outcome but which also recognizes the current business model reliance on such rebates. Possibilities may include:

71.1 A more immediate move towards non-discrimination in terms of rebates that are common across retail and wholesale customers;
71.2 The gradual removal, rationalization or limitation in size of those rebates only provided to the national supermarket chains and not wholesalers and a shift of such rebate values to rebates common across the two groups where non-discrimination principles would apply; or alternatively

71.3 The gradual extension of some of those rebates currently only provided to the national supermarket chains to wholesalers/buyer groups (or directly to their members) as well.

72. The remedial action that is ultimately identified must form part of a mandatory Code of Conduct for Stakeholders in the grocery retail sector that will fall within the scope of a single government implementing department and Ombudsman.

73. The Code of Conduct will provide guidelines in line with any ultimate remedial actions identified to ensure a non-discriminatory and fair treatment on rebates.

74. The Ombudsman will be responsible for:

74.1 monitoring compliance with the code of conduct and handling disputes between the suppliers and retailers.

74.2 Notifying the Commission of any cases it believes there to have been an abuse of buyer power or discriminatory treatment which violates the Competition Act.

75. It must be noted that this is not an outright prohibition of rebates as the Inquiry is only concerned about those rebates that give rise to differential treatment without objective justification between national supermarket chains and small and independent retailers.

76. Once more, the Inquiry is of the view that an agreed industry code of practice on rebates is desirable because it can be implemented quickly and provide comfort to each single competitor that it will not be put to a competitive disadvantage by agreeing whilst others do not. It also more easily facilitates action across different market participants such as suppliers and retailers.

77. **Lease rental rate differentials.** The Inquiry is mindful that the elimination of exclusive leases may still not have the desired effect of enhancing competition and economic participation if rental rates are highly discriminatory in favour of the national retail chains. For this reason, changes ideally need to occur to the
manner in which rental rates are set and the extent of differentials that currently exist in shopping malls across the country.

78. However, the Inquiry is also mindful that bringing about changes in the rental models of shopping mall developments is likely to result in substantial commercial upheaval for both the national retail chains as well as the property developers in the short term. This suggests that if change is to occur then a suitable transition model will need to be developed whereby, there is a glide path to a more equitable rental model. The Inquiry also recognises that this too will require industry level buy-in or regulation in order to ensure that no single developer or supermarket chain gains a competitive advantage through non-compliance, threatening the compliance of others in the process.

79. Given these difficulties, the Inquiry intends to embark on further consultations with property developers, supermarket chains, emerging retail chains and independent stores in the next phase in order to identify a workable transition model.

80. **Competitiveness support for spaza shops and small independent retailers.** In order to foster and ensure inclusive economic participation as envisaged in the objectives of the Competition Act, the Inquiry is of the view that there is a need for a suite of interventions aimed at improving the competitiveness of spaza shops and independent retailers beyond the improvement in pricing of supply to wholesalers and access to trading areas as outlined above.

81. The Inquiry has identified a number of areas of improvement which are necessary in order to achieve this. These range from (i) the need for improved bargaining and procurement processes; (ii) removal of information asymmetries in order to improve access to credit finance; and (iii) providing support for the enhancement of business skills.

82. The Inquiry is of the view that there already exist numerous market driven initiatives and business models that already provide greater purchasing power and credit to certain independent retailers, and which could form the basis for support for smaller and informal businesses if given the necessary support for innovation around their business models.
82.1 The Inquiry has determined the success and beneficial outcomes of buyer groups in aggregating the purchasing power of small and independent retailers as well as providing credit finance. However, these groups rarely reach down to the smaller informal spaza shops due to their size and informal nature. There is a need to strengthen such platforms and expand the scope of their operations to include spaza shops.

82.2 The Inquiry has also noted various initiatives to improve the business skills and incorporate spaza shops into existing formal networks to enhance their viability. These include the partnerships between the Free State Department of Economic Development, Small Business Development, Tourism and Environmental Affairs and BiBi Cash and Carry; the eSpaza Sum and Big Save initiative, and the Gauteng Department of Economic Development initiative along with Pick n Pay. Whilst many of these have faced challenges and created some unintended consequences, the process of exploring different models has provided important lessons as to what may or may not work.

82.3 Lastly, there are also emerging logistics and distribution businesses seeking to find a niche in providing stocking and support services to spaza shops. These businesses too are innovating in order to find workable commercial models that might support such efficiency-enhancing services.

83. Accordingly, the Inquiry recommends that the best approach is for the single implementing department (as the lead) together with development finance institutions (“DFIs”) such as the Industrial Development Corporation (“IDC”), Khula Enterprise Finance (“Khula”), the National Empowerment Fund (“NEF”) and industry participants (retailers and suppliers) to support the development of viable commercial models which may provide the necessary support for smaller informal businesses rather than seeking to provide such services itself. This is because there is already fertile ground for such models, and if entrepreneurs can find means to generate revenues out of such initiatives such that it is self-sustaining and the rollout incentivised, then the impact is likely to be more widespread and sustainable than any government led programme reliant on continual funding.
Accordingly, the Inquiry recommends that the single implementing department coordinates seed finance for innovative commercial models of private businesses that aim to offer the following support for small informal spaza shops:

84.1 The effective incorporation of spaza shops into buyer groups and larger wholesale operations in order to assist them to realise economies of scale and scope in purchasing. This would include finding effective means to pool the purchasing of numerous spaza shops in the same area such that the distribution costs are also reduced;

84.2 The generation of key information on individual spaza shop operations such that the risks of extending credit finance to these shops can be more accurately assessed in order to facilitate credit access for the purchase of stock. This would include means to link the suppliers of credit to the spaza shops; and

84.3 The development of consumer and business information to assist in the improvement of such businesses, including business and financial management training in order to improve the skills of spaza shop owners, and thus lead to the professionalisation of this class of grocery convenience store.

85. The Inquiry notes that such an incentive programme must be open to and target initiatives established by, *inter alia*, buyer groups, and spaza shop associations. The Inquiry would like to caution that the initiatives to be considered in respect of the incentive programme must be premised on developmental, rather than pure commercial, objectives insofar as the development of spaza shops is concerned.

86. The Inquiry notes that the initiatives that can be considered under such an incentive programme may, *inter alia*, include the establishment of distribution centres to be located in peri- and non-urban areas. The development of such distribution centres could follow a similar approach as that adopted for the automotive hubs established by the Automotive Industry Development Centre in conjunction with the Gauteng Provincial Government, wherein supporting infrastructure was put in place to support entrepreneurs in the townships. This is in the context where warehouses may not operate in proximity to particular
areas and the visible success of similar models such as the municipal fresh produce markets.

87. The Inquiry also recommends that the single implementing department seek to draw in funding from the large national retail chains in support of the seed funding initiative in order to bolster the funds available.

88. **Removal of regulatory obstacles to meeting competitive challenges.** In order to remedy the regulatory obstacles faced by small informal and independent retailers in peri-urban and non-urban areas, the Inquiry makes the following recommendations to remove regulatory constraints and improved enforcement of other regulations in order to equalise the playing field:

88.1 With regard to trading times, municipalities must review the by-laws and regulations in relation to spaza shops and street traders. This must be done with the view to abolish the regulation of trading times for these businesses. The Inquiry notes that the regulation of trading times should continue to apply to the retailing of liquor given the social impact of such economic activities. However, where asymmetries exist in the regulation of trading times for liquor trade which favour the national supermarket chains, such asymmetries need to be removed.

88.2 With regard to zoning, municipalities must fasttrack the approval of any existing re-zoning requests for spaza shops in township areas within three months from the date of the publication of the final report of the Inquiry.

88.3 The single implementing department must coordinate the determination of preferred zoning processes and practices that facilitate ease of entry for small businesses in non-urban areas and which can be adopted by municipalities nationally.

88.4 Municipalities must proactively rezone areas and erect infrastructure for informal traders to enable them to carry on business in a more effective and formalised manner. Such initiatives must consider the following:

88.4.1 the location of the informal trading market should be in close proximity to economic and transport hubs, such as malls and taxi ranks. This is crucial as it will generate a high volume of
foot-traffic which is necessary for the viability of these businesses;

88.4.2 consumer movements and demand by business;

88.4.3 proper lighting, security and sanitation is provided within the infrastructure to ensure improved health and safety conditions for these businesses.

88.5 Municipalities must develop and implement a framework for the registration of informal businesses particularly spaza shops, within the municipal jurisdiction. The process must be simplified and should not require the type of registration that is conducted through the Companies and Intellectual Property Commission. Rather, the registration process should aim to develop a simple register which will track, inter alia, the details of the spaza shop owner, the location and basic data relating to the turnover of each spaza shop.

88.6 There must be increased coordination between the South African Revenue Services (“SARS”) and the South African Police Services (“SAPS”) to facilitate proactive policing against counterfeit goods. The Inquiry is aware of current initiatives to revive a counterfeit unit within the South African Revenue Services and the existing unit within the SAPS. The Inquiry will engage further with these entities to determine the enforcement activities of such initiatives on counterfeit goods trading within the informal economy.

88.7 There must be improved coordination by government on addressing the regulatory challenges which affect small businesses. The single implementing department must establish an intergovernmental committee that will involve the different spheres of government relevant to the implementation of recommendations. This committee will be tasked with the review of existing regulations, using government regulatory impact assessment tools in order to recommend relevant changes that will improve the overall competitiveness of small businesses.

88.8 The single implementing department must facilitate the establishment, in each province, of a specialist unit to review municipal regulation and
reduce red tape that hinders the conduct of business in township areas. Such a unit must assess. Further, this unit must be accessible to small businesses in order to proactively deal with local regulations that hinder their business. This unit should also be tasked with engaging with local economic development offices in municipalities to ensure the integration of informal small business development in spatial and economic planning activities of the municipality.

89. The purpose of these recommendations is to provide some immediate regulatory relief to spaza shops seeking to contend with a changing competitive environment and ensure that such regulations do not restrict their activities and adaptation to competition. These go to some of the core issues faced by such shops, including the unfavourable trading hours and re-zoning requirements. The recommendations envisage some immediate relief from suspending regulations or fast-tracking existing applications, whilst more sensible policies are developed for municipalities nationally through the coordinating role of a single implementing department within government.

90. However, the recommendations also seek to achieve a mindset shift at a municipal level to one that is supportive of informal businesses in peri-urban and non-urban areas such that these businesses may be able to grow and compete more effectively in support of their owners and consumers served. This will also enable the ultimate transition of these businesses to more formal operations that can contribute to municipal tax. As a result, the Inquiry envisages a deliberate focus on removing regulatory red tape for such businesses and integrating their needs into local economic planning in much the same manner as is done for formal businesses. The collection of information on businesses in the township areas would assist in the development of such local economic policies.

90.1 The additional focus on enforcement around counterfeit products is there to ensure that stores have an incentive to comply with broader legal requirements even if they are informal, by removing the advantage gained by some businesses from price undercutting due to the illicit trade in counterfeit goods. This initiative is also in line with other current initiatives in government to remove such illicit trade given its negative impact on tax collection too.
1 MARKET INQUIRY PROCESS

1.1 Background

91. Following the publication of the final Terms of Reference ("ToR") by the Competition Commission ("the Commission") on 30 October 2015, the Grocery Retail Sector Market Inquiry ("the Inquiry") officially commenced on 27 November 2015.

92. The Commission initiated the Inquiry in order to:

92.1 understand how the grocery retail sector operates because the Commission has reason to believe that there exist features or a combination of features in this sector that may prevent, distort or restrict competition; and

92.2 to achieve the purpose of the Competition Act No 89 of 1998 ("the Act").

93. The Inquiry was conducted in the following phases:\n
93.1 Phase 1: the publication of the ToR, initial background consultations, literature review and the publication of the Statement of Issues ("SOI"), Guidelines for Participation and Administrative Timelines;

93.2 Phase 2: Information gathering through site visits and re-visits, surveys, targeted consultations, information requests and public hearings;

93.3 Phase 3: Processing and analysing information, drafting of a preliminary report, identifying information gaps and follow up consultations, targeted consultations, information requests and public hearings to address any identified gaps; and

93.4 Phase 4: Formulation and testing of recommendations, drafting of final report and publication of same.

94. The SOI contained the Inquiry’s envisaged framework to assist the participants in the Inquiry to focus on issues the Inquiry envisaged to be the most relevant in answering questions arising from the ToR. In line with the scope of the Inquiry

\[\text{\textsuperscript{1} For detailed information on the Inquiry’s phases refer to section 10.1 of Annexure 1.}\]
and as set out in the ToR, the SOI proposed to assess competition in the grocery retail sector according to the following objectives:

94.1 **Objective 1**: The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy;

94.2 **Objective 2**: The impact of long-term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on local competition in the grocery retail sector;

94.3 **Objective 3**: The impact of the dynamics of competition between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy on competition;

94.4 **Objective 4**: The impact of regulations, including, *inter alia*, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy;

94.5 **Objective 5**: The impact of buyer groups on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy; and

94.6 **Objective 6**: The impact of certain identified value chains on the operations of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.

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2 After consideration of comments from stakeholders on the draft SOI, the Inquiry expanded this objective to also include the assessment of the impact of the buyer power of large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.
1.2 Structure of the report

95. The report is structured as follows: Chapter two provides a comprehensive background of the South African grocery retail sector. Chapter three deals with the value chain analysis, the placement of small and independent retailers, the challenges faced and competitive strategies employed by these players in the broader grocery retail sector. This is in response to the issues raised in respect of objective six and it provides the background that underpins the analysis conducted in this Inquiry. Chapter four sets out the analysis conducted in respect of objective one which seeks to determine the impact of the entry of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy in general.

96. Chapter five provides an assessment of the impact of long-term exclusive leases in the South African grocery retail sector, in line with objective two of the Inquiry. Chapter six deals with objective three and evaluates the competitive dynamic between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural and the informal economy. Chapter seven provides an assessment of the regulatory landscape in the South African grocery retail sector and its impact on small and independent retailers, in line with objective four of the Inquiry. Chapter eight deals with the assessment of the impact of buyer groups and buyer power on competition in the South African grocery retail sector. This is in respect of the issues raised in objective five of the Inquiry. Chapter nine sets out the Inquiry’s preliminary findings and proposed remedies in respect of same.
2 BACKGROUND TO THE SOUTH AFRICAN GROCERY RETAIL SECTOR

2.1 Structure of the South African grocery retail sector

97. The post-apartheid South African grocery retail sector has developed in line with the principles of trade liberalization which encourage openness of markets. One of the hallmarks of the South African grocery retail sector, contrary to other jurisdictions such as India, is the low level of economic regulation which has facilitated ease of entry in the sector at both the formal and informal segments. As will become clearer in the report, the openness of the sector has enabled the increased expansion of corporate retailers to the displacement of small independent businesses. This displacement is further exarcebated by the ease of entry in the informal segment, thus leading to the replacement of these small independent retailers, which tend to be family owned, that largely serviced communities before the boom of retail chains in both urban and rural areas. It is against this context that the Inquiry has considered the competitive dynamics in the South African grocery retail sector.

98. As set out in the Inquiry’s SOI, the South African grocery retail sector is complex and consists of: (i) manufacturers or suppliers of grocery retail products; (ii) buyer groups and distributors; (iii) wholesalers; (iv) hybrid wholesaler retailers (i.e. wholesalers that also have retail supermarket offerings); (v) national supermarket chains and independent retailers (formal and informal); and (vi) consumers. This is set out in Figure 2.1 below.
99. Traditionally, the manufacturer’s products would be distributed to retail stores through a distributor or wholesaler. However, large national supermarket chains have over the past 50 years become vertically integrated upwards along the value chain, fulfilling the role of both distributor and retailer.\(^3\)

100. A more recent phenomenon is the adoption by the buyer groups and/or their members of centralised distribution. These buyer groups are now establishing distribution warehouses.\(^4\) Independent retailers make use of third party distributors, join buyer groups that fulfil the role of distributor of goods to their stores, or purchase goods for on-selling from a wholesaler such as Makro and Jumbo Cash and Carry.

101. Hybrid wholesaler retailers offer products in bulk for retailers to buy as stock for their own stores as well as selling goods directly to the consumer. A well-

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\(^3\) The large national supermarket chains, as well as smaller supermarket chain stores, have distribution centres across South Africa that distribute goods to their retail stores.

\(^4\) Independent Cash and Carry is an example of such a buyer group.
known example of such a hybrid wholesaler retailer is Massmart’s Makro stores.

102. As will be discussed later in the report, the vast majority of goods in the grocery retail sector are manufactured for and sold by the national supermarket chains.

103. According to Who Owns Whom, the structure of the South African grocery retail sector is characterised by a significant number of suppliers of Fast Moving Consumer Goods (“FMCG”) (in the various sub-sectors), a few supermarket national chains in the formal retail channel as well as a number of firms active in the broader wholesale and independent retail channel (formal and informal).

104. At the supplier level there are generally a large number of suppliers even if a few firms have a sizeable share. A detailed exposition of the various suppliers active in the different sub-sectors is set out in section 11.1 of Annexure 2.

105. At the retail level, there are roughly five national supermarket chains in South Africa, namely: Shoprite Group (consisting of Shoprite, Usave and Checkers); Pick n Pay Group (consisting of Pick n Pay supermarket and hypermarket, Pick n Pay mini market, Pick n Pay Spaza and Boxer); Spar Group (comprising Super Spar, Spar and KwikSpar); Massmart Group (consisting of Game Foodco, Cambridge and Makro); and Woolworths. In the formal independent segment, there are a few emerging challenger retailers which Choppies and Food Lovers Market (which includes Fruit & Veg City).

106. In the wholesale and informal independent retail channel, there are a number of players. Which include wholesalers, cash and carries, general dealers and spaza shops.

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5 Spar has submitted that they are not a “national supermarket chain” but rather a chain of independent retailers, supplied largely (though not exclusively) from Spar distribution centres. Spar submission on time and SOI dated 15 June 2016, para 4, p2
6 The Massmart Group has, through its Game Foodco division, in recent years expanded to sell a broader grocery retail offering.
7 There are national supermarket chains such as Clicks and Dis-Chem who focus on the health and beauty segment of the FMCG market, however these are not considered for the purposes of this Inquiry.
8 These include, inter alia: Jumbo Cash & Carry and Shield (which belong to the Massmart Group); Power Trade, Food Town and Best Buy, which belong UMS buyer group; IBC’s various members, including, Save Group, Tradeport/Ohlanga Group, Afrisave C&C; EST; Lifestyle supermarket, Top Team supermarket and Roots Butchery, belonging to the ICC buyer group; and Trade Zone and Food Zone belonging to the Buying Exchange Company.
2.2 The informal grocery retail sector in South Africa

107. As part of the research into the grocery retail sector, the Inquiry sought to understand the competitive dynamic between the informal and formal market of grocery retailing present in South Africa.

108. Businesses that operate in the informal sector are usually small in size and mostly run from people’s homes or are located on public streets and municipal land zoned for informal business activities.

2.3 The formal grocery retail sector in South Africa

109. The Inquiry gathered evidence on the number of supermarket chain stores in South Africa and their distribution throughout the country. Figure 2.2 below indicates the locations of Pick n Pay (corporate and franchised), Shoprite, Spar (corporate and franchised), Woolworths, Massmart, Food Lover’s Market (corporate and franchised, including Fruit and Veg City), and Choppies stores. Section 11.2 of Annexure 2 contains details as to the locations of each supermarket chain, by their respective sub-brands.

Figure 2.2: Supermarkets across South Africa

Source: Inquiry’s mapping based on submissions by parties
110. National supermarket chains have been able to open stores across South Africa through expansion, diversification and consolidation.

111. Expansion refers to the increasing or the broadening of the retail portfolio of national supermarket chain stores into uncharted areas. These expansions primarily manifests in three ways:

111.1 First, national supermarkets expand their footprint through shopping centres and malls. Particularly, South African townships and rural areas have experienced the expansion of national supermarket chains e.g. Shoprite in Jabulani Mall, Soweto (Gauteng), Shoprite in Paledi Mall, Mankweng (Limpopo) and Pick ‘n Pay in Mall at Lebo, Lebowakgomo (Limpopo) (see Figure 2.3 for example).

![Figure 2.3: Shoprite in Paledi Mall, Mankweng, Limpopo](image)

Source: Paledi Mall, 2017

111.2 A second way is through the conversion of spaza shops in townships, peri-urban and rural areas into franchise convenience stores. This initiative has been largely pioneered by the partnership between Gauteng Department of Economic Development (“GDED”) and Pick n Pay’s spaza-to-store conversion project (See Figure 2.4).
And thirdly, some garage convenience stores are often converted into franchise stores. For example, British Petroleum’s (“BP’s”) convenience stores have been converted into Pick n Pay franchises, Caltex stores into Food Lover’s Market franchises under the FreshStop brand and Engen convenience stores into Woolworths franchises (see Figure 2.5).
Diversification, on the other hand, refers to the strategy by national supermarkets to offer varied retailing experience tailored to the demands of customers in certain income groups and areas. This would include, for example, a national supermarket setting up partitioned versions of their stores, i.e. hypermarkets, family value stores, convenience stores and express garage stores bearing the name and branding of a national supermarket chain (see Figure 2.6). This strategy allows national supermarket chain stores to become more diverse by offering different store formats of their shops to customers in different living standards measure (LSM) categories to those that they traditionally offered.
111.5 Further, the stores have diversified the product ranges that they offer. Examples include diversification into the liquor store business in competition with independent liquor store retailers as well as USave, Boxer and Cambridge formats in competition with general dealers.

Figure 2.6: An example of Pick n Pay’s diversification strategy

Source: Pick n Pay online

112. Consolidation refers to the strategy of national supermarket chains to expand their footprint and market share through organic expansion and diversification plans, acquisitions of small independent retailers, such as the acquisition of Jwayelani by Choppies, and franchised models.

2.4 Types of shopping centres

113. The Inquiry found that shopping centres are an integral part of the sale of grocery products in South Africa. For this reason, we broadly discuss the different types of shopping centres currently available in South Africa.

114. There are different types and classifications of shopping centres and decisions regarding the size, location and tenant mix of the shopping centre is based on the functions and characteristics of the type of shopping centre that the property developer wishes to build. The South African Council of Shopping Centres (“SACSC”) has published a guideline setting out the classification of shopping centres and the salient features of each. A summary of the different types of shopping centres in terms of Gross Lettable Area (“GLA”), number of stores and number of anchor tenants can be seen in Table 2.1.
### Table 2.1: Classification of shopping centres in South Africa

<table>
<thead>
<tr>
<th>Type</th>
<th>GLA (m²)</th>
<th>Number of tenants</th>
<th>Number of anchor tenants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convenience centre</td>
<td>500 – 5000</td>
<td>5 – 25</td>
<td>1</td>
</tr>
<tr>
<td>Neighbourhood centre</td>
<td>5000 – 12000</td>
<td>25 – 50</td>
<td>1 – 2</td>
</tr>
<tr>
<td>Community centre</td>
<td>12000 – 25000</td>
<td>50 – 100</td>
<td>1 – 2</td>
</tr>
<tr>
<td>Small regional centre</td>
<td>25000 – 50000</td>
<td>75 – 150</td>
<td>1 – 3</td>
</tr>
<tr>
<td>Regional centre</td>
<td>50000 – 100000</td>
<td>150 – 250</td>
<td>1 – 2</td>
</tr>
<tr>
<td>Super regional centre</td>
<td>&gt; 100000</td>
<td>&gt; 250</td>
<td>&gt; 7</td>
</tr>
<tr>
<td>Lifestyle centre</td>
<td>15000 – 50000</td>
<td>50 – 125</td>
<td></td>
</tr>
<tr>
<td>Value centre</td>
<td>10000 – 50000</td>
<td>20 – 40</td>
<td></td>
</tr>
<tr>
<td>Filling station stores</td>
<td>30 – 600</td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

Source: South African Council for Shopping Centres, Major retail types, classification and the hierarchy of retail facilities in South Africa, September 2016

115. Convenience centres, also known as strip malls, are generally located in suburbs and small towns. The tenant mix usually include convenience retailers such as pharmacies, delicatessens, butcheries, dry cleaners and liquor stores and fast food outlets. The anchor tenant is usually a small grocery store, smaller than 1000m², such as a Kwik Spar, Woolworths Food or independent food retailer.

116. Neighbourhood centres fulfil a convenience role for a surrounding neighbourhood within a (2 kilometre) range. Critical aspects of neighbourhood centres include a well-known food anchor tenant, sufficient parking, and a good location offering easy access to residents from the surrounding suburbs. The anchor tenant in neighbourhood centres is usually larger than 1400m², typically Spar, Pick n Pay, Checkers, Shoprite, Woolworths Food and Food Lover’s Market.\(^9\)

117. Community centres offer a larger variety of convenience products than neighbourhood centres. Anchor tenants in community centres are full line national supermarket chains, which may be in excess of 2500m².\(^10\)

118. Small regional centres serve a broader community than neighbourhood centres and community centres. The tenant mix in these centres is wider and the centre is located where it is visible to passing traffic and easily accessible

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\(^9\) It is possible to have two retailers as anchor tenants to provide a variety of grocery products. Line tenants usually include pharmacies, butcheries, liquor stores as well as restaurant and banking facilities. Independent stores run by local residents may also be part of the tenant mix to offer a unique variety in the shopping centre.

\(^10\) Where the market is large enough to support more than one national supermarket chain, an additional supermarket chain may be included as a second anchor tenant. Line tenants include national clothing retail stores, restaurants and takeaways, banking services, and convenience retailers such as pharmacies, butcheries, hairdressers and liquor stores.
Regional shopping centres offer a wide range of stores, parking facilities and a wide entertainment component. They serve a large primary and secondary catchment area and are usually located on provincial roads linked to national roads. In most cases, two large supermarkets, larger than 5000m² or one large supermarket of between 8000m² and 12000m² are food anchor tenants in regional centres.

Super regional shopping centres provide retail facilities to an entire metropolitan area, large region, and to national and international tourists. These shopping centres offer a very wide tenant mix, entertainment, services and the latest retail concepts and international brands and are typically over 100 000m² in size. The widest possible tenant mix is present in super regional shopping centres with at least seven anchor tenants which include groceries, clothing (all the national and latest international clothing brands), household goods (a wide variety of comparative home and décor stores), entertainment (cinemas, electronic games, and ice rinks), banks and other services as well as health and beauty stores.

A lifestyle centre offers a unique retail shopping and entertainment experience in a relaxed and attractive environment, often with open air designs. The emphasis of tenant mix is largely on restaurants, fitness, entertainment and a more focused retail offering. Lifestyle centres are mainly developed in areas that serve higher LSM consumers.

A value centre compliments the retail facilities that are not necessarily represented in large regional and super regional centres and are usually limited to specific products. These shopping centres offer a strong grocery component with only a few clothing stores. Value centres are mostly occupied

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11 A small regional shopping centre may, when a market is large enough, have up to three national supermarket chains as anchor tenants. National clothing retail stores are also required as anchor tenants in small regional shopping centres. The focus of the tenant mix is on comparative shopping in clothing and household items in small regional centres.

12 However, it is possible to have a third food anchor tenant present in the centre. National clothing retailers are required as fashion anchor tenants in regional shopping centres. Line tenants include boutiques and shoe stores, food court areas, homeware and décor stores, services such as banking, cell phone service centres and post offices, and entertainment such as cinemas and games arcades.
by traders requiring large space and are usually located next to a regional shopping centre.\textsuperscript{13}

123. Filling station stores are located in forecourts at petrol stations and provide convenience shopping on a 24-hour basis to local and passing vehicle traffic as well as residents living in close proximity. National supermarket chains have entered this market in recent years by collaborating with filling stations.\textsuperscript{14}

2.5 Market shares and concentration

124. The Inquiry’s ToR cited a Barclays report and a Who Owns Whom report that estimated that the five largest players in the grocery retail sector collectively accounted for between 80% and 90% of the market in South Africa in 2014. This was taken as a point of departure by the Inquiry to investigate the competition dynamics in the grocery retail sector.

125. Following the publication of the ToR, the Inquiry received submissions from the national supermarket chains indicating that their market shares are lower than those cited in the ToR. For example, Pick n Pay estimated that Shoprite, Pick n Pay, Spar and Woolworths collectively accounted for 57% of the market in 2014, based on turnover figures reported in the national supermarket chains’ annual reports and StatsSA retail sales data.\textsuperscript{15}

126. In 2017, Statistics South Africa (“StatsSA”) published a Retail Trade Industry report for 2015, which the Inquiry relied upon in estimating market shares for the formal grocery retail segment. Table 2.2 below shows the estimated market shares based on the turnover derived in the formal grocery retail sector. The formal grocery retail sector comprises both the specialised stores and non-specialised stores.\textsuperscript{16}

\textsuperscript{13} Typical tenants of a value centre include specialised retailers occupying a large space and offering a wide variety of products such as Hi-Fi Corporation and Toys R Us, home improvement facilities like hardware, paint, furniture and tiles, and hyper grocery stores. A small component of fast food outlets is also usually present. Woolworths is present in Engen forecourts, Pick n Pay Express stores are located in BP filling stations and Food Lover’s Market has collaborated with Caltex to place Fresh Stop stores in Caltex forecourts. Larger petrol stations also offer takeaway facilities such as Steers, Wimpy, Mugg & Bean and Wild Bean Café.

\textsuperscript{14} Pick n Pay presentation, 31 January 2018, slide 5.

\textsuperscript{15} To obtain the total grocery retail sector revenues, using the StatsSA data, the Inquiry aggregated the Non-specialised stores with food, beverages and tobacco predominating under SIC 6211 and the Food, beverages and tobacco in specialised stores under SIC 6220. The Inquiry then used the national supermarket chains’ revenues for 2015 in order to approximate their market shares.
Table 2.2: Market shares in the formal grocery retail sector 2015

<table>
<thead>
<tr>
<th>Non-specialised stores with food, beverages and tobacco predominating</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Turnover (R Million)</td>
</tr>
<tr>
<td><strong>including:</strong></td>
<td></td>
</tr>
<tr>
<td>Shoprite</td>
<td>92711</td>
</tr>
<tr>
<td>Spar</td>
<td>74060</td>
</tr>
<tr>
<td>Pick n Pay</td>
<td>67603</td>
</tr>
<tr>
<td>Woolworths</td>
<td>22352</td>
</tr>
<tr>
<td><strong>Food, beverages and tobacco in specialised stores</strong></td>
<td>67591</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>352531</td>
</tr>
</tbody>
</table>

*Source: StatsSA Retail Trade Industry, 2015, Table C, pg. 5; National supermarket chains’ annual financial statements*

127. The above table indicates that 81% of sales within the formal grocery retail segment in 2015 occurred in non-specialised stores while the remaining 19% of sales is attributed to specialised stores, such as butcheries, bakeries and fresh fruit and vegetable stores. The national supermarket chains, namely, Shoprite, Pick n Pay, Spar and Woolworths collectively have a market share of 72% based on turnover figures for 2015.

2.6 Barriers to entry in the South African grocery retail sector

128. The competition authorities have previously considered the nature and extent of barriers to entry within various product markets in the South African grocery retail sector. In this regard, the Tribunal considered barriers to entry in the market for the wholesale of grocery products in the merger involving Masscash Holdings (Pty) Ltd and Finro Enterprise (Pty) Ltd (“Masscash/Finro matter”)17. In this matter, it found that on balance barriers to entry were high. Similarly, in the merger involving Pick n Pay and Boxer18, the Tribunal found that there were high barriers to entry in the market. Lastly, the Commission, in the Supermarket Investigation19 found that there were significant barriers to entry in the South African grocery retail sector. These are set out below.

128.1 First, the required capital costs (including, *inter alia*, land and buildings, establishing a distribution network) were found to be significant;

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17 Case NO: 04/LM/Jan09.
18 Case No: 52/LM/Jul02.
128.2 Second, economies of scale\textsuperscript{20} and scope\textsuperscript{21} were considered to be crucial for effective competition, particularly insofar as they related to a retail firm’s ability to obtain favourable trading terms, rebates and advertising allowances. Similarly, from a supplier’s perspective, economies of scale were considered a crucial aspect for the realisation of productive efficiencies; and

128.3 Third, the administrative and/or regulatory requirements were also considered to be a significant barrier to entry.

129. The Inquiry noted that the market dynamics in the South African retail sector have largely remained the same, characterised by high barriers to entry, particularly in the national supermarket chain channel.

2.7 Employment within the South African grocery retail sector

130. The grocery retailer sector is a source of employment for many South Africans. This section will discuss the impact that the retail grocery sector has on employment in South Africa. Due to the difficulties faced in estimating the size of the informal grocery retail market, this discussion is limited to the formal segment of the market.

131. According to StatsSA, 302 433 persons were employed in non-specialised stores with food, beverages and tobacco predominating in 2015. This represents 37\% of the total employment created by the retail sector as a whole. Further, the number of people employed in these stores increased by 109\% between 2005 and 2015.\textsuperscript{22}

132. In specialised food, beverage and tobacco stores, the number of persons employed in 2015 amounted to 60 678, indicating a 12\% decrease in employment since 2005. Employment in specialised food, beverage and

\textsuperscript{20} Economies of scale were found to be important in lowering costs by allowing retailers to maximise the efficiencies of their warehousing and distribution facilities. Further, various costs of running a grocery retail chain do not increase proportionally with the number of outlets.

\textsuperscript{21} The Commission found that grocery retailers benefit from supplying a large number of products and that the costs of supplying products do not increase in proportion with the widening of product range. Further, the grocery retailers benefit from being a “one-stop-shop” solution in terms of attracting larger numbers of customers.

tobacco stores contributed 7.5% to the total employment opportunities in the retail sector as a whole.\textsuperscript{23}

133. The above statistics also point to the growth of the national supermarket chains and the parallel decline of speciality stores such as butcheries and bakeries.

2.8 Consumer behaviour within the grocery retail sector

134. In September 2016, the Inquiry commissioned a service provider to conduct a consumer survey to understand consumers’ general shopping behaviour and preferences. The survey interviewed 1558 respondents, ranging between 18 and 70 years old across 10 selected areas of the country i.e., Winterveldt and Ivory Park in Gauteng, Vrygrond in the Western Cape, Mmabatho in the North West, Embalenhle in Mpumalanga, Thabong in the Free State, Mthatha in the Eastern Cape, Kimberley in the Northern Cape, Giyani in Limpopo and KwaMashu in Kwa Zulu Natal province.

135. The survey sought to understand, \textit{inter alia}, the following:

135.1 consumers preferences in respect of where grocery shopping is conducted, i.e. national supermarket chains or small and independent outlets and the reasons thereof;

135.2 Shopping places that are frequented for convenience weekly/monthly shopping; and

135.3 the average disposable income spent on groceries items per month.

136. The results of the survey revealed that:

136.1 Across the different income bands, consumers generally spread their shopping across different outlets, namely: supermarkets, general dealers, spaza shops and wholesalers.

136.2 A significant part of the lower income earners do weekly/monthly shopping outside their local area in shopping centres.

136.3 A high proportion of the higher income earners do their daily shopping at the local supermarket.

136.4 When comparing the offering of supermarkets to general dealers and spaza shops, a portion of consumers preferred to do most of their shopping at supermarkets for the following reasons: better quality products, wider variety, better service and lower prices.

137. The results of the survey suggest that consumers across income bands make use of more than one outlet for their shopping needs. Some consumers consider supermarkets to be interchangeable with spaza shops and wholesalers. Based on the survey, customer behaviour differs when shopping for convenience i.e. daily shopping as opposed to weekly shopping.

138. As such, the survey suggests that while the expansion of shopping centres into previously underserviced areas has meant that many consumers are now shopping at supermarkets, consumers still frequent traditional stores for many of their convenience shopping needs.

139. When asked where consumers have shopped at least once in the last two weeks, 82% answered yes to shopping at their local supermarkets, 72% at the local spaza, 61% at a supermarket located outside of the local area, 27% at a general dealer and 20% at a wholesaler, as can be seen in Figure 2.7 below.

Figure 2.7: Respondents who have visited the following outlet types within two weeks

<table>
<thead>
<tr>
<th>Outlet Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Dealer</td>
<td>27%</td>
</tr>
<tr>
<td>Local Supermarket</td>
<td>82%</td>
</tr>
<tr>
<td>Spaza</td>
<td>71%</td>
</tr>
<tr>
<td>Outside Supermarket</td>
<td>61%</td>
</tr>
<tr>
<td>Wholesaler</td>
<td>20%</td>
</tr>
</tbody>
</table>

Source: Competition Commission Consumer Survey
140. Figure 2.8 below identifies two types of shopping missions and the type of outlets that a consumer is likely to visit for that specific shopping mission. The survey indicated that around 55% of the respondents in the survey recorded doing their weekly/monthly shopping at local supermarket. Although lower, a significant percentage (43%) also used local supermarkets for convenience shopping. Similarly, a higher percentage (33%) of respondents recorded doing shopping at supermarkets outside of their local area for their weekly shopping than the percentage of people (13%) using outlying supermarkets for convenience shopping. Given the additional transport costs required to travel to an outside shopping centre, it makes sense that a consumer would primarily visit an outside supermarket for major grocery purchases. In addition to this, the consumer survey also confirmed that the primary reason for visiting a spaza shop is for convenience shopping (or top-up shopping) instead of weekly or monthly shopping.

![Figure 2.8: Types of shopping missions per different outlet types](image)

Source: Competition Commission Consumer Survey

141. The consumer survey found that supermarkets outside of the local area are most likely to lose market share as a result of entry by a new supermarket in the respondent’s local area. Figure 2.9 below shows the respondents that frequent (40%) supermarkets outside the local area before the opening of their nearest supermarket. Thus the survey suggests that the main losers of local supermarket entry are not Spaza shops or general dealers but rather the
supermarkets that are located outside of where the respondents resided, which further highlights the importance of location for shopping centres.

Figure 2.9: From whom newly opened supermarkets took market share

![Bar chart showing loss by outlet type]

Source: Competition Commission Consumer Survey

142. The consumer survey also indicates that one of the primary reasons that most people go to the nearest shopping centre is to purchase groceries. Other reasons for visiting the shopping centre include general shopping, banking and clothes shopping. This is shown in Figure 2.10 below.

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24 Consumer Survey Presentation; Slide 25
143. Figure 2.11 below indicates that the majority of supermarkets that respondents visit are located within a shopping centre. In all the surveyed areas, more than 50% of the respondents considered their closest supermarket to be located inside of a shopping centre. There are a few instances where a supermarket has been found to operate outside of a shopping centre. This was observed to be more common in the Gauteng townships as well as in Thabong, North West and Free State provinces.

2.9 Scope of analysis

144. The grocery retail sector is characterised by a complex set of heterogeneous products and services within interrelated markets. However, because
analysing hundreds of individual geographic markets for grocery retail services separately would be inefficient and unwieldy, it is analytically appropriate and expeditious to focus the analysis of the grocery retail sector broadly in terms of the formal and informal grocery retail services in South Africa. This approach is also premised on the view that the products and services provided by grocery retailers (both formal and informal, in their respective categories) are provided under similar competitive and entry conditions in South Africa. It is well established practice that individual service and products markets may be clustered for administrative convenience if the competitive conditions for two markets are similar enough to analyse them together.

145. Competition authorities have in previous investigations and inquiries considered the size and format of retail stores, their product offerings and whether or not they belong to a vertically integrated group when attempting to define markets. Often, it was found that asymmetrical substitution exists between different size stores and different store formats and so there exists a competitive dynamic between different types of grocery retailers, albeit skewed.

146. In South Africa, the Inquiry is of the view that demand-side substitutability decisions made by consumers within respective LSM groups are similar across all areas of the country. This means that the choice between buying a product from an independent retailer, informal trader or large national supermarket chain is made following a similar decision making process (whether it is based on price, availability, convenience or quality) across all areas of South Africa.

147. Asymmetrical competition dynamics exist between large national supermarket chains and other independent grocery retailers in the view of the Inquiry. Consumers may find that large national supermarket chains are substitutes for independent grocery retailers where a large national supermarket chain is available but the converse may not always hold. To a certain extent, all grocery retailers within the sector place a competitive constraint on each other, depending on their availability within the area where the consumer is willing to buy products.

25 Antitrust in the Groceries Sector & Liability Issues in Relation to Corporate Social Responsibility, 2015, pg. 34
148. For the reasons above, the Inquiry has decided to assess the competitive dynamic of the grocery retail sector across the whole of South Africa, encompassing all retailers of grocery products to determine whether there are any cumulative competitive distortions within the market.
3 VALUE CHAINS ANALYSIS AND THE COMPETITIVE PLACEMENT OF SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY

3.1 Introduction

149. With rapid urbanisation in South Africa, large food retailing companies have identified townships and fringes of urban regions as areas for growth. As a result, the last decade has seen numerous formal retailing outlets in the form of supermarkets and shopping centres being established in these regions. This is driven by rapid income growth in these regions, since the previous decade, along with saturated retail markets in established urban areas. Within this context, the Inquiry sought to determine if and how the establishment or presence of large food grocery retailers is affecting informal grocery trade (and implicitly employment and livelihoods) in these regions. Further, the Inquiry sought to understand the impact of certain relevant value chains on the operations of the informal grocery trade.

150. In order to answer the questions posed above, the following objectives were pursued: 26

150.1 To determine how spaza shops fit into formal value chains of key food products. This serves as key background information to the relationship between formal and informal retail.

150.2 To understand competitive strategies of spazas, in relation to practices of formal retailers in townships. This section will have a specific focus on price differences/relationships. An understanding of price relationships, and the broader competitive strategy, serves to inform spaza strategies that facilitate business feasibility related to informal retailing.

150.3 To understand the business challenges faced by spazas. This serves to contextualize how spazas perceive proximity to formal retailers amidst the myriad of factors that previous researchers have noted as constraining factors to informal retail (see inter alia

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26 The ideal approach would have been to do a pre- and post-analysis of spaza business practices after the establishment of a supermarket/large grocery retailer, or at least a temporal study of spaza operations, to gauge how their behaviour changed over time. Due to time and budgetary constraints, this was not possible.

150.4 To understand consumer patterns and consumer preferences for purchases at spazas vis-à-vis purchases at formal retailers in townships. There have been multiple studies on the effect of supermarkets on informal retailing in townships (see, inter alia, Lichthelm (2008), Charman et al. (2012) and Piper and Yu (2016)). These studies, however, have a common limitation in that they do not consider consumer preferences, related to food and grocery purchases, of township dwellers. Since strong demand is the lifeblood of any business, it is imperative that consumption issues are included to form a holistic picture.

151. The achievement of the objectives, as stated above, would not conclusively answer the question of whether supermarkets encroach on spaza markets, and, in turn, affect the livelihoods of spaza operators. It, however, serves to contextualise spaza shops’ connections with suppliers, other retail formats and township (food) consumers, in order to make general interpretations on the relationship between spazas and formal food retailing in informal areas.

3.2 Methodology

152. The objectives outlined above were addressed in two phases, namely a value chain analysis, conducted with secondary information and discussions with industry experts, and primary analysis of food retailing and consumers in selected townships.

Phase 1

153. Phase one was focussed on assessing the value chain for a number of selected products based on the method developed by Kaplinsky and Morris (2001) and refined by Trienekens (2011). These authors noted that all value chain analysis should start with constructing a “tree” or map of input-output relationships which consider and describe variables such as gross output, commodity flow, employment and concentration of sales, to name a few. A value chain analysis, therefore, serves as a descriptive tool with which to contextualise how products move from production to consumption and allow
for the identification of opportunities and constraints within the chain. The analysis focussed on the following chains:

153.1 Washing powder
153.2 Wheat to bread;
153.3 Maize to maize meal;
153.4 Sunflower seed to cooking oil; and
153.5 Raw milk to fresh milk/UHT.

Phase 2

154. Phase two analysed the primary data gathered through structured interviews with spaza owners and township consumers. This was used to support the findings in respect of objectives two to four as previously stated.

Focus Areas

155. The survey focussed on four metropolitan municipal areas namely, the Cities of Ekurhuleni, Johannesburg, eThekwini and Cape Town (metros). These are the four largest metros in the country and had a collective population of just below 15 million people in 2011\(^{27}\).

156. Within these metros two to three townships were identified as survey target areas. Due to the time constraints associated with the project, the decision on which areas to target were determined on the basis of the existence of an established surveying in these areas. The townships identified, per metro, are presented in

157. Table 3.1 below.

<table>
<thead>
<tr>
<th>Table 3.1: Focus Areas for Survey Collection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focus Area 1</td>
</tr>
<tr>
<td>---------------</td>
</tr>
<tr>
<td>Focus Area 1</td>
</tr>
<tr>
<td>Focus Area 2</td>
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<tr>
<td>Focus Area 3</td>
</tr>
<tr>
<td>Focus Area 4</td>
</tr>
</tbody>
</table>

Sampling

158. Within each of these areas, maximum variation purposive sampling was undertaken. The basic principle behind this type of sampling is to gain an improved understanding of a specific research object or principle by considering it in various forms. Approximately thirty spaza shops and thirty consumer respondents were surveyed per area and amounted to a total sample of 300 spaza respondents and 300 consumer respondents across the sampling areas listed above. Specific supermarkets in each area were also identified and a once-off price recording was conducted in parallel to the spaza and consumer surveys mentioned above.

159. Purposive sampling is well suited to the spaza shops and the informal retailing sector in South Africa since data and information on this is sparse. Since the full population of these type of operations is not available, it is impossible to do representative probability sampling. Ideally, the areas under consideration would have to be analysed through a census, as opposed to a selected sample, as this would provide the most comprehensive information and results. Due to time and budgetary constraints, this was however not possible. Due to the sensitive nature of the information, a participation incentive was given to respondents. Both spaza owners and township consumers received a R100 voucher that is redeemable at any outlet with Mastercard facilities.

3.3 Value Chain Governance

160. The type of relationship that governs a value chain transaction generally depends on the costs associated with that particular transaction. In other words, if it is relatively easy to transact and the information is relatively symmetric, with no risk of exploitation between parties, the market structure will prevail as the best mechanism to govern a transaction. However, the market mechanism might not be ideal for all transactions. When it becomes more costly to transact because of hidden information or hidden

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28 Purposive sampling is a type of non-probability sampling with the objective of capturing a wide range of respondents.
29 The discussions and assertions presented here are based on extensive experience in working in the selected value chain by BFAP’s institutional economist, Dr. Melissa van der Merwe. The features and characteristics which are therefore not directly referenced or indicated as obtained from discussions from industry experts should be considered with this in mind.
characteristics, or when the risk of exploitation increases, a mechanism that exerts greater control such as a formal contract, or even vertical integration are better-suited (Williamson, 2002). It is, therefore, possible to see many different mechanisms governing the different transactions in the same value chain.

161. This analysis of the governance mechanisms is based on the work done by Gellynck and Molnár (2009) and Raynaud et al. (2005). In this work, the dyadic relationship between every two links in the value chain is classified, on a spectrum, between a spot market relationship, a non-contractual or contractual arrangement, a relation-based alliance, an equity-based alliance and vertical integration, based on a predetermined set of transaction variables such as length and preferred supplier use).

Maize to maize meal

162. The maize-to-maize meal value chain is mostly governed by contractual arrangements with different sets of specifications between a number of predominantly large companies. The transaction between the maize producers and millers, however, approximates a spot market with the South African Futures Exchange (“SAFEX”) serving as a trading platform on or from which prices are derived.

163. The transaction between the maize milling companies and formal retailers differ between product lines and across retail chains. Although most of these transactions are governed by contractual relationships with predetermined specifications, it can range from procurement through a central distribution centre or procurement at store level. Additionally, in some instances, retailers take ownership of the procured products, and in other instances, the processor rents shelf space for its products. Discussions with industry experts revealed that orders are usually placed weekly, depending on sales, and prices are negotiated quarterly. For low-value goods such as maize meal, profits are quite small, and the payment terms are usually between 60 and 90 days.

Wheat to bread

164. The transactions within the wheat-to-bread value chain are governed by contractual arrangements that are similar to the ones found in the maize-to-maize meal value chain. The SAFEX again plays a central role in terms of
pricing between producer and milling level. In the case of wheat, quality is a key consideration for which premium or discounts on the SAFEX price are paid.

165. The transaction between the wheat milling companies and the retailers are more complex than the other value chain transactions discussed. According to discussions with industry experts, procurement is typically done directly from the retailer and not through the central distribution centre as with non-perishable products such as maize meal. The perishability associated with bread necessitates higher transaction, ordering and delivery frequencies. According to industry experts and participants, prices are generally negotiated quarterly with orders placed daily or weekly, dependent on sales, and payment terms between 60 and 90 days. The relationship between the retailer and milling company also determines whether the expired bread is collected or repurposed in store. Discussions with industry experts identify bread is seen as a Key Value Item ("KVI") or loss leader. Key value items attract customers to stores, but they are also known to drive customer’s ‘value for money’ perceptions of a store. These are typically the products that lead to changes in outlet or store chain choice when prices are not aligned.

Oil seeds to cooking oil

166. Discussions with industry experts revealed that transacting between primary producers and processors in the South African oilseed industry can, for the most part, be considered as arm’s length transactions. Canola represents the exception, where relational contracting dominates, with prices determined as a factor of import parity and alternative oilseed products. Within the sunflower and soybean chains, there might be selected instances of relational contracting between these two parties, but the existence of the SAFEX allows for all fundamental factors to be discounted into a price that is available in the public domain. Furthermore, the various agents that transact on this exchange erode the possibility of the processing industry acting in an uncompetitive manner. There are three types of agents or traders that are involved in trading oilseeds on SAFEX: (i) hedgers that protect an existing portfolio against adverse movements in oilseed prices by means of options and futures, (ii) arbitrageurs who makes a profit from price differentials of oilseeds in different markets and (iii) speculators who attempt to make profits from short-term price movements. Hedging agents will typically be primary producers or processors
that are taking a position on the exchange to mitigate their price risk. The other two agents (arbitrageurs and speculators) ensure a requirement for a market to function efficiently and makes it non-conducive to market power abuse.

167. The terms of transactions between crushers and refiners differ depending on the level of integration in the chain. In some instances, crushing and refinement are integrated into a single company, implying no interim transaction. When refinement is not vertically integrated with crushing, the transaction between the two is typically governed by relational contracting, to ensure sufficient throughput. Within the contracting relationship, oil prices remain determined by import parity levels, as South Africa remains a net importer of oil.

168. The terms of transactions between processors (either integrated crushing and refinement or independent refineries and bottling plants) and retailers are more uncertain and have not been researched widely in South Africa. Such relationships are also very diverse and differ amongst product lines and across retail chains. Some retailers have central procurement strategies through their own distribution centres, while others procure locally at store level. Discussions with key stakeholders highlighted that some retail groups do not take ownership of products. Instead they provide shelf space to processors and pay them after the product is sold – typically on 90-day terms.

169. Long payment terms are particularly relevant to low-value goods, where profits are small and sometimes even negative but are effective at drawing consumers into the relevant store. Within the vegetable oil space, low-value blends would fall into this category, whereas higher value products such as canola would not. Prices are typically negotiated on a quarterly basis, with product orders placed weekly depending on consumer sales trends. Discussions with industry experts revealed that a share of the final price is allocated to the retailer to cover merchandising costs, such as advertising and promotions. Processors are expected to provide different product lines aimed at consumers of various backgrounds and income levels, as well as different packaging sizes.
As a result of the high perishability of raw milk, the governance of the milk value chain is more regulated than that of maize meal, bread, and cooking oil. The transaction between the milk producer and the milk processor is typically governed by contractual arrangements. Depending on the transaction and the needs of the transacting parties, these contracts can either be formal written contracts or verbal agreements between the producer and processor.

The contract terms associated with these contracts typically range between one and ten years. According to industry experts, the ten year contracts are extreme options available only to mega-producers. These are required to secure the substantial capital investment that is associated with mega-production. For example, a herd of around 5,500 cows, would need a capital outlay in excess of R30 million. In addition to this, highly specific asset investment is required in terms of milking equipment and fixed improvements. To make this type of scale possible, a long-term agreement needs to be in place to ensure that such an enterprise has an off-take agreement for the large volumes of milk (more than 100,000 litres a day) that are produced. This is, however, an extreme example of which only one or two producers, such as this, operate in South Africa. The ten year contract is, therefore, the exception rather than the rule.

Since these type of contracts are not common, the associated terms are mostly unknown and privy only to the contracting parties. Annual contracts, on the other hand, are more common and contain a clause that allows the processor of milk to amend prices according to market conditions. Prices are generally negotiated by producers, but determined by processors, and led by market conditions. Additionally, these contracts can be altered or suspended with at least three or six months’ notice. Regardless of the type of contract, the processor generally stipulates the quality and content (butterfat and protein ratio). In general, the contracts between milk producers and processors guarantee the producer with a market for this highly perishable product.

The transaction between the milk processor and the large retailers are largely dictated by the retailers. Due to the perishability of fresh milk, procurement is typically done directly from the processor and not through the central
distribution centre as with maize meal and other non-perishable products. Ultra High Temperature ("UHT") milk, in turn, is procured by the central distribution centre. Generally, milk processors purchase shelf space from the large retailers and hire packers for merchandising. The retailers, in turn, charge a rebate on gross in-store sales (per processing company) and use these funds to pay for marketing and other costs. Similar to bread, milk is also perceived as a KVI.

3.4 The Positioning of Spaza Shops in Formal Value Chains

174. In this section, the Inquiry considered the position of informal retailing and how it fits into the chains described above, is considered. This was done by considering data collected by surveying 300 spaza operators.

Procurement practices

175. In order to understand how the spaza shops are integrated into the various supply chains, their sales and procurement strategies (for the products under consideration) were considered and analysed. Results show that, with the exception of bread, the preferred source of supply, for the surveyed sample, is the nearest wholesaler. Bread is however, predominantly sourced directly from the plant bakeries (85% of the sample). The remainder of the sample procured bread at formal retailing formats such as wholesalers (11%) and retailers (1%). The percentage of the sample that did not stock bread is 3%. These dynamics can most probably be explained by the perishability of bread.

176. In the case of milk, spaza shops predominantly stock UHT milk and therefore perishability considerations are less important, unlike bread. As a result, around 16% of the total sample sourced directly from the processors. The remainder of the sample predominantly relied on wholesalers for supply of milk (76%), whilst 6% sourced milk from the nearest supermarket and 2% of the sample reported not stocking milk. Results further suggested that larger spaza shops were more likely to be serviced directly by milk suppliers, with 25% of spaza shops with sales in excess of R1 000 per day, being serviced directly, as opposed to on only 12% of spazas with sales less than R1 000 per day. This was considered to be suggestive of the need for scale in order to benefit from supplier (processor) delivery and distribution networks.
Cooking oil and maize meal, which are products that can be kept in inventory, were mainly sourced from wholesalers (89% and 86% respectively). The frequency with which these products were procured was also significantly less compared to bread and milk. Table 3.2 below provides a summary of the key findings associated with sales and procurement practices of the surveyed stores.

Table 3.2: Summary of procurement practices per product

<table>
<thead>
<tr>
<th></th>
<th>Bread</th>
<th>Maize Meal</th>
<th>Cooking Oil</th>
<th>Milk</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Main Supply Source</strong></td>
<td>Direct from baker (85% of sample)</td>
<td>Nearest Wholesaler (86% of sample)</td>
<td>Nearest Wholesaler (89% of sample)</td>
<td>Nearest Wholesaler (76% of sample)</td>
</tr>
<tr>
<td><strong>Most reported</strong>*</td>
<td>Every day (85% of sample)</td>
<td>Once a week less (90% of sample)</td>
<td>Once a week less (93% of sample)</td>
<td>Twice a week (26% of sample)</td>
</tr>
<tr>
<td><strong>purchasing</strong>*</td>
<td>% of respondents making use of credit in procurement</td>
<td>4.4%</td>
<td>3%</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Product Collection / Delivery</strong></td>
<td>Supplier delivery (85% of sample)</td>
<td>Own transport (85% of sample)</td>
<td>Own transport (84% of sample)</td>
<td>Own transport (74% of sample)</td>
</tr>
</tbody>
</table>

In order to understand the motivation for using the preferred source of supply, the primary consideration, disaggregated by product, are depicted from Figure 3.1 to Figure 3.3. The total sample was clustered into different supply source options namely supermarket, wholesaler and supplier (processor). In the case of bread, only the Processor and Wholesale cluster were considered, since only 1% of the sample indicated supermarkets as supply choice.

Figure 3.1 considers motivation for supply preference associated with bread. It shows that, for the processor cluster, a little more than half of the sample noted convenience as the main reason for sourcing directly from the supplier. The convenience aspects here are related to delivery services available from suppliers. In most cases, it was also noted that this delivery service is free. From the respondents in the wholesaling cluster, just below half of the cluster noted that price was the main consideration for sourcing bread from this supply source. Within this cluster, 76% of the respondents reported to have sales of less than R1000 per day. This suggests that store size could be a determinant in a spaza shop’s supply choice for bread. Results from this
cluster further suggest that stated convenience is the primary consideration for wholesale supply choice. These convenience considerations are mainly related to proximity to the wholesaler.

**Figure 3.1: % of cluster’s primary reason for sourcing bread from wholesalers or suppliers**

![Bar chart showing the percentage of cluster's primary reason for sourcing bread from suppliers or wholesalers.](image)

180. In terms of cooking oil, 93% of the sample stated that they sourced cooking oil from wholesalers. The primary reason for this choice is price-related for 50% of the sample, and convenience for 38% of the sample. Similar to maize meal, the convenience factor mentioned here is mostly related to proximity (See Figure 3.2).

**Figure 3.2: % of cluster's primary reason for sourcing cooking oil from wholesalers**

![Bar chart showing the percentage of cluster's primary reason for sourcing cooking oil from wholesalers.](image)

181. In the case of milk, the reliance on the nearest wholesaler for supply is marginally less than in the case of maize meal and cooking oil, with 76%
sourcing milk from wholesalers, 16% directly from suppliers (processors) and 5% of retailers. If these supply choices are considered per cluster, the main reason for making use of processors was related to quality, with 48% of the total cluster noting this as the primary reason for their supply choice. The quality notion was mostly related to freshness and as a result, it seems fair to deduce that processors were mostly used for fresh milk procurement. Convenience were also stated by a large proportion of the supplier cluster with 41% noting that this was the main reason for procurement directly from processors. The convenience factor here is mostly related to delivery. With regards to wholesaling and retailing, favourable price levels and convenience were stated as the primary reasons for supply choice. Convenience in this context was again mainly related to proximity to the supply source (See Figure 3.3).

**Figure 3.3: % of cluster’s primary reason for sourcing milk from wholesalers**

Sales patterns

It is expected that sales patterns of spaza shops are dictated by the needs of township consumers. In order to improve the understanding related to sales patterns, and reconcile this with consumer preferences, respondents were asked to list the five most stocked items (products with the highest turnover) in their store, in order of importance. The frequency of bread, milk, maize meal and oil, listed under the three top products is presented in Figure 3.4.
Figure 3.4: % of sample that ranked selected products as most important product in their store

183. Figure 3.4 shows that 55% stated that bread was the most important product in their store, with 19% of the sample noting it was the second most important product. In the case of milk, only 8% rated it as the most significant product, but 25% reported that this was the second most important product that they stocked. The other two products considered were not rated as extremely important. It is also important to note that there was a high degree of heterogeneity in the reported stocked products.

Concluding remarks on procurement and sales practices

184. The results presented in this section served to contextualise the procurement and sales practices of spaza stores in order to understand how they fit into the supply chains as discussed in earlier sections. It was found that products that are non-perishable are sourced almost exclusively from wholesalers on a relatively infrequent basis (less frequent than once a week). Perishable products, in turn, are sourced directly from suppliers due to convenience factors but also to ensure quality and freshness. The diagrams in Figure 3.5 can therefore represent the end nodes of supply chains for perishable and non-perishable products. It seems that wholesalers almost serve the purpose of a self-servicing distribution centre, used by spaza operators, for non-perishable products.
In terms of governance, transactions between spazas and suppliers can generally be classified as arm’s length. There are however instances, where due to the frequency of the transaction, the transaction(s) can be classified as relational contracting. Product examples where this transaction would prevail are bread and milk, specifically when these products are delivered to the spaza shop.

Results on sales suggest that bread and milk are the most important products in terms of turnover generated. This supports the general notion that spazas are convenience stores, used for top-up purposes. This, in turn, could also affect dynamics upstream in the various value chains. Although not conclusive, the results presented in this section suggest that high sales volumes and perishability (which eliminates the possibility of holding inventory) creates support for a conducive environment in which suppliers (processors) directly service smaller retail outlets such as spaza shops.

3.5 Competitive Strategy Analysis

Competitive strategies of spaza shops

The competitive interaction between spaza shops and national supermarket chains has been widely researched in academic literature. Lichthelm (2008) found that the opening of these retail establishments (national supermarket chains) in townships did have a negative effect on the number of spaza shops
in operation and on the turnover levels of those that remained in business subsequent to the opening of the formal retail stores. Mdlala (2015), had similar results, noting that spazas experienced lower consumer volumes, subsequent to the opening of a supermarket in close proximity and responded by adjusting their marketing strategy. Contrastingly, Peyton et al. (2014) note that although supermarket expansion in informal economies have been pervasive, consumption patterns of poor households are often incompatible with the competitive strategies of national supermarket chains.\footnote{Peyton (2014) finds that marginalised consumers are often not able to afford larg(er) packing formats associated with formal retail and that spaza shops speaks to this need by providing smaller packing sizes for example instead of a 700g loaf of bread, spazas offer half a loaf of bread.}

188. As noted in Objective 1, spaza shop owners considered extended trading hours as a key component of their competitive advantage. Similarly, it seemed that credit extensions are used by spaza shops as part of their competitive mix. From a pricing perspective, spaza shops did not fare well relative to the national supermarket chains. In addition, some spaza shops seemed to price their products relative to the national supermarket chains while others do not.

*Spaza business challenges*

189. The literature on informal trading in South African townships has noted numerous factors that affect the feasibility of these businesses. Kroll et al. (2017) highlight the establishment of formal retail outlets in townships, combined with the disbursement of social grants through these outlets as one of the key problems. Coetzer and Pascarel (2014), in turn, note the business acumen of store owners and lower volumes (which ultimately require higher prices) as key factors that affect the feasibility of these establishments negatively. Other reasons that are noted was the generally anti-foreign sentiment towards informal businesses, access to capital, issues related to infrastructure and regulatory issues.

190. This noted literature shows that there are numerous issues, which include idiosyncratic problems associated with spaza shops and informal traders that could influence their business viability. As a result, the complexity of successful small-scale grocery trading within townships should not be underestimated, and this should furthermore be reflected in the analysis presented here. With this in mind, this section of the report explores the issues
and constraints that were reported by spaza shop owners and managers along with their perceptions and level of agreement with certain factors relating to the relationship between spazas and large supermarkets in close proximity. The issues and constraints that were reported are presented below. In addition, views of spaza owners and/or managers perceptions regarding business growth and benefits of being in close proximity to a large (food) retailer are considered.

### 3.6 Issues and constraints affecting business operations of spaza shops

In conventional business analysis, opportunities and constraints are analysed through the well-known Porter (2008) approach. Whilst providing valuable guidance, the issues conventionally analysed with this approach was supplemented by issues identified from the literature, specifically on the informal economy, in order to tailor it to an informal food retailing business. It should also be noted that the issues considered here had a strong focus on factors related to competitiveness since the ultimate objective of this analyses is to determine if livelihoods derived from informal food trading is affected by competition from formal retailing. The factors considered in Porter’s competitiveness strategy were therefore used as a point of departure, whilst combining it with broader literature on informal retailing, to derive the factors presented in Figure 3.6 the figure below. Figure 3.6 shows that Crime was the most noted constraint with 64% of the sample rating crime as “Very Constraining”. This was followed by 59% of the sample rating Price Competition from other Spazas as “Very Constraining.” Rated third, was Price Competition from Supermarkets (53%).
To account for the heterogeneity of the enterprises included in the sample, open-ended questions on constraints and issues were also included in the survey in order to account for possible issues that were not captured through the structured questions. These issues are summarised in Figure 3.7 below. From this, it should be clear that Competition and Crime were again listed as the main issues affecting the business viability of spazas. Other issues that were prevalent, although not rated high in the “primary concern” category is supply related issues and language or prejudice against foreign owned enterprises. Infrastructural issues related to electricity and shop space were also mentioned frequently. Results from the structured and open-ended questions, therefore, validate one another in that Competition and Crime are the biggest issues that affect spaza business operations.
The nature of crime faced by spazas are diverse. According to literature, this ranges from minor stock theft incidents to more serious incidents related to vandalism, intimidations and violent attacks. Perks (2010) noted that spaza shops in the Nelson Mandela Bay Metropolitan are often the victims of break-ins, vandalism and physical attacks. It is further noted that large amounts of stock attract crime and therefore shops keep small inventories.

For Thembisa, Charman (2017) found that 23% of spaza shops surveyed in Thembisa recalled incidents of robbery or theft within the last five years. Mboyane and Lanzani (2011) also found that a significant proportion of a sample of spaza operators from the Kagiso Township reported robbery, vandalism and break-ins to be a constraining issue impacting on business feasibility and growth.

In the Western Cape, Gastrow et al. (2013) regarded crime statistics specifically concerned with foreign national spaza operators and found that the type of crime reported were predominantly robberies, with cash and airtime being the goods typically stolen. Charman and Piper (2012) specifically looked at xenophobic violence in Delft, which is an area also considered in this study. They considered police statistics and used primary data collected through surveys and focus groups and found that levels of violent crime against foreign owned shopkeepers are not significantly higher than for local shopkeepers. They, in turn, find that spaza shops in these areas operate under circumstance that international literature refers to as ‘violent entrepreneurship’ where
informal operations function in areas associated with high crime levels. Delft is considered an area with high crime levels and as a result, the criminality, which spaza operations face in this area, is not directed at spaza shops specifically but rather an outcome of the general environment of the area.

196. Although the survey used in this study did not explicitly ask on respondents to elaborate on the type of crime that was constraining, 5% reported “Theft” as the most important constraint in an open-ended question asking respondents to list five key factors constraining their business operations. This was grouped under crime in the initial analysis. Additional open-ended answers included words such as “Thieves”, “Criminals in Neighbourhood” and “Stealing by Workers”. This would suggest that both internal and external theft are problems for these operations. Based on the short literature review above, the type of crime that businesses are exposed to is expected to vary with the area, amount of employees, and nature of the ownership of the business and businesses in close proximity.

Spaza Owner perceptions with regards to proximity of large formal grocery retailers

197. The perceptions of spaza owners/managers with regards to the proximity of supermarkets were explored through a set of Likert-scale questions. The aim of these questions was two-fold. The first was to determine if spaza owners perceived the presence of formal retailing in townships to increase competition. The second was to establish if spaza owners perceived their relationship to formal retailing, in close proximity, as symbiotic or encumbering.

198. The first was a general question that dealt with spaza owners/managers perceptions on whether there is space for both retail formats in informal settlements. The results of this are presented in Figure 3.8 below.
199. As is clear from the above, 44% of respondents agreed with the statement that there is room for both retail formats in townships whilst 19% fully agreed. This implies that more than half of the sample felt that both spazas and large(r) supermarkets can operate in township areas. In terms of how proximity affected spaza business prospects, Figure 3.9 shows that the majority of spaza shop owners or managers perceived the presence of supermarkets in townships as growth constraining.

200. The above perception was validated with a question that explored the possibility of supermarket proximity being beneficial to spaza shops. Here respondents again had to express their level of agreement. The results are reflected in Figure 3.9.
Figure 3.10: Percentage of Sample’s Level of Agreement with "My business benefits from being close to a large grocery retailer"

201. The results in Figure 3.10 and Figure 3.11 seem somewhat contradictory in that the majority of the respondents answered they felt that there is space for both retail formats (See Figure 3.8 below) but overall respondents perceived the proximity of supermarkets as being growth constraining and having no benefits to their business. Due to this ambiguity, perceptions related to proximity are explored further by clustering the sample based on the reported distance to the nearest supermarket.

202. Three distance clusters are considered namely “less than one km away from the nearest supermarket”, “between 1 and 2 km away from the nearest supermarket” and “more than 2 km away from the nearest supermarket.” The statement concerning benefits of proximity perceptions shows that distance to nearest supermarket affects how spazas perceive benefits. Figure 3.11 shows that a higher % of respondents closer to large retailer disagreed with the statement, compared to the cluster that reported their distance in excess of 2km from the closest supermarket.

203. The statement which considers the perception of supermarket proximity impeding growth, by cluster, is presented in Figure 3.9 and Figure 3.12. It again seems to support the notion that spaza shop owners perceive proximity to supermarkets negatively. The level of disagreement seems to be inversely related to distance since the highest level of disagreement is associated with the group less than 1km away from the nearest retailer (combined fully disagree and disagreement of 63%). This decreases somewhat, to 59%, for
respondents located between 1km and 2km away. Of the respondents located more than 2km away, 44% disagreed with the statement.

**Figure 3.11: Percentage of Cluster’s Level of Agreement with "My Business Benefits from Being Close to a Large Grocery Retailer"**

![Graph showing percentage of agreement for different distance clusters](image)

204. Figure 3.12 corroborates the findings of Figure 3.9. Here in excess of 60% of all of the clusters agreed (agree and fully agree combined) that the presence of a large grocery retailer, in close proximity, makes it difficult for them to grow their business.

**Figure 3.12: Percentage of Cluster’s Level of Agreement with “The presence of a large retailer makes it difficult for my business to grow”**

![Graph showing percentage of agreement for different distance clusters](image)

205. In order to validate the differences between how the distance clusters perceived the benefits and threats related to growth, as apparent in Figure 3.9 and Figure 3.12, the Kruskal-Wallis test is applied. Formally, the hypotheses are presented in Table 3.3 below.
Table 3.3: Hypothesis related to growth and proximity of spaza shops to supermarket.

<table>
<thead>
<tr>
<th></th>
<th>H0</th>
<th>Result/Test stat</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>H1:</strong></td>
<td>No difference in how spazas with different levels of proximity to supermarkets perceived supermarket proximity's effect on business benefits.</td>
<td>6.91**</td>
<td>Reject H0</td>
</tr>
<tr>
<td><strong>H2:</strong></td>
<td>No difference in how spazas with different levels of proximity to supermarkets perceived supermarket proximity's effect on business growth.</td>
<td>1.11</td>
<td>Cannot reject H0</td>
</tr>
</tbody>
</table>

** indicating a 5% level of significance

206. Results in Figure 3.9 suggest that distance results in significant differences in how spaza owners/managers perceive benefits. The hypothesis that there is no difference in how the different clusters perceive proximity of supermarkets on spaza growth, could however not be rejected. This suggests that the incidence of spazas agreeing with benefits of formal retail proximity are higher for spazas located further away from supermarkets. Perceived benefits could include retailers as a form of supply or the fact that retailers could serve as an attraction point for consumers. The specific benefits are however difficult to gauge in that no question on this was included in the survey. For growth prospects, the general sentiment with regards to proximity is not affected by distance.

207. In order to explore the relationship between the spaza shop and retailer in the same proximity further, the retailer as a possible supply source is considered. Figure 3.13 presents the results on this and is less enlightening than expected. Of the four products that are focused on this report, all exhibit an approximately equal split between agreement and disagreement. In order to explore this further, a selection of the four products was considered separately. The total sample was divided into different size clusters (with sales/turnover used as a size proxy), where the clusters are organised as follows: Less than R200 per day, R201-R500 per day, R501-R1000 per day, R1001-R2000 per day, and More than R2000 per day.

208. This classification was then used to determine if the size has an impact on whether supplies are (sometimes) sourced from the closest supermarket or
large retailer. The logic behind this is that smaller sizes might be more inclined to source products from supermarkets in close proximity since they do not benefit from scale in terms of delivery and inventory capacity. The selection of products considered here is maize meal, cooking oil and milk. This is because in the case of bread only around 10% of the sample reported to obtain bread from retail formats (90% reported to be serviced directly by suppliers). The disaggregated results are presented in Figure 3.13 below.

**Figure 3.13: Percentage of Sample’s Level of Agreement with "Large local grocery retailers are an attractive source for food/grocery supplies"**
Figure 3.14: Percentage of Cluster’s Level of Agreement with "Large local grocery retailers are an attractive Source for Food/Grocery Supplies"

Figure 3.14 shows that for the products considered, spaza shops with sales in excess of R2000 and shops with sales of less than R500, agreement levels exceeds disagreement levels. In contrast to this, for respondents with sales between R501 and R2000, disagreement levels exceeded the level of agreement. The results presented here, therefore, suggest that there could be synergies between spaza shops and supermarkets but that these synergies are affected by size (three of the 5 clusters showed a substantial level of
agreement with the statement under consideration). This could possibly explain by spazas at different ends of the size spectrum, using supermarkets in proximity for top-up purposes.

Conclusion

210. The results presented in this section suggests that Crime and Competition are the highest ranked containing issues reported by respondents. In terms of competition, the perceptions related to competition from formal retailers in close proximity was further explored. Despite a substantial part of the sample agreeing that there is room for both spazas and supermarket in townships, subsequent questions point to a high level of agreement with the notion that supermarket proximity impedes growth and does not have benefits to informal retailing in related areas. If the aggregate sample is disaggregated by size and distance to nearest supermarket, there are however clusters that appeared to be comfortable with the view that supermarkets are an attractive source of supply. This would suggest that, despite the general negative sentiment towards formal retailing, there might be some synergies between the two retail formats.

3.7 Consumption patterns in townships

211. As established above, the food retailing sector, whether formal or informal, forms part of a set of broader value chains that enables the movement from farm to store. The establishment and sustainability of these value chains are directly related to the value that these chains can derive by servicing the final consumer. Within this context, the dynamics between formal and informal retailing should not only be considered in terms of the effects of formal retailing on informal livelihoods (specifically those of spaza shop owners and managers) but also on what township consumers prefer and how they perceive formal and informal retailing. This section, therefore, focuses on two key aspects related to township consumers. Firstly, basic shopping patterns in terms of preference and frequency of 300 township residents are presented. Secondly, the preference to buy certain products at spazas or supermarket are analysed by considering the effect of different consumer attributes on this decision. Attributes considered here include gender, employment status and income level. The logic for this analysis is if it is found that different formats service different market segments it could suggest that both formats are
required close to or in township areas and support the notion that the two formats might not be competing for consumer spend within the same retail space.

*Consumer shopping patterns*

212. In order to understand the food purchasing behaviour of consumers in townships, key findings in terms of purchasing preferences and frequency are presented in the graphs below. Figure 3.15 serves as background on the income distribution of the sample. From this figure, it is evident that almost 20% of the sample earns between R 1 501 and R 3 000 per month. Approximately 30% of the sample earned between R 3 001 and R 5 000 per month and around 27% earned between R 5 001 and R 10 000 per month. The sources of income are subsequently presented in. The overwhelming primary source of income for the sample was reported to be wages and salaries of a household member. In terms of employment, 29.7% of the sample indicated that they are currently unemployed.

**Figure 3.15: Income Distribution of the Sample**
213. Figure 3.17 and Figure 3.18 below consider the various consumer motives for shopping at different retail formats. Figure 3.17 specifically considers the key reasons for spaza inclinations. Here, the primary reason for spaza patronage is related to convenience in terms of location with convenience in terms of shopping hours rating the highest in terms of a secondary characteristic. If this is compared to the results of Figure 3.18 below, which represents reasons for supermarket patronage, the difference is striking. Here, consumers cited price factors as the primary motivation for favouring supermarkets, with the secondary consideration, ranking the highest, being product variety. This seems to suggest that consumers perceive the different retail formats independently and favour the different formats for different reasons.

**Figure 3.17: Primary and Secondary Considerations for Spaza Shopping**

<table>
<thead>
<tr>
<th>Consideration</th>
<th>Primary</th>
<th>Secondary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Packaging size</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Price</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Variety of Products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convenience of shopping hours</td>
<td>40</td>
<td>20</td>
</tr>
<tr>
<td>Convenience of location</td>
<td>50</td>
<td>30</td>
</tr>
</tbody>
</table>

**Figure 3.16: Primary Source of Income**

![Primary Source of Income](chart)

- **Wages and Salaries**: 80,00%
- **Social Grants**: 20,00%
- **Remittances**: 0,00%
214. Figure 3.19 and Figure 3.20 relates to purchasing frequency and monthly food spent at supermarkets and spaza shops. From Figure 3.19 it is apparent that spaza purchases were reported to be much more frequent compared to purchases at supermarkets. The majority of the sample reported that they visit a spaza once a week or more. In terms of supermarkets, the largest share of consumers (50%) indicated that they purchase at these outlets once a month with a high proportion also purchasing weekly. This supports the notion that supermarkets cater for weekly/monthly shopping trips and spaza shops are used for convenient daily top-up shopping trips.

215. Figure 3.20 shows that almost 50% of the sample reported that they spend less than 20% of their total food spent at spazas. Contrastingly, just over 40% of the sample indicated that they spend between 60% and 80% of their total food expenditure at supermarkets. The most important products purchased at
spazas, this were reported to be bread, milk, sugar and convenience products such as crisps or sugary drinks. Non-food related spaza purchases often mentioned were airtime and paraffin.

Figure 3.20: Percentage of monthly food expenditure at different outlets

Due to the fact that price is a key factor in terms of competition, consumer patterns related to price were tested by determining their level of agreement with statements related to price. This is presented in Figure 3.21 and Figure 3.22 specifically regards how consumers behave with regards to price differences between spazas. Here it is apparent that almost 40% agreed with the statement that they shopped around between spazas to find the best price, with roughly 17% strongly agreeing with this statement. (See Figure 3.21 below). This would suggest that almost half of the sample considered price when deciding which spaza outlet to support. The level of agreement with searching for the best price between formal and informal outlets is even stronger with 36% agreeing and 28% strongly agreeing with the statement. This would suggest that there is a form of price competition between the two retail formats.
Retail format choice

217. In terms of explicitly analysing consumer preferences for a specific retail format (spaza or supermarket) consumers were asked to indicate their outlet preference for 7 different products. The various products considered, with its associated percentage of sample preferences are depicted in Figure 3.23 below. Here it is apparent that bread and milk purchases were overwhelmingly preferred at spaza outlets, whereas maize meal, cooking oil and sugar purchases were preferred at supermarkets. Potatoes and tomatoes were more evenly distributed between the two formats.
In order to determine if the preferences as indicated in Figure 3.23 below, are related to specific consumer attributes, a probit model for each of the products under consideration was estimated (see Table 3.4 below). The four consumer attributes that were considered as explanatory variables are gender, age, employment status and income level. The probit estimates are subsequently used to determine the probability of a change to purchase at a supermarket given an incremental change in one of the explanatory variables and the associated marginal effects.

Table 3.4: Estimation Results of Binary Probit model

<table>
<thead>
<tr>
<th>Product</th>
<th>Variable</th>
<th>$\beta$</th>
<th>Marginal Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bread</td>
<td>Gender</td>
<td>0.13</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>Age</td>
<td>-0.05</td>
<td>-0.01</td>
</tr>
<tr>
<td></td>
<td>Employment Status</td>
<td>0.37*</td>
<td>0.08*</td>
</tr>
<tr>
<td></td>
<td>Income</td>
<td>0.1</td>
<td>0.02</td>
</tr>
<tr>
<td>Milk</td>
<td>Gender</td>
<td>0.29</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>Age</td>
<td>-0.03</td>
<td>-0.01</td>
</tr>
<tr>
<td></td>
<td>Employment Status</td>
<td>0.26</td>
<td>0.09</td>
</tr>
<tr>
<td></td>
<td>Income</td>
<td>0.11*</td>
<td>0.04*</td>
</tr>
<tr>
<td>Maize Meal</td>
<td>Gender</td>
<td>-0.22</td>
<td>-0.06</td>
</tr>
<tr>
<td></td>
<td>Age</td>
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<tr>
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Table 3.4

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<tr>
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<td>-0.06</td>
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<td>Sugar</td>
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<td>-0.1</td>
<td>0.12</td>
<td>-0.09</td>
<td>-0.19**</td>
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</tbody>
</table>

219. In Table 3.4 a 10% significance is denoted by *, a 5% by ** and a 1% by ***. This suggests that income is a significant determinant for outlet choice in the case of milk, maize meal, cooking oil and sugar. Employment status was found to be a significant determinant for bread. Tomatoes and potatoes did not have any significant determinants amongst the demographic determinants considered here. This could probably be attributed to spaza shops not frequently stocking these products. The computed marginal effects also show that bread buyers that are unemployed are 8% more likely to buy bread from spazas than supermarkets. Contrastingly, for milk, the marginal effect on income suggest that persons in higher income categories are more likely choose spazas. The marginal effects for maize meal, cooking oil and sugar, in turn, points to an increase in the likelihood that the consumer will choose local supermarkets when income increase.

220. The statistical significance of the income parameter on milk, maize meal, cooking oil and sugar, therefore, seem to propose a degree of market segmentation between spazas and supermarkets where the segmentation is based on income level. It further shows that supermarkets are more likely to service higher-income consumers in the case of non-perishable staples. In the case of milk, income segmentation shows that spaza shops are also servicing high(er) income township consumers. Due to the heterogeneous nature of milk in terms of perishability and packaging, this result is difficult to interpret. This preference could however possibly be attributed to convenience factors.
3.8 Conclusion

221. The aim of this report is to provide context to how informal food retailing fits into the broader food retailing milieu. To this end, four research objectives were considered. The first was to understand the relationship between informal retailing and the rest of the value chains in question. This was done through a dual approach in which the traditional formal value chains were mapped and discussed. It was subsequently supplemented by data on procurement and sales practices of the 300 spaza owners/manager interviewed. The latter revealed that spaza shops are overwhelmingly reliant on wholesalers as a source of supply for cooking oil, maize meal and to a lesser extent milk (where 16% of the respondents were serviced directly by suppliers). In the case of bread in excess of 80% of the sample noted that they relied on processors to service them with direct supplies.

222. Procurement frequency also differed substantially between the products. In the case of bread, delivery was reported to occur once a day or once every second day by the majority of the sample. This was similar in the case of milk. Cooking oil and maize meal were however purchased less frequently with most respondents indicating a procurement frequency of once a week or less. The notable difference between the sales and procurement practices of the products considered in this report, therefore, centres on frequency and supply source, which is implicitly driven by the perishability of the product. Results further point to scale advantages, in terms of sourcing supplies directly from suppliers/processors, specifically in the case of milk. It was found that spazas with higher turnover where more inclined to be supplied directly by the processors compared to shops with lower turnover.

223. The second objective was concerned with the analysis of the competitive strategies of spazas, with a specific focus on prices. Pricing analysis for the aggregate sample of spazas and supermarkets revealed that there are significant price differences between spaza outlets and formal retailers in townships in the case of maize meal, milk and bread. Brown bread was found to be 8% more expensive at spaza stores compared to supermarkets whereas white bread was only 6% more expensive. Maize meal was found to be 38% and milk 40% more expensive at spaza outlets, though this figure is likely to be amplified due to the smaller packaging bias associated with spazas. Contrastingly, cooking oil was found to be 2% cheaper at spazas, although
this difference was not statistically significant. These results speak to the second objective.

224. With regard to objective 4, results associated with consumer travelling patterns suggests a degree of market segmentation between spazas and supermarkets. The graphical analysis of purchasing considerations and frequency revealed that spazas are utilised for convenience in terms of location and operating hours, whereas supermarkets were preferred when price and product variety were important considerations. In order to evaluate the effect of certain consumer attributes related to demography, a probit model was estimated. Here results pointed to a degree of market segmentation driven by income levels. Specifically, non-perishable staples were more likely to be purchased at supermarkets for consumers in higher income brackets. Results in this section, therefore, support the general notion that spaza shops serve as convenience outlets that are frequently utilised for top-up purposes, with consumers preferring supermarkets, due to price and variety, for general grocery shopping.

225. There are some caveats associated with the discussions above. Firstly, although the sample size is substantial and includes respondents from the four major townships in South Africa, the sample cannot be regarded as representative of the total population of spaza shops in South Africa. Business Day (2017) reports that Nielsen estimates the total amount of informal food retailers in South Africa at around 14 000. The respondents included here, therefore, represents about 2% of the total population. As a result, the work presented here should be seen in an exploratory context and should be used not to quantify the differences and relationships between variables unequivocally. Secondly, it is terribly difficult to survey a heterogeneous group with a standardised survey. Allot of the salient features (such as arm length transacting), and nuances associated with specific shops is exactly what ensures the feasibility of their business.

226. Literature and the results presented here show that supermarket establishment/presence does affect the food retail geography in townships and that spaza shop owners generally perceive proximity of formal retailing in a negative light. Despite this, growth in the number of consumers engaging in spaza shop patronage has increased significantly since 2015 (see Business Day, 2017 based on Nielsen statistics). This points to the ability of spazas to
cater to certain consumer needs that are not addressed by supermarkets. This study suggests that these needs are related to convenience although previous literature has also found that this could be to service consumers with inadequate funds to procure standard products and unit size available in formal retail outlets.

227. If this is reconciled with the heterogeneity of the sample, one could argue that the ‘informal’ nature of their business is exactly what gives spazas their competitive edge. The informality allows them a certain degree of agility to cater and adapt to changing consumer needs. A clear example from this study is the varying and very loose credit terms certain spazas provided to customers. What previous literature on the effects of formal retailing in townships have failed to consider is consumer procurement patterns and preferences. In this study, it is however shown that there is a degree of market segmentation, based on consumer patterns related to income and convenience.

228. It is, therefore, the opinion of the authors that despite competitive behaviour between formal and informal retail there is room in townships for both formats. The absence of supermarkets in townships would potentially make the survival of informal retail format somewhat more feasible, but this would ultimately deprive township consumers of access to the benefits associated with large-scale, formal retailing. These include in-store value propositions in terms of product variety and prices and substantial investments in sophisticated and efficient value chains. From a holistic point of view, both formats are therefore essential in township economies. It would serve policy markers well to strengthen informal economy entrepreneurs by focusing on some of the constraining issues, not directly related to competition, identified here and in literature. Broadly, this could include curbing crime and strengthening business acumen of spaza operators.
4 THE IMPACT OF THE EXPANSION, DIVERSIFICATION AND CONSOLIDATION OF NATIONAL SUPERMARKET CHAINS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS AND RURAL AREAS AND THE INFORMAL ECONOMY

4.1 Introduction

229. There is widespread perception that the expansion, diversification and consolidation of national supermarket chain stores into townships, peri-urban and rural areas (“non-urban areas”) and or the informal economy affects the viability of small independent retailers and their ability to expand. These small and independent retailers also face certain barriers such as difficulties associated with accessing financial capital, which exacerbate their inability to effectively respond to the competitive pressures they face from large national supermarket chain stores. It is also widely perceived that these expansions have an impact on employment. It is believed that post the entry of a national supermarket chains, customers are drawn away from small and independent retailers, which in some instances, forces the owners to shut down the store which has negative effect on the owner and the employees in these stores. Despite some of the highlighted negative impact, it is also submitted that, the entry of national supermarket chains into these areas create new job opportunities for the formal labour market. And lastly, there is considerable interest on the overall welfare impact these large supermarkets have on consumers. These themes will form the basis of the analysis in this chapter.

230. The South African townships are typically densely populated, with rapidly developing areas, largely inhabited by the commuter population, particularly in the informal areas (generally referred to as squatter camps or informal settlements). Therefore, there is a need to have convenience stores which operate until late at night to cater for the commuter population who arrive back at their residential areas late in the evenings and are in need of grocery items which are affordable and in quantities suitable for immediate consumption. As a result, there is a high incidence of ownership of spaza shops in the grocery retail sector which largely operate at an informal level, from residential properties, and with a limited product range, focusing on basic grocery items.

231. Small businesses are recognized as one of the effective ways to address the challenges posed by high levels of unemployment in South Africa, by providing
individuals with a source of income and thereby empowering them. When compared to other developing countries, the South African level of entrepreneurship has been measured to be one of the lowest\textsuperscript{31}. This is despite the increase in the number of South Africans who believe there are good opportunities for starting a business in their area, as well as those who believe that they have the necessary skills, knowledge and experience to start a business.

4.2 The expansion, diversification and consolidation of national supermarket chains into townships, peri-urban areas and the rural areas.

232. Pre-1994, the retail needs of townships, rural and peri-urban areas were largely serviced by small, often informal businesses and the residents would either travel to the main city centers for their shopping or purchase from general dealers or supermarkets. There has been a significant change to this landscape, following the democratic elections in 1994, resulting in a huge move by the national supermarkets into townships, peri-urban and rural areas.

233. National supermarket chains have been expanding their footprint in these areas, occupying shopping centres and malls located in townships, peri-urban and rural areas, directly servicing areas that were previously serviced by small and independent retailers largely owned by local South Africans.\textsuperscript{32}

234. In light of the expansion, diversification and consolidation of national supermarket chains into townships and peri-urban areas it could be interpreted to mean that some of the consumers serviced by the small independent grocery retailers may have switched to purchasing their grocery items from the national supermarket chains. The national supermarket chains provide the non-urban residents with both convenience and monthly shopping services.

\textsuperscript{31} The Global Entrepreneurship Monitor 2015/2016, P4
\textsuperscript{32} Recently, some of the national supermarket chains have been extending their footprint. Pick ‘n pay has done so by converting independent spaza shops into franchise convenience stores, and extending to filling station stores. Woolworths also has a branded convenience store that is open for 24 hours. National supermarket chains have also been diversifying their stores and product offerings, giving customers a varied retailing experience that is often tailored for the targeted customers. Submission by Unitrade Management Services, dated 15 June 2016, p4, para 5.
235. It is also noted that prior 1994, the small independent businesses operating in these areas where also largely owned by South African citizens, which has drastically changed post 1994\textsuperscript{33}.

236. Despite this change, there are consumers in particular from the lower income brackets who cannot afford the offerings of the large retailers and therefore still buy from spaza shops and local independent shops\textsuperscript{34} \textsuperscript{35}. In assessing this objective, the Inquiry sought to understand the effects (both positive and negative) of the entry of national supermarket chains into townships, peri-urban and rural areas on small and independent businesses and also for the consumer. The Inquiry’s assessment in this regard was guided by the purpose of the Act as set out in Section 2 (b), (c), (e), (f) and (g) of the Act. These provisions provide the following:

“2. The purpose of this Act is to promote and maintain competition in the Republic in

…(b) to provide consumers with competitive prices and product choices;

(c) to promote employment and advance the social and economic welfare of South Africans …

(e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;

(f) to promote a greater spread of ownership, in particular to increase the ownership stakes of “historically disadvantaged persons;”

(g) to detect and address conditions in the market for any particular goods or services, or any behaviour within such market, that tend to prevent, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic;…”

237. In particular, the Inquiry sought to examine:

\textsuperscript{33} The developments post 1994 are discussed in detail in Objective 3 on assessing the dynamics of competition between local and foreign national operated businesses.

\textsuperscript{34} Refer to a detailed discussion under section 3.5 on the competitive strategy of spaza shops in Objective 6. These are consumers who may not be able to afford purchasing a bag of rice (500g) but would be able to buy a cup of rice as offered by some of the spaza shops.

\textsuperscript{35} This was also a finding made by Peyton \textit{et al} (2014). This finding is also discussed under the competitive strategies of spaza shops in responding to the competition challenge from the large supermarket chains.
whether the entry of national supermarket chains in townships, peri-urban and rural areas has led to an increase or a decrease in the number and performance (turnover) of small and independent retailers in these areas;

barriers faced by small and independent retailers and whether these are likely to inhibit their ability to effectively respond to the competitive pressures faced by them from national supermarket chains;

the effects of the entry of national supermarket chains into townships, peri-urban and rural areas on employment; and

the effects that the entry of national supermarket chains into townships, peri-urban and rural areas on consumers.

**4.3 The impact of national supermarket chains on the performance and the number of small and independent retailers**

**4.3.1 Trends in the entry and exit of small independent stores**

In assessing the impact of the entry of national supermarkets into townships, peri-urban and rural areas on the performance and the number of small and independent retailers, the Inquiry looked at the trends in entry and exit of the small independent stores in these areas. The purpose of assessing the trends in entry and exit was to understand if there is a link between the number of independent retail stores that have entered and exited the market and the rapid increase of malls and shopping centres anchored by the national supermarket chains.

Previous studies conducted in the sector have shown a decrease in the number of small and independent retailers trading in these areas. Some research points to a high correlation between the decline in the performance of small informal businesses and national supermarkets broadening their geographic footprint in townships and non-urban areas. Furthermore, it has been hypothesized that the shrinking township informal and formal grocery retail market, and the subsequent rise of national supermarkets have

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37 Of course, correlation is not causation.
negatively impacted profits, employment, entrepreneurship, product offerings and operational strategies of independent small businesses\(^{38}\). Although there is an abundance of research on this issue, most of it has been found to be inconclusive, anecdotal, and inadequate to produce any irrefutable inference.\(^{39}\)

240. The anecdotal evidence provided to the Inquiry shows that there has been an exit of small businesses especially following the entry of national supermarket chains within the vicinity of small independent businesses.

241. On the positive side, from the consumer perspective, the bulk of the submissions suggest that the entry of large national supermarket chains offers a variety of products at relatively lower prices and there are other incidental lifestyle benefits that comes with these developments. The negative side of this is that as a result of product offerings, the lower prices, the convenience etc. brought forward by national supermarket chains smaller traders lose their regular customers who are then redirected to the national supermarket chain stores\(^ {40}\). These constrain the ability of these traders to effectively compete and be sustainable in these markets.

**Submissions from stakeholders**\(^ {41}\)

242. Public consultations with small independent traders across the country produced differing views regarding the impact of the entry of national supermarket chains on their businesses and other businesses in non-urban areas.\(^ {42}\) Each trader’s experience differed depending on a number of factors such as the location of their business in relation to the shopping centre where national supermarket chains are located, the location of other small independent retailers, the type of business and product offering etc.

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\(^{39}\) Vanya Gastrow comment on ToR dated 25 June 2015, p2, para 1.2.

\(^{40}\) Factors such as the inability of smaller traders to buy in bulk from suppliers and wholesalers offsets their ability to sell at competitive prices.

\(^{41}\) See section 13.1 in Annexure 4

In areas like KwaMashu and townships on the periphery of Polokwane, the general view presented by formal and informal business operators was that the wider product offerings by national supermarkets adversely impacts the performance of small grocery retailers, resulting in the closures of most of these businesses as they stop being competitive, particularly on price and product variety.\(^{43}\)

On the other hand, the view that also emerged was that national supermarkets entering non-urban areas presented small independent retailers with an opportunity to capture the foot traffic that is directed to and from the malls anchored by these large national supermarkets, depending on the location of the small business in relation to the national supermarkets.\(^{44}\) This was submitted with the acceptance that it would to some extent require the small business in question to diversify its offering and offer better quality of products than what the large retailers would be offering.

**The small business surveys**

To supplement stakeholder submissions, the Inquiry commissioned a survey, to, amongst other things assess the entry and exit trends of small and independent retailers and their performance considering the increase of shopping malls and centres anchored by large supermarket chains into these areas. In 2017, the Inquiry contracted the Sustainable Livelihoods Foundation\(^{45}\) ("SLF") to conduct a small business survey ("small business survey"). SLF had previously conducted a similar study in this sector, the Inquiry sought to conduct a comparative study of the areas previously surveyed.

The small business survey selected non-urban residential areas in different provinces. The areas that had been previously surveyed by SLF were Ivory Park (Gauteng), KwaMashu (KwaZulu-Natal), Thabong (Free State) and Vrygrond (Western Cape). In addition to the areas that had been previously surveyed, SLF further conducted surveys in five other provinces that had

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\(^{44}\) Minutes of meeting between City of Mbombela and the Inquiry, dated 05 September 2016

\(^{45}\) In addition to having conducted other related surveys in the informal sector, SLF had previously done work similar that of the Inquiry.
never been surveyed. The areas surveyed were De Aar (Northern Cape), Phokeng (North West), Modjadji (Limpopo), Nkomazi (Mpumalanga) and Lusikisiki (Eastern Cape)\textsuperscript{46}. Altogether, SLF visited and interviewed 1 181 informal retail grocery outlets.

\textit{The results of the business survey on areas previously surveyed}

247. Figure 4.1 below shows the number of informal grocery retailers in Ivory Park, KwaMashu, Thabong and Vrygrond. In particular, the old numbers are those identified in the 2012 survey and the new numbers are those identified during the 2017 survey. Both the old and new numbers reflect the businesses that were surveyed to try and establish the trends in the entry and exit of spaza shops in the aforementioned areas. In summary, the survey found that except for Thabong, all the other areas experienced a decline in the number of small independent grocery retailers since they were last surveyed.

248. It was further noted that in general, South African ownership of the small and independent businesses in these areas had declined, with the bulk of the closures in all areas being spaza shops that were owned by locals.\textsuperscript{47}

\textbf{Figure 4.1 Trends in the entry and exit of spaza shops in selected surveyd areas.}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure4_1.png}
\caption{Trends in the entry and exit of spaza shops in selected surveyed areas.}
\end{figure}

\textsuperscript{46} It is important to note that some of the areas surveyed, ie. Ivory Park, Vrygrond, national supermarket chains had been in existence long before both surveys were conducted. Secondly, the areas explored varied in terms of their socio economic status. The survey included all small and independent stores irrespective of the nationality of the owners to assess the impact of the supermarket chains in that area.

\textsuperscript{47} In 2012 KwaMashu South African-owned informal grocery retailers exceeded foreign owned retailers. The 2017 survey found that South African-owned small retailers had drastically declined. On the other hand, the number of foreign owned retailers remained relatively unchanged in the same period.
249. In Ivory Park, the number of spaza shops declined by 3.3%. There was already a Pick ‘n Pay store in operation when the area was first surveyed in 2012. Therefore, attrition could not be directly attributed to the presence of the Pick n Pay store.

250. In Vrygrond, the decline was at an estimated 16.9%, and KwaMashu is said to have seen a decline of 71%. On the contrary, Thabong experienced an increase of approximately 59.2% small retailers\(^{48}\).

251. Furthermore, in the first-round survey period, South African-owned informal grocery retailers exceeded foreign owned retailers in that area. The 2017 survey found that South African-owned small retailers had declined with the number of foreign owned retailers having remained relatively unchanged.

The results of the business survey on areas not previously surveyed

252. The Inquiry extended the areas to be surveyed to other provinces focusing on De Aar, Phokeng, Nkomazi, Lusikisiki and Modjadji kloof. In general, the survey found that South African ownership share of the township spaza market had declined. In particular, the survey revealed that foreign nationals own approximately 80%\(^{49}\) of the spaza shops in areas such as Phokeng, in the North West.

Conclusion on the findings of the small business survey

253. The survey results showed that it is largely the South African owned spaza retailers and general dealers that have shown a massive decline. In the context of the current survey, the decline of one group of informal retailers and resilience of another group draws yet another equivocal conclusion.

254. In KwaMashu a Pick n Pay store opened following the 2012 survey by SLF. Based on the available evidence, we cannot conclude that the Pick n Pay supermarket in KwaMashu as cited by Madlala (2016) resulted in the changing dynamics in the number of small independent stores as found during the 2017 survey. If indeed the opening of the supermarket caused the decline, other factors, such as those cited by Madlala (2016) (i.e. management skills) and

\(^{48}\) Small business survey, 2017
\(^{49}\) Small business survey, 2017
other various factors that can be seen below in the barriers faced by small traders, would be more appropriate in explaining the closures of these businesses.

255. The survey in the Thabong area exhibited atypical trends from all the other regions. Although the Thabong Shopping Centre underwent massive extensions in 2014 and 2015, which included adding two grocery retailers, Superspar and Pick n Pay, the survey data shows that the number of small retailers since the last survey period (2015) increased from 51 to 12550. The findings suggest that between 2015 and 2017 small retailers in Thabong more than doubled in growth. The positive outcome is marked by an increase in both foreign and South African owned small retailers. This result contradicts the proposition that the entry of national supermarkets leads to a decline in the number of small businesses.

256. The small business survey attempted to the extent possible, to understand the impact that the large supermarket chains operating in townships and rural areas have on small retailers. As with other previous studies and surveys, the small business survey cannot provide conclusive results either for or against the assertion that the entry of national supermarket chains lead to a decline in the number of small businesses. More importantly, new evidence shows that in one area, despite the addition of national supermarket chains, the number of small grocery retailers has indeed increased although what has been noted is the change in the dynamic of ownership with the majority of these businesses being owned by foreign nationals.

257. The increase in the number of small grocery retailers close to shopping centers supports the finding by another survey conducted that found that there could be synergy between spaza shops and national supermarkets co-existing for the benefit of consumers51. We conclude that the patterns expressed in these numbers clearly indicates that there are other factors that are contributing to the decline of small independent retailers in these areas and that such impact cannot be attributed only to the increasing shopping centre and mall developments occupied by the large supermarket chains.

50 Small business survey, 2017
51 A study conducted that sought to understand amongst others, the competitive strategies of spaza shops in relation to formal supermarkets and understand consumer patters and preferences for purchases at spaza shops and from formal supermarkets.
Consumer survey

258. Turning to evidence from consumers on the trends in the entry and exit of small and of small independent retailers, Figure 4.2 below shows responses from consumers who reported using “other retailers before the large supermarket in their area opened”. The question posed to survey respondents was, “if you used other retailers before the large supermarket opened, what is your perception on the number of smaller independent retailers in your area now?”

Figure 4.2: Consumer perception of the number of small retailers in their neighbourhoods

- Foreign owned retailers decreased 3%
- Foreign owned retailers increased 38%
- Local retailers decreased 31%
- Local retailers increased 3%
- Local retailers remained the same 15%

Source: Inquiry consumer survey, 2017

259. The descriptive statistics show that 41% of the respondents reported an increase in the general number of spaza shops, whereas 34% reported a general decline in spaza shops. In addition, 25% of respondents thought that spaza shops remained the same. It is worth noting that of the 41% view increase in spaza shops, 38% of respondents were of the view that this was an increase in foreign owned spaza shops.

Competitive strategies of spaza shops

260. Spaza shops and supermarket chains sell groceries in parallel. As a result, there is an expected level of competitive interaction between them. Lichthelm (2008) found that the opening of these retail establishments (national supermarket chains) in townships did have a negative effect on the number of spaza shops in operation and on the turnover levels of those that remained in business subsequent to the opening of the formal retail stores.

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52 The level of competition between spaza shops and national supermarket chains has been widely researched in scientific literature.
Mdlala (2015), had similar results, noting that spazas experienced lower consumer volumes, subsequent to the opening of a supermarket in close proximity and responded by adjusting their marketing strategy. Contrastingly, Peyton et al. (2014) note that although supermarket expansion in informal economies have been pervasive, consumption patterns of poor households are often incompatible with the competitive strategies of national supermarket chains.53

261. Competition can manifest in various forms such as convenience offerings in shopping hours, the convenience of location, credit provision, product mix and price. This section evaluates some of the aspects related to the competitive strategies of spazas, specifically looking at credit provision, convenience and prices.

Extended trading hours

262. Spaza shops are positioned to compete on convenience related to accessibility (in terms of operating hours and proximity) relative to the national supermarket chains.54

263. The majority of spaza shops surveyed indicated that they operate for extended hours as this is a critical component of their competitive strategy. From the survey, only 3 respondents out of the total sample of 300 spaza shop, indicated that they did not have extended shopping hours.55

Credit provision

264. Spaza shops are also generally known to offer their customers credit in the form of allowing customers to take basic items from their shops on credit payable monthly or weekly depending on the arrangement.56 Further to offering food on credit, some spaza shop owners also offer credit/loans to customers within their communities.57 Approximately 30% of the spazas

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53 Peyton (2014) finds that marginalised consumers are often not able to afford larg(er) packing formats associated with formal retail and that spaza shops speaks to this need by providing smaller packing sizes for example instead of a 700g loaf of bread, spazas offer half a loaf of bread, affordable for the low income group.

54 This was cited in the consumer survey as one of the reasons for spaza shop patronage, convenience in location and trading hours.

55 Extended operating hours were classified as anything other/longer than traditional retail hours of 09:00-19:00.

56 This was found to be more prevalent with foreign traders with local spaza shop owners submitting they did not generally offer credit to their customers.

57 Local traders also informed the Inquiry that they did not offer loans to customers as the risk of repayment were too high.
interviewed indicated that they provide credit. What is, however, striking is that an additional 42 respondents (14% of the total sample) cited customers not repaying their debt as a severe business constraint, even though they indicated that they do not provide credit. This discrepancy points to the level of credit provision potentially being as high as 44%.

Prices

265. The Inquiry collected samples of associated brands for specified unit sizes to compare prices of the products between spaza shops and national supermarket chains. The descriptive statistics of spaza prices and national supermarket chain prices (for the products under consideration) are presented in Table 4.1 and Table 4.2. The number of price observations exceeds the number of spaza and supermarket units interviewed since more than one price per product were collected per establishment.

266. For comparative purposes, the prices of the various products were converted into common units, for example, spazas that reported a price for a 500ml of milk and supermarkets that reported prices for 2 litres were converted into price equivalents for 1 litre.

Table 4.1: Descriptive price statistic of spaza shops.

<table>
<thead>
<tr>
<th></th>
<th>Brown Bread</th>
<th>White Bread</th>
<th>Milk</th>
<th>Maize Meal</th>
<th>Cooking Oil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observations</td>
<td>637</td>
<td>612</td>
<td>630</td>
<td>677</td>
<td>684</td>
</tr>
<tr>
<td>Mean</td>
<td>R11.62</td>
<td>R12.42</td>
<td>R17.44</td>
<td>R10.32</td>
<td>R17.53</td>
</tr>
<tr>
<td>Min</td>
<td>6</td>
<td>5</td>
<td>7</td>
<td>4.8</td>
<td>6.19</td>
</tr>
<tr>
<td>Max</td>
<td>17</td>
<td>17.50</td>
<td>40</td>
<td>28</td>
<td>33</td>
</tr>
<tr>
<td>Std Dev.</td>
<td>1.42</td>
<td>1.57</td>
<td>5.96</td>
<td>2.48</td>
<td>4.16</td>
</tr>
</tbody>
</table>

An alternative answer could be that credit-provision was perceived as a constraint in that spaza operators are unable to offer credit to customers. This inability is as a result of high defaulting rates of customers. Another interesting result was that only 36% of 26% reported to supply credit, stated the terms for providing this service. From these responses, it also seems that this service is mostly provided free of charge, with only two respondents specifying interest terms. The payment period, where specified, varied significantly between respondents but ranged from a few days to month end, which in severe cases can imply as much as 30 days.

Spazas usually supply more than one unit size of a product, for example, 500ml milk, 1 litre milk and 2 litre milk. In selected instances spazas also stock more than one brand per product line.

The protocol, with regards to price collections, was for enumerators to collect prices, brands and unit size from spaza shops for the products under consideration. In the case of supermarkets, enumerators were instructed to collect the three lowest prices, with associated brands for specified unit sizes. Here the unit sizes were specified and restricted to the sizes/packaging that is known to have the largest sales volumes. Industry experts suggested that these are 700g loaves of bread, 2-litre bottles of milk, 5kg bags for maize meal and 750ml for cooking oil.
Table 4.2: Descriptive price statistics of supermarkets.

<table>
<thead>
<tr>
<th></th>
<th>Brown Bread</th>
<th>White Bread</th>
<th>Milk</th>
<th>Maize Meal</th>
<th>Cooking Oil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observations</td>
<td>100</td>
<td>100</td>
<td>97</td>
<td>161</td>
<td>83</td>
</tr>
<tr>
<td>Mean</td>
<td>R10.72</td>
<td>R11.73</td>
<td>R12.37</td>
<td>R7.43</td>
<td>R18.02</td>
</tr>
<tr>
<td>Min</td>
<td>6.99</td>
<td>8.85</td>
<td>5.20</td>
<td>9.50</td>
<td>8.99</td>
</tr>
<tr>
<td>Std Dev.</td>
<td>1.37</td>
<td>1.33</td>
<td>1.07</td>
<td>1.60</td>
<td>3.24</td>
</tr>
</tbody>
</table>

267. The differences between the products under consideration are depicted in Figure 4.3 below. The comparative study found that the largest differences between spaza shop and national supermarkets chains prices were for milk and maize meal, with average spaza shops being approximately 40% higher for both products. It should, however, be noted that spazas are more inclined to sell smaller unit sizes which are comparatively more expensive (per unit) than their larger unit size equivalents.\(^62\) In the case of cooking oil, average prices at spaza outlets were 2% lower than averages recorded for supermarkets. Except for cooking oil, all differences between average spaza shop prices and average supermarket prices were significant.

Figure 4.3: Outlet price difference.

268. A test for the significant difference in means was also conducted for each product. This is presented in Table 4.3 below.

269. In terms of relating pricing to proximity to national supermarket chain stores, the aggregate sample was clustered into three clusters namely “more than 2km away from nearest supermarket,” “between 1km and 2km away from the

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\(^{62}\) This would likely amplify the price difference. If actual product sizes were to be compared, this difference could be somewhat less.
nearest supermarket” and “less than 1 km away from the nearest supermarket.” The average price per product is presented in each cluster in the table below.

Table 4.3: Average spaza shop price disaggregated by supermarket proximity.

<table>
<thead>
<tr>
<th></th>
<th>Brown Bread (700g)</th>
<th>White Bread (700g)</th>
<th>Milk (1 litre)</th>
<th>Maize Meal (1 kg)</th>
<th>Cooking Oil (750 ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 km away</td>
<td>11.66</td>
<td>12.31</td>
<td>15.28</td>
<td>10.17</td>
<td>17.10</td>
</tr>
<tr>
<td>Between 1km and 2km away</td>
<td>11.52</td>
<td>12.33</td>
<td>15.91</td>
<td>10.44</td>
<td>17.68</td>
</tr>
<tr>
<td>More than 2km away</td>
<td>12.31</td>
<td>15.93</td>
<td>20.22</td>
<td>11.14</td>
<td>17.94</td>
</tr>
<tr>
<td>Average Supermarket Price</td>
<td>10.72</td>
<td>12.42</td>
<td>12.37</td>
<td>7.43</td>
<td>18.02</td>
</tr>
</tbody>
</table>

270. What is apparent from Table 4.3 is that prices tend to increase as the distance to supermarket increase. This is also common knowledge that spaza shops are generally more expensive when compared to supermarkets. What is observed from the test was that there was no much difference in price when the spaza shop was located less that 1km away from a supermarket, whereas for spaza shops located in excess of 2km from supermarkets were inclined to charge higher prices.63

**Pricing strategy in relation to prices of national supermarket chain stores**

271. The analysis in this section is based on a question on price setting in spaza shops, and whether prices are derived from corresponding prices at large retailers.64

272. As shown in Figure 4.4 the survey inquired whether spaza shop operators considered the prices of national supermarket chain stores when setting prices in their stores. Around 48% of the respondents admitted65 to considering supermarket chain stores’s prices and, in fact, set their prices in relation to prices of these stores. 34% of spaza shop operators stated they did not benchmark their prices with supermarket chain stores 66. This suggests

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63 In order to determine if the differences in prices were statistically significant a t-test for differences in means were conducted. The results for this test is included in the appendix. For all the products, except sunflower oil, no statistically significant difference in average price levels was found between spazas located less than 1 km away, and between 1 and 2 km away from a national supermarket chain store. Significant differences were however determined from price levels of spaza shops between 1km and 2km away located more than 2km away.

64 This question was included to supplement the data gathered on prices, discussed above. This supplementation was deemed necessary since a once off price recording for spazas and national supermarket chain stores were conducted. This is less ideal than a temporal collection which would reveal the incidence of specials and large deviations. As a result, the pricing relationships between the two retail formats were explored qualitatively and are presented here.

65 Fully Agree and Agree response combined.

66 Disagree and Fully Disagree combined.
that there is a pricing relationship between spaza shops and national supermarket chain stores. This was further disaggregated by turnover level, which is a proxy for store size and different distance clusters were also considered (see Figure 4.5).

**Figure 4.4:** Percentage of small business operators in agreement with "I set my product prices based on prices in national supermarket chains".

**Figure 4.5:** Percentage of cluster level agreement with "I set my product prices based on prices in large supermarkets".
273. Figure 4.5 shows that spaza shops with a smaller turnover tend to show a higher level of agreement with the statement that they set their prices according to prices at national supermarket chain stores. Contrastingly, spaza shops further away from large retailers tend to show a higher level of agreement with the statement under consideration.

Response by small and independent retailers to competition pressure from the large supermarket chains

Submissions from small business operators

274. The Inquiry also looked at the competitive strategies of spaza shops in responding to competitive pressure from the large supermarket chains. Submissions from some stakeholders suggest that small and independent retailers often alter their product mix in response to competitive pressures from supermarket chains.67 68

Consumer survey

275. From the Inquiry’s 2017 consumer survey (“consumer survey”), the sustainability of foreign spaza shops can be attributed to their product mix. Table 4.4 reports the most purchased items by households at national supermarkets, foreign and South African owned small retailers. The top three items purchased at national supermarkets - maize meal, rice and meat - are customarily purchased in bulk as they have a longer shelf life. Dairy and bread, are prone to immediate expiration and require regular replenishment. In response to this, foreign retailers sell more bread and diary. This suggests that foreign retailers focus their product mix on items that are required more frequently by customers and with a shorter shelf life. Local retailers on the other hand have a similar product mix but were found to focus on refreshments and bread. Dairy, which is a high turnover product, is not commonly purchased from them, suggesting it is not widely stocked.

67 For instance, the African Council of Hawkers and Informal Business (“ACHIB”) stated that street hawkers trading outside Eastgate Mall opted to sell smaller portions of their fresh produce (i.e. a single apple) in response to the presence of a large retail store inside the mall that offered consumers cheaper fresh produce in bulks
68 In Polokwane, small retailers resorted to selling prepared food (e.g. magwinya (vetkoek), kotas (version of a bunnychow) and chips) to serve the employees in the shopping centres and malls, whilst other traders diverted from selling grocery items to selling prepared food for school children.
Table 4.4: Top five products purchased by type of retailer.

<table>
<thead>
<tr>
<th>Position</th>
<th>National supermarkets</th>
<th>Foreign owned small retailer</th>
<th>Local owned Small retailer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Maize Meal</td>
<td>Bread</td>
<td>Refreshments</td>
</tr>
<tr>
<td>2</td>
<td>Rice</td>
<td>Dairy</td>
<td>Bread</td>
</tr>
<tr>
<td>3</td>
<td>Meat (Beef and Pork)</td>
<td>Airtime</td>
<td>Airtime</td>
</tr>
<tr>
<td>4</td>
<td>Dairy</td>
<td>Refreshments</td>
<td>Dairy</td>
</tr>
<tr>
<td>5</td>
<td>Bread</td>
<td>Eggs</td>
<td>Eggs</td>
</tr>
</tbody>
</table>

Source: Inquiry consumer survey, 2017

276. In short, there is strong evidence to support the premise that small independent retailers have adopted a strategy of altering their products when large retailers enter their areas. Small and independent traders also tend to switch to prepared food and refreshments in response to the dwindling profits from grocery items. Furthermore, evidence from the consumer survey shows that some small retailers, more especially foreign retailers, turn to products that are commonly used or consumed daily such as bread and milk. This allows them to be a convenient source of perishables thus ensuring their longevity and survival despite the increasing entry of supermarkets.

277. Consumers that participated in the survey who previously used South African retailers were also of the view that foreign ownership of small retailers in their communities is on the rise, whereas South African ownership has declined.

278. The surveys, literature and face-to-face engagements all presented inconclusive outcomes on the impact of large national supermarkets entering non-urban areas on small and independent retailers. However, this does not imply that the entry of large retailers in non-urban areas has had no impact on small and independent retailers. There are other factors that have contributed to the decline in the number of small independent retailers which are discussed in detail below.

4.3.2 Barriers and constraints affecting business operations of spaza shops

279. There are numerous issues, which include idiosyncratic problems associated with spaza shops and informal traders\(^69\) that could influence their business

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\(^69\) The literature on informal trading in South African townships has noted numerous factors that affect the feasibility of these businesses. Kroll et al. (2017) highlight the establishment of formal retail outlets in townships, combined with the disbursement of social grants through these outlets as one of the key problems. Coetzer and Pascarel (2014), in turn, note the business acumen of store owners and lower volumes (which ultimately require
viability and the ability to effectively respond to competitive pressures from competing large national grocery retailers. As a result, the complexity of successful small-scale grocery trading within townships should not be underestimated.

280. We explore the issues and constraints that were reported by spaza shop owners and managers along with their perceptions and level of agreement with certain factors relating to the relationship between spazas and large supermarkets in proximity. In addition, some of spaza owners and/or managers submitted views regarding business growth and acknowledged benefits of being near a large (food) retailer.

281. The issues and barriers considered focused on factors related to competitiveness of these small businesses with the ultimate objective of this analysis being to determine if livelihoods derived from informal grocery trading are affected by competition from formal retailing.\textsuperscript{70}

282. These constraints were raised by business operators during direct engagements with the Inquiry.\textsuperscript{71}

283. The following concerns are the main concerns raised by spaza shop operators during our engagements with small business operators:

283.1 procurement or sourcing of goods for their businesses;

283.2 access to finance; and

283.3 lack of business and entrepreneurial skills.

\textit{Procurement or sourcing of goods for small and independent retailers}

284. Submissions from the operators of small independent grocery retailers show that one of the main challenges they face is the ability to source goods from higher prices) as key factors that affect the feasibility of these establishments negatively. Other reasons that are noted was the generally anti-foreign sentiment towards informal businesses, access to capital, issues related to infrastructure and regulatory issues.\textsuperscript{70} It should also be noted that the The factors considered in Porter’s competitiveness strategy were therefore used as a point of departure, whilst combining it with broader literature on informal retailing, to derive the factors presented in the figure 27 shows that Crime was the most noted constraint with 64% of the sample rating crime as “Very Constraining”. This was followed by 59% of the sample rating Price Competition from other Spazas as "Very Constraining." Rated third, was Price Competition from Supermarkets (53%).\textsuperscript{71} Further detail on other issues and constraints faced by small businesses is discussed under section 3.5 of Objective 6.
the suppliers under terms and conditions applicable to the large retailers. It has been submitted that the large retailers have buyer power which is exercised to the detriment of buyer groups, independent wholesalers and small retailers.\textsuperscript{72, 73}

285. Evidence have shown that most of the small and independent retailers do not have the capacity to source goods in bulk, as this would require the use of transport and storage facilities and large capital\textsuperscript{74}. Most suppliers would not directly sell to small independent retailers as they generally do not have the financial means to buy in bulk and meet the minimum quantity requirements.

286. A survey conducted on spaza shops\textsuperscript{75} indicated that these businesses preferred to procure non-perishable products from wholesalers on a relatively infrequent basis and perishables directly from suppliers due to to convenience (i.e. free delivery) and for quality issues.

287. Being aware of the challenges they face when purchasing directly from the suppliers and manufacturers, the majority of the small and independent businesses have resorted to aggregating their purchases hoping to get better prices and trading conditions from the suppliers.\textsuperscript{76} Despite these, the small and independent retailers submit that they continue to offer unfavourable trading conditions that makes it difficult to compete with large supermarket chains, especially to be price competitive.\textsuperscript{77} With this in mind, there is a need for innovative solutions aimed at enabling efficient procurement processes complemented by appropriate infrastructure mechanisms such as centralised distribution centres in non-urban areas.\textsuperscript{78}

\textsuperscript{72}Submission by EST and UMS, at the Gauteng Public Hearings dated 5 June 2017).
\textsuperscript{73} See detailed discussion on buyer power in Objective 5.
\textsuperscript{74} Minutes of meeting between Small Business Chamber and the Inquiry, dated 26 September 2016, p2, Para 2.2
\textsuperscript{75} Small business survey, 2017.
\textsuperscript{76} However, the South African Bulk Entrepreneurs Primary Cooperative Operation (“SABEPCO”) continued to receive challenges when purchasing directly from manufacturers, in particular in respect of maize meal which they allege they were not being offered competitive prices in comparison to the prices offered to supermarket chains and some foreign owned wholesalers irrespective of the bulk quantities they were purchasing. In addition to discrimination received from the manufacturers and direct suppliers, these businesses alleged facing price discrimination from foreign owned wholesalers offering better prices and trading conditions to foreign owned spaza shops.
\textsuperscript{77} The MJ Group Companies (“MJ Group”) also submitted that due to the buying power that large supermarket chains have, it is practically impossible for them as small independent retailers to compete with the large retailers on pricing. Further refers to high rentals, exclusive leases as additional challenges facing small businesses.
\textsuperscript{78} Minutes of meeting between Small Business Chamber and the Inquiry, dated 26 September 2016, p2, Para 2.2.
Efforts to assist small independent businesses with the procurement of goods.

288. There has been efforts to enhance the competitiveness of small independent local traders in areas such as the Free State. There were further discussions with suppliers such as Tiger Brands to try and introduce a supply model to assist spaza shops in procuring stock, which is discussed in Objective 3 below. There are also secondary cooperatives that have been set up in the Free State province to assist with procurement as well as to negotiate with local cash and carriers and wholesalers to enter into partnerships with spaza shops for procurement purposes.

289. The Inquiry engaged with the Department of Small Business Development (“DSBD”) relating to training and development of small and independent businesses. The DSBD advised the Inquiry about the National Informal Business Upliftment Strategy (“NIBUS”) that is aimed to address the development of small businesses at the lower base of small SMME’s. The programme strategically targeted entrepreneurs in the informal economy with the intention to increase traders’ i.e., spaza shops, general dealers etc. competitiveness. The DSBD informed the Inquiry that part of the activities to increase these businesses competitiveness included bulk buying, warehousing and distribution, which would assist these businesses to be more competitive by accessing these services. In addition there are programmes such as the Shared economic Infrastructure Facility where a number of informal traders, micro businesses and cooperatives can operated together under shared facilities.

290. In Tshwane, the Department of Economic Development (“EDD”) informed the Inquiry that it had conducted a survey on a sample of spaza shops operating in and around Mamelodi, Soshanguve and other Townships in Pretoria. Following the survey, which covered spaza shops, general dealers and independent wholesalers, the EDD developed training schemes and educational programmes aimed at equipping these businesses to sustain themselves and compete effectively. The Gauteng Department of Economic Development (“GDED”) in partnership with Pick n Pay initiated a pilot project aimed at assisting struggling independent township traders in particular spaza shops.

79 Free State province compiled a draft policy aimed at developing ways to unfold the benefit derived by SMMEs from sourcing products from local suppliers or at a provincial level.
80 The BB cash and carry initiative is discussed in detail in Objective 3.
81 Submission by the DSBD to the Inquiry, dated 04 June 2018.
operating in townships. The project was launched as part of the GDED’s Township Economy Revitalisation project aimed at assisting small businesses, which are operating in the townships. Pick n Pay together with the GDED have put up a partnership model offered to small businesses. Amongst others, the initiative offered the Pick n Pay Preferential Procurement Process for spaza shops buying from Pick n Pay and introduced a Pick n Pay spaza model pilot in the townships.

291. In terms of the agreement concluded between Pick n Pay and the GDED, the department would mobilize spaza shops around the province to participate in product development programmes and workshops organised by Pick n Pay’s aimed at developing these small businesses. The programme is aimed at local owned spaza shops, and intends to assist them to become more competitive and withstand the competitive pressure they face from shopping centre developments and foreign owned spaza shops.

292. The Inquiry has since received complaints from the store owners who are involved with this project and is currently engaging Pick n Pay regarding the model of this project as well as the store owners to further understand their complaints and determine ways in which same could be alleviated.

Access to finance

293. Majority of local entrepreneurs that the Inquiry engaged with submitted that one of the major challenges they face as operators of small businesses is access to finance. According to these entrepreneurs, the financial sector does not offer adequate support to entrepreneurs living in townships, peri-urban and rural areas. For most start-ups, entrepreneurs in the grocery retail market stated that they must rely on their own savings or borrow from friends and family. In addition to this, a study by Finfind\(^2\) show that in the instances where smaller traders applied for funding, the reasons they are applying, the terms of finance, the rates charged as well as the reasons why some of the applications aren’t a success was not publically available. As such, smaller traders were not able to effectively compare offers. The study also showed that only 1% of small traders access formal financing, and 87% do not access financing.\(^3\)

\(^3\) The South African SMME Access to Finance Report 2017
294. For historical reasons, local small independent retailers, local spaza shop owners, have unremittingly submitted to the Inquiry the challenge of accessing funding for their start-ups. This is also linked to the challenge they face in being able to purchase their stock in bulk, enabling them to save on their input costs and price competitively in relation to their fellow foreign owned spaza shops. Due to the informal nature of the businesses, they have no access to capital or collateral required to finance the start up or expand the business.

295. The small business operators further submitted that government also does not have provisions in its Small Medium and Micro Enterprises ("SMME") support programmes that assists independent businesses by offering finance or credit to procure goods in bulk enabling them to save on their input costs. Small business operators submit that commercial banks that provide finance to small businesses charge high rates, making it virtually impossible for the businesses to invest and innovate, thereby reducing the lifespan of these businesses in the market. In the same light, the FinFind report states that although the South African government attempts to increase the credit facilities available to smaller traders, the private sector only contributes a minimal portion to these credit facilities.\(^{84}\)

296. Studies suggest that there are various obstacles that make it difficult for small independent traders to get access to funding. For instance, there are high research costs, lack of skills and the know-how to be able to produce good quality financial records, poor business models, inadequate collateral, bad credit history (in some cases, most smaller traders do not have a credit history) as well as the lack of access to markets.\(^{85}\)

297. However, through the Inquiry’s investigation it was brought forward by Big Save that some financial institutions are trying to create initiatives that cater solely for the informal traders given their unique nature of operations.\(^{86}\) In particular, Big Save explained that they have a My Spaza initiative which assist with finances and offers its members credit facilities to be able to procure stock. A similar initiative was established by Bibi Cash and Carry ("Bibi").\(^{87}\) Bibi notes that

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\(^{84}\) The South African SMME Access to Finance Report 2017  
\(^{86}\) Minutes of meeting between Big Save and the Inquiry, dated 17 July 2016, p4  
\(^{87}\) Minutes of meeting between Bibi Cash and Carry and the Inquiry, dated 18 March 2016, p3, Para 3.4
access to finance for local traders, which is allegedly a barrier for local traders, are one of the facilities that are offered to local traders.

Lack of business skills

298. One factor that was raised by some of the operators of small retail businesses was the lack of business skills or the need to have those improved in order to remain or become more competitive. Other traders submitted to the Inquiry that contrary to popular belief, they have the necessary business acumen that enables them to operate a profitable business, submitting this was not the reason their businesses were not successful.

299. Big Save in conjunction with Absa and Ispaza Sum Holdings launched an initiative aimed at equipping local owned spaza shops with businesses skills through training which affords informal traders opportunities and trainings to gain the necessary skills to remain profitable and ways to adopt to the changes in the grocery retail market. According to Big Save, this initiative further includes models on more efficient ways to procure stock.

300. The DSBD also advised that under the NiBUS initiative, training and development programmes would be in place to assist informal businesses with business skills training them to run their businesses efficiently and profitably. The statement which considers the perception of supermarket proximity impeding growth, by cluster, is presented in section 3.6 of objective six. It again seems to support the notion that spaza shop owners perceive proximity to supermarkets negatively. The level of disagreement seems to be inversely related to distance since the highest level of disagreement is associated with the group less than 1km away from the nearest retailer (combined fully disagree and disagreement of 63%). This decreases somewhat, to 59%, for respondents located between 1km and 2km away. Of the respondents located more than 2km away, 44% disagreed with the statement.

88 A variety of local traders in Rustenburg have emphasised that the challenges they face as small business has little to do with their lack of business skills. Like traders in Rustenburg, SABEPCO also stated that the bulk of the businesses they operate were inherited from the previous generation, which in their view suggests that they have the skills which they inherited from their predecessors. Submission by SABEBCO, dated 4 November 2016
89 Previously called the My Spaza project, operating in Mamelodi and surrounding areas.
90 Minutes of meeting between Big Save and the Inquiry, dated 17 July 2016, p4
91 A more detailed comparison on the business skills between the local and the foreign trades, as well as possible factors as to why foreign traders allegedly remain successful are discussed in Objective 3 of this report.
4.4 The impact of the entry of national supermarket chain stores in townships, peri-urban areas and rural areas on employment

301. The grocery retail market plays an important role in providing both formal and informal economic participation for South African citizens. This section of the chapter considers the effect of this move by national retailers on employment in non-urban areas.

Figure 4.6: Formal and informal employment in retail trade as a percentage of total employment.

![Chart showing employment figures]

Source: StatsSA Retail Trade Industry survey, 2017

302. The wholesale and retail trade sector is one of the major contributors of employment in the country. The sector contributes more jobs to the economy than manufacturing, mining and construction sector82. Figure 4.6 above summarizes employment figures of formal and informal employment in the retail trade sector as a percentage of total employment. Holistically, formal and informal employment accounted for 37.2% of total employment in 2015.

303. In particular, the contribution by the food, beverages and tobacco specialist stores in the retail sector as a percentage of total employment has declined since 2005, from 11.8% to 7.5% in 2016. This indicates that the larger national supermarket chains have grown to some extent at the expense of these specialist stores.

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Submissions from stakeholders

304. The municipalities that met with the Inquiry could not indicate the number of people employed in the retail sectors. However, despite not having specific numbers of job created through the shopping centre developments, all municipalities did submit that the opening of the large retailers in the affected areas did create more jobs than could the small independent retailers cumulatively. Similar acknowledgements were mentioned by the Capricorn District Spaza Forum, stating that the malls created job opportunities for locals. However, they also stated that small independent retailers also created opportunities for employment despite being at a small scale.

Consumer survey

Figure 4.7: Employment at a local mall – customers’ responses

![Pie chart]

Source: Inquiry consumer survey, 2017

305. In Figure 4.7 above, surveyed customers were asked if they worked at the local mall, knew of anyone from the community who worked at the mall or none. 63% of the respondents did not work or know anyone who worked at the mall. 6% of the respondents worked at mall and the rest knew of a community member who was employed in the mall. Although there are some positives on employment in these results, it does not specify where in the mall the respondents or their peers work in the mall. As a result, the consumer survey simply gives high level glimpse of employment at the mall, but it cannot speak to the employment created by the large retail stores.

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93 Minutes of meeting between Capricorn Municipality and the Inquiry dated 22 August 2016, p2.
306. In summary, there are mixed views on the impact of the entry of national supermarket chains on employment in township, peri-urban and rural areas. Customers might not know any of the locals who are employed at these national supermarket chains because of the merchandising services that are employed by suppliers across most national supermarket chains. Merchandisers are employees often appointed through an agent to take care of the respective suppliers’ stock in national supermarket chains. On the other hand, although some jobs are created through the appointment of these agents who form part of the numbers that represent national supermarket chains, small traders also lose the employees post the shutdown or change of ownership from local traders to foreign traders.

4.5 The impact of the entry of national supermarket chain stores in townships, peri-urban areas and rural areas on consumers

307. National supermarket chain stores’ entry in townships, peri-urban and rural areas impact the local economy through businesses and consumers. It is assumed that consumers benefit from the efficiencies that large national supermarket chain stores gain from their sophisticated supply chain practices and diverse mix of retail outlets that caters for consumer specific demands. National supermarkets are reputed to be offering consumers lower prices and a wider product variety, resulting in income and time saving. In order to obtain direct submissions from the consumers, the Inquiry relied heavily on the consumer survey in addition to the direct engagements the Inquiry had with stakeholders during meetings, site visits and at public hearings.

Consumer welfare

308. One of South Africa’s research house, Demacon (2010) undertook an in-depth study of the impact of Jabulani Mall on the local community. The study employed a household survey within a 10km radius of the mall in order to study past and current consumer behaviour. The reported impact on consumers were (i) reduced travel times to retail centres, (ii) reduced average travel costs to retail centres, (iii) provision of quality goods and services, (iv)...

94 Submission by Pick n Pay to SOI dated 14 June 2016, p2, para 5.
lower prices and (v) general convenience owing to the one-stop offering of a mall. A study conducted by the University of South Africa (“UNISA”) also showed that at large, consumers in Soshanguve gained the benefit of having a variety in the product choice as well as the prices offered from the entry of a development. The Inquiry explores the aforementioned factors that were looked into by Demacon to measure the impact of the entry of national supermarket chains on consumers below.

Figure 4.8: Total average proportion of total household consumption expenditure attributed to Food and non-alcoholic beverages by race.

Figure 4.8 above presents the average proportion of consumption expenditure that households spend on food and non-alcoholic beverages by race as reported in StatsSA’s Income and Expenditure surveys from 1990 – 2010/2011. Since 1990, the proportion of income South Africans spend on food and non-alcoholic beverages has declined significantly. Expenditure on food and non-alcoholic beverages by the white population has declined from 12% of total expenditure in 1990 to 6.4% in 2010/2011. Blacks’ total expenditure on food and non-alcoholic beverages has declined from 22% in 1990 to 18.4% in 2010/2011. Coloureds and Indians/Asians’ expenditure has decreased from 27% and 23% in 1990 to 16.4% and 6.7% respectively in


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309. **Prof AA Lighelm. Small Business dynamics in Soweto: A longitude analysis, 2008, p74**
2010/2011. In light of some of the submissions that the Inquiry has received, i.e. that the large retailer are generally cheaper, from these statistics, one could assume that the decreases may be attributed in some part to the widening geographic footprint of national supermarket chain stores offering cheaper competitive prices and quantities, thus resulting in an absolute decline in total food expenditure. However, there are other factors such as an income effect that may have contributed to the statistic results.

310. Figure 4.9 below reports total annual average income by race. As depicted, total annual average income has been increasing over time. In 1990, Black people earned 31% of the total national average annual income (R39 000) or R12 000 per household. In 2010/2011, the average Black household was earning 58% of the national average (R119 542) or R69 632 in level terms. On the other hand, in 1990, Coloureds earned 56% of the national average income or R22 000, but their average annual income has since increased to more than 16% of the national average in 2010/2011 or R139 190 in levels.

![Figure 4.9: Total average annual income by race](image)


311. In light of these statistical facts, the question is whether the reduction in consumers' expenditure on food and non-alcoholic beverages emanated from the lower prices and associated efficiencies from innovative national supermarket chain stores or whether the increase in average income over time brought about a broad-base increase in expenditure on other items (luxury),
thus decreasing the share of food and non-alcoholic expenditure\textsuperscript{97}. From an economics perspective, this represents a substitution or an income effect paradox\textsuperscript{98}. Such questions require more rigorous statistical tools to solve.

\textit{Reduced travel times to retail centre}

312. Much of the available literature and submissions from stakeholders appear to suggest that national supermarkets moving into non-urban areas afford consumers savings on time and transport. Figure 4.10 below presents descriptive statistics depicting walking and driving distance by consumers to the nearest local supermarket. 25\% of consumers who walk to the shop indicated that it takes them 10 minutes whereas driving consumers reported taking an estimated 15 minutes. Half the respondents said the average time walking to the nearest local supermarket is 18 minutes, while driving consumers said it takes around 15 minutes. The upper limit of the respondents equally said driving and walking time takes an estimated 25 minutes from their homes.

\textbf{Figure 4.10: Walking and driving distance in minutes to the nearest local supermarket}

![Figure 4.10: Walking and driving distance in minutes to the nearest local supermarket](image)

\textit{Source: Commission Consumer survey, 2017}

\textit{Provision of quality goods and a shopping experience}

313. In Figure 4.11 below, consumers in different income bands, indicate the reasons consumers shop at national supermarket chains. A larger proportion of shoppers at the national supermarket chains indicate that they do so for lower prices, albeit this proportion differs by chain. For instance, approximately

\textsuperscript{97} In accordance with literature in conspicuous spending and status, several studies (see Kaus 2013, Burger \textit{et al} 2014) have found that, as income rises, Black and Coloured households spend relatively more on visible consumption comparable to White households. Many reasons have been advanced including an issue of “asset deficits” (see Van Der Berg 2007). By increasing expenditure on “catching up”, the base effects result in a decline in the share of other items.

\textsuperscript{98} The substitution effect is the change in consumption patterns due to a change in the relative prices of goods. The income effect is the change in consumption patterns due to the change in purchasing power. This can occur from income increases, price changes, or even currency fluctuations.
39% of consumers state that they shop at a Pick n Pay for the low prices, but this is higher for value chains such as Massmart (79%) and Shoprite (72%). Another significant reason for consumers shopping at national supermarket chains is the offer of fresh products. This is accounted for 35% of the reasons cited in the case of Spar, and 25% for Pick 'n Pay. For consumers who are less price sensitive such as Woolworths consumers, the quality of produce is cited as the reason for shopping at a national supermarket chain (55% for Woolworths).

Figure 4.11: Reasons consumers shop at national supermarkets

<table>
<thead>
<tr>
<th>Reason</th>
<th>Total of top six</th>
<th>Choppies</th>
<th>Massmart</th>
<th>Woolworths</th>
<th>Spar</th>
<th>Shoprite</th>
<th>Pick n Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low prices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fresh products</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality products</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offers specials</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wide range of products</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Commission consumer survey, 2017

314. During some of our engagements with stakeholders, it was alleged that large national supermarkets do not offer quality grocery products to all consumers. It's alleged that low-income customers tend to be sold nutritionally poor foods, whereas the stores in wealthier areas offer healthier options. However, much like most literature on this topic, conclusions cannot be drawn from the descriptive statistics alone

315. Large national supermarkets chains also provide customers with quality products. It is submitted that although customers are brand conscious, quality is of the utmost importance and customers are willing to pay for good quality products. Moreover, customers are price sensitive, especially those at the lower end of the income band. Small deviations in prices between

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100. Submission by Rasta Vuyisile Dlamaini, 14 November 2016, p76
101. Minutes of meeting between Jwayelani and the Inquiry, dated 17 August 2016, p6, para 2.5.
different branded products will sway customers to substitute to cheaper options. To account for this high price elasticity of demand, large national supermarkets offer customers a variety of products at favorable prices\textsuperscript{102} which most small independent retailers are not able to do. At most, a small independent retailer would offer customers just two brands of an item as stocking a wide variety of a product can be costly for a small business.

\textit{Convenience and one-stop offering at a mall}

\textit{Submissions from stakeholders}

316. Some stakeholders submitted that national supermarkets, especially those located in malls provide customers with the convenience of a one-stop shopping experience. Pertinently, this saves them transport costs, which is a huge burden on most low-income households\textsuperscript{103}. In addition, it is submitted that customers are able to access their social grants from till points, thus affording national supermarkets the ability to extend credit facilities for grocery shopping\textsuperscript{104}.

317. In addition to this, it has been asserted that national supermarkets form part of a bigger network in the grocery market, allowing suppliers to reach wider markets. This benefits customers as it exposes them to a broad range of products in one store, thus decreasing search costs\textsuperscript{105}.

318. Stakeholders affirm that national supermarkets provide consumers with savings stemming from lower prices and cost associated with transport costs. However, there is an allegation of some national supermarkets serving lower-income customers with inferior products relative to their wealthier

\textsuperscript{102} Ibid 12. Ibid 12. Minutes of teleconference meeting between the Department of Economic Development and Tourism and the Inquiry, dated on 8 March 2016, p14, para 23.1-23.2.\hspace{1em}
\textsuperscript{103} The StatsSA \textit{Measuring household expenditure on public transport report} showed that more than two-thirds of households who fall in the lowest income quintile spent more than 20\% of their monthly household income \textit{per capita} on public transport. Minutes of meeting between Spar Ngcobo and the Inquiry, dated 27 September 2016, p5, para 2.5
counterparts. In the next section, the paper will consider evidence from the consumer survey to support the current submissions.

Consumer survey - Convenience

319. To investigate the premise on convenience, Figure 4.12 below shows data describing where consumers do most of their daily, weekly and monthly grocery shopping by type of retailer. Local supermarkets are mostly used for monthly shopping, which contradicts some literature studies that submit that consumers in townships still prefer outside shopping malls. Whilst this is the case, the survey clearly shows that spaza shops are used almost exclusively for daily/convenience shopping. However, the data also shows that consumers also make use of local supermarkets for their daily or convenience shopping. Interestingly, the survey\textsuperscript{106} shows that the top five products in the monthly grocery bag and the convenience bag are similar. These are maize meal, rice, meat (beef or pork), bread and cleaning products.

320. Supermarkets outside the local areas are still popular amongst consumers for monthly shopping. On the other hand, general dealers and wholesalers or cash and carries are not a common conduit for grocery shopping at any time of the month.

Figure 4.12: Frequency of grocery shopping by type of retailers.

Source: Commission Consumer survey, 2017

321. It is often suggested that national supermarkets attract customers to malls, which provides a one-stop shopping and errand experience. Figure 4.13 below presents descriptive statistics of other activities carried out by

\textsuperscript{106} Commission Consumer survey, 2017
consumers who do their grocery shopping in malls. The descriptive statistics present enough evidence to support the notion that complementary to grocery shopping, consumers often use the opportunity to do their banking, clothing shopping, eat out and also do general shopping of other items. This adds to the point that national supermarkets entering townships, peri-urban and rural areas bring an extra element of convenience to the customer that saves travel and time costs if that is undertaken in a mall environment.

Figure 4.13: Other consumer activities at the mall while shopping

![Figure 4.13: Other consumer activities at the mall while shopping](image)

Source: Commission Consumer survey, 2017

The Inquiry did not receive an equivalent response from foreign traders on the issues around the consumer benefits as compared to those received from local. As such, the bulk of the views captured from local traders are only representative of their views on the impact of national supermarket chains on the attrition or accretion of small independent small retailers in townships, peri-urban and rural areas.

4.6 Preliminary findings

The entry of national supermarket chains into townships and rural areas has had both negative and positive effects on the performance of small and independent businesses as submitted by stakeholders.107

323.1 The entry of national supermarket chains into non-urban areas has shifted the competitive landscape in these areas such that there is an observed diversion of customer demand from small and

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107 From submissions received from the small business operators and from the results of the survey that focused on small businesses and evidence collected depending on a number of factors such as the location, the offering and the ability of the affected business to adapt to pressure as a result of changes in the market.
independent businesses that previously serviced these customers. This appears to have displaced the small and independent businesses in non-urban areas.

323.2 However, spaza shops continue to play an important convenience or daily shopping role in these communities. As such, they are able to survive in competition with the large supermarket chains which predominately serve the weekly and monthly shopping requirements, in addition to some daily convenience. However, to do so the spaza shops need to ensure their location, product offering, trading hours and pricing are positioned to best service convenience shopping.

323.3 Some small local businesses have benefited from the footfall generated by the national chain.

324. Overall, there has been a decline in the number of small independent grocery retailers operating in non-urban areas. Of all areas surveyed, only one area was found to have experienced an increase in the number of small independent retailers operating. In many areas there has also been a shift from South African owned spaza shops to foreign-owned.

325. Small and independent retailers face a number of barriers and constraints which impact on their competitiveness in relation to national supermarket chains. These, *inter alia*, include:

325.1 the inability to realise the requisite economies of scale due to the procurement practices used by small and independent business;

325.2 information asymmetries that negatively impact on credit assessment capabilities of financial institutions and thus contributes to the observed lack of appropriately designed financial products for such micro-entreprises; and

325.3 the need for improved business management skills by small and independent businesses.

326. Benefits created by the entry of national supermarket chains largely relate to consumer welfare gains in the form of lower prices, consumer choice, time and transport cost savings as well as general convenience.
5 THE IMPACT OF LONG-TERM EXCLUSIVE LEASE AGREEMENTS ENTERED INTO BETWEEN PROPERTY DEVELOPERS AND NATIONAL SUPERMARKET CHAINS AND THE ROLE OF FINANCIERS IN THESE AGREEMENTS ON COMPETITION IN THE GROCERY RETAIL SECTOR

5.1 Introduction

327. The Commission has previously investigated the issue of long-term exclusive lease agreements and noted the increasing number of complaints from market participants alleging that these agreements create barriers to entry and expansion. While the Commission embarked on advocacy efforts and imposed conditions to the approval of mergers in the sector to change this practice, it has persisted. It also became necessary for the Commission to obtain an in-depth understanding of these leases, their benefits and justifications, as well as the general negative impact that these leases may have on the South African grocery sector at large. The Commission accordingly determined as part of this Inquiry’s ToR, to investigate the issue of long-term exclusive leases.

328. In paragraph 76 of the SOI, the Panel identified the following issues in respect of the effects of long-term exclusive lease agreements on competition in the grocery retail sector:

328.1 The prevalence and duration of exclusive lease agreements entered into between property developers and the national supermarket chains in South Africa, by also seeking to understand the role of financiers in these agreements on competition in the grocery retail sector, as contemplated by the provisions of section 2(g)\textsuperscript{108} of the Act;

328.2 The extent to which long-term exclusive lease agreements entered into between property developers and national supermarket chains have excluded small businesses and larger competitors or potential competitors from entering malls, and from competing effectively on the

\textsuperscript{108} Section 2(g) of the Act sets out the purpose of the Act as “to detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to prevent, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic.”
basis that they do not have access to suitable retail space, as contemplated by the provisions of sections 2(e)\textsuperscript{109} and 2(g) of the Act;

328.3 The extent to which the use of long-term exclusive lease agreements has contributed to the high levels of concentration in the sector, as contemplated by the provisions of section 2(f)\textsuperscript{110} of the Act; and

328.4 The extent to which long-term exclusive lease agreements entered into between property developers and national supermarket chains have benefited or harmed consumers and led to increased or decreased efficiencies, as contemplated by the provisions of sections 2(a)\textsuperscript{111} and 2(b)\textsuperscript{112} of the Act.

5.2 Role players in the development of shopping centres

329. The key participants in the development of shopping centres are financiers, property developers and anchor tenants. This section will discuss the requirements of each role player to either finance, develop, or open a store in a shopping centre. As will be explained, the reliance on the presence of national supermarket chains as anchor tenants in shopping centres in order to make the shopping centre viable is the principle justification advanced by national supermarket chains for exclusive lease agreements.

Financiers

330. Financiers were asked to elaborate on the factors taken into account when considering the financing of a shopping centre. Financiers indicated that the most important requirement for a property developer to acquire finance for developing a shopping centre is that the shopping centre must be able to generate cash flow\textsuperscript{113}.

\textsuperscript{109} Section 2(e) of the Act sets out the purpose of the Act as “to ensure the small and medium-sized enterprises have an equitable opportunity to participate in the economy”

\textsuperscript{110} Section 2(f) of the Act sets out the purpose of the Act as “to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons

\textsuperscript{111} Section 2(a) of the Act sets out the purpose of the Act as “to promote the efficiency, adaptability and development of the economy”

\textsuperscript{112} Section 2(b) of the Act sets out the purpose of the Act as “to provide consumers with competitive prices and product choices”

\textsuperscript{113} The reason for this requirement is that the shopping centre must generate enough profit that will enable the property developer to repay the loan, in order to develop the shopping centre. This is the case regardless of whether the shopping centre is located in urban, peri-urban, township, or rural areas.
331. The South African Property Owners Association (“SAPOA”) is an industry association whose members own an estimated 90% of the commercial, retail, office and industrial properties in South Africa. [114]

332. The second requirement which is inextricably linked to the first is that the property developer must secure tenants for at least 60 to 70% of a shopping centre’s GLA before construction of the centre begins. In addition, at least one of these tenants, depending on the size of the shopping centre, must be an anchor tenant, preferably a national supermarket chain. Financiers submitted that a shopping centre without a national supermarket chain is unlikely to attract shoppers and line tenants and as such, will not be able to generate consistent and sustainable cash flow. Further, financiers submitted that although they do not stipulate who the anchor tenant should be, they prefer national supermarket chains as they are unlikely to cancel their lease or default on rent. In some cases, financiers consider the location of all tenants within a shopping centre to make sure that there are draw cards, or shops that create foot traffic throughout the entire shopping centre so as to avoid dead spots.

333. Financiers generally offer a ten (10) year loan. Consequently, property developers and national supermarket chains conclude lease agreements that endure for at least ten (10) years. [115]

334. Financiers require property developers to put up security for the duration of the loan. Security may be in the form of suretyship or mortgage bond taken by the property developer on the shopping centre which is the subject matter of the loan or another property or both. In the case of new entrants or property developers whose professional team does not have the required experience in developing similar shopping centres, financiers require security in the form of mortgage bonds on more than one property. In some instances, financiers require a minority stake in the shopping centre where the developer and the professional team possess the requisite experience in developing similar shopping centres.

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114 [114] Masingita submits that a standard lease between a developer and an anchor tenant would range from ten to twenty years whereas an agreement for a line tenant ranges from 2 – 5 years. Masingita further emphasised that the viability of the development and the loan obtained to erect the mall also affects the duration of the lease agreements.
Property Developers

335. There are various factors that are taken into account when property developers propose the development of a new shopping centre. Property developers submitted that the location of a proposed shopping centre is a critical factor to consider. The first thing that a property developer must establish is the availability of land in a proposed location. Secondly, the property developer assesses the suitability of the proposed location in relation to determining its accessibility, visibility and the potential catchment area.

336. After identifying a suitable location, the property developer commissions a study, which is conducted by a specialist firm to determine the following:

336.1 Catchment area setting out the geographic boundaries which will be serviced by the proposed shopping centre. The catchment area will also inform the demographic profile of the community as well as the spending power of that community.

336.2 The nature of the existing competition informs the developer whether or not the shopping centre will face competition from stand-alone stores, other shopping centres or from both. This information, in turn, enables the property developer to determine the size and nature of the shopping centre they should build.

337. Once the property developer has established the nature and size of the available market, they decide the appropriate tenant mix to ensure that their shopping centre will serve the consumer demand in the area where the shopping centre is located.

338. Once the property developer has established the appropriate tenant mix which will enable the shopping centre to meet the consumer demand in full, the property developer invites prospective tenants to rent space in the shopping centre.

339. Once the property developer has concluded lease agreements with tenants who will lease, at least, 60 or 70% of the GLA in the shopping centre, the property developer applies for loans from financiers to finance the development of the shopping centre. As previously indicated, property developers need national supermarket chains to lease space in their shopping
centres as anchor tenants in order to generate sufficient footfall to make the shopping centre financially viable.

**Anchor tenants**

340. Anchor tenants are businesses that are considered essential tenants in a shopping centre due to their ability to attract shoppers as well other tenants to the shopping centre. Tenants that are generally not considered to have the ability to attract shoppers to the shopping centre are known as line tenants. Property developers select an appropriate mix of line tenants and anchor tenants to ensure that a shopping centre caters to the consumer demand based on the location of the shopping centre and the community which it services. Pick n Pay, Shoprite and Spar, who are considered anchor tenants in shopping centres, have exclusivity provisions in their lease agreements with property developers.

341. National supermarket chains claim that in light of their ability to attract shoppers and other tenants to the shopping centre, a shopping centre that does not secure an appropriate anchor tenant, such as a national supermarket chain, is likely to fail. Both financiers and property developers have also indicated that national supermarket chains are important anchor tenants in shopping centres in South Africa.

342. National supermarket chains require retail space within shopping centres for a variety of reasons such as security and convenience for shoppers. In particular, Masingita Group (“Masingita”), a property developer, explained that shopping centres, as opposed to stand-alone stores, have various benefits that are not available in a stand-alone setting. Masingita stated that apart from the variety offered at a shopping centre, a shopping centre is said to be convenient, the centre is usually located closer to consumers, which saves consumers transport costs and enhances convenience given that the service offering is also wider, which is complementary to the grocery retail offering brought by national supermarket chains.\(^{116}\)

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\(^{116}\) Submission of a presentation (open session) by Masingita at the Gauteng public hearing, dated 3 November 2017, slide 12.
5.3 Lease agreements between tenants and property developers

343. Lease agreements for anchor tenants are concluded before the construction of a shopping centre, whereas on the other hand, lease agreements for smaller retailers and line tenants that wish to lease space in the centre are usually concluded once construction has commenced or after the new shopping centre has been completed.

344. The lease agreements with tenants in shopping centres, in addition to the standard clauses in respect of duration and rent, include provisions such as:

344.1 long leases for anchor tenants and short leases for line tenants;
344.2 exclusivity clauses typically with food anchor tenants (supermarkets);
344.3 the location and size of the store;
344.4 usage clauses limiting the use of the space that is being leased; and
344.5 a base rent and a rent determined on turnover.

5.4 Exclusive lease agreements

345. Exclusivity clauses in lease agreements limit the property developer’s rights to lease space in the shopping centre to businesses that provide products or services that are similar or in competition to the national supermarket chains or parties for whose benefit the exclusive lease agreement was entered into. Exclusive lease agreements are generally in favour of national supermarket chains such as Shoprite, Checkers, Pick n Pay and Spar, who are considered food anchor tenants in shopping centres. There have been allegations that Massmart also has exclusivity provisions in their lease agreements.\(^{117}\) \[^{118}\]

346. Exclusivity provisions can be either complete\(^{119}\) or partial\(^{120}\). Complete exclusivities often prevent the landlord from letting space to a tenant that

\(^{117}\) Emira noted that Rhino Cash and Carry, which is owned by Massmart, has an exclusive lease agreement in a shopping centre located in Kokstad (p 11, line 12), however the exclusivity agreement existed before Massmart acquired Rhino Cash and Carry (p 14, line 2).

\(^{118}\) \[^{119}\] Complete exclusivity refers to the prohibition of any business that is considered to be in competition with the national supermarket chain within the shopping centre

\(^{120}\) Partial exclusivity provisions allow the national supermarket chains to limit the size of competing stores or product range of competing stores within the shopping centre for the duration of the national supermarket chain’s lease or its renewal.
would operate businesses such as a supermarket, bakery, butchery, delicatessen, pharmacy and liquor store for the duration of the national supermarket chain’s lease or its renewal, whether or not the national supermarket chain is currently providing these products.\textsuperscript{121}

347. Partial exclusivity provisions are often found in lease agreements where the national supermarket chain’s lease was concluded in an existing shopping centre with established tenants, some of which could be seen to compete with the food anchor tenant in the shopping centre. The exclusivity becomes partial in recognition of the presence or existence of these other competing businesses in the shopping centre.

348. Sometimes these provisions can extend to include other shopping centres owned by the developer within the immediate area of the shopping centre in which the retailer will be leasing space. Exclusivity provisions are also usually crafted to extend to any future extension or addition to the shopping centre.

5.5 The role of financiers, property developers and national supermarket chains in exclusive lease agreements

349. The Inquiry has revealed the relevant parties to the issue of exclusive lease agreements to be property developers, financiers and national supermarket chains. Below we discuss each of the relevant parties.

Financiers

350. The information provided to the Commission during and after the previous (supermarket) investigation indicated that financiers required exclusivity in lease agreements before they approved the loan for financing the construction of a shopping centre.

351. \[\text{[\text{\verb|X|}]^{122}} \text{[\text{\verb|X|}]^{123}}\] The Inquiry requested Standard Bank and Nedbank to make submissions at public hearings. All these financiers confirmed that they neither participate in negotiations of lease agreements between tenants and property developers, nor do they become involved in the selection of appropriate

\textsuperscript{121} For example, SAPOA members have submitted that national supermarket chains have in the past included pharmacies in the exclusivity provisions even though the supermarket was not planning on opening an in-store pharmacy at the time of concluding the lease.

\textsuperscript{122} \[\text{[\text{\verb|X|}]^{122}}\]

\textsuperscript{123} \[\text{[\text{\verb|X|}]^{123}}\]
tenants in shopping centres. Furthermore, all financiers confirmed that they do not require exclusivity in the lease agreements in order to approve applications for loans sought for financing shopping centres.

352. [⪫].

353. The Inquiry has found that, although financiers do not require exclusivity agreements, they do require developers to secure long-term lease agreements with an anchor tenant, such as a national supermarket chain in order to approve a loan for the financing of a shopping centre.

Property Developers

354. [⪫].

355. [⪫]

356. The Inquiry requested property developers who rely on loans from financiers to finance shopping centres, such as Masingita, to make submissions in the public hearings. The Inquiry also received submissions from Redefine Properties Ltd (“Redefine”), Liberty Property Group (“Liberty”), Emira Property Fund Ltd (“Emira”) and Resilient REIT Ltd (“Resilient”), all of whom are listed property funds that finance their own shopping centres. They confirmed that exclusivity in lease agreements are not required by financiers in order to secure finance for a loan to develop a shopping centre, neither are they requested to be included in lease agreements by property developers.

357. Redefine explained that generally, national supermarket chains request exclusive lease agreements as a way to protect their anchor tenancy in the shopping centre in question. Redefine further noted that some exclusivity clauses found in their lease agreements have been enforced for over 25 years. Redefine has further indicated that they do not allow the negotiation

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124 [⪫]
125 Submission by Nedbank at the Gauteng public hearing (Open session), dated 1 November 2017, p 15
126 [⪫]
127 [⪫]
129 Redefine is a property investment company with a property portfolio comprising of office, retail and industrial space. Redefine’s retail property portfolio includes 87 retail properties.
130 Submission by Redefine, dated 18 October 2016, p35 – 36
131 Submission by Redefine, dated 18 October 2016, p35 – 36
of exclusive lease agreements in new shopping centres that they develop but that they have inherited pre-existing exclusivity agreements when purchasing existing shopping centres; Redefine has frankly stated that they “hate them”.  

358. Masingita submitted that national anchor tenants have a form of leverage over developers given that it is an industry norm that a financier would not approve a loan without securing the 70% national anchor tenancy. On the contrary, Masingita submitted that previously these conditions (exclusivity) were imposed on them due to their lack of market power. However, this practice has declined since the accumulation of market power by Masingita. This implies that the less market power a property developer has, the more likely national supermarket chains will require or impose exclusivity on the shopping centre.

359. The Liberty Group, also a property developer, has indicated to the Inquiry that national supermarket chains have significant bargaining power and often extract more favourable terms from landlords than other retailers are able to. Yet, these national supermarket chains do not incur unusually higher costs in establishing themselves in a shopping centre. Liberty is therefore of the view that there is less reason for exclusivity to be awarded to national supermarket chains in order to guarantee a return on their investment. Liberty is of the view that exclusive lease agreements between landlords and supermarkets are not justified, and should not exist and that any exclusivity clauses which are currently in leases should be removed.

National Supermarket Chains

360. National supermarket chains submit that a substantial investment is required to open a new store. As a result, prior to concluding a lease agreement with a property developer, national supermarket chains conduct an assessment of the available market to determine whether or not the store will trade profitably, such that the investment into the new store is justified. In other words, the

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132 Submission by Redefine, dated 18 October 2016, p. 22.
133 Submission of a presentation (open session) by Masingita at the Gauteng public hearing, dated 3 November; slide 19.
134 Submission of a presentation (open session) by Masingita at the Gauteng public hearing, dated 3 November; slide 19.
135 Submission by Liberty at the Gauteng public hearing, dated 6 November, p. 7.
136 Submission by Liberty at the Gauteng public hearing, dated 6 November, p. 7.
137 Submission by Shoprite (Closed session) at the Gauteng public hearing, dated 1 November, p. 19 – 20.
investment and the profitability of the supermarket is inextricably linked with the profitability of the available market.

361. All national supermarket chains, with the exception of Woolworths, confirmed that they request exclusivity provisions be included in their lease agreements. The national supermarket chains have also indicated to the Inquiry that following the Commission’s previous investigation into exclusive lease agreements, property developers have been less likely to allow for exclusivity clauses in lease agreements.

362. National supermarket chains offered that exclusive leases are justified for the following reasons:

362.1 They compensate the anchor tenant for being expected to sign a long term-lease as well as pay the rent for the duration of the lease even if its trading in that shopping centre or mall is unprofitable;

362.2 They protect the investment made to open a new store and the investment into refurbishing the store;

362.3 National supermarket chains are said to operate at low margins and any loss in sales through the entry of a competitor in a shopping centre has an impact on the profitability of a the national supermarket chain;

362.4 The spending power of the market within the area serviced by a shopping centre may not support the introduction of a competing store;

362.5 Exclusive lease agreements do not constitute a barrier to entry for smaller players in the market; and

362.6 Exclusive lease agreements do not cause harm to consumers through increased prices and/or decreased quality of goods.

363. A detailed discussion of the national supermarket chains’ justifications for these exclusivities follows later in the chapter.

5.6 The duration of exclusive lease agreements

364. As previously indicated, Shoprite, Pick n Pay and Spar have exclusivity provisions contained in their lease agreements with property developers. The Inquiry has found that these exclusive agreements usually last for the duration
of the initial lease period and extend to all renewal options. Usually, the initial lease period is 10 years. As a result, it is often the case that exclusive lease agreements could endure for at least 30 years. This potentially excludes competitors from placing a competitive constraint on national supermarket chains in shopping centres. The length of the exclusive lease agreements indicates that exclusivity is not only intended to allow a national supermarket chain to open a new store and trade profitably before the introduction of a competitor but to exclude rivals in a shopping centre for an extended period of 20 years or more, all in the name of protecting the initial investment and subsequent refurbishments by the national supermarket chain.

5.7 The prevalence of exclusive lease agreements

365. This section gives an overview of the prevalence of exclusive lease agreements in favour of national supermarket chains in shopping centres across South Africa. Each of the national supermarket chains will be discussed in turn.

366. [X].

367. Further discussion of the prevalence of exclusive leases can be found in section 14.1 of Annexure 5.

5.8 Review of lease agreements submitted to the Inquiry

368. The Inquiry obtained a sample of the lease agreements between the national supermarket chains and property developers with regard to the duration of the lease and renewal periods, usage clauses stipulating the purpose of the space that is being leased and any limitations to the landlord’s right of letting, which could include exclusivity clauses.

Duration of the lease and renewal periods

[X]

369. [X].

370. [X].

[X]
371. [⬥].

372. [⬥].

373. [⬥]

374. [⬥]:

374.1 [⬥];

374.2 [⬥];

374.3 [⬥];

374.4 [⬥]

374.5 [⬥].

Usage clauses stipulating the purpose of the space that is being leased

375. [⬥]

376. [⬥].

377. [⬥].

Limitations to the landlord’s right to let

378. Although some of the exclusivity clauses contained in the lease agreements submitted by the anchor tenants have since been waived, this section considers the various exclusivity clauses found in the lease agreements insofar as they may not have been waived and are still applicable in various other shopping centres.
5.9 The extent to which exclusive lease agreements exclude small businesses and potential competitors from entering shopping centres and becoming effective competitors to the national supermarket chains

392. The Inquiry received submissions that indicated that long-term exclusive lease agreements have excluded small businesses and competitors from entering shopping centres. The submissions received during the public hearings appear to align with the complaints that have previously been investigated by the Commission.
Complaints received during the Inquiry

393. From the evidence collected, it has become apparent that small independent businesses view exclusive lease agreements as a constraint to opening a store in a shopping centre. This is particularly the case for speciality stores such as butcheries, bakeries and liquor stores.

394. Unitrade Management Services (“UMS”) is a buyer group and a voluntary trading association that represents small independent businesses active across South Africa. UMS submitted that exclusive leases should be phased out in order to give small independent retailers space to trade within malls and shopping centres. Further, UMS suggested that exclusivity should be limited to 5 years in order for the retailer to recoup their investment. Thereafter, no exclusivity agreements should be permitted in the development.\textsuperscript{138} UMS believes that 5 year exclusivity\textsuperscript{139} agreements would be sufficient to allow the centre to become sustainable and as well as allowing the tenant with the exclusivity to build a reputation. Independent retailers cannot necessarily afford the rent in large malls and therefore UMS suggested that independent retailers with smaller stores should be able to lease space in small convenience centres without the hindrance of exclusivity clauses. Small convenience centres on busy main roads can become hubs with increased footfall, thereby allowing independent retailers such as bakeries, butcheries and greengrocers to expand.\textsuperscript{140}

395. Liquor City is a liquor store franchise business with a presence across South Africa and has experienced difficulties following the entrance of liquor stores affiliated with large supermarket retailers. Liquor City submitted that exclusive leases have led to some of their leases not being renewed after a large retailer obtained a lease with exclusivity provisions in the shopping centre. For example, a Liquor City store in Boksburg, Gauteng, which had been leasing a space in a shopping centre for 18 years was given notice to vacate and pay for the costs of stripping the store to a vacant shell in 2014 in favour of a liquor store affiliated with Checkers Hyper. The master lease\textsuperscript{141} of the centre was

\textsuperscript{138} Submission by UMS at the Gauteng public hearing, dated 6 June 2017, p. 8, para. 19.
\textsuperscript{139} The proposed time frame is based on the UK Competition Commission’s grocery market investigation.
\textsuperscript{140} Submission by UMS at the Gauteng public hearing, dated 6 June 2017, p. 16, para. 51 – 52.
\textsuperscript{141} A master lease is a controlling lease under which the lessee can sub-lease the property for a period of time not extending the term of the master lease.
Confidential

held by Checkers. The reasons given to Liquor City in a letter stated that "since 2004 this particular group has opened their own liquor stores and it’s for this reason that the group has to give preference to their own brands when it comes to centre leases". Liquor City stated that it has had to close many stores over the last two years as a result of exclusive leases. Their attempts to open stores in many shopping centres have also failed due to preference given to liquor stores affiliated with large supermarkets.

In addition, Mr Walter Hlope made the submission that he was offered a franchise by Liquor City in early 2015 but was unable to lease space in various shopping centres for a liquor store even though there were empty leasable spaces in those shopping centres. Mr. Hlope indicated that the landlords at the various shopping centres refused to lease space to him because the large retailers located in the shopping centres already had or were planning on opening their own liquor stores. Mr. Hlope indicated that it is preferable to have a store within a shopping centre for security reasons.

Earljay Trading Enterprise ("Earljay") has been operating in stand-alone stores in Tembisa since 2006. Earlyjay submitted that it had applied to operate a butchery in a shopping centre in Kaalfontein, Tembisa which is nearing completion. Boxer is the anchor tenant. During negotiations for leasing space in the shopping centre, the developer indicated that Earlyjay would require permission from Boxer to trade in the shopping centre. At the time of the public hearings, Earlyjay was still waiting on the approval from Boxer. The benefit of opening a store in a mall or shopping centre, in Earlyjay’s view, is the foot traffic in a mall.

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142 Submission by Liquor City at the Gauteng public hearing, dated 9 June 2017, p. 32, para. 138.
143 Submission by Liquor City at the Gauteng public hearing, dated 9 June 2017, p. 31, para. 146.
144 Submission by Liquor City at the Gauteng public hearing, dated 9 June 2017, p. 42, para. 214.
146 Liquor City’s allegations of predatory prices will not be discussed in this section.
147 [X].
148 [X].
149 Submission by Liquor City at the Gauteng public hearing, dated 7 June 2017, p. 61, para. 376.
150 Submission by Liquor City at the Gauteng public hearing, dated 7 June 2017, p. 61 – 62, para. 377 – 381.
151 Submission by Liquor City at the Gauteng public hearing, dated 7 June 2017, p. 69, para. 448 – 453.
152 Submission by Earljay at the Gauteng public hearing, dated 9 June 2017, p. 57, para. 302.
154 Submission by Earljay at the Gauteng public hearing, dated 9 June 2017, p. 65, para. 366.
Mr Kunene, representing the KZN Youth Chamber of Commerce and Industry ("KZNYC"), submitted that exclusive lease agreements should not be allowed because it is difficult for individuals to open up their own stores, such as a liquor store, if a major anchor tenant has its own liquor outlet. In Mr Kunene’s view, small businesses that are likely to be affected by exclusive lease agreements include butcheries and bakeries. According to KZNYC, these businesses have been the main source of income for businessmen in the townships.

The Khayelitsha Community Trust ("KCT") explained the difficulty it encountered when it tried to build a new mixed-use centre in 2015 to accommodate businesses that were unable to enter the existing Khayelitsha Mall due to lack of space. The existing mall currently has a Spar and Shoprite located inside the shopping centre. The new development came to a standstill when Spar legally challenged the development claiming that the new mixed-use centre was an extension of the existing shopping centre. Spar claimed that in terms of the lease agreement the exclusive rights awarded to the tenant prevented the landlord and developer from pursuing other supermarket retailers to enter the new development.

There were discussions with the existing tenants around allowing them to relocate from the old mall to the new development, or alternatively to have two shops, one located in the old mall and another in the new development. An agreement was not reached and the dispute was referred to arbitration. The arbitrator ruled in favour of Spar, that the new development was an extension of the old shopping centre and that the retailer was entitled to exert and exercise its exclusive right to trade to prevent any other supermarket trading in the new development.

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155 Submission by KZN Youth Chamber of Commerce at the Kwa-Zulu Natal public hearing, dated 3 July 2017, Para 115.
156 Submission by KZN Youth Chamber of Commerce at the Kwa-Zulu Natal public hearing, dated 3 July 2017, Para 115.
158 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 62.
159 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 25.
161 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 30. This did not take into consideration the effect of this decision from the perspective of the Competition Act.
402. KCT submitted that the exclusivity clause with Spar and Shoprite prevented it from allowing any other grocery, butchery, bakery, or fishery retailer from entering the existing shopping centre. KCT claims that they have had two butchers asking to be on the waiting list. KCT’s property portfolio manager has also been called by the existing supermarkets to shut down local traders selling boerewors rolls and samoosas within the shopping centre because the supermarket sells these products as well. There was also an instance where Jet started to sell dry goods and canned food, but this was claimed to be in contravention of the supermarket’s right to exclusivity.

403. KCT submitted that the lease agreement had a 10 year renewal period and the second term of the lease agreement has already come into effect. KCT could not remove the exclusivity clause from the renewed lease agreement (with Spar). In fact, after renegotiating the lease agreement, KCT claims an additional clause was entered that KCT or its subsidiaries could not accommodate any other supermarkets within 5km of the existing mall or allow a general merchant such as Game to convert to a supermarket.

404. Spar responded to the submission made by KCT. Spar indicated that the shopping centre was extended, as was the intention from the time that Spar entered the shopping centre. Spar enforced the exclusivity provision in the lease agreement which reads “Save for a proposed Game general merchandise store… and the existing Shoprite Supermarket, the landlord shall not during the period of this lease or any renewal thereof, lease any other portion of the shopping centre or any extension or addition thereto, to a national supermarket group/chain that may now or hitherto be in existence.”

162 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 53.
163 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 66.
164 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 66.
165 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 71.
166 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 71.
167 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 75.
168 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing, dated 4 July 2017, para 77.
169 Submission by a letter from Spar, dated 5 February 2018.
170 Submission by a letter from Spar, dated 5 February 2018, para. 3.3.
171 Submission by a letter from Spar, dated, 5 February 2018, para. 3.4.
The appeal arbitrator held that what KCT saw as a new centre was in fact an extension of the existing centre and that the exclusivity provision in favour of Spar should therefore be upheld.\textsuperscript{172} Spar has also indicated that the exclusivity provision was not amended.\textsuperscript{173}

405. As indicated previously, SAPOA surveyed its members regarding their views on who has been affected by exclusive leases. According to one member who wished to remain anonymous: “There are numerous small retailers that have been denied tenure at shopping centres because of the exclusivity clauses contained in anchor tenant leases. These include butcheries, green grocers and bakeries. In many cases the exclusivity will be linked to a particular size of the butchery or bakery. The limitation on the size is also prohibitive, as a butchery will often not be viable on a smaller footprint.”\textsuperscript{174}

406. [\textsuperscript{175}]

407. [\textsuperscript{176}]

408. [\textsuperscript{177}]

409. [\textsuperscript{178}][\textsuperscript{179}]

410. [\textsuperscript{180}]

411. Woolworths concurred that exclusivity clauses between anchor tenants and landlords have inhibited the ability of other retailers from entering or expanding into a shopping centre.\textsuperscript{181} In its submissions, Woolworths stated that exclusivity clauses should only endure for as long as is necessary to recover a retailer’s initial investment and for no longer than 5 years. Further, the period of a lease, including renewals, as well as usage and tenant mix clauses should

\textsuperscript{172} Submission by a letter from Spar, dated, 5 February 2018, para. 3.5.
\textsuperscript{173} Submission by a letter from Spar, dated, 5 February 2018, para. 3.2.
\textsuperscript{175} Submission by SAPOA, dated 24 August 2016, p. 27
\textsuperscript{176} Submission by SAPOA, dated 24 August 2016, p. 24.
\textsuperscript{177} Submission by SAPOA, dated 24 August 2016, p. 8.
\textsuperscript{178} [\textsuperscript{179}]
\textsuperscript{180} [\textsuperscript{181}].
not be held to the same time restriction of 5 years, since these do not, in Woolworths' view, constitute an outright restriction on entry or expansion.\textsuperscript{182}

412. Woolworths submitted that it does not support exclusive leases and does not believe that such leases should be a feature of the market place.\textsuperscript{183} Woolworths noted that clauses that restrict the size of a retailer trading in a shopping centre do not allow the affected business to grow and are equivalent to an exclusive lease.\textsuperscript{184} In addressing exclusive lease agreements, Woolworths suggested to the Inquiry that there are many complex factors that the Inquiry will have to take into account and that the Inquiry will have to either disallow exclusivity provisions in their entirety or limit the duration of such exclusivities.\textsuperscript{185}

413. Finally, the exclusivity provisions may also impact on the product range of existing smaller independent traders in a shopping mall. For instance, Representatives of the South African Trading Association (“SATA”) indicated that long-term tenants in the Chatsworth Centre such as Mr. Pillay once approached the landlord to be permitted to sell cell phones from his store because people were no longer buying photo cameras. The landlord did not permit Mr Pillay to sell cell phones because it was not in his lease. However, Mr Pillay claims that other national retailers in the mall, such as Foschini, Markham and Milady are allowed to sell cell phones.\textsuperscript{186}

\textit{Small national and regional supermarket chains}

414. The Inquiry engaged with smaller national supermarket chains and regional supermarket chains to determine whether exclusive lease agreements entered into between property developers and national supermarket chains have hampered their growth and expansion in shopping centres. In particular, the Inquiry received submissions from Choppies and Food Lover’s Market, both of whom indicated that they consider exclusive lease agreements as a barrier to entry into shopping centres.

415. Choppies is a regional supermarket chain that entered the South African market in 2010. Choppies is currently active in Limpopo, North West, Gauteng,

\begin{itemize}
\item \textsuperscript{182} Submission by Woolworths to final Statement of Issues dated 29 August 2016, p. 35, para. 5.2.2.2.
\item \textsuperscript{183} Submission by Woolworths at the Gauteng public hearing, dated 2 November 2017, p. 40.
\item \textsuperscript{184} Submission by Woolworths at the Gauteng public hearing, dated 2 November 2017, p. 41.
\item \textsuperscript{185} Submission by Woolworths at the Gauteng public hearing, dated 2 November 2017, p. 47.
\item \textsuperscript{186} Submission by SATA at the Kwa-Zulu Natal public hearing, dated 6 July 2017; para 296.
\end{itemize}
Mpumalanga, Northern Cape, Free State and recently, KwaZulu Natal, following their acquisition of Jwayelani stores in KwaZulu Natal. Jwayelani is a chain of regional supermarkets and butcheries. Since Choppies entered the South African market in 2010, it claims to have experienced significant challenges in entering shopping centres. Choppies submitted that this is perhaps attributed to retail property developers not recognising Choppies as a national anchor tenant. Choppies submitted that the reasons for rejection when attempting to lease space are not disclosed. As a result, in many instances, Choppies has either had to buy out and occupy old standalone stores or buy the property (strip centres and stand-alone properties) where its stores are located. Choppies is of the view that exclusive lease agreements hinder competition and that there are no positive justifications for such agreements.

416. Jwayelani claimed that it has not been able to enter shopping centres due to exclusive lease agreements. The reason given by property developers for not allowing it to trade in shopping centres is that “it does not fit the customer profile [of the mall]”. Jwayelani prefers to be in shopping centres because many customers frequent shopping centres for a one stop shopping experience. Jwayelani is currently only trading in two shopping centres. 

417. Exclusivity agreements may have affected Choppies’ (and by extension, Jwayelani’s) ability to lease space in the past. Choppies has a negative view of exclusivity lease agreements and has never insisted on such agreements when opening a new store. In its view, exclusivity arrangements hinder competition and do not have any positive justifications. Choppies further submitted that it is likely that exclusivity lease agreements limit product choice and may lead to higher prices for consumers.

418. Food Lover’s Market (“FLM”) is a grocery retailer that focuses on fresh and perishable food. As a newer entrant into the grocery retail market, FLM

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187 See notes of meeting with Choppies dated 20 June 2016.
188 See Choppies written submission dated 12 May 2017, p. 3, para. 2.17.
189 Submission by Choppies, dated 12 May 2017, p. 3, para. 2.19.
190 Minutes of meeting between Jwayelani and the Inquiry, dated 17 August 2016.
191 Submission by Choppies, dated 12 May 2017, p. 3, para. 2.17.2 – 2.19.
193 FLM has 96 stores across South Africa. 73 of these stores are Food Lover’s Market stores which offer a wider offering than the 19 Fruit & Veg City stores. 4 stores are Food Lover’s Eateries, which offer a restaurant and café, grill bar, Panini and pizza bar, smoothie bar, ready prepared-take away meals and bakery. FLM opened their first store as a Fruit & Veg City in 1993. They were able to open an additional 4 stores by the end of 2000.
has experienced barriers to entry related to exclusive leases granted by landlords to anchor tenants in national shopping centres.\textsuperscript{194}

419. When FLM was trading as Fruit & Veg City it did not consider itself to have any direct competitors because the other grocery retailers were not as focused on fresh produce as FLM was at the time.\textsuperscript{195} When Fruit & Veg City entered the market, it was able to compete against the national supermarket chains in fresh produce by supplying good quality fresh produce at competitive prices. However, over time the larger grocery supermarkets started to improve their procurement processes and Fruit & Veg City realized that it needed to improve its offering to customers. This is when the founders of Fruit & Veg City created FLM, in the mid-2000s after visiting the USA.\textsuperscript{196} FLM identified an opportunity to expand its business into providing its customers with butchery and bakery departments. It was not FLM's focus to compete with Pick n Pay and Shoprite in all product lines, but rather to provide its customers with fresh meat, bread and other products as well as fresh produce.\textsuperscript{197}

420. FLM was not focused on entering shopping centres in the first five years of its establishment. It was establishing stand-alone stores as Fruit & Veg City stores. It was around the late 1990's that FLM started approaching shopping centres to open up stores inside shopping centres. This is also the period when FLM first encountered exclusive lease agreements.\textsuperscript{198}

421. FLM's submission details instances where they were prevented from entering a shopping centre or where they have been required to limit their product or service offering due to exclusive lease agreements. Table 5.1 below replicates FLM's submissions in this regard.

<table>
<thead>
<tr>
<th>Centre/Area</th>
<th>Retailer with exclusive lease agreement</th>
<th>Entry prevented</th>
<th>Limited offering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carnival City Mall, Brakpan, Gauteng</td>
<td>Checkers</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Riverwalk Centre, Potchefstroom, North West</td>
<td>Shoprite</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Bethlehem Mall, Bethlehem, Free State</td>
<td>Pick n Pay</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Paarl Mall, Paarl, Western Cape</td>
<td>Pick n Pay</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Newcastle Mall, Newcastle, KZN</td>
<td>Checkers</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{194} Submission by FLM, dated 31 May 2017, p. 8, para. 13.1.2.


\textsuperscript{196} Submission by FLM at the Gauteng public hearing dated 31 Oct 2017, p. 15.

\textsuperscript{197} Submission by FLM at the Gauteng public hearing dated 31 Oct 2017, p. 17.

\textsuperscript{198} Submission by FLM at the Gauteng public hearing dated 31 Oct 2017, p. 11.
422. From the above, it is evident that FLM has experienced exclusivity agreements as a barrier to entry into malls and shopping centres throughout the country. In the two instances where FLM was prevented from offering their full range of products and services, FLM was eventually able to introduce their full offering following lengthy negotiations.

423. In the case of Boardwalk Centre in KZN, the store was first opened as a Fruit and Veg City store in 2010, offering only fresh produce because Pick n Pay would not allow a FLM to open a store with their full offering. In 2016, the store was able to start trading as a FLM with their full offering. Similarly, the store in Umhlanga Ridge was opened as a Fruit and Veg City store in 2009 because Pick n Pay refused to allow FLM to open a store with their full offering. After 4 years of negotiations, Pick n Pay agreed to waive their exclusivity and a FLM with full offering was established.200

424. FLM was of the view that an exclusive lease is a trade-off between the anchor tenant and the developer201 and that there is no valid reason for the inclusion of exclusivity clauses in lease agreements. FLM submitted that it has never and will never require an exclusive lease provision from shopping centres or mall owners.202 FLM also submitted that the grocery retail sector has become more competitive following the Commission’s previous investigation into exclusive lease agreements. They further submitted that developers and landlords are less inclined to grant exclusivity in new shopping centres and are willing to accommodate FLM even in instances where there is an exclusivity agreement in place that has not been waived.203

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199 Spar was willing to waive their exclusivity on condition that the landlord reduce the turnover rental percentage in the lease agreement and upgrade and extend Spar’s delivery yard at the landlord’s cost. The landlord was not willing to do this and Spar refused to waive their exclusivity.


202 Submission by FLM, dated 31 May 2017, p. 11 – 12, para. 17.4 – 18.

Major hybrid wholesalers and retailers of general merchandise and food products

425. The Inquiry received submissions from Massmart in respect of their Game stores that have been unable to introduce fresh produce into their stores in shopping centres as a result of exclusivity provisions afforded to national supermarket chains.

426. Massmart operates nine wholesale and retail chains, including Game, Makro, Rhino Cash and Carry, Jumbo, Cambridge Food and Liquorland. Game has attempted to apply a strategy in terms of which it will expand its product offerings to include the supply of fresh groceries alongside its general merchandise and non-perishable grocery offering. The inclusion of groceries is to enable customers to conduct various shopping missions within Game stores. Customers can either come to Game for top-up grocery shopping or to do their basic grocery shopping.

427. According to Massmart, Game is in a good position to supply fresh groceries to South African customers as a result of its established footprint of stores across South Africa enabling it to have the ability to quickly expand into fresh groceries and create a new competitive constraint on a national scale.

428. Massmart believes that Game’s differentiated product offering has the potential to provide consumers with an alternative shopping experience. Game also has the potential to be welcomed by mall operators as it enhances the retail mix in the malls in which Game is present.

429. [\textsuperscript{204}][\textsuperscript{205}]

430. In October 2014, Massmart filed a complaint\textsuperscript{205} with the Commission alleging that Shoprite Checkers, Pick n Pay and Spar are abusing their dominance by entering into long-term exclusive lease agreements with property developers. Massmart has submitted that exclusive lease agreements are anti-competitive in that they prevent entry or expansion by new retailers into shopping centres where one or more of the 3 large retailers are incumbent.

\textsuperscript{204} Competition Commission case number 2014Oct0612.
Previous investigations by the Competition Commission

434. In June 2009, the Commission initiated an investigation against the national supermarket chains (Pick n Pay, Shoprite Checkers, Woolworths, Spar, Massmart and Masscash) for alleged contraventions of sections 4(1)(a), 5(1), 8(c) and 8(d)(i) of the Act. The investigation examined various competition concerns in the grocery retail sector, including buyer power, category management, information exchange and long term exclusive lease agreements. The Commission alleged that the national supermarket chains and property developers entered into and enforced long term exclusive lease agreements through anchor tenancy, to the exclusion of potential competitors such as speciality stores such as bakeries and butcheries at the retail level.

435. Following the findings of its investigation, the Commission non-referred the case. In its non-referral press release in January 2014, the Commission decided to pursue advocacy engagements with the industry. Further to the advocacy engagements, the Commission received an increasing number of complaints during 2013 and the second half of 2014. The following complaints were received:

435.1 Mass Stores Proprietary Limited vs. Shoprite Checkers Proprietary Limited and Hyprop Investments Limited (October 2013);
435.2 South African Property Owners Association NPC vs. Pick 'n Pay Group, Shop Rite and Spar Group (September 2014);
435.3 Mr. SA Mahwiliri vs. Mr. Isaac Kriel (September 2014);
435.4 Massmart Holdings Limited vs. Shoprite Checkers and Others (October 2014); and
5.10 The extent to which exclusive lease agreements have contributed to the high level of concentration in the formal grocery retail sector

436. The Inquiry considered the effect of exclusive lease agreements on the concentration levels of the formal grocery retail sector. The Inquiry focused on the levels of concentration in the formal sector because exclusive lease agreements by their nature affect stakeholders that are active in the formal retail sector and not necessarily the informal sector.

437. From the information gathered, it is evident that exclusive lease agreements may have an effect on the concentration levels in the sector due to the difficulties faced by small businesses, speciality stores, regional supermarkets and small national supermarkets in obtaining retail space in shopping centres due to the existence and enforcement of exclusive lease agreements between property developers and national supermarket chains. Of greater concern to the Inquiry is the fact that the pattern of the use of long-term exclusive leases has had the effect of maintaining the observed levels of concentration and incumbency by the national supermarket chains.

438. While it has been argued that emerging challenger retailers can compete from stores that are not located in shopping centres, the evidence gathered suggests that the majority of consumers in South Africa shop at formal supermarkets as opposed to the informal sector.\footnote{Submission by Shoprite, dated 06 July 2017; para 1.7.} As indicated previously, the formal supermarkets are largely located in shopping centres. The evidence presented indicates that other players within the grocery retail sector have been precluded from opening stores in shopping centres. Denying independent retail stores the opportunity to trade in shopping centres could potentially result in their failure as they are not able to attract as much foot traffic in their isolated location as a stand-alone store. This has the direct effect of reducing the number of independent retail traders and reduced their ability to compete with national supermarket chains in shopping centres.
5.11 The extent to which long-term exclusive lease agreements have benefited or harmed consumers

439. The Inquiry was tasked to evaluate the extent to which long-term exclusive lease agreements entered into between property developers and national supermarket chains have benefited or harmed consumers and led to increased or decreased efficiencies.

440. According to Masingita, apart from exclusive leases bearing a competitive constraint on potential entrants in the market, they can also be harmful to consumers. In support of this notion, Emira also submitted that exclusivity is a condition the retail market would be better off without because exclusive leases can act as a hurdle for the property owner to bring in new tenants.

441. 

442. The evidence does indicate that exclusive lease agreements have restricted consumer choice within shopping centres. Despite this proliferation of shopping centres, the consumer choice within shopping centres has largely been confined to the limited pool of national supermarket chains that have been considered suitable to be anchor tenants due to the prevalence of exclusive leases. Consumer choice is an important dimension to competition, as it provides consumers with the benefit of varied offerings at different price and quality points. Eliminating this alone is a significant harm to consumer welfare and hence competition.

443. Aside from the adverse impact on consumer choice, the Inquiry also is of the view that these leases are likely to have negative effects on price competition too.

443.1 At a narrow level, the leases have restricted competing alternatives within individual shopping centres where consumers are more easily able to compare pricing and substitute purchases across stores, whether for the whole shop or a part of it. The very fact that

213 Submission of a presentation (open session) by Masingita at the Gauteng public hearing, dated 3 November; slide 19.
214 Submission by Emira at the Gauteng public hearing, dated 6 November 2017, (open session); para 30; p. 29.
215 Commission case number 2014Sep0456.
supermarket chains seek exclusivity in the fear of revenue being diverted to alternatives supports this hypothesis.

443.2 At a broader level, these leases have perpetuated concentration in the grocery retail market to a few large national chains. Whilst some view this as sufficient to realise competition, it is also the case that the national chains are differently positioned in respect of core target markets (e.g. by LSM category) and therefore do not always compete head on for the same consumer. The exclusion of independent stores or new emerging chains can only enhance the level of competition and bring more focus on remaining competitive on price or quality amongst the national chains. The example of FLM is informative in this regard, adding a new competitive force to which the chains have had to respond in areas where it operates.

5.12 Justifications for exclusive lease agreements

444. The national supermarket chains indicated various justifications for exclusive lease agreements. This section will explore these justifications.

445. The justifications offered by national supermarket chains for exclusive lease agreements can be broadly summarised in six main categories. These are presented in Table 5.2 below indicating the national supermarket chain that submitted these justifications to the Inquiry.

Table 5.2: Justifications for exclusive lease agreements offered by national supermarket chains

<table>
<thead>
<tr>
<th>Justification</th>
<th>[X]</th>
<th>[X]</th>
<th>[X]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusive lease agreements compensate the anchor tenant for having to sign a long-term lease where they are expected to trade and pay rent for the duration of the lease, regardless of the profitability of the store</td>
<td>[X]</td>
<td>[X]</td>
<td></td>
</tr>
<tr>
<td>Exclusive leases protect the investment of opening a new store and continuously refurbishing a store in a shopping centre</td>
<td>[X]</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Supermarkets operate at low margins and therefore a small loss in the volume of sales through the introduction of a competitor in the shopping centre has a significant impact on the profitability of a supermarket</td>
<td>[X]</td>
<td>[X]</td>
<td></td>
</tr>
</tbody>
</table>
The spending power of the market within the area serviced by a shopping centre may not support the introduction of a competing store

Exclusive lease agreements do not constitute a barrier to entry for smaller players in the market

Exclusive lease agreements do not cause harm to consumers through increased prices and/or decreased quality of goods

| 446. | Further detail regarding the submissions of the national supermarket chains on this issue is set out in 14.2 of Annexure 5. |

**Other justifications for exclusive lease agreements**

| 447. | Ms Sepeng, a commercial property owner in Garankuwa as well as the owner of OBC Garankuwa Butchery, elaborated on the advantages of exclusive lease agreements for landlords. She noted that exclusive leases allow the landlord to plan ahead and secure the viability of the shopping centre or mall.\(^{216}\) Exclusive trading has never been a problem for Ms Sepeng as long as the stores with exclusivity are controlled in terms of speciality, rather than large retailer shops that become one-stop stations with a bakery, butchery, and pharmacy.\(^{217}\) This allows for a good tenant mix and allows smaller retailers with speciality shops an opportunity to trade in shopping centres and malls. Further, Ms Sepeng indicated that exclusivity allows smaller retailers in her shopping centre an opportunity to grow. Tenants with a smaller turnover are given an opportunity to rent at a lower rate per square metre while large retailers with an exclusivity agreement often generate a larger turnover and this translates into a higher rate per square metre.\(^{218}\) Ms Sepeng’s exclusive leases at her shopping centre are for a duration of 10 years with an option to renew. |

| 448. | Not all SAPOA members are against supermarkets requiring an exclusive lease clause, for example, one of the anonymous members who made submissions in relation to exclusive leases argues that the benefits of having the anchor tenant within the property outweigh the potential negative impacts. In their experience, smaller businesses (that are likely to compete with the |

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216 Submission by Bongo Sepeng at the Gauteng public hearing, 6 June 2017, p. 34, para. 129.
218 Submission by Bongo Sepeng at the Gauteng public hearing, 6 June 2017, p. 40, para. 154.
large retail anchor tenants) are unable to generate sufficient revenue in a
centre which occupies a bigger, well known branded tenant and are, as such,
not attracted to these buildings irrespective of any restrictions imposed in
terms of an exclusivity clause.\textsuperscript{219}

5.13 Waivers of exclusive lease agreements

This section provides a detailed assessment of occurrences where a national
supermarket chain has waived its right to exclusivity to accommodate the
introduction of another grocery anchor tenant to enter a shopping centre as
well as the waiving of exclusivity to accommodate the entry of small business
and speciality stores in a shopping centre. The analysis is based on
information submitted by Shoprite, Pick n Pay and Spar in response to
information requests. The section also provides a summary of the
commitments proposed by Shoprite, Pick n Pay and Spar to no longer enforce
exclusivity in certain shopping centres across South Africa.

\textit{Waiving of exclusivity to accommodate another national retailers}

The Inquiry requested that Shoprite\textsuperscript{220}, Pick n Pay\textsuperscript{221} and Spar\textsuperscript{222} provide
detailed information regarding where and when they had waived exclusivity
for another grocery anchor tenant to enter a shopping centre.

\textit{Food Lovers Market / Fruit & Veg City}

FLM has provided instances where existing tenants were willing to waive their
exclusivity or where landlords accommodated FLM despite exclusivity
agreements. These are summarised in Table 5.3 below.

<table>
<thead>
<tr>
<th>Centre/Area</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weskus Mall, Vredenburg, Western Cape</td>
<td>Checkers waived their exclusivity after negotiations with the landlord.</td>
</tr>
<tr>
<td>Arbour Crossing, Amanzimtoti, KZN</td>
<td>Pick n Pay agreed to waive their exclusivity.</td>
</tr>
<tr>
<td>Westwood Mall, Durban, KZN</td>
<td>Pick n Pay agreed to waive their exclusivity.</td>
</tr>
</tbody>
</table>

\textsuperscript{219} Submission by SAPOA, dated 24 August 2016, p. 25.
\textsuperscript{220} Submission by Shoprite, dated 22 September 2017 p. 21-23.
\textsuperscript{221} Submission by Pick n Pay, dated 04 July 2017, p. 9-10, para. 28 and Annexure P4.
\textsuperscript{222} Submission by Spar, dated 17 July 2017, p. 12, para. 46-47.
FLM refused to waive their exclusivity. Despite this, the landlord accommodated FLM.

Checkers waived their exclusivity.

Shoprite waived their exclusivity.

Source: FLM submission

452. FLM noted that while exclusivity agreements have been waived in many shopping centres, the restriction on the size of their stores has not. FLM has had extensive negotiations with landlords over not being allowed to open a store more than 2000m² to 2500m². FLM submitted that the national supermarket chains are using their exclusivity privileges to restrict the size of FLM stores in order to prevent FLM from going into the grocery field, which they consider as their own business. FLM submitted that the national supermarket chains wish to restrict FLM to stay in fresh produce. Thus, the partial exclusivities relating to size restricts the range of products that FLM can carry in a store.²²³

453. [3]< identified four occasions when it waived exclusivity to allow for the entry of FLM into a shopping centre [3]<.²²⁴


²²³ [X].
²²⁴ [X].
²²⁵ [X].
²²⁶ [X].
²²⁷ [X].
²²⁸ [X].
458. The assessment above indicates that all three national supermarket chains have required at some point in time the landlord to reimburse the national supermarket for the entry of a FLM into the same shopping centre. In these instances, exclusivity was accordingly a bargaining chip that no longer has any bearing on the justifications provided to this Inquiry for these clauses in the first place. Notably, in the case of Shoprite and Pick n Pay, the Inquiry finds that these supermarket chains have required landlords, when they have agreed to allow FLM to enter a shopping centre to locate it in areas that are competitively less favourable.

[3<]

459. [3<] identified two malls with whom it shares partial exclusivity with [3<]: [3<].


461. [3<].

462. [3<] did not identify instances in which it has waived exclusivity to allow for a [3<] store to enter a shopping centre which Spar has an exclusive lease agreement in place.

463. The assessment above indicates that the national supermarket chains appear to be more lenient with regards to allowing the entry (or presence) of a Woolworths store as opposed to a FLM in the same shopping centre. The selective waiving of exclusivity clauses seems to be used by national supermarket chains as a tool to influence tenant mix within a shopping centre and as a bargaining chip to demand more favours from the landlord.

[3<]

465. [3<].

466. [3<].

467. [3<] has identified three instances when it waived its exclusivity to allow for the entry of a [3<] store into the shopping centre: [3<].

468. [3<].

469. [3<].

470. [3<].

471. [3<] has identified three instances when it has waived its exclusivity in the face of a [3<] store operating in a shopping centre with existing exclusivity: [3<].

Waiving of exclusivity to accommodate a small business or speciality store

Butcheries

472. [3<] identified three instances when it waived its exclusivity to allow for the entry of a butchery into one of its shopping centres: [3<]. Unfortunately, this Inquiry does not have any submission or view from [3<], despite numerous efforts to have a confidential engagement with them.

474. [3 пункт] identified four instances in which it permitted a butchery or a biltong store to enter a shopping centre in which [3 пункт] already had an exclusive lease agreement: [3 пункт] 243

475. [3 пункт] 244

Bakeries

476. [3 пункт] identified four instances where it has waived exclusivity for a bakery to enter a shopping centre: [3 пункт] 245

477. [3 пункт] 246 [3 пункт]. These limitations, in the Inquiry’s view, still limit the growth potential of the new tenants referred to above.

Fresh Fruit and Vegetable Merchant

478. [3 пункт] identified one example where it waived its exclusivity to allow for the entry of a fresh fruit and vegetable store[3 пункт] 247

Evidentiary insights on waivers on exclusive lease agreements

479. The insights gathered in respect of the waivers on exclusivity by the incumbent national supermarket chains indicate that these players are willing and able to set aside such restrictions where they choose to. The Inquiry, however, remains concerned that these waivers were, in large part, in favour of competing incumbent national supermarket chains and independent specialist stores. There are very limited instances in which such waivers were accorded to the emerging challenger retailers.

480. The Inquiry finds it concerning that the growth and competitive ability of these emerging challenger retailers has been substantially limited because of exclusion from the shopping centres. Lastly, the public policy benefit for the sustained presence of the emerging challenger retailers and other
independent retailers is the realisation of inclusive economic participation in the South African economy.

Waiving of future exclusive leases

481. In light of the Inquiry, national supermarket chains made proposals regarding the waiving of exclusive lease agreements. The Inquiry has received proposals from [_excel]. Each proposal is set out below.

[excel]

482. [excel] proposal was as follows:

482.1 [excel].

482.2 [excel]:

482.2.1 [excel].

482.2.2 [excel]

482.2.3 [excel]248

[excel]

483. [excel] proposal was as follows:

483.1 [excel]:

483.1.1 [excel]

483.1.2 [excel].

483.2 [excel]:

483.2.1 [excel]249

248 Proposal by Pick n Pay, dated 17 April 2018.
249 Service department refers to butchery, bakery, fish shop, delicatessen, fresh fruit and vegetable merchant, liquor and pharmacy.
483.2.2 \([\text{3}<]\)\(^{*250}\)

484. \([\text{3}<]\)\(^{251}\)

485. \([\text{3}<]\)

486. \([\text{3}<]\) proposal was as follows:

486.1 \([\text{3}<]\)

486.2 \([\text{3}<]\)

486.3 \([\text{3}<]\)

486.4 \([\text{3}<]\):

486.4.1 \([\text{3}<]\)

486.4.2 \([\text{3}<]\)

486.5 \([\text{3}<]\):

486.5.1 \([\text{3}<]\)

486.5.2 \([\text{3}<]^{252}\)

5.14 Other barriers to entry and expansion in shopping centres

487. During the course of the Inquiry, other barriers to entry of small businesses that fall outside the scope of the Inquiry were identified by stakeholders. These barriers are highlighted for further research.

Rentals

488. In Masingita’s developments, the rental fee is usually negotiated before construction commences on the development with anchor tenants and only

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\(^{250}\) Proposal by Shoprite, dated 19 January 2018.
\(^{251}\) Proposal by Shoprite, dated 19 January 2018.
\(^{252}\) Proposal by Spar, dated 18 May 2018
negotiated after the development is completed with line tenants. Emira noted that the size of the shop is a determining factor of the rental fee payable in any property development. Moreover, Emira stated that the larger the store size, the less rental payable per square metre, which is motivated by bulk buying or bulk renting. Masingita explained that base rentals are market related and are based on the size of the centre and the year in which the development anticipated commencing trade. A base rental is defined by Masingita as a rental payable by the lessee in accordance with the size of the store and rate per square meter agreed on and the rate is usually lower for tenants who occupy a larger space.

On the other hand, Emira defined a base rental as a standard market related rental fee paid by tenants. Further to this, Masingita defined a turnover rental as a percentage of turnover paid by the lessee to the lessor as additional rental. Furthermore, Emira stated that some national anchor tenants have a base rental and in the following year, the base rental is re-calculated. On the other hand, there are other retailers who are exempted from any escalations such as Woolworths.

In terms of rental and other costs of operating in a shopping centre, Redefine explained that there is base rental, which is calculated per square metre and a turnover rental, which is a percentage of the tenant’s turnover. The tenant is required to pay whichever is the higher of the base rental or turnover rental. Additionally, there may be a merchants association contribution which the landlord also contributes towards that is used for promotions within the shopping centre. Tenants are also required to pay water and electrical charges as well as municipal rates. There is also usually a contribution towards operating costs for cleaning and security for common areas. All of these costs, other than rental, are calculated on a pro rata basis, depending on the space that the tenant occupies within the shopping centre.
491. Redefine explained that the difference in rental per square metre between tenants is based on the amount of space they wish to occupy as well as the shape and location of the shop. The security of income also plays a part in the rental rate. Listed companies usually sign 10 year leases and it is most likely that the landlord will be able to collect rent from these tenants for 10 years. The smaller businesses have a higher credit risk which is factored into the rental rate. Anchor tenants know what their turnover would be on a certain size store and know the rental rate that they can afford. If the landlord wanted to charge a higher rental to the anchor tenants, they would not rent space in the development and the development would not receive financial backing from financiers. This would mean that the development would not be built.

492. Additionally, Redefine explained to the Inquiry that tenants earn different margins. In particular, grocery tenants earn very small margins. A tenant who has a large space and low margins would pay a lower rental per square metre than a tenant renting a small space with large margins.\(^{261}\) In Redefine’s view, this does not preclude smaller businesses from entering shopping centres, as the increase in foot traffic that a small business would experience when located in a shopping centre could increase their turnover, thereby enabling the small tenant to pay the higher rental rate.\(^{262}\)

493. Ugu Association of Business claimed that the method used to determine the rental in the lease agreement is not clearly communicated to their members. For example, Ugu Association of Business claimed that members will be told that the rent at a shopping centre is R15 000 but when they approach the management of the shopping centre they are told that it is R21 000 instead and the members are not told how the rent was calculated.\(^{263}\)

494. Representatives of the South African Trading Association ("SATA") and tenants of Chatsworth Centre claimed during the KZN public hearings that over the last 28 years smaller tenants have been slowly replaced by major national stores. Chatsworth Centre used to have 170 tenants, however, this has dropped to approximately 105 tenants due to revamps and loss of trade at the mall.\(^{264}\)

\(^{261}\) Submission by Redefine at the Gauteng public hearing, 3 November 2017 p. 40.
\(^{262}\) Submission by Redefine at the Gauteng public hearing, 3 November 2017 p. 40.
\(^{263}\) Submission by Ugu Association at the Kwa-Zulu Natal public hearing, dated 3 July 2017, Para 209.
\(^{264}\) Submission by SATA at the Kwa-Zulu Natal public hearing, dated 6 July 2017, Para 290.
Long term tenants at Chatsworth centre, such as Mr Pillay, have complained to the landlord about the annual increase in their rentals of between 8 to 10%, and believe that there should be a cap for long-term tenants. It is claimed that the landlord has not listened.  

The Inquiry further received a complaint on 10 June 2018, alleging that small store tenants pay a much higher rental rate than that of anchor tenants. Roma Gioielli Jewellers, situated in Woodlands Boulevard shopping centre in Pretoria, has alleged that the rental rate for line tenants in this shopping centre have been increased in order to pay for shop fittings and rental for an anchor tenant that will soon be entering the shopping centre.

This complaint is similar to that of ExactAfrica, who indicated in meetings with the Inquiry that the difference in rental rates between anchor tenants and line tenants is excessive, with higher escalation rates for line tenants compared to anchor tenants. ExactAfrica also indicated that line tenants’ lease agreements usually contain clauses which are not present in anchor tenant lease agreements, stipulating an increase in rental rates based on performance of the store.

5.15 International experience on exclusive leases in grocery retail markets

The Inquiry also had regard to the experiences of other international jurisdictions in relation to the use of long-term exclusive lease agreements. Specifically, the Inquiry considered the investigations by the competition authorities in the United Kingdom and Australia. The Inquiry found that in both investigations, the widespread use of long-term exclusive lease agreements hampered the normal functioning of competition and gave rise to anti-competitive outcomes. As such, the competition authorities in these jurisdictions took corrective remedial action to cure the identified harm arising from this practice. A brief summary of the international experiences is set out in 14.3 of Annexure 5.

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265 Submission by SATA at the Kwa-Zulu Natal public hearing, dated 6 July 2017, Para 291.
266 Commission case number 2018Jun0013.
267 Minutes of Meeting between ExactAfrica and the Inquiry, dated 1 August 2017, p1
268 Minutes of Meeting between ExactAfrica and the Inquiry, dated 7 July 2016.
5.16 Preliminary findings

499. When considering the prevalence of exclusive leases, the Inquiry found that exclusive leases are prevalent across South Africa. The Inquiry found that the prevalence of exclusive leases give rise to the exclusion of emerging challenger retailers. The extent to which long-term exclusive lease agreements entered into between property developers and national supermarket chains have excluded small businesses and larger competitors or potential competitors from entering malls, and from competing effectively on the basis that they do not have access to suitable retail space.

500. The Inquiry found that exclusivity provisions generally last for the duration of the initial lease and extend to all options to renew, depending on negotiations with property developers.

501. While it is reasonable for the financiers, property developers and national supermarket chains to make long term commitments to protect their investments in the shopping centre, it is questionable whether the terms requested in the leases, i.e., exclusivity, product offering etc. are justifiable.

502. The Inquiry found that the pattern of the use of long-term exclusive leases has had the effect of maintaining the observed levels of concentration and incumbency by the national supermarket chains.

503. The evidence does indicate that exclusive lease agreements have restricted consumer choice within a shopping centre. Despite this proliferation of shopping centres, the consumer choice within shopping centres has largely been confined to the limited pool of national supermarket chains that have been considered suitable to be anchor tenants due to the prevalence of exclusive leases. The evidence that such leases have served to exclude emerging retailers and specialist stores from shopping malls across most of the country demonstrates that consumer choice in general has been more limited and price competition hindered.
THE IMPACT OF THE DYNAMICS OF COMPETITION BETWEEN LOCAL AND FOREIGN NATIONAL OPERATED SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AND THE INFORMAL ECONOMY ON COMPETITION

6.1 Introduction

504. The democratic dispensation has seen increasing numbers of foreign nationals making South Africa their home\(^\text{269}\). The growing number of foreign nationals and the rapid increase in the number of formal retail chains opening up stores in non-urban areas prompted some researches to study the impact of these developments on small and independent businesses (local and foreign owned). Several studies conducted reported that there has been a decline in the number of small businesses especially those that operated within the vicinity of a shopping mall\(^\text{270}\).

505. In addition to the increasing numbers of foreign owned businesses, studies conducted in the sector post 1994 also indicate that there has been a decrease in the number of small and independent retailers trading in non-urban areas.

506. It is public knowledge that foreign owned spaza shops are perceived to be more successful than local owned spaza shops. This has in the past, and most recently in Kwa-Zulu Natal, contributed to tensions between South African nationals and foreign nationals, especially in townships and rural areas and sometimes these spreading into urban areas\(^\text{271}\). Central to this dynamic of

\(^{269}\)In particular, the majority of them settled in the township and rural areas of South Africa and are making a living largely by opening businesses in the informal grocery retail sector, more specifically by opening spaza shops.

\(^{270}\)D.H. Tustin and J.W. Strydom, ‘The potential impact of formal retail chains’ expansion strategies on retail township development in South Africa’, Southern African Business Review, Volume 10, Issue 3, Dec 2006, pp.48-66; A.A. Ligthelm, ‘The impact of shopping mall development on small township retailers’, South African Journal of Economic and Management Science Volume 11, Number 1(2008) and A.A. Ligthelm, ‘Entrepreneurship and small business sustainability’, Southern African Business Review Volume 14, Issue 3, Dec 2010, pp.131-153; In addition to the decline in the number of small businesses, other studies have found that over the years, foreign owned spaza shops have grown considerably in comparison to local-owned spaza shops. A study conducted by the Sustainable Livelihoods Foundation indicated that, contrary to some studies, this influx did not increase the number of spaza shops operating in non-urban areas but rather that the influx resulted in the local-owned spaza shops being taken over by the foreign nationals;

\(^{271}\)In some instances, the tensions have sparked into violence resulting in the burning and looting of retail businesses owned by foreign nationals and the unfortunate loss of lives. This evolving pattern of ownership and operation has since 1994 become a focus of deep conflict, erupting most dramatically in the xenophobic attacks in 2008 and 2015 which revealed profound underlying tensions between South African born township residents and residents drawn from across the continent and from South Asia.
conflict appears to be perceptions of how foreign owned spaza shops, and, to a degree, formal and/or semi-formal retailers conduct their business compared to local-owned spaza shops.

507. Some of the local retailers allege that the underlying reasons for the violence is that the foreign owned retailers thrive under unfair advantages which undermine the viability of the local-owned retail stores. Allegations that have been made against foreign operated retailers, in public and during the Inquiry’s engagements with local traders, include that foreign nationals operate without trading licenses; do not comply with statutory tax requirements; receive preferential treatment from most wholesalers due to their shared religious beliefs; and have access to counterfeit goods.

508. This perception of unfair advantage, together with other factors considered in this Inquiry are perceived to be the cause for foreign owned spaza shops’ better performance than the majority of local-owned spaza shops. The tension arising from these perceptions and the economic insecurity of the unemployed local South Africans\(^{272}\) are said to be some of the causes for xenophobic violence against foreigners.\(^{273}\)

509. In this objective, the Inquiry sought to ascertain the extent to which specific factors contribute to different business outcomes between foreign and local owned businesses. The Inquiry also sought to understand the dynamics of competition between foreign owned and local owned spaza shops. This was done by assessing the factors outlined below in line with sections 2(b), (c), (e), (f) and (g) of the Act.

\(^{272}\) In other words job security, business opportunity etc.

\(^{273}\) A few instances of when tensions actually sparked into violent protest action includes the December 1994 and January 1995 marches in the Alexandra Township outside of Johannesburg. Local protesters destroyed the homes and shops of suspected undocumented migrants and demanded their immediate extradition. The most violent demonstrations came in 2008, when wildfire attacks spread from Alexandra Township to other townships in Gauteng and to the rural areas of Limpopo. This resulted in 342 foreign owned shops being looted and 213 being burnt down. Most recently, in 2015, an estimated 120 shops owned by Somali and Bangladeshi nationals across Snake Park, Zola, Meadowlands, Slovoville, Kagiso, Zondi and Emdeni in Soweto were looted. Sahistory.org.za (8 June 2018) Xenophobic violence in democratic South Africa [Online]. Available at: http://www.sahistory.org.za/article/xenophobic-violence-democratic-south-africa [Accesses on 14 March 2017]; In addition, there have also been numerous marches in particular in the township areas. One of the most recent examples was in February 2017, when community members from various townships around Tshwane organized “anti-immigrant marches” in demonstration against African foreign nationals “taking their jobs and businesses”. These marches were accompanied by violent conduct and gross looting of stores in non-urban areas.
510. In particular, the factors which the Inquiry sought to assess include the following:

510.1 the reasons why foreign operated spaza shops are perceived to be more successful than local owned spaza shops, and the factors contributing to their perceived success;

510.2 the barriers faced by local owned spaza shops, which are likely to inhibit their ability to effectively respond to the competitive pressure faced by them from foreign operated spaza shops;

510.3 the effects (positive or negative) of the dynamics of competition between foreign and local national operated spaza shops on local manufacturers, buyer groups, wholesalers and upstream suppliers; and

510.4 the effects (positive or negative) of the dynamics of competition between foreign and local operated spaza shops on employment in the sector.

*Limitations and conceptual constraints on meeting some of the goals of this objective*

511. The Inquiry faced fundamental problems in gathering the appropriate evidence necessary for a comprehensive analysis of the issues related to this objective. The public debates around this issue have been, and are, marked by deeply conflicting and often contradictory views, characterised by prejudice by “one” against “the other”. The submissions made by each group were similar throughout the country with locals casting accusations on foreign nationals and foreign nationals claiming that their business success was solely due to their skills, their organisational structures, and their effort and perseverance.

512. The evidence gathering exercise was further distorted by the poor participation and cooperation by foreign nationals, despite numerous efforts made to secure their participation in the Inquiry. In those instances where the Inquiry did manage to engage foreign traders, the information submitted by the foreign nationals was very limited and the shopkeepers were often not willing to engage with the Inquiry. Foreign nationals indicated that they did not engage because of fear for their safety. The Inquiry identified language
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barriers as one of the challenges preventing effective participation by foreign nationals in the Inquiry process which was alleviated by the translation of Inquiry documents\textsuperscript{274}.

513. To better facilitate the participation of foreign nationals in the proceedings, the Inquiry enlisted the assistance of the diplomatic corps and various business groupings representing foreign nationals, however this was not successful\textsuperscript{275}.

514. This effectively meant that the Inquiry did not benefit from substantial the inputs by foreign traders in the process. Despite the above limitations, the Inquiry assessed the submissions from both parties with caution ensuring that the assessment and the conclusions drawn from the evidence submitted are objective. The various challenges faced by the Inquiry is discussed in section 15.1 of Annexure 5. However, to counter such shortcomings, the Inquiry has drawn on the existing scholarly literature and has employed both quantitative and qualitative evidence. The qualitative evidence largely reflects information that was gathered during meetings with various stakeholders.

6.2 Studies on the interaction between local and foreign owned informal grocery retail operations

515. By way of context and in an effort to supplement the evidence gathered, the Inquiry also had regard to academic literature on the interaction between local and foreign owned informal grocery retail operations in South Africa. A detailed exposition of the literature review is set out in section 15.2 of Annexure 6.

516. The reviewed literature is broadly divided into two categories. One category focuses on identifying the sources of violence against foreign nationals operating spaza shops in non-urban areas, with a particular focus on xenophobia, local grievances and local politics, and the extent of manipulation

\textsuperscript{274} To address this concern pamphlets, questionnaires, invitations and other documents related to the Inquiry, in particular those communicating with traders in the informal sector were translated to various languages to ensure that the Inquiry was reaching all stakeholders. Documents were also translated into the following foreign languages Swahili, Somali, Bengali and Amharic and also in local languages, i.e. Tswana, Zulu, Tsonga, Swati, and Sotho languages. These translated copies were also taken along by the team during the site visits when engaging with foreign nationals.

\textsuperscript{275} The Inquiry contacted representatives of the Pakistan High Commission and the Ethiopian Embassy, requesting their assistance in facilitating meetings with nationals from their countries who operate businesses in the grocery retail sector. Following numerous requests and follow ups, the Inquiry was unsuccessful in securing meetings with foreign nationals from these countries.
by local and national political actors. The other category focuses on pinpointing the differences in the ways that local nationals run their spaza shops. For purposes of this Inquiry, the focus is wholly on the second category.\footnote{276 It has been well documented that the survival and prosperity of spaza shops in townships and rural areas thrive on sustained competitive advantage.}

517. In summary, the studies reviewed, outline critical managerial skills and competencies required, which inhibit South African informal ventures from succeeding in townships and in previously disadvantaged communities more generally. Broadly, the identified barriers in the literature can be categorized as: (i) business administration skills, (ii) understanding of regulatory and tax policies, (iii) simple marketing and financial skills, and (iv) customer service skills. These identified barriers are tested below against stakeholder submissions and surveys.

6.3 The reasons why foreign owned spaza shops are perceived to be more successful than local owned spaza shops

518. The Inquiry considered various factors which are said to contribute to the success of foreign owned spaza shops as identified in academic literature and submissions in hearings\footnote{277 Most factors were obtained from past studies and research conducted in the informal business sector.}. The Inquiry, accordingly, considered the factors set out below.\footnote{278 The studies and research the Inquiry considered are discussed in detail under the Annexures below. These include the following studies: Badenhorst-Weiss, J.A. and Cilliers, Competitive advantage of independent small businesses in Soweto, \textit{Southern Business Review}, Volume 18, Issue 3, Jan 2014, pp.1-21; Liedman (2013); L. Piper and A Charman, Xenophobia, Price Competition and Violence in the Spaza Sector in South Africa, \textit{African Human Mobility Review} Volume 2, Issue 1, Jan-April 2016.}

518.1 Ownership dynamics and vertical integration between spaza shops and wholesalers;

518.2 Trading hours and location;

518.3 Stock diversity, product choice and packaging;

518.4 Procurement of goods;

518.5 Regulations and by-laws;

518.6 Counterfeit goods; and
Price competition.

The factors considered below, indicate that foreign traders have a competitive advantage over the locals. The Inquiry noted that some of these advantages may sometimes be ascribed to the creativity and business acumen of foreign traders. However, other factors that grant foreign traders a competitive advantage are illegal in nature and these are briefly discussed below.

Ownership structure and integration between spaza shops and wholesalers

Similar to the findings in academic literature, the Inquiry found that the manner in which ownership of spaza shops is structured contributes to the dynamics of competition between local and foreign owned spaza shops.

The Inquiry, through the small business survey, found that foreign nationals employ a number of ownership strategies which include (i) horizontal models (shareholding / operational ties to other township retail outlets), (ii) vertical linkages (with the spaza shop being an 'outlet' for the formally registered wholesaler), (iii) cooperative strategies of working with separate but allied retail outlets to share opportunities for bulk purchasing and synergizing deliveries, and (iv) maintaining 'multiple retail outlets' under central control elsewhere. During interviews with foreign shopkeepers surveyed in Vrygrond, at least 17 respondents interviewed knew of at least 45 shops owned by more than a single owner. The key observation in this regard that foreign traders, unlike local traders, tend to operate their spaza shops in partnerships as opposed to sole ownership. This allows for both managerial and capital synergies to be realised and thus improve competitiveness.

Linked to the ownership model adopted by networks of foreign owned spaza shops is vertical integration into wholesalers operations. The Inquiry found a trend by foreign owned spaza shops to be linked to a wholesaler (usually also foreign owned) operating in the Central Business Districts (“CBD”) across the country. During its site visits, the Inquiry collected anecdotal evidence of such networks.

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279 This includes factors such as stock diversity, product choice and packaging and the manner in which foreign traders procure their goods. In addition to their business acumen, the Inquiry notes that foreign nationals tend to work harder because they are in a foreign country and usually face the pressure of sending money back to their families in their home countries. They therefore trade from a desperate position and with much aggression compared to local traders.

280 Further detail on these illegal activities is set out in section 15.3 of Annexure 6.

281 Somali and Ethiopian.
linkages. This vertical integration strategy by foreign traders fits within the network-based approach to operating their spaza shops in contrast with the micro-scale 'survivalist' business approach of most local owned spaza shops.

523. These vertical linkages were also confirmed by local owned spaza shop associations and individual spaza shop owners who stated that because of the direct or indirect link between foreign owned spaza shops and wholesalers, they could not compete with foreign owned spaza shops on pricing. The local traders stated that foreign owned wholesalers engage in differential treatment in that foreign owned spaza shops enjoy preferential pricing when sourcing products from these wholesales. Foreign nationals in Kwa-Zulu Natal have however indicated that they are not aware of foreign wholesale owners who also own spaza shops. However, it is difficult to disentangle whether there is preference or simply that locally-owned stores are unable to access buyer groups and wholesalers due to the survivalist mode of operation.

524. With regard to ownership of local owned spaza shops, the Inquiry found that these tend to be owned by an individual and serve as the owner’s primary source of income. This implied that local owned spaza shops are often run with a survivalist approach. This becomes a challenge for the business

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282 Inquiry’s site visits in the following locations: Limpopo (Polokwane), Eastern Cape (Mthatha) and Mpumalanga (Nelspruit).

283 The wholesalers are often owned by a group of foreign nationals who may have started operating the business as spaza shops in the township and eventually growing them up the supply chain to a wholesaler or a cash and carry outlet whilst still retaining some interest (direct or indirect) in the spaza shop. The fact that most foreign nationals start business at spaza shop level and ultimately grow the businesses to become suppliers at the wholesale level was also confirmed by the Somali Association Board. In certain instances, the link would be in the form of the owner(s) of the wholesaler sponsoring the entry of a foreign owned spaza shop. This provides efficiencies to the foreign owned spaza shops, thereby giving these foreign owned spaza shops a competitive edge over those owned by local nationals.

284 Local traders indicated that the link between foreign owned wholesalers and spaza shops could be seen in the preferential treatment these wholesalers give to foreign owned spaza shops. These allegations were made by traders in the following locations during the Inquiry’s site and re-visits:
Submission by local traders at the Kwa-Zulu Natal re-visit, Durban, 2016, Transcript pp.6-9; Submission by local traders at the Limpopo re-visit, Polokwane, dated 4 November 2016, Transcript p.57; Submission by local traders at the Mpumalanga re-visit, Nelspruit, dated 9 November 2016, Transcript, pp. 20 and 33; During the Limpopo rev-visit, one of the traders indicated that they witnessed a number of vans owned by well-known local wholesalers that would go around the Seshego Township on Wednesdays collecting cash from foreign owned spaza shops. In addition to collecting the cash, these vans would frequently collect lists of items to be ‘purchased’ from the wholesaler of which items would later be delivered to the spaza shops.

285 This allegation relates to some of the Inquiry’s findings raising concerns of possible price discrimination by foreign owned wholesalers on the trading terms offered to foreign owned spaza shops.

286 Submission by local traders Kwa-Zulu Natal, Durban, site-visit, 2016, Transcript p.107.

287 Findings from the Inquiry’s questionnaire.
especially when it has to raise capital, expand, purchase stock, and employ workers.

525. The ownership structure of foreign owned spaza shops confers some advantages that local spaza shop owners do not enjoy. These, inter alia, include the ability to pool resources to raise capital to expand and to purchase stock for the shops, coordinated logistical support for the transportation of products from wholesalers, improved purchasing which may result in lower pricing. Cumulatively, these factors enable the foreign owned spaza shops to realise economies of scale and this confers upon some level of competitive advantage relative to the local-owned spaza shops.

526. Another trend that was observed is that foreign nationals may approach local spaza shops that are seemingly struggling and offer to rent these premises, resulting in the shop being foreign run. This trend was also observed by Elite Star Trading (“EST”), a buyer group, which submitted that in the event that a local trader is unable to sustain their business post entry, they are often afforded an opportunity to lease out their spaza shop to foreign national traders. This would suggest that in some instances the decline in locally owned stores would have occurred regardless, and the foreign ownership provides an opportunity for the business to survive.

Trading hours and strategic location

527. Most small business stakeholders submitted that other factors fostering the success of foreign owned spaza shops is their choice of shop location and operating hours. Spaza shops are, by their nature, convenience stores that offer core household grocery items. Therefore their location and accessibility is crucial for the consumer.

528. Foreign owned spaza shops were said to strategically locate themselves in high pedestrian intersections. As previously noted that foreign nationals rent out flats from local owned spaza shops, the high pedestrian location of foreign

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288 In instances where local spaza shop owners decline the offer to purchase, it was submitted, several times, that foreign nationals tend to engage in a strategy of setting up shop surrounding the local trader with the intention to force them out of the market through very low prices. Often the very low prices will attract customers to the foreign owned spaza shop, leaving the locally owned spaza shop struggling to make sales, operating at a loss. As a result, local spaza shop owners faced with this dilemma are eventually forced to rent out or even sell their spaza shops to foreigners in order to make some income.
owned businesses is not a newly discovered location but usually an area that
was already operating as a local owned business.

529. Stakeholders also submitted that foreign owned spaza shops open throughout
the year including public holidays and that on these days, communities often
use the foreign spaza to replenish their necessities\textsuperscript{289}. It was also noted that
the majority of the operators or shopkeepers of foreign owned spaza shops
are males who often do not have families in South Africa, making it possible
for them to trade longer hours and during holidays. This is different for the
majority of local-owned spaza shops which are often run by women who are
more likely to have young children and therefore would have household
obligations as well.

530. Somali Community Board of South Africa (\textquotedblright SCOB\textquotedblright)\textsuperscript{290} submitted that the
operating hours of foreign owned spaza shops are generally between 5am –
11pm. During this time, there is high demand for essentials such as bread,
milk and eggs. In this period, according to SCOB, the Somali spaza shops
generally make sales of up to R 3000, an amount that is considered
substantial in this segment of the grocery retail sector. SCOB submitted that
local-owned spaza shops generally only open later at around 7am and close
earlier, typically around 5pm and/or 6pm. SCOB further submitted that by
operating largely outside of what would be considered to be the peak hours
for spaza shops, local-owned spaza shops miss out on the significant sales
made during these critical periods. According to SCOB, foreign owned spaza
shops capitalise through their operating hours, capturing the demand of
workers that return to the non-urban areas late in the evening\textsuperscript{291}.

531. The views by SCOB were partly confirmed by some local stakeholders who
indicated that they open at 9am for students and again between 6pm- 9pm.\textsuperscript{292}
These stakeholders also submitted that the regulations on trading hours are
not strictly enforced and one can open and close their shops at any time.

\textsuperscript{289} Minutes of a meeting between Free State Department of Economic, Small Business Development, Tourism
and Environmental Affairs and the Inquiry, dated 20 July 2016.
\textsuperscript{290} Minutes of a meeting between the Somali Community Board of South Africa and the Inquiry, dated 22 February
2016, p.5, para.251.
\textsuperscript{291} Ibid.
\textsuperscript{292} It is noteworthy that these stakeholders indicated that this is due to the fact that they are located closer to
schools and therefore their operating hours are aligned to the opening of schools and are not the usual spaza
shop operating times which that cater to household needs.
532. The Inquiry’s business survey established from both local and foreign owned spaza shops their opening and closing times. This was done with the intention to establish whether the views received by the Inquiry were true. Table 6.1 below indicates the average trading times as submitted by the spaza shops which were interviewed during the survey.

Table 6.1: Average operating hours of local and foreign owned spaza shops.

<table>
<thead>
<tr>
<th></th>
<th>Opening time</th>
<th>Closing time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local spaza shop</td>
<td>06:00-07:00</td>
<td>20:00-21:00</td>
</tr>
<tr>
<td>Foreign spaza shop</td>
<td>06:00-07:00</td>
<td>21:00-22:00</td>
</tr>
</tbody>
</table>

Source: Small Business Survey.

533. As seen in Table 6.1 above, it appears that local and foreign owned spaza shops open at the same time however foreign owned spaza shops close their shops an hour after the local owned spaza shops.

534. The Inquiry’s consumer survey also sought to determine the average operating hours of both local and foreign owned spaza shops from the perspective of customers. The results are shown in the Table 6.2 below.

Table 6.2: Average operating hours of local and foreign owned spaza shops.

<table>
<thead>
<tr>
<th></th>
<th>Opening time</th>
<th>Closing time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local spaza shop</td>
<td>6:00</td>
<td>20:00</td>
</tr>
<tr>
<td>Foreign spaza shop</td>
<td>6:00</td>
<td>21:00</td>
</tr>
</tbody>
</table>

Source: Consumer Survey.

535. Table 6.2 above summarises consumer responses regarding the average opening and closing times of the spaza shop in their respective areas. From the views submitted by consumers, it appears that local and foreign owned spaza shops open at roughly the same time. Similar to the business survey’s findings, the only difference noted from the submissions, is the closing time, granted the difference is an hour. However, when the question was posed more unambiguously, “In terms of opening and closing times of local owned spaza shops and foreign owned spaza shops, which of the following applies?” 70 percent of the respondents stated that “Foreign shops open earlier and close later than local shops”.

536. There is no denying that foreign owned spaza shops which open for longer hours are generating more income as there is clearly a need from the customers to access a shop that is open beyond the official trading hours. In areas where there are clear by-laws that stipulates the trading times for
informal businesses such as spaza shops and hawkers, spaza shop operators who do not to adhere to the official trading hours benefit from this, i.e. opening and closing outside the stipulated trading hours. Depending on whether by-laws regarding trading hours are enforced or not, traders that do not comply, enjoy the benefit of servicing demand that exists in these periods at the expense of those operators that comply with the prescribed trading hours.

537. As will be discussed in Objective 4, the Inquiry found that there is limited enforcement of trading hours by most municipalities.

Stock diversity, product choice and packaging

538. Submissions by stakeholders and the results of the consumer survey indicated that foreign owned spaza shops supply a wider variety and larger volume of groceries as compared to local-owned spaza shops. Submissions also indicated that foreign owned spaza shops package their items in quantities that make it affordable for the consumers, i.e. selling one nappy as opposed to a pack of nappies which may be unaffordable at that time for the consumer.

539. On the other hand, local-owned spaza shops were considered to offer items that customers found to be generally expensive and readily available at national supermarket chains (in higher volumes and at cheaper prices). As a result, local-owned spaza shops are less attractive to consumers who would rather get cheaper prices on individual items or saving to buy in higher volumes from the large retail stores.
Products offered by type of spaza

Figure 6.1: Top ten purchased items at local owned spaza shops.

[Diagram showing the top ten purchased items at local owned spaza shops]


540. Drawing from the discussion in Objective 1, it was shown that foreign owned spaza shops supply products that are more frequently demanded by consumers and with a shorter shelf life. Figure 6.1 above presents the top ten products that consumers buy from local owned spaza shops. Over half of the consumers report using local-owned spaza shops primarily for the procurement of bread. The second most prominent item purchased at a local-owned spaza shop is airtime, followed by dairy products;

Figure 6.2: Top ten purchased items at foreign owned spaza shops.

[Diagram showing the top ten purchased items at foreign owned spaza shops]


541. Figure 6.2 above presents of the top ten items purchased at foreign owned spaza shops. Although both groups mainly serve their respective communities
with bread and airtime, foreign owned spaza shops seem to leverage on smaller grocery items. Dairy and refreshments were also found to make up a significant portion of the basket of goods offered to consumers from foreign operated spaza shops. The remaining items are typically sold in small volumes. Vegetables like tomatoes can easily be sold individually rather than in batches. Cigarettes, candles and spice packets also offer perfect examples of items that can be sold loosely, which is the competitive advantage foreign owned spaza shops enjoy over local-owned spaza shops. In addition, the product offerings from foreign owned spaza shops also include vegetables, spices and paraffin. To conclude, a wider product offering undoubtedly makes foreign owned spaza shops more competitive than local-owned spaza shops who have not differentiated their products enough from the supermarkets.

542. Further to a wider range, foreign owned spaza shops were found to be willing to sell unpackaged individual items to make what would otherwise be unaffordable items affordable. This includes products such as children’s nappies, rice and sugar sold in cups and lose tea-bags. The Inquiry notes that there may be health implications that this raises. As will become clearer in Chapter 4 below, it would seem there is no regular or strong enforcement of the health and safety standards in the informal grocery retail sector. In addition, it was alleged that foreign owned spaza shops also offer credit to local customers, which tends to attract more customers.

Sale of counterfeit goods in spaza shops

543. Another factor found to have a potential impact on the competition dynamic between foreign owned and local spaza shops was the sale of counterfeit goods. With this factor having been raised as an issue of concern by local spaza shop operators during site visits and also having been observed by the Inquiry during some of the site visits, the Inquiry commissioned a study to investigate the issue of counterfeit goods in the informal sector. During its site visits, the Inquiry observed that the most prevalent counterfeit goods sold were contraband cigarettes. Foreign owned spaza shops were generally found to
be selling contraband cigarettes which has the potential of attracting more traffic to these shops, strengthening their business position.\textsuperscript{293}

544. The study was conducted in 50 spaza shops. The study sought to determine the extent of the prevalence of counterfeit goods in the informal sector in light of the alleged unfair advantage conferred on spaza shops have access to these goods.\textsuperscript{294}

545. Local traders alleged that the sale of these products largely occurs in foreign owned spaza shops. Further, it was alleged that it is the foreign traders who have access to these products and sell them at low prices, to the detriment of local traders who cannot access them.

546. A total of 23 specific items were purchased (when available) in each of the 50 sites visited. In addition, the researchers purchased these same items from up to three formal retail supermarkets (Shoprite, Spar and/or Pick n Pay) for purposes of comparative analysis. It is important to note that the spaza shops chosen reflected the shop ownership demographic within the area.

547. The purchased items from the spaza shops were labelled, aggregated, scrutinised and compared to those purchased from the formal stores to examine any discrepancies in packaging, standards, appearance, smell, taste, ‘feel’, and other factors.

548. The various samples which were purchased by the researchers were submitted to the relevant brand owning manufacturers for analysis and review. Furthermore, the researchers liaised with “brand protection” lawyers Spoor and Fisher, who represent various South African manufacturers relevant to this study and who availed a fraud specialist private investigator to review the samples.

\textsuperscript{293} Recently the SAPS in Hartwater, Northern Cape Province, found a counterfeit products factory worth R77 million, which produced well known branded spices, baking powder, instant yeast and sanitary towels, amongst others. The corroborates the existence of counterfeit products within the grocery retail sector. The business survey also found that in Ivory Park (Gauteng), cigarettes costing 50c are being traded in the streets. Further that many of the spaza shops sell cheap cigarettes which are not only untaxed but also sold individually which is in contravention of the law. Select.timeslive.co.za (9 July 2018) Smoke and mirrors: cartels flood SA with illicit cigarettes. [Online]. Available at: https://select.timeslive.co.za/news/2018-07-09-smoke-and-mirrors-cartels-flood-sa-with-illicit-cigarettes/ [Accessed on 26 April 2019];

A recent presentation in Parliament noted that cigarette smuggling was exploding within our borders, with the country also ranked amongst the world’s top five countries in respect of trade in illicit cigarettes.

\textsuperscript{294} As part of the study, the researchers contacted and received feedback from various corporate companies whose products are traded within the informal grocery sector, as well as inputs from a private investigator.
549. Of the 50 spaza shops in the nine provinces from which products were purchased, a minimum of one likely counterfeit item or more was detected in 45 of the outlets (90%). It was also found that whilst some South African owned spaza shops also stocked what appeared to be counterfeit goods, these goods appeared to be more prevalent in foreign owned spaza shops. This could partly be attributed to the fact that local-owned spaza shops are generally smaller in size and have a limited range of stock.

550. As a result of this, the study also found that the prevalence of counterfeit goods in spaza shops suggests a strong supply chain link between wholesalers and the black/grey markets. This is because spaza shops procure majority of the stock products from wholesalers.

551. The findings of possible counterfeit items found by the counterfeit study are summarised Table 6.3 in the below.

Table 6.3: Possible counterfeit products identified in the informal market

<table>
<thead>
<tr>
<th>Item type</th>
<th>Popular Item Brand</th>
<th>Manufacturer</th>
<th>Evidence of fraud or illegality</th>
<th>Percentage of likely counterfeit items in sample group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matches</td>
<td>Lion</td>
<td>Lion Match Co.</td>
<td>Yes</td>
<td>Pending results from manufacturer</td>
</tr>
<tr>
<td>Rice (cheapest)</td>
<td>Tastic</td>
<td>NA</td>
<td>Yes</td>
<td>indeterminate</td>
</tr>
<tr>
<td>Maize meal</td>
<td>Ace/ white Star</td>
<td>Tiger Brands</td>
<td>Yes</td>
<td>11.5%</td>
</tr>
<tr>
<td>Stock cubes</td>
<td>Knorr</td>
<td>Unilever</td>
<td>Yes</td>
<td>5.8%</td>
</tr>
<tr>
<td>Razor blades</td>
<td>Supermax / Gillette</td>
<td>Supermax / Gillette</td>
<td>Yes</td>
<td>76%</td>
</tr>
<tr>
<td>Sanitary pads</td>
<td>Always</td>
<td>Proctor and Gamble</td>
<td>Yes</td>
<td>47.2%</td>
</tr>
<tr>
<td>Shoe polish</td>
<td>Kiwi</td>
<td>SC Johnson</td>
<td>Yes</td>
<td>26.6%</td>
</tr>
<tr>
<td>Cigarette papers</td>
<td>Rizla</td>
<td>Imperial Tobacco Company</td>
<td>Yes</td>
<td>78%</td>
</tr>
<tr>
<td>Cortizone cream</td>
<td>Movate</td>
<td></td>
<td>Yes</td>
<td>Samples are illegally traded (prescription required)</td>
</tr>
<tr>
<td>Headache medicine</td>
<td>Grandpa</td>
<td>GlaxoSmithKline</td>
<td>Yes</td>
<td>25%</td>
</tr>
<tr>
<td>Medicinal Tea</td>
<td>Hamburg</td>
<td>AspenPharma</td>
<td>Yes</td>
<td>87.5%</td>
</tr>
</tbody>
</table>

295 The table does not include all the products which were sampled but those which were suspected to be counterfeit.
Many of the items which the researchers and brand protection specialists suspected to be counterfeit were identifiable due to obvious printing mistakes, or superseded packaging styles. An example is ‘SuperMax’ razor blades. This is depicted in Figure 6.3 and Figure 6.4 below.

Figure 6.3: Counterfeit razor blades, (genuine brand examples on the top left). Note the altered spelling – “Mirona” (bottom right) and SuperMarx (bottom centre)

Figure 6.4: Genuine Rizlas (Top Left) and counterfeit versions Note old packaging in centre column, and removal of brand name (top-centre)
553. The Inquiry is concerned that the sale of counterfeit goods appears to confer, upon those spaza shops selling such goods, an unfair competitive advantage as counterfeits are generally cheaper than original branded goods. In addition to the unfair competitive advantage, there are broader negative ramifications for the fiscus. The negative impact on the fiscus is two-fold. First, in the form of lost tax revenue, and second, the burden that is likely to be placed on the public healthcare sector. The consumption of untested products poses a threat to the public healthcare system as consumers of such products are likely to require the services of public hospitals in the event that such products have negative health and safety effects. A detailed discussion on tax evasion is set out in section 15.3 of Annexure 6. The counterfeit study also made findings on the effects of counterfeit goods as well as the recommendations on how these goods could be dealt with. This is discussed in section 15.4 of Annexure 6.

554. Some complaints had been made to government institutions, raising concerns about foreign traders bringing large quantities of counterfeits goods into the country and selling these in spaza shops to desperate customers with health risks. Further to counterfeit goods, it was also submitted that foreign traders were also selling damaged goods, repackaging and selling at cheaper prices at the expense of local traders who would sell original graded items at a higher price.

555. During its site visits, the Inquiry observed that the most prevalent counterfeit goods sold were contraband cigarettes. Foreign-owned spaza shops were generally found to be selling contraband cigarettes which has the potential of attracting more traffic to these shops, strengthening their business position. A recent presentation in Parliament noted that cigarette smuggling is on the increase in South Africa, with the country also ranked amongst the world’s top five countries in respect of trade in illicit cigarettes.

556. In July 2018, the South African Police Services (SAPS) in Hartswater, Northern Cape Province, found a counterfeit products factory worth R77

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296 The South African Revenue Services is said to lose up to R7-billion annually of taxes annually through the illicit cigarette trade, for example.
297 Submission by local traders at the North West re-visit, Rustenburg re-visit, dated 14 November 2016, p.47.
298 In May 2018, The Finance Standing Committee, in Parliament, was briefed by several bodies on the illicit financial flows in the Tobacco industry. Among the presenters were the Hwaks, SAPS, SARS, National Prosectuting Authority, National Treasury, financial Intelligence Centre, the Fair Trade Independent Tobacco Association and the the Tobacco Institute of South Africa.
million, which produced well known branded spices, baking powder, instant yeast and sanitary towels, amongst others. This corroborates the existence of counterfeit products within the grocery retail sector.

557. The Inquiry also engaged the National Consumer Commission (“NCC”) as well as the Department of Health (Food Control and Environmental Health Departments), to try and obtain any information and/or complaints which these organisations may have received regarding the prevalence of counterfeit goods in the market. None of these institutions had received formal complaints or submissions and therefore no work had been conducted regarding the sale of counterfeit products.

558. The Inquiry noted that the prevalence of trading in counterfeit good goes beyond grocery items and includes clothing and footwear as well. This is exemplified by, among others, the recent confiscation and burning of counterfeit goods, by the SAPS in Gauteng, with an estimated value of R500 million.299

559. The findings by the counterfeit study, the numerous incidents found by the Inquiry and news reports indicate that the trade of and prevalence of counterfeit goods within the Republic is a clear issue that cannot be ignored. There is therefore a need for increased enforcement intervention in order to reduce and eliminate the sale of these products in the South African grocery retail sector.

Selective enforcement of applicable laws

560. In addition to the above strategies, it was alleged that foreign owned spaza shops also operate without due regard to the applicable laws and regulations. Some of the alleged practices include controversial allegations of joint residence and business location said to pose serious health risks, conducting business without official registration and/or licensing, and lack of tax compliance.

561. It was further submitted by local spaza shop operators that foreign traders were taking advantage of the lack of enforcement of applicable laws and regulations by the relevant authorities. However, the Inquiry found it was not

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only foreign owned spaza shops that operated without trading licenses. There were also local owned spaza shops that operated without trading licenses and therefore the concern regarding selective enforcement affected all informal traders whether local or foreign nationals.

562. In its engagements with local authorities, the Inquiry found that one of the reasons why there is a lack and/or selective enforcement is due to the fact that municipalities lack have sufficient resources to conduct inspections or enforce the applicable by-laws and regulations.

563. In addition to the lack of enforcement traders allege that regulations are sometimes selectively enforced. One of the examples provided by local spaza owners regarding this issue was the use of RDP houses to conduct businesses. Local spaza shop owners in Rustenburg, Polokwane and Kimberley submitted they are strictly prohibited from running a spaza shop in an RDP house without rezoning the property and that officials would enforce this against them, yet many foreign traders are able to operate their shops or spaza shops from these houses.

564. Further, on the issue of health inspections, local traders submitted that officials frequently visit their spaza shops for inspection but do not visit foreign owned spaza shops to check for compliance.

565. In response to the allegations by local traders, SCOB submitted that what seemed to be selective enforcement as perceived by locals, was in fact a result of bribery solicited by enforcement authorities. SCOB submitted that their members that own spaza shops were sometimes targeted by officials for inspections relating to health and safety, trading times, counterfeit goods, with the intention to solicit bribes in exchange for not being found to have contravened by-laws.

566. The Inquiry did receive several allegations indicating that during inspections, officials who conduct these inspections sometimes require bribes from traders who do not comply with applicable regulations.

300 Local spaza shop owners submitted that the officials, in particular the police, do not enforce the applicable by-laws on foreign owned spaza shops.
301 Ibid
302 Submission by local traders at the Limpopo re-visit, Polokwane, dated 4 November 2016, p.65.
303 Minutes of a meeting between Somali Communit Board and the Inquiry, dated 22 February 2016, p.3, para. 2.3.1.
Procurement of Goods

567. Representatives from foreign owned spaza shops submitted that foreign spaza shop owners share transport and rotate amongst themselves the sourcing of goods, leaving those that are not responsible on the day to continue operating the stores which would otherwise be closed.\(^{304}\) In some cases, they would often have national partnerships of up to 20 stores, which allows them to buy stock in bulk and take advantage of the volume discounts which are then passed down to customers through lower prices. Other foreign traders submitted that they tasked each other to vigorously search for best prices, comparing different wholesalers and even retailers before making a purchase to ensure they get the best price that allows them to offer cheaper prices to their customers. From the submission of the foreign traders, it is clear that they generally have a clear strategy to be as competitive as possible especially on prices and having a wide variety of products available in their stores.

568. On the other hand, local spaza shop owners stated that it is difficult for them to buy collectively because each member of the association sells different products\(^ {305}\). However, some local spaza shop owners are said to be adopting the strategy of collective buying which affords them discounts at various wholesalers. An example of this, is the initiative by the SABEPCO group in Limpopo which has been in negotiation with various large suppliers albeit unsuccessfully.

569. It was alleged that some foreign owned wholesalers tend to offer credit and lower prices as well as discounts to foreign owned spaza shops making it impossible for local traders to compete with foreign traders successfully. The allegation of discriminatory pricing was also made by the UGU Association of Businesses during the public hearings in Kwa-Zulu Natal, submitting that these wholesalers effectively have ‘local prices’ and ‘foreign prices’.\(^ {306}\) Local

\(^{304}\) One important activity on operating a grocery retail is being able to source and procure trading stock at competitive prices to enable the store to effectively compete by offering its customers good prices. Related to procuring stock at good prices is also being able to have a procurement strategy that does not negatively affect the business, i.e. ensuring shop is regularly stocked with basic essentials going out of stock, the continuous trading etc.

\(^{305}\) Minutes of meeting between Engcobo Small Business Chamber and the Inquiry dated 26 September 2016, p.3, para.2.3.

\(^{306}\) Minutes of meeting between Capricorn Municipality and the Inquiry dated 22 August 2016, p.6; Submission by UGU Association of Business at the Kwa-Zulu Natal public hearing, Durban, public hearings, dated 3 July 2017, p.39, para.150-151.
traders claimed that they are denied stock on credit, which makes it difficult for them to compete with foreign traders.\textsuperscript{307} \textsuperscript{308}

570. Local spaza shop owners further alleged that foreign nationals come into the country without the start-up capital to buy the stock they need to trade and that at their request, the start-up capital is granted by wholesalers in the form of stock, which is later paid back by the foreign spaza shop owners.\textsuperscript{309}

571. In its engagements with local spaza shop owners, some operators informed the Inquiry that they would like to operate their businesses adopting some of the strategies used by foreign nationals, in particular pooling their money together to buy in bulk and get savings but could not do so as they also lacked the capital to purchase in bulk for their stores. As such, local spaza shop operators admitted that some of the foreign national business strategies could improve their businesses if applied.

\textit{Price Competition}

572. Price competition between local and foreign owned spaza shops seem to be at the centre of the claims that foreign owned spaza shops outcompete local owned spaza shops, with the perception that foreign owned spaza shops are cheaper than local-owned spaza shops.\textsuperscript{310} Academic literature shows that the foreign owned spaza shops that are perceived to have cheaper prices.\textsuperscript{311}

573. Foreign spaza shop owners submitted that they are generally cheaper than most national supermarket retail chains due to their procurement strategies, i.e. getting stock from wholesalers at lower prices and passing those on to their customers.

574. Local spaza shop owners submitted that they cannot compete with foreign owned spaza shops on pricing as the owners of the spaza shops are also the

\begin{footnotes}
\begin{itemize}
\item \textsuperscript{307} Submission by local traders at the Mpumalanga re-visit, Nelspruit, dated 9 November 2016, p.20.
\item \textsuperscript{308} Anecdotal evidence from a local spaza shop owner indicated that he had witnessed, on several occasions, foreign spaza shop owners having membership cards that could be used when they purchased their stock from foreign owned wholesalers, which membership cards qualifies them for certain discounts and benefits. According to him, these membership cards are not offered to local spaza shop owners irrespective of the fact that local spaza shop owners purchase the same amount of stock as foreign spaza shop owners or more.
\item \textsuperscript{309} Submission by local traders Limpopo re-visit, Polokwane, dated 4 November 2016, p.57.
\item \textsuperscript{310} Previous studies conducted on this aspect have suggested that the real difference on the average prices between local and foreign owned spaza shops is not large.
\item \textsuperscript{311} Vanya Gastrow (2013) Somalinomics: A case study of the economics of Somali informal trade in the Western Cape p.21; L. Piper and A Charman, Xenophobia, Price Competition and Violence in the Spaza Sector in South Africa, \textit{African Human Mibility Review} Volume 2, Issue 1, Jan-April 2016.
\end{itemize}
\end{footnotes}
suppliers with links to the wholesalers. There is a perception amongst consumers that foreign owned spaza shops are cheaper than local owned spaza shops.

**Figure 6.5: Consumer preference for spaza shops by nationality.**

575. Figure 6.5 above presents the data responses by consumers on the type of spaza shop they prefer to use for their shopping. In total, almost half (48.2 per cent) of the consumers surveyed indicated an inclination towards foreign owned spaza shops. Only 16.57 per cent indicated a preference for local-owned spaza shops. The remainder of the consumers showed no preference. It is also important to note that the preference is attributed to, *inter alia*, the competitive prices offered by foreign owned spaza shops as opposed to local owned spaza shops.

576. On the distance or proximity of spaza shops, 75% of consumers indicated that there is a foreign spaza shop close to where they live in contrast to 64% for local spaza shops. Consumers also indicated that there are generally more foreign owned spaza shops in townships than there are local owned spaza shops. This makes foreign owned spaza shops more accessible and may explain the relatively high preference for them by consumers.

### 6.4 Barriers faced by local nationals to compete with foreign nationals

577. Literature has pointed out a number of factors which are hurdles faced by local spaza shop owners that inhibit their ability to compete with foreign spaza shop owners. These barriers are identified in Objective 1 as access to finance, lack
of business skills and procurement or sourcing of goods. In addition to those identified in Objective 1, the Inquiry also notes that regulatory policies and the general condition of the economy act as barriers which local owned businesses face and which inhibit them from competing effectively with foreign nationals.\textsuperscript{312} The analysis below discusses the impact of the barriers on local-owned spaza shops’ ability to respond to competition from foreign traders insofar as they are not discussed in Objective 1 and considers the available funding models from banks and government agencies.

\textit{Business skills}

578. Stakeholders\textsuperscript{313} submitted that majority of foreign spaza shop owners are highly skilled and trained in the retail market.\textsuperscript{314} In some instances, the skills are borne from previous employment in the retail sector in their countries of origin, through either family businesses or the many retail stores in the area\textsuperscript{315}. In contrast to foreign nationals, local spaza shop owners and other small independent retailers (i.e. grocers, small bakery owners) voiced a need for training.\textsuperscript{316}

579. In response to this call for skills development, the government has introduced many initiatives aimed at supporting small businesses in the retail space. One example is the Department of Economic Development’s training on financial literacy and business sustainability\textsuperscript{317}. In addition to this is the Big Save and Absa initiative as well as the DSBD development programme which are discussed in Objective 1.

\begin{itemize}
\item \textsuperscript{312}Numerous local traders across various locations during the Inquiry’s site visits and re-visits these factors as barriers they face.
\item \textsuperscript{313}Meeting between the Competition Commission and the Somali Association of South Africa meeting on 25 November 2016.
\item \textsuperscript{314}Many foreign spaza shop owners hold business related qualifications earned in their countries of origin (Meeting between the Inquiry and the City of Mbombela meeting on 05 September 2016).
\item \textsuperscript{315}The skills transfer continues as the astute spaza shop owners recruit immigrants whom they train to run their shops with some eventually becoming storeowners.
\item \textsuperscript{316}The Wholesale and Retail Sector Education (“WRSETA”) has also found the lack of business skills as being one of the main reasons why informal spaza shops do not grow and not necessarily the lack of money as submitted by some business operators (WRSETA Western Cape workshop for informal businesses on 18 March 2018 in Langa, Cape Town); Meeting between the Inquiry and the SABEPCO meeting on 27 October 2016.
\item \textsuperscript{317}The DSBS also has projects that are aimed at developing the capacity of the local informal traders/retailers to increase their competitiveness. Some of the activities included in the project involve offering business training, coaching, mentoring services to these entrepreneurs as well as provide infrastructure support (The Department of Economic Development meeting dated March 2016, para 5.3, pp9); and Project: Informal Traders Upliftment Project (“ITUP”), part of the National Informal Business Upliftment Strategy initiated by the Department of Small Business Development.
\end{itemize}
Start-up capital

580. Local traders submitted that there is a need for access to capital and that there is limited assistance from government in this regard. The Inquiry reviewed available funding models supported by government as well as financiers. The findings suggest that the models available to small businesses are not geared to cater for spaza shops given their informal nature. A detailed review of these packages is found in section 13.4 of Annexure 3. Further, these traders submitted that because of the nature of businesses they run, financial institutions are unlikely to extend credit facilities to them.

581. It was submitted that foreign owned businesses are able to access funding from their home countries which gives them an advantage over local businesses. This has been denied by representatives of foreign owned businesses, stating they do not receive financial assistance from their home countries.316

582. The Inquiry had regard to the StatsSA Survey of Employers and the Self-employed (2013) to better understand the trends in respect of sources of capital to start a business. The results are shown below.

Figure 6.6: Source of money to start the business.

Source: StatsSA Survey of Employers and the Self-employed, 2013

316 This finding is discussed in detail in Objective 3; During the Kwa-Zulu Natal public hearings, it was submitted by the Msunduzi Municipality that one of the main complaints received from the local traders was access to capital. Local traders submitted to the municipality that foreign traders received financial assistance for their businesses in addition to them pooling together their financial resources to purchase stock in bulk from wholesalers.
Figure 6.6 above shows descriptive statistics from StatsSA’s Survey of Employers and the Self-employed regarding their source of income for start-ups. The survey shows that the majority of start-ups relied on using their previous or current wages for funding. The survey also showed that a little over 11 per cent of the surveyed individuals used loans from commercial banks. Three per cent of the surveyed business operators cited using a “mashonisa”\(^{319}\) to source funding for their start-up. On the other hand, 76 per cent cited having obtained their start-up capital from friends and relatives who granted them a loan.

### 6.5 Various actions taken in response to competition from foreign owned spaza shops

The Inquiry sought to establish steps taken (if any) by government and private entities to address the issues that have contributed to violence in certain areas across South Africa. These initiatives are generally directed at local traders.

**Bibi Cash and Carry and Free State Department of Economic Development**

The Free State Department of Economic Development, Small Business Development, Tourism and Environmental Affairs (“Free State DESTEA”) had a partnership with BiBi Cash and Carry (“BiBi”) where in terms of the Memorandum of Understanding, BiBi undertook to train traders and grant a loan of about R 600 000 as well as a container store to each trader. In addition, BiBi would deliver various products to these stores as a supplier, simplifying the procurement processes for these small businesses. The model was not successful due to misunderstandings between the parties and was not feasible for the traders to pay back loans of R 600 000 especially if the store became insolvent because of market dynamics.

In addition, delivery logistics were not feasible. Following the failure of the BiBi project, the Free State DESTEA wanted to commence discussions with Tiger Brands in terms of which local owned spaza shops were to be rebranded and assisted by Tiger Brands to participate in bulk buying. According to Free State DESTEA, after it became aware of the challenges faced by spaza shops as well as the costs linked to setting up a store, it then approached Tiger Brands

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\(^{319}\) This refers to unsecured cash loan providers who are notorious for charging high interest rates. These are colloquially referred to as loan sharks.
to assist spaza shops in the area by providing financial management skills and ways in which the spaza shops could purchase stock in bulk. Accordingly, the spaza shops would operate under a model that is similar to that of a franchise. Unfortunately, at the time of engagements with the Inquiry, this project had not commenced.

**Big Save and eSpaza Sum Holdings Initiative**

587. In Tshwane, a network of 22 spaza shops located in Mamelodi Township had organised themselves under the brand “eSpaza Sum”. eSpaza Sum was formally registered under the name eSpaza Sum Holdings and had managed to obtain a R3.5 million loan from Absa Bank on behalf of the spaza shops who are part of eSpaza Sum. The idea behind the organised spaza shops under eSpaza Sam was to form a registered entity, which would have the ability to apply for loan agreements with Absa Bank. This is because spaza shops are generally not formally registered, do not have bank accounts from which they operate their businesses or records of their costs and profits and therefore do not meet the criteria that banks require for loan agreements. The issue of access to financing is discussed in detail under Objective one.

588. eSpaza Sum would in turn, grant to the spaza shops, start-up capital which was expected to be paid back by the spaza shops. In addition to the start-up capital, eSpaza Sam had negotiated discounts with Big Save, which is a large cash and carry located in Mamelodi Township on the outskirts of Tshwane, in terms of which the spaza shops would procure their stock from Big Save at lower prices.

589. This model was not only an attempt to assist spaza shops with the capital they required to start their businesses but was to uplift and modernise spaza shops in Mamelodi and Pretoria West as well as offer various other support structures such as management skills and marketing skills.

590. This model unfortunately failed because the spaza shop owners who were part of the project did not commit to attending the training sessions organised.

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6.6 Impact of the dynamics of competition between local and foreign national operated small and independent retailers on consumer welfare

591. The section below will ascertain the impact that the competition between local and foreign national operators have on consumers.

592. The consumer survey commissioned by the Inquiry elicited the views of consumers about the benefits, if any, arising from the dynamics of competition between foreign and local run spaza shops. The survey also sought to understand the reasons for consumers preferring to shop from either a local- or foreign owned spaza shop. The section below will ascertain the impact that the competition between foreign and local owned spaza shops has on consumers.

Figure 6.7: Why consumers prefer to buy at local spaza shops.

![Graph showing reasons why consumers prefer local spaza shops]


593. Figure 6.7 summarizes the top five reasons consumers reported as the factors for their preference to shop in local-owned spaza shops. The most prominent, as depicted in Figure 6.7, is patriotism. The second reason cited by consumers is that local traders supply good quality products. The third reason reported relates to the hygiene of the spaza shop, as most consumers deem local-owned spaza shops to be cleaner than foreign owned spaza shops.  

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321 This section focuses on consumer preferences between local and foreign owned spaza shops, the Inquiry notes that consumers have indicated that they prefer to purchase their groceries from malls as discussed under Objective 1.
Figure 6.8: Why consumers prefer to buy at foreign owned spaza shops.

![Pie chart showing reasons for shopping at foreign owned spaza shops.]


594. Figure 6.8 above shows the reasons for shopping at foreign owned spaza shops. It would seem that foreign owned spaza shops are preferred firstly for their lower prices and secondly, for being located closer to home for most consumers. Thirdly, the convenience of the operating hours attracts consumers to foreign owned spaza shops. Fourthly, consumers also reported the availability of credit (i.e. being able to take products from the spaza shop on credit) as an appealing feature. Lastly, consumers further submitted the availability of stock as an important factor for their preference of foreign owned spaza shops.

595. In consideration of the above evidence, it appears foreign owned small retailers offer consumers favourable prices and wider product choice. This is contradictory to the results of local owned spaza shops, which are seemingly patronised in the interest of loyalty and for being cleaner and offering grocery items of better quality than those sold in foreign owned spaza shops.

596. Over and above these findings, the Consumer survey also found that 50% of respondents generally prefer foreign owned spaza shops and fewer than 20% prefer local owned spaza shops.

6.7 Impact of the dynamics of competition between local and foreign national operated small and independent retailers on impact on employment

597. There is very little literature review or any formal studies that have been conducted on the impact of spaza shops on employment. In assessing the impact of spaza shops on employment, the Inquiry relied largely on stakeholder submissions and the small business survey. The key findings show that although foreign traders collectively seem to have more employees,
their employees are largely foreigners. On the other hand, although it might appear that local traders employ less people, they account for more South African employees in the informal grocery retail sector. Figure 6.9 below presents the results from the Small business survey on the number of employees foreign owned spaza shops employ.

Figure 6.9: Spaza outlets that employ one person or more, by nationality and the number of South African jobs they create.

<table>
<thead>
<tr>
<th>Nationality of spaza owner</th>
<th>Number of outlets with one employee or more</th>
<th>Number of South Africans employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladeshi</td>
<td>102</td>
<td>9</td>
</tr>
<tr>
<td>Ethiopian</td>
<td>280</td>
<td>44</td>
</tr>
<tr>
<td>Somali</td>
<td>90</td>
<td>16</td>
</tr>
<tr>
<td><strong>SUB TOTAL</strong></td>
<td><strong>472</strong></td>
<td><strong>69</strong></td>
</tr>
<tr>
<td>South African</td>
<td>343</td>
<td>332</td>
</tr>
</tbody>
</table>

Source: Commission business survey, 2017

598. The above seems to suggest that South African spaza shops employ more South Africans than foreign owned spaza shops. Out of all the foreign nationals, Ethiopians employ more South Africans, followed by Somalians and Bangladeshis.

6.8 Preliminary findings

599. The Inquiry found that local traders also face competition from a growing number of foreign owned retail shops, in particular spaza shops that are generally perceived to be cheaper than most locally owned spaza shops by consumers. As a result, foreign owned spaza shops draw more feet at the expense of locally owned spaza shops. On this note, foreign owned shops have continued to perform better in comparison to local owned small businesses despite the broadening footprint of national supermarket chain stores in these areas.

600. There are numerous factors that contribute to the perceived success of foreign owned spaza shops. These factors, *inter alia*, include ownership dynamics and vertical integration between their spaza shops and wholesalers; trading hours; stock diversity, product and packaging; procurement of goods; regulations and by-laws; trading in counterfeit goods; and price competition.

601. The Inquiry found that foreign owned spaza shops employ business strategies which include horizontal (operational ties), vertical (spaza shops in business with wholesalers), cooperative strategies of working with separate but allied
retail outlets to share opportunities for bulk purchasing and synergizing deliveries, and businesses of maintaining 'multiple retail outlets' under central control. This is contrary to most local-owned spaza shops and small grocery retailers who generally operate on a standalone basis.

602. In relation to trading hours, the evidence before the Inquiry indicated that foreign owned spaza shops generally close later than local-owned spaza shops and are widely perceived to have longer operating hours generally. This provides an advantage because those spaza shops are able to capture and service the demand that exists in these times. In cases where there are prescribed trading hours for business operations, those spaza shops that operate outside of the prescribed trading hours will enjoy an advantage over those that comply with the law. Further, the Inquiry found that there is little or no enforcement by the officials of trading hours by the relevant authorities.

603. In relation to stock diversity, product choice and packaging, the Inquiry found that foreign owned spaza shops offer customers a wider variety of products and volumes whilst local spaza shop owners have admitted that their shops have less stock in comparison.

604. In relation to the sale of counterfeit goods, local spaza shop owners alleged that foreign owned spaza shops sell counterfeit products. The Inquiry found that some local operated spaza shops also traded in counterfeit products however to a lesser extent when compared to foreign owned spaza shops. The counterfeit study which the Inquiry commissioned found numerous examples of counterfeit products which exist in the grocery retail sector.

605. In assessing the impact of spaza shops on employment, the Inquiry relied on submissions made by stakeholders during the investigation and on the survey conducted on small independent businesses. The evidence collected indicated that local-owned spaza shops generally employ locals and this typically translates an average of one person per shop. In terms of foreign owned spaza shops, Ethiopians employ more South Africans, followed by Somalis and Bangladeshis.
THE IMPACT OF REGULATIONS, INCLUDING, AMONGST OTHERS, MUNICIPAL TOWN PLANNING AND BY-LAWS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY

7.1 Introduction

606. As set out in the SOI, regulations are generally designed to promote and protect important public policy goals, such as the promotion and protection of public health and safety, and manage activities by citizens. However, in some instances, regulations inadvertently restrict competition in an industry by; (i) reducing the incentives for new firms to enter a market, and (ii) increasing the barriers for existing competitors to expand and effectively compete in a market.

607. It is widely asserted that small businesses can be a key driver to innovation, job creation and economic growth. Therefore, one of the Inquiry’s objectives was to determine whether there are any regulatory features that may distort and/or impede competition in the South African grocery sector. In particular, the Inquiry sought to determine whether there exists any regulatory features that may potentially prevent small businesses from competing effectively and successfully contributing to the South African economy. Most importantly, if such features exist in the South African grocery retail sector, they are likely to impede the achievement of the objectives of the Competition Act\textsuperscript{322} as set out in section two of same.

608. The Inquiry assessed the impact of regulations\textsuperscript{323} on the informal economy, specifically small and independent retailers in townships, peri-urban and rural areas. These regulations were selected on the basis that stakeholders identified same as raising the most concerns. These regulations included:

608.1 Regulations governing street trade\textsuperscript{324};

\textsuperscript{322} Competition Act 89 of 1998, as amended, Section 2.
\textsuperscript{323} For the purposes of this analysis, “regulations” includes National Acts of Parliament and Regulations thereto, Provincial Acts and Regulations thereto, Municipal By-laws, and policies emanating from all three spheres of Government.
\textsuperscript{324} This category of regulations mainly govern the business operations of informal traders and includes regulating the times at which they are permitted to trade as well as the geographic areas where they are allowed to trade from.
608.2 Zoning regulations\textsuperscript{325};

608.3 Health and safety regulations\textsuperscript{326}; and

608.4 Liquor regulations\textsuperscript{327}.

609. Guided by the OECD toolkit\textsuperscript{328} and the objectives of the Act, the Inquiry sought to establish whether any of these regulations had any of the following unintended effects on competition in the grocery retail sector:

609.1 limiting the number and range of small and independent retailers to compete effectively;

609.2 limiting the ability of small and independent retailers to compete effectively;

609.3 leading to the reduction in incentives of small and independent retailers to compete effectively;

609.4 limiting choice and information available to consumers;

609.5 creating uncertainty amongst small and independent retailers regarding the requirements they are expected to comply with in order to compete effectively;

609.6 being onerous, time consuming and costly to comply with;

609.7 being excessively enforced even for insignificant transgressions thereby restricting participation of small and independent retailers in the market; and/or

\textsuperscript{325} This category of regulations regulates the location of businesses as set out in the zoning schemes of the different municipalities. These regulations require that grocery retailers wishing to operate in a certain area, must obtain the relevant permissions to trade in a specific area or for the specific area to be zoned as a trading/commercial area or having mixed use rights allowing for residential and commercial use.

\textsuperscript{326} This category of regulations set specific health and safety standards that grocery retailers are required to adhere to, when operating their businesses, such as, the manner in which food items are prepared, stored and served. These regulations are also intended to regulate the condition of premises within which products for human consumption is prepared.

\textsuperscript{327} This category of regulations governs the location and trading times which liquor traders are required to adhere to, as well as, the type of sales that certain business types are allowed to make from their businesses namely: wholesale, retail, and special.

\textsuperscript{328} The OECD toolkit is a manual which provides guidance on how to assess laws, regulations and policies for their competition effects, and how to revise regulations or policies to make them more pro-competitive.

609.8 being unenforced, poorly enforced or selectively and corruptly
enforced thus creating uncertainty and an uneven playing field among
small and independent retailers in townships, peri-urban and rural
areas.

610. A detailed discussion of the steps as set out in the OECD toolkit\textsuperscript{329} is provided
in section 16.1 of Annexure 7.

611. The Inquiry undertook this assessment with the unfortunate limited assistance
and participation by some organs of State, including municipalities, relevant
provincial and national government departments due to general unavailability
by the officials representing those departments to participate in the Inquiry.
Hence, the findings of the Inquiry in relation to this objective, are largely
reflective of the views of market participants, in particular the traders which
are affected by the applicable legislations and regulations.

612. As will be discussed in further detail below, the Inquiry has found that certain
regulations and the issues surrounding the enforcement of the legislations, by-
laws and regulation, have the effect of distorting competition in the grocery
retail sector. Where regulations are unequally enforced, or in cases where law
enforcement officials have succumbed to corruption, the result is that the
playing field between competitors in the sector becomes unequal – with some
competitors being afforded an advantage over others.

613. In carrying out the analysis for purposes of this objective, the Inquiry gave
regard to specific pieces of legislation in line with the OECD toolkit\textsuperscript{330} The
Inquiry first provides a general overview on the impact of applicable
regulations to businesses based on submissions received from various
stakeholders. It then used the OECD toolkit\textsuperscript{331} and submissions from retailers
and municipalities to assess the abovementioned four categories of
regulations across the nine Provinces in South Africa\textsuperscript{332} to evaluate the impact
of these regulations on small and independent businesses.

\textsuperscript{329} OECD (2017), Competition Assessment Toolkit: Volume 3. Operational Manual [Online]. Available at:

\textsuperscript{330} OECD (2017), Competition Assessment Toolkit: Volume 3. Operational Manual [Online]. Available at:

\textsuperscript{331} OECD (2017), Competition Assessment Toolkit: Volume 3. Operational Manual [Online]. Available at:

\textsuperscript{332} The four categories of regulations relate to: Street Trade, Zoning, Health and Safety and Liquor.
7.2 The South African Regulatory Framework

614. The contextual framework for the regulatory landscape in most markets in South Africa is still founded in the architecture of the erstwhile apartheid regime.\textsuperscript{333} The previous South African apartheid government adopted various segregationist policies and methods which effectively resulted in the economic marginalisation of the greater black majority of the country’s population. Indeed, such policies which, \textit{inter alia}, included severe restrictions on freedom of movement effectively had the impact of hampering and discouraging the culture and practice of entrepreneurship amongst black communities.\textsuperscript{334} It is against this contextual framework that the review of the regulatory landscape in the South African grocery retail sector is conducted.

615. In assessing the impact of regulations on the competitive dynamics of the South African grocery retail sector, the Inquiry looked at the legislative and executive competence granted to the three spheres of government by the Constitution of the Republic of South Africa, 1996 (“the Constitution”), namely the national, provincial and local spheres. These spheres are distinct from one another and yet interdependent and interrelated.\textsuperscript{335} Each sphere is granted autonomy to exercise its powers and perform its functions within the parameters of its defined space. Each sphere must respect the status, powers and functions of government in the other sphere and “not assume any power or function except those conferred on [it] in terms of the Constitution”.\textsuperscript{336}

616. The analysis below first sets out (briefly) the different pieces of legislation and regulations under consideration and describes the rationale for the enactment of each. The analysis also took into account the different studies that have been conducted in the past (available in section 16.2 of Annexure 7), with a view to informing the consideration of the different pieces of legislation and regulations in this Inquiry. The Inquiry then considered the evidence gathered


\textsuperscript{334} Specifically through harsh licensing requirements and strict zoning requirements in townships and rural areas, the formation of special police squads to ensure the prosecution of informal traders in these areas and the Group Areas Act 41 of 1950.

\textsuperscript{335} The national sphere has plenary legislative and executive authority subject to the concurrent and exclusive powers conferred on the provincial sphere in Part A of Schedules 4 and 5 of the Constitution and both those spheres are subject to the local authority’s exclusive power to administer the matters listed in Part B of Schedule 4 and 5.

\textsuperscript{336} Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others 2010(6) SA 182 (CC) at para 43.
through, *inter alia*, submissions and public hearings on the impact of the different pieces of legislation and regulations on small businesses, in particular. Based on the foregoing, the Inquiry makes provisional findings and recommendations.

*Regulations governing street trade*

617. The applicable National legislation with regard to street trade is the Businesses Act, 71 of 1991 ("Businesses Act"). Its broad purpose is to provide for the licensing and carrying of certain businesses through the designation of municipalities or the appointment of other bodies as licensing authorities by the relevant Premier of the province. It prohibits any person from conducting businesses, amongst others, that sell or supply perishable foodstuff without a business license or, in the case of hawking, a hawkers’ license issued by the municipality or a body appointed by the Premier as a licensing authority.\(^{337}\)

618. The provincial legislation for each province is in the form of regulations promulgated by the Premier under section 6 of the Businesses Act. That section permits the Premier to set out the powers, duties and functions of the licensing authorities, the issuing, amendment, suspension, withdrawal and transfer of licenses and appeals.

619. Municipalities are empowered to develop street trading by-laws that typically regulate street vendors, markets and undertakings that sell food to the public in accordance with the Businesses Act.\(^{338}\) For example, the City of Johannesburg Metropolitan Municipality Informal Trading By-Law (2009) states that the purpose of the by-law is to promote social and economic development and a safe and healthy environment through municipal planning and trading regulations in accordance with the Businesses Act.

*The rationale for street trade regulations*

620. The Inquiry sought to understand the rationale for the development of street trade regulations in order to (i) better appreciate the context for same, and (ii)
determine whether there is alignment between the regulations and the
development of a pro-competitive environment for small businesses, in
particular. Interestingly, there was very limited public information regarding the
rationale for street trading by-laws. Cachalia (1983) stated the three basic pre-
apartheid conditions which street traders were subjected to.\textsuperscript{339}

620.1 Hawkers were required by law to be licensed by the City Council;

620.2 Hawkers were required to remain constantly mobile, moving
seventy feet every twenty minutes;

620.3 Hawkers were not allowed to trade from certain times to certain
times.

620.4 According to Cachalia (1983) whilst by-laws regarding street trade
had been amended over the years, these three requirements had
remained consistent and were placed on street traders, who were
predominantly non-white, in order to control their movement and
restrict competition between them and already established
businesses.\textsuperscript{340} Interestingly, some of these requirements still form
part of our law today, such as the requirements to be licensed by
the municipality in order to trade and the regulation of trading
times.

\textit{Zoning and Planning}

621. The national legislation that regulates regional planning and development is
the Spatial Planning and Land Use Act, 16 of 2013 ("SPLUMA"). SPLUMA\textsuperscript{341}
establishes a framework for spatial development and national norms and
standards for land use management. It is noteworthy that the provinces also
have provincial legislations which deal with provincial planning and in
particular frameworks for municipal spatial development. However, neither
class of legislation intrudes on the exclusive municipal competence of
municipalities to make its own zoning decisions.\textsuperscript{342} Municipal by-laws regulate

\textsuperscript{339} C Cachalia, "From Survival to Defiance", ISBN: 0/86982/217/9 Pg. 11, 1983.
\textsuperscript{340} C Cachalia, "From Survival to Defiance", ISBN: 0/86982/217/9 Pg. 11, 1983.
\textsuperscript{341} The Spatial Planning and Land Use Act, 16 of 2013.
\textsuperscript{342} In the matter between the Johannesburg Metropolitan Municipality and the Gauteng Development Tribunal
and Others [2010] ZACC 11, the Constitutional Court held that the "Constitution confers different planning
responsibilities on each of the three spheres of government in accordance with what is appropriate to each
land use through the establishment of a land use scheme in accordance with national and provincial spatial development frameworks and principles. A land use scheme provides for different categories of land use zoning and regulations for the municipal area and a system of authorizations. It should be emphasized though, that the decision to determine land use zones and the granting of authorisations and relaxations are exclusively municipal competencies. National legislation merely sets out the framework and principles within which municipalities may exercise their rights in relation to land use within their jurisdiction.

622. Nationally, SPLUMA\(^{343}\) provides the framework for spatial planning and land use management and any other kinds of planning. SPLUMA\(^{344}\) is drafted to ensure that the system of spatial planning and land use management as adopted at all spheres of government, promotes social and economic inclusion. Amongst other purposes, relevant for this Inquiry, is that SPLUMA\(^{345}\) provides for the sustainable and efficient use of land to redress the imbalance of the past and ensure that there is equity in the application of spatial development planning and land use management systems. SPLUMA\(^{346}\) aims to improve access to and use of land as managed through the Land Use Management systems that is to be adopted in the different spheres of government within their respective jurisdictions.

623. In terms of SPLUMA\(^{347}\), national, provincial and municipal branches must have Spatial Development Frameworks. Further to that, municipalities must adopt and approve land use schemes in terms of which land and use thereof are managed. The use of land is then as permitted by a land use scheme and a town planning scheme as adopted. The land use schemes set out the zoning schemes and the processes for rezoning which determines the permitted use of land in question.

624. A municipal land use scheme must set out the zones, together with a zoning map and set out the procedures and conditions relating to the use of rights

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\footnotesize{\textsuperscript{343} The Spatial Planning and Land Use Management Act, 16 of 2013.}  
\footnotesize{\textsuperscript{344} The Spatial Planning and Land Use Management Act, 16 of 2013.}  
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\footnotesize{\textsuperscript{347} The Spatial Planning and Land Use Management Act, 16 of 2013.}
allocated to each zone. Municipalities are also required to keep a register of all amendments to land use scheme.

625. Zoning schemes are effected in line with the policy plans and other tools such as the spatial development framework used in the management of land use. The policy plans will set out the general purpose of a zoning scheme as to determine use rights and to provide control over the use of land and prevent over utilization of land.

626. Zoning laws designate the specific use of land. Through zoning schemes, municipalities determine the appropriate use of the land within their jurisdiction. The zoning scheme also specifies whether a permit or consent from the municipality is required for the development of the land, and set out the development rules applicable for a particular zone. Often a zoning scheme sets out the primary use rights for the property and there may also be secondary use rights which generally require consent from the municipality for use thereof. Zoning by-laws apply in conjunctions with other rights, i.e. environmental, heritage and traffic regulations

The rationale for SPLUMA

627. The rationale behind the enactment of SPLUMA\(^{348}\) is based on a number of important factors. Apart from providing a framework for spatial planning and land use management and specifying the relationship between the spatial planning and land use management system and other types of planning; it’s purpose is to specifically provide for inclusive, developmental and equitable spatial planning at different spheres of government, as well as, to address past spatial and regulatory imbalances.\(^{349}\)

628. Todes and Turok (2018) also recognize this in their research on spatial inequalities in South Africa. The authors state that prior to its transition to democracy almost two decades ago, large parts of the country were deliberately under-developed and entire communities were forcibly removed off well-located urban land to marginal areas on the periphery. As a result of

\(^{348}\) The Spatial Planning and Land Use Management Act, 16 of 2013.

\(^{349}\) The Spatial Planning and Land Use Management Act, 16 of 2013.
this, the authors argue that the entrenched social and spatial inequalities have created enormous pressures for social redress and spatial rebalancing.\textsuperscript{350}

\textit{Health and Safety}

629. The Department of Agriculture, Forestry and Fisheries (“DAFF”), the Department of Health (“DoH”) as well as the Department of Trade and Industry (“DTI”) are responsible for food legislation at the national level. The DoH requires that all foodstuffs shall be safe for human consumption in terms of the Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972 (“FCD Act”).\textsuperscript{351} The FCD Act\textsuperscript{352} addresses issues relating to the manufacture, labelling, sale and importation of foodstuffs.

630. In addition to the FCD Act\textsuperscript{353}, the Inquiry also considered the municipal by-laws, whose primary function is to control the sale, manufacture, importation of foodstuffs, cosmetics and disinfectants; and to provide for incidental matters.

\textit{The rationale for the FCD Act}

631. The FCD Act\textsuperscript{354} was first created by the apartheid government in 1972 to "control the sale, manufacture and importation of foodstuffs, cosmetics and disinfectants and to provide for incidental matters." However, there were certain shortcomings with regard to the legislature and a need to amend the FCD Act\textsuperscript{355} arose. In 2006, the Foodstuffs, Cosmetics and Disinfectants Amendment Bill was passed. The rationale behind amending the FCD Act\textsuperscript{356} was explained by the Directorate of Legal Services from the Department of Health at a meeting for the Select Committee on Social Services.\textsuperscript{357}

632. A few minor amendments were effected pertaining to the long title of the FCD Act,\textsuperscript{358} allowance of exportation under the amendments, allowing an accused to be afforded a second opportunity to have his or her goods tested and the

\textsuperscript{351} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\textsuperscript{352} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\textsuperscript{353} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\textsuperscript{354} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\textsuperscript{355} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\textsuperscript{356} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\textsuperscript{357} Meeting of Select Committee of Social Services (NCOP) dated 22 August 2006. Meeting minutes available Online at: https://pmg.org.za/committee-meeting/7200/ [Last viewed 25 April 2019]
\textsuperscript{358} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
amount payable in that regard now became the discretion of the Director General. Importantly, the clause pertaining to the preservation of secrecy was repealed as it was no longer deemed necessary in the new age of transparent governance.

Liquor Act

633. The Liquor Act, 59 of 2003 ("the Liquor Act") is the national legislation, which sets national norms and standards for the liquor trade and specifically regulates the manufacture and distribution of liquor. The regulation of liquor in South Africa is subject to concurrent jurisdiction between national and provincial government. The authority for licensing of trading activities is conferred upon provincial regulatory bodies, which in turn enacts provincial statutes. The ‘control of undertakings that sell liquor to the public’ is an exclusive municipal competence. Municipal by-laws supplement the provincial statutes and typically set trading days and hours as a result of the control that municipalities have over the outlets that sell liquor to the public. Municipalities are also responsible for zoning areas for liquor trading and environmental health issues.

The rationale for the National Liquor Act

634. Prior to South Africa’s constitutional dispensation, liquor trade was governed by the Liquor Act, 27 of 1989. This Act did not provide for the different competencies across the different spheres of Government. Before proclamation, provincial liquor authorities were responsible for the regulation of all the value chain categories of the liquor industry. Subsequently, this Act was repealed at national level and replaced with the Liquor Act. This was to bring the then liquor regulation regime into alignment with constitutional

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359 Under the national legislature’s plenary power to legislate on any matter not listed in Schedules 4 and 5 such as trade and its power under section 44(2)(b) and (c) of the Constitution of the Republic of South Africa, 1996 to pass legislation in respect of a Schedule 5 provincial competence to maintain economic unity and to maintain essential national standards.

360 The Liquor Act, 59 of 2003 provides that a person may only manufacture or distribute liquor if they are registered in accordance with the Liquor Act, 59 of 2003 and have obtained a license to manufacture or distribute liquor. The Liquor Act 59 of 2003 further provides for the manufacturing and distribution of liquor to be regulated at national level while micro manufacturing and retailing continue to be regulated at a provincial level. For purposes of the Liquor Act, 59 of 2003, distribution refers to selling liquor to another person who intends to on-sell that liquor.


363 See for example the City of Cape Town’s Liquor Trading Days and Hours By-law, 2010.

prescripts in respect of the competencies accorded to the various levels of government in the Constitution. At a societal level, the Liquor Act\textsuperscript{365} sought to reduce the socio-economic and other costs of alcohol abuse through the setting of norms and standards in the industry.

635. In addition to the above, the Liquor Act\textsuperscript{366} also sought to facilitate new entry, diversification of ownership and, broadly, much more social responsibility by the industry.\textsuperscript{367}

636. Having considered the different pieces of legislation and regulations, we now turn to consider the previous work conducted on the impact of regulation on small business in general.

7.3 \textbf{Analysis of applicable categories of regulations}

637. The Inquiry’s analysis is set out according to the following outline: a high level overview of stakeholder submissions which were received during site visits, revisits and public hearings is set out, followed by an application of the OECD toolkit\textsuperscript{368} to the abovementioned categories of regulations and then in conclusion the Inquiry sets out its preliminary findings and recommendations.

\textit{Insights from the submissions in public hearings and meetings with stakeholders}

638. The stakeholder submissions to the Inquiry consistently point to the following concerns, amongst others (found in section 16.3 of Annexure 7) regarding the regulatory regime in the South African retail sector:

638.1 The majority of the concerns were in relation to the alleged selective and over-enforcement of applicable regulations and by-laws by the municipal authorities;

638.2 The bulk of regulatory concerns were in relation to differential treatment, as between the national supermarket chains, foreign

\begin{footnotes}
\end{footnotes}
traders and local traders, in respect of trading times, health and safety laws and municipal zoning; and

638.3 Other concerns related to the presence of illegal trading by unlicensed traders and the concomitant effect this has on the competition dynamic, particularly between foreign traders and local traders.

Application of OECD toolkit on by–laws from selected municipalities

639. A total of 225 regulations from municipalities across the country were analysed. Specifically, the Inquiry analysed a total of 112 regulations with regard to street trade; 67 regulations with regard to zoning; 15 regulations with regard to health and safety and 31 regulations with regard to liquor trading. Whilst there are approximately 234 municipalities and nine provinces in South Africa, the applicable regulations, per jurisdiction, were significantly similar to one another and to some extent reflecting the exact copy of one another. There were minor differences observed, reflecting some effort to customize the regulations for the specific province or municipality. As such, to avoid duplication of work, the Inquiry assessed these laws and regulations collectively. Where differences were apparent, this is highlighted. Below, the Inquiry’s analysis of the above-mentioned categories of regulations is discussed:

Analysis of regulations governing street trade

640. The street trade regulations across the provinces govern trading times for street traders. In assessing the street trade regulations, the Inquiry considered whether there was uniformity in the regulations on a provincial basis and to what extent they possessed features that may prevent, distort or restrict competition. In particular, given the concerns regarding trading times, the Inquiry assessed the provisions made thereto in the regulations and how these impacted on small businesses, particularly street traders.

641. The Inquiry found that none of the street trade regulations in the Eastern Cape, Limpopo, Gauteng and Western Cape make specific reference to trading hours. The Northern Cape was the only province which had uniform trading times for the informal trade sector. These regulations set the trading hours as
starting from 8:00 to 18:00\textsuperscript{369}. In Kwa-Zulu Natal\textsuperscript{370}, only one municipal jurisdiction specifically set out the trading times and these were between 6:00 and 20:00. In the Free State, only the Mangaung municipality set the trading times as from Monday to Friday, between 7:00 and 18:00; Saturdays, 7:00 to 15:00 and Sundays and Public Holidays 7:00 to 13:00.

642. As previously indicated, the concern regarding the regulation of trading times was that it, \textit{inter alia}, is not aligned with the trading model for the informal trade sector. A large proportion of consumers who reside in townships, peri-urban areas and rural areas, work outside of their residential areas. Furthermore, throughout the country, there is a large reliance on public transport within townships, peri-urban and rural areas by residents who work outside of their residential areas, giving rise to what is termed the “commuter population”.

643. Figure 7.1 below graphically illustrates the findings from the consumer survey\textsuperscript{371}, which indicated that:

643.1 a large portion of consumers travel out of their residential areas to work before 08:00 and travel back to their residence (ostensibly from work) after 17:00; and

643.2 the majority of consumers surveyed travel to work between 06:00-07:00 and return from work between 17:00-18:00.

\textbf{Figure 7.1: Average consumer travel times to and from their place of work}

\begin{center}
\includegraphics[width=\textwidth]{figure71.png}
\end{center}

\textit{Source: Inquiry Consumer Survey}

\textsuperscript{369} This hours of trade is also provided for by the Lekwa Teemane Municipality in the North West Province.

\textsuperscript{370} Ubuntu Municipality

\textsuperscript{371} Inquiry Consumer Survey Report, P.12.
644. Figure 7.1 above, when considered in light of the specified trading times, indicates that whilst some of the regulations that have been identified, allow traders to operate their businesses until at the latest 20:00, for the most part they prevent traders from operating their businesses during peak times in the morning.

645. As mentioned in objective 3 above, the Inquiry’s consumer survey found that whilst local and foreign owned spaza shops generally open around the same time, being 6:00 – the closing times for both local and foreign owned spaza shops differ by approximately one hour. Similar findings were made by the Inquiry’s Small Business Survey, which found that local and foreign owned spaza shops generally open around the same time in the mornings (between 6:00 and 7:00), however foreign owned spaza shops generally close one hour later than local owned spaza shops.

646. The impact of this is that those traders who strictly adhere to the regulatory stipulation of a 7:00 opening time, could be unfairly disadvantaged as early commuters, i.e. scholars, workers who generally create the most foot traffic, would have already arrived at schools or work places by the time the business opens, meaning that these street traders miss out on the opportunity to make meaningful sales in the mornings to the detriment of their businesses.

647. In areas where shops were found to generally close early, for example in Modjadjiiskloof and Lusikisiki, the reasons attributed to this early closure was a lack of municipal infrastructure such as street lights and shop owners generally feeling unsafe after dark.

648. The Inquiry also noted other concerns arising from the regulations governing street trade: of particular interest is that regulations in a number of provinces, specifically provide that street trading may not compete with existing businesses.

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372 Local traders close at 20:00 and Foreign Owned Spaza Shops close at 21:00, according to the Inquiry Consumer Survey.
373 Inquiry Small Business Survey: All reports under Operating Hours
374 According to the Inquiry Small Business Survey, Local Owned spaza shops generally close between 20:00 and 21:00 whilst Foreign Owned spaza shops generally close between 21:00 and 22:00.
375 Inquiry Small Business Survey Reports: Modjadjiiskloof and Lusikisiki
376 Quoted directly from the street trading by-laws that were assessed "No person shall do business as a street trader on a verge contiguous to that part of a building in which business is being carried on by another person, other than the business of a department store, supermarket or wholesaler, where the goods or services that the
The Inquiry recognises that the regulatory burden is heavier on spaza shops and independent retailers than it is on street traders and that in order to protect the aesthetics of towns and cities, as well as, the financial investments of the spaza shops and independent retailers – such regulations may be necessary. However, the wording of the provision, specifically “where the goods or services that the street trader sells or provides are of the same nature or similar to the goods being sold or services provided by the other person” and the requirement that if the proposed traders’ goods are similar to that of the existing trader in the same vicinity, the proposed trader may not trade those goods without first obtaining the consent of the existing trader, could likely result in anti-competitive effects by limiting the ability of potential street traders to successfully enter the market and by carving out routes to market for some traders (such as spaza shop owners and independent retailers) at the exclusion of others (such as street traders). This is possibly also detrimental to consumers potentially limiting product choice and competitive prices.

In line with section 2(f) of the Competition Act, the Ethekwini and Newcastle Municipalities in Kwa-Zulu Natal have adopted a practice aimed at promoting and increasing ownership stakes for the historically disadvantaged groups. The municipalities take into account the following factors when considering applications for informal trade permits and preference is given to:

- black persons;
- unemployed persons;
- new entrants into the informal sector;
- those persons who do not share a household with already existing permit holders; and
- physically challenged persons.

However, due consideration is also given to whether or not the goods which the applicant intends to sell “fits with those sold or supplied by other informal street trader sells or provides are of the same nature or similar to the goods being sold or services provided by the other person.”

377 Umhlatuze Municipality in Kwa-Zulu Natal and Metsimaholo, Nala and Phumelele Municipalities in the Free State, as well as Emalahleni Municipality in Mpumalanga.
traders in the informal trading area or other traders in the immediate vicinity.” This could possibly be limiting to competition with regard to traders incentive as well as limiting consumer choice with regard to a range of products.

652. A variety of municipalities, such as those in the Free State, have already developed programs to try and club the businesses together and the array of the stalls would be determined by the product offerings of the businesses.

653. In the Free State, specifically Metsimaholo and Tswelope municipals districts and in Nkomazi, Mpumalanga - the regulations reasonably and specifically prohibit the sale of certain goods such as alcohol, vehicles, drugs, guns and protected ornaments. The provisions also extend to pets, cosmetics, raw meat and fish, which may only be sold with prior written permission from the municipality.

654. In the main, most provinces do not have the requirement of street traders acquiring written consent from the municipality before engaging in street trading. However, some provinces provide specifically that no persons shall be a street trader without the prior written permission of the relevant municipality, unless that person is a South African citizen. Exceptions are made where the person applying to be a street trader has permanent residency or a work permit in South Africa and owns fixed property within the jurisdiction of relevant municipality.

655. During its engagements with stakeholders, the Inquiry found that whilst some stakeholders were aware of the applicable trading times, a number of traders complained that they were unsure about the trading times applicable to them and further that, law enforcement is often inconsistent. Traders also claimed that it is often very costly and time consuming to acquire a trading permit from their local municipalities. In this regard, the applicable street trade regulations are assessed below, in line with the OECD toolkit.

656. In view of the prevalence and success of foreign owned small businesses in the country, this provision can be recommended to policy makers in Provinces.

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379 Specifically Northern Cape and North West provinces.
380 Written permission to practice street trade may be granted for a period of twelve months and thereafter may be renewed upon the payment of the renewal fee. Most regulations provide that if written approval is denied applicants have the option to appeal the application with the Municipality.
that have not adopted the same approach, for example, in the Eastern Cape; Gauteng and Western Cape, where regulations do not place this requirement on applicants who want to trade. In Mpumalanga, the requirement to be a South African citizen is not enforced in that applicants who are not South African citizens are allowed to apply under the Immigrations Act and are not required to be property owners within the jurisdiction in order to qualify to operate as a street trader. Regulations in Limpopo generally do not require street traders to apply for written permission to operate as street traders. However, the Musina municipality makes specific reference to this requirement.

657. In line with the guidelines in the OECD toolkit,\(^\text{382}\) the Inquiry’s preliminary view on the enforcement of street trade regulations is that they result in the following concerns for small businesses. These concerns indicate the difficulties that street traders face at a municipal level which may have a negative impact on their ability to effectively compete:

657.1 inconsistencies in the regulation of trading times may unfairly disadvantage traders who are compliant;

657.2 high cost and extended duration of acquiring street trading permits;

657.3 lack of enforcement of applicable laws in relation to street traders; and

657.4 disruptive conduct in relation to the relocation of street traders.

**Analysis of zoning and planning regulations**

658. The need to assess the regulations involving zoning and rezoning of property prior to a business being conducted from that property was informed by the numerous submissions and complaints made by stakeholders to the Inquiry. Stakeholders claim that some of these regulations including municipal town planning and licensing by-laws, are often costly and carries the risk of being rejected, are time consuming and generally involve processes that are not clear etc.

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In light of the above, this section focuses on land use management, i.e. town planning and zoning regulations as implemented by municipalities within their respective jurisdictions. The Inquiry assessed the regulations that regulate zoning to the extent that the application and the enforcement of this by-laws may affect the business operations of small and independent retailers, or their ability to open businesses. The Inquiry took into account the submissions and the views of market participants when reviewing the applicable zoning and planning by-laws.

In selecting the municipalities, the Inquiry was also guided by the issues raised by small business operators from different provinces and municipalities across the country that made submissions to it. The Inquiry also reviewed zoning by-laws and zoning schemes submitted by the municipalities to the Inquiry during its evidence gathering phase. During the Inquiry’s engagements with stakeholders through meetings and public hearings, the following issues were raised in relation to zoning by-laws:

660.1 Actual and potential entrepreneurs are not well informed about the applicable municipal zoning schemes, zoning plans etc. and the processes necessary to legally operate a business from a selected geographic area;

660.2 Zoning regulations and schemes were inflexibly applied;

660.3 Rezoning processes are costly and unreasonably time consuming;

660.4 The processes that authorities were required to follow in rezoning a property are not transparent and are not publicly available. The result is that the criteria applied by each authority or by the same authority itself, changes. This leads to uncertainty and no assurance is provided as to when or even if the zoning application will be approved; and

660.5 Changing by-laws require business operators to comply with costly and time consuming requirements.

660.6 Multiple administration regulations have been passed by municipalities, adding to the burden of conducting businesses in township areas. The strict enforcement of zoning and land use could

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383 Made up of town planning and zoning regulations.
potentially stifle business restricting potential businesses from opening. Added to the land use rights as allocated by the municipality, the cost of rezoning property, depending on the location of the land could also have a negative impact on potential entrepreneurs, as the process of rezoning is generally costly. The process for awarding a business license was found to be costly, unreasonably lengthy and to lack co-ordination within the different departments within the municipality.

661. During some of the engagements between the Inquiry and stakeholders, the possible recommendation of a blanket rezoning application or in competition language, an exemption, was suggested. In particular, a study conducted by the Sustainable Livelihood Foundation\(^\text{384}\) recommended this type of blanket rezoning, which would comprise different land use rights making it easier for potential businesses to be established without having to incur the cost of rezoning land from residential use to use for business purposes.\(^\text{385}\) Other recommendations included moving towards facilitations rather than purely the control and enforcement of applicable laws and regulations with regard to small business operations and clarity on relevant regulations.

662. It was also recommended to move towards proactive rezoning based on demand by business. For example, where small businesses in an area are not zoned for such, authorities should proactively rezone such areas instead of viewing such conduct as unlawful and clamping down on it. Such areas are earmarked by entrepreneurs based on the perceived foot traffic, something that municipalities or other authorities might not always be in a position to do. According to the small business survey\(^\text{386}\), there is a growing class of merchant wholesaler outlets which specialise their trade to informal spaza shops. Such businesses occupy municipal town CBDs where regulation of the high street appears to be minimal. This enables businesses to operate with a degree of informality. The recommendation of the blanket rezoning beforehand, will further aid the authorities to ensure that only registered, legitimate businesses operate therefrom, in service to the smaller businesses.

\(^\text{384}\) Revisiting the potential socio-economic impact of the Western Cape Liquor Act on unregulated liquor retailers, 23 April 2012, Sustainable Livelihood Foundation.
\(^\text{385}\) This idea has been implemented by the City of Cape Town within the municipality, allocating a blanket rezoning or consents comprising of different land use rights.
\(^\text{386}\) Inquiry Small Business Survey Reports.
663. The Inquiry notes that once municipalities have engaged in proactive zoning, taking into account consumer movements and demand by businesses, there is still a need for the establishment of appropriately designed and located infrastructure to support the economic activities of micro-enterprises. The Inquiry considers it important that in establishing the support infrastructure for micro-enterprises, due regard must be given to the location, proper lighting, security and sanitation in order to prevent issues of crime and a lack of formalisation.

664. This was also raised in the Inquiry’s site visits and revisits where stakeholders submitted that municipalities have in the past proactively zoned areas to be occupied by micro-enterprises. In addition, to proactive zoning it was submitted that municipalities would also erect infrastructure in these pre-zoned areas to provide hawkers and informal traders with an effective spatial framework from which to carry on their business. However, it was noted that many of these ‘informal trading markets’ in other provinces, were vacant or unused. Hawkers submitted that these ‘markets’ were impractical for their businesses as they were often located too far from economic and transport hubs, which create the foot-traffic that is necessary for the success of these businesses.

665. In this regard, the Inquiry takes note of the Gauteng Revitalization Program which aims to bring about radical economic transformation through infrastructure development for township enterprises. Government is prioritising the development of infrastructure through street-level informal markets for micro-enterprises within the township space. These markets will allow the clustering of township enterprises and allow these businesses to establish cooperative strategies among themselves such as, the sharing of business space and services and combating crime.

387 This was also seen during the Inquiry’s site visit to the North West Province dated 14 and 15 September 2016 and during the Inquiry’s revisit to the Northern Province dated 5 December 2016.
666. The Kareeberg municipality rezoning policy involves a requirement that the rights acquired through a rezoning process may lapse in the event that these rights are not used within a period of 2 years from the approval of the rezoning application. This condition was also found to be generic in most municipal town planning regulations. The Inquiry find this to be concerning as the municipality may in its discretion, decide that the applicant who may be a small independent business must commence with its operation within a year or even a lesser period irrespective of the other regulatory challenges that may be faced by the small business. This is possible as most of the regulatory requirements are not necessarily aligned and relevant government offices operate in silos. Further, the rights will also lapse if the municipality has not approved the building plans within that period (2 years or shorter as determined by the municipality) thereby negatively affecting or disadvantaging small businesses.

667. The above condition has the possible effect of reducing the number of small businesses that may enter the market and compete.

668. There is no specific zoning for small businesses such as spaza shops. The lack of detail in the zoning scheme can be a barrier to potential business operators as it prohibits them access to important information which could otherwise encourage them to exercise their rights to operate a small business. The failure to specifically address the trading requirements for small businesses as spaza shops also creates uncertainty for potential traders and creates scope for potential victimization by authorities of traders that operate without permits.

Western Cape

669. The Bergrivier municipality; the City of Cape Town metropolitan municipality and the Drakenstein municipality’s by-laws were reviewed in the Western Cape.

670. In relation to the relevant by-laws of the Bergrivier municipality:
The municipality keeps most of its town planning schemes online in an electronic format. This is also the case with most municipalities. The Inquiry is of the view that all municipalities should be required to make all relevant and necessary information as widely available as possible, in order to ensure that none of the stakeholders may be prejudiced in accessing it.

By-laws may also create uncertainties due to the manner in which they have been crafted. For example some of the sections of the Bergrivier municipality’s zoning by-laws were found to be too broad. These by-laws state that no building or structure can be erected without the permission of the municipality. The requirement may effectively prohibit a resident from constructing any structure on their property with the purpose of conducting a small retail business such as a spaza shop. The municipality could look into other less restrictive way of controlling buildings within the municipality such as allowing non-permanent temporary structures (such as a container) to be erected without the permission from the municipality for purposes of operating a small business such as a spaza shop etc..

Further section 22(2) of this by-law prohibits the use of the premises that is not reflected as a primary premises, without the approval of the municipality. This could mean that if a resident were to operate a spaza shop from their house, they would have to first obtain consent from the municipality. The consent requirement could potentially increase the barrier to entering the grocery retail market at a very small scale.

Similar to other municipalities, the town planning by-laws of the City of Cape Town also states that all property within the municipality’s jurisdiction is subject to the zoning scheme and cannot be used for any purpose which is not specified in this zoning scheme. Permission must be obtained from the City Council. The City of Cape Town has a zoning scheme that allocates a number of rights to properties ensuring that there can be multiple uses for the property by the legal owners subject to consent from the municipality where required. The various categories in the zoning scheme can be found in section 16.4 of Annexure 7: Objective Four - The impact of regulations, including, amongst others, municipal town planning and by-laws on small and

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389 Section 22(1) of the Bergrivier Municipality zoning by-laws.
390 Section 22(2) of the Bergrivier Municipality zoning by-laws.
independent retailers in townships, peri-urban areas, rural areas and the informal economy.

Annexure 7.

675. The Sol Plaatjes Municipality was one of the 12 municipalities that participated in the pilot study which was conducted by DTI, COGTA and SALGA. The municipality highlighted that as part of the recommendations resulting from the pilot study, municipalities are encouraged to host informal trade forums to afford informal traders with a platform to voice their concerns. However, the municipality raised a concern that it is extremely difficult to persuade the informal traders to congregate on a regular basis.

676. The multiple land use rights zoning scheme as adopted by the City of Cape Town is an example of how municipalities can allocate land use rights in a manner that promote small businesses especially micro businesses without imposing onerous and expensive processes that may effectively prevent potential entrepreneurs to open businesses.

677. Applications in terms of the municipal planning by-laws are made in terms of the by-law\(^{391}\) for rezoning and for consent to use the rights in terms of the zoning management scheme. The challenge, as with most of the town planning and zoning schemes is that the regulations do not set out in detail the process involved in applying for rezoning as well as when consent is required from the municipality to give effect to the additional rights granted on the property. Despite the above criticism, the City of Cape Town’s Planning Laws were found to be more explicit on the different land use rights afforded to the occupants of land within the municipality, thereby reducing some of the barriers that can be created by the compliance required for operating a small business.

_Gauteng_

678. The City of Tshwane land use management has 28 days to decide and inform an applicant if an application is incomplete for purposes of being reviewed by the council for rezoning.\(^{392}\) The issue concerning lengthy and expensive zoning application processes was also raised with the Inquiry by a number of municipalities.

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\(^{391}\) Section 42 of the Bergrivier Municipality zoning by-laws.

\(^{392}\)This means an applicant may only be informed on the 27th day after lodging the application that their application is incomplete and therefore cannot be reviewed, which unnecessarily lengthens the period for the zoning application.
small business operators as a barrier to doing business within most municipalities. The by-law itself does not seem to differentiate between small, medium and large businesses on the application for rezoning. Although lengthy for large businesses, it may be more affordable for them which would not be the case for a small and medium sized enterprise. This may potentially be the case with regard to all rezoning application processes.

679. Ekurhuleni municipality’s Town Planning Scheme has provisions for zoning some of the residential areas with the ability to conduct businesses from residences subject to written consent. The process for obtaining such consent from the municipality is not set out for prospective applicants and the process may potentially be a lengthy one. On the positive side, the by-law makes provision for the primary dominant use of property to be residential but also allow the secondary use of the residence for operating a business.

*KwaZulu Natal*

680. Matatiele municipality’s land use management system includes the introduction for flexibility and compatible use of land in residential neighbourhoods. The zoning scheme makes provision for use of residentially zoned areas to conduct a home business subject to the consent of the municipality. When applying for rezoning, after lodging the application, the applicant is required to publish a notice in the local newspaper of such intention, to surrounding neighbours, and also to serve a copy of the notice to surrounding land owners as directed by the municipality. The decision by the municipality is granted after the expiry of 28 days from the date of submission of the application. The downfall of this is that the by-law does not set out the application process in detail except for the form that must be completed. This creates uncertainty amongst small and independent retailers as they are not properly informed of the requirements which could effectively prevent them from operating effectively in the market.

681. Further to the above, local spaza shop operators submitted to the Inquiry that these zoning by-laws are applied inconsistently between business operators by the municipality in favour of certain ethnic groups, in particular foreign owned businesses.
682. As with most of the zoning and land management by-laws reviewed, the municipality’s zoning regulations were found to lack detail and clarity of processes, the period to be taken for the application as well as the exact applicable fees which again has the effect of creating uncertainty amongst small and independent business operators.

Limpopo

683. The Inquiry found the Thulamela local municipality gives applicants a period of 5 years for the approval to lapse, which at least gives the applicant sufficient time to set up business once rezoning has been approved. This is in contrast with other municipalities which give 2 years or less.

684. The Inquiry accessed the municipality’s proposed fees\textsuperscript{393} for rezoning which were R3 562 plus R1 784 for the notice to be placed by the municipality, in addition to the cost that the applicant will have to bear for placing an advertisement of the application in local newspapers as required by the by-law. The amount payable towards a rezoning application may seem reasonable for a business (which may still be rejected) but for a small survivalist business which is trying to have a property rezoned for business, this may be unaffordable as was submitted by the majority of small and independent retailers as one of the regulatory barriers.

685. In line with the guidelines in the OECD toolkit\textsuperscript{394}, the Inquiry’s preliminary view on the enforcement of zoning regulations is that they may result in the following concerns for small businesses which indicate the difficulties that street traders face at a municipal level which may have a negative impact on their ability to compete effectively:

685.1 High costs and lengthy processes associated with rezoning of property may be having the effect of minimizing the incentive of competitors to compete, this is compounded by the fact that the by-laws themselves do not differentiate between small, medium and large businesses on rezoning applications. Whilst the process is lengthy for all businesses, it may be the case that it is more affordable for large businesses to

\textsuperscript{393} For the period 2017/18.
bear the costs and time constraints associated with the process, than may be the case for small and medium sized businesses.

685.2 Uncertainties resulting from lack of accessible information regarding the requirements that small business operators need to comply with before they can trade legally.

685.3 Inconsistent application of the by-laws in favor of certain nationalities, having the possible effect of reducing the incentive of competitors to compete effectively.

Analysis of health and safety regulations

686. Small and independent grocery retailers across the country have raised concerns around health and safety regulations in the retail sector. Some have submitted that although they are aware of regulations that they are required to comply with, they are unaware of the actual content and requirements as prescribed by these regulations. Small and independent grocery retailers that have knowledge of the health and safety requirements further submitted that there exists no enforcement by authorities or inspectors who are appointed to enforce these regulations. Traders also submitted that when the regulations are enforced, the enforcement is done so unequally between foreign and national traders. According to the local traders, inspectors generally do not require foreign traders to comply with the regulations and sometimes accept bribes from foreign nationals who wish to evade compliance. As alluded to in Objective three above, this lack of enforcement affords foreign traders a competitive advantage over local traders and enables them to sell counterfeit products.

687. For purposes of this report, the term foodstuffs will include cosmetics and disinfectants as the FCD Act\textsuperscript{396} refers to both interchangeably. The FCD Act\textsuperscript{397} provides for various definitions that are useful for the Inquiry’s analysis of health and safety regulations. The following terms are defined under Section 1 and are relevant:\textsuperscript{398}

\begin{itemize}
\item [395] These include traders in the following provinces: Limpopo, North West and Free State.
\item [396] The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\item [397] The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
\item [398] The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended, Section 1.
\end{itemize}
687.1 Foodstuffs\textsuperscript{399};

687.2 Premises\textsuperscript{400};

687.3 Prohibited article\textsuperscript{401}; and

687.4 Treated and/or Treatment\textsuperscript{402}.

688. The FCD Act\textsuperscript{403} deals with various prohibitions. The Inquiry identified the prohibitions that are likely to affect traders active in the grocery retail market and these are discussed below.

\textit{Sale of mixed, compounded or blended foodstuffs}

689. In accordance with the FCD Act\textsuperscript{404} any person who sells any foodstuffs which contains a mixture of different foodstuffs or a blend consisting of the same foodstuff in different quantities in a package that does not bear a label which complies with the provisions of the regulations and which does not indicate clearly the mixture, compound or blend of the foodstuffs is prohibited. Further that the label must contain specifically the names or, as the case may be, the kinds or grades of the ingredients and the portions or amounts present in the foodstuffs, unless such foodstuff is taken and delivered direct to the purchaser from bulk stock and the container of which such foodstuffs is stored in bears such label. This requirement shall not apply with reference to the sale of any foodstuffs which is the subject of a patent.\textsuperscript{405}

\textit{False description of articles}

690. Publication of false or misleading advertising of any foodstuffs, cosmetics or disinfectant for purposes of sale is a prohibition according to the FCD Act.\textsuperscript{406}

\textsuperscript{399} Any articles or substance (except a drug as defined in the Drugs Control Act\textsuperscript{399}) ordinarily eaten or drunk by a person or purporting to be suitable, or manufactured or sold for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as part or ingredient of any such article or substance.

\textsuperscript{400} Means land or any building or other structure and includes any train, boat, ship, aircraft or other vehicle.

\textsuperscript{401} Means any foodstuffs, cosmetic or disinfected which may in terms of this Act not be sold or manufactured or imported for sale or which does not comply with the provisions of this Act in all respects.

\textsuperscript{402} Means coloured, stained, powdered, polished, coated or steamed, or missed, preserved, flavoured, diluted or thickened with any substance, or treated in any other.

\textsuperscript{403} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.

\textsuperscript{404} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.

\textsuperscript{405} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended, Section 3(1).

\textsuperscript{406} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended.
Confidential

False or misleading advertising includes false or misleading information on the origin, nature substance, mode and place of manufacture of the products.

691. The prohibition of false and misleading advertising shall not be regarded as prohibition where it is under a geographical name which is generally accepted as a generic term for a particular type or variety of such foodstuff, provided the foodstuff described by or sold under the name in question is of the type or variety indicated by that name.407

Prohibition of sale, manufacturing or importation of certain articles

692. The Act prohibits the sale of foodstuffs that contains or has been treated with a prohibited substance or which contains a particular substance in a greater measure than that permitted by regulation or has been treated with a substance containing a particular substance in a greater measure than that permitted by regulation.408

Inspectors

693. The Act also makes provision for inspectors who may be authorised by the Director-General, who are persons he has deemed fit as inspectors who shall, subject to the control of the Director General, be vested with the powers, duties and functions conferred or imposed on the inspector by the FCD Act.409

694. The FCD Act further indicates that a member of the South African Police Services above the rank of a sergeant may perform the duties of an inspector.410

695. Such inspectors are granted the the power to, at all reasonable times, enter upon any premises on or in which any foodstuff is sold and inspect or search such premises, to further examine or extract the foodstuff and demand information regarding that foodstuff. Inspectors are also given the power to inspect the operation or process carried out in or upon such premises and demand any information from the owner regarding such operations. The

407 The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended, Section 5(1).
408 The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended, Section 2(1).
409 The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended, Section 10(1).
410 The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended, Section 10(3)(c).
inspectors may also seize product which may be in contravention of the FCD Act.\textsuperscript{411}

696. On examination of the regulations and municipal by-laws collected, the Inquiry found that the bulk of regulations deal with health and safety from an external perspective, particularly in relation to external advertising, signs and the regulation thereof. They do not give details as to how the actual products should be kept in a store or the requirements which need to be adhered to in relation to conditions under which products are allowed to be sold by retailers. Regulations and municipal by-laws also do not deal with requirements on the structure of the store concerning the maintenance of the building to ensure safety of products.

697. Various health and safety regulations mention that failure to maintain sewers, drains, water fittings, water closet fittings and all sanitary facilities are prohibited. Furthermore, it was noted that the trade regulations also place specific health and safety requirements on informal traders, which will be discussed below.

698. Across the provinces, the trade regulations make specific provision with regard to general conduct, cleanliness and obstruction. It is reasonably provided therein that street traders may not pose any kind of risk to the health and safety of other residents and businesses within the jurisdiction or to environmental health and safety, by providing: amongst other things, that street traders are prohibited from building open fires in their areas of business, prohibited from disposing of any fat or grease in drains around their stalls, they may not obstruct access to fire hydrants and their goods may not be stored in storm water drains.

699. Furthermore, street traders are required at all times to keep their designated trading areas clean, neat and free of any noxious odours.

\textit{Stakeholder submissions on health and safety regulations}

700. The Inquiry held a consultation process with hawkers, spaza shop owners and small and independent retailers of which some are members of buyer groups, in order to determine the issues these stakeholders face in relation to health

\textsuperscript{411} The Foodstuffs, Cosmetic and Disinfectant Act, 54 of 1972, as amended, Section 11.
and safety. This was conducted through two phases, the initial being formal meetings with the representatives of the market participants, which included the various municipalities and the second being re-visits in the form of public hearings which was open to all the traders and not just the representatives.

**Limpopo revisit**

701. During consultations in the Limpopo province, the Inquiry found that most health and safety issues raised by traders were linked to the alleged unequal enforcement of the applicable regulations between local traders and foreign traders. And further, traders were generally unsure on which regulations are applicable to them.

702. Numerous local traders claimed that health and safety regulations are stringently enforced against the local traders but not on foreign nationals. According to the local traders, requirements such as having a window in a building from which one trades and lack of ventilation is enforced against local traders whereas foreign traders can be found trading in a building that lacks ventilation. Authorities were further accused of ignoring such violations.412

703. Many of the local traders also alleged that inspections were seldom conducted, while one of the traders who was present at a consultation submitted that when he did have an inspector visit his store, the inspector notified him that he has found a lot of health and safety prohibitions in many of the foreign owned spaza shops. Further, despite the allegations that foreign nationals do not comply with the required regulations, their stores still operate and are not closed down by authorities.413 Another trader indicated that when inspectors conduct inspections, they do not look at the stock but they conduct inspections on the structure of the building.414 415

704. As indicated in Objective 3, local traders also alleged that foreign nationals do not sell clean food as they sleep in the same building that they operate their business from, and that most times they relieve themselves in the same room

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412 Submission by local traders at the Limpopo Re-visit dated 4 November 2017, Transcript p 46.
413 Submission by local traders at the Limpopo Re-visit dated 4 November 2017, Transcript p 64.
415 One of the traders claimed that there was an incident where 750ml bottles of cooking oil had two plastic labels over the bottle, the label underneath indicated that the cooking oil had expired while the one on top had a new expiry date printed on it. The original labelling on the cooking bottle had been replaced to conceal the original expiry date. In other words the packaging was reprinted more than once. See note 11 above.
as the store. Consumers face health issues and local traders find it difficult to resolve this matter as they do not know which government entity to go to or which regulator with whom to lodge complaints. The municipalities have been consulted but nothing has been done about the complaints raised by local traders.\textsuperscript{416}

\textit{KwaZulu-Natal revisit}

705. Similar to the Limpopo traders, in KwaZulu-Natal, local traders raised concerns over non-adherence of health and safety regulations, as foreign traders allegedly sleep in the same containers from which they trade. According to the local traders, regulations do not permit that traders sleep and trade in the same container. Local traders further claimed that in the morning, they have witnessed foreign traders living in same container in which they trade.\textsuperscript{417} Local traders stated that the health and safety inspectors conduct inspections ones or twice a year.\textsuperscript{418}

\textit{Mpumalanga revisit}

706. Traders in Mpumalanga raised the issue of counterfeit products allegedly being sold by foreign traders who traded in the area. According to the local traders, the foreigners produce their own products under a famous brand which is cheaper and is not of the same quality as the original product and sell this to local customers. Local traders claimed that such counterfeit products affect the health of the consumer and that such issues should be resolved by health and safety inspectors.

\textit{North West revisit}

707. Traders in the North West province submitted that Pakistani, Bangladeshi, Somali and Ethiopian traders sell counterfeit products, which include products such as Zum-buk, razor blades and cigarettes. Similar to traders in other provinces, they further alleged that foreign nationals repackaging expired goods or that they scratch off the expiry dates on cans which have already passed the expiry date and sell the products at cheaper prices in township and rural areas. Furthermore, where suppliers have products that are soon to expire,
they sell them at discounted prices to foreign nationals only, who in turn resell them at extremely cheap prices. It was alleged that municipalities are aware of these issues because they have been notified but that they turn a blind eye to such issues.\textsuperscript{419}

708. The local traders alleged that where inspections are conducted, police officers and health inspectors sometimes request monetary bribes from the traders where they find that traders do not adhere to the regulations.\textsuperscript{420}

\textit{Northern Cape revisit}

709. Traders in the Northern Cape submitted that inspectors from the Department of Health do conduct inspections on an annual or bi-annual basis. In the event that the inspectors find that the stores are not in accordance with the regulations that are applicable, they issue out fines to the traders and indicate to the traders the measures they need to take in order to comply with the regulations.\textsuperscript{421}

710. Local traders also submitted concerns relating to the issuing of health and safety certificates, alleging that these were not issued to them by the local municipality. According to the traders, this affects them as they cannot trade without the necessary documentations.\textsuperscript{422}

711. Some traders indicated that the laws governing trade in the Province do not deal with issues of health and safety and that this has been brought to the attention of the relevant authorities. This was confirmed by some of the municipal workers present at the revisit.

712. In line with the guidelines in the OECD toolkit\textsuperscript{423}, the Inquiry’s preliminary view on the enforcement of health and safety regulations is that they result in the following concerns for small businesses, which has a negative impact on their ability to effectively trade:

\textsuperscript{419} Submission by Leslie Nongawuza at the Rustenburg Re-visit, Transcript p. 50.
\textsuperscript{420} Submission by local traders at the Limpopo Re-visit dated 4 November 2017, P.33.
\textsuperscript{421} Submission by local traders at the Kimberley Re-visit dated 5 November 2016, p20.
\textsuperscript{422} Submission by local traders at the Kimberley Re-visit dated 5 November 2016, p40.
712.1 Lack of enforcement and/or inconsistencies in the enforcement of health and safety regulations; and

712.2 Lack of knowledge of regulations that are applicable to traders.

Analysis of liquor regulations

713. Each of the nine provinces enacted separate provincial liquor legislations which are within the relevant province. The Constitution provides that licensing for the retail of liquor to consumers falls within the exclusive jurisdiction of provinces. The liquor licenses issued by provincial liquor authorities include the following:

713.1 Liquor licenses for bars, pubs, nightclubs, pool clubs, dance halls, and taverns;

713.2 Liquor licenses for hotels, restaurants, gaming premises, sports grounds, and theatres;

713.3 Liquor licenses for off-consumption businesses such as supermarkets, general merchandise stores, bottle stores, wholesale liquors, sorghum beers; and

713.4 Licenses for micro-manufacturing.

714. Provincial liquor legislation prohibit the sale of liquor to consumers from any liquor retail outlet unless that liquor retail outlet holds a retail liquor license. In general terms, Provincial liquor legislations establish systems for regulating applications for liquor licenses as well as to provide for the notification of and participation by communities regarding the granting of liquor licences. The Provincial liquor legislations prohibit the sale of liquor to certain categories of people.

715. The Constitution provides that the regulation of trading hours for the liquor industry falls within the exclusive legislative competence of Local Government. Furthermore, the Constitution imbues Local Government with exclusive authority to determine the legal framework for zoning land for residential purposes, business purposes or both.
716. Municipalities routinely publish by-laws and amendments thereto. The liquor trading hours by-laws reviewed by the Inquiry largely place an obligation on the municipality to consult members of a community which is likely to be affected where an applicant for a liquor license seeks to operate a liquor trading business in that community. Such a consultative process enables the affected community to raise objections to an approval of a liquor license by the provincial liquor authority or to recommend additional conditions for approval of such a license.

717. During the Inquiry’s engagements with stakeholders, some of the concerns raised regarding liquor trading related to licensing and the exorbitant costs and lengthy processes associated therewith, trading hours and the allegation of preferential treatment received by large retail chains in terms of extended trading times as compared to independent liquor retailers who are not allowed to trade beyond the times specified in the by-laws, as well as, the perceived preferential treatment of retail liquor stores over independent liquor stores with regard to opportunities to trade from shopping centres and malls. The Inquiry reviewed the applicable liquor regulations with the view to understand the regulation of liquor trading in the country as well as to determine if these concerns are addressed by the relevant legislations.

Stakeholder submissions on liquor regulations

718. Different municipalities treat special liquor license holders differently and also based on the requirements of the holder of a special liquor license. Special liquor licenses are usually issued as once off for an event or a specified period.

719. Some municipalities such as the George local municipality do not permit the selling of liquor on Sundays and on religious public holidays. However, such restrictions do not appear to raise competition concerns as they apply equally to all liquor traders within that municipal district irrespective of the type of liquor license they possess. However, the same provision is not applied uniformly throughout the province or throughout the country\(^{424}\) which could mean that certain traders have a competitive advantage over others in surrounding areas, dependent on where they are located and which laws apply to them.

\(^{424}\) In the Free State, liquor trading is allowed Monday-Sunday. Correspondence with Free State Gambling, Liquor and Tourism Authority, 7 February 2019.
With regard to the regulation of trading hours, some municipal regulations expressly state that trading hours applies specifically to premises which are properly zoned for liquor trade. This means that in these municipalities, liquor traders which have not obtained zoning certificates will not be able to lawfully operate until such time that a zoning certificate is obtained. As was stated above, under the analysis of zoning regulations, liquor traders would have to incur expenses and lengthy processes in order to obtain zoning certificates with the aim of applying for a liquor licences, the granting of which are also not guaranteed.

In these circumstances, the Inquiry also notes that that zoning falls within the exclusive legislative competence of municipalities while liquor licencing is at provincial level, this may have a negative effect on the ability of small firms to compete effectively in the liquor industry as the ability for a potential trader to obtain a trading license does not guarantee their trading legally as they are still required to comply with zoning regulations which is regulated by a different sphere of government. Application for liquor licensing should be streamlined with applications for rezoning of premises so that liquor traders so not have to face dual restrictions.

In May 2016, the Western Cape Cabinet approved the implementation of Regulatory Impact Assessments ("RIAs") as a mandatory prerequisite for all significant proposed policies and legislation in the province. In this regard SBP, was employed to conduct a RIA on the Western Cape Alcohol-Related Harms Reduction Policy Green Paper. The purpose of RIAs is to ensure that government only regulates when necessary; that adverse impacts are kept to a minimum and that decisions made by government are informed by robust evidence based policy. Regulations in South Africa seek to reduce the socio-economic and other costs of liquor abuse whilst simultaneously enhancing broader benefits of liquor trading. The Inquiry analysed the relevant liquor by-laws which govern small businesses in the nine Provinces, this will be discussed below.

The primary area regulated by the above by-laws relates to days on which liquor may be sold in a particular municipality. In general, the majority of the

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425 These municipalities include the Mbashe Local Municipality, Kouga Local Municipality, Drakenstein Local Municipality, Great Kei Local Municipality.
426 An independent private sector development and research company specialising in the business environment.
427 National, Provincial and Local.
provisions in the liquor regulations which were assessed were found to be the same. The by-laws also stipulate trading hours applicable for different categories of businesses licensed to trade in liquor. As stated above, the by-laws almost invariably create an obligation on the municipality to consult community members residing nearby the premises for which a liquor license is sought.

Trading Times

724. In general, the by-laws categorise liquor license holders and set out the trading times which are applicable to each category, as follows:

724.1 Retailers who sell liquor for consumption off the licensed premises such as bottle stores, liquor wholesalers, etc. This category of retailers is largely permitted to sell liquor between 08h30 and 20h00 from Monday to Saturday. On Sundays, these retailers are allowed to open at 09h00 and close at 13h00 or 15h00.

724.2 Liquor traders that are licensed as micro-manufacturers are generally allowed to trade between 08h00 and 18h00.

724.3 Traders licensed for consumption on the premises such as hotels, casinos and lodges are generally permitted to sell liquor for 24 hours throughout the week.

724.4 Other categories of liquor traders who sell liquor for consumption on the premises have limited trading hours. Pubs, bars, taverns, sport bars, etc. are allowed to sell liquor from 09h00 to 23h00 or 00h00 between Monday and Saturday while they may sell liquor from 11h00 to 23h00 on Sundays.

724.5 As previously stated, during its engagements with stakeholders the Inquiry received numerous complaints about the unfair application of trading times amongst the different categories of liquor traders, specifically that large retail chains are allowed to trade for longer hours and until much later than independent liquor retailers. The Inquiry engaged the various provincial liquor authorities in order to gain their views the issues raised.
According to the Free State Gambling, Liquor and Tourism Authority, all liquor traders in the Free State are treated in the same manner and according to the publication of the Free State Liquor regulation, which applies provincially and states that all license types operate under the specific trading times published for that category of license. Accordingly, large retail chains must comply with the trading hours according to the category of license which they hold. Regular compliance is ensured by compliance inspectors.428

However, in the Eastern Cape and Western Cape, trading times are determined by the various municipalities in those provinces and vary from municipality to municipality. An extension of trading hours is only considered by municipalities through their special consent dispensation.429 In the Western Cape, some municipalities do provide for the extension of trading hours for some license types however, this process is limited by the provincial legislation.430

In Mpumalanga, the same trading hours are applicable to all liquor outlets irrespective of the size, as long as they fall within the same category of license holding. There are however special provisions for liquor license holders to make applications to the board to have the trading times amended, also irrespective of the size of the business.431 Whilst in the Free State, there is no provision for the extension of trading hours with the exception of the special event license which allows a license holder to trade outside of the regular trading hours but only for a special event.

**Preferential Treatment**

A common theme amongst stakeholders has been the allegation of preferential treatment of national supermarket chains over independent retailers:

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428 Submission received from Free State Gambling, Liquor and Tourism Authority, 7 February 2019.
429 Submission received from Eastern Cape Liquor Authority, 12 December 2018.
430 Submission received from Western Cape Liquor Authority, 11 December 2018.
431 Submission received from Mpumalanga Department of Economic Development and Tourism, 28 January 2019.
During the Gauteng public hearings a chain of independent liquor traders, Liquor City (Pty) Ltd complained that they are experiencing serious difficulty in operations and keeping businesses alive, specifically with regard to the preferential treatment offered to retail chains over small independent retailers. According to their submission since 2003 retail chain stores have been allowed to apply for liquor licenses. This brought about a trend amongst property developers to remove independent liquor retailers from shopping centres and only allow large retail chain stores to operate from there. A concern amongst stakeholders has been that liquor authorities do not consider small independent business in the vicinity of the new proposed liquor license and how the granting thereof will impact the existing small independent business.

One specific instance which Liquor City referred to was the shopping centre on Colorado Street in Boksburg. Liquor City was operating there for twenty-two years however, once large retail chains were allowed to apply for liquor licenses, the developer refused to renew Liquor City’s lease as they had agreed to hand the lease over to Checkers Liquor Shop, a new licensee. Liquor City has since vacated the premises and was forced to retrench 15 employees as a result.

In a similar instance involving another independent liquor retailer, Mapilela Beer Distributors, which took place in Gauteng in 2013, Pick ‘n Pay Retailers brought an application to the North Gauteng High Court to have a decision taken by the Gauteng Provincial Liquor Board (GPLB) set aside. This matter was in response to a decision taken by the GPLB not to grant Pick ‘n Pay a liquor license to operate a liquor store in the Westgate shopping mall. According to the GPLB, the granting of that license would have been contrary to public interest since the possibility existed that it would cause a harmful monopolistic condition to arise.

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432 Liquor City is a liquor store brand which operates under a franchise system. Liquor City is the franchisor.
433 Liquor City Submissions at the Gauteng Public Hearings dated 9 June 2017, P.2 - P.46 See also discussion in Objective 2.
434 Pick ‘n Pay Retailers (Pty) Ltd V Gauteng Provincial Liquor Board and Others (47571/12) [2013] ZA GPHC 138
725.4 The GPLB refused to grant the application in response to an objection which was lodged by Mapilela Beer Distributors, which was already carrying on the business of operating a liquor store in the Westgate shopping mall. According to Mapilela Beer Distributors, it had received a letter from the landlord of the shopping mall which stated, “It is absolutely clear that if the Board approves the Applicant’s (Pick ‘n Pay) application, the Applicant (Pick ‘n Pay) will enjoy total liquor market share within the Westgate shopping centre.”

725.5 In the letter, the Westgate shopping mall leasing manager had confirmed that Pick ‘n Pay had entered into a 15 year lease agreement with the mall, conditional upon Pick ‘n Pay’s obtaining of the liquor license for which it had applied. The letter went on to state that the existing liquor store, Mapilela Beer Distributors, would be provided with one calendar month notice to vacate the mall and will be replaced by Pick ‘n Pay’s liquor store.

725.6 The application to have the decision by GPLB not to grant the liquor license to Pick ‘n Pay set aside, was dismissed with costs.

Licensing

726. A number of issues were raised by various stakeholders regarding liquor licensing, mostly pertaining to the burdensome and costly process involved in getting an independent liquor business licensed, these are highlighted below:

726.1 During the Cape Town public hearings, Dr. Lief Peterson of the Sustainable Livelihoods Foundation highlighted one of the issues that liquor traders in the city of Cape Town are experiencing with regard to the formalization of their businesses. According to his submission, one of the main barriers to expansion of small liquor businesses is that it is nearly impossible for them to formalize their businesses. The process which is extremely difficult and tedious is also very time consuming and costly. The absence of a simplified formalization framework means that the majority of small independent liquor traders will always
remain small in order to be able to remain below the radar since they are, in essence, illegal businesses.\textsuperscript{435}

726.2 Also during the Cape Town public hearings, the Provincial Department of Economic Development and Tourism submitted that it is currently busy with a regulatory impact assessment, particularly with regard to liquor regulations as a result of the numerous complaints it has received regarding the process of application for liquor licenses which are said to be too onerous on retailers.\textsuperscript{436}

726.3 Other stakeholders submitted that they experience difficulties in respect of applications for liquor licenses. They submitted that their applications are turned down simply because their business premises are too close to a school or a church. However, the same consideration is not applied to national supermarket chains.\textsuperscript{437}

726.4 The Western Cape Liquor Authority submitted that when considering a liquor license application, the designated liquor official must include in his/her report, the distance of the proposed licensed premises from existing licensed premises in the area.\textsuperscript{438} However inMpumalanga, consideration is only given to the proximity of existing businesses when objections are raised.\textsuperscript{439} On the other hand the Eastern Cape Liquor Board does not make provision for the consideration of distance between similar businesses when considering new liquor license applications.\textsuperscript{440}

726.5 With regard to the cost of attaining a liquor license, in the Free State, the application process is said to have been simplified to the extent that applicants are no longer required to make use of the services of a consultant or Attorney to apply for the license.\textsuperscript{441} This has the effect of drastically reducing the costs for applying for a liquor license for the

\textsuperscript{435} Submission by Sustainable Livelihoods Foundation at the Cape Town Public Hearings dated, 10 May 2017, Transcript P. 32 – P. 96.
\textsuperscript{436} Submission by Provincial Department of Economic Development and Tourism (Cape Town) at the Cape Town Public Hearings dated, 11 May 2017, Transcript P.2 – P.43.
\textsuperscript{437} Submission by UGU Association of business at KZN public hearing dated, 3 July 2017, Transcript P. 59 to P.60
\textsuperscript{438} Submission from Western Cape Liquor Authority, dated 11 December 2018.
\textsuperscript{439} Submission from Mpumalanga Department of Economic Development and Tourism, dated 28 January 2019
\textsuperscript{440} Submission from Eastern Cape Liquor Board, dated 12 December 2018.
\textsuperscript{441} Submission from Free State Gambling, Liquor and Tourism Authority, dated 7 February 2019.
potential trader. The Western Cape liquor authority highlighted that all costs and criteria is the same, irrespective of the size of the business, meaning that a national supermarket chain and a small independent retailer will pay the same fees when applying for a liquor license.442

726.6 In general, provincial liquor authorities submitted that liquor license applications can and may be refused due to a number of factors and considerations. The most common of these considerations relates to public interest considerations such as the distance between the proposed liquor businesses and schools, places of worship, institutions for the frail and aged, as well as, drug and alcohol rehabilitation centres in the area concerned. Consideration is also given to noise pollution with regard to on-consumption liquor retailers and possible public disturbance.444

727. In line with the guidelines in the OECD toolkit445, the Inquiry’s preliminary view on the enforcement of liquor regulations is that they result in the following concerns for small businesses:

727.1 Inconsistency in how the regulations are enforced, specially trading times, with regard to small independent liquor retailers and large retail chains;

727.2 Inconsistency in how the regulations are applied from province to province, specifically with regard to trading times;

727.3 High costs and extended duration of acquiring liquor licenses, where the same criteria and costing applies to small independent liquor retailers and large retail chains.

7.4 Preliminary findings

728. As previously indicated, in general, submissions made to the Inquiry point toward alleged selective and over enforcement of regulations resulting in differential treatment between foreign national traders, local traders and the
national supermarket chains. These allegations were made with particular reference to trading times and health and safety regulations. Other concerns raised indicated that the licensing processes for trading are burdensome for small traders, in particular. In line with the guidelines in the OECD toolkit\(^446\), the Inquiry finds that inconsistent enforcement (either over enforcement, lack of enforcement or selective enforcement) and burdensome regulatory processes raise barriers to entry for small retailers and make it difficult for small retailers who are already in the market to innovate and expand.

729. With regard to trading times, the Inquiry finds that trading time regulations are unreasonable and in most instances there are inconsistencies in the enforcement of those regulations i.e.: selective and/or a lack of enforcement.\(^447\) In line with the guidelines in the OECD toolkit, \(^448\) the Inquiry is of the view that these inconsistencies in the regulation of trading times may unfairly disadvantage traders who are compliant; that the high cost and extended duration of acquiring street trading permits may result in barriers to entry for micro-businesses.

730. With regard to zoning and land use, overly strict enforcement could potentially stifle business and restrict potential businesses from being established. Added to the land use rights as allocated by the municipality, the cost and time constraints associated with the rezoning of property, depending on the location of the land could also have a negative impact on potential entrepreneurs as the affordability will determine if they can have the land rezoned to operate a business legally. In other words, whilst these by-laws seek to manage land use, they seriously interfere with access to land, which is key to most entrepreneurs, especially those from historically disadvantaged backgrounds. In line with the guidelines in the OECD toolkit, \(^449\) the Inquiry is

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\(^{447}\) Submission by Sustainable Livelihood Foundation during the Western Cape Public Hearings dated 10 May 2017 stated that “…effectively 70% of the market enterprise within this context run by foreign nationals is quite striking. We would argue that this is the consequence of under-regulation and it’s a failure of the state to accurately foresee what happens when you do nothing about regulating an entire sector and that is kind of what we’ve seen within a township context.”


of the view that these are likely to result in minimizing the incentive of competitors to enter and compete effectively.

731. With regard to health and safety regulations, the Inquiry found that they, in themselves, do not appear to raise competition concerns. During its engagement with municipalities, the Inquiry found that the general lack of enforcement was largely due to municipalities lacking human resources to conduct inspections. In line with the guidelines in the OECD toolkit, the Inquiry is of the view that this is likely to result in a lack of knowledge amongst small retailers regarding the regulations with which they are required to comply. This makes it difficult for them to innovate and expand their businesses.

732. With regard to liquor regulations, the Inquiry finds that there is unequal enforcement regarding trading hours between independent liquor retailers and national supermarket chains. The Inquiry finds that the national supermarket chains, unlike independent liquor retailers (who are generally compliant), seem to enjoy an unfair competitive advantage in that the same trading hours are not enforced against them. In line with the guidelines in the OECD toolkit the Inquiry is of the view that this is likely to result in high barriers to entry and difficulties in innovation and expansion for independent retailers.

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THE IMPACT OF THE BUYER POWER OF BUYER GROUPS AND OTHER LARGE PURCHASERS OF FMCG PRODUCTS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY

8.1 Introduction

733. The Inquiry has been tasked with assessing the impact of buyer groups on small and independent retailers in townships, peri-urban areas, rural areas, and the informal economy in general.

734. Buyer groups play an integral part in the grocery retail supply chain, in that they allow independent wholesalers and retailers to pool their resources to save costs and to aggregate their volume purchases in order to secure better terms than they would be able to achieve when acting individually.

735. As per the Statement of Issues, the Inquiry aims to identify buyer groups that operate in the South African grocery retail sector, to better understand the competitive benefits or harm of the buyer groups, insofar as they affect small and independent retailers in townships, peri-urban areas, rural areas and the informal economy. In particular, the Inquiry will be guided by the purpose of the Act as set out in section 2 and will focus on the following:

735.1 the efficiencies arising from the impact of buyer groups, and the extent to which these are passed onto consumers, as contemplated by the provisions of section 2(a) of the Act;

735.2 the positive and negative effects of buyer groups on the ability of small and medium sized retailers to compete effectively, by either reducing or increasing the barriers faced by them to enter into and expand in the grocery retail sector, as contemplated by the provisions of section 2(e) and (f) of the Act;

735.3 the positive and negative effects of buyer groups on consumer prices and product choices, in line with the provisions of section 2(b) of the Act; and

452 The Inquiry’s terms of reference refers to buyer groups, however, some scholarly literature also refer to buying groups. The reader can assume the terms to be used interchangeably.
453 Grocery Retail Market Inquiry Statement of Issues dated 15 July 2016, p. 27, para. 98
the positive and negative effects of buyer groups on employment, in line with section 2(c) of the Act.

As a result of submissions received from industry stakeholders in response to the SOI, the Inquiry also broadly considered buyer power in the FMCG sector.454

The Inquiry sought to assess the extent to which there is unequal bargaining power between suppliers and the national supermarket chains, and whether such unequal bargaining power has been to the detriment of small independent retailers and/or benefit of consumers. In doing so, the Inquiry was guided by the purpose of the Act as set out in section 2 of the Act and focused on the following:

Whether the large national supermarket chains have a degree of buyer power over their suppliers, and how this may be used to extract certain rebates from suppliers;

The effects of the buyer power of national supermarket chains through rebates on the ability of small and medium sized as well as independent retailers and their buyer groups to compete effectively in the sector, as contemplated by the provisions of section 2(e) and (f) of the Act; and

the efficiencies arising from the impact of the buyer power of large purchasers of FMCG products, and the extent to which these are passed onto consumers, as contemplated by the provisions of section 2(a) of the Act.

The chapter begins with a brief discussion of what led to the adoption of the buyer group model and its continued rationale. This is followed by an analysis of some of South Africa’s major buyer groups, including membership requirements and the dynamics between suppliers and the buyer groups. The section on buyer groups then concludes with a summary of the views obtained from members of different buyer groups to understand how belonging to buyer groups has helped them compete in the grocery retail sector.

454 Statement of Issues dated 15 July 2016, p. 27, para. 98
739. The chapter then moves onto buyer power by the national supermarket chains. The assessment begins with a structural evaluation, taking into account factors that could aid or create an environment conducive to the exercise of buyer power. After this, the inquiry assessed the rebates received by supermarket chains and how these rebates differ between the national supermarket chains and buyer groups as well as wholesalers which supply the independent trade, including spaza shops. The Inquiry also assessed whether these rebates are in fact passed onto consumers, resulting in consumer benefits, or not.

8.2 Market dynamics in the township and rural areas before 1994 and the relationship between retailers and suppliers in the grocery sector

The development of the township economy before 1994

740. According to Elite Star Trading (“EST”), a major South African buyer group, before the entry of large retailers into the township and rural areas, township dwellers relied on retailers in town for sourcing their grocery needs. Spaza shops and garages were used as convenience stores. The township business model was set up to exclude township businesses from opportunities to grow outside the township itself. EST argues that during apartheid, trading licenses were difficult to obtain for spaza and independent retailers, which became a barrier for township retailers to easily trade in the township areas.

741. According to Trade Intelligence, the township markets represented a significant consumer base for the suppliers of FMCG products, but it was a challenge to reach these markets. As a result, the “independent wholesaling” business model was established to served as a middleman between township traders and suppliers outside townships. The development of the independent wholesaling business model culminated in the establishment of buyer groups to, *inter alia*, consolidate the purchasing power of the wholesalers.

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455 Townships were designed not to have trading spaces as laws were designed and police forces were employed, to ensure that no formal economic activity occurred in township areas.

456 Submission by EST at the Gauteng public hearing dated 5 June 2017, Transcript pp.12-13, para 40 – 45.

457 Trade Intelligence (2016) *Malls to Markets: An Introduction to South African Food & Grocery Retail*, p. 64

458 Submission by EST at the Gauteng public hearing dated 5 June 2017, Transcript p. 13, para 46.
Route to Market: the retail vs. wholesale channel

742. Suppliers of grocery retail products use two main routes to market to distribute their products: the national supermarket chain channel and what we have broadly defined as the wholesale channel.\footnote{Certain suppliers have different names for these channels, but the Inquiry has used the general term for ease of reading and to protect the identity of the suppliers} Section 11.1 in Annexure 2 provides a more detailed discussion on the suppliers which sell FMCG products into both channels. The “wholesale channel” refers to the distribution of FMCG through the: wholesalers, which is largely dominated by the following buyer groups, Unitrade Management Services (“UMS”), Independent Buying Consortium (“IBC”), EST, Shield Buying Consortium (“Shield”), and Independent Cash and Carry (“ICC”);\footnote{Trade Intelligence (2016), \textit{Malls to Markets: An Introduction to South African Food & Grocery Retail}, p. 68} hybrid wholesalers; independent retailers; and the informal retailers.\footnote{The wholesale channel typically involves: wholesalers / cash and carries and hybrid wholesalers; and large independent retailers that focus on selling FMCG in bulk quantities. This channel is typically a less direct route to end-consumers because: first, their customers are small and informal businesses that buy in bulk and on-sell the product to the end-consumer; second, in certain instances suppliers do not deal directly with cash and carries hybrid retailers and independent retailers but rather negotiate trading terms with buyer groups that represent these retailers for the reasons discussed above in the buyer group section. There are instances when end-consumers will buy from cash and carries or hybrid wholesalers for their personal consumption but this is less prevalent than the retail channel. The Minutes of the meeting between Limpopo Capricorn Municipality Spaza Forum and the Inquiry, dated 22 August 2016 allude to this scenario whereby end-consumers are able to buy goods directly from the wholesalers.} These two channels typically serve different customers.\footnote{Suppliers also sell their products to other channels and customer segments such as hotels, schools, restaurants, companies etc. who purchase products in bulk directly from the suppliers, this however makes up a very small portion of the suppliers’ business.} The national supermarket chain channel is generally viewed as the formal channel, while the wholesale channel, because of primarily serving the informal retail sector, is viewed as ‘informal’.

743. Suppliers submitted that they primarily rely on the national supermarket chains as their primary route to market.\footnote{Suppliers also sell their products to other channels and customer segments such as hotels, schools, restaurants, companies etc. who purchase products in bulk directly from the suppliers, this however makes up a very small portion of the suppliers’ business.} According to suppliers, the national supermarket chains play an important role as they are gatekeepers in terms of access to consumers. The national supermarket chains are considered to be a key and growing route to market for suppliers, not only in South Africa but also across the continent.

744. The national supermarket chain channel accounts for more than 50% of the suppliers’ revenues. The national supermarket chain channel is typically the
most direct channel for suppliers to distribute their products to the end-
consumer.

745. There are some differentiating factors in respect of the two routes to market, including: the costs of distribution and risk in servicing the different channels; national supermarket chains have their own distribution centres and tend to have a lower cost of distribution for the supplier (due to the fact that the supplier is able to transport the product to a central location); the wholesale channel tends to have lower overhead costs than the national supermarket chains channel465 466; and the national supermarket chains channel has lower administrative costs for the suppliers in that they have centralised systems, for example, they use central accounts which reduces transactional costs.467

746. Further to the differences between the two routes to market, there are also limitations for the suppliers in distributing their products through two channels. For example, some suppliers are able to sell their products through both channels while other suppliers, by virtue of the types of products they manufacture or customers that they target, are dependent on selling almost exclusively through the national supermarket chains’ channel468. Typically, suppliers of staple food products or KVI products are able to easily sell through both channels.469

8.3 Buyer groups in South Africa

747. The OECD defines buyer power as the “ability of a buyer to influence the terms and conditions on which it purchases goods.”470 Buyer power can be linked to coordination where buyers may coordinate their negotiations with suppliers by forming buyer groups.471 Section 17.1 in Annexure 8 provides a literature review regarding the role of buyer groups in general.

465 [X]
466 [X]
467 [X]
468 The Inquiry found an instance where a supplier had tried to diversify into the wholesale channel. However, the type of product categories manufactured by the supplier was not suited to or demanded by the wholesale channel. [X] Further, suppliers that produce private label brands and products which cater for higher LSM customers are not likely to be able to supply the wholesale channel. The wholesale channel is dominated by well-known brands that are typically low-margin known value item products.
469 For example, [X]
471 Refer to Miguel de la Mano (17 June 2008) Presentation on anticompetitive buyer power conduct
According to UMS, in South Africa buyer groups are a mechanism used by independent retailers, lacking the required volumes or buyer power and product variety, to enter the South African grocery retail market and compete against the incumbent retailers. The purpose of a buyer group is to leverage the combined purchasing power of its members to obtain volume discounts or negotiated discounts and thereby collectively achieve the desired economies of scale and scope on products with the intention of resale to end-consumers.\textsuperscript{472}

Not all buyer groups exist solely to pool volume orders for its members. Some buyer groups, such as UMS, also provide other value added services to their members such as skills development, sales support services and credit facilities.\textsuperscript{473}

\textit{Main independent buyer groups in townships}

The main independent buyer groups that operate in South Africa are UMS, EST and the ICC. The Massmart Group also has a buyer group called Shield.\textsuperscript{474} These are discussed briefly below.

\textit{Elite Star Trading Africa}

EST is a national buyer group whose main objective is to increase the buyer power of its members. EST has approximately [\textsuperscript{<}].\textsuperscript{475} 476

EST offers a range of services, such as buying and negotiating on behalf of their franchised independent retailers, such as the Devland Cash and Carry group, including distributing stock. Although EST offers these services to its members, the buyer group allows for the members to negotiate directly with suppliers should they be able to negotiate better offers than those negotiated between the buyer group and the suppliers. EST members have around 149 stores in South Africa, with bigger stores having their own warehousing facilities.

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\textsuperscript{472} Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p.10, ls. 10-13.
\textsuperscript{473} Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 2 ls. 20 – p. 3 l 10.
\textsuperscript{474} The Buying Exchange Company and Independent Buying Consortium are also large buying groups. However the Inquiry was not able to interview them.
\textsuperscript{475} [X]
\textsuperscript{476} [X]
Unitrade Management Services

753. UMS negotiates with large suppliers on behalf of its members in order to secure better price deals through buying in bulk as large suppliers often do not deal directly with small, independent retailers.\(^{477}\) \(^{478}\) UMS has in excess of 150 members in Southern Africa.\(^{479}\) According to Trade Intelligence, in 2016 UMS provided services to 160 outlets, of which 130 were branded.\(^{480}\) UMS considers itself to be a Voluntary Trading Association (“VTA”) as it provides more services than what a standard buyer group would provide.\(^{481}\) \(^{482}\) \(^{483}\)

754. UMS buys on behalf of and supports independent stores that belong to one of its three retail brands: Powertrade, Food Town and BestBuy. All the three brands target lower income consumers mainly LSM 2-6, and on-sell to retailers who also target lower income end consumers.\(^{484}\) UMS members can also trade under their own brand as a Trading Partner.

755. UMS has about 100 employees, which excludes their member’s employees who amount to approximately 10 to 15 thousand people.\(^{485}\)

\(^{477}\) Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 3, ls. 9 – 10.
\(^{478}\) According to UMS, the buyer group was born out of the frustration of independent retailers due to all the buyer groups at the time being owned by corporates (for example, the Shield Buying Group being owned by Massmart) who were unwilling to invest in growing independent entrepreneurs. Jad Perreira, the CEO of UMS, saw an opportunity to help grow independents under UMS. Minutes of meeting between UMS and Commission, dated 8 July 2016, para 3. Its members typically include wholesalers and retailers who then on-sell to spaza shops, hawkers and smaller supermarkets. Spaza and tuck shop owners are too small to be members of UMS,\(^{478}\) however, they are open to all other independent retailers.
\(^{480}\) Trade Intelligence (2016), Malls to Markets: An Introduction to South African Food & Grocery Retail, p. 94.
\(^{481}\) Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 2, ls. 27-28.
\(^{482}\) UMS’s business model is similar to that of a franchise but without the costs associated with a normal franchise such as loyalty fees, and franchise fees. Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 3, ls. 3-5.
\(^{483}\) While UMS enables its members to buy products from suppliers and wholesalers at low prices, UMS also offers skills training and development, credit facilities, sales support services and store development. Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 3, ls. 12 – 25.
\(^{484}\) Minutes of meeting between UMS and the Inquiry, dated 08 July 2016, para 3.7.
\(^{485}\) Ibid.
Independent Cash and Carry

756. The ICC was established around 2000 – 2001.\textsuperscript{486, 487, 488} Before 2010, the ICC only catered for big wholesalers\textsuperscript{489} but following the entry of national supermarket chains in township areas, the ICC commenced to sign up smaller members in the buyer group.\textsuperscript{490} According to Trade Intelligence, in 2016 the ICC serviced 330 member outlets, with a membership base of approximately 185 independent wholesale and retail grocery members, as well as 67 Lifestyle franchise stores across food, liquor and hardware.\textsuperscript{491}

757. ICC supports independent retailers under the Lifestyle brand, with stores including Lifestyle Supermarket, Lifestyle Express, Lifestyle Liquor and Lifestyle Hardware & Building Supplies. ICC introduced a Lifestyle franchise which was initiated to assist black independent retailers with services such as financing, training and enhancing their ability to compete effectively in the grocery retail market.\textsuperscript{492}

758. ICC has a distribution centre that breaks bulk for its members\textsuperscript{493} and also directly distributes products to its members. With regards to trade agreement negotiations, ICC directly negotiates, usually annually, with suppliers on behalf of its members.\textsuperscript{494} In addition to negotiating trade terms for its members, ICC offers its members marketing support.\textsuperscript{495, 496}

Shield Buying Group

759. Shield was founded on 3 March 1973, prior to being acquired by Massmart. The purpose of the buyer group was to provide independent retailers and

\textsuperscript{486} Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 2:2.1.
\textsuperscript{487} The founding members were Big Save Cash and Carry, Overland, Savemoor as well as Numain Cash and Carry. Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 2:2.2.
\textsuperscript{488} Some of the original members are no longer part of the buyer group. ICC notes that a majority of the members left the buyer group because ICC could not match the same trading terms of competing buyer groups. Ibid
\textsuperscript{489} According to the ICC during that period, the wholesale and cash and carry trade was declining due to the major entry of national supermarket chains into township and rural areas, which largely affected the competitiveness and market shares of wholesalers in these areas. Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 2:2.1.
\textsuperscript{490} Ibid.
\textsuperscript{491} Trade Intelligence (2016), \textit{Malls to Markets: An Introduction to South African Food & Grocery Retail}, p. 100.
\textsuperscript{492} Ibid.
\textsuperscript{493} Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 3:3.3.
\textsuperscript{494} Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 3:3.5.
\textsuperscript{495} Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 3:3.12.
\textsuperscript{496} Within ICC’s trading terms, there is a promotional allowance afforded to each member for marketing and promotional purposes. Each member has promotional broadsheets that are specifically designated for marketing purposes which is financed by suppliers.
wholesalers with the ability to compete with formal retail and wholesale groups.\textsuperscript{497} The number of members in Shield buyer group has varied over time but it is now in excess of 500 members, and the majority of those members are independent retailers.\textsuperscript{498}

760. Shield provides the members with credit access which allows members to purchase stock to the value of the available credit and Shield guarantees payment to the supplier. The group volume is aggregated over a financial year, which gives Shield the benefit of negotiating reduced prices as it receives the same terms that the Massmart group gets. In essence, Shield gives its members access to pricing that they as an individual would not be able to negotiate because of volume.\textsuperscript{499} \textsuperscript{500} \textsuperscript{501}

\textit{Buyer groups amongst foreign owned independent retailers}

761. The Inquiry did not find any evidence of the existence of buyer groups in relation to foreign owned retailers. This is in contrast to the commonly-held perception among South African owned independent retailers located in the township areas that foreign owned retailers, particularly Somali retailers, collectively buy goods in bulk, which, it is alleged contributes to the success of Somali owned retail stores.

762. Despite this common perception, most Somali traders indicated that they do not use the traditional buyer group model and that they coordinate the transportation of their goods to reduce transport costs through jointly renting a vehicle or formally entering into an arrangement with another retailer (a competitor) who owns a vehicle. It is this transport practice that has created a...
misperception that Somali traders collaborate in buying stock which is essentially aimed at obtaining bulk discounts from wholesalers.\textsuperscript{502}

763. According to Vanya Gastrow’s research on Somali traders, it is difficult to collaborate in bulk buying as each shop has varying stock requirements and each shop is managed and accounted for separately. Joint purchasing would result in confusion over payments and the division of the stock.\textsuperscript{503}

764. The only other exception where collective buying is considered is in instances where there is singular ownership of shops, e.g. one trader owns 3 shops and buys stock for all three shops collectively. In addition to this collaboration, Somali traders have indicated that they have cooperation among themselves when they discuss prices charged by wholesalers and where it is best to buy stock due to low prices. Further, by frequenting the same shop, they develop relationships with the wholesaler managers and owners allowing them to negotiate prices.\textsuperscript{504}

765. The Inquiry is therefore of the view that the collective purchases by foreign owned spaza shops does not fall within the same model adopted by the major South African buyer groups.

\textit{Membership in buyer groups}

766. The Inquiry assessed membership in buyer groups to determine the ease of entry and exit for members.

\textit{Criteria for entry into the buyer group}

767. In terms of membership, EST submitted that any independent trader who wants to join the buyer group is free to do so. However, EST noted that the potential member is required to pay a monthly membership fee and a once off joining fee of R25 000.\textsuperscript{505} According to EST, the requirements to be part of the

\textsuperscript{502} Minutes of meeting between Somali Community Board and the Inquiry, dated 22 February 2017, para. 2.5.2
\textsuperscript{504} Ibid
\textsuperscript{505} Minutes of meeting between EST and the Inquiry, dated 2 September 2016; para 4
buyer group will work against the smaller trader if their net revenue is as low as their lowest membership fees.\textsuperscript{506}

768. UMS does not require a membership fee from its members. Potential members are instead offered an agreement with standard general terms.\textsuperscript{507} The policy for accepting new members into the buyer group is determined by the amount of credit available in the UMS buyer group, which suggests that as long as UMS can supply a credit facility, they are open to sign up a new member.\textsuperscript{508} \textsuperscript{509} \textsuperscript{510}

\textit{Member’s ability to deal directly with the suppliers}

769. It appears the members of buyer groups are also able to deal directly with suppliers without the involvement of buyer groups. Some of EST’s members generally negotiate trading terms directly with their suppliers, however, this does not happen often.\textsuperscript{512} \textsuperscript{513} Shield members are also allowed to purchase goods from alternative sources without the involvement of the buyer group.\textsuperscript{514}

\textsuperscript{506} EST further submitted that smaller traders, who in their view have a revenue of less than R1500, are not in the best position to join their buyer group given that EST’s lowest membership fee is R2500.
\textsuperscript{507} Minutes of meeting between UMS and the Inquiry, dated 08 July 2016, p. 10, para. 4.3
\textsuperscript{508} Minutes of meeting between UMS and the Inquiry, dated 08 July 2016, p. 10, para. 4.2
\textsuperscript{509} The requirements to be met include ensuring that a member is a certified South African citizen and should have a registered VAT number. Minutes of meeting between ICC and the Inquiry, dated 22 June 2016, para 3:3:6.
\textsuperscript{510} In terms of the size of the member, the ICC categorizes their members as either “big members” or “small members”. Big members need to have an approximated turnover of about R20 million per month and they pay a membership fee of approximately R65 000 a month and all rebates are passed on to the large members. Small members, on the other hand, pay a lesser membership fee, according to the size of their business, and the ICC retains 1% of the rebates (capped at R 50 000) given by suppliers.
\textsuperscript{511} Shield’s credit policy determines with whom it does business. For a member to qualify for credit, they need to meet both Shield and its insurer’s criteria for insurable credit. The criteria are as follows: the member needs to 1) be a South African VAT registered company; 2) produce audited financial statements for the last two to three years so that Shield can establish a track record before it gives credit to a new member. If a member is able to provide sufficient guarantees in terms of personal suretyship or cash guarantees or guarantees in other forms (property, etc.), Shield is willing to waive the requirement of three years of audited financial statements. Minutes of meeting between Shield and the Inquiry, 22 August 2016, page 4
\textsuperscript{512} The reason why a member would choose to deal directly with a supplier is because the member may have different requirements as compared to other members of the group. Minutes of meeting between EST and the Inquiry, 02 September 2016, page 4
\textsuperscript{513} For example, the Inquiry spoke to the manager of Devland Nelspruit, a member of EST, who explained that certain products were difficult to source through a buyer group (for example washing powder, soft drinks, and rice). By way of illustration, he indicated that OMO washing powder does not sell well in Mpumalanga but Surf washing powder does; and Surf does not sell well in Gauteng. Similarly, Squeezee, which is a very popular soft drink in Mpumalanga is unknown in Johannesburg. Devland Nelspruit also has a local producer of rice called Pesto/Festive rice, however Pesto is not popular in Johannesburg. Shaya is a popular local brand of rice in Nelspruit that is made by a local farmer, however Shaya is not popular in Ermelo or Komati. Minutes of meeting between Devland Nelspruit and the Inquiry, dated 05 September 2016, para 23
\textsuperscript{514} Massmart’s submission dated 29 August 2016, p.17, para. 3.4.4
Member’s ability to leave the buyer group

770. If a UMS member wishes to leave the buyer group, members are required to give 30 day notice of intention to terminate their membership.\textsuperscript{515} ICC signs membership agreements with its members, but none of its members are bound to stay in the group in the event that they desire to switch to an alternative buyer group.\textsuperscript{516 517}

Evidentiary insights from buyer group membership criterion

771. In summary, it appears that membership in South African buyer groups is fluid and the requirements to enter a buyer group are not insurmountable for most independent retailers. It is noteworthy that in terms of dual membership, it is not typical for a member to belong to two different buyer groups at the same time.\textsuperscript{518 519 520 521}

772. Members are also not locked into belonging to one buyer group and can relatively easily cancel their membership and join another buyer group if they so wish.

Member’s views of the significance of Buyer Group

773. The IBC, a buyer group that has partnered with the UMS buyer group, submitted that it procures about 60\% of its stock through the buyer group and the rest independently.\textsuperscript{522} Save Group submitted that through the buyer group, it is able to negotiate better deals with suppliers.\textsuperscript{523}

\textsuperscript{515} Ibid
\textsuperscript{516} Minutes of meeting between ICC and the Inquiry, dated 22 June 2016, para 4:4.4.
\textsuperscript{517} ICC submits that a member who desires to switch or leave the group would only have to file a 30 day notice and there are no penalties charged for leaving the buyer group.
\textsuperscript{518} Shield’s and ICC’s membership agreement explicitly prohibits members from belonging to another buyer group. Shield submits that its primary condition of a single membership is because it wants to protect its intellectual property. Similarly, the ICC also prohibits dual membership.
\textsuperscript{519} Minutes of meeting between ICC and the Inquiry, dated 22 June 2016, para 4:4.4
\textsuperscript{520} For example, Shield is constantly publishing deals for its members and they want to protect the extensive information that they provide to their members. Such information falling into the hands of one of Shield’s competitors would enable them to get a competitive edge over Shield.
\textsuperscript{521} ICC notes that the risk of allowing a dual membership is the ability of a member to share sensitive information with a competitor. Minutes of meeting between ICC and the Inquiry, dated 22 June 2016, para 4:4.9
\textsuperscript{522} Minutes of meeting between Save Group of Companies and the Inquiry, dated 11 April 2017, p.1
\textsuperscript{523} The Save Group acknowledged that it does sometimes negotiate better on its own depending on the supplier and the collective bargaining strength of the buyer group. Ibid, p.3
774. Prior to co-founding the UMS buyer group, Super Save (“SSP”) was a member of the Shield buyer group.\textsuperscript{524} SSP considers UMS to source the best discounts, and offers more innovative products and incentives.

775. Take n Pay submitted that the benefits it realised from joining UMS was the significant countervailing power of the buyer group.\textsuperscript{525}

776. Goseame, a member of the UMS buyer group, submitted that some of the benefits of joining the buyer group include: members can buy goods at a lower price than they otherwise would; members are offered numerous discounts which they never had before; members can send back stock and obtain a refund; members are able to negotiate prices; and communication is much better.

777. Devland Cash and Carry Nelspruit (“DCCN”), a member of the EST buyer group,\textsuperscript{526} submitted that the advantage of belonging to a buyer group is the ability to procure significant volumes of products, particularly in times of shortages. DCCN also submitted that EST is better suited to negotiate deals for the entire Devland group.

778. Yarona Cash and Carry (“Yarona”), also a member of the EST buyer group, submitted that buyer groups are important for independent retailers as they negotiate better deals on behalf of their members.\textsuperscript{527}

779. According to Bibi Cash and Carry (“BCC”),\textsuperscript{528} a member of the ICC buyer group, being part of a buyer group offers some protection to the members as they are able to receive better pricing, among other benefits.

780. Big Save submitted that it joined the ICC buyer group because it helped it realise efficiencies that it would not have achieved on its own.\textsuperscript{529} Big Save submitted that the consolidated purchasing power of a buyer group enabled it to negotiate lower prices for its members. As a result, this enables members to be competitive in the market they operate in.

\textsuperscript{524} Minutes of meeting between Super Save and the Inquiry, dated 16 August 2016, p.2, para. 3.1
\textsuperscript{525} Minutes of meeting between Take n Pay and the Inquiry, dated 16 August 2016, p.2, para. 3.1
\textsuperscript{526} Minutes of meeting between Devland Cash and Carry Nelspruit and the Inquiry, dated 05 September 2016, p.3, para. 22
\textsuperscript{527} Minutes of meeting between Yarona Cash and Carry and the Inquiry, dated 12 July 2016, p.5, para. 6.1
\textsuperscript{528} Minutes of meeting between Bibi Cash and Carry and the Inquiry, dated 18 March 2016, p.4, para. 5.4
\textsuperscript{529} Minutes of meeting between Big Save Waltloo and the Inquiry, dated 13 July 2016, pp. 1 - 2
781. Maxmart, a member of the Shield/Masscash buyer group, submitted that it enjoys discounts and product offerings that Masscash negotiates on its behalf.\textsuperscript{530}

782. Super Save Malelane (“SSM”) also a member of Shield/Masscash buyer group, submitted that it joined the buyer group in order to benefit from a wider basket of products and favourable prices.\textsuperscript{531} In addition, submitted that the buyer group allows it to keep up with product trends through procurement of new products and participation in trial products.

783. The main reason for Riviera Cash and Carry (“RCC”) joining the Shield/Masscash buyer group was because it was difficult to open up an account with the big suppliers.\textsuperscript{532} RCC also submitted that the buyer group negotiates deals and rebates with suppliers which RCC would not be able to do on its own.

784. Limpopo Cash and Carry (“LCC”), another member of the Shield/Masscash buyer group, submitted that the benefits it enjoys include trade discounts; and marketing services in the form of pamphlets as well as advertising space in the weekly local newspaper.\textsuperscript{533}

\section*{8.4 Preliminary findings regarding buyer groups}

785. Regarding the identity of buyer groups that operate in the South African grocery retail sector, the Inquiry found that:

\begin{itemize}
\item[785.1] the main independent buyer groups that are operating in South Africa are UMS, EST, ICC, and Shield. These buyer groups service members (generally traditional and hybrid wholesalers as well as independent grocery retailers) who operate in the non-urban areas;
\item[785.2] although it appears that there are no formal foreign owned buyer groups, foreign small traders tend to collaborate in respect of transport arrangements and negotiate their own discounts with wholesalers.
\end{itemize}

\begin{flushright}
\textsuperscript{530} Minutes of meeting between Maxmart White River and the Inquiry, dated 05 September 2016, p. 3, para. 3.1
\textsuperscript{531} Minutes of meeting between Super Save Malelane and the Inquiry, dated 16 August 2016, p. 3, para. 3.1
\textsuperscript{532} Minutes of meeting between Riviera Cash and Carry and the Inquiry, dated 05 September 2016, pp. 2 - 3
\textsuperscript{533} Minutes of meeting between Limpopo Cash and Carry and the Inquiry, dated 05 September 2016, p.2, para. 3.1
\end{flushright}
In terms of the efficiencies arising from the impact of buyer groups and the extent to which these are passed onto consumers, the Inquiry found that:

786.1 buyer groups enable independent retailers that lack scale to negotiate more favourable trading terms with suppliers to better compete in the South African grocery retail market; and

786.2 members of buyer groups realise better pricing for their product purchases as a result of consolidated purchasing power. This enables the members to price their products cheaper than they would be able to absent the buyer groups, which ultimately benefits the end consumers.

On the positive and negative effects of buyer groups on the ability of small and medium sized retailers to compete in the sector, by either reducing or increasing the barriers faced by them to enter into or expand in the grocery retail sector, the Inquiry found that:

787.1 there are positive effects of buyer groups on the ability of small and medium sized retailers to effectively compete in the sector;

787.2 belonging to a buyer group reduces the barriers that the small and medium sized retailers face as they are able to benefit from better trading terms obtained by the buyer group and therefore purchase at more favourable prices;

787.3 some buyer groups also offer credit to their members which assists with cash flow and reducing the financial barriers that are faced by small and medium sized retailers;

787.4 membership in buyer groups is fluid and the requirements to enter a buyer group are not insurmountable for most independent retailers. Members are also not locked into belonging to one buyer group and can relatively easily cancel their membership and join another buyer group if they wish to do so. The ability of small business to enter or leave buyer groups also allows them to take advantage of benefits that they find in other groups.

The Inquiry was not able to establish the impact of buyer groups on employment due to the unavailability of data from the buyer groups.
In summary, buyer groups are an essential component of the supply chain for small independent retailers as it permits them to benefit from greater scale in purchasing, which ensures better pricing. However, the extent to which such benefits enable effective competition with the national retailers depends on the bargaining power of wholesalers relative to the national supermarket chains which we explore next.

8.5 Buyer Power in the South African Grocery Retail Sector

The analysis that follows is based on the information obtained by the Inquiry through submissions made at public hearings, confidential meetings, as well as summonses issued to some suppliers.

The Inquiry was made aware of growing concerns, raised by both suppliers and competing retailers, regarding the extent of buyer power allegedly held by the major retailers.

The importance of the different channels available to suppliers in selling their products to end consumers is that it provides suppliers with alternative (diverse) demand should one channel fail. Buyer power may be enhanced when suppliers do not have (or have only a few) alternative significant sales channels. In order for there to be a balance, suppliers need to have outside options to sell to should the national supermarkets choose not to deal with them, and these options need to be sufficient enough for the suppliers’ profits not to be undermined.

The ability of these national supermarket chains to extract more favourable terms and conditions from suppliers is said to be unfair and to the detriment of smaller competing retailers and those operating through the wholesale channel, including wholesalers, independent retailers and informal retailers, that do not obtain such favourable terms. It is argued that it also gives the national supermarket chains a pricing advantage over the other retailers and that it will ultimately result in their exit from the market. It has also been claimed that suppliers are forced either to increase the selling price of their product to make up for the rebates, discounts and other incentive schemes

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534 [X] and Submission by EST at the Pretoria (Gauteng) public hearing dated 5 June 2017, Transcript pp. 30 - 36.
that are provided to the large national retail chains. Alternatively, suppliers have to provide unfavourable trading terms to their smaller retailers to make up revenues, which makes it difficult for the smaller retailers to compete against the national supermarket chains – the so-called waterbed effect.\(^{536}\) However, it should also be noted that national supermarkets are not the only retailers accused of abusing their buyer power. The Inquiry has been informed that a buyer group, namely \([\times]\), receives more favourable trading terms to the detriment of another buyer group.\(^{537}\)

794. Some submissions\(^{538}\) alleged differential treatment in respect of the rebates paid to the national retail chains and buyer groups.\(^{539}\) \([\times]\) claimed that an important aspect of trading term negotiation relates to the proportion of guaranteed rebates versus growth rebates. According to \([\times]\), the construct of the national retail chains’ rebate structure is guaranteed in nature and quantifiably larger when compared to buyer groups such as \([\times]\) whose rebate structure is primarily performance-based and variable.

**Introduction to buyer power**

795. Buyer power can be defined as the situation where a firm (or group of firms) is able to obtain from a supplier more favourable terms than those available to other buyers, or than which would otherwise be expected under normal competitive conditions.\(^{540}\) Based on this, the assessment conducted in this section sought to determine whether the national supermarket chains do indeed exercise buyer power over their suppliers through extracting terms that are more favourable in a manner that is not objectively justified.

796. Economic literature indicates that there are two forms of buyer power: monopsony power and bargaining (or negotiating) power.\(^{542}\)

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\(^{536}\) Submission by EST at the Pretoria (Gauteng) public hearing dated 5 June 2017, Transcript pp. 30 - 36

\(^{537}\) \([\times]\)

\(^{538}\) \([\times]\)

\(^{539}\) The Commission has previously dealt with loyalty rebates in the matter against SAA, it also previously examined the role of rebates and buyer power in the Supermarkets Investigation


\(^{541}\) P. Dobson et al., ‘Buyer Power and its Impact on Competition in the Food Retail Distribution Sector of the European Union’ *Journal of Industry, Competition and Trade*, vol. 1, no.3, 2000, p. 3

According to the OECD, a firm has monopsony power if its share of purchases in the upstream input market is sufficiently large such that it can cause the market price to fall by purchasing a lower quantity of product or cause the price to rise by purchasing more of the product.\(^{543}\) Chen (2007) defines monopsony power as the situation in which suppliers in a perfectly competitive upstream market are forced by the buyer to sell below the normal market price (the competitive price).\(^{544}\)

Bargaining power, on the other hand, refers to the negotiation strength that a buyer has \textit{vis-à-vis} a seller in commercial negotiations. Such negotiation strength can be due to the size of the buyer, its commercial significance to the seller and its ability to switch to alternative suppliers.\(^{545}\)

According to Dobson \textit{et al.} (2000) buyer power may exist in isolation, where the selling power of retailers is limited by intense retailer competition. This might be the case, for example, where retailing is highly fragmented on the selling side but coordinated (through buyer groups) on the buying side. But often it might be that the buyer power of retailers is linked with their selling power, where one power reinforces the other, and thus the effects of one on the other and their combined influence on economic welfare take on some importance.\(^{546}\)

Doyle and Inderst (2007) stated that in settings where relatively few suppliers and buyers interact, buyer power should not be seen as the strategic withholding of demand so as to reduce a uniform wholesale price, but rather the exercise of buyer power should be seen as leading primarily to the realisation of individual discounts.

Dobson \textit{et al.} (2000) found that apart from the ability to extract discounts on transactions from suppliers, buyer power may manifest itself in the contractual obligations (as vertical restraints) which retailers may be able to place on suppliers. These could take a number of forms such as listing charges (where buyers require payment of a fee before goods are purchased from the listed supplier); slotting allowances (where fees are charged for store shelf-space

\(^{543}\) OECD (2008) \textit{Monopsony and Buyer Power Policy Roundtable}, p. 9
\(^{545}\) ICN Merger Guidelines, April 2006, p.42
allocation); retroactive discounts on goods already sold; buyer forced application of most favoured nation (“MFN”) clauses (with contractual obligations for the supplier not to sell to another retailer at a lower price); unjustified high contribution to retailer promotional expenses; and insistence on exclusive supply.\textsuperscript{547}

802. The most important fact to note in relation to these definitions is that the balance of negotiating power between a buyer and seller is premised on the outside options available to each party. Competitive discipline on the upstream suppliers arises through the buyers having options to purchase from alternative sources. In this regard, buyer power is further enhanced if the supplier does not have alternative sources of demand.

803. Buyer power can be used to drive down the price of products purchased from suppliers\textsuperscript{548}, however, the extent to which the gains realised from such price reductions are passed onto customers is uncertain. Dobson and Chakraborty (2008) stated that even if retailers possess very significant buyer power, it does not automatically follow that this would be detrimental to economic welfare. In particular, the exercise of buyer power may allow a retailer to obtain discounts, but competition at the retail level could then oblige it to put these benefits back into the market through lower prices or an improved retail offer (such as better retail service or improved store amenities). Furthermore, this might benefit more than the retailer’s own customers, since the competitive response by retail rivals might then be to lower their prices and otherwise improve their retail offer.\textsuperscript{549, 550}

804. Similar to Dobson and Chakraborty (2008), Doyle and Inderst (2007) found that in an industry characterised by successive mark-ups, the exercise of buyer power can decrease the mark-ups commanded by the next level in the supply chain. As a result, this generally reduces the marginal purchasing price

\textsuperscript{549} In other words, buyer power can potentially act as a benign countervailing force spurring on supplier competition and encouraging greater supplier efficiency, with the retailers’ buying muscle used to negotiate discounts from suppliers which are then (partially if not fully) passed on to improve consumer welfare. See P. Dobson and R. Chakraborty, ‘Buyer power in the U.K. groceries market’, The Antitrust Bulletin, vol. 53, no. 2, 2008, p. 343
of goods and services and not the final retail price. However, the authors argue that in the presence of vigorous competition at the retail level of the value chain, then a discount to one buyer may force all retailers to lower their selling prices and thus give rise to consumer-welfare enhancing outcomes.\footnote{C. Doyle and R. Inderst, ‘Some Economics on the Treatment of Buyer Power in Antitrust’, \textit{European Competition Law Review}, vol. 28, no. 3, 2007, p.9}

805. This benign view of buyer power is said to be most applicable when suppliers can afford to give these discounts without negatively impacting their own welfare to such a degree that it undermines their own competition, efficiency or incentives to invest and innovate; i.e., lower consumer prices at no real economic cost.\footnote{P. Dobson and R. Chakraborty, ‘Buyer power in the U.K. groceries market’, \textit{The Antitrust Bulletin}, vol. 53, no. 2, 2008, p. 344}

806. Notwithstanding the potential benefits of buyer power, there are instances in which retailers’ buyer power may adversely affect competition and eventually harm end consumers. According to Dobson and Chakraborty (2008), there are three particular ways in which retailers may exploit their buyer power. First\footnote{This is applicable in a “market framework” where there are numerous suppliers but all retailers pay their suppliers a single “market price”}, retailers may withhold their demand as to reduce the purchase price and generate a better margin on the sale of these products. If the retailers also have selling power vis-à-vis the final consumers they serve, they can sell the reduced quantity purchase as higher prices, in which case consumers pay higher prices and purchase a lesser volume of such goods. Second\footnote{This may arise in a “market framework” where there are numerous suppliers but all retailers pay their suppliers a single “market price”, as well as in a “bargaining framework”, which refers to a situation where suppliers are relatively concentrated and prices and other terms are negotiated bilaterally.}, buyer power may suppress investment by suppliers in process and product innovation as well as maintenance if it reduces the suppliers’ expected returns from such investment. Third\footnote{This is applicable in in a “bargaining framework”, which refers to a situation where suppliers are relatively concentrated and prices and other terms are negotiated bilaterally.}, if the terms of trade to retailers with less buyer power worsen when retailers with strong buyer power obtain better terms (referred to as the waterbed effect), then the offer to final consumers by retailers with less buyer power may also worsen.\footnote{P. Dobson and R. Chakraborty, ‘Buyer power in the U.K. groceries market’, \textit{The Antitrust Bulletin}, vol. 53, no. 2, 2008, pp. 345 - 346}

807. Dobson \textit{et al}. (2000) proposed that the economic welfare effects arising from the exploitation of buyer power are less certain as suppliers (producers) will
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generally suffer if the prices they obtain for their goods are reduced, while consumers might gain if lower intermediate (transfer) prices result in retailers setting lower final (retail) prices, so the net economic effect is not clear a priori.  

The economic test for buyer power

808. A traditional method of assessing buyer power is one where the size of the buyer is assumed to be a good measure of buyer power. However, a comparison of the fraction of a party's total business for which the other side accounts will not adequately reflect its bargaining strength. Generally what constitutes buyer power is not so much the percentage of current business that a buyer or seller would lose, but whether the respective party can find equally attractive opportunities to buy or sell to replace that which has been lost. This means that the ability of a buyer to acquire more favourable terms of trade depends on its relative bargaining strength compared to suppliers and competing buyers. If a buyer can easily switch to another supplier or market, then it may be in a better position to demand discounts. A buyer can do so if its total size on the market is relatively large, or if it acts as a gatekeeper to a substantial part of the supplier’s potential market and thus can thus not easily be side stepped.

809. Another indication of buyer power may be when the outcomes of trading negotiations between a supplier and a retailer result in significantly less favourable trading terms for the supplier compared with the trading term outcomes of the same supplier with other retailers.

810. In grocery retailing, all but a few multinational brand manufacturers may account for only a very small fraction of a large retailer's business. But this does not necessarily indicate that the retailer has more power vis-à-vis these suppliers than vice versa; if a retailer delists a strong brand shoppers may either switch products or purchase this particular good elsewhere. Whether the retailer stocks only a few or a plethora of different products should then only be important to the extent to which it influences total store traffic,

559 Ibid
consumers’ inclination to switch stores rather than products, and the retailer’s overall loss in margins if it loses some customers. This illustrates that in assessing buyer power one cannot merely rely on using percentage measures based on a supplier’s or retailer’s overall business or profits.\footnote{C. Doyle and R. Inderst, ‘Some Economics on the Treatment of Buyer Power in Antitrust’, European Competition Law Review, vol. 28, no. 3, 2007}

811. When a retail market is concentrated, suppliers tend to depend largely on the retailers as the small number of retailers become the gatekeepers without which no supplier can operate. Suppliers will also tend to largely depend on retailers when there are high barriers to entry and expansion in the retail market, this is as it becomes difficult for the suppliers to find alternative (outside options) by way of integrating into the downstream market or even sponsoring new entry.

812. Buyer power exists where the buyer has the ability and incentive to, \textit{inter alia}:

812.1 demand the trading terms and discounts it requires from the supplier given its outside options (which may include other suppliers that can supply the product, and or the retailer can produce the product itself);

812.2 delist a supplier’s brand without its customers switching to other retailers;

812.3 delist a supplier’s brand without losing traffic in the retailer’s store due to the unavailability of that specific supplier’s brand;

812.4 transfer its risks that are associated with conducting its business to the supplier; and

812.5 reduce or credibly threaten to reduce purchases from the supplier.

813. The use of buyer power is largely dependent on the buyer knowing that: it is the gatekeeper to the market and an important customer to the suppliers; that the supplier cannot afford to lose its business; the buyer has alternative options other than the seller; and/or the buyer can enter or sponsor entry in the upstream market where the suppliers are active.

814. Given the market structure of the South African grocery retail sector, which is characterised by the presence of a few large national supermarket chains, the
The focus of this analysis will be on the bargaining power dynamics between suppliers of FMCG and these retailers. Further, the Inquiry will consider whether there exists differential treatment in respect of trading terms between the national supermarket chains and the wholesale channel (broadly defined).

8.6 The assessment of buyer power

815. The assessment of buyer power presented below is two-fold. First, the Inquiry considered the existence and exercise of buyer power at an aggregate level, taking into account the dynamics between the national supermarket chains and the sizes and types of suppliers. Second, the Inquiry considered a more disaggregated, product-specific assessment of buyer power, particularly considering those products that were to be amongst the highest selling product lines in spaza shops.

816. In its assessment, the Inquiry considered the importance of the national supermarket chains to suppliers. This was done by assessing (i) the strategic importance of the formal retail channel in the distribution of FMCG products in South Africa and (ii) the revenue contributions of the national supermarket chains to suppliers as a proportion of the suppliers’ overall business. Given that the negotiations of trading terms between suppliers and the national supermarket chains are primarily based on setting rebates applicable to products for a particular period, the Inquiry focussed its analysis on rebates. In this regard, the Inquiry sought to determine whether (i) national supermarket chains are able to extract more favourable trading terms from suppliers; and (ii) there is differential treatment between the national supermarket chains and buyer groups.

817. The Inquiry also considered the submissions made by market participants which largely reflected the views of suppliers about rebates and the related negotiation process for same. In this regard, the Inquiry understood that the national supermarket chains consider these rebates to be an essential part of their operations and are thus in favour thereof. Lastly, the Inquiry sought to demonstrate the impact of rebates on the final price of goods sold by the national supermarket chains by using illustrative examples submitted by market participants.

818. We now turn to consider each of these factors below.
Market structure, concentration and barriers to entry

819. As indicated in the background section, the South African grocery retail sector is characterised by a significant number of suppliers of FMCG products and a few national supermarket chains in the formal retail channel as well as a number of firms active in the broader wholesale and independent retail channel.

820. The national supermarket chains are vertically integrated in that they act as both distributor and retailer of groceries. This vertical integration appears to confer some competitive advantage as there is recognition that such strategies yield efficiencies in the distribution system and savings for suppliers. As such, the national supermarket chains enjoy compensation for this vertical integration in the form of rebates and services they require from the suppliers. The Inquiry noted that this vertical integration is not altogether unique to the national supermarket chains as it appears that there are some buyer groups that have also adopted this strategy and established their own central distribution centres, for example, some of the buyer groups have members who also own distribution centres.

821. The available evidence indicates that the formal grocery retail sector is concentrated with Shoprite, Spar, Pick n Pay and Woolworths accounting for a significant portion of the market share in this space.

822. The South African grocery retail sector is characterised by high barriers to entry, particularly in the national supermarket chain channel. The Inquiry is of the view that such a market structure alters the bargaining framework between the national supermarket chains and the independent retailers to the disadvantage of the latter. This is as suppliers of FMCG appear to have limited outside options for the distribution of their products.

Contribution to supplier’s turnover

823. As discussed above, the percentage of the suppliers’ current business that a retailer accounts for is not enough to conclusively indicate buyer power (or

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561 These savings are seen through the distribution centre rebate suppliers offer to the national supermarket chains for these savings.
562 For example, IBC and ICC Buyer Groups - Trade Intelligence (2016) Malls to Markets: An Introduction to South African Food & Grocery Retail, p. 94 and Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 3.3.
lack thereof), but it is important in that the bargaining strength of a retailer is reinforced by its size relative to its competitors (or even the supplier).

824. In section 8.2 above, the Inquiry established that the national supermarkets chain channel is the primary route to market in the South African grocery retail sector. This reinforces the view that this channel is of strategic importance for suppliers who wish to sell their products to consumers. This is also borne by the revenue contributions of the national supermarket chains to the business of FMCG suppliers. Submissions by market participants indicated that this channel contributes more than 50% of the suppliers’ total revenues.

825. In addition, suppliers such as [X], whose business largely derives the bulk of its sales from the wholesale channel, still consider the national supermarket chain channel to be important because of the large national footprint they possess. [X] also noted that the national supermarket chains have a centralised business model and that even “decentralised” groups such as [X] can instruct their stores to stock a supplier’s product.

826. The Inquiry also solicited the views of the suppliers as to the implications of losing one of their top retail customers. [X] submitted that the risk of losing its largest customer (Shoprite) would be more material than losing a wholesale customer. While some suppliers submitted that they have tried to diversify and sell more products into the wholesale channel to avoid over-dependence on the national supermarket chains, they still rely on the retail channel in order to remain profitable. [X] observed that while it has been trying to diversify its customer base and reduce the risk of heavily relying on the retail channel, this has been difficult given the national presence of the retailers. Another medium-sized supplier, [X], explained that the retail route to market is essential given the sales volumes that are achieved via their national supermarket chains channel customers.

827. The above confirms that the national supermarket chains form an integral part of the supplier’s business, as evidenced by the significant levels of revenue contribution derived from them. Indeed, the strategic importance of the

\[563 [X]\]
\[564 [X]\]
\[565 [X]\]
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\[568 [X]\]
national supermarket chains as a primary route to market also serves to further strengthen their indispensability to suppliers of FMCG. This effectively places the national supermarket chains in a relatively stronger bargaining position as opposed to the suppliers of FMCG, but also relative to the wholesale channel overall.

828. We now turn to consider the bargaining dynamics between suppliers of FMCG and their customers. As previously indicated, these bargaining dynamics primarily manifest themselves in the context of negotiations on trading terms, particularly the rebates that customers (i.e. national supermarket chains and buyer groups) require from suppliers. Before delving into this assessment, we first set out the context by way of a brief discussion of the different types of margins that are at play in this sector.

*The role of front and back margins (rebates) in determining the price of products*

829. Prior to the purchasing of any product from a supplier, retailers will enter into a trading term agreement with their suppliers. The trading term agreement includes, *inter alia*, the agreed rebates, allowances and other incentive schemes in respect of the products sold. These are collectively referred to as the back-end margin that a retailer will enjoy as a result of its dealings with a supplier. It is important to note, however, that retailers also derive an additional margin based on the differential between the invoice price (including any on-invoice discounts) paid to a supplier for the acquisition of a product and the retailer’s selling price for same. Cumulatively, the combination of a back-end and front-end margin yields what is referred to as the net margin realised by retailers in respect of products sold.

830. It is also noteworthy that discounts are different from the rebates in that they are on the invoice so that the customer can see the value of the discount.
Further, unlike the other trading terms, discounts are negotiated frequently, depending on the product in question.

831. Stakeholders submitted that in setting their selling prices they need to understand what their back-end and front-end margins are. The rebates form part of the national supermarket chains' back-end margin, which they use to cover their operational costs.

The negotiation process and types of trading terms

832. The trading terms are applied to all purchases irrespective of the actual cost price of products which is negotiated by the relevant divisions. While trading terms broadly are applied by all suppliers, the degree of how favourable the trading terms are and whether specific ones are given at all will differ per supplier/retailer based on their bargaining strength and importance, among other things.

833. The trading terms, meaning rebates, allowances and incentives that are demanded by the national retailers, may be classified in terms of guaranteed rebates and growth linked rebates. The guaranteed rebates are those rebates that the retailers require and receive from the supplier with no reciprocal activity in return. The growth rebates, on the other hand, are the rebates that are given to retailers once they achieve a certain amount of growth in sales for the specific suppliers' products.

834. [X] submitted that an important aspect of trading term negotiation relates to the proportion of guaranteed rebates versus growth rebates that a retailer receives. According to [X], the construct of the national supermarket retailers' rebate structure is guaranteed and higher in quantum as compared to [X] structure which is variable in nature, depending on its sales performance.

835. Suppliers are generally responsible for all activities related to their products until sale to end consumers, including the costs of the retailers' private standards and requirements.

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575 Submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, Transcript p. 15., Is. 1-5
576 [X]
577 Submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, p. 27, Is. 27 - 31.
578 [X]
836. Suppliers interact with the retailers on a frequent and ongoing basis. Depending on the type of product sold by the supplier, negotiations around the price of the product can occur on a monthly or bi-monthly basis and are usually provided on a deal sheet. Retailers and suppliers may also approach each other on an *ad-hoc* basis to discuss special promotional campaigns.

837. In the sections below, the Inquiry describes and discusses some of the rebates that form part of the trading terms between the suppliers and the retailers. A more detailed discussion of the rebates can be found in sections 17.2 and 17.3 in Annexure 8 contained in a table which provides the suppliers own explanation of certain rebates from the interrogations.

*Basic rebate*

838. In order for suppliers to do business with the national supermarket chains, suppliers are required to pay the national supermarket a basic rebate. The Inquiry understands that the basic rebate is for the ability to do business with the national supermarkets: *“something that allows you a seat at the table to negotiate with retailers, to do business through retailers and allow your products on shelves”*.\(^{579}\)

839. Shoprite submitted that a basic rebate is for the cost of doing business.\(^{580}\)\(^{581}\) [\(\text{[X]}\)] submitted that the basic rebate is that portion of margin that is guaranteed.\(^{582}\) According to one of the suppliers\(^{583}\), a basic rebate is an historic green fee. Suppliers do not receive any reciprocal benefits in return for paying the base rebate. Another supplier submitted that the basic rebate is for getting their products into the retailers’ store.\(^{584}\)

\(^{579}\) Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 5, ls. 29 - 30

\(^{580}\) These costs include upfront costs of purchasing the stock before it is sold, costs to maintain the inventory, the financial and business-to-business information technology systems, costs to provide for receiving processes at all the sites where stock will be received etc. Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 5, ls. 30 – 32 p. 6, ls. 1 - 3

\(^{581}\) These costs include upfront costs of purchasing the stock before it is sold, costs to maintain the inventory, the financial and business-to-business information technology systems, costs to provide for receiving processes at all the sites where stock will be received etc. Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 5, ls. 30 – 32 p. 6, ls. 1 - 3

\(^{582}\) According to one of the suppliers, a basic rebate is an historic green fee. Suppliers do not receive any reciprocal benefits in return for paying the base rebate. Another supplier submitted that the basic rebate is for getting their products into the retailers’ store.

\(^{583}\) According to one of the suppliers, a basic rebate is an historic green fee. Suppliers do not receive any reciprocal benefits in return for paying the base rebate. Another supplier submitted that the basic rebate is for getting their products into the retailers’ store.

\(^{584}\) Another supplier submitted that the basic rebate is for getting their products into the retailers’ store.
Listing fees

Listing fees are allegedly used to manage the costs of adding new products onto the shelves of supermarket stores. Previously, listing fees were charged in the grocery retail industry in order to afford a supplier an opportunity of having a product on shelf. However, the term “listing fees” has evolved over the years and is now apparently related to work that has been done in managing space profiles. Not all suppliers pay a listing fee as others prefer to promote their products differently. For example, prefers to do its own launch support. Similarly, not all retailers charge listing fees.

Advertising allowance

The purpose of an advertising allowance/fee is apparently for the supplier to contribute towards the retailer’s costs for promoting or advertising the products of that specific supplier. This allegedly enables retailers to plan for their advertising and marketing campaigns in advance. The advertising allowance is captured as a guaranteed minimum amount in order to ensure that the advertising spend is covered.

Settlement discount

A settlement discount is provided to retailers to incentivise earlier settlement of their accounts. Certain suppliers submitted that they are not obligated to

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585 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript p. 20, para. 73
586 Massmart submitted that the fees related to space management are generally paid to it by suppliers where both parties (suppliers and Massmart) review what is available on the shelf so as to establish a possibility or need of placing a new product on shelf. Due to the limited shelf space, the introduction of a new product could result in the removal of another. Submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, Transcript p. 14, ls. 4 - 13
587 The launch supports done by may include advertisements and putting products on display. The launch support is an additional cost that the supplier would incur, and unlike the listing fee, they are not obliged to pay it.
588 For example, submitted that not charging listing fees gives a retailer more flexibility – if it does not like the product, it does not have to stock it on its shelves. This way is not tied to any one supplier. It was also suggested that larger suppliers agree to pay listing fees because it guarantees space for their products on the shelves.
589 Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 8, para 30.
590 [📧]
591 [📧]
592 [📧] submitted that it considers the advertising allowance as an investment which enables it to have direct contact with consumers. [📧] also consider it important to track the advertisements of retailers to ensure that it receives the value that it pays for, and to make sure that it receives value from the advertising allowance that it contributes.
593 Fruit and Veg City explained that the reason why retailers would receive a settlement discount for paying earlier is because retailers would usually pay within 60 or 90 days. Since cash flow is important for suppliers, the
pay settlement discounts, and do not have any settlement discounts with the
retailers.594 595

Distribution centre / warehousing allowance

843. The distribution centre (“DC”) or warehousing allowance is the payment made
by suppliers to the retailers for re-distributing products from their
warehouses/distribution centres to their respective stores. Practically,
suppliers deliver to the retailer’s central distribution centre (as opposed to the
retailer’s individual stores) and the retailer assumes the responsibility for
delivery to its respective stores596. Suppliers submitted that there are
productive efficiencies realised when products are delivered to a central
distribution centre as opposed to delivering to all the individual stores of a
retailer across the country.597

Category management and data sharing agreements

844. Category management ranges from suppliers buying access to the national
supermarket chain’s sales data for its products, to a holistic discussion
between the suppliers and retailers regarding the specific categories that
suppliers operate in.598 599 600 601 Category management is considered by the
larger suppliers as a good methodology for ensuring healthy collaboration

594 [X].
595 Shoprite confirmed this, stating that various suppliers have different cash requirements and payment schedules
for the various customer groups they serve. Submission by Shoprite at the Gauteng public hearing (open session)
dated 1 November 2017, Transcript p. 6, ls. 11 - 17
596 For example, Spar submitted that it charges a distribution allowance for storing products in its warehouses and
distributing the suppliers’ products with Spar’s trucks. The allowance that Spar charges can range from 2% to
15% depending on the type of product. Submission by Spar at the Gauteng public hearing (open session) dated
15 December 2017, Transcript p.22, para 80
597 These suppliers include [X].
598 Category management research indicates the best way to layout a store, the best promotions to have, or the
best ranges to stock that are ultimately beneficial to the shopper.
600 [X]
601 This is as the data is immediate and more frequent than data bought from data companies, [X]
between manufacturers and retailers. However, smaller suppliers do not necessarily share the same view, as it may be used by larger suppliers to control the category to the detriment of smaller suppliers.

**Merchandising services allowance**

845. The Inquiry found that suppliers generally employ teams of merchandisers to stock their products on the national supermarket chains’ shelves. However, national supermarket chains prefer to do their own merchandisers or use a third party merchandisers to stock the shelves.

**Volume or growth rebate**

846. The growth rebate is a performance-based rebate and may be expressed in terms of a percentage or monetary value based on the national supermarket chain achieving specified volume growth targets.

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602 [X] The larger suppliers appear to have a favourable view regarding category management and the data that is provided to them. The category management allowance is paid upfront for the supplier to have a seat at the table when the discussions happen. [X].

603 [X] This is said to be mainly in an advisory capacity in that the supplier gives suggestions on how best to run the retailers’ categories. This was [X].

604 [X] indicated that all retailers get the same percentage for category management. However, it does not pay category management rebates to buyer groups, as Cash and Carries as they tend to service traders and not the end consumer. [X].

605 [X] Further, it was submitted that the wholesale channel does not receive category management rebates due to its perceived inability to provide reliable data on customer purchases.

606 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript p. 14, para 42

607 Merchandising services are mostly in relation to packing, shelf health, and removing expired products. According to a [X] it is a standard requirement to ensure that any product on offer is packed according to specific layouts, planner bags and the supplier ensures that there are specific requirements in terms of stock rotation. [X] also stated that the visibility of products is high priority for national supermarket chains. Refer to [X], for more details.

608 [X]

609 [X]

610 [X]

611 Some suppliers claimed that although they provide volume-based rebates, they have steered away from such rebates. Some of the listed reasons for this were that the suppliers’ products are experiencing growth on their own and that the retailers prefer to have guaranteed rebates for accounting reasons. [X]
Store opening promotional allowance

847. Store opening allowances are rebates that suppliers are required to pay to the national supermarket chains in the advent of new store openings or refurbishments in existing stores.\(^{612}\) \(^{613}\) \(^{614}\) \(^{615}\)

Swell allowance

848. The swell allowance is considered a contribution by suppliers towards damaged and returned products that are centrally distributed.\(^{616}\) \(^{617}\) \(^{618}\) \(^{619}\) Some suppliers submitted that the value of a swell allowance is that rather than having to dispute every damage, they pay a percentage as an allowance upfront.

Other rebates

849. The Inquiry also found that there are other rebates that are not common across all suppliers and retailers. A discussion of these may be found in section 17.2 of Annexure 8.

Aggregate rebate analysis – differential treatment between retailers and buyer groups

850. This section assesses whether there exists differential treatment of the national supermarket chains channel and the wholesale channel (broadly comprising wholesalers, buyer groups, and independent retailers) in respect of rebates. In this regard, the Inquiry also sought to determine whether such

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\(^{612}\) [\text{\textless}X\text{\textgreater}]\) submitted that store opening allowances are categorised as guaranteed payments, which are termed compulsory. [\text{\textless}X\text{\textgreater}]\) also submitted that they are required to contribute towards the opening of new stores as well as refurbishments done in the national supermarket chain stores. [\text{\textless}X\text{\textgreater}]

\(^{613}\) [\text{\textless}X\text{\textgreater}]\) is of the view that the store opening allowances are required by the retailers as an incentive for them to upgrade the store and make the shopping experience more pleasant in order to attract more consumers. The representative of [\text{\textless}X\text{\textgreater}]\) was however not sure of the rationale behind the allowance, see [\text{\textless}X\text{\textgreater}]

\(^{614}\) According to Shoprite, the supplier benefits from the excitement of consumers for the new store and the suppliers are then given a platform to promote their products in the new store

\(^{615}\) Shoprite submitted that it receives refurbishments or store opening contributions from its suppliers as part of promotional support. Shoprite believes that the supplier also benefits when a new store opens, or when it is refurbished. Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 11, ls. 11 - 17

\(^{616}\) [\text{\textless}X\text{\textgreater}]

\(^{617}\) This covers everything that is damaged between receipts and shelf but excludes expired stock and factory faults. [\text{\textless}X\text{\textgreater}]

\(^{618}\) Shoprite explained that it makes provisions within its business to cater for costs associated with any damages that might occur on the stock procured. Shoprite takes into account various other factors, apart from damages, and these factors include returns, wastages as well as the safe disposal of the supplier’s product, of which this fee is charged to the supplier

\(^{619}\) Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 7, para 20
differential treatment, in the absence of objective justification, could be ascribed to the exercise of buyer power. The assessment conducted compares the rebates paid by suppliers to firms active in the two different channels and evaluates whether or not there are differences in the rebates as alleged by some buyer groups.\textsuperscript{620}

851. The Inquiry requested suppliers to submit their rebates data for the top ten retail customers they sell to and the top five products sold for each of the years 2013 to 2017.\textsuperscript{621,622}

852. Table 8.1 below compares the aggregate value of rebates provided to retailers for 2017. The table identifies the retailers who receive above average rebates (highlighted in red) and retailers that receive lower than average rebate from the supplier (highlighted in blue).

Table 8.1: Comparison of highest and lowest rebates offered to retailers for 2017

\[ \text{[\textgreater \times \textless]} \]

*Source: Various submissions from suppliers of FMCG products*

853. Table 8.1 indicates that [\textgreater \times \textless] and [\times \times] receive above average rebates from most of the suppliers. Interestingly, although generally [\times \times] contributed the most revenue to the suppliers, the rebate data indicates that three suppliers offer [\times \times] larger rebates even though [\times \times] is only the second largest retailer. [\times \times] provides a higher rebate to [\times \times]. [\times \times] also tends to receive above average rebates, which is possibly due to its affiliation with [\times \times]. The data also suggests that [\times \times] obtains rebates which tend to be lower than the other major national supermarkets earn.

854. Regarding buyer groups, the data indicates that although there are few instances where the buyer groups have received above average rebates, for the majority of the time is not the case. It is also noteworthy that for the
qualifying emerging challenger retailers the trend is that they receive lower than average rebates.

855. As the sample of suppliers are typically larger, including many multinationals, the results may also reflect some countervailing power from larger suppliers. In this regard it is interesting to note that a smaller supplier such as [x] has a much bigger disparity in rebates to national retailers in comparison to wholesalers, which may reflect its relatively more limited countervailing power. It would be interesting to assess the differences for even smaller suppliers which have even less clout.

Disaggregated, product-specific rebate analysis – differential treatment between retailers and buyer groups

856. In an attempt to provide a like-for-like assessment, the Inquiry undertook a narrower assessment of buyer power by considering the relationship between suppliers of specific products and their customers. The Inquiry considered, inter alia, the contribution in terms of volumes and revenue of a customer to a supplier’s business and the rebates offered to customers for selected products.

857. The selected products (milk; soft drinks; cooking oil; and washing powder) were a mix of both basic and non-essential goods. These products were randomly selected based on the results of the small business survey which showed, among other things, the top selling products for spaza shops in South Africa. In this way the Inquiry could establish if differential rebates were also likely to disadvantage smaller retailers dependent on the wholesale channel.

858. The Inquiry requested suppliers of milk, cooking oil, soft drink and hand washing powder to provide annual revenue and volume data of the different brands that they manufactured for the period 2015 to 2017. This was to assist the inquiry in determining the brand and pack size that consumers purchase the most from each supplier. Upon establishing the most purchased brand and pack size from the different suppliers of the four products, the Inquiry obtained rebate data offered by the suppliers to their top 80% revenue contributing customers. This data was disaggregated by customer in order to determine whether or not there is correlation between the size of the customer and rebates given to each customer.
859. We discuss the Inquiry’s findings in respect of each of the selected products below. Due to the confidential nature of the disaggregated information used, the Inquiry presents a summarised version of its findings below. The more detailed confidential analysis is found in sections 0 through to 17.7 of Annexure 8.

860. Milk (fresh and long life) products

The Inquiry identified milk, as opposed to other dairy products such as cheese and yogurt, as it is considered to be a staple food and an essential source of protein. Milk is broadly divided into fresh milk and long life milk. Based on the information provided by the milk processors, the small business survey and site visits to numerous township and rural areas across South Africa, the Inquiry determined that both fresh and long-life milk products are sold in supermarkets while spaza shops typically sell long life milk because of its longer shelf-life, without need for refrigeration.

861. The Inquiry received submissions from four milk product manufacturers in South Africa. These are collectively referred to as the milk processors. The milk processors are multi-product firms, selling various types and sizes of dairy products. Some milk processors sell both fresh milk and long life milk, while others only sells either long life or fresh milk.

862. The data suggests that long life milk is the more preferred option in South Africa. The Inquiry decided to analyse both fresh and long life milk, because even though long life is the most sold product, fresh milk is considered an important product that customers visit supermarkets for. The most popular bottle size for fresh milk is the 2 litre bottle. Long life milk is typically sold in the 1 litre format. Accordingly, the Inquiry focussed its analysis on the 2 litre fresh milk and 1 litre long life products.

863. The Inquiry requested each milk processor to provide the revenue and volumes sold to customers making up 80% of the milk processors business.

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823 Section 0 of Annexure 8 provides a more detailed analysis for milk products based on the confidential submissions of the suppliers

This was done to identify the major customers as well as any other customer that makes a significant contribution to the milk processor’s business.

_Evidentiary insights from rebates paid by milk producers_

864. The premise of the Inquiry’s approach was that the customers that contribute the highest volumes and revenue would be considered important customers to the suppliers of FMCG. As such, by virtue of their size, these customers would be expected to possess more significant negotiating power. Accordingly, the more significant negotiating power possessed by these customers would manifest itself in the form of better trading terms from their suppliers. The Inquiry found that the national supermarket chains are primarily the largest and most important individual customers of all the milk processors and this is reflected in the largest individual rebates provided.

865. The Inquiry found that there were instances in which some customers who purchased and contributed more revenue (than others) were not able to extract as much favourable trading terms from their suppliers. As can be seen from Figure 8.1 and Figure 8.2, buyer groups are higher volume customers for long life milk products sold by [<X], but they do not receive more favourable rebates than the national supermarket chains for these products.

**Figure 8.1:** [X] milk volumes (in litres) and revenue contribution (in Rand) from top 10 customers for period 2017

[X]

Source: Inquiry’s calculations based on data submitted by [X]

**Figure 8.2:** [X] 1litre long life milk aggregated rebates by customer for 2017

[X]

Source: Inquiry’s calculations based on data submitted by [X]
The Inquiry found that the national supermarket chains receive much higher rebates compared to the buyer groups. Even in instances where the rebates related to costs that are incurred by all firms active in these channels, such as the distribution rebate for example, there was still significant differential treatment. It was noteworthy that the buyer groups only receive favourable treatment in terms of growth rebates, although this type of rebate was comparatively smaller than others.

*Sparkling soft drink products*[^29]

The Inquiry determined that sparkling soft-drink products were popular products purchased by end-consumers, in supermarkets and spaza shops. The Inquiry received submissions from two soft-drink manufacturers that are multi-product firms, selling various flavours of sparkling soft drink products.

*Evidentiary insights from rebates paid by soft drink manufacturers*

The soft drink manufacturers tend to have a larger pool of customers to sell their products to as compared to the dairy processors. For example, while one manufacturer’s largest customers comprised the national supermarkets, the company still derived a significant proportion of its business from wholesale and smaller businesses. The other soft drink manufacturer was primarily focused only selling to wholesale customers.

Buyer groups do not appear to play a significant role in purchasing soft-drinks for their members. Rather, it appears that the members themselves make direct purchases from the suppliers. Only one buyer group was identified as a large customer of soft drink manufacturer. The buyer group obtains rebates which are slightly higher than some of the soft-drink processors largest customers;

Both soft-drink manufacturers appear to provide more favourable rebates to the national supermarket chains. It is noteworthy that even for the manufacturer that primarily distributes its products through the wholesale channel, it still pays the highest rebates to the national supermarket chains. As can be seen in Figure 8.3 below, [XX] independent wholesale customers

[^29]: Section 17.5 of Annexure 8 provides a more detailed analysis of sparkling sot drink product based on the confidential submissions of the suppliers
receive comparatively lower rebates than the retail channel customers even though these are $[\times]$ highest volume customers.

**Figure 8.3: Comparison of rebates to $[\times]$ largest customers in 2017**

$[\times]$

*Source: $[\times]$ Submission*

871. It also appears that the non-integrated nature of independent retailers is a significant disadvantage for them as they do not qualify the types of rebates that the supermarket retailers benefit from as a result of servicing directly to the end consumer. Wholesalers were effectively excluded from certain rebates focused on supermarket costs or benefits because they are not vertically integrated, or received lower rebates for the same reason. Given that the independent retailers that depend on the wholesalers also incur many of these costs and yet do not enjoy rebates related to them, results in such retailers likely facing a competitive disadvantage.

**Washing powder products**

872. Washing powder products were selected on the basis of their popularity with consumers, particularly those that purchase from spaza shops. According to a market study conducted by $[\times]^631$, there were four main brands in the hand washing powder market in South Africa in 2016 and these include, Sunlight, Ariel, Omo and Maq. $[\times].^632$ $633$

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630 Section 17.6 of Annexure 8 provides a more detailed analysis of the washing powder section based on the confidential submissions of the suppliers

631 $[\times]$

632 $[\times]$

633 According to Who Owns Whom, the South African soap, cleaning and sanitation products, wax and polishes manufacturing industry continues to be dominated by large multinational FMCG players, particularly, Unilever, Reckitt Benckiser South Africa (Pty) Ltd (Reckitt), Procter & Gamble South Africa Trading (Pty) Ltd (P&G), Colgate-Palmolive (Pty) Ltd (Colgate-Palmolive) and Johnson & Johnson (Pty) Ltd (J&J). There are also notable South African companies operating in the sector. These include Bliss Brands (Pty) Ltd (“Bliss Brands”) and Tiger Consumer Brands Ltd (Tiger Brands).
The Inquiry requested the three hand washing powder manufacturers, [X] to provide annual revenue and volume data for their different hand washing powder brands for the period 2015 to 2017.

The Inquiry found that the most purchased hand washing powder pack size is the 2kg. This is for all three suppliers. [X] most purchased brand is [X]. [X] and [X] only manufacture one brand each, [X] respectively.

The Inquiry now considers how the washing powder suppliers’ offer rebates to their different customers in light of the volumes and the revenue contributed by these customers.

Evidentiary insights from rebates paid by handwashing powder suppliers

As evidenced in section 0 of Annexure 8 the premise of the Inquiry’s approach was that the customers that contribute the highest volumes and revenue would be considered important customers to the suppliers of FMCG. As such, by virtue of their size, these customers would be expected to possess significant negotiating power. Accordingly, the significant negotiating power possessed by these customers would manifest itself in the form of better trading terms from their suppliers.

The Inquiry found that the national supermarket chains were the largest and important customers (based on volume and revenue contributions) for most suppliers of handwashing powder, with the exception of one supplier whose business is largely conducted through the wholesale channel. By way of example, Figure 8.4 below depicts the volumes and revenue of [X]. Figure 8.5 below depicts the aggregated, as well as some individual category rebates that [X].

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634 This, as already mentioned in the previous sections, was to assist the Inquiry in determining the brand and pack size that consumers purchase the most. Upon establishing the most purchased brand and pack size of hand washing powder, the Inquiry obtained rebate data paid by these manufacturers to their top 80% revenue contributing customers.

635 Annexure 8 section 17.6 contains the rebates analysis of the washing powder suppliers’, however due to the confidentiality nature of the information used the Inquiry does not present the analysis here.

636 [X]
The Inquiry found that there were instances in which the largest and important customers (these, in most instances, being the national supermarket chains) were able to extract favourable trading terms from their suppliers. However, the Inquiry also found instances wherein the largest customers did not enjoy the benefits of favourable trading terms relative to the national supermarket chains. These customers were largely the buyer groups that operate in the wholesale channel. For example, while national supermarket chains who purchase far less volumes and accordingly also contribute lower revenue obtained significantly better rebates in comparison.

The Inquiry noted that in those instances where national supermarket chains appeared to be able to extract more favourable trading terms, notwithstanding the fact that they were not deemed the largest and important customers, it was difficult to divorce such behaviour from the exercise of buyer power.

The Inquiry also found that even in instances where it considers the individual rebate categories and the rationale behind such rebates there still exists differential treatments in the way the rebates are offered. The differential treatment is in terms of, firstly, obtaining the rebate and secondly, the quantum that is obtained. For example with the basic rebate, (as can also be seen to the right of Figure 8.5 above), the Inquiry found that even though all customers of the three washing powder suppliers that were considered in the
analysis received the basic rebate, the quantum differed significantly between the customers and as well as between the suppliers themselves.

881. The expectation would be that, given that all these suppliers sell a product that falls within the same category\(^{637}\), then the rebate quantum given by these suppliers would not be significantly different. The Inquiry found that this is not the case, the rebate quantum that are offered by these suppliers are significantly different from one supplier to the next. This may also be indicative of the bargaining dynamics at play between the different size suppliers of same product categories and their customers. It may also be that as a result of a suppliers’ relative size, brand recognition and the basket of products manufactured a supplier is placed at a better negotiating position. For some suppliers it may reflect the need to achieve brand recognition and acceptance from the supermarkets in order to build market share. The importance of supermarkets for brand development therefore is what gives them additional bargaining power.

882. When considering other rebates such as the DC allowance rebate and the swell allowance rebate you find instances wherein not all customers receive the rebate even though on the face of it they qualify for such a rebate as they conduct the activities that the rebate is offered for. The second issue is that even between the customers that do receive these rebates the quantum is not the same. The wholesale channel customers are generally the ones that don’t receive the majority of these rebates and even in instances where they receive them they receive much smaller quantum compared to the national supermarket chains.

883. The DC allowance is said to be given for the savings obtained when a supplier delivers goods to a central distribution centre or warehouse, as opposed to having to deliver to the individual stores. Some suppliers do not give a distribution allowance to buyer groups (wholesale channel customers) even when they do have warehouses/distribution centres that the suppliers deliver to, which means that the suppliers realise the savings.\(^{638}\)

884. The Inquiry is thus of the view that these rebates that are mostly offered to the national supermarket chains reduce their costs of placing the products on

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\(^{637}\) Which is most likely handled, stored and packaged in the same way.

\(^{638}\) [↩]
shelf. The buyer groups and wholesalers primarily do not receive these rebates that are associated with costs of moving the products from the warehouse to the shelf, this is because they are not vertically integrated with the retailers. What this means is that, while the costs of the national supermarket chains are reduced, those of the independent retailers (wholesale channel retailers) are not reduced to the same extent and this ultimately impedes on these independent retailers’ ability to compete and grow relative to their counterparts the national; supermarket chains.

Sunflower oil products

885. The Inquiry also considered cooking oil products as one of the product in conducting its assessment of buyer power. Cooking oil generally forms part of the monthly food products that are purchased by consumers from national supermarket chain stores, wholesalers, and all the way to being purchased from informal spaza shops.

886. The Inquiry obtained information on rebates and other trading terms from the following cooking oil producers, namely, [\textsuperscript{[\textsuperscript{3}]<}].

887. The Inquiry found that the most popular cooking oil pack size is the 2L, which is for all three suppliers. [\textsuperscript{[\textsuperscript{3}]<}].

888. Below the Inquiry discusses its findings on the cooking oil suppliers’ rebates analysis.

Evidentiary insights from rebates paid by cooking oil suppliers

889. As extensively touched on previously, the customers purchasing the highest volumes of cooking oil would be expected to contribute the highest revenue. Such customers would be considered important customers to their suppliers by virtue of their size, and hence those customers are likely to have better

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\textsuperscript{639} Section 17.7 of Annexure 8 provides a more detailed rebate analysis of the Sunflower/Cooking Oil products based on the confidential submissions of the suppliers.

\textsuperscript{640} See section 3.3 of the Value Chains analysis where there is a discussion on the oil seeds to cooking oil value chain.

\textsuperscript{641} As stated in preceding sections, the Inquiry requested data from the three cooking oil manufactures for their different cooking oil brands for the period 2015 to 2017. This was to assist the inquiry in determining the brand and pack size that customers and consumers purchase the most, and so conduct the rebates comparison analysis on same. Upon establishing the most purchased brand and pack size of hand washing powder, the Inquiry obtained rebate data offered by these suppliers to their top 80% revenue contributing customers.
negotiating power and accordingly, better trading terms relative to customers contributing less.

890. The Inquiry found that the national supermarket chains were the largest and important customers for some of the cooking oil suppliers\textsuperscript{642}, on the basis of volume and revenue contributions. However, for other suppliers\textsuperscript{643} the wholesale channel made up a larger proportion of their business. As indicated in Figure 8.6 below which shows [\textless{}], with the exception of [\textlessthan] and [\textlessthan], the independent wholesalers and buyer groups make up majority of [\textlessthan] top ten customers and are the most important customers.

Figure 8.6: [\textlessthan] 2L cooking oil volumes (in litres) and revenue (in Rands) for 2017

\[
\text{[\textlessthan]}
\]

Source: Inquiry’s calculations based on data submitted by [\textlessthan]

891. Figure 8.7 below depicts the aggregated, as well as some individual category rebates that [\textlessthan].

Figure 8.7: [\textlessthan] 2L cooking oil aggregated rebates and individual rebates offered to top 10 customers in 2017\textsuperscript{644}

\[
\text{[\textlessthan]}
\]

Source: Inquiry’s calculations based on data submitted by [\textlessthan]

892. Despite that the wholesale channel customers are the most important customers, the national supermarket chains invariably received the highest rebates even where they were not the largest customers [\textlessthan]. This was also the case against other smaller retail chains which contributed more volumes than the larger national chains.

893. The Inquiry also found instances where not all customers are granted rebates, even rebates such as swell allowance which are designed for reimbursing
customers for damaged and returned products (\[\times\]). Similar to the washing powder analysis, the wholesale channel customers are generally the customers not receiving most rebate categories, and even in instances where they receive specific rebates it is normally a much lower quantum compared to what the national supermarket chains receive. This is reflective of their buyer power.

894. The Inquiry also finds that because of the better rebates that the national supermarket chains are able to obtain, their costs of placing products on shelf are much lower and thus they are at a better competitive advantage. The independent retailers on the other hand are worse off, as they must incur all these costs with no rebates, even in instances where they qualify for such rebates by virtue of conducting the activities to ultimately place product on shelf like the national supermarket chains.

**Stakeholder views on rebates**

895. The Inquiry received submissions from market participants expressing their views on the efficacy of rebates in the grocery retail sector in South Africa. Broadly, these submissions focussed on the following themes:

895.1 The responsiveness of the national supermarket chains to changing dynamics in the market. This was specifically referred to in the context of the alleged lack of changes in the composition and/or reductions in the quantum of rebate packages required by the national supermarket chains;

895.2 The perceived inability of FMCG suppliers to walk away from negotiations even in instances where these are unjustifiably unfavourable to the suppliers. This, it was argued was due to the fact that the national supermarket chains are a must-have channel for effective participation and competition in the market;

895.3 The value (or lack thereof) derived from some of the components of the rebate packages required by the national supermarket chains; and

895.4 The perceived lack of transparency regarding the trickle down effects of rebates, particularly insofar as they relate to price reductions for final consumers and/or profitability of the national supermarket chains.
Responsiveness to changes in rebate packages

896. Regarding the responsiveness of the national supermarket chains to changing dynamics, some suppliers submitted that the national supermarket chains do not adjust the rebates packages that they require from suppliers in response to developments in the market. By way of example, [\textit{\textsuperscript{[<]}}] submitted that once a national supermarket chain has decided on a rebate package, the components and terms of that package are unlikely to be changed or be reduced in terms of quantum.\textsuperscript{645} [\textit{\textsuperscript{[<]}}], a medium supplier, also claimed that in its experience there had never been an occasion when it was able to reduce or change an existing trading term.\textsuperscript{646} [\textit{\textsuperscript{[<]}}] submitted that once a type of rebate is paid to a retailer it becomes entrenched in the trading terms.\textsuperscript{647} For example, [\textit{\textsuperscript{[<]}}] submitted that the basic rebate and the settlement discount tend to stay the same for each year.

897. The submissions made implied that the composition and quantum of rebate packages (particularly in relation to reductions where it may be warranted) does not change even in instances where such changes may be necessary. These suppliers claimed that the lack of responsiveness is due to the historic nature of these rebates and that this is the nature of how business is conducted in the grocery retail sector.

898. The above notwithstanding, the Inquiry found that there were some suppliers who had a contrary experience in that they could adjust their trading terms with national supermarket chains. [\textit{\textsuperscript{[<]}}] submitted that it was always able to renegotiate trading terms if it no longer derived benefits from such trading terms.\textsuperscript{648} [\textit{\textsuperscript{[<]}}] also submitted that it has renegotiated (reduced) the overall rebates that [\textit{\textsuperscript{[<]}}] was receiving as they were resulting in the prices of [\textit{\textsuperscript{[<]}}] products being more expensive at [\textit{\textsuperscript{[<]}}] than in the other retailers’ stores. [\textit{\textsuperscript{[<]}}] did this in order to harmonise the prices of its product in the market.\textsuperscript{649}

Value derived from rebates

899. Some suppliers submitted that given the critical role that the national supermarket chains play in the distribution of their products, there are
difficulties for these suppliers to not pay for certain rebates, particularly when they no longer derive benefit for their businesses. It was also alleged that given the sticky nature of the components, as alluded to above, it becomes difficult to remove certain rebates if the suppliers have paid for them in the past.

900. [X] submitted that a key guiding principle in its negotiations with the national supermarket chains is the “value given for value received”. This implied that [X] is able to adjust its rebate packages if it no longer derived value from same. However, this was in contrast from its earlier submissions in which it indicated that once rebate packages are determined, these do not generally change. [X], a mid-sized supplier, claimed that it has to pay for some rebates, such as the advertising allowance, irrespective of whether it realises value from such rebates or not. [X] submitted that the rebates system can place a burden on it as a supplier as these rebates become additional costs that it incurs in order to distribute its products through a particular store. For example, when [X] is obliged to provide services (at its own cost in addition to rebates) such as managing shelf space and supply of marketing material such as gondola’s and front end displays. However, when these costs become inflated and are higher than those of its competitor suppliers it impedes on [X] ability to compete.

901. Suppliers submitted to the Inquiry that they factor in the cost of rebates in the invoice prices charged to the national supermarket chains. This ultimately means that even if the supermarket chains pass on the rebates to customers, the customers are not necessarily better off as lower rebates may also result in lower prices from suppliers.

*Ability to walk away from negotiations*

902. Given the importance of the national supermarket chain channel as a route to market, some FMCG suppliers submitted that they are unable to walk away from negotiations with these customers as they do not have an effective alternative route to market. [X] is an example of such suppliers, stating that
in order to have presence in national supermarkets’ stores and thereby grow its brand, it is required to participate in incentives schemes.\textsuperscript{654} [\texttimes] further submitted that as a result of the countervailing power that national supermarket chains have, it merely accepts whatever prices and terms made by these customers, which often results in the cost of trading becoming significantly higher for [\texttimes].\textsuperscript{655}

903. However, there were also submissions which indicated that there have been some FMCG suppliers that were able to walk away from negotiations with the national supermarket chains. [\texttimes], a mid-size supplier, submitted that it was able to walk away from negotiations with a national supermarket chain when it no longer saw value in a promotion rebate paid.\textsuperscript{656} Similarly, [\texttimes] submitted that when national supermarket retailers ask for rebates that it cannot afford, it simply walks away from the negotiations and doing business with those specific customers. [\texttimes] gave an example of when it parted ways with [\texttimes] because of disagreements on the trading terms.

904. The Inquiry received a submission where the supplier did not walk away from the negotiations but rather avoided them altogether. [\texttimes] made a strategic decision to not do business with the national supermarket chains as they require rebates that [\texttimes] cannot afford to contribute given the small size of its business.\textsuperscript{657} [\texttimes] submitted that it is also not willing to accept unnecessary returns of products due to consumer error, damage etc. as it does not have mark ups that are high enough to accommodate these factors that form part of the trading terms with national supermarkets.\textsuperscript{658} The Inquiry notes that there is an opportunity cost for choosing this strategy, such as not growing the suppliers brand and sales volumes.

\textit{Transparency in relation to rebates}

905. An additional issue that was raised related to the lack of transparency in respect of the rebates paid to the national supermarket chains. While the rebates that are provided to the retailers are well known, the amount is confidential, only known by the suppliers and retailer. Suppliers prefer not to
keep a record of the rebates on the invoice of a transaction for different reasons. One large supplier informed the Inquiry that it prefers rebates that are off-invoice because the supplier’s other customers will not receive the information on how much rebates the other retailers receive. It also prevents copies of such invoices being sent to other retailers.659

906. [X] stated that it refuses to agree to rebates when retailers make requests that are not in accordance with their guidelines of returns on investments. [X] submitted that it refuses even Shoprite, its biggest customer.660 661

The effect of rebates on the final price paid by consumers

907. Having considered the bargaining dynamics between FMCG suppliers and the national supermarket chains, in particular, the Inquiry sought to determine whether the receiving of rebates by retailers could potentially have an impact on consumers. In this regard, the inquiry received submissions from [X] and [X] who sought to demonstrate how the rebates obtained from FMCG suppliers are passed onto consumers in the form of lower prices.

908. Some of the national supermarket chains submitted that a large portion of the rebates they require from the suppliers are used towards lowering the prices of the products to the end-consumer. For example, [X] submitted that approximately 95% of deductions from suppliers go into reducing the cost of goods to the consumer or to the retail outlet.662 Spar submitted an illustrative example for confirm its assertions. This is set out in Table 8.2 below.

### Table 8.2: Example of how rebates contribute the selling price of a product663

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>List Price</td>
<td>R100</td>
</tr>
<tr>
<td>Deal discount 1%</td>
<td>(R1)</td>
</tr>
<tr>
<td>Warehouse allowances 4%</td>
<td>(R4)</td>
</tr>
<tr>
<td>Distribution allowance 2%</td>
<td>(R2)</td>
</tr>
<tr>
<td>Logistics allowance 2.5%</td>
<td>(R2.50)</td>
</tr>
<tr>
<td>Rebate guaranteed 1%</td>
<td>(R1)</td>
</tr>
<tr>
<td>Settlement discount 1.5%</td>
<td>(R1.50)</td>
</tr>
<tr>
<td>Net Cost</td>
<td>R88</td>
</tr>
<tr>
<td>Add markup 10%</td>
<td>R8.80</td>
</tr>
<tr>
<td>Selling price</td>
<td>R96.80</td>
</tr>
</tbody>
</table>

659 [X]
660 [X]
661 [X]
662 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript para 91.
663 See Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript para 91 p. 26
909. The Table 8.2 above shows that a product which is listed by the supplier at R100. Various discounts and allowances totalling 12% (R12) result in a net cost of the product being R88. Spar would then add a markup of 10% resulting in a selling price to the consumer of R96.80.

910. The discounts and allowances that Spar appears to use in order to reduce the final of the product are largely efficiency-based in that they include the warehouse, distribution and logistics rebates. Spar also noted that not all deductions are used to reduce the final price of a product. The type of rebates that fall into this category include the swell or damage allowances, advertising allowances, category management allowances and house brand allowances.664

911. [X] also provided a more tangible example of how it used rebates to lower the price of a 2 litre Sunfoil. This is set out in Table 8.3 below.

| Table 8.3: [X] breakdown of the cost and selling price for sunflower oil |
|------------------------------|-------------------------------|
| Invoice Price                | [X]                           |
| Basic Rebate                 | [X]                           |
| Data Sharing                 | [X]                           |
| Settlement Discount          | [X]                           |
| Advertising Rebate           | [X]                           |
| Quality Assurance            | [X]                           |
| Total Cost                   | [X]                           |
| Selling Price                | [X]                           |
| Margin Percentage            | [X]                           |

Source: [X] submission, Annexure A

912. According to [X], it takes into account the total cost of a product and the required margin to cover expenses whilst maintaining overall profitability when determining the selling price.665 The total cost of the product is the sum of two separate negotiations: first, a negotiation regarding the invoice price; second, the rebate negotiation that is part of the supplier’s trading terms with [X].666

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664 Submission by Spar at the Gauteng public hearing dated 15 December 2017, Transcript p. 16
665 [X]
666 [X]
Table 8.3 suggests that the invoice price for Sunfoil sunflower oil was \([\times]\) per unit. \([\times]\) received deductions of \([\times]\)% in rebates, leading to cost price of \([\times]\). It then added a mark-up of \([\times]\)% to sell the product at a retail price of \([\times]\).

It is important to note, that the Inquiry also received \([\times]\) Sunfoil sunflower oil trading terms from the supplier.\(^667\) The trading terms indicate that \([\times]\) received an additional \([\times]\) for distribution centre allowance. When added to the \([\times]\) rebate reduction reflected in \([\times]\) example, the total rebate reductions received by \([\times]\) were ultimately in the order of \([\times]\). This effectively meant that the actual margin percentage realised by \([\times]\) on Sunfoil sunflower oil is approximately \([\times]\).

From the above, it is apparent that:

1. portions of the rebate are allocated in different ways which may directly or indirectly lead to a lower price to the consumer;\(^668\);

2. national supermarket chains have different ways of allocating their rebates across their business and choose what proportion of the rebates, discounts and other incentive schemes are transferred to the consumer;\(^669\); and

3. national supermarket chains do keep some of the rebates for themselves, as part of their revenue and this is commonly referred to as “banking the rebate”.\(^670\)

This is consistent with the submissions by the FMCG suppliers to the Inquiry. Broadly, these suppliers submitted that it is not clear how the rebates they pay to the national supermarket chains are allocated towards the reduction of the final price paid by end-consumers. \([\times]\) submitted that it is not able to determine how the national supermarket chains allocate the rebates it pays to offset the operational costs they incur.\(^671\) \([\times]\) also confirmed that it is not
certain as to how the rebates it pays are transferred into the prices charged to consumers.\textsuperscript{672}

917. Other suppliers such as [X] appeared to be ambivalent to how the national supermarket chains allocate the rebates it pays.\textsuperscript{673} [X] stated that many national supermarket chains use the rebates and incentives to reduce their front-end margin and rely on the back-end margin to fund the cost of their operations.\textsuperscript{674} [X] further suggested that a proportion of the rebates may be put into the retailers’ profits, however, the effect to the end consumer is unlikely to be significant. Similarly, [X] submitted that retail pricing for its products is at the discretion of the retailer and that it does not consider whether or not the national supermarket chains use the rebate paid to lower the prices charged to consumers\textsuperscript{675}. [X] submitted that it believes that the buyer power of the different national supermarket chains is proportionate to their size and that there is strong competition in the retail sector, which ultimately leads to lower prices for consumers.\textsuperscript{676}

918. Some suppliers such as [X] submitted that they add the rebates that are required by the national supermarket chains to the invoice price at which they sell their products.\textsuperscript{677} \textsuperscript{678} [X] also submitted that in instances where a national supermarket chain requires relatively high rebates, [X] factors the rebate percentage into its invoice price.\textsuperscript{679} [X] submitted that due to the high invoice price it charges a national supermarket chain, the final price paid by consumers is also likely to increase. By way of example, [X] recounted an instance where as a result of the high rebates that [X] required, the price of [X] hand washing powder at the [X] stores were higher than those in other retail stores, suggesting that the rebates were not passed on.\textsuperscript{680} \textsuperscript{681}

\textsuperscript{672} [X] for example, submitted that it works from a net cost and then grosses up the trading terms, so they include the rebates that the retailers charge them in the price they charge the retailers for the goods. [X].

\textsuperscript{673} [X] has also submitted that it adds the rebates given to[X] back onto the selling price it charges them, Refer to [X] has also submitted that the rebates eventually lead to it increasing its selling price, Refer to [X]

\textsuperscript{674} [X] has also submitted that the rebate

\textsuperscript{675} This however led [X] to renegotiating its trading terms with [X] in order for them to be in line with the other retailers and thus maintain uniformity in the prices of their product. This is in line with [X] strategy of harmonising prices of their product and giving their consumers consistency

\textsuperscript{676} [X]
Similarly, [X] and [X] also confirmed that they factor the cost of rebates into the price it charges the national supermarket chains for their products.\(^{682}\)\(^{683}\) [X] submitted that once its margins are squeezed, it will first attempt to improve its efficiencies as much as possible in order for it to remain competitive. However, once it has maximised its efficiencies, the remaining rebate costs have to be transferred to the consumer to make up for the lost margin.\(^{684}\)

[X] submitted that in order for its sales to remain profitable, it adds the cost of rebate to be paid to the selling price to the [X] specifically.\(^{685}\)

_Evidentiary insights on the effects of rebates on consumer prices_

Based on the above, it appeared that there are instances in which the national supermarket chains utilise the rebates they require from FMCG suppliers to reduce the final price paid end-consumers. In addition, it appeared that not all rebates paid by FMCG suppliers are used to offset and reduce the prices paid by consumers and that these rebates are used either (i) allocated to the operational costs of the national supermarket chains or (ii) factored into the margins realised by the national supermarket chains, the so-called banking of the margin. There is a lack of transparency as to which rebates go to reducing the cost of the product on the shelf and which do not.

Further, and more concerning, are the submissions that seemed to indicate that in order to satisfy the requirements of the national supermarket chains, some suppliers resort to factoring in these rebates onto the cost price paid for the products. This effectively implies that, but for the rebates, it is possible the cost price at which the national supermarket chains purchase these products could have been lower. This is of particular concern if the rebates are not passed onto consumers, as this will result in higher pricing on the shelf that would otherwise have been the case with lower rebates.
Large suppliers views on the water-bed effect

923. The waterbed effect predicts that in instances where a retailer is able to extract higher discounts from suppliers, this may lead to a decline in the size of discounts offered to rival buyers.\textsuperscript{686} As a result, rivals may find it increasingly difficult to compete with the large buyer in the downstream market. The waterbed effect, however, may not necessarily lead to end-consumers suffering.\textsuperscript{687} For the waterbed effect to occur, it requires that the decline in demand from rival sales channels allows the supplier to charge a higher price to those channels.\textsuperscript{688}

924. The Inquiry sought to establish, from suppliers of both the national supermarket chain channel and the wholesale channel, whether they have been forced to offer the wholesale channel less favourable trading terms as a result of the of the more favourable terms that are demands by the national supermarket chains. The Inquiry did not receive sufficient information from stakeholders to definitively conclude on the waterbed effect. However, the analysis of the evidence in discussed in Sections 8.5 and 8.6 relating to the differential treatment of national supermarkets and independent wholesalers does raise concerns that the waterbed effect may occur in the grocery retail sector.

Previous investigations by the Competition Commission

925. The Inquiry had regard to the previous investigations by the Commission that have considered the issues of rebates. This was with the aim to highlight that this is an on-going problem that has prevailed over time and that there is a degree of tension regarding the overall effect that rebates and other trading term conditions have on competition at both the retail level and the supplier level.

926. In the British American Tobacco South Africa (“BATSA”) case the Tribunal determined whether BATSA engaged in exclusionary conduct which may have violated sections 5(1), 8(c), and d(i) of the Act. The concern was primarily

\textsuperscript{686} T. Ravhungoni & M. Ngobese, ‘Disappearance of small independent retailers in South Africa: The waterbed and spiral effect of bargaining power’, Conference paper, 2010, p. 4
\textsuperscript{688} Ibid, para 6.30.
around the practice of category management\textsuperscript{689} characterised as the selling of preferential space by retailers to BATSA.\textsuperscript{690} The Tribunal was sceptical by BATSA’s claim that category management was a way for suppliers and retailers to promote particular product categories.\textsuperscript{691} However, the Tribunal did not find there to be harm to competition as a result of BATSA’s involvement in category management, because the foreclosure concerns and resulting harm to competitors was minimal.\textsuperscript{692} The Tribunal did however recognise that the retailers had substantial countervailing power and could be described as “bullying tyrants”.\textsuperscript{693} From the Inquiry’s perspective, the countervailing power observed by the Tribunal could potentially be ascribed to the exercise and abuse of buyer power.

927. The Commission had also investigated a complaint by a wholesalers against an FMCG suppliers in the past.\textsuperscript{694} The alleged conduct specifically related to the preferential treatment in terms of pricing and rebates offered by the supplier to wholesalers belonging to [\textsuperscript{7}]. The Commission investigated the case under sections 5(1), 8(c), and 9(1). The case was non-referred by the Commission because the alleged price discrimination by the supplier was deemed not significant enough to result in a substantial lessening of competition. The Commission also found that the trade agreements entered between the supplier and [\textsuperscript{7}] did not limit [\textsuperscript{7}] from buying from other FMCG suppliers or reselling FMCG’s to other wholesalers or retailers in the downstream market.

928. The Commission also investigated a complaint by a supplier of [\textsuperscript{7}] against two other competing suppliers [\textsuperscript{7}] in which it was alleged that the respondents invoice their products at full price to their clients and in turn grant those clients confidential discounts in the form of promotional discounts and advertising rebates in order to prevent the low prices from being reflected on their invoices.\textsuperscript{695} The Commission ultimately non-referred the case because it found

\textsuperscript{689} See paragraph 844 above for a more detailed discussion regarding Category Management
\textsuperscript{690} The Competition Commission and JT International v British American Tobacco South Africa Case No 05/CR/Feb05 at para 76
\textsuperscript{691} The Competition Commission and JT International v British American Tobacco South Africa Case No 05/CR/Feb05 at para 86
\textsuperscript{692} The Competition Commission and JT International v British American Tobacco South Africa Case No 05/CR/Feb05 at p. 36, para 103
\textsuperscript{693} The Competition Commission and JT International v British American Tobacco South Africa Case No 05/CR/Feb05 at para 295
\textsuperscript{694} [\textsuperscript{7}]
\textsuperscript{695} [\textsuperscript{7}]
that the rebates paid by [X] did not pass the legal definition of an exclusionary conduct as the effects arising in the market for [Y] are likely to be a result of retailers conduct and not the conduct of [X].

929. It is evident from the discussion above that while the Commission and the Tribunal have not been able to definitively prove the anti-competitive effects arising from rebates, the conduct still continues to be of concern at both the supplier level as well as the retail level. In light of the fact that rebates appear to be a persistent feature in South Africa and internationally, there is a need to find potential solutions to the negative impact on competition presented by this practice.

8.7 Preliminary findings on buyer power

The extent to which national supermarket chains have buyer power:

930. The Inquiry found that the structure of the South African grocery retail sector is characterised by a significant number of suppliers of FMCG products and a fewer number of national supermarket chains. Similarly the Inquiry observed that the number of retailers active in the wholesale channel, which includes buyer groups and other independent retailers etc. is significant.

931. The Inquiry also noted that the national supermarkets chain channel is characterised by high levels of concentration, as well as high levels of barriers to entry. These factors combined serve to limit the available alternative outside options for the suppliers in of FMCG. These factors indicate a market that may be conducive to unequal bargaining power.

932. The conduciveness of the grocery retail structure to the exercise of buyer power is further augmented by the fact that the national supermarket chain channel is a critical component of the supplier’s route to market. In this regard, the Inquiry found that in general, the national supermarket chains channel contribute more than [X] of the business of the FMCG suppliers.

933. The Inquiry considered the bargaining dynamics between the suppliers of and the national supermarket chains and between the suppliers and the wholesale channel customers. The Inquiry found that in general the national supermarket chains are able to extract more favourable terms from the suppliers when compared to the other players active in the wholesale channel, regardless of
whether the national chains were the largest customers or not. Suppliers considered the provision of these rebates to be part and parcel of conducting business in the grocery retail sector in South Africa.

934. These factors are indicative of the fact that the national supermarket chains have buyer power when engaging with suppliers, and also relative to the wholesale channel where there is not the same bargaining power (aside from [X]).

The effects of the buyer power on the ability of small and medium sized as well as independent retailers and their buyer groups to compete effectively in the sector:

935. An analysis of the rebates provided by suppliers demonstrates that national supermarket chains are able to extract higher rebates in general relative to wholesale customers. This is partly a function of extracting a higher percentage rebate in instances where the rebate is also provided to wholesale customers, such as a basic rebate. This is reflective of buyer power, but also often reflective of the larger individual volumes purchased by the national chains relative to the smaller and less concentrated buyer groups.

936. However, the difference is also because the national supermarket chains demand rebates to cover some of the costs they incur in putting the product on the shelf, i.e. their retail function. This includes the distribution centre rebate which moves product from a warehouse to the supermarkets, and merchandising allowances for placing product on shelf. Through linking the rebate to these costs and activities, it effectively results in the wholesale channel (specifically Buyer Groups and wholesalers) being denied such rebates as they do not perform these functions. However, their customers, the small independent retailers and spaza shops, do incur these costs and also do not benefit because there is no direct relationship with the suppliers. The net result is that these smaller stores are placed at a disadvantage relative to the national retail chains whose relative costs are reduced through additional rebates.

937. In the context where suppliers believe that they have little choice but to offer the rebates demanded by the national supermarket chains, they are likely to use the lack of bargaining power of the wholesalers to claw back some profits through offering smaller rebates. This may be described as a waterbed effect
or alternatively just thought of as differences in rebates emerging from bargaining power differences. Either way, once the bargaining power is secured by the larger national chains it sets in motion a dynamic that perpetuates that power and market position through being able to negotiate improved rebates relative to competitors.

938. The inquiry found that this issue of discriminatory rebates between the national supermarket chains and the wholesale channel retailers is a significant problem and serves to further entrench the national supermarket chains’ position in the market.

*Impact of buyer power on efficiencies and prices to the final consumer:*

939. The Inquiry found that in the trading terms that the national supermarket chains negotiate with the suppliers there are instances where components and/or characteristics of the trading terms are notionally linked to value provided or productive efficiencies. For example, distribution allowances are said to be more efficient than store deliveries by the supplier. However, in some cases suppliers were unable to determine if there was any exact relationship to a value provided. For instance, some suppliers paid advertising rebates and yet did not benefit from advertising. The Inquiry also found that there are some trading terms that do not appear to be based on any value provided or productive efficiencies but are just in the ordinary course understood to be part of how the grocery retail sector operates in South Africa. This would include basic rebates.

940. The Inquiry found that there are instances wherein the national supermarket chains utilise the rebates they obtain from FMCG suppliers to reduce the final price end-consumers pay. The Inquiry also found that not all rebates paid by FMCG suppliers are used to offset and reduce the prices paid by end-consumers and that these rebates are (i) allocated to the operational costs of the national supermarket chains or (ii) factored into the margins realised by the national supermarket chains, the so-called banking of the margin.

941. However, most suppliers indicated that they are unable to determine if the rebates they offer are used to reduce retail prices or not, as there is no transparency as to how these rebates are used. This is consistent with the other finding that suppliers are not necessarily aware of whether the alleged
value provision that a rebate covers actually goes to generating that value. There is therefore a lack of transparency as to how rebates translate into lower consumer pricing.

942. The Inquiry also received submissions from some suppliers that seemed to indicate that in order to satisfy the requirements of the national supermarket chains, they resort to factoring in these rebates onto the cost price paid for the products. This effectively implies that the rebates may be neutral, insofar as even if they are passed on, the final consumer prices are no lower than they would be absent the rebates. This is because the supplier prices would be lower too absent the rebates. Alternatively, the rebate system may be detrimental to consumers in the case where the retail chain does not pass on the rebates. This is because the higher supplier prices in the context of having to offer large rebates is simply passed onto the consumer and the rebates pocketed by the retailer. The Inquiry is aware of at least one instance where this was the case.

The effects of buyer power on employment:

943. The Inquiry was not able to conduct such analysis due to the unavailability of information.
9 PRELIMINARY FINDINGS AND RECOMMENDATIONS OF THE GROCERY RETAIL MARKET INQUIRY

944. Broadly, the Inquiry found that there is a combination of features in the South African grocery retail sector that may prevent, distort or restrict competition. In particular, there are three principal areas of concern that warrant remedial action, namely long term exclusive lease agreements and buyer power; competitiveness of small and independent retailers; and the regulatory landscape.

Market structure and the Inquiry’s scope of analysis

945. The Inquiry considered the market structure of the South African grocery retail sector and found that it is broadly split between formal and informal segments. In the formal segment, the Inquiry found that there are a number of suppliers of FMCGs and a few national supermarket chains, hybrid wholesalers as well as emerging challenger retailers. In the informal segment, the Inquiry found that there are a number of independent wholesalers and retailers (e.g. general dealers, spaza shops and hawkers).

946. At the supplier level of the South African grocery retail sector, there are a number of firms who manufacture and supply various FMCGs to different retail platforms. These suppliers are of varying size, with a limited number of large multi-product firms.

947. In the formal retail channel, there are about seven national supermarket chains comprised of four incumbent firms and about three emerging challenger retail operations. The incumbents generally have a retail presence across the country whilst the emerging challenger retailers are present in specific parts of South Africa. The broader wholesale and independent retail channel is made up of a number of independent firms including wholesalers, general dealers, buyer groups (who represent wholesalers, among others), right down to spaza shops.

948. There is very limited information regarding the levels of concentration in the broader South African grocery retail sector. However, what is clear is that the supplier level of the value chain is characterised by the presence of a large number of players active in the various sub-sectors with a few large multi-product firms. Data from StatsSA indicates high levels of concentration in the
formal retail channel, the national supermarket chains, namely, Shoprite, Pick n Pay, Spar and Woolworths collectively have a market share of 72%.

949. The levels of concentration in the formal retail channel, in particular, are also reinforced by the high levels of barriers to entry that seem to exist at this level of the value chain. It is common cause that entry at this level requires the acquisition of land and buildings which necessitates significant capital expenditure in order to make entry, the realisation of significant economies of scale and scope, the establishment of an extensive distribution network in order to be competitive, and compliance with stringent regulatory requirements in order to remain operational. The Inquiry also found that the formal segment is characterised by high barriers to entry and expansion at the supplier level of the value chain.

950. The Inquiry also established that the national supermarket chains are vertically integrated in that they act as both distributor and retailer of groceries. This vertical integration appears to confer some competitive advantage as there is recognition that such strategies yield efficiencies in the distribution system and savings for suppliers. This vertical integration does not appear altogether unique to the national supermarket chains as there are some buyer groups that have also adopted this strategy and established their own central distribution centres while some of the buyer groups have members who also own distribution centres.

951. The above entry and competitive conditions are applicable to all players that are active in the formal retail channel. Similarly, the conditions of entry and competition that prevail in the informal retail channel are also similar irrespective of where these players are located.

952. It is the view of the Inquiry that the market structure of the South African grocery retail sector, as alluded to above, creates a conducive environment for a significantly altered bargaining framework between the national supermarket chains and their suppliers (be it suppliers of FMCG products or property developers). This altered bargaining framework leads to distortions in competition between the national supermarket chains, emerging challenger retailers and those firms that are active in the wholesale, independent retail channel.
From a customer perspective, the purchasing decisions (underpinned by demand-side considerations) made by consumers across LSM groups tend to be informed by the same factors, namely price, availability, convenience or quality. It is for this reason that low income households, for example, appear to rely on both spaza shops and the national supermarket chains for their grocery needs. For those customers that reside in non-urban areas, the national supermarket chains and spaza shops serve a useful substitutable and complementary purpose. It seems that consumers shop at spaza shops (where they generally spend less than 40% of their budget) for the convenience of location and trading hours relevant mostly for day-to-day items, whilst they shop at the national supermarket chains for weekly and monthly shopping where price, variety, quality and packaging size matter. In non-urban areas, spaza shops serve a useful convenience role (akin to that of convenience stores in the garages located in the urban areas).

This consumer dynamic is expected given that there is acknowledgement that asymmetrical competition dynamics exist between large national supermarket chains and independent grocery retailers in the informal retail channel. Consumers may find that large national supermarket chains are substitutes for independent grocery retailers under certain conditions, particularly where a large national supermarket chain is able to service the convenience aspect that spaza shops, for example, have traditionally filled.

With this background in mind, the scope of analysis adopted by the Inquiry was premised on the view that the products and services provided by grocery retailers (both formal and informal, in their respective categories) are provided under similar entry and competitive conditions in South Africa. As a result of these considerations, the scope of analysis for the Inquiry is the broad grocery retail sector in South Africa.

We now turn to the findings of the Inquiry in light of its objectives.

*Long-term exclusive lease agreements, buyer power and their distortions on competition between grocery retailers*

First, when viewed within a bargaining framework, there appears to be a sustained pattern of behaviour by the national supermarket chains and their
counterparts (whether property developers or suppliers of FMCG products) that:

957.1 enables or results in the exercise of market power by the national supermarket chains to the exclusion of smaller, independent stores as well as emerging challenger retailers such as OBC, Choppies, Fruit and Veg and Food Lovers Market; and

957.2 creates a conducive environment for the exercise of buyer power, with its concomitant distortion of competition between the national supermarket chains, wholesalers and independent retailers.

958. This pattern manifests itself in respect of long-term exclusive leases in shopping centres and the payment of rebates by suppliers to the national supermarket chains, both of which have the effect of:

958.1 reinforcing the levels of concentration in the formal retail segment;

958.2 entrenching incumbency by the national supermarket chains; and

958.3 raising barriers to entry for small and independent retailers and thus removing a crucial element for competition in the retail ecosystem i.e. emerging challenger retailers.

959. Cumulatively, the exclusionary effects arising from this pattern have resulted in restricted consumer choice.

The impact of long-term exclusive lease agreements on competition in the grocery retail sector

960. The bargaining power possessed by the national supermarket chains (as anchor tenants) manifests itself in the requirement for exclusivity in lease agreements. For example, while some of the national supermarket chains alleged that the financiers of property developments required such exclusivity, the Inquiry established that this is not the case.

961. The Inquiry established that financiers typically require property developers to secure national supermarket chains as anchor tenants that will remain operational in the development for the duration of the loan repayment period, which is usually 10 years before they are willing to finance a development.
962. The Inquiry found that national supermarket chains (as anchor tenants) exploited this requirement by requiring exclusivity, claiming that this is to protect their investment and compensate them for accepting the risk of paying rent for 10 years, irrespective of the success of the mall.

963. The Inquiry established that there is a pattern of sustained use of long-term exclusive lease agreements by the national supermarket chains in shopping centres across South Africa. The pattern of these long-term exclusive lease agreements appears to have persisted over long periods of time with the initial lease period being generally 10 years. When regard is given to the renewal clauses in these lease agreements, some of these contracts could endure for a period of at least 30 years.

964. The Inquiry found that given the high levels of concentration in the formal retail channel, which the incumbent national supermarket chains account for a significant portion thereof, the foreclosure effects that arise as a result are significant. Whilst the historic focus of the effect of exclusive leases was on competition between the national chains, the Inquiry has focused on the effect of such leases on the entry and expansion of smaller challenger retail chains and independent stores, including specialist retailers. The Inquiry has found that exclusive leases have substantially hindered the emergence of challenger retail chains to the main four national retailers, and also served to prevent economic participation by small independent retailers, including specialist retailers. This was confirmed by the evidence gathered by the Inquiry.

965. The Inquiry established that the vast majority of Shoprite and Spar leases, and a majority of Pick n Pay leases, contain exclusivity provisions. Woolworths leases do not contain explicit exclusivity provisions. However, the Inquiry found that its leases do incorporate aspects that the Inquiry considers to have similar effects to exclusivity provisions. A number of small independent retailers and the emerging challenger retailers brought forth evidence of their inability to access the shopping centre environment across the country as a result of the long-term exclusive lease agreements. Property developers also affirmed the view that these long-term exclusive lease agreements foreclose the would-be entrants from entering the shopping centre environment in competition with the national supermarket chains. Woolworths also acceded to the foreclosure effects that arise as a result of these exclusive lease agreements.
Much has been made, by the national supermarket chains, of the fact that the emerging challenger retailers or small specialist stores could and are able to grow outside of the shopping centre environment. The Inquiry also established that these emerging challenger retailers and independent stores have been forced to seek alternative avenues in order to compete in the South African grocery retail sector. The Inquiry finds it concerning that their growth and competitive ability has been substantially limited because of exclusion from the shopping malls. Notably, the Inquiry established that consumers generally spend a significant portion of their grocery expenditure in shopping centres. It is this custom that small and independent retailers and the emerging challenger retailers are deprived of as a result of being foreclosed from shopping centres.

The Inquiry is concerned that the observed pattern of the use of long-term exclusive lease agreements serves to sustain and entrench incumbency and the current levels of concentration in the South African grocery retail sector. In essence, current exclusive leases prevent emerging chains from developing to the point that they can suitably play the anchor tenant role in new developments, which means the same four retail chains are the only candidates, perpetuating and entrenching their cumulatively dominant position. Furthermore, given the slightly different LSM or consumer targeting of these chains, there would typically only be a couple that might be appropriate for any single new development given its location and target market.

The Inquiry found that the foreclosure effects arising from the use of exclusive long-term lease agreements are also aided and abetted by the presence of usage clauses stipulating the purpose of the space that is being leased and limitations to the landlord’s right of letting the rental space. In this regard, the Inquiry established that the usage clauses essentially stipulate not only its current business activities but also the national supermarket chains could potentially engage in at the shopping centre. For example, this goes as far as including the sale and hire of video recorders and accessories, electronics and communications, for example.

The Inquiry found that this conduct is akin to the national supermarket chains carving out potential product markets they wished to enter into in the future without explicitly prohibiting property developers from leasing out rental space
to suppliers of these particular products. The Inquiry was provided with evidence of instances where retailers in these carved out potential product markets would be allowed to operate in the shopping centre environment. However, their tenancy would be immediately terminated by the property developers once the national supermarket chain decided to expand into these carved out product markets. Some of the limitations to the landlord’s right to let included the requirement that property developers must consult the national supermarket chains on the tenant mix and any future developments that may impact on same by a property developer. The usage clauses further stipulate the location and size of potentially competing stores that could be allowed in a shopping centre.

970. The national supermarket chains provided a number of reasons in justification of long-term exclusive lease agreements. These justifications ranged from the view that exclusivity is aimed at compensating the national supermarket chains for having committed to a long-term agreement with its concomitant success risk factors, to compensation for the investments made.

971. The Inquiry found that the justifications provided by the national supermarket chains are not compelling for a number of reasons. For one, this is because, although historically the national supermarket chains did not possess sufficient information and tools to gauge the economic viability of the areas they were entering into and thus relied on exclusivity as a means of protecting themselves, this is no longer the case. With the proliferation of information and the sophistication of economic tools, national supermarket chains are not only able to assess realistically the viability of opening a store in a particular location, evidence before the Inquiry indicates that a detailed and intensive viability assessment is made by these national supermarket chains before entering into a lease. Furthermore, risk is also reduced for these chains through negotiating low rental rates and transferring more of the development costs onto other tenants, reducing the need for exclusivity clauses. However, most importantly, all businesses take on investment risk as part of doing business and the ability of the national retail chains to transfer this risk to property developers and other tenants simply reflects their considerable market power. After all, other tenants are not able to mitigate such risks in the same manner.
972. The Inquiry found evidence showing instances in which the national supermarket chains waived exclusivity provisions in order to allow competitors (including other national supermarket chains, specialty stores and in limited instances, the emerging challenger retailers) to access the shopping centre environment. Whilst some national supermarket chains are becoming more lenient regarding the enforcement of exclusivity against small and specialist stores, the Inquiry remains concerned that they still require limitations on the size of these competing line tenants. The Inquiry found that the restrictions on size have the effect that these competing line tenants cannot effectively compete and grow their businesses beyond the required floor space imposed by the national supermarkets.

973. Similarly, while in some large shopping centres there has been a relaxation of the enforcement of exclusivity provisions, such that competing anchor tenants may be present, there is very limited evidence of the emerging challenger retailers such as OBC, Fruit and Veg City, Liquor City and Choppies, being allowed to enter shopping centres. This may be because they lack the negotiating power to force entry into larger malls in competition with the anchor tenant, or a more deliberate strategy by the current dominant chains to keep such emerging challengers small by denying them entry specifically. Entry by these emerging challenger retailers into the formal grocery retail segment in South Africa has largely been outside shopping centres and with time, for a very few such as Food Lovers Market and Fruit and Veg City, into the shopping centres. The Inquiry found that this conduct effectively maintains the incumbency of the national supermarket chains in the shopping centres and retail supermarket trade more generally given the importance of shopping centres for consumer shopping expeditions.

974. The national supermarket chains tendered undertakings to the Inquiry in terms of which they sought to waive the enforcement of exclusivity provisions in their lease agreements. These waivers had conditions ranging from the type of products sold (in the case of speciality stores) to the size (both in terms of revenue and lease space) and location of the potential competitors concerned. The Inquiry found it challenging to establish consensus between the national supermarket chains in respect of the conditionalities for the waiver of exclusivity provisions.
In summary, the Inquiry found that the pattern of the sustained use of exclusive long-term contracts has not only restricted competition and given rise to consumer harm, but it also goes against the objectives of the Act which seek to, amongst others, to realise inclusive economic participation. The Inquiry is particularly concerned that these practices have effectively excluded widespread participation in the retail sector in South Africa where barriers to entry should be low and participation possible. This fundamentally undermines the objectives of the Competition Act and broader national economic policy aimed at facilitating transformation and economic inclusion.

In addition, the Inquiry was made aware of allegations that line tenants are not only affected by exclusive lease agreement clauses but by other terms that property developers enforce on them such as high rental costs. In this regard, it was argued that property developers are forced to transfer costs for managing the shopping centre onto the line tenants to appease the requirements of the anchor tenants for low rental rates. This is akin to the waterbed effect identified in academic literature. The Inquiry is concerned that the high cost of rental for the smaller tenants limits their ability to effectively compete and grow their businesses. This applies to existing tenants that are not direct competitors to the national retail chains due to the exclusive leases, but would also apply to smaller specialist stores or challenger chains in the event that they gained entry in future. The Inquiry is therefore concerned that simply eliminating exclusive leases may still not achieve greater levels of competition and economic participation if these businesses are saddled with high rental costs relative to the national chains.

*Buyer power and its impact on competition in the South African grocery retail sector*

The Inquiry found that the presence of buyer groups in the South African grocery retail sector has beneficial competition outcomes for members (generally traditional and hybrid wholesalers as well as independent grocery retailers), who largely operate in the informal retail trade segment. In particular, buyer groups enable wholesalers and independent retailers that lack scale economies to be able to amass their purchasing power in bargaining with suppliers. The Inquiry established that buyer groups play a pivotal role in improving the competitiveness of wholesalers and independent retailers.
It is against this finding that the Inquiry assessed the bargaining dynamics between the suppliers of FMCG products and the national supermarket chains as well as the buyer groups. The Inquiry sought to determine whether the exercise of buyer power by the national supermarket relative to that of buyer groups and wholesalers serving smaller retailers had an effect on competition at the grocery retail level of the value chain.

The Inquiry found that the structure of the South African formal grocery retail segment is characterised by factors that are conducive to the existence of an unequal bargaining framework between the national supermarket chains and suppliers, especially relative to wholesalers and buyer groups. The Inquiry established that the national supermarket chains are a critical route to market for the suppliers of FMCG products, based on revenue and volume contributions. With few exceptions, there was evidence in relation to the inability of FMCG suppliers to walk away from negotiations with national supermarket chains and the rigidity of trading terms, particularly as it relates to the composition and quantum of same. In this context, the national supermarket chains are able to extract more favourable trading terms than those customers in the informal segment (i.e. buyer groups, wholesalers, independent retailers etc.).

The findings of the Inquiry suggest that there is no clear rationale that explains the difference in the quantum of the rebates paid to the national supermarket chains in comparison to those obtained by those customers in the informal segment other than simply differential buyer power. In some instances, even where the national supermarket chains were not the largest customers, they were still able to extract better and more favourable trading terms than buyer groups, who would be the larger customers in those particular instances. This differential treatment is indicative of the exercise of buyer power.

In particular, the national retail chains have moved to demanding rebates to cover the costs of certain retail store level activities, such as merchandising, store openings and refurbishment, advertising and promotion, access to shelf space and category management, etc. The primary discriminatory effect of these rebates is that they are by their very nature not made available to wholesalers and buying groups servicing the independent retailers, because the wholesalers do not serve the retail store function given their lack of vertical integration. The implication is that independent retailers, which also incur
these self-same costs as the national retail chains, do not benefit from similar rebate categories and therefore are placed at a material disadvantage to the national chains.

982. The Inquiry is thus of the view that these rebates are more favourably offered to the national supermarket chains, which resultantly reduce their costs of offering FMCGs and thereby maintain their market positions and providing an unfair competitive advantage over the independent retailers. The costs of the independent retailers, owing to their lack of vertical integration with wholesalers, are not reduced to the same extent. The independent retailers incur all these costs with no rebates, even in instances where they otherwise qualify for the rebates by virtue of conducting the activities to ultimately place product on shelf like the national supermarket chains. This ultimately impedes these independent retailers’ ability to compete and grow.

983. Furthermore, whilst some of these rebates paid by FMCG suppliers appeared to be underpinned by productive efficiencies (such as in the case of distribution allowances, for example), there were some which did not appear to have any efficiency or beneficial justification other than simply a reflection of buyer power by the national chains. In this context, the Inquiry found mixed evidence about the pass-through of rebates to the final prices paid by consumers. This is particularly concerning given that some suppliers factor in the cost of these rebates onto the price paid by the national supermarket chains for the products. This could potentially have a price-raising effect on the cost of products to the detriment of consumer welfare where such rebates are not passed through. Further to this, there is a lack of transparency regarding back-end margins.

984. The Inquiry is of the view that cumulatively, the South African grocery retail sector possesses features and characteristics that are conducive to the exercise of buyer power and the indicative evidence obtained through the rebate analysis attests to the exercise of such power to the detriment of independent retailers and smaller retail chains, and potentially to consumers too.
Shifts in the competitive landscape and the impact on small and independent retailers

985. The Inquiry noted that spaza shops and independent retailers in peri-urban areas developed at a point in time where, as a result of the apartheid regime’s spatial policies and construction of the economic landscape, there was no closer competition to contend with both from national supermarket chains nor foreign nationals in the immediate vicinity. Subsequent to democracy, this economic landscape has been slowly changing in these areas.

986. In particular, the Inquiry found that the entry of the national supermarket chains into township areas has shifted the competitive landscape in those areas such that the observed decline or exit of spaza shops and independent retailers can partly be attributed to this phenomenon. The Inquiry also found that as spaza shops and independent retailers were grappling with this changing competitive dynamic, there was, simultaneously, increasing competitive pressure from foreign-owned spaza shops that have displaced locals in some cases.

987. The Inquiry found that spaza shops and independent retailers serve a critical role in the grocery retail ecosystem, particularly for those that reside in peri- and non-urban areas. Despite the lower prices offered by supermarket chains, spaza shops offer convenience in terms of longer trading hours, proximity of location and also offer products in smaller quantities making them affordable to poor consumers who would not otherwise afford to purchase bulk products from supermarket chains. This convenience role is akin to smaller convenience stores of the national chains and petrol station forecourts that have proliferated in wealthier areas. As a result, there continues to be a role for spaza shops despite the entry of supermarket chains into these peri-urban and non-urban areas.

988. Further, and most importantly, the Inquiry is of the view that spaza shops and independent retailers are a crucial tool for the realisation of the objectives of the Competition Act. Specifically, spaza shops and independent retail operations are part of the suite of avenues available for the achievement of broader and inclusive economic participation given the lower entry barriers into these types of businesses. This also provides the potential to build one’s own business and accumulate capital rather than simply engage in salaried employment.
989. It is the view of the Inquiry that the entry of national supermarket chains into townships and rural areas has had both negative and positive effects. From a consumer perspective, their entry has provided closer proximity to the source of weekly and/or monthly shopping activities given the range and lower pricing of larger supermarket chains. Historically consumers from township areas would have travelled greater distances to frequent these chains for such shopping expeditions, incurring greater costs in terms of time and transport money.

990. From a small and independent business perspective the evidence is often mixed. The more convenient location of the national supermarket chains means that some convenience shopping which would have occurred at the spaza shops has now shifted to the larger retail chains, negatively affecting the spaza shops. The Inquiry established that overall, there has been a decline in the number of small independent grocery retailers operating in non-urban areas following the entry of national supermarket chains in these areas. However, the shorter shopping hours, single location on the periphery of the peri-urban areas and big box format means that these supermarket chains have not displaced all convenience shopping, especially for smaller daily top-up shopping by commuters that may leave and return outside of shopping hours or those located further from the supermarket store.

991. This shift in the competitive landscape has required that local spaza shops respond by adapting their own business models and even locations within peri-urban areas in order to continue to be relevant to consumers in those areas. This may include longer opening hours or a change in products stocked in order to fulfil the convenience role more appropriately. Location also becomes more important. This may involve moving further from the new supermarket location, but the Inquiry also found that those spaza shops and independent retailers that are located closer to the shopping centres have sometimes benefitted from the increased foot traffic in that area.

992. The challenges from a changed competitive environment due to large supermarket chains entering peri-urban areas for local spaza shops are compounded by the additional challenge of new entry by foreign-owned nationals into these same areas. The Inquiry found that local spaza shops also face competition from a growing number of foreign owned spaza shops and independent retailers that are generally perceived to be cheaper than most
local-owned spaza shops by consumers. As a result, foreign owned shops often perform better in comparison to local-owned small businesses, especially in the context of the broadening footprint of national supermarket chain stores in these areas where changes to business models are required.

993. The Inquiry found that there are numerous factors that are perceived to contribute to the success of foreign owned spaza shops, based on consumer surveys, targeted engagements and public forum discussions. These factors, amongst others, included efficiencies in the procurement of goods from cooperative arrangements (both horizontal and vertical), greater convenience through longer trading hours, stock diversity and product packaging, but also greater price competition from trading in counterfeit goods.

994. The Inquiry found that foreign owned spaza shops and independent retailers in many instances employ horizontal (operational ties) and vertical (spaza shops linked to wholesalers) cooperative strategies to compete. At a horizontal level, the Inquiry established that separate but allied retail outlets share opportunities for bulk purchasing and synergizing deliveries as well maintaining ‘multiple retail outlets’ under central control. From a vertical perspective, the Inquiry found that foreign owned spaza shops may in some cases be linked to specific wholesalers, some of which are also foreign owned. This provides these spaza shops with the opportunity for preferential pricing. In contrast, most local-owned spaza shops and small grocery retailers are family owned and operate on a standalone basis. This approach to conducting business not only inhibits local-owned businesses from raising capital for expansion but also deprives them of the ability to realise economies of scale in respect of purchasing and transport costs.

995. In relation to stock diversity, product choice and packaging, the Inquiry found that foreign owned spaza shops offer customers a wider variety of products and volumes whilst local spaza shop owners admitted that their shops have less stock in comparison. This effectively means that local owned spaza shops are not able to fully cater to the demand from customers as opposed to the foreign owned spaza shops.

996. The Inquiry found that trade in counterfeit goods confers some form of price advantage to those that engage in the sale of such goods as opposed to those competitors that do not. Further to the unfair competitive advantage, there are
broader negative ramifications for the fiscus in terms of lost tax revenue and the increased burden that is likely to be placed on the public healthcare sector. The Inquiry found that while local-owned spaza shops also traded in counterfeit products, the sale of such goods appeared to be more prevalent in foreign owned spaza shops. This unfair competitive advantage was also confirmed by the observed trends in consumer preferences as they appear to prefer foreign owned spaza shops due to, amongst others, lower prices.

997. Having regard to the emerging competitive pressures from both the national supermarket chains and the foreign nationals faced by small and independent retailers, the Inquiry noted that South African spaza shops and independent retailers have struggled to adapt to the changes in the competition dynamics. The Inquiry found that the challenges facing spaza shops in particular, and which are said to have contributed to the difficulty to adapt to changes in competition, include amongst others:

997.1 The inability to adequately tap into the economies of scale and scope in procurement offered by buyer groups and larger wholesalers due to the smaller and informal nature of these retailers relative to even independent retail stores that make use of buyer groups. The lack of cooperation amongst South African spaza shops unlike those of foreign nationals also prevents them from taking advantage of the opportunities for bulk buying at more competitive prices.

997.2 The inability to tap into credit markets due to again the small and informal nature of these businesses. This feature means there is typically a lack of verifiable performance information and systems in place which result in information asymmetries with potential providers of credit, including the buyer groups but also financial institutions and development finance providers. The lack of credit limits the ability to ensure greater stock levels and variety to meet the convenience requirements of customers. The lack of social networks of cooperation as an alternative such as those used by foreign-owned shop owners also closes out this alternative.

997.3 The need for greater levels of professionalisation and improved business management skills in the context of more sophisticated
competitors entering these areas of operation and the need to adapt the businesses to such competition.

998. In addition to the challenges above, the Inquiry found that the regulatory environment is not conducive to supporting the sustainable competitiveness of these micro-enterprises in competition to supermarket chains, and in many cases actively undermines their ability to respond to the changing competitive environment.

999. For example, the Inquiry found that local authorities impose restrictive apartheid-era trading times that are at odds with the convenience role that spaza shops and independent traders are best positioned to target. This is especially important in the context of the entry of supermarket chains as the spaza shops need to position themselves firmly as convenience options in order to survive and thrive. This also creates an asymmetry between those shops willing to not comply with the trading hours and/or pay enforcement officials to ignore the lack of compliance. Such shops are able to gain an advantage in servicing consumer demand to the detriment of those that comply, which also undermines the transition of these businesses from informal to formal enterprises.

1000. Similarly, in relation to liquor regulation, the Inquiry found that there is differential treatment of small and independent traders relative to the national supermarket chains for which longer trading hours are provided for. This enables the national supermarket chains to be able to service demand in those periods in which the small and independent traders are not able to trade. This confers upon the national supermarkets a level of competitive advantage that is not available to the small and independent traders.

1001. In addition, the Inquiry found that the regulatory processes for trading are burdensome for small traders, particularly in relation to zoning and land use. The Inquiry found that the cost and time constraints associated with rezoning of property, depending on the location of the land, are onerous for micro-enterprises and could have a negative impact on potential entrepreneurs. This is especially in the context where shop owners may need to relocate in response to the entry of supermarket chains and would require new sites zoned for business use.
1002. More generally on zoning and trading hours, the Inquiry found that many municipalities seek to use these laws to push out informal traders in favour of the supermarket chains and formal independent stores which they favour because they see them as contributing to municipal taxes. However, the Inquiry notes that the informal businesses also contribute to municipal development and the welfare of their residents in terms of providing economic participation for their owners and convenient shopping for their customers. In addition, these businesses can only be developed into formal tax-paying operations if they are provided with the necessary support from municipalities to develop and grow.

**Recommended remedial action**

1003. Having regard to the foregoing, the Inquiry recommends a number of remedial actions that may rectify the circumstances identified above that have the effect of preventing and distorting competition in the South African grocery retail sector, and inhibiting the effective participation of South African spaza shops and independent retailers in this sector.

1004. Broadly, the required remedial actions comprise a suite of interventions ranging from (i) changes in firm behaviour in order to ameliorate the distortions in competition in relation to long-term exclusive lease agreements and buyer power; (ii) support mechanisms to bolster the sustainable competitiveness of small and independent retailers; and (iii) modernisation of the regulatory landscape in order to create a conducive environment for the optimal functioning of competition.

1005. **Exclusive leases.** In order to remedy the distortions to competition as a result of the use of long-term exclusive lease agreements, the Inquiry recommends the following:

1005.1 As of the date of publication of this report, the incumbent national supermarket chains (Shoprite, Pick n Pay, Woolworths, Spar (including their subsidiaries) and their successors must, with immediate effect, cease from enforcing exclusivity provisions, or provisions that have a substantially similar effect, in their lease agreements against speciality stores. This also applies to other provisions which serve to
restrict the product lines, store size and location within the shopping center for speciality stores.

1005.2 No new leases or extensions to leases by the incumbent national supermarket chains may incorporate exclusivity clauses (or clauses that have substantially the same effect) or clauses that may serve to restrict the product lines, store size and location of other stores selling grocery items within the shopping center.

1005.3 The enforcement of exclusivity by the incumbent national supermarket chains (Shoprite, Pick n Pay, Woolworths, Spar (including their subsidiaries)) and their successors as against other grocery retailers (including the emerging challenger retailers) must be phased out within three years from the date of the publication of the Inquiry report.

1006. These recommendations permit the phase out of existing exclusive agreements where appropriate whilst setting the platform for a future where such agreements do not exist to restrict entry and expansion by specialist and emerging retail chains into shopping malls nationally.

1006.1 The immediate cessation of exclusivity as against speciality stores is warranted given that these restrictions have serious detrimental effects on broadening participation in the economy by SMEs and firms owned by historically disadvantaged persons. The elimination of such exclusivity is also unlikely to severely impact on the operational viability of national supermarket chains given their small and specialist nature.

1006.2 Regarding existing lease agreements, the Inquiry was careful to avoid any commercial upheaval (for both the national retail chains and property developers) that could result from an immediate cessation of such conduct. This alignment with the contracting between anchor tenants and property developers also means there is likely to be less disruption to those contractual arrangements.

1006.3 Moving forward, the Inquiry sees no possible efficiency rationale that outweighs the exclusionary effect of exclusive leases. South Africa is already endowed with ample shopping mall complexes, and there are plenty of potential anchor tenants willing to take on the risk of new
developments if they add value to the community without having to require exclusivity.

1007. Having regard to the foregoing, the Inquiry sought to provide a comprehensive package of remedial actions to facilitate the implementation of the recommendations set out in paragraph 66 above. These remedial actions include the development of a mandatory code of conduct as well as the establishment of an Ombudsman to oversee the implementation thereto. This approach is ideal as opposed to dealing with such conduct on an ad hoc case by case basis.

1008. As such, the recommendations set out in paragraph 66 above must form the basis for an agreed industry code of conduct in order to ensure that they apply equally to all national chains. This will provide each national chain the comfort that they will not be disadvantaged by signing up to the code because their competitors cannot then gain an unfair advantage through non-compliance.

1008.1 Whilst a voluntary industry code is desirable from an expediency perspective, and some progress has already been made in this regard, the Inquiry also recommends legislative or enforcement action if this is not feasible.

1008.2 Failing a voluntary code, the Commission should initiate and investigate the collective exclusionary effect of exclusive leases nationally by the supermarket chains on emerging retail chains and the participation of SMEs and firms owned by historically disadvantaged persons.

1008.3 In addition, the Inquiry also recommends that the Department of Trade and Industry establish a regulatory framework to oversee the grocery retail sector, including the appointment of an ombudsman to act as arbitrator in disputes, in order to deal with the full range of issues highlighted in this Inquiry including that of exclusive leases. This is because the Commission itself is unlikely to be able to respond timeously to the sheer volume of likely disputes. The regulatory framework should cover all discriminatory conduct in favour of the national retail chains including exclusionary lease practices, differential rental rates and escalations, as well as store location within
shopping malls. Specifically, the ombudsman will act as an arbiter in disputes between retailers and property developers on such matters. The ombudsman will also be responsible for ensuring that all customers or suppliers are treated in a fair and transparent manner.

1009. **Buyer power and rebates.** Rebates are an entrenched business practice that may be difficult to move away from without material commercial upheaval for both supermarket chains as well as certain suppliers. The Inquiry thus invites further submissions on potential solutions that might enable a movement towards a more non-discriminatory outcome but which also recognizes the current business model reliance on such rebates. Possibilities may include:

1009.1 A more immediate move towards non-discrimination in terms of rebates that are common across retail and wholesale customers;

1009.2 The gradual removal, rationalization or limitation in size of those rebates only provided to the national supermarket chains and not wholesalers and a shift of such rebate values to rebates common across the two groups where non-discrimination principles would apply; or alternatively

1009.3 The gradual extension of some of those rebates currently only provided to the national supermarket chains to wholesalers or buyer groups (or directly to their members) as well.

1010. The remedial action that is ultimately identified must form part of a mandatory Code of Conduct for Stakeholders in the grocery retail sector that will fall within the scope of a single government implementing department and Ombudsman.

1011. The Code of Conduct will provide guidelines in line with any ultimate remedial actions identified to ensure a non-discriminatory and fair treatment on rebates.

1012. The Ombudsman will be responsible for:

1012.1 monitoring compliance with the code of conduct and handling disputes between the suppliers and retailers.

1012.2 Notifying the Commission of any cases it believes there to have been an abuse of buyer power or discriminatory treatment which violates the Competition Act.
1013. It must be noted that this is not an outright prohibition of rebates as the Inquiry is only concerned about those rebates that give rise to differential treatment without objective justification between national supermarket chains and small and independent retailers.

1014. Once more, the Inquiry is of the view that an agreed industry code of practice on rebates is desirable because it can be implemented quickly and provide comfort to each single competitor that it will not be put to a competitive disadvantage by agreeing whilst others do not. It also more easily facilitates action across different market participants such as suppliers and retailers.

1015. **Lease rental rate differentials.** The Inquiry is mindful that the elimination of exclusive leases may still not have the desired effect of enhancing competition and economic participation if rental rates are highly discriminatory in favour of the national retail chains. For this reason, changes need to occur to the manner in which rental rates are set and the extent of differentials that currently exist in shopping malls across the country.

1016. However, the Inquiry is also mindful that bringing about changes in the rental models of shopping mall developments is likely to result in substantial commercial upheaval for both the national retail chains as well as the property developers in the short term. This suggests that if change is to occur then a suitable transition model will need to be developed whereby, there is a glide path to a more equitable rental model. The Inquiry also recognises that this too will require industry level buy-in or regulation in order to ensure that no single developer or supermarket chain gains a competitive advantage through non-compliance, threatening the compliance of others in the process.

1017. Given these difficulties, the Inquiry intends to embark on further consultations with property developers, supermarket chains, emerging retail chains and independent stores in the next phase in order to identify a workable transition model. In addition, the Inquiry will also engage with the Department of Trade and Industry as to how such a transition model may fit within the regulatory framework for grocery retail envisaged above. If these discussions fail to be constructive, the Inquiry recommends that the Commission initiate and investigate the exclusionary effects of such rental differentials as against the larger property developers whose practices have a more widespread impact on the market. This may be under the new section 9(1)(a)(ii) or the existing
section 5(1) of the Competition Act no 89 of 1998 (as amended) (the “Competition Act”) where the amendments now waive the yellow card for offences. Alternatively, this may be explored under the indirect effect of buyer power as against the national retail chains under the new section 8(4) of the Competition Act.

1018. **Competitiveness support for spaza shops and small independent retailers.** In order to foster and ensure inclusive economic participation as envisaged in the objectives of the Competition Act, the Inquiry is of the view that there is a need for a suite of interventions aimed at improving the competitiveness of spaza shops and independent retailers beyond the improvement in pricing of supply to wholesalers and access to trading areas as outlined above.

1019. The Inquiry has identified a number of areas of improvement which are necessary in order to achieve this. These range from (i) the need for improved bargaining and procurement processes; (ii) removal of information asymmetries in order to improve access to credit finance; and (iii) providing support for the enhancement of business skills.

1020. The Inquiry is of the view that there already exist numerous market driven initiatives and business models that already provide greater purchasing power and credit to certain independent retailers, and which could form the basis for support for smaller and informal businesses if given the necessary support for innovation around their business models.

1020.1 The Inquiry has determined the success and beneficial outcomes of buyer groups in aggregating the purchasing power of small and independent retailers as well as providing credit finance. However, these groups rarely reach down to the smaller informal spaza shops due to their size and informal nature. There is a need to strengthen such platforms and expand the scope of their operations to include spaza shops.

1020.2 The Inquiry has also noted various initiatives to improve the business skills and incorporate spaza shops into existing formal networks to enhance their viability. These include the partnerships between the Free State Department of Economic Development, Small Business
Development, Tourism and Environmental Affairs and BiBi Cash and Carry; the eSpaza Sum and Big Save initiative, and the Gauteng Department of Economic Development initiative along with Pick n Pay. Whilst many of these have faced challenges and created some unintended consequences, the process of exploring different models has provided important lessons as to what may or may not work.

1020.3 Lastly, there are also emerging logistics and distribution businesses seeking to find a niche in providing stocking and support services to spaza shops. These businesses too are innovating in order to find workable commercial models that might support such efficiency-enhancing services.

1021. Accordingly, the Inquiry recommends that the best approach is for the single implementing department (as the lead) together with development finance institutions (“DFIs”) such as the Industrial Development Corporation (“IDC”), Khula Enterprise Finance (“Khula”), the National Empowerment Fund (“NEF”) and industry participants (retailers and suppliers) to support the development of viable commercial models which may provide the necessary support for smaller informal businesses rather than seeking to provide such services itself. This is because there is already fertile ground for such models, and if entrepreneurs can find means to generate revenues out of such initiatives such that it is self-sustaining and the rollout incentivised, then the impact is likely to be more widespread and sustainable than any government led programme reliant on continual funding.

1022. Accordingly, the Inquiry recommends that the single implementing department coordinates seed finance for innovative commercial models of private businesses that aim to offer the following support for small informal spaza shops:

1022.1 The effective incorporation of spaza shops into buyer groups and larger wholesale operations in order to assist them to realise economies of scale and scope in purchasing. This would include finding effective means to pool the purchasing of numerous spaza shops in the same area such that the distribution costs are also reduced;
1022.2 The generation of key information on individual spaza shop operations such that the risks of extending credit finance to these shops can be more accurately assessed in order to facilitate credit access for the purchase of stock. This would include means to link the suppliers of credit to the spaza shops; and

1022.3 The development of consumer and business information to assist in the improvement of such businesses, including business and financial management training in order to improve the skills of spaza shop owners, and thus lead to the professionalisation of this class of grocery convenience store.

1023. The Inquiry notes that such an incentive programme must be open to and target initiatives established by, *inter alia*, buyer groups, and spaza shop associations. The Inquiry would like to caution that the initiatives to be considered in respect of the incentive programme must be premised on developmental, rather than pure commercial, objectives insofar as the development of spaza shops is concerned.

1024. The Inquiry notes that the initiatives that can be considered under such an incentive programme may, *inter alia*, include the establishment of distribution centres to be located in peri- and non-urban areas. The development of such distribution centres could follow a similar approach as that adopted for the automotive hubs established by the Automotive Industry Development Centre in conjunction with the Gauteng Provincial Government, wherein supporting infrastructure was put in place to support entrepreneurs in the townships. This is in the context where warehouses may not operate in proximity to particular areas and the visible success of similar models such as the municipal fresh produce markets.

1025. The Inquiry also recommends that the single implementing department seek to draw in funding from the large national retail chains in support of the seed funding initiative in order to bolster the funds available.

1026. **Removal of regulatory obstacles to meeting competitive challenges.** In order to remedy the regulatory obstacles faced by small informal and independent retailers in peri-urban and non-urban areas, the Inquiry makes the following recommendations to remove regulatory constraints and
improved enforcement of other regulations in order to equalise the playing field:

1026.1 With regard to trading times, municipalities must review the by-laws and regulations in relation to spaza shops and street traders. This must be done with the view to abolish the regulation of trading times for these businesses. The Inquiry notes that the regulation of trading times should continue to apply to the retailing of liquor given the social impact of such economic activities. However, where asymmetries exist in the regulation of trading times for liquor trade which favour the national supermarket chains, such asymmetries need to be removed.

1026.2 With regard to zoning, municipalities must fastrack the approval of any existing re-zoning requests for spaza shops in township areas within three months from the date of the publication of the final report of the Inquiry.

1026.3 The Department of Cooperative Governance and Traditional Affairs must coordinate the determination of preferred zoning processes and practices that facilitate ease of entry for small businesses in non-urban areas and which can be adopted by municipalities nationally.

1026.4 Municipalities must proactively rezone areas and erect infrastructure for informal traders to enable them to carry on business in a more effective and formalised manner. Such initiatives must be done ensuring that due consideration is given to the following:

1026.4.1 the location of the informal trading market should be in close proximity to economic and transport hubs, such as malls and taxi ranks. This is crucial as it will generate a high volume of foot-traffic which is necessary for the viability of these businesses;

1026.4.2 consumer movements and demand by business;

1026.4.3 proper lighting, security and sanitation is provided within the infrastructure to ensure improved health and safety conditions for these businesses;
1026.5 Municipalities must develop and implement a framework for the registration of informal businesses, particularly spaza shops, within the municipal jurisdiction. The process must be simplified and should not require the type of registration that is conducted through the Companies and Intellectual Property Commission. Rather, the registration process should aim to develop a simple register which will track, inter alia, the details of the spaza shop owner, the location and basic data relating to the turnover of each spaza shop.

1026.6 There must be increased coordination between the South African Revenue Services and the South African Police Services to facilitate proactive policing against counterfeit goods.

1026.7 There must be improved coordination by government on addressing the regulatory challenges which affect small businesses. The Department of Trade and Industry must establish a committee that will involve the different spheres of government. This committee will be tasked with the review of existing regulations, using government regulatory impact assessment tools in order to recommend relevant changes that will improve the overall competitiveness of small businesses.

1027. The purpose of these recommendations is to provide some immediate regulatory relief to spaza shops seeking to contend with a changing competitive environment and ensure that such regulations do not restrict their activities and adaptation to competition. These go to some of the core issues faced by such shops, including the unfavourable trading hours and re-zoning requirements. The recommendations envisage some immediate relief from suspending regulations or fast-tracking existing applications, whilst more sensible policies are developed for municipalities nationally through the coordinating role of the Department of Cooperative Governance and Traditional Affairs.

1028. However, the recommendations also seek to achieve a mindset shift at a municipal level to one that is supportive of informal businesses in peri-urban and non-urban areas such that these businesses may be able to grow and compete more effectively in support of their owners and consumers served. This will also enable the ultimate transition of these businesses to more formal
operations that can contribute to municipal tax. As a result, the Inquiry envisages a deliberate focus on removing regulatory red tape for such businesses and integrating their needs into local economic planning in much the same manner as is done for formal businesses. The collection of information on businesses in the township areas would assist in the development of such local economic policies.

1028.1 The additional focus on enforcement around counterfeit products is there to ensure that stores have an incentive to comply with broader legal requirements even if they are informal, by removing the advantage gained by some businesses from price undercutting due to the illicit trade in counterfeit goods. This initiative is also in line with other current initiatives in government to remove such illicit trade given its negative impact on tax collection too.
10 Annexure 1: Market inquiry process

10.1 Grocery Market Inquiry Phases

Phase 1

1. During Phase 1, the Inquiry undertook the following activities: (i) the publication of the Inquiry’s draft and final ToR; (ii) an overview of the Inquiry’s initial consultations conducted during this phase of the Inquiry; and (iii) the publication of the Inquiry’s draft and final SOI, Guidelines for Participation, Administrative Guidelines, as well as an overview of stakeholder comments on these documents.

Publication of the Inquiry’s draft and final ToR

2. The Inquiry’s draft ToR were published in the Government Gazette in July 2015, giving stakeholders a period of 15 business days to comment on the contents thereof. The Inquiry received a total of 20 submissions, commenting on the contents of the draft ToR, from a total of 8 research institutions, private researchers, students, and other interested individuals, 5 small businesses and business associations, 4 national retail chains, as well as from Cosatu, the South African Property Owners’ Association (“SAPOA”) and Section 27, a public interest law centre.

3. The comments received on the draft ToR were carefully considered. Where deemed appropriate, the comments were incorporated in the Final ToR, which were published in the Government Gazette on 30 October 2015.

Initial consultations

4. After the initiation of the Inquiry and before the Inquiry panel was finalised and appointed, the Inquiry commenced with initial consultations with various stakeholders and reviews of existing literature in relation to the objectives of the Inquiry. The purpose of such consultations and research was to obtain an

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696 Electronic copies of the draft and final ToR are available at: http://www.compcom.co.za/retail-market-inquiry/
initial overview of the competition and public interest issues prevalent in the sector that may have relevance to, or a bearing on, the Inquiry. 697 698

5. After the finalisation and appointment of the Inquiry panel in February 2016, the Inquiry presented the results of its initial consultations and literature review to the Inquiry panel, whereafter both the Inquiry panel and the Inquiry (hereinafter referred to collectively as “the Inquiry”) addressed the proper scoping of the Inquiry. 699

Draft SOI, Guidelines for Participation and Administrative Timelines

6. The draft SOI contained the Inquiry’s envisaged framework to assist the participants in the Inquiry to focus on issues the Inquiry envisaged to be the most relevant in answering questions arising from the ToR. In line with the scope of the Inquiry and as set out in the ToR, the SOI proposed to assess competition in the grocery retail sector according to the following objectives:

6.1 Objective 1: The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy;

6.2 Objective 2: The impact of long-term exclusive lease agreements entered into between property developers and national supermarket chains, and the role of financiers in these agreements on local competition in the grocery retail sector;

6.3 Objective 3: The impact of the dynamics of competition between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural areas and the informal economy on competition;

697 In addition, the research and consultations allowed the team to compile a database of research that had already been conducted by researchers, policymakers and other stakeholders in the industry, allowing the Technical Team to identify specific gaps in the existing research and data to be addressed in the Inquiry.

698 The initial consultations were mainly conducted with the following stakeholder groups: a) Research institutions and consulting houses; b) Universities; c) Small business associations (local and foreign operated); and d) Government institutions.

6.4 **Objective 4**: The impact of regulations, including, *inter alia*, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy;

6.5 **Objective 5**: The impact of buyer groups on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy; and

6.6 **Objective 6**: The impact of certain identified value chains on the operations of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.

7. The draft Guidelines for Participation provided guidance as to how stakeholders who wished to participate in the proceedings of the Inquiry were to submit their responses and information. This document was designed to ensure a fair and transparent process for all stakeholders to effectively participate in the Inquiry.

8. The draft Administrative Timelines were drawn up to provide structure and guidance to stakeholders in respect of the Inquiry’s milestones and timelines, and to indicate when they would be expected to make submissions to, and participate in the Inquiry.

9. On 17 May 2016, the Inquiry published the draft SOI, guidelines for participation and administrative timelines for comment by the public. Stakeholders were given a period of one month to comment on the draft documents, with submissions due on 15 June 2016.

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700 After consideration of comments from stakeholders on the draft SOI, the Inquiry expanded this objective to also include the assessment of the impact of the buyer power of large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.

701 This was followed by a media briefing by the Panel on the status of the Inquiry. The draft documents were submitted to the Commission Meeting for noting approximately a week before the publication thereof.
Stakeholder comments on the draft SOI, Guidelines for Participation and Administrative Timelines

10. The Inquiry received formal written submissions from 7 stakeholders, and oral submissions from two stakeholders. In accordance with the draft Guidelines for Participation, Administrative Timelines and in the interest of the Inquiry’s principles of transparency, the submissions were published on the Commission’s website during the week of 11 July 2016.

11. The comments and submissions received in relation to the draft SOI were primarily around the issue of the buyer power of national supermarket chains relative to their suppliers, and the indirect effects of this power on small independent retailers and independent buyer groups. In addition to this, the issue of rebates, in particular rebates demanded by the national supermarket chains from suppliers, to the detriment of small independent retailers and buyer groups, came up as one of the issues of concern that were not necessarily explicitly referred to in the ToR and the draft SOI.

Publication of the final SOI, Guidelines for Participation, Administrative Timelines and Guidelines for Data and Technical Analysis

12. After considering the submissions from stakeholders, the Inquiry subsequently amended objective 5 of the SOI to include the consideration of the impact of buyer power of large purchasers of Fast Moving Consumer Goods (“FMCG”) on small and independent retailers in townships, peri-urban and rural areas. Objective 5 of the SOI initially only included the consideration of the impact of buyer groups in these areas.

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702 All stakeholder comments on the draft SOI, guidelines for participation and administrative guidelines are available at: [http://www.compcom.co.za/retail-market-inquiry/](http://www.compcom.co.za/retail-market-inquiry/).

703 namely: Pick ’n Pay; the SPAR group; Woolworths; Unitrade Management System (“UMS”) buyer group; Agri SA, a non-profit organisation focused on developing agriculture in South Africa; the South African National Consumer Union (“SANCU”); and Ms Reena das Nair, an independent academic researcher.

704 These included a retired owner of an independent wholesaler in the Western Cape area; and from the managing director of the Elite Star Trading (“EST”) buyer group. Two stakeholders, namely the Department of Trade and Industry (“DTI”) and University of Fort Hare formally noted that they did not have any comments on the documents at that stage.

705 None of the submissions contained confidential information.

706 No comments in respect of the Inquiry’s draft Guidelines for Participation and Guidelines for Data and Technical Analysis were received.

707 Other amendments to the SOI included: a) clarification of the structure of the SPAR Group; b) further qualification of the barriers to entry and expansion in the grocery retail sector; c) the inclusion of the consideration of issues pertinent to consumers, such as transparency of the actual value of the benefits of store loyalty schemes to consumers, as well as pricing transparency through the use of unit pricing of pre-packaged goods on shelf tags; d) clarification of certain definitions used in the SOI, such as the definitions of “informal businesses”, the “informal
13. On 15 July 2015, the amended and final versions of the SOI, Administrative Timelines and Guidelines for Participation were subsequently published on the Commission’s website, together with an invitation to market participants to make full submissions on the subject matters raised in the SOI.

Comments received in respect of the subject matters raised in the SOI

14. The Inquiry received formal written submissions on the subject matters raised in the SOI from 18 stakeholders.

15. Non-confidential versions of the written submissions received in respect of the subject matters raised in the SOI were published on the Commission’s website in September 2016. Stakeholders were also given the opportunity to comment on the non-confidential versions of each other’s submissions. Six such submissions were received from Massmart; Pick n Pay; Spar; Woolworths; UMS and SANCU. Non-confidential copies of these submissions were also published on the Commission’s website.

Phase 2

16. Phase 2 constituted the information gathering phase of the Inquiry. The Inquiry’s main activities during this phase included:

16.1 Site visits and re-visits;

16.2 Targeted stakeholder consultations and information requests;

16.3 Conducting surveys; and

16.4 Public hearings.

economy”, “independent retailers” and “national supermarket chains”; and e) a general refinement of the document in light of these amendments.

708 All non-confidential stakeholder comments on the subject matter of the Inquiry are available at: http://www.compcom.co.za/retail-market-inquiry/

709 Specifically, the Inquiry received submissions from 4 national supermarket chains, namely: Pick n Pay, Spar, Woolworths and Massmart. The Inquiry also received submissions from 1 buyer group (UMS), 2 independent store owners (Kabelo Ditsele and Strini Naicker), 2 associations (the Limpopo Consumer Forum, and SAPOA), 1 research firm (JE Deidrichs and Associates) and 4 independent researchers (King Bareng Geoffrey Mogorosi, Clarence Kwinana, Reena das Nair and Vanya Gastrow). In addition, 4 individuals, namely: Godfrey Segwela, Isaac Motoko, Selamolela Ngoako and Sipho Mashaba, each made submissions in their personal capacities, respectively.

710 Such comments are available at: http://www.compcom.co.za/retail-market-inquiry/

711 Site re-visits took place in the form of mini public hearings with a group of stakeholders comprising mostly informal traders, and attended or presided over by one panel member, where possible.
17. The Inquiry’s activities in respect of each of these are set out below.

**Site visits**

18. Most of the Inquiry’s objectives focus on the business operations of small and independent retailers within townships, peri-urban areas, rural areas and the informal economy. However, limited information was gathered from the research reviewed in phase one.\(^7\)

On this basis, the Inquiry identified the need to consult directly and widely through site visits in order to interact directly with, and obtain the views of, small and independent retailers (both formal and informal), regarding, *inter alia*, the barriers they experienced in entering into and expanding their businesses in the sector.

19. The site visits were subsequently set up to focus on meetings with small and independent retailers (either formal or informal), provincial government departments and municipalities, buyer groups and wholesalers, as discussed below.

**Meetings with small and independent retailers**

20. The Inquiry’s site visits with small and independent retailers (either formal or informal) included meetings with spaza shop owners and hawker forums, other independent retailers and general dealers in townships, peri-urban and rural areas throughout the country.\(^7\)

21. The Inquiry’s consultations with such forums provided it with the opportunity to interact with spaza shop owners directly to (i) explain the work of the Commission and the purpose of the Inquiry; (ii) discuss the challenges they face in opening, operating and expanding their spaza shops or businesses; (iii) give them the Inquiry’s survey-type questionnaire to complete and to also share these questionnaires with other spaza shop owners in their areas to complete. The results of the questionnaires were used to inform discussions during the subsequent site re-visits conducted by the Inquiry.

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\(^7\) During its Phase one consultations and literature review, the Inquiry was only able to find and gather information and data in respect of the operations of small and independent retailers within townships and peri-urban areas in the Gauteng and Western Cape provinces. However, the Inquiry’s Phase one consultations and literature review revealed very limited information and data in respect of the businesses operations of small and independent retailers within townships, peri-urban and rural areas within the remaining 7 provinces of South Africa.

\(^7\) During initial site visit stage, the Inquiry did not prioritise Cape Town, as some information and data was already available in respect of the challenges faced by small and independent retailers in the city.
Provincial departments of economic development and municipalities

22. The meetings with the provincial departments and municipalities during the course of the Inquiry’s first round of site visits played a key role in connecting the Inquiry with spaza shop and hawker forums in their respective jurisdictions. This proved to be useful in setting up meetings with locally-operated spaza shops and with hawkers who are generally extremely difficult to contact.

23. Government departments and municipalities were also able to provide the Inquiry with research relating to the various objectives of the Inquiry that they had already conducted or commissioned. In addition, they were able to provide the Inquiry with the latest versions of their regulations, provide insights as regards the enforcement thereof and the challenges that they, as regulators, experience in doing so. Lastly, they were able and willing to facilitate the Inquiry’s site re-visits in their respective provinces.

Buyer groups and cash and carries

24. A large proportion of the customers of wholesalers (who are often members of buyer groups) consists of both foreign and local-operated small and independent retailers in townships, peri-urban and rural areas. As such, buyer groups and wholesalers have often provided useful information to the Inquiry as regards the buying patterns and challenges faced by these players, as well as the dynamics of competition between foreign and local operated spaza shops.

Site visit schedule

25. The Inquiry’s site visits commenced in June 2016, and were completed by the end of September 2016, as set out in section 10.2 of Annexure 1. During the Inquiry’s initial site visits, it became apparent that it would be necessary to
conduct re-visits to the spaza shop owners and hawkers visited during the initial site visits.\textsuperscript{714} 

26. In July 2016 a risk was identified that the Inquiry's public hearings, which were to take place in 2017, would not make sufficient provision to engage all stakeholders properly on a regional basis, due to time constraints. A decision was therefore made to convert the planned re-visits to the various provinces visited into mini-public hearings, to allow for sufficient and inclusive consultation with small and independent retailers on a regional basis.\textsuperscript{715} The site re-visits commenced during the second week of October 2016 and were completed by the end of November 2016. Section 10.2 of Annexure 1 sets out the Inquiry’s site re-visit schedule.

\textit{Targeted consultations and information requests}

27. In addition to the site visits and re-visits set out above, the Inquiry also conducted targeted consultations with specific identified stakeholders that were not included in the site visits. Stakeholders engaged included a range of national and provincial Government departments, industry associations, buyer groups, wholesalers, large and small retailers, property developers and suppliers. The full list is contained in section 10.3 of Annexure 1.

\textit{Surveys}

28. The Inquiry identified the need to supplement the information gathered during its site visits and site re-visits with representative survey data for: (i) small and independent retailers in townships, peri-urban and rural areas across South

\textsuperscript{714} The main reason for this was that a large portion of the time spent with the spaza shop owners and hawkers during the initial visits was often used to explain to them the role of Commission, what the Inquiry sought to do and the type of information the Inquiry required from them. The Inquiry was often faced with initial reluctance on the part of the spaza shop owners and hawkers to participate constructively in the meetings. They often informed us that they were reluctant to engage the Commission as a Government body, on the basis that they had engaged with other Government bodies before, without any tangible outcome to those engagements. It therefore took a significant amount of time to convince spaza shop owners and hawkers to view the Commission’s work in a different light. On this basis, the Inquiry identified the need to re-visit these spaza shop owners and hawkers to show its commitment to the project, and to engage in more focused discussions to gather some of the detailed information required for the analysis of the Inquiry’s 6 objectives.

\textsuperscript{715} Each re-visit was subsequently conducted over a period of one day. Awareness of each re-visit was created beforehand in the local media. The hearings were open to all relevant stakeholders in the area to allow them to raise their concerns and elaborate on the barriers to open, operate and expand their retail businesses. Where possible, each re-visit was attended by at least one panel member, and transcribers and translators were appointed to address any language barriers and to allow for the formal record taking of the hearings.
The Inquiry also commissioned a study which looked at the potential existence of counterfeit goods in the informal grocery sector. Further to the outsourced study and surveys, the Commission compiled its own internal questionnaire which was filled out by traders in the numerous provinces in which the Inquiry conducted its site-visits.

**Consumer survey**

The purpose of the consumer behavior survey was to assess the general shopping behavior and preferences of consumers in the grocery retail sector. This survey was conducted over the following 10 areas with 1,558 respondents: Mthatha (Eastern Cape), Thabong (Free State), Ivory Park and Winterveldt (Gauteng), KwaMashu (KwaZulu Natal), Giyani (Limpopo), Secunda and Embalenhle (Mpumalanga), Mmabatho (North West), Kimberly and Galeshewe (Northern Cape), Vrygrond and Cape Town (Western Cape).

**Small business survey**

The purpose of this survey was to understand the changing socio-economic, political and informal dimensions within which the spaza market operates in South African townships in each of the nine South African provinces. The survey involved locating and interviewing spaza shops trading within township, rural, peri-urban and urban communities. The small business survey assessed competitiveness in the informal retail grocery segment which also included the dynamics between foreign owned and local owned spaza shops. The research process generated findings from a collective of 1,181 informal grocery outlets located in the following nine township localities across South Africa: namely Vrygrond (Western Cape), De Aar (Northern Cape), Thabong (Free State), Ivory Park (Gauteng), Phokeng (North West), Modjadjiskloof (Limpopo), Nkomazi (Mpumalanga), KwaMahsu (KwaZulu Natal), and Lusikisiki (Eastern Cape).

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716 The surveys were conducted by service providers with significant experience in conducting surveys in townships, peri-urban and rural areas and with some form of prior experience on the topics. Specifically, the Inquiry appointed Lightstone Property Solutions to conduct its consumer survey and the Sustainable Livelihoods Foundation to conduct its small business survey. Both surveys have since been completed. The information gathered through these surveys was processed, analysed, summarised and incorporated in the assessment of the objectives of the Inquiry.
A study of potential counterfeit goods in the informal grocery sector

32. The study on the potential existence of counterfeit goods in the informal grocery retail segment was prompted by submissions received during the site-visits, re-visits and public hearings. Further the study was also driven by an earlier piece of research conducted by the Sustainable Livelihood Foundation ("SLF"), on the nature of competition in the informal grocery retail segment. The SLF research was conducted based on a random sample of 50 informal grocery retail outlets in four township settlements, namely Vrygrond (Western Cape), Ivory Park (Gauteng), Lusikisiki (Eastern Cape), and KwaMashu (KwaZulu Natal). The SLF research made the following findings:

32.1 Majority of the spaza shops which were interviewed were foreign owned (72%) with representatives commonly from Ethiopia, Bangladesh and Somalia;

32.2 South African spaza shop ownership was in decline;

32.3 The foreign owned shops were strongly linked into supply chains, with business ties between individual retail outlets and wholesalers;

32.4 Non-normative employment models appeared to be a feature of foreign nationals’ outlets, including working terms and contracts that could be best seen as legally problematic, and in worst cases exploitative.

32.5 Foreign owned shops were more commonly involved in the retailing of contraband (untaxed) cigarettes, which play an important role in bolstering business profitability;

32.6 The majority of counterfeit grocery items are likely to be sold within the spaza shops.

33. Building on the previous research, the purpose of this study was to establish the range, amount and extent of likely counterfeit items and to discover the prevalence of such products in the informal grocery retail segment.
Inquiry’s questionnaire

34. During its site visits, the Inquiry also compiled an internal questionnaire which was translated into various languages spoken in South Africa as well as languages spoken by foreign nationals such as Swahili, Amharic and Bengali. Some of the issues which the questionnaire sought to answer related to the difference in trading times between foreign and local owned spaza shops, the difference in ownership structures and how spaza shops procure their products.

Public Hearings

35. The Inquiry conducted four sets of public hearings that were held in Cape Town from 8 – 12 May 2017; Johannesburg from 8 – 9 June 2017; Durban from 3 – 7 July 2017; and Pretoria from 5 – 7 June 2017 and 30 October – 6 November 2017. During these public hearings, the Inquiry heard very useful submissions from more than 50 individual stakeholders and stakeholder groups. A list of all stakeholders that presented at each of the public hearings, together with the specific topics presented on is set out in sections 10.5 to 10.8 of Annexure 1.

Phases 3 and 4

36. During Phase 3 and Phase 4, the Inquiry analysed all the information that had been collected during Phases 1 and 2 and drafted this report documenting the preliminary findings of the investigation and the proposed recommendations. In addition, there were follow up meetings and information requests with certain stakeholders in order to fill the gaps that had been identified after the Inquiry had begun compiling this preliminary report. The final report will be published in Phase 4.

717 The Pretoria and Johannesburg hearings are collectively referred to as the “Gauteng hearings”.

718 These included a number of small and independent grocery retailers and liquor traders, owners of small and independent speciality shops such as butcheries and bakeries, a number of associations representing a significant number of small and independent retailers; research institutions; three provincial Government departments; two municipalities; two buyer groups, small and independent manufacturers/suppliers of grocery products; a limited number of small and independent shopping centre owners, large national retailers, property developers and financiers of shopping centre developments.
10.2 Site visits and re-visit schedules

Table 10.1: Site Visit Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Province</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 May 2016 to 02 September 2016</td>
<td>Gauteng</td>
<td>Pretoria and Johannesburg</td>
</tr>
<tr>
<td>20, 21 July 2016</td>
<td>Free State</td>
<td>Bloemfontein</td>
</tr>
<tr>
<td>16, 17 August 2016</td>
<td>KwaZulu-Natal</td>
<td>eThekwini, KwaDukuza, and Pietermaritzburg</td>
</tr>
<tr>
<td>22, 23 August 2016</td>
<td>Limpopo</td>
<td>Polokwane</td>
</tr>
<tr>
<td>5, 6 Sept 2016</td>
<td>Mpumalanga</td>
<td>Mbombela</td>
</tr>
<tr>
<td>14, 15 Sept 2016</td>
<td>North West</td>
<td>Rustenburg, Mahikeng</td>
</tr>
<tr>
<td>26, 28, 29 September 2016</td>
<td>Eastern Cape</td>
<td>Mthatha, East London, and King Williams Town</td>
</tr>
</tbody>
</table>

Table 10.2: Inquiry site re-visit schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Province</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 October 2016</td>
<td>KZN</td>
<td>eThekwini</td>
</tr>
<tr>
<td>04 November 2016</td>
<td>Limpopo</td>
<td>Polokwane</td>
</tr>
<tr>
<td>09 November 2016</td>
<td>Mpumalanga</td>
<td>Nelspruit</td>
</tr>
<tr>
<td>05 December 2016</td>
<td>Northern Cape</td>
<td>Kimberley</td>
</tr>
<tr>
<td>08 November 2016</td>
<td>Eastern Cape</td>
<td>Mthatha</td>
</tr>
<tr>
<td>14 November 2016</td>
<td>North West</td>
<td>Rustenburg</td>
</tr>
</tbody>
</table>

10.3 Targeted consultations

37. The Inquiry has also sent targeted information requests to the following stakeholders:

37.1 Retailers, including Spar, Pick n Pay, Shoprite, Massmart, Woolworths, Choppies, Fruit & Veg, The Save Group and The Check-out Group.\textsuperscript{720}

\textsuperscript{719} The Inquiry was unable to conduct a site visit to the Northern Cape. However, the Northern Cape was included in the Inquiry Team’s re-visits.

\textsuperscript{720} Partial responses to the information requests have been received from Spar, Pick n Pay, Shoprite and Massmart, with the balance of the information expected within the next 4 weeks. Full responses to the information requests were received from Choppies and Fruit & Veg. To date, no responses have been received from The Save Group and The Check-out Group. Due to it being engaged in public hearings, the Inquiry has not yet reviewed and processed the responses to the information requests received thus far.
37.2 Financiers, including the Banking Association of South Africa, Nedbank, FNB, Standard Bank, Barclays, Investec and Grindrod Bank.\(^{721}\)

37.3 Property developers, including SAPOA, Old Mutual, Hyprop, SACS property solutions, Investpro properties, GBCSA properties, Liberty Life, Growth Point, Resilient properties, Redefine properties, Atterbury properties, Annenburg properties, Abland property developers and Amdec property developers.\(^{722}\)

37.4 Manufacturers and suppliers of fast moving consumer goods, including I&J, Premier Foods, Tiger Brands, Oceana, Unilever, Pioneer Foods, [X] and Soweto Brands.\(^{723}\)

37.5 A selection of metropolitan, district and local municipalities, including the Sedibeng local municipality, Ethekwini metropolitan municipality, Stellenbosch local municipality, Kwadukuza local municipality, Overberg district municipality, Mbombela local municipality, Umsunduzi local municipality, City of Cape Town metropolitan municipality, City of Tshwane municipality, Drakenstein local municipality and Rustenburg local municipality.\(^{724}\)

### 10.4 Overview of consultations phases 1 and 2

<table>
<thead>
<tr>
<th>NAME OF FIRM OR INSTITUTION</th>
<th>DESCRIPTION OF FIRM OR INSTITUTION</th>
<th>PHASE 1 OR PHASE 2 CONSULTATION</th>
<th>SITE VISIT OR DIRECT CONSULTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somali Community Board</td>
<td>Association of Somali operated retailers</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
</tbody>
</table>

\(^{721}\) Note that the information requests were sent to these financiers in the form of discussion points when requesting meetings with them. Responses to such discussion points were either received verbally at the meeting (FNB, Grindrod), or in writing (in the case of Nedbank). No responses were received from the Banking Association, Standard Bank and Barclays, although Standard Bank has since indicated its availability to make submissions at the upcoming public hearings (see section 3.3.5 below).

\(^{722}\) Note that in some instances, the information requests were sent to these developers in the form of discussion points when requesting meetings with them. Responses to such questions/discussion points were either received verbally at the meeting (Investpro, Resilient), or in writing (SAPOA, Old Mutual, Redefine). No responses were received from Hyprop, SACS, GBCSA, Abland, Amdec, Liberty Life, Growth Point, Atterbury and Annenburg.

\(^{723}\) Note that the information requests were sent to these suppliers in the form of discussion points when requesting meetings with them. Responses to such discussion points were either received verbally at the meeting (Tiger Brands, Oceana, Unilever, Pioneer Foods), or in writing (in the case of I&J), or both (Premier Foods, [X], Soweto Brands).

\(^{724}\) These information requests were sent to these municipalities in the form of discussion points when requesting direct meetings with them as well as their participation in the public hearings.
<table>
<thead>
<tr>
<th>NAME OF FIRM OR INSTITUTION</th>
<th>DESCRIPTION OF FIRM OR INSTITUTION</th>
<th>PHASE 1 OR PHASE 2 CONSULTATION</th>
<th>SITE VISIT OR DIRECT CONSULTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Business Council</td>
<td>Association local operated spaza shops</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>The African Council of Hawkers and Informal Businesses</td>
<td>Association of hawkers and informal businesses</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>National African Federated Chamber of Commerce (&quot;NAFCOC&quot;)</td>
<td>Association</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Milk Producers' Organisation (&quot;MPO&quot;)</td>
<td>Association of milk suppliers</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Somali Community Board (Cape Town)</td>
<td>Association of Somali operated retailers</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<tr>
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<tr>
<td>Ncobo Small Business Chamber</td>
<td>Association</td>
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<td>Bloemfontein informal forum</td>
<td>Association of informal businesses in Bloemfontein</td>
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<td>My Spaza</td>
<td>Association of locally operated spaza shop owners located in Mamelodi. The forum seeks to support its members, with plans to open their own buyer group within a period of 3 years</td>
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<tr>
<td>Minara Chamber of Commerce</td>
<td>Association representing medium/large independent retailers</td>
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<tr>
<td>Lepelle Nkumpi Local Municipality Hawkers Forum</td>
<td>Association of hawkers operating in the Lebowakgomo township</td>
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<td>South African Bulk Entrepreneurs Primary Co-Operative (&quot;SABEPCO&quot;)</td>
<td>Association of spaza shops wishing to form a buyer group in the Limpopo province</td>
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<td>Limpopo site visit</td>
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<td>Elizabeth Litswithi</td>
<td>Hawker's Association</td>
<td>Phase 2</td>
<td>North West site visit</td>
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<td>Ncobo small business chamber</td>
<td>Association of small business owners</td>
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**Buyer Groups and Cash & Carries**

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<th>Type</th>
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<td>Tayo Cash &amp; Carry</td>
<td>Foreign owned cash &amp; carry</td>
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<td>ICC buying group</td>
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<td>Yarona Cash &amp; Carry</td>
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<td>Big Save (KZN)</td>
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<td>Kit Kat</td>
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<td>Limpopo Cash &amp; Carry</td>
<td>Cash &amp; Carry</td>
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**National, provincial, local Government departments and other Government bodies**

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<thead>
<tr>
<th>NAME OF FIRM OR INSTITUTION</th>
<th>DESCRIPTION OF FIRM OR INSTITUTION</th>
<th>PHASE 1 OR PHASE 2 CONSULTATION</th>
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<td>Capricorn District Municipality and spaza shop forums</td>
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<td>Sekhukhune District Municipality LEDET</td>
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<td>Phase 2</td>
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<td>Rhino Cash and Carry</td>
<td>Affiliated with the Massmart group with a primary focus on retail trade to the end-customer.</td>
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<td>Liquor and liquor trading regulation authority</td>
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<td>Financier of shopping centres</td>
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<td>Direct consultation</td>
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<td>Investpro properties</td>
<td>Financier of shopping centres</td>
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<td>Grindrod Bank</td>
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<td>Masingita Group of Companies</td>
<td>Black owned property developer with properties in townships and rural areas</td>
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<td>Saldru</td>
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<td>Direct consultation</td>
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<td>NAME OF FIRM OR INSTITUTION</td>
<td>DESCRIPTION OF FIRM OR INSTITUTION</td>
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<td>SITE VISIT OR DIRECT CONSULTATION</td>
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<td>Firm that negotiates lease agreements on behalf of small retailers</td>
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<td>Direct consultation</td>
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<tr>
<td>Who Owns Whom</td>
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Supermarkets

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<td>Choppies</td>
<td>Supermarket chain (meeting at Northwest stores)</td>
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<td>North West site visit</td>
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<td>Overland Liquors</td>
<td>Liquor store franchise</td>
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<td>Direct consultation</td>
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<td>Spar buyer group</td>
<td>Buyer group/national retail chain</td>
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<td>Supa save</td>
<td>Small supermarket</td>
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<td>Mpumalanga site visit</td>
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<td>Superspar Westend</td>
<td>Independent Spar Retailer</td>
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<td>Max Mart supermarket</td>
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<td>OB Supermarket</td>
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<td>Deon van der Vyfer</td>
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<td>Private individual - previous owner of a grocery store</td>
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<td>Woolworths</td>
<td>Large retailer</td>
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<td>Direct consultation</td>
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<td>Jwayelani</td>
<td>Suppliers of meat, recently acquired by Choppies</td>
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<td>Direct consultation</td>
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<td>The Pastry Works</td>
<td>Speciality bakery</td>
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<td>Direct consultation</td>
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<td>Take &amp; Pay Supermarket</td>
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<tr>
<td>Super Save</td>
<td>Small retailer (member of UMS buying group)</td>
<td>Phase 2</td>
<td>KZN site visit</td>
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<td>NAME OF FIRM OR INSTITUTION</td>
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<tr>
<td>Goseame Open Market</td>
<td>Hybrid store which specializes on the sale of fresh produce and meat. A member of UMS buyer group</td>
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<tr>
<td>Moses Lehadi</td>
<td>Former supermarket owner in Mafikeng who rented out his supermarket to foreign nationals</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>Tsholofelo Molefi</td>
<td>Small retailer</td>
<td>Phase 2</td>
<td>North West site visit</td>
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<tr>
<td>Ms Mantwa</td>
<td>Former supermarket owner in Ledig who rented out his supermarket to foreign nationals</td>
<td>Phase 2</td>
<td>North West site visit</td>
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<tr>
<td>Ndu’s Spar</td>
<td>Member of Spar group that is currently running a Country Spar outlet catering the rural community surrounding Ngcobo;</td>
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<td>Sparg’s Spar</td>
<td>Member of Spar group that was formerly an independent retailer;</td>
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**Suppliers and manufacturers of grocery products and liquor**

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<th>Name</th>
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<td>Van Loveren Family Vineyards</td>
<td>Small winemaker</td>
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<td>Oceana</td>
<td>Large supplier of groceries</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<tr>
<td>[X]</td>
<td>Small supplier of certain grocery products</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<tr>
<td>Tiger Brands</td>
<td>Large supplier of groceries</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<td>Unilever</td>
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<td>Pioneer Foods</td>
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<td>Premier Foods</td>
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<td>Soweto Brands</td>
<td>Small supplier of certain grocery products</td>
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</table>
## Overview of stakeholder representations at the Cape Town Hearings

<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
</table>
| MJ Group         | Small grocery retailer in Gugulethu | • Inability to obtain a lease from a shopping centre in Gugulethu as a result of an exclusive lease agreement between the anchor tenant and landlord and the importance of locating its retail business in a shopping centre for, inter alia, security reasons.  
• Concerns regarding the buyer power of large retailers. |
| Gugulethu Liquor Traders Association | An association of 45 licensed liquor traders in Gugulethu | • Concerns and impact of liquor by-laws.  
• Impact of the entry of large retailers and their liquor stores in the Gugulethu area on the traders’ businesses.  
• Discriminatory enforcement by liquor boards and municipalities, as well as lack of cooperation between these bodies and township liquor traders |
| Siyanda Mnothoza of Gugulethu | Owner of a small informal shop selling basic groceries in Gugulethu | • Inability to compete with foreign operated traders.  
• Negative impact of the entry of shopping centres in his area on his business.  
• Concerns regarding municipal regulations and the enforcement thereof on his business. |
| Thandiswa Kama (Skoma Butchery) | Owner of an independent butchery in Gugulethu | • Skoma Butchery was removed to make way for the construction of a new shopping centre, and was unable to obtain a suitable lease in the shopping centre. |
| Malcolm Green of Winepreneur | Representative of an association of black owned wine makers | • Difficulties of black owned wine makers to list their brands at the major retailers, even though the brands are of export quality. |
| Drakenstein Municipality | A small municipality in the Western Cape | • Overview of the structure of the municipality and its trading and land use regulations. |
## 10.6 Overview of stakeholder representations at the Pretoria/Johannesburg hearings

<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
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<tr>
<td>EST (Louis Greef)</td>
<td>Buyer group with operations nationally</td>
<td>• Discussion and evidence relating to the buyer power of large retailers, and how such power is abused to the detriment of buyer groups, independent wholesalers and cash &amp; carries that supply small and independent retail businesses.</td>
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</table>

### Stakeholder name: University of the Western Cape (“UWC”), Institute for Poverty, Land and Agrarian Studies (“PLAAS”); National Research Foundation (“NRF”) and SLF

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<thead>
<tr>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint presentation of research institutions</td>
<td>• Results of independent studies conducted in the Western Cape Province insofar as it relates to competition between local and foreign operated retailers, food security and supply chains and the impact on the entry of shopping centres into township and peri-urban areas on the competitive landscape of the retail sector in these areas.</td>
</tr>
<tr>
<td></td>
<td>• Some ideas in changing approach to informal trading in general</td>
</tr>
</tbody>
</table>

### Stakeholder name: Western Cape Department of Economic Development and Tourism’s Red Tape Reduction Unit

<table>
<thead>
<tr>
<th>Provincial Government</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Overview of the activities of the Red Tape Reduction Unit.</td>
</tr>
<tr>
<td></td>
<td>• Discussions of the Unit’s regulatory reviews and instances where the unit has assisted in removing regulatory barriers.</td>
</tr>
<tr>
<td></td>
<td>• Views as regards the regulatory barriers faced by informal traders in the Western Cape.</td>
</tr>
<tr>
<td>Stakeholder name</td>
<td>Stakeholder profile</td>
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<tr>
<td>---------------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Glo Bake (by Noah Msibi)</td>
<td>Small retail bakery in Attridgeville</td>
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<tr>
<td>UMS</td>
<td>Buyer group with operations nationally</td>
</tr>
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<tr>
<td>OBC Garankuwa Butchery (Bobo Sepeng)</td>
<td>Small butchery in Garankuwa and owner of a shopping centre in Garankuwa</td>
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<tr>
<td>Masha Logistics (Tisetso Masha)</td>
<td>Liquor traders in Mamelodi (previously grocery retailers)</td>
</tr>
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<td></td>
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</tr>
<tr>
<td>Khazimla IT Solutions (Simphiwe Nkula)</td>
<td>IT solutions</td>
</tr>
<tr>
<td>Stakeholder name</td>
<td>Stakeholder profile</td>
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<tr>
<td>---------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
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</tbody>
</table>
| South African Bulk Entrepreneurs Primary Cooperative Organisation ("SABEPCO")   | Spaza shop owners from Limpopo seeking to form a buyer group                        | • Discussion of challenges faced by general dealers in Limpopo  
• Discussion of factors leading to the formation of the SABEPCO buyer group and challenges faced by the buyer group with some suppliers unwilling to supply them and general treatment by these suppliers.  
• Challenges of competing with a wholesaler that is also a retailer. Example, Makro.  
• Lack of monitoring of businesses and enforcement of by-laws relating to permits and health and safety.                                                                                                                                                                                                                     |
| First Wealth Coin Group                                                          | Group wishing to start a bank to fund spaza shop operations                           | • Discussion of the firm’s initiative to start a bank to fund the operations of spaza shops in township, peri-urban and rural areas.                                                                                                                                                                                                                         |
| Rori’s Cake and Bakery                                                           | Small bakery in Mabopane                                                            | • Impact of the entry of large supermarkets in Mabopane on Rori’s Cake and Bakery business – noting a significant drop in turnover and subsequent retrenchment of staff.  
• Lack of support by government in building capacity of traders like this one by enabling them to participate in tenders to institutions such as hospitals and prisons, despite them selling high quality goods and having good support from their communities.  
• Evidence of the nature of competition between these traders and stores owned by the large retailers and how some are able to compete on quality but, due to lack of scale, are unable to compete on price. The manner in which this price competition occurs was clearly spelt out in this submission. |
<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
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</thead>
<tbody>
<tr>
<td>Rori's Cake and Bakery</td>
<td></td>
<td>• Notes that Rori's Cake and Bakery does not wish to trade in a shopping centre due to the high rentals charged for space in shopping centres.</td>
</tr>
</tbody>
</table>
| Walter Hlope Liquor City franchisee |                                            | • Mr Hlope is an approved Liquor City franchisee, but has been unable to open a liquor store as he has not been able to obtain trading space in any of the shopping centres in his surrounding area due to exclusive lease agreements entered into between the shopping mall and anchor tenant (large retailers), which to liquor stores.  
  • The submission gives a detail list of the trials and tribulations of knocking on closed doors of the malls and the practical impact of exclusive leases as practices by most of the large retailers, including Game.  
  • Mall is his chosen area of operation for security reasons.                                                   |
| Majomogopo Merchant and Enterprise ("Majomogopo") | Firm wishing to open a shopping centre in rural Limpopo | • Discussion of barriers faced in opening a mall in rural Limpopo                                                                                      |
| SAPOA Property Owners’ Association |                                            | • Overview of SAPOA complaint lodged with the Commission.  
  • In spite of probing by the Panel, SAPOA was unable to speak in detail about the operations of their members.  
  • This has made it necessary for any future engagements to consider having direct dealings with the property developers themselves and not SAPOA – hence the information requests were sent to the property developers. |
| Soweto Brands Soweto based manufacturer of certain grocery items |                                            | • Discussion of serious challenges in listing goods on the shelves of major retailers.  
  • The conglomerate effects most of the large retailers have.                                                   |
<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soweto Business Access</td>
<td>Association of Soweto based spaza shops</td>
<td>• Discussion of the general negative impact of the entry of large retailers and foreign operated spaza shops on the operations of local operated spaza shops in Soweto.</td>
</tr>
</tbody>
</table>
| Sefate Molifi Imports     | Grocery Sales, Marketing & Merchandiser      | • Discussion of unwillingness of suppliers to engage the firm in supply negotiations, and other related concerns, such as favourable trading terms afforded to large retailers as a result of their buyer power.  
• Allegations made on the nature of trading agreements concluded between FMCG suppliers and the large retailers  
• Lack of business of opportunities for small and independent sales, marketing & merchandising businesses due to not being given these opportunities.  
• Discussion of serious concerns relating to the sugar supply and value chain. |
| Moagi’s Meat Supply       | Small butchery in Sebokeng                   | • Impact of the entry of large retailers into the Sebokeng area on Moagi’s Meat Supply – significant drop in turnover and subsequent retrenchment of employees.  
• Discussion of challenges in expanding the business of Moagi’s Meat Supply as a result of space constraints, as well as delays and frustrations in dealing with the relevant municipality to assist with such space constraints.  
• This submission also showed a glaring number of malls in existence and which continue to be built in areas with rather a small population. Hence the challenges faced by this butchery will continue to be faced and will be felt by many others given the malls that currently exist and that seem to be popping up in the area. |
<p>| Liquor City franchisor     | Franchisor of Liquor City outlets            | • An extensive discussion of the impact of exclusive lease agreements entered into between shopping mall landlords and anchor tenants (large retailers) |</p>
<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
</table>
| Gross Corner Supermarket | Independent supermarket in Sebokeng | • Discussion of the negative impact of the entry of large retailers and foreign operated retailers into Sebokeng on Gross Corner Supermarket’s operations, with a particular focus on the ability of large retailers and foreign operated spaza shops to buy in bulk.  
• Significant drop in sales and subsequent need to retrench Gross Corner Supermarket’s employees. |
| AJ Trading Enterprise | Owner of 2 small butcheries in Tembisa | • Discussion of unfair shopping centre lease terms as compared to those applicable to anchor tenants.  
• Inability to obtain leasing space in shopping centres as a result of the overlap between the product offerings of AJ Trading Enterprise and those of the anchor tenants of the shopping centre (large retailers).  
• Point made about the big differential in rentals payable in shopping malls or centres in Tembisa and those in Kyalami, the latter being far cheaper. Alluding to one competitor increasing operational costs of another competitor.  
• Discussion of inefficiencies and difficulties encountered in attempting to engage the local municipality. |
## Stakeholder name and Profile

### MEC: Gauteng Provincial Department of Economic Development
- **Stakeholder profile**: Provincial Government
- **Topic(s) of presentation**:
  - Discussion of the Department’s township revitalisation programme, and various initiatives to develop and assist small businesses (across all sectors) in township, peri-urban and rural areas of the Gauteng Province.
  - Discussion of data gathered by the Department on small and informal businesses, and challenges faced by such businesses.
  - Overview of the Department’s MOU with Pick n Pay to supply and assist selected spaza shops in the Gauteng Province.
  - Overview of the Department’s recommendations to the Inquiry regarding the transformation and development of the grocery retail sector.
  - Some of these recommendations were subsequently mentioned by the MEC mid-June 2017 in his budget vote speech at the Gauteng legislature for consideration and possible implementation.

### Jaybeez Bakery
- **Stakeholder profile**: Small bakery in Kagiso
- **Topic(s) of presentation**:
  - The stakeholder requested financial and professional assistance, and did not present on any of the objectives of the Inquiry.

### Buy Black South Africa (Zama Qampi)
- **Stakeholder profile**: Business association
- **Topic(s) of presentation**:
  - Discussion of the lack of transformation in the grocery retail sector.
  - Discussion of the association’s initiatives to set up hawker distribution centres in Gauteng.
  - Presentation of the association’s recommendations to the Inquiry.

### 10.7 Overview of stakeholder representations at the Durban hearings

<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>KZN Youth Chamber of Commerce</td>
<td>Chamber of commerce</td>
<td>Impact of the entry of foreign owned spaza shops and large retailers into township, peri-urban and</td>
</tr>
<tr>
<td>Stakeholder name</td>
<td>Stakeholder profile</td>
<td>Topic(s) of presentation</td>
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<tr>
<td></td>
<td></td>
<td>rural areas on the operations of local operated small retailers in these areas.</td>
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<tr>
<td></td>
<td></td>
<td>• Specific issues highlighted included (i) buyer power of large retailers and foreign owned spaza shops (ii) the ease with which large retailers are able to overcome regulatory challenges compared to small retailers; (iii) concerns with large retailers expanding operations into other products and markets, such as pharmaceuticals; (iv) concerns with exclusive lease agreements entered into between landlords and anchor tenants (large retailers).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The Chamber also presented certain recommendations to address their concerns.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Offered to provide a formal and well considered submission after the hearing.</td>
</tr>
<tr>
<td>UGU Association of Business (Thanda Ncane and others)</td>
<td>Association of associations (an umbrella body to 58 other associations)</td>
<td>Impact of the entry of foreign owned spaza shops and large retailers into township, peri-urban and rural areas on the operations of local operated small retailers in these areas.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Specific issues highlighted included (i) lack of skills of small local operated retailers; (ii) lack of access to funding; (iii) alleged price discrimination by foreign owned wholesalers as between local and foreign operated retailers; (iv) buyer power of large retailers; (v) unfavourable lease terms in shopping centres; (vi) impact of exclusive lease agreements entered into between shopping centre landlords and anchor tenants (large retailers); (vii) the fact that formal supermarkets in shopping centres have the facilities to do SASSA grant pay-outs to consumers, whereas spaza shops do not; (viii) concerns regarding overly restrictive regulation of liquor trading; (ix) lack of regulation by government of businesses owned by foreign nationals; and (x) expired goods being sold in rural areas and the</td>
</tr>
<tr>
<td>Stakeholder name</td>
<td>Stakeholder profile</td>
<td>Topic(s) of presentation</td>
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<td>---------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Khayelitsha Community Trust (Tembisa Jimsana)</td>
<td>Trust wishing to expand its shopping centre operations in Khayelitsha</td>
<td>• Discussion of regulatory difficulties and bottlenecks to expand the Trust’s shopping centre operations in Khayelitsha due to exclusive leases entered into with current anchor tenants.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Discussion of concerns with the Trust’s exclusive lease agreements with anchor tenants (large retailers), and how such anchor tenants have refused speciality stores and stalls access to the Trust’s existing shopping centre.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• This is despite a study being conducted among the Khayelitsha residents and the outcome of the study indicating that the residents would prefer a variety to the existing retail brands to purchase from. Lack of choice forces them to travel as far as Mitchells Plain and Somerset West for alternative brands.</td>
</tr>
<tr>
<td>KZN Department of Economic Development and</td>
<td>Provincial Department</td>
<td>• Overview of the prevalence of the sale of expired and counterfeit consumer goods in the province.</td>
</tr>
<tr>
<td>Tourism: Consumer complaints division</td>
<td></td>
<td>• Discussion of the systems put in place by the Department to monitor and enforce public health and safety regulations, specifically as regards the sale of expired and counterfeit goods.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The best submission on paper or as a work plan by far by a government department in addressing the challenges at the heart of this Inquiry and faced by informal traders, small and independent retailers located in townships, peri-urban and rural areas.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Were told that their counterparts in Gauteng are in consultation with this Department on this work that</td>
</tr>
<tr>
<td>Stakeholder name</td>
<td>Stakeholder profile</td>
<td>Topic(s) of presentation</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>KZN Department of Economic Development and Tourism: Regulatory services for formal/informal businesses (Tsepiso Selepe)</td>
<td>Provincial Department</td>
<td>it is doing with the intention of implementing same in Gauteng.</td>
</tr>
<tr>
<td>Inqola Trading (Thabo Givinda)</td>
<td>Manufacturer of soups and spices</td>
<td>• Overview of the state of and challenges facing informal businesses in the KZN province.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Overview of various regulations applicable to informal businesses, and the department's initiatives to assist such business to comply.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Of importance is their role in regulating sale of expired and not consumable FMCGs across industry players (large and small)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Expired goods bought from big retail stores at discounted prices and sold in rural areas (with expiry dates removed)</td>
</tr>
<tr>
<td>Food and Beverages InNeed Wholesalers (“FBI”) Foundation (Sanjay Lutchman)</td>
<td>NGO and supplier of bottled water</td>
<td>• Complaints regarding Massmart's Supplier Development Programme</td>
</tr>
<tr>
<td>South African Traders’ Association and Chatsworth Centre</td>
<td>Association of small businesses in Chatsworth</td>
<td>• Discussion of unfavourable trading terms between large retailers and small suppliers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Allegations of excessive margins achieved by larger retailers.</td>
</tr>
<tr>
<td>The Spar Group (Wayne Hook, ex-CEO)</td>
<td>Large retailer</td>
<td>• The most extensive complaint regarding (i) unfavourable shopping centre lease agreement terms as compared to anchor tenants (large retailers); and (ii) the inability of existing tenants to expand their product offerings to include some of the products offered by the anchor tenant as a result of the exclusivity in the lease agreements entered into between the landlord and anchor tenant.</td>
</tr>
</tbody>
</table>

320
### 10.8 Overview of stakeholder representations at the Pretoria hearings

<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
</table>
| Massmart         | Retailer            | • Exclusive lease agreements  
|                  |                     | • Buyer power and supply terms |
| Food Lover’s Market | Retailer        | • Exclusive lease agreements  
|                  |                     | • Buyer power and supply terms |
| Pick ’n Pay      | Retailer            | • Exclusive lease agreements  
|                  |                     | • Buyer power and supply terms |
| Shoprite Group   | Retailer            | • Exclusive lease agreements  
|                  |                     | • Buyer power and supply terms |
| Spar Group       | Retailer            | • Exclusive lease agreements  
|                  |                     | • Buyer power and supply terms |
| Choppies         | Retailer            | • Exclusive lease agreements  
<p>|                  |                     | • Buyer power and supply terms |</p>
<table>
<thead>
<tr>
<th>Stakeholder name</th>
<th>Stakeholder profile</th>
<th>Topic(s) of presentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woolworths</td>
<td>Retailer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Buyer power and supply terms</td>
</tr>
<tr>
<td>Redefine Properties</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Resilient Properties</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Masingita Group</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Emira Property Fund</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Liberty Group</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Nedbank</td>
<td>Financier</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Standard Bank</td>
<td>Financier</td>
<td>• Exclusive lease agreements</td>
</tr>
</tbody>
</table>
Confidential
### 11 Annexure 2: Background to the SA grocery retail sector

#### 11.1 List of suppliers active in the different FMCG sub-sectors in South Africa

<table>
<thead>
<tr>
<th>Industry</th>
<th>Description of the Industry</th>
<th>Players In the industry</th>
<th>Size of the Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dairy Industry</td>
<td>The dairy industry consists of a primary and a secondary industry. The primary industry consists of milk producers who own and operate dairy farms which primarily produce and purchase raw milk which is pasteurised, homogenised, packaged and sold through retail outlets. The secondary industry consists of processors who produce the six types of dairy products, Milk and Cream, Concentrated Milk, Buttermilk and Yoghurt, Whey, Butter and Oils, and Cheese. Secondary processing also includes the production of ice cream and the supply of inputs into other products, such as chocolate and baby foods. Milk is generally processed by large dairy converters such as Clover and Parmalat or medium-sized converters such as Fairfield and Orange Grove which produce homogenised and pasteurised fresh milk and other dairy products such as yoghurts, creams and cheeses. There are also a number of small-scale processors who produce fresh milk and value-added products, such as speciality cheeses for local and niche markets.</td>
<td>Bandini Cheese (Pty) Ltd, Caledon Suiwel (Pty) Ltd, Clover Industries Ltd, Clover Milkyway (Pty) Ltd, Clover SA (Pty) Ltd, Coega Dairy (Pty) Ltd, Dairy Day (Pty) Ltd, DairyBelle (Pty) Ltd, Danone Southern Africa (Pty) Ltd, Darling Romery (Pty) Ltd, De Villiers Chocolate (Pty) Ltd, Denmar Estates (Pty) Ltd, Dewfresh (Pty) Ltd, Douglasdale Dairy (Pty) Ltd, DWR Hertzog, Fair Cape Dairies (Pty) Ltd, Fairfield Dairy (Pty) Ltd, Far End Dairy (Pty) Ltd, Farmgate Dairy (Pty) Ltd, Froneri South Africa (Pty) Ltd, Gattis Ice Cream (Pty) Ltd, Homsek (Pty) Ltd, Honeydew Dairies (Pty) Ltd, La Montana Melkery (Pty) Ltd, Lactolab (Pty) Ltd, Ladismith Cheese Company (Pty) Ltd, Lailco Dairies (Pty) Ltd, Lancewood Holdings (Pty) Ltd, Libstar Holdings Ltd, Libstar Operations (Pty) Ltd, Mooivallei Suiwel (Pty) Ltd</td>
<td>The annual market for dairy-based products is approximately R40bn</td>
</tr>
<tr>
<td>Company Names</td>
<td>Industry Comment</td>
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<tr>
<td>Mountainview Dairy CC</td>
<td>Nestle (South Africa) (Pty) Ltd</td>
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<tr>
<td>Orange Grove Dairy (Pty) Ltd</td>
<td>Orange Grove Farms (Pty) Ltd</td>
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<tr>
<td>Parmalat South Africa (Pty) Ltd</td>
<td>Polar Ice Cream Company (Pty) Ltd</td>
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<td></td>
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<tr>
<td>Rhodes Food Group (Pty) Ltd</td>
<td>Rhodes Food Group Holdings Ltd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sonnendal Dairies (Pty) Ltd</td>
<td>Sundale Free Range Dairy (Pty) Ltd</td>
<td></td>
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<tr>
<td>Trademodel Seven (Pty) Ltd</td>
<td>Transem (Pty) Ltd</td>
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<tr>
<td>Ububele Holdings Ltd</td>
<td>Unilever South Africa (Pty) Ltd</td>
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<td></td>
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<tr>
<td>Unique Dairy Products (Pty) Ltd</td>
<td>Wesmelk Melkery (Pty) Ltd</td>
<td></td>
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<tr>
<td>WJ Khourie</td>
<td>Woodlands Dairy (Pty) Ltd</td>
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</tr>
<tr>
<td>Wynn-With Milk Farm (Pty) Ltd</td>
<td>York Cheese Factory (Pty)</td>
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</table>

The industry is highly concentrated and controlled by a handful of farmers, silo owners and manufacturers. The four biggest millers, Pioneer Foods (Sasko Milling), Tiger Milling, Premier Foods and Ruto Mills, a division of Foodcorp, dominate the wheat milling market with 97% market share and are vertically integrated in baking and production of other foods such as pasta and cereals.

A M Alberts (Pty) Ltd
AFGRI Operations (Pty) Ltd
African Star Grain and Milling (Pty) Ltd
Algoa Roller Mills CC
Bakhresa SA (Pty) Ltd
Blinkwater Meule (Pty) Ltd
Brenner Brands (Pty) Ltd
Carolina Roller Meule (Pty) Ltd
Epic Foods (Pty) Ltd
Gideon Milling (Pty) Ltd
Godrich Flour Mills (Pty) Ltd
I L Molino CC
Lethabo Milling (Pty) Ltd
Pioneer Voedsel (Pty) Ltd
Premier FMCG (Pty) Ltd
Pride Milling Company (Pty) Ltd
RCL Foods Ltd

South Africa’s average milling capacity utilisation is 3.7 million tons or 79.5% of the available capacity and according to the Department of Agriculture, Forestry and Fisheries (DAFF) the potential capacity is approximately 5 million tons. 25 companies generate 75% of all maize milled within South Africa and the leading four players, Pioneer, Premier,
**Pasta Manufacturing Industry**

The South African pasta manufacturing industry remains a relatively small sector in terms of industry players, in comparison to other food segments and in terms of employees. A limited number of local millers which produce bread flour, including the major manufacturers, produce semolina flour and durum flour for supply to pasta and noodle manufacturers and value-added manufacturers.

Dry pasta manufacturers include the two large pasta manufacturers, Tiger Brands and Pioneer Foods, as well as Pasta Nova which specialises in Soup pasta. A new market entrant in this segment is the co-operative Griekwaland Wes Korporatief BPK (GWK). Noodle manufacturers are Nestle with its Maggi brand and Noodlemaster which manufactures a variety of private label in-house noodle brands and its own brand. There are a number of value-added pasta manufacturers, most of these manufacturers only use imported wheat products and produce dry pasta as well as ready-made pasta meals with accompaniments. The products are branded under own brand or a private label brand and available through a variety of channels. Some have factory shops which sell directly to the public. Included are FG La Pasta, MG Pasta, Rhodes Food Group, Pasta Factory, La Pasta Delizia, Pasta Gallo and Pasta Regalo.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>S A Rice Mills (Pty) Ltd</td>
<td>Foods, Pride Milling and Tiger Brands, together mill approximately 75% of the maize meal that is produced in the country.</td>
</tr>
<tr>
<td>Tiger Brands Ltd</td>
<td></td>
</tr>
<tr>
<td>Tongaat Hulett Starch (Pty) Ltd</td>
<td></td>
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<tr>
<td>Vaal Milling Company (Pty) Ltd</td>
<td></td>
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<tr>
<td>VKB Flour Mills (Pty) Ltd</td>
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<tr>
<td>Choice Wise Trading (Pty) Ltd</td>
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<tr>
<td>F G La Pasta (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Griekwaland Wes Korporatief Ltd</td>
<td></td>
</tr>
<tr>
<td>Libstar Operations (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>M G Pasta CC</td>
<td></td>
</tr>
<tr>
<td>Nestle (South Africa) (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Pioneer Voedsel (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Tiger Brands Ltd</td>
<td></td>
</tr>
<tr>
<td>Unilever South Africa (Pty) Ltd</td>
<td></td>
</tr>
</tbody>
</table>
| Vegetable and Animal Oils and Fat Manufacturing Industry | The manufacture of oils and fats from vegetables and animals is part of South Africa's agro-processing sector. Agro-processing has enjoyed an average growth rate of over 2% since 2013. In South Africa, oils and oil products are manufactured mainly from sunflower seeds and soybeans with a smaller market for canola. A niche market for groundnut oils exists but the primary nut derivation is peanut butter. Coconut oil, palm oil and other exotic oils are imported, as the growing of such products is suited to tropical climates. The primary stakeholders in the value chain are: Suppliers of agricultural inputs such as seeds, fertilisers and pesticides; Agricultural producers and farmers; Traders and agricultural produce agents; Bulk storage and silo operators; Processors, who carry out the combined operation of crushing, extraction and refining of oils; Wholesalers, retailers, and distributors; Manufacturers of food products, including soya flours and milks and industrial products; and End users including retail consumers. Vertical integration is present, particularly at the levels of traders who also supply storage facilities and processors who also carry out manufacturing. Grain and seed traders such as Senwes, Afrgri and NWK, also offer bulk storage, including silos, to potential purchasers. | Africa Sun Oil Refineries (Pty) Ltd
D H Brothers Industries (Pty) Ltd (Willowton)
Elangeni Soaps (Pty) Ltd
Epic Foods (Pty) Ltd
Epko Oil Seed Crushing (Pty) Ltd
Free State Oil (Pty) Ltd
Majesty Oil Mills (Pty) Ltd
PhilAfrica Foods (Pty) Ltd
Sea Lake Investments (Pty) Ltd
Sime Darby Hudson and Knight (Pty) Ltd
Southern Oil (Pty) Ltd
Standerton Oil Mills (Pty) Ltd
Sunola Oil Mills (Pty) Ltd
Unilever South Africa (Pty) Ltd | Revenue accruing from the sales of processed oils and fats totalled R11.6bn in 2015. However, the production of the South African edible oils and fats industry is insufficient to meet local demand. In 2015, the production of oilseed and oilseed products stood at 1.86 million tons while total demand for oilseed products totalled 2.13 million tons. |
Fruit and Vegetable Processing Industry

The fruit and vegetable processing industry forms a part of the agro-processing sector. The fruit processing industry generally adds value to fresh produce either by extending the useful life of the fruit, through canning and drying, or by processing the fresh fruit into a new product or ingredient such as pulp, concentrate or juice. The South African industry’s major fruit products include canned fruit, pulps, purées, dried fruit, jams and fruit juice. Canned vegetables and various sauces are the major products of vegetable processing.

There are a number of companies involved in the production of the processed goods mentioned above but the South African industry is dominated by three key players: Tiger Brands; the Rhodes Food Group; and Ceres Fruit Juice, a part of Pioneer Foods. More specifically, Langeberg & Ashton, part of Tiger Brands, and the Rhodes Food Group are the largest processors and canners of deciduous fruit. Tiger Brands and the Rhodes Food Group are likewise the largest players in the processing of vegetables and tomatoes. Ceres dominates the fruit juice processing industry. Summerpride plays a notable role in operating the sole pineapple processing plant in South Africa although it competes with Swaziland-based Swazican, part of Rhodes. In addition to these dominant firms there exist a number of smaller purée and concentrate processors including Breede Valley Fruit Processors, Ashton Extracts and Boland Pulp, which was acquired by the Rhodes Food Group in 2015.

Soap and Cleaning Products, Wax and Polishes Manufacturing Industry

Cleaning and sanitation products, soap, polishes, wax and lubricating agents are classified as consumer chemicals and therefore constitute a sub-sector of the chemical sector. Manufacturers operating in the industry produce a wide spectrum of Fast-Moving Consumer Goods (FMCG), which are customised for personal, household, institutional, industrial and commercial applications. The Home Care segment includes laundry care products, surface active detergents, also known as

Some 1.25 million tons of fresh fruit, excluding grapes and berries, was purchased for processing in 2015/2016. According to the latest disaggregated statistics for the manufacturing sector released by Statistics South Africa (StatsSA) in 2016, income among processors of fruit and vegetables was R14.6bn while the total value of sales, including exports, of all processed and preserved fruit and vegetable products stood at R24bn.
surfactants, bleach and other sanitising agents, dishwashing liquids, wax and polishes. Products categorised in this segment are not produced exclusively for the household environment and there are numerous cleaning applications that have been developed for commercial, institutional and/or industrial use. Cleaning and sanitation products that are produced for the Personal Care segment include various forms of bath and hand washing soaps, facial cleansers and shower gels.

The South African market for soap, cleaning and sanitation products, wax and polishes continues to be dominated by large multinational FMCG players, notably Unilever, Reckitt Benckiser, Procter & Gamble, Colgate-Palmolive and Johnson & Johnson. Notable South African companies operating in the sector include Bliss Brands and Tiger Consumer Brands. Local small, medium and micro enterprises (SMMEs) operating in the industry generally manufacture non-branded cleaning agents that are supplied to independent wholesalers and/or to the informal sector. Refer to Enterprise Development and Social Economic Development for further information.

Numerous manufacturers and suppliers of cleaning and sanitation products specialise in specific niche markets, such as the hospitality or food and beverages industries. Blendwell produces cleaning agents specifically for use in the food industry, while household appliance manufacturer, Miele, produces its own range of washing powders and dishwashing detergents under the Miele Care Collection label. The industry also includes third party manufacturers that produce customised products under contract for major South African retailers such as Pick’n Pay, Shoprite, Woolworths, Checkers, the Spar Group, Dischem and the Clicks Group. Cleaning agents produced under contract are generally sold as retailer-branded products, or house brands. South Africa’s major contract manufacturers include Le-Sel Research, Beige Holdings and Prime Product Manufacturing.
continue to be dominated by major international companies. There are currently around 250 players that operate in South Africa's formal sector. Statistics for manufacturers active in the country's informal sector are not currently available.

**The Manufacture And Wholesale Of Non-Alcoholic Beverages**

Non-Alcoholic Beverages are known as soft drinks to distinguish them from alcoholic drinks. Soft drinks, as defined in terms of section 15 (1) of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, include sweetened and unsweetened drinks, namely: Fruit or vegetable drinks; Soda water; Indian or quinine tonic water; Natural spring water and any sweetened artificially carbonated water, whether flavoured or unflavoured; Ginger beer; and Herbal or botanical beverages. There are a number of smaller companies that manufacture carbonated soft drinks such as SoftBev, Little Green Beverages, Kingsley Beverages and Twizza. As a result of their lower price they have taken significant market share from Coca-Cola, the dominant firm in this market.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adcock Ingram Holdings Ltd</td>
<td></td>
</tr>
<tr>
<td>Big Save Distribution Centre (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Big Save Liquor Walloo (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>BOS Brands (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Breva Enterprises (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Chill Beverages International (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Clover SA (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Coca-Cola Peninsula Beverages (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Coca-Cola Sabco (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Coca-Cola Shanduka Beverages South Africa (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Ekhamanzi Springs (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Enebev (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Kingsley Beverage (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Lentas International (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Little Green Beverages (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>MoFaya Beverage Company (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Nestle (South Africa) (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>P V M Nutritional Sciences (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Parmalat South Africa (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Pioneer Foods Groceries (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Red Bull South Africa (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>Soda King Franchising CC</td>
<td></td>
</tr>
<tr>
<td>SoftBev (Pty) Ltd</td>
<td></td>
</tr>
<tr>
<td>South African Breweries (Pty) Ltd</td>
<td></td>
</tr>
</tbody>
</table>

The total volumes of soft drinks sold in 2015 stood at 889 million litres in on-trade, and 4,813 million litres in off-trade.
| (The) Suntory Beverage and Food South Africa Ltd |
| Tiger Consumer Brands Ltd |
| Twizza (Pty) Ltd |
| Ultimate Sports Nutrition (Pty) Ltd |
11.2 Distribution of supermarkets across South Africa

38. In this appendix, the various store formats of the national supermarket chains will be discussed.

**Shoprite**

39. Shoprite had 1012 supermarket stores in South Africa on 30 September 2017. Shoprite has diversified its store formats to cater to customers’ demands in different markets in South Africa. The distribution of these supermarkets are shown in Figure 11.1.

**Figure 11.1: Shoprite stores across South Africa**

*Source: Submissions by Shoprite, 2017/18*

40. Shoprite is the main brand of the Shoprite group. Shoprite supermarkets have service departments in their stores including bakeries, delis, fish shops, and butcheries. Selected stores also offer a pharmacy under the MediRite brand.

41. USave is a supermarket chain owned by the Shoprite Group and focuses on the needs of lower income consumers. USave supermarkets follows a smaller
format than Shoprite stores and there are no service departments in USave stores.

42. Checkers caters for consumers in the upper-income groups and focuses strongly on fresh produce. There are also service departments such as a bakery, butchery, deli, cheese deli and wine shop available in Checkers stores.

43. Checkers Hyper is a larger format than Checkers supermarkets with a wider product range.²²⁵

Pick n Pay

44. Pick n Pay had 853 grocery stores across in South Africa on 4 May 2018. It has both corporate owned stores and franchises under the Pick n Pay brand and also owns Boxer supermarkets. Pick n Pay stores targets middle-income South African consumers while Boxer stores target middle to lower income customers.²²⁶ The distribution of these stores is shown in Figure 11.2.²²⁷

Figure 11.2: Pick n Pay and Boxer stores across South Africa

Source: Submission by Pick ‘n Pay

²²⁵ Shoprite brands and store formats, available online at https://www.shopriteholdings.co.za/group/brands.html

²²⁶ Pick n Pay Investor Relations, available online at http://www.picknpay-ir.co.za/at-a-glance.php

²²⁷ This does not include Pick n Pay or Boxer liquor stores.
45. Pick n Pay supermarkets offer a wide variety of grocery products for weekly or monthly shopping as well as top-up shopping including fresh produce, butchery, bakery, deli and hot food counter. There are both franchised (branded as Pick n Pay Minimarket) and corporate owned Pick n Pay supermarket stores.

46. Pick n Pay hypermarkets are Pick n Pay’s largest format store, and includes the offerings of a supermarket as well as appliances, kitchenware, home improvement, garden and pool accessories, toys and an expanded health and beauty range.

47. Pick n Pay Local stores have a smaller range of products than supermarkets. These stores are aimed at convenience shopping and fresh produce rather than monthly grocery shopping.

48. Pick n Pay Express stores provide 24-hour convenience shopping located in the forecourts of BP petrol stations. The range in these stores is limited and focused on daily needs. In addition and as indicated earlier, Pick n Pay has recently entered into a partnership with the GDED in terms of which they will convert spaza shops in townships, peri-urban and rural areas into franchise convenience stores.

49. Boxer supermarkets are the equivalent of Pick n Pay supermarkets aimed at middle to lower-income customers. Boxer stores offer grocery items including a butchery, bakery, fresh produce and hot foods counter. All Boxer supermarket stores are located close to public transport hubs.

50. Boxer Punch stores have a lower-cost operating model, allowing the stores to further reduce to selling prices of products. Boxer Punch stores offer a narrow range of products including basic commodities, pre-packed frozen and fresh meat, and a limited range of breads and confectionery.

Spar

51. As at December 2017, Spar had approximately 907 stores across the country. The Spar brand includes corporate owned stores as well as ‘independent’ stores owned by members of the Spar voluntary trading association. Both these

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728 Pick n Pay store formats and footprint, available online at http://www.picknpay-ir.co.za/store-footprint-format.php
729 Boxer store formats and footprint, available online at http://www.picknpay-ir.co.za/store-footprint-format.php
formats are supplied mainly, but not exclusively by the six Spar distribution centres located across South Africa.

**Figure 11.3 : Spar stores across South Africa**

![Distribution of Spar Stores Across South Africa](image)

*Source: Submission of Spar, 2017*

52. Figure 11.3 show 3 of Spar’s different store formats. It is important to note that Spar Express, located in Shell petrol station forecourts, Savemor, Spar Tops and Spar Pharmacy stores are not included.

53. Superspar is the largest of Spar’s store formats, with each store having a floor space of 1 300m² or more. Superspar stores stock a full line of groceries and general merchandise and have in-store butcheries, bakeries, delis, fresh produce and hot food counters.

54. Spar stores have a floor space of at least 700m². Spar stores cater to customers as a neighbourhood grocery store for both convenience and weekly or monthly shopping. Service departments such as butcheries, bakeries, delis, fresh produce and hot food counters are also present in Spar stores.
55. The smallest store format is Kwikspar, which caters for neighbourhoods and rural areas. These stores are between 300 to 700m² in size and do not offer a bakery, deli or butchery.\textsuperscript{730}

\textit{Woolworths}

56. Woolworths has Woolworths Food stores located within their Woolworths department stores as well as stand-alone food stores. Woolworths has also diversified by locating stores at Engen petrol station forecourts. Figure 11.4 shows the locations of these stores.

\textbf{Figure 11.4: Woolworths Food stores across South Africa}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure11.4.png}
\caption{Distribution of Woolworths Stores Across South Africa}
\end{figure}

\textit{Source: Submission by Massmart, 2017}

57. Within the grocery retailer sector, Massmart owns Makro, Game FoodCo and Cambridge Food stores. The location of these stores is indicated in Figure 11.5 below.

58. Makro is a hybrid wholesaler retailer that sells food, liquor and general merchandise to consumers and trading customers for on-sell purposes.

\textsuperscript{730}Spar store formats, available online at http://investor-relations.spar.co.za/ir2017/who-we-are/our-brands-and-store-formats/
59. Game is a retailer of general merchandise, groceries and liquor that has recently entered the fresh food market through Game FoodCo.

60. Cambridge Foods is a supermarket targeted at lower LSM groups.731

Figure 11.5: Makro, Game and Cambridge Foods stores across South Africa

![Map of South Africa with store locations marked]

Source: Submission by Food Lover’s Market, 2017

61. As a newer entrant into the grocery retail sector, Food Lover’s market started out as a fresh fruit and vegetable store known as Fruit and Veg City. They have since started to convert these stores and open new stores under the Food Lover’s Market brand and have widened their product offering to include various grocery items. Figure 11.6 below shows the distribution of these two store formats across South Africa.

---

731 Massmart overview, available online at http://www.massmart.co.za/our-business/overview/
Food Lover’s Market has also diversified into convenience shopping by having their “Freshstop” stores located at Caltex petrol station forecourts. There are more than 200 “Freshstop” stores across South Africa. Food Lover’s Market has also introduced Market Liquors, a liquor store located next to selected Food Lover’s Market stores.  

Choppies

Choppies, a well-known grocery retailer in Botswana, entered the South African market in 2010. They have since acquired Jwayelani butcheries stores and have expanded into hybrid wholesaler retailers. The location of the Choppies stores in South Africa are indicated in Figure 11.7 below.

732 Food Lover’s Market store formats, available online at https://foodloversmarket.co.za/our-story/
733 Choppies did not provide the location of Jwayelani stores to the Inquiry.
Figure 11.7: Choppies stores across South Africa

Source: Submission by Choppies, 2017

64. For convenience, Figure 11.8 below breaks down the distribution of the formal grocery retailers across South Africa. Notice the concentration of retailers in the Gauteng province as well as the Cape Town and Durban metropolitan areas.
Figure 11.8: The South African Retail Sector
12 Annexure 3: Objective Six: Value chains analysis and the competitive placement of small and independent retailers in townships, peri-urban areas, rural areas and the informal economy

Table 12.1: Difference testing by distance between price levels of spazas

<table>
<thead>
<tr>
<th>Product</th>
<th>Hypothesis</th>
<th>t-statistic</th>
<th>Critical t-value</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bread</td>
<td>Significant price difference between stores less than 1km away from SM and between 1 and 2km away from SM</td>
<td>0.15</td>
<td>1.65</td>
<td>No significant difference</td>
</tr>
<tr>
<td></td>
<td>Significant price difference between stores less than 1km away from SM and between 1 and 2km away from SM</td>
<td>3.39</td>
<td>1.65</td>
<td>Significant difference</td>
</tr>
<tr>
<td>Maize Meal</td>
<td>Significant price difference between stores less than 1km away from SM and between 1 and 2km away from SM</td>
<td>0.4</td>
<td>1.65</td>
<td>No significant difference</td>
</tr>
<tr>
<td></td>
<td>Significant price difference between stores less than 1km away from SM and between 1 and 2km away from SM</td>
<td>1.82</td>
<td>1.65</td>
<td>Significant difference</td>
</tr>
<tr>
<td>Milk</td>
<td>Significant price difference between stores less than 1km away from SM and between 1 and 2km away from SM</td>
<td>1.02</td>
<td>1.65</td>
<td>No significant difference</td>
</tr>
</tbody>
</table>
Significant price difference between stores less than between 1 and 2km away from SM and stores more than 2km away from SM | 1.92 | 1.65 | Significant difference

12.1 Probit model for choice of retail outlet

Of specific interest is whether the different explanatory variables are significant. If it is found to be statistically significant, it could be interpreted as supporting evidence that the market for a specific product is segmented. Table 12.2 shows the coding associated with the variables under consideration.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
<th>Coding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent</td>
<td>Choice of Retail Outlet</td>
<td>1=Spaza</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0=Supermarket</td>
</tr>
<tr>
<td>Explanatory</td>
<td>Gender</td>
<td>0=Male</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1=Female</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td>1=18-24</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2=25-40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3= 40-65</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4=Older than 65</td>
</tr>
<tr>
<td>Employment Status</td>
<td></td>
<td>0=Employed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1=Unemployed</td>
</tr>
<tr>
<td>Income Level</td>
<td></td>
<td>1=Less than R1500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2= Between R1501 and R3000; 3= Between R3001 and R5000; 4=Between R5001 and R10 000; 5=More than R10 000</td>
</tr>
</tbody>
</table>

The following probit model was subsequently developed:

\[ Y = \delta (X \beta + \varepsilon) \]

\[ \delta - 1(Y) = XB + \varepsilon \]

Where Y= Choice of predominant retail outlet
\[ \delta = \text{Cumulative distribution function of the standard normal distribution} \]

\[ \beta = \text{Parameters to be estimated} \]

\[ \varepsilon = \text{Error Term} \]

\[ \mathbf{X} = \text{Vector of independent variables with:} \]

1 = Gender

2 = Age

\[ X_3 = \text{Employment Status} \]

\[ X_4 = \text{Income Level} \]

**Table 12.3: Frequencies of Independent Variables in Model**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>Male=38%</td>
</tr>
<tr>
<td></td>
<td>Female=62%</td>
</tr>
<tr>
<td>Age</td>
<td>18-24=15%</td>
</tr>
<tr>
<td></td>
<td>25-40=55%</td>
</tr>
<tr>
<td></td>
<td>40-65=29%</td>
</tr>
<tr>
<td></td>
<td>Older than 65=2%</td>
</tr>
<tr>
<td>Employment Status</td>
<td>Employed=71%</td>
</tr>
<tr>
<td></td>
<td>Unemployed=29%</td>
</tr>
<tr>
<td>Income Level</td>
<td>Less than R1500=8%</td>
</tr>
<tr>
<td></td>
<td>Between R1501 and R3000=19%</td>
</tr>
<tr>
<td></td>
<td>Between R3001 and R5000=30%</td>
</tr>
<tr>
<td></td>
<td>Between R5001 and R10 000=27%</td>
</tr>
<tr>
<td></td>
<td>More than R10 000=15%</td>
</tr>
</tbody>
</table>

**12.2 A final note on the barriers to competition of employment**

*Introduction*

67. In order to do an analysis of the value chain features affecting employment growth related to the informal sector would require substantial time and resources, which were both constraining factors in this project. In addition to
this, informal discussions with some of the entities within the value chain revealed a reluctance by respondents to share information related to contracting and costs which are essential in quantifying barriers to entry (as will be seen from the discussion below) and would have to be obtained through legal channels if a comprehensive quantitative analysis is required. As a result, the approach followed here, to shed some light on the barriers to competition to employment at various nodes of the value chain, is to rely on literature and institutional economic theory. Although this will not conclusively show the extent to which these factors are impeding job creation, it does provide context and points to the inherent features of food value chains that are mirroring the features of a dual economy. This is done by considering supply chains generically within three sections namely, food production, food manufacturing and distribution and retailing.

Food production

68. At the heart of agricultural production as a means to livelihood or self-employment is asset endowments (Carter, 1999). The most apparent endowment requirement, in turn, is land. Land has numerous implicit issues that could be constraining. These are land access, land ownership and geography. Land access is probably the most explicit constraint and is largely self-explanatory. Ownership issues relate to tenure where the constraining issues actually lie in the fact that the producer cannot use a title deed as collateral for production finance. Geography, in turn, speaks to the location of numerous small-scale producers and this is particularly prevalent in the grain (maize) sector where a lot of the small-scale production occurs in the former homeland areas, especially the Eastern Cape. Since most of these producers are in the traditional homeland areas of South Africa, their geography makes them uncompetitive in relation to grain farmers located close(r) to exporting or processing facilities. Based on discussions with industry experts, farmers in these more remote areas therefore often produce for own consumption or sell surplus production in close proximity in the informal sector and receive as much as 80% of the price of maize on the SAFEX.

69. Other notable constraints mentioned in literature that relates to the success of small-scale farming as a means to produce and trade your way out of poverty are:
69.1 Managerial and technical expertise (see, inter alia, Zimmerman (2000) and Kirsten et al. (2010)).

69.2 Access to finance (Fan et al. (2013))

69.3 Access to inputs and technology (see, inter alia, Ortman and King (2007), Odhiambo et al. (2008) and Barrett (2008)).

70. In terms of enterprise growth and subsequent (second-round) employment generation, primary agriculture is not an attractive option. To a large extent farming enterprises function at two ends of a spectrum. This is supported by recent research by the Bureau for Food and Agricultural Policy which points to a primary agricultural industry that also reflects the dual nature of the rest of the South African economy (see BFAP(2016) related to poultry and BFAP(2017) related to maize). At the one end of the production spectrum, we see formalised commercial production systems characterised by small margins and high volumes. At the other end, are an informal producer often characterised by sales directly to consumers in the informal market. Organic growth, of these enterprises, from small- to large scale, seems unlikely due to the unattractiveness associated with specific production sizes. This is driven by opportunity cost and high (production and price) risk associated with agricultural production, which can be explained using an example from the BFAP Baseline (2017), presented below:

How big is big enough?

Most smallholder farmers plant maize more out of necessity than commercial intent, and it is rational for these resource-poor farmers to utilise their households’ land and labour to produce green mealies; enough to provide for themselves and possibly sell a couple of bags, but not too much to require expensive inputs or put strain on the often elderly and female labour force. Nevertheless, for emerging farmers who have earmarked maize production as their main income generating activity, the potential of maize farming to actually generate income is important – and this is where the weather comes in as the most important factor. In the 2015/16 production year, for example, few dryland farmers outside of Mpumalanga (whether commercial or emerging) made money from maize production despite the high producer price. Furthermore, the good weather that was experienced means that, even though 2016/17’s average national maize yield will be close to 6 t/ha, and maize farmers will in all likelihood produce the largest maize crop in
SA’s history, many maize farmers will be worse off than in 2015/16, unable to cover input costs at the low maize price. Given these very real weather risks and the concomitant low margins, scale and therefore land size becomes the inherent limiting factor. In order to shed light on the income generating potential of maize farming, consider the 2014/15 season and the number of hectares necessary to earn an income comparable to that of other industries.

Figure 12.1: Maize hectares required to equal 6 months income equivalent of alternative employment

It is clear that even a moderately successful farmer in a season with reasonably good rainfall requires 11 hectares of maize to earn the same as an entry-level mine worker for the six month period of the maize production season. For a year’s gross margin a farmer would thus need 22 hectares in a ‘normal’ production year. If we average this out over the past three years, a farmer would require more than 66 hectares to ‘earn’ an amount equivalent to a mine worker given that the past two years would not have rendered much of an income. Following this same line of thought, a successful farmer would require 27 hectares to earn the same as the agricultural minimum wage for a level farm worker, while an improved input using but struggling farmer, with a yield of 2.5 t/ha, would require 52 hectares.


71. In this instance, it seems relational that the less risky option, which in this case is a formal income opportunity (with a more constant and frequent income stream), will be preferred to that of agricultural production. The critical barrier
to entry into the formal commercial chain is therefore related to size. Small scale production with the objective of producing food or generating additional income is a reality, but moving beyond this into (medium) sizes with incomes equivalent to more stable income opportunities creates a trade-off. Due to production and price risk and infrequent income streams associated with numerous agricultural products, this is often a less favoured option and is a significant constraint to employment generation. It is, therefore, the inherent nature of agriculture, associated with commercial intent that will not allow for employment generation beyond that of the farmer and his immediate household.

Food manufacturing and retailing

72. Opportunities for self-employment and subsequent employment in small and micro-enterprises are, in the opinion of the authors, only feasible at the two end nodes of the value chain, namely farming and retailing. This is underpinned by institutional economic theory, which, in broad terms, acknowledges that high asset specificity, transaction uncertainty (related to prices, quality and volumes) and high transaction frequency causes firms to vertically co-ordinate (contract) or integrate within a value chain (Williamson, 2002). The three factors listed above are all present in food manufacturing and distribution, and, as a result, the level of vertical integration seems to serve as a barrier for entrepreneurs and subsequent employment opportunities within the chain, related to manufacturing and distribution.

73. The above description however only tells one side of the story. Fast Moving Consumer Goods are typically goods that move through the chain with low margins and in high volumes. Substantial investment costs (in manufacturing or distribution assets) are feasible in an environment of adequate returns. Adequate returns, in turn, can be achieved by large margins with limited volumes or low margins and high volumes. The competitive environment in the FMCG milieu typically creates an environment of low margins, which necessitates the scale requirements associated with high volumes. With increased volumes, however, comes increased risk and uncertainty and higher transaction frequency. This again provides a conducive environment for contracting and in extreme cases vertical integration.

74. Combined with the investment issues raised above, the average South African consumer has limited financial capacity for FMCG purchases of which food is
a sub-category. StatsSA (2014) note that around 34% of expenditure of poor South African households are devoted to food purchases. This environment creates a definite demand side ceiling in terms of prices, which further supports an environment of low margins. The only way, within this context, to increase profitability within FMCG supply chains, is to improve efficiencies, which would imply decreasing variable cost or cost per unit. This, however, often requires substantial investments in sophisticated and highly specific manufacturing and/or distribution technologies, which brings us right back to the investment discussion, related to low margins and high volumes, at the beginning of this section.

75. Based on the inherent characteristics of the food manufacturing and distribution, discussed above, supply chains have evolved in such a way that scale requirements present the biggest barrier to entry for entrepreneurs and subsequent employment opportunities. In our view, contracting arrangements and integration are merely a by-product to manage risks and transaction costs in the chain.

Food retailing

76. The constraints to self-employment and employment growth related to informal food retailing were touched on earlier in the report. Findings here indicate that crime and competition from other informal and formal retail outlets are the main issues that are constraining growth. Since the surveyed sample of spaza respondents are not representative, this is supplemented by a broader literature study, presented below.

77. Competitive barriers to informal retail employment as a means to a livelihood is, similar to that of primary agricultural production, asset endowment. A comprehensive study by Skinner (2005), of informal traders in the Durban area, showed that asset endowments related to start-up funds, transport and business space were highly constraining. In the most cases, respondents indicated that they obtained start-up funds from their own savings or from relatives or friends. In addition to this, only 10 out of 507 respondents were able to secure credit from sources other than friends, relatives or government. This highlights access to credit as a major constraint, flowing from the lack of asset endowment. In contrast to our study, Skinner (2005) however found that respondents did not regard crime as a highly constraining factor, but was similar
in that competition was highlighted as a key limiting factor. Woodward et al. (2007) showed that the median income for 764 randomly surveyed spaza shops falls under the national minimum wage. This directly speaks to the viability of informal trading. In addition to this, three key variables were identified as factors determining the viability of informal enterprises, namely start-up capital, urban context and gender. This re-enforces results from Skinner that start-up capital is a constraining factor to informal sector entrepreneurship. Moloi (2014) found the key limiting issues to start-up and growth of spazas in Atteridgeville as financial support, lack of business management skills, expensive transportation, limited trading space, crime, negative competition among spaza shop owners, and lack of cooperatives among spaza shop owners. Other studies similarly found start-up capital to be the first and most prominent constraint (see, inter alia, Cichello et al. 2011 and Clover et al. 2005). Once these enterprises are operational issues that directly speak to their viability are noted in literature access to credit (see Skinner, 2006), competition (see Crush et al. (2011) Charman et. al. (2012)), managerial expertise (Perks, 2010 and van Scheers, 2010) and crime (see Gough et. al, 2003 and Lichthelm, 2005).

78. In terms of the integration of informal food retailers into the rest of the value commercial value chain, research is sparse. Research and innovation are suggesting that commercial food companies are conceptualising and testing ways to service these producers. Examples include delivery services for certain food products (from wholesalers and suppliers directly) and innovations in ordering and payment functionalities for this industry (see inter alia 5M2T distribution network to spazas, Spazapp development).
12.3 Value chain analysis

79. This appendix is concerned with eals with the mapping and description of the value chains in question. This serves to provide background information which can ultimately be used to contextualise the relationship between formal and informal retailing. The maps will be supplemented by a section that considers structures that govern the relationships/transactions in the value chains. This will conclude by describing how spaza shops form part of established value chains. This is done by making use of data obtained through primary data collection.

12.4 Washing Powder Value Chain

Introduction

80. In South Africa, the manufacture of soap and cleaning products, wax and polishes is a multi-billion rand industry that has proved to be an effective enabler of empowerment and small business development.

81. The South African market for soap and other cleaning agents is a multi-billion rand industry that is estimated generate employment for more than 16 000 people. According to Who owns Whom,\textsuperscript{734} which references a study undertaken by the Centre of Competition Regulation and Economic Development at the University of Johannesburg and the Zambia Institute for Policy Analysis and Research,\textsuperscript{735} South Africa’s cosmetic, soaps and detergents industries collectively generated in excess of US$4.6 billion (approximately R60 billion) in sales revenue in the year 2015, with the soaps and detergents component accounting for US$1.3 billion (almost R17 billion) of this amount. Based on sales value, the laundry care segment is estimated to account for more than 65% of revenue generated in the home care sub-sector.

82. As a result of the above figures and indication by the Business Survey\textsuperscript{736} that washing powder is one of that products sold the most by some retailers in the informal market, the Inquiry has elected to evaluate this value chain.

\textsuperscript{734} Manufacture of Soap and Cleaning Products, Wax and Polishes, Who Own Whom African Business Information, October 2017, p 5.

\textsuperscript{735} Growth and Development in the Cosmetics, Soaps and Detergents Regional Value Chains: South Africa and Zambia, African Industrial Development and Integration Research Programme, Centre for Competition, Regulation, and Economic Development.

\textsuperscript{736} Results from Small Business Survey conducted by Sustainable Livelihood at the request of the Inquiry.
Various types of soap products

83. As indicated in the introductory paragraph, this Chapter will focus on washing powder, it is however important to give a clear explanation of the various forms of soap prior to the analysis of the washing powder value chain.

84. Soaps and detergent found in households can be grouped into four general categories. Within each category are different product types formulated with ingredients selected to perform a broad cleaning function as well as to deliver properties specific to that products. Below is a summary of the four categories:

84.1 Personal cleaning products

84.1.1 Personal cleaning products are formulated for cleaning hands, the face and the body. They are available in the following formats: bars, gels, liquid soaps, powders and pastes.

84.2 Laundry detergents and laundry aids

84.2.1 Laundry detergents and laundry aids are formulated to meet a variety of soil and stain removal, bleaching, fabric softening and conditioning and disinfectant needs under varying aids are available as liquids, powders, gels, sticks, spray, pumps, sheets and bars. Laundry detergents are either for general purpose or light duty. General purpose detergents are suitable for all washable fabrics and come in wither liquids or powders. Liquids work best on oily soils and for penetrating solid and stains. Powders are especially effective in lifting out clay and group-in dirt. Light duty detergents are used for hand or machine washing lightly soiled items and delicate fabrics. Laundry aids contribute to the effectiveness of laundry detergents and provide special functions. Laundry aids include the following: bleaches, enzymes, fabric softeners, pre-was soil and stain removers, stretches, fabric finishes water softeners, etc.

84.3 Dishwashing products
84.3.1 Dishwashing products include detergents for hand and machines dishwashing as well as some speciality products. They are available as liquids, gels, powders, capsules and bars.

84.4 Household cleaning products

84.4.1 Household cleaners are available as liquids, gel, powders, solids, sheets, and pads.

Value chain assessment

85. The washing powder market, like most products in the larger industry, is characterised by downstream and upstream linkages to various sectors. There is relatively a high level vertical integration and most of the industry’s established companies are turnkey manufacturers that are directly involved in the formulation, blending, packaging and distribution of their products. However, it is not unusual for the larger players to outsource production to third party manufacturers.\(^\text{737}\)

86. Raw material used in the manufacture of soap and cleaning products are sourced largely from the chemical and agriculture sectors, both locally and abroad. They include surfactants, solvents, pigments, preservatives, natural extracts, vitamins, essential oils, fragrances, alcohols, fillers, glycerines, emulsifiers, waxes and lanolin. The global supply chain is complex and it is not always easy to determine the source of certain raw materials. In recent years, stakeholders have become increasingly sensitive to environmental pressures with regard to sourcing of palm oil and growing numbers of manufacturers and retailers have pledged to become Chain of Custody certified by obtaining their oil from suppliers who sell certified sustainable palm oil.\(^\text{738}\) Other key players in the industry value chain include companies that specialise in the manufacture of fragrances, equipment manufacturers and distributors, as well as manufacturers and suppliers of packaging and refill packets. Packaging has an aesthetic value in that it influences the consumer’s perception of quality of the product. It also has an important functionality value and is therefore required to


\(^{738}\) See footnote 5 above, p 6.
conform to specific criteria to avoid the degradation of the product. In keeping with the drive for the industry to improve its environmental footprint, there is growing demand for packaging that is biodegradable and/or recyclable. 

87. Given the importance of effective marketing and the fact that consumers in this market tend to be brand loyal, branding consultants and strategies also play a key role in the industry. Brand identities are commonly reflected in the packaging of the products.

88. Supermarkets are generally the most popular distribution channel for washing powder. Others smaller avenues in which products can be distributed is online, through mass merchandisers, non-grocery retailers and/or specified stockists.

Illustration of the various segments of the value chain

89. Figure 12.2 below depicts the basic structure of the washing powder value chain, followed by a description of the activities that take place under each branch of the value chain.

Figure 12.2: Value chain for the manufacture of washing powder and other detergents

![Value chain diagram]


See footnote 5 above, p6.
90. Raw Material Suppliers

90.1 Raw materials are chosen according to a set criteria, including their human and environmental safety, cost, compatibility with other ingredients and the form and performance characteristics of the finished products. In recent years, heightened awareness regarding product safety and sustainability concerns has prompted growing numbers of consumers to shun products containing harsh chemicals. In response, manufacturers have adopted the production of products that are environmentally friendly.\textsuperscript{740}

91. Manufacturing of powder detergents

91.1 Each manufacturer adopts its own special production process which differs from the next manufacturer. There are however basic steps which are common to all products of a similar form such as washing powder. The raw materials are treated with chemicals and equipment which process the raw materials and transform them into semi-finished soap. The semiinished soap is processed to finished soap and further developed into soap products such as soap noodles, detergent powder, dish wash bar, bath soap, etc. which are ultimately purchased by the consumer.\textsuperscript{741}

91.2 Powder detergents (washing powders) are produced by spray drying, agglomeration or dry mixing. Figure 12.3 below illustrates the spray drying process. A further explanation of the process is made under the figure.

\textsuperscript{740} See footnote 4.
\textsuperscript{741} See footnote 4.
During the spray drying process, dry and liquid ingredients are initially combined into a slurry, or thick suspension, in a tank called a crutcher, this is indicated by part 1 of Figure 12.3 above. The slurry is heated and then pumped to the top of a tower where it is sprayed through nozzles under high pressure to produce small droplets. The droplets fall through a current of hot air, forming hollow granules as they dry, this is indicated by part 2 of Figure 65 above. The dried granules are collected from the bottom of the spray tower where they are screened to achieve a relatively uniform size, this is indicated by part 3 of Figure 12.3 above.

After the granules have been cooled, heat sensitive ingredients that are not compatible with the spray drying temperatures (such as bleach, enzymes and fragrance) are added, this is indicated by part 4 of Figure 12.3 above. Traditional spray drying produces relatively low density powders.

Figure 12.4 below illustrates the manufacturing of washing powder detergents using agglomeration and dry mixing methods followed by an explanation of the process below the figure.
The manufacture of washing powder detergent through agglomeration produces higher density powders compared to the spray drying mechanism. Through agglomeration, manufactures either use a liquid binder, rolling or shear mixing to cause the ingredients to collide and adhere to each other in order to form larger particles.

Dry mixing is used to blend dry raw materials using small quantities of liquids.

The final step in the manufacture process of soaps and detergents is packaging. Detergents are either packaged in cartons, bottles, pouches, bags or cans. The selection of packaging materials takes into considerations the nature of the product and its compatibility with the selected material, cost, package safety, shelf appeal and ease of use. For purposes of this Chapter the interest lies with powder detergents which are packaged in bags.

Following the packaging segment of the value chain is the distribution of the washing powder. As stated above, the largest distribution avenue for washing...
powder is the retail and wholesale channels, which include major players such as Makro, Pick n Pay, the Shoprite Checkers Group, Spar and Choppies.

Market participants and competition in the market

94. The South African market for the manufacturing of washing powder continues to be dominated by large multinational FMCG players, particularly Unilever, Procter & Gamble, and MAQ. Notable South African companies operating in the sector include Bliss Brands.

95. Local SMMEs operating in the industry generally manufacture non-branded products which are supplied to independent wholesalers and/or to the informal sector.

96. The industry also includes third party manufacturers who produce non-branded washing powders. Many of these non-branded products, which are also referred to as house-brands are customised for retailers such as Pick n pay, Woolworths, Checkers, the Spar Group, Dischem and the Clicks Group, who brand these products according to their store brand. South Africa's major manufacturers include Le-Sel Research.

97. These value-for-money house brands are becoming increasingly popular and the quality of some retail brands compares favourably with that of branded products. Market research indicates that consumers regard house branding as an endorsement of the product by the retailer.

98. While a culture of brand loyalty has long been a key feature of the South African retail environment, private label growth in the South African home care segment (which includes washing powder) is outpacing branded product growth. Private home care products recorded real sales growth of 9.2% year-on-year in 2015, while branded product sales posted real year-on-year sales growth of only 2.7% during the same period. Market research suggests that local customers are increasingly trading down to cheaper products or taking advantage of price promotion. House brands may therefore be considered possible competitors to the likes of Procter & Gamble in future.
Previously, the South African detergents market was dominated by Unilever in both the hand wash and auto wash segments. MAQ launched into the hand wash market in late 2003 and within a couple of years became a key player in the market. Ariel later entered the market which saw Unilever losing market shares in both the hand wash and auto wash markets.

Notwithstanding the entry of MAQ and Procter & Gamble, Unilever South Africa continues to dominate South Africa’s washing powder market in the various segments. The Company’s product portfolio includes the best-selling brands, which include Omo, Sunlight, Comfort and Skip. Laundry care categories in which Unilever is the market leader include standard washing powder detergents, standard liquid detergents, bar detergents and hand wash detergents. The largest key competitors to Unilever, who are also multinational players in the South African washing powder market, new entrants and hold the highest remaining market shares in the market are Procter & Gamble, MAQ and Bliss Brands.

Recent entry into the market

Below is a discussion of the washing powder brands that have recently entered and exited the market as well as a discussion on the performance of those that entered the market.

Hand washing remains dominant as the penetration rate of washing machines remains relatively low in South Africa. Many households still face issues with regard to plumbing and electricity. Whilst standard liquid detergents with strong value sales in 2017, albeit from a low base. For this reason, this section will focus most on hand wash powder. As previously indicated, multinational Unilever continued to lead sales with slightly more than half of the entire retail value share within laundry care. In second place is multinational Procter & Gamble.

MAQ (Bliss Brands) entered a market that was already monopolised and managed to grow its market share to [X].

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742 [X].
Another washing powder brand which entered the market recently was Ariel, owned by Procter & Gamble. Ariel had an outstanding start in South Africa, reaching [X] market share after 18 months of its entry. Ariel became the clear challenger of Unilever and is currently the second largest player in the hand wash powder market with growing shares month after month in the Auto wash market, which reached [X] in 2015. Post the entry of Ariel into the overall washing powder market, Unilever lost [X] market share [X] on hand washing powder.

Colgate International ("Colgate") was an active player in the washing powder market which has since exited. [X]. Colgate manufactured, marketed and distributed Punch and Bingo which were both local brands as well as Dynamo which was a global brand. All brands could be used for both hand and auto wash.

Colgate exited the washing powder business in 2004 as a result of a change in global corporate focus strategy and not as a result of the competitive dynamics of the market. Colgate made a decision from its head office in New York to exit its global laundry detergent business across all markets. As a consequence of this decision, all affected subsidiaries exited the laundry detergent business.

Channels for sales and distribution

The finished product reach the ultimate consumer through a range of distributors (i.e. distribution centres, wholesalers, retailers, informal traders, etc.) who compete based on product brand, availability and pricing.

Below is an example of how essential the retail channel is for the distribution of washing powder products. The table below illustrates the market share attributed to each customer of [X], most of which are retail store groups.

743 [X].
744 [X].
745 [X].
Market shares and market concentration

112. In South Africa, the washing powder market consists of very few players who hold more than 5% market shares namely, Unilever; Bliss Brands; and Procter & Gamble. In addition to the washing powder brands manufactured by the above-mentioned firms, national retail stores also sell their own house brands which account for a certain amount of share in the market.

113. The table below illustrates the market shares of players in this industry for the years 2012 to 2015.

Table 12.5: Market shares for the years 2012 -2015

[...]

Source: [...] .

114. The table below illustrates the market shares of washing powder brands in this industry for the years 2012 to 2015.

Table 12.6: Market shares for washing powder brands

[...]

Source: [...] .
Confidential

Barriers to entry

115. Barriers to entry for this market appear to range from low to very high. Acquiring start-up capital, training, machinery and raw material required to produce soap and detergents on a small-scale does not appear to be the problem. The real barrier for a potential competitor appears to be in relation to the distribution channels for the product and getting the product into retail outlets. Therefore despite the relative ease of entry into manufacturing, it is considerably more difficult for a new manufacturer to break into the mainstream market, where brand loyalty generally presents a substantial barrier to entry. Strat-up costs would be high if one wishes to manufacture on a large scale to reach the various distribution channels that may be available. A minimum capital or credit line of at least 10 to 15 million will be required.

116. Product innovation, packaging, distribution, merchandising, marketing and advertising are also barriers that confront new entrants. The sustainability of a new player in this industry is further hampered by the capacity of the established players to market and distribute their brands nationwide. Despite all these challenges it is evident that the washing powder market is not saturated and that there is room for new innovative players which will compete with the major companies that are currently active in this market.

Opportunities for SMME’s

117. According to Who owns Whom, having considered a research study commissioned by the Institute for Economic Research (ERI), the manufacturing industry offers great scope for SMME’s for the following reasons:

117.1 The manufacture of products on a small-scale is a relatively simple process.

117.2 Soap and detergent manufacturing potentially a high profitable model, as operating costs are relatively low and profit margins are high.

Conclusion

118. The washing powder market is clearly dominated by a few players in the manufacturing level who utilise strong distribution channels such as retail to distribute their products. From the above, it appears that there are no high barriers to entry into the washing powder market however the greatest hurdle
in which new entrants must overcome is finding a strong distribution channel for their products. Furthermore, it appears that there is still room for many more competitors to enter the market and that customers are open to switching provided that a new entrant has innovative ways of marketing their product, identifies a specific customer it wishes to service and finds the effective distribution channel. A successful example of this is the entry of the MAQ brand which managed to increase its market shares shortly after its entry.

12.5 The Wheat-to-Bread Value Chain

Introduction

119. Wheat is the second most important grain crop produced in South Africa and a significant portion of the consumer basket, in particular, the baskets of poorer consumers, see Figure 12.9 further below. South Africa is a net importer of wheat and only produces around 57% of what is consumed annually, which makes the importation of wheat a significant aspect of the South African wheat landscape, see Figure 12.5. Unfortunately, this means that for wheat, and ultimately bread, international prices and exchange rate movements drive prices. This leaves vulnerable South African consumers exposed to adverse price fluctuations related to global and macroeconomic shocks.

Figure 12.5: Volume of South African wheat production, imports, consumption, and exports (1998/99 – 2014/15)

120. Most of the wheat produced in South Africa is destined for human consumption of wheat products of which bread forms the biggest share. As mentioned above, almost half of the wheat milled in South Africa is imported, which makes the
use of imported wheat a critical feature in the wheat value chain, specifically at the storage and milling nodes. The generic wheat product supply chain is depicted.

Wheat to bread value chain

121. Figure 12.6 below sets out the South Africa wheat value chain.

![Figure 12.6: South African wheat value chain](image)

Source: DAFF, 2016c

Input Suppliers

122. Input suppliers in the wheat chain largely correspond to those in the maize chain as described above.

Primary Production

123. Although South African wheat production is spread across the country, it is concentrated in the Western and Northern Cape, and the Free State provinces, see Figure 12.7.
The number of wheat producers is estimated to range between 3 800 and 4 000. The bulk of wheat produced in South Africa is bread wheat with small quantities of durum wheat for the manufacturing of pasta. Overall, the production of wheat in South Africa has declined by 9% in the period 2009 to 2014. This trend is due to South African farmers finding it challenging to produce wheat profitably and are therefore gradually switching to growing more profitable crops such as canola, oats, maize, and soybeans. Over the next decade, wheat production is expected to increase by less than 1%, which is insufficient to supply the expected 1.4% growth in demand driven by the continued growth in the population (BFAP, 2017; DAFF, 2016c).

Trade

As a result of the expected declining production and increased consumption, imports are expected to increase over the next decade, as well as exceed domestic production from 2018 onwards (BFAP, 2017).
126. South Africa mainly imports wheat from Australia (19.8%), Canada (19.5%), Russia (17.5%), Germany (16.3%), Argentina (10.5%), and Ukraine (8.9%). Wheat is also exported from South Africa, mainly to Zimbabwe (45.9%), Botswana (25%), Zambia (8.1%), Namibia (6.4%) and Lesotho (5.1%) (DAFF, 2016c).

Storage

127. In much the same way as maize, the wheat producer can use on-farm silos or silo bags, or immediately after harvest, deliver the crop to the miller or processor, or make use of any one of off-farm commercial silos owned and operated by AFGRI, Senwes, NWK, Suidwes Landbou, OVK, VKB, GWK, NTK, MKB, and TWK (Figure 12.12).

Wheat milling

128. Wheat in South Africa is mainly milled into wheat flour, meal and bran to use in the manufacturing processes. Wheat flour is used in the baking industry to manufacture bread and bread products, pasta, biscuits, and other confectionary products. Meal and bran, in turn, are used for the manufacturing of breakfast cereal products but is also used in the animal feed industry (Figure 12.8). (DAFF, 2016c).

Figure 12.8: The wheat milling process

Source: Adapted from DAFF, 2016c
The four big role players in the wheat to bread value chain are Tiger Brands, Premier Foods, Pioneer Foods and Food Corp. These four millers accounted for approximately 80% of the total wheat milled in 2015 (Louw et al., 2017). In 2016, there were 80 wheat milling operations in South Africa, which decreased from around 100 milling firms in 2008 (Louw et al., 2017). Discussions with industry experts revealed that this is due to firm consolidation and not as a result of firms going out of business (Louw et al., 2017).

Baking

The South African bread market is divided into sub-regions with large plant bakeries servicing them. The four wheat milling companies, mentioned earlier, are all vertically integrated with downstream plant bakeries. The bread brands associated with each company are as follows: Pioneer Foods - Sasko, Tiger Brands - Albany, Premier Foods - Blue Ribbon and Foodcorp - Sunbake (DAFF, 2016c). These bakeries have a market share of between 50% and 60% of the domestic bread market in South Africa (Berkowitz, 2013). The remainder of the market is serviced by independent and in-store bakeries (Berkowitz, 2013). The number of plant bakeries is estimated between 60 and 70. In contrast to this, the amount of in-store and franchise bakeries is around 600 and 250, respectively (Berkowitz, 2013).

Retailing

Most of the South African formal retailers, especially large and hyper stores, have in-store bakeries that bake and sell bread and other confectionary products. One of the benefits of an in-store bakery is that it allows the retailer to supply bread at slightly lower prices compared to the bread supplied by large plant bakeries, due to savings on the variable cost (packaging and distribution costs) of in-store produced bread. Unfortunately, having an in-store bakery require substantial investments with a significant variable cost associated with it. The quality of the ingredients and therefore the final product is often inconsistent when compared to that of the larger plant bakeries (DAFF, 2016c; Maister and Durham, 2011).

Consumption

Bread is a staple food for many households, particularly for those living in low-income households (LSM 1-4), and is the second biggest supplier of energy in
the national diet after maize meal (Figure 12.9.). According to data from the StatsSA Income and Expenditure (2010/2011) report, brown bread and white bread represent approximately 20% and 10.5% of these consumers’ expenditure on starchy foods respectively.

133. Figure 12.5 indicates a steady upward trend in wheat consumption in South Africa between 1998 and 2015. Recent issues, such as load shedding and the higher price of electricity, along with urbanisation, have also exasperated the trend in bread demand in order to substitute staples with long cooking times, such as maize meal and rice (BFAP, 2017).

134. Consumption of bread in South Africa is around 62 loaves of bread per person per annum. This amounts to roughly 3 slices per day. There are also considerable regional differences in preferences and consumption. In the Western Cape, for example, 76% of the bread consumed is white bread, while in Limpopo, 75% of the bread consumed is brown bread. In terms of consumption, Gauteng consumers consume about 86 loaves of bread per annum while Limpopo consumers consume about 44 loaves of bread (DAFF, 2016c). Sasko (29%), Albany (25%), Sunbake (15%), and Blue Ribbon (12%) are the four most popular brands among consumers in the lower LSM categories (AMPS, 2015), with customers also exhibiting strong brand loyalty.

12.6 The Maize-to-Maize Meal Value Chain

Introduction

135. The South African maize industry is of strategic importance, both in terms of production and consumption. South Africa produces 57% white maize, which is mainly used for human consumption in the form of maize meal, and 43% yellow maize mainly used for animal feed. The maize industry is an essential contributor to the economy as both an employer and earner of foreign currency. In terms of consumption, maize plays a central role since a significant number of low-income households rely on maize for calorie intake (DAFF, 2016a). The StatsSA Income and Expenditure (2010/2011) report indicates that expenditure on maize for lower-income households forms a substantial part of staple
consumption (around 35%)\textsuperscript{746}. This reinforces that maize is the most accessible staple food in South Africa (See Figure 12.9).

\textbf{Figure 12.9: Share Contribution to Total Staple Food Expenditure by ID}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure129.png}
\caption{Share Contribution to Total Staple Food Expenditure by ID}
\end{figure}

\textit{The maize-to-maize meal value chain}

136. Maize and maize products typically flow from farm to silo, silo to mill and ultimately from the mill to the retail point (Figure 12.10).

The maize value chain shows significant concentration of input suppliers. Key companies in the input supply sector engage in seed, fertilizer, crop protection, and machinery sales or a combination thereof. According to StatsSA (2010), the five largest fertiliser companies are responsible for approximately 87% of total market revenue related to fertiliser. The two largest fertiliser companies are Sasol and Omnia with a combined market share of 67%. South Africa remains a net importer of fertiliser with maize consuming about 41% of the total available fertiliser (DAFF, 2015). The fertilizer market, however, underwent significant changes in terms of concentration following the Commission’s investigation into Sasol (GrainSA, 2011). Monsanto recently purchased shares in Sensake and Carnia and is currently the largest seed company in South Africa. Other large seed suppliers include Pannar and Pioneer Hybrid International (DAFF, 2016b).

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Primary Producers

138. According to DAFF (2016b), the number of commercial maize farmers in South Africa is estimated at 9,000 and they cultivate close to 3.4 million hectares. They also employ approximately 150,000 farm workers. Deregulation in the agricultural sector brought about shifts in the production regions of yellow and white maize production, specifically the increase in maize production in the Northern Cape in response to higher maize prices. Another noteworthy change is the shift of maize production from the western to the eastern parts of the country. Figure 12.11 clearly shows the Free State, North West and Mpumalanga provinces as the primary production regions for maize in South Africa.

Figure 12.11: Maize Production in South Africa

Source: Climate signals, 2017a
Handling and Storage

139. Maize producers have four main options when it comes to storing maize post-harvest; the farmer can either deliver maize directly to a miller, store it on-farm in silo bags or in self-erected silos (172 on-farm silos countrywide) or store the maize in commercial off-farm silos (260 silos). According to Coleman (2014), private companies (previously agricultural cooperatives) own 85% of these commercial silos, which amounts to 16.3 million tons of maize. The commercial silos account for 94% of the available silo capacity (Coleman, 2014). Figure 12.12 illustrates the silos that service the country’s major maize production provinces. The silo owners include; AFGRI, Senwes, NWK, Suidwes Landbou, OVK, VKB, GWK, NTK, MKB, and TWK. Currently, AFGRI, NWK and the SENWES group, situated in the northern parts of South Africa, are the principal silo owners and own 73% of the total storage capacity.

Figure 12.12: Silo’s servicing maize production regions

Source: Agbiz, 2015

Transport

140. The free market system with its complex transport requirements led to massive developments in road transport, and a reduction of maize transport by rail from 80% to 50% of total volumes transported. This was mainly due to Spoornet’s failed adaption to the market’s increased service requirements, and their failure to maintain their fleet. The increase in road transport, on the other hand, resulted in challenges with offloading as silos where initially constructed to dispatch grain primarily by rail. The most prominent players in the road transport
sector include Unitrans, Imperial Logistics and Bidfreight (NAMC, 2004; DAFF, 2016b, 2014a).

**Trade**

141. The South African maize sector is an important earner of foreign currency through the export of maize and maize products. During 2015 and 2016 yellow and white maize showed significant increases in import volumes and reductions in export volumes because of the prevailing drought conditions that placed the domestic maize production under pressure. South African maize prices traded at import parity levels, and contrary to global trends, domestic prices reached record highs. However, the improvement in weather conditions in maize producing areas led to above average maize yields and subsequently, lower prices, allowing domestic prices to align with below average global prices. These lower 2017/2018 prices are expected to lead to a reduction in commercial maize production in 2017 (BFAP, 2017).

142. Price determination for maize occurs on the South African Futures Exchange (“SAFEX”) and allows all fundamental factors to be discounted into prices. The trading of maize in South Africa is dominated by six large traders; Rand Merchant Bank, Senwes, Afgri, Cargill, Louis Dreyfus and Verus Farms. Some of the smaller traders include Brisen, Bester Feed Exchanges, CTH Trading, Farmwise, Unigrain and Free State Maize (DAFF, 2016b).

143. Three types of agents (or traders) are involved in trading maize on SAFEX; (i) hedgers that protect an existing portfolio against adverse movements in maize prices by means of options and futures, (ii) arbitrageurs who makes a profit from price differentials of maize in different markets, and (iii) speculators who attempt to make profits from short-term price movements. Hedging agents will typically be primary producers or millers that are taking a position on the exchange to mitigate their price risk. The other two agents (arbitrageurs and speculators) ensure a requirement for a market to function efficiently (Geyser, 2013).

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748 Major import markets for maize is Argentina, Mexico, Brazil, the USA, Zambia and Malawi (DAFF, 2016).
749 Major export markets for maize is Botswana, Zimbabwe, Lesotho, Swaziland, Namibia, Philippines, Mozambique, Congo, Zambia and Madagascar (DAFF, 2016b).
Maize milling

The maize milling industry consists of both wet and dry milling processes, see Figure 12.13. For the purpose of this study, the focus will fall on the dry milling process, specifically the production of maize meal. The dry milling process transforms white maize into maize meal by refining the kernels. The products derived from this process are; samp, maize grits, and maize rice, unsifted, sifted, coarse, super (40% of sales) and special (30% of sales) maize meal, with an increasing percentage of super maize meal sold in the market (NAMC, 2004a).

![Figure 12.13: Maize Milling Industry Value Chain](source: Adapted from DAFF, 2016b)

Business forms within the milling industry include private and public companies. According to Louw et al. (2017), the five biggest milling companies were responsible for milling 45% of the total maize in South Africa in 2016, and the total number of milling firms amounted to 344. Over the past two decades, this number has varied between 333 and 468 which points to the relative ease of entry and exit, for smaller millers. The entry and exit are based on the returns associated with the final product. The national milling capacity is estimated at 5 million tons of which only approximately 3.7 million tons are currently utilized.
146. Maize meal is a key staple for the South African in low(er) income segments. From 2013 to 2014 the per capita consumption of maize, however, decreased from 83.03kg to 82.13kg (DAFF, 2016b). This is primarily driven by consumer class mobility where lower-income consumers moved into higher income categories because of income growth (BFAP, 2017). Wealthier and urbanised consumers, tend to move away from maize meal as a staple to other forms of staple foods such as bread and potatoes (BFAP, 2017). White Star (32%), Ace (23%) and Iwisa (12%) are the three most popular brands among consumers in the lower LSM categories (AMPS, 2015), with strong brand loyalty prevalent amongst consumers.

12.7 Sunflower seed-to-Cooking Oil Value Chain

Introduction

147. There is a wide variety of oils produced from vegetables and animals available for human consumption. Due to animal fat being considered unhealthy, the market is dominated by vegetable oils and fat which are considered healthier for human consumption. The manufacturing of oils and fats from vegetables is part of South Africa’s agro-processing sector. The oilseed value chain is an important part of the agricultural sector and oilseeds are regarded as one of the most important crops produced in South Africa. They represent an important sub-sector within South African agriculture, from a production, value addition, and consumption perspective. Oilseeds are a growing sub-sector, both in terms of primary production and processing capacity. From a production perspective, soybeans and sunflower are popular alternatives to produce in rotation with maize, whilst canola is produced in the winter rainfall regions in rotation with wheat. Table 12.7 below presents the average contribution of different oilseeds to the gross value of agricultural production between 2013 and 2015 and indicates that soybeans and sunflower are the largest oilseed sectors in South Africa.

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750 Demand relations of oilseed products in South Africa by Hendrick P. Van Schalwyk
Table 12.7 Contribution of oil seeds to the gross value of agriculture in South Africa

<table>
<thead>
<tr>
<th></th>
<th>Contribution to gross value of agricultural output</th>
<th>Share in gross value of field crop production</th>
<th>Share in gross value of agricultural production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soybeans</td>
<td>R4.67 billion</td>
<td>8.4%</td>
<td>2.3%</td>
</tr>
<tr>
<td>Sunflower seed</td>
<td>R3.26 billion</td>
<td>5.9%</td>
<td>1.6%</td>
</tr>
<tr>
<td>Groundnuts</td>
<td>R548.7 million</td>
<td>1.0%</td>
<td>0.3%</td>
</tr>
<tr>
<td>Canola</td>
<td>R490.6 million</td>
<td>0.9%</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

Source: DAFF, 2016d

148. Limited volumes are consumed in unprocessed form, providing an opportunity for value addition. Oilseed processing yields vegetable oil, predominantly for human consumption, as well as protein meal, a raw material to the animal feed sector. Hence, oilseed production and processing also contribute to the competitiveness of livestock production. Sunflower seed is the third largest grain crop in South Africa after maize and wheat. Sunflower seeds can be consumed or can be used for the manufacture of sunflower oil and oilcake. Sunflower oil is used for cooking oil, margarine and other foodstuff as well as in fuel for diesel engines as bio-fuel, while oilcake is primarily used in animal feed. In the past ten years, the gross value of the sunflower seed produced in South Africa has been relatively volatile. Sunflower seeds are produced in eight out of the nine provinces in South Africa, and North West and the Free State Provinces were the largest producers of sunflower seeds.

149. Vegetable oil consumption in South Africa has expanded rapidly over the past 15 years. This value chain assessment is focused on oil used predominantly for cooking purposes, of which palm oil has the largest share, followed by sunflower oil and soybean oil, see Figure 12.14 below. Palm oil is generally imported and when used as cooking oil, it is predominantly in the fast food industry. Sunflower seed is primarily used to manufacture sunflower oil, commonly referred to as cooking oil and oil cake used for animal feed. Within the soybean and sunflower oil sectors, approximately 50% and 80% respectively of domestic oil consumption has been produced in South Africa over the past 5 years.

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751 Who Owns Whom Reports, The Growing of Cereals and other October, March 2018
752 Department of Agriculture, Forestry and Fisheries, (2017), Sunflower Seed Market Value Chain Profile.
Figure 12.14: Vegetable oils consumption in South Africa

Source: BFAP, 2017 & ITC, 2017

The oilseed to vegetable oil value chain

150. Figure 12.15 represents a generic perspective on the oilseed to vegetable oil value chain in South Africa. While the broad structure is similar, differences are evident between the different oilseeds. Such differences include the primary purpose of production, with oilseeds such as sunflower and canola produced predominantly for their high oil yield, whereas soybean processing yields a higher protein meal content for use in animal feed.

151. Oilseeds and its products typically flow from farm to silo, silo to crusher, crusher to either animal feed mill (protein meal and full fat) or refinery (oil) and refinery to wholesale and/or retail. Trade is considered at different levels of the value chain, as it represents an important consideration both in primary oilseed markets and oilseed products. Owing to the focus on cooking oil, the discussions that follow are focussed on oil production for human consumption and does not provide further detail on processing to animal feed.

152. The primary stakeholders in the value chains includes:

152.1 Suppliers of agricultural inputs such as seeds, fertilisers and pesticides;

152.2 Agricultural producers and farmers;

152.3 Traders and agricultural produce agents;

152.4 Bulk storage and silo operators;

152.5 Processors, often carry out combined operations of crushing, extraction and refining oils;
152.6 Wholesalers, retailers and distributors;

152.7 Manufacturers of food using oil;

152.8 End users

**Figure 12.15: Oil seed to vegetable oil value chain in South Africa**

*Input Suppliers*

153. The input suppliers relevant to the oilseed value chain are very similar to those reflected in the discussion of maize input suppliers. Seed, chemicals, and fertilisers are generally supplied by the same companies for most field crops. Within the soybean sector, however, a larger share of producers rely on farm-saved seed. This reduces the cost of seed for the producer but is detrimental to investment into new variety development by seed companies. The endpoint royalty system that is expected to be introduced on soybean seed in South
Africa will allow the release of new, improved varieties to domestic producers in the future.

Primary Producers

154. The area planted to oilseeds has expanded rapidly over the past decade. Amongst the summer crops, growth in area cultivated to oilseeds has been mainly at the expense of white maize (Figure 12.16). Consumed mainly as a basic food staple, the demand for white maize has stagnated in recent years; hence yield gains have been sufficient to supply domestic demand, despite a decline in the area. Conversely, crops produced predominantly for the growing animal feed market have expanded much faster. In addition to strong demand and favourable margins, oilseed production holds many advantages for producers. The nitrogen fixation properties of soybeans, for instance, make it highly desirable in a rotation system with maize, whereas sunflower production is considered a lower risk option due to its resilience through periods of water deficiency.

Figure 12.16: Area planted to selected summer crops in South Africa

![Area planted to selected summer crops in South Africa](source)

Source: BFAP, 2017

155. Amongst the winter crops, the benefits of canola cultivated in rotation to wheat and barley have also supported rapid area expansion in recent years (Figure 12.17) whilst expansion is slowing relative to the past decade, BFAP (2017) expects continuous increases in the area planted to both soybeans and canola over the coming decade. Conversely, the area planted to sunflower is expected
to stabilise, as it does not have the same excess crushing capacity evident in the soybean market.

Figure 12.17 Area planted to selected winter crops in South Africa

Source: BFAP, 2017

156. Although South Africa’s Industrial Policy Action Plan (“IPAP”) 2011-2017 and Agricultural Policy Action Plan (“APAP”) 2014 – 2019 has no specific strategy for oilseeds and edible oils, the government has identified primary agriculture and agro-processing as key potential areas for growth towards a stronger economy. There are interventions in IPAP which would be benefit the development of the edible oils sub-sector as well. At the primary level, this includes financial assistance for productivity-enhancing investments, development of competitive clusters and investments in infrastructure\(^\text{753}\). This is also in light of the job creation opportunities that agriculture creates. As such, there are developmental projects, co-operatives and initiatives aimed at encouraging agricultural enterprises. This includes encouraging and lowering the risks of new entrants in the agricultural sector. There are numerous relief

\[^\text{753}\] Bureau for Food and Agricultural Policy (BFAP). 2011. The contribution of the agro-industrial complex to employment in South Africa
offered to farming entrepreneurs that includes disaster relief for fire, flooding etc.

There is therefore opportunities for SMMEs to enter at the primary level of the oil chain with support of the available developmental projects supported by government.

Table 12.8 presents the provincial distribution of oilseed production in South Africa. The bulk of soybeans are produced in the Eastern parts of the country in Mpumalanga and the Free State, whereas sunflower production is concentrated in the Western parts of the country in the Free State and North West. All current canola production occurs in the winter rainfall region in the Western Cape.

<table>
<thead>
<tr>
<th>Province</th>
<th>Soybeans Thousand tons</th>
<th>Soybeans Share in national</th>
<th>Sunflower Thousand tons</th>
<th>Sunflower Share in national</th>
<th>Canola Thousand tons</th>
<th>Canola Share in national</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Cape</td>
<td>1.28</td>
<td>0.12%</td>
<td>0.00</td>
<td>0.00%</td>
<td>101.13</td>
<td>100.00%</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>12.70</td>
<td>1.22%</td>
<td>0.49</td>
<td>0.06%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>Free State</td>
<td>339.33</td>
<td>32.54%</td>
<td>429.67</td>
<td>56.22%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>2.33</td>
<td>0.22%</td>
<td>0.10</td>
<td>0.01%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>86.29</td>
<td>8.28%</td>
<td>65.25</td>
<td>8.54%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>450.73</td>
<td>43.22%</td>
<td>3.37</td>
<td>0.44%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>Limpopo</td>
<td>46.72</td>
<td>4.48%</td>
<td>65.25</td>
<td>8.54%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>Gauteng</td>
<td>63.57</td>
<td>6.10%</td>
<td>4.73</td>
<td>0.62%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>North West</td>
<td>39.83</td>
<td>3.82%</td>
<td>260.58</td>
<td>34.10%</td>
<td>0.00</td>
<td>0.00%</td>
</tr>
</tbody>
</table>

Source: CEC, 2017

Handling, Storing and Transport

Within the soya and sunflower value chain, handling, storage, and transport are very similar to the maize value chain discussed above. Producers can use on-farm silos or silo bags, deliver directly to processors after harvest or utilise any one of off-farm commercial silos owned and operated by AFGRI, Senwes, NWK, Suidwes Landbou, OVK, VKB, GWK, NTK, MKB, and TWK. Transportation systems are also very much the same as for maize and wheat and are detailed in earlier sections.

Within the canola sector, producers have the option of delivering to the SSK silos in the Western Cape, or alternatively directly to Southern Oil (Pty) Ltd. (“SOILL”), the single largest off-taker of canola in South Africa. SSK also owns a majority interest in SOILL. The bulk of production tends to be contracted, resulting in producers delivering directly to the processor.
Oilseed Processing

161. While the bulk of oilseed production is processed prior to consumption, a small share of sunflower seed is consumed directly in the bird feed, or health and confectionary markets. This share is minimal in the total market. Van Zyl (2010) however notes that 95% of all marketable sunflower seed in South Africa is ultimately processed into oil and cake.

162. Oilseed processing, specifically to cooking oil, consists of crushing (to extract crude oil and protein meal or oilcake) as well as a refining process for the crude oil. For illustrative purposes, the crushing process for sunflower seed is presented in Figure 12.18, as sunflower is the biggest component of the domestically produced cooking oil industry.

163. The main crushers of sunflower seed are Nola Industries, Epic and Epko. There are also pressing plants with smaller pressing capacity are Sealake Industries, Elangeni Oil & Cake Mills and Capitol Oil Mills.

Figure 12.18: Sunflower processing process

Source: Van Zyl, 2010

164. Table 12.9 presents the processing capacity, thereby also illustrating who the major role players are in soya and sunflower processing. It indicates that South Africa has a dedicated crush capacity of approximately 1.8 million tons per annum each for sunflower and soybeans. Considering that some of the plants have a dual crushing ability and can, therefore, switch between soybean and sunflower, approximately 600 thousand tons of additional sunflower, or 800 thousand tons of additional soybeans can be crushed if all dual capacity is
shifted into a single product (in a dual capacity plant, sunflower crush volumes are typically approximately 80% of soybeans). SOILL in the Western Cape is currently the only canola crushing plant in the country and also includes an oil refinery.

Table 12.9: Soya and Sunflower Processing Capacity

<table>
<thead>
<tr>
<th>Oilseed crushers in South Africa</th>
<th>Facilities</th>
<th>Capacity (1000 tons p.a.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Refinery</td>
<td>Dual</td>
</tr>
<tr>
<td>Continental Oil Mills</td>
<td>Viljoenskroon</td>
<td>No</td>
</tr>
<tr>
<td>Continental Oil Mills</td>
<td>Randfontein</td>
<td>Yes</td>
</tr>
<tr>
<td>Epco oilseed crushing</td>
<td>Lichtenburg</td>
<td>Yes</td>
</tr>
<tr>
<td>Nola industries</td>
<td>Randfontein</td>
<td>Yes</td>
</tr>
<tr>
<td>Gauteng Oil</td>
<td>Gauteng</td>
<td>Yes</td>
</tr>
<tr>
<td>Sun oil refineries</td>
<td>Durban</td>
<td>Yes</td>
</tr>
<tr>
<td>Sunola oil mills</td>
<td>Port Shepstone</td>
<td>Yes</td>
</tr>
<tr>
<td>Willowton Oil Mills</td>
<td>Pietermaritzburg</td>
<td>Yes</td>
</tr>
<tr>
<td>Willowton Oil Mills</td>
<td>Isando</td>
<td>Yes</td>
</tr>
<tr>
<td>CEOCO</td>
<td>Boksburg</td>
<td>No</td>
</tr>
<tr>
<td>Nedan Oil</td>
<td>Potgietersrus</td>
<td>No</td>
</tr>
<tr>
<td>Nedan Oil</td>
<td>Potgietersrus</td>
<td>Yes</td>
</tr>
<tr>
<td>Nedan Oil</td>
<td>Potgietersrus</td>
<td>No</td>
</tr>
<tr>
<td>Drak</td>
<td>Winterton</td>
<td>No</td>
</tr>
<tr>
<td>VKB</td>
<td>Villiers</td>
<td>No</td>
</tr>
<tr>
<td>Russel Stone</td>
<td>Bronkhorstspruit</td>
<td>No</td>
</tr>
<tr>
<td>Noble</td>
<td>Standerton</td>
<td>No</td>
</tr>
<tr>
<td>Gauteng Oil</td>
<td>Nasrec</td>
<td>No</td>
</tr>
<tr>
<td>Majesty</td>
<td>Krugersdorp</td>
<td>No</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: BFAP, 2015*

165. When crushed, the extraction rates of both oil and oilcake differ across oilseed types, as indicated in .

166. Table 12.10. High oil-yielding seeds such as sunflower and canola are produced predominantly for oil production, whereas soybeans, with its high oilcake yields, is mainly targeted at protein meal production for the animal feed market. A significant share of soybean oil is also sold in crude form for use in animal feed.

Table 12.10: Average Oilseed Crushing Yields

<table>
<thead>
<tr>
<th>Oilseed</th>
<th>Oilcake content</th>
<th>Oil content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soybean</td>
<td>79.1%</td>
<td>18.0%</td>
</tr>
</tbody>
</table>
The production of cooking oil requires further refinement of the crude oil. After refinement, oil is packaged and distributed to wholesale or retail level. The crushing plant often also handles refinement and Table 12.9 indicates which of the crushing plants also have refinement facilities. Independent refiners are also prevalent in the value chain. These refineries procure crude oil from domestic crushing plants, as well as imported sources.

**Retailing**

As mentioned above, the formal retail market is dominated by five major players; Pick ’n Pay, Shoprite/ Checkers, Spar, Mass Mart and Woolworths selling oil products, amongst many others, to final consumers. These are supplemented by independent sales, which are typically small, sometimes informal convenience stores.

To look at whether the refiners of crude oil into cooking oil treat both independent and the major retail chains the same as distributors of their products, the Inquiry looked at rebates and other trading terms that are offered to the retailers of cooking oil. The following cooking oil producers submitted data to the Inquiry, namely, Calthorpe of DH Brothers Industries (Pty) Ltd t/a The Willowton Group (“Willowton”), Golden Fry Oil South Africa (Pty) Ltd (“Golden Fry”) and from Wilmar South Africa (Pty) Ltd (“Wilmar”).

Depending on the quantities being purchased, cooking oil producers supplies both independent and retail chains with cooking oil for resale. Similar to rebates in other grocery products, the major retail chains demands cooking oil suppliers to give them rebates for categories of the retail products. There are producers that focuses directly on supplying independent wholesalers and spaza shops with good quality products at competitive prices because they do not demand rebates. Suppliers that offer rebates to retailers have generally been found to offer high rebates to major retail chains than to independent retailers. However, irrespective of the rebates being offered or not, we have been observed that

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See the assessment of rebates for cooking oil in Chapter 5.
Confidential

independents still manage to sell their cooking oil cheaper than the major retail chains.

Consumption

171. Supported by rising income levels and continued population growth, vegetable oil consumption in South Africa has expanded rapidly over the past 15 years (BFAP, 2017). According to BFAP (2017), the combined consumption of sunflower, soybean, canola and palm oil has increased by an annual average of 2.9% per year, since 2001. The fastest growth was observed in canola consumption (11.8% p.a.), though from a very small base. This was followed by soybean oil (5.7% p.a.).

172. Figure 12.19 indicates that the greatest share of national expenditure on edible oils is attributed to middle-class consumers. Expenditure decile 5 to 8 combined accounts for almost half of the total national expenditure. Expenditure decile 1, (the 10% of the population with the lowest income) only accounts for 4.5% of total expenditure, whereas expenditure decile 10 (the 10% of the population with the highest income) accounts for 7% of total expenditure.

Figure 12.19: Expenditure on vegetable oil disaggregated by expenditure decile

![Figure 12.19: Expenditure on vegetable oil disaggregated by expenditure decile](image)

Source: Stats SA, 2012

Trade

173. Oilseeds and their products are traded at different levels of the value chain – as raw seeds, as oilcake or protein meal and as crude or refined oil. After many
years of consecutive net exports of soybean seed, a substantial expansion of domestic crushing capacity necessitated net imports from 2014 onwards, which were further exacerbated by the drought in 2015 and 2016. South Africa is typically a small net importer of sunflower seed, with canola trading almost at self-sufficiency.

174. South Africa remains a net importer of vegetable oil, but the share of imported products in total consumption differs significantly across different oil types. South Africa imports all of its palm oil requirement, mainly from Indonesia and Malaysia. Small quantities are re-exported into the rest of the Southern African region. Conversely, net imports only accounted for approximately 17.5% of total sunflower oil consumption over the past 5 years, with small net exports in 2016. Imports typically accrue from the European Union, as well as Argentina, with some exports to the rest of the Southern African region. In the soybean oil market, net imports accounted for an average of 45% of domestic consumption over the past 5 years. Imports typically originate from the Netherlands, Argentina, and Spain, with exports directed at the rest of the Southern and Central African region. The share of net imports in the still small canola oil market fluctuates significantly from year to year but has averaged at 22% between 2012 and 2016. The bulk of imports originate from the European Union, with exports also distributed to the rest of the Southern and Eastern African region.

175. Sunflower oil is typically imported as crude oil, as domestic sunflower oil production fluctuates in line with the domestic crop. Van Zyl (2010) notes that, in the event of a domestic shortage, processors prefer to import crude oil for domestic refinement, as crude oil imports are generally more cost-effective than sunflower seed imports for domestic crushing. Within the soybean oil market, the share of crude oil in total soybean oil imports has declined to an average of 25% in the past 5 years from 90% in the early 2000s (ITC, 2017). Data from the ITC (2017) indicates that almost no palm and canola oil is imported in crude form.

**Sunflower oil**

176. For purposes of this Inquiry, the focus is on sunflower oilseed as sunflower cooking is the biggest component of the domestically produced cooking oil industry. Sunflower cooking oil (“herein referred to as cooking oil”) also forms
part of the National Agricultural Marketing Council’s ("NAMC") food basket.\textsuperscript{755} As also discussed in Chapter 3, cooking oil was indicated as one of the must have product in a spaza shop.

177. As a result, cooking oil generally forms part of the monthly food hampers purchased by customers from wholesalers, retail chain stores all the way to being purchased from informal spaza shops. Figure 12.20 represents the sunflower seed market value chain.

178. In terms of the market structure, the processing of sunflower seed is highly capital intensive and requires high technology and specialized knowledge. Generally, the processing of sunflower seeds is mainly used for human consumption and the importance of the production of sunflower is the extraction of oil from the seed. Statistics show that in light of international markets, South Africa is not a major exporter of sunflower seed. The low figures in the export of sunflower seeds also suggests that South Africa only has capacity to meet the domestic demand and no so much of the export market.\textsuperscript{756} Generally, the market for seeds in South Africa is highly concentrated with two main players; Monsanto and Pioneer Hi-Bred International.

179. Oilseeds and its products typically flow from farm to silo, silo to crusher, crusher to either animal feed mill (protein meal and full fat) or refinery (oil) and refinery to wholesale and/or retail. Trade is considered at different levels of the value chain, as it represents an important consideration both in primary oilseed markets and oilseed products. Owing to the focus on cooking oil, the discussions that follow are focussed on oil production for human consumption and does not provide further detail on processing to animal feed.

\textsuperscript{755} NAMC Markets and Economic Research, Food Basket Price Monthly Issue 26- Feb/2018
\textsuperscript{756} Department of Agriculture, Forestry and Fisheries, (2017), Sunflower Seed Market Value Chain Profile.
Sunflowers grow well under draught conditions, and are mainly planted in the Free State, North West, the Mpumalanga Highveld and Limpopo province. The sunflower seed is one of the commodities traded on SAFEX. The SAFEX price serves as an indicator for producers as to what they can charge for their produce in the market. The international oil prices act as a guideline for domestic seed and oil prices as South Africa is regarded as a price taker in the global oilseed market.

The refining of sunflower seed into oil is highly capital intensive and requires advanced technology and specialized knowledge. The majority of large refineries are located in Gauteng and Kwa-Zulu Natal. To reduce transport costs, the location of refineries and agro-production facilities should be close to either crude oil facilities (crushing plants) or harbours for imports of crude sunflower oil. In South Africa, refineries can import oil at a lower price than that supplied by local crushers, which is why many sunflower oil refineries are located close to Durban port.

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757 Department of Agriculture, Forestry and Fisheries, (2017), Sunflower Seed Market Value Chain Profile.
Recent pricing trends

182. Table 12.11 shows the average price for sunflower oil as well as the year-on-year percentage change from December 2012 to December 2017.

Table 12.11: Average retail price of sunflower oil (December 2012 to December 2017)

<table>
<thead>
<tr>
<th></th>
<th>Price of Sunflower Oil - 2L</th>
<th>% change (year-on-year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2012</td>
<td>R34.80</td>
<td>-</td>
</tr>
<tr>
<td>December 2013</td>
<td>R34.34</td>
<td>-1.3%</td>
</tr>
<tr>
<td>December 2014</td>
<td>R31.18</td>
<td>-9.2%</td>
</tr>
<tr>
<td>December 2015</td>
<td>R39.12</td>
<td>25.5%</td>
</tr>
<tr>
<td>December 2016</td>
<td>R44.51</td>
<td>13.9%</td>
</tr>
<tr>
<td>December 2017</td>
<td>R39.78</td>
<td>-10.6%</td>
</tr>
</tbody>
</table>

Source: Source: StatsSA

183. Figure 12.21 below compares the average cost of producing 2L of cooking oil\(^759\) to the average price of sunflower oil and shows the margin between the cost of production and retail price.

Figure 12.21: Sunflower seed and sunflower price trends (January 2013 to December 2018)

\(^759\) The PPI data for cooking oil was reported in 4x5L packages. This has been converted to 2L for comparison purposes.
Market Shares and Concentration

184. The following market shares for the market of refining and supplying refined sunflower oil are taken from the merger investigation of Wilmar Continental and Unity Foods. The merger was prohibited.

Table 12.12: The estimated market shares for the refining and supply of refined bulk sunflower oil based on annual volumes sold in 2014 and 2015

[Source: The Commission’s calculation based on data from market participants]

12.8 The Dairy Value Chain

Background to the Dairy industry

185. The primary dairy industry consists of milk producers or farmers who own and operate dairy farms. In essence, these farms produce and purchase raw milk which is pasteurised, homogenised, packaged and sold through retail outlets as fresh milk or non-perishable milk products such as UHT (Long Life) milk and milk powder, for both human and animal consumption. The primary industry is represented by the Milk Producers Organisation (MPO).

186. According to the MPO, the South African dairy industry is the fifth-largest agricultural industry in South Africa, providing a sustainable living for thousands of small- and large-scale producers across the country.

187. The secondary dairy industry consists of dairy processors who produce the six types of products, Milk and Cream, Concentrated Milk, Buttermilk and Yoghurt, Whey, Butter and Oils, and Cheese. Processors range from a few larger processors of dairy products who operate nationally, a larger number of smaller processors...
processors who operate in specific areas, and a number of producer distributors ("PDs") who sell their own produce directly to retailers and consumers.  

188. Milk is generally processed by large dairy converters [>] or medium-sized converters [>] which produce homogenised and pasteurised fresh milk and other dairy products such as yoghurts, creams and cheeses. There are also a number of small-scale processors who produce fresh milk and value-added products, such as specialty cheeses for local and niche markets.  

189. According to Who Owns Whom, the South African dairy industry operates on a free market basis, is involved in numerous international trade agreements, is exposed to relatively low import tariffs, has no quota system and receives no government subsidies. Furthermore, the industry is sufficiently represented by industry associations which include the following:

189.1 Milk South Africa (Milk SA);
189.2 The Milk Producers Organisation (MPO);
189.3 The South African Milk Processors Organisation (SAMPRO);
189.4 The South African Society of Dairy Technology (SASDT); and
189.5 The Dairy Standard Agency (DSA).

Regulatory environment

190. Dissimilar to other countries in the World, South Africa’s dairy industry operates in a completely deregulated environment. The Dairy Standard Agency (DSA) has as its’ primary objective to promote the compliance of milk and other dairy products with product composition, food safety and metrology standards.

191. The following Acts, Regulations and guidelines have a direct impact on the dairy industry.

191.1 The Marketing of Agricultural Products Act
191.2 The Foodstuffs, Cosmetics, and Disinfectants Act\textsuperscript{769}

191.3 The Livestock Improvement Act\textsuperscript{770}

191.4 The Fertilisers and Farm Feeds Agricultural Act\textsuperscript{771}

192. The Medicines and related Substances Control Act\textsuperscript{772}

192.1 The Animal Disease Act\textsuperscript{773}

192.2 The Consumer Protection Act\textsuperscript{774}

192.3 The Agricultural Products Standards Act\textsuperscript{775}

192.4 The National Regulations for Compulsory Specifications Act\textsuperscript{776}

192.5 The Legal Metrology Act\textsuperscript{777}

193. A relevant government authority with regard to the regulation of the dairy industry is the Department of Agriculture, Forestry and Fisheries (DAFF). In 2015, DAFF passed the Regulation R260.\textsuperscript{778} The regulation introduces new dairy product classifications, including drinking yoghurt and custard. The fat content of dairy and imitation dairy products also changed, now according to the new regulation, for a dairy product to qualify as "low fat," the labelling must indicate the fat content to be less than 1.5% and creating a new, “medium fat” category. These amendments are intended to align local regulations with international standards as per Codex Alimentarius.\textsuperscript{779} Regulation R260 further defines more stringent marking requirements for dairy and imitation dairy products as prescribed in the Labelling and Advertising Regulations under the Foodstuffs, Cosmetics, and Disinfectants Act.\textsuperscript{780}

\textsuperscript{769} Act 54 of 1972
\textsuperscript{770} Act 60 of 1997
\textsuperscript{771} Act 36 of 1947
\textsuperscript{772} Act 101 of 1965
\textsuperscript{773} Act 35 of 1984
\textsuperscript{774} Act 68 of 2008
\textsuperscript{775} Act 119 of 1990
\textsuperscript{776} Act 5 of 2008
\textsuperscript{777} Act 9 of 2014
\textsuperscript{778} Regulation R260 relates to the Classification, Packing and Marking of Dairy Products and Imitation Dairy Products Intended for Sale in the Republic of South Africa.
\textsuperscript{779} The Codex Alimentarius is a collection of internationally recognized standards, codes of practice, guidelines, and other recommendations relating to foods, food production, and food safety
\textsuperscript{780} Act 54 of 1972
194. Producers are required to adhere to various standards, including but not limited to:

194.1 HACCP- Hazard Analysis and critical control point systems;

194.2 Global GAP;

194.3 ISO 9001: 2008 – Quality Management Systems Certification; and


Overview of the Value Chain

195. Whilst the dairy value chain produces an array of products which are intended for human consumption, these include; raw, pasteurised and UHT milk, fermented milk, cream (fresh and long life), yoghurt, cheese, condensed milk, milk powder, whey powder, butter, and ghee\(^{781}\), the predominant focus of this analysis is fresh and UHT milk.

196. The value chain of the dairy industry can be divided into four levels: (1) the farming or production of raw milk; (2) the procurement of raw milk by processors such as Clover and Parmalat who procure the raw milk from specific regions within the country; (3) the processing of raw milk into dairy products such as UHT milk, yoghurt, milk powders, butter, cheese, butter milk, milk powders, whey power etc.; and (4) the on-sale of the dairy products either to retailers or in bulk to caterers and other end-users. Below is a diagrammatic representation of the dairy industry value chain in Figure 12.22 below:\(^{782}\)

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\(^{781}\) DAFF report, 2014

\(^{782}\) Inquiry Value Chain Analysis Pg. 43; Louw et al., 2004.
There are two main sources of raw milk from producers, namely commercial producers and small to medium producers. Milk from commercial dairy farms usually goes straight into bulk collection for dairy processors who then produce dairy products such as cheese, butter and yoghurt. Small and medium dairy farms either supply consumers (PDs) or contribute to the bulk collection of milk. Dairy processors can also import raw milk to use in their production processes. 

The bulk of South Africa’s raw milk is produced in the coastal provinces, with the Western Cape, Eastern Cape and Kwazulu-Natal provinces accounting for about 61% of raw milk produced in South Africa in 2014/2015. This is due to mild temperatures and good rainfall which helps to ensure the best quality pasture and the most favourable environment for milk production, these being essential pre-requisites for lower milk production costs and higher yields.

Nature of competition along the value chain

Over the last decade or so, the number of milk farmers has declined by more than 50% from just over 4 100 in 2006 to less than 2 000 milk farmers in January 2017. Some reasons for this decline has been attributed to a number of factors...
such as the lengthy drought period, acquisitions by larger producers, liquidations, lack of family successors, diversification into more profitable forms of farming, farm sizes being too small for new technology to be cost effective, and isolated farm locations which make milk collection unattractive to milk buyers.787 This could also be attributed to the unstable prices of one of the largest cost drivers for milk producers: animal feed.788 With the rough climatic conditions that South Africa experienced over the past few years, feed prices were higher than usual, and profit margins in the dairy value chain were severely squeezed.789

200. Table 12.13 below sets out the distribution of raw milk producers/farmers, per province from January 2009 to January 2017 and provides an overall total of milk producers/farmers in South Africa over the same period.


<table>
<thead>
<tr>
<th>Province</th>
<th>Jan ’09</th>
<th>Jan ’11</th>
<th>Jan ’12</th>
<th>Jan ’14</th>
<th>Jan ’15</th>
<th>Jan ’16</th>
<th>Jan ’17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Cape</td>
<td>795</td>
<td>683</td>
<td>647</td>
<td>529</td>
<td>533</td>
<td>502</td>
<td>481</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>387</td>
<td>314</td>
<td>283</td>
<td>264</td>
<td>262</td>
<td>251</td>
<td>244</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>37</td>
<td>28</td>
<td>21</td>
<td>25</td>
<td>14</td>
<td>14</td>
<td>7</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>373</td>
<td>323</td>
<td>322</td>
<td>281</td>
<td>267</td>
<td>253</td>
<td>247</td>
</tr>
<tr>
<td>Free State</td>
<td>884</td>
<td>601</td>
<td>535</td>
<td>389</td>
<td>328</td>
<td>280</td>
<td>249</td>
</tr>
<tr>
<td>North West</td>
<td>540</td>
<td>386</td>
<td>352</td>
<td>233</td>
<td>222</td>
<td>181</td>
<td>165</td>
</tr>
<tr>
<td>Gauteng</td>
<td>217</td>
<td>127</td>
<td>126</td>
<td>109</td>
<td>100</td>
<td>97</td>
<td>98</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>286</td>
<td>201</td>
<td>164</td>
<td>117</td>
<td>94</td>
<td>93</td>
<td>87</td>
</tr>
<tr>
<td>Limpopo</td>
<td>32</td>
<td>23</td>
<td>24</td>
<td>14</td>
<td>14</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>3,551</td>
<td>2,686</td>
<td>2,474</td>
<td>1,961</td>
<td>1,834</td>
<td>1,683</td>
<td>1,593</td>
</tr>
</tbody>
</table>

Source: MPO

201. Despite the fact that the number of milk farmers has consistently been on the decline, this has not translated into a decline in milk production.790 On the contrary, milk production has grown consistently over the years with an average annual growth rate of just over 2% from 1960 million litres in 2000 to 2780 litres in 2014. This is indicative of a drift towards fewer farms, exhibiting greater

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788 Value Chain Analysis, Pg. 43
789 Value Chain Analysis, Pg. 43
790 Teboho Bosiu; Reena Das Nair and Anthea Paelo, the Global Food Value Chain and Competition Law and Policy in BRICS Countries: Insights from Selected Value Chains in South Africa (November 1, 2017). CCRED Working Paper No. 21, pg. 60, para. 7.4.1.
economies of scale in the form of larger herds and increased production capacity.

202. The volume of milk produced is also intensely dependent on the milk: maize price ratio which directly affects the animal feeds industry. The animal feeds industry is vulnerable to high commodity prices, often driven by climatic conditions and exchange rate fluctuations. An increase in the milk: maize price ratio means that when the milk price in relation to maize price increases, there is an increase in raw milk production.

203. Table 12.14 below, depicts the South African milk production output for the period 2000-2014, as well as, the decline the number of milk farmers over that same period.

<table>
<thead>
<tr>
<th>Year</th>
<th>Milk Production (mnl litres)</th>
<th>Number of Producers</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>2780</td>
<td>1,980</td>
</tr>
<tr>
<td>2001</td>
<td>5,980</td>
<td>5,980</td>
</tr>
<tr>
<td>2002</td>
<td>6,000</td>
<td>6,000</td>
</tr>
<tr>
<td>2003</td>
<td>6,000</td>
<td>6,000</td>
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<tr>
<td>2004</td>
<td>6,000</td>
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<td>2005</td>
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<td>2006</td>
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<td>2007</td>
<td>6,000</td>
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<tr>
<td>2008</td>
<td>6,000</td>
<td>6,000</td>
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<tr>
<td>2009</td>
<td>6,000</td>
<td>6,000</td>
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<tr>
<td>2010</td>
<td>6,000</td>
<td>6,000</td>
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<tr>
<td>2011</td>
<td>6,000</td>
<td>6,000</td>
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<tr>
<td>2012</td>
<td>6,000</td>
<td>6,000</td>
</tr>
<tr>
<td>2013</td>
<td>6,000</td>
<td>6,000</td>
</tr>
<tr>
<td>2014</td>
<td>6,000</td>
<td>6,000</td>
</tr>
</tbody>
</table>

Source: MPO

204. Further down the value chain, the number of processor/distributors had dropped from 178 in September 2008 to 115 in April 2016 while the number of milk buyers had also dropped from 163 to about 150 during the same period. This concentration in the sector particularly amongst the milk procurers result in substantial bargaining power being held by a small number of procurers. Possibly as a result of this, the South African Milk Co-operative (“SAMILCO”) which is made up of dairy farmers, applied for an exemption from the

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791 Teboho Bosiu; Reena Das Nair and Anthea Paelo, the Global Food Value Chain and Competition Law and Policy in BRICS Countries: Insights from Selected Value Chains in South Africa (November 1, 2017). CCRED Working Paper No. 21, pg. 60, para. 7.4.1.
Competition Commission in August 2013, to enable its’ members to participate in collective price negotiations with milk processors.

*Market shares and concentration*

205. While there are currently about 150 milk buyers in the country, the four largest milk buyers which are also the main processors [▷]. They purchase in the region of about 70% of the total milk production in South Africa.\(^{792}\)

206. Market share information with regard to the large milk processors is not readily available. Despite this, the Inquiry sets out below a comparative analysis of the regional market shares of milk processors for the years 2008 and 2014. [▷]

207. Generally, market shares are calculated regionally because the geographic scope for the procurement of raw milk has been defined in competition assessments as regional/provincial markets since raw milk is procured within a geographic locale. This is largely due to transport costs and the limited shelf life of raw milk, as well as the location of the majority of milk producers.

208. In 2008, the regional markets for the processing of raw milk was highly concentrated. The market share figures for that period are set out in the table below.

**Table 12.15: Market shares of milk processors, per region, according to the value chain analysis**

[▷]

*Source: Adapted from Value Chain Analysis, Robberts et al*

209. From Table 12.15 above, it appears that in 2008 [▷] had enjoyed a significant market share in Mpumalanga but had no presence in the Free State, whilst [▷] enjoyed a significant portion of the Free State market. It also appears that whilst [▷] is not present in any of the other regions, it had a strong competitive presence in the Eastern Cape.

210. In the [▷] merger, which was assessed in 2014, the Commission set out the market shares of milk processors based on total raw milk purchased from milk

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\(^{792}\) Value Chain Analysis, Pg. 45
Confidential

producers, per region. The table below sets out these market share calculations.

Table 12.16: Market shares of milk processors, per region, according to [◊] merger analysis

[◊]

Source: [◊] merger report based on submissions of market participants and total from MPO.

211. In Table 12.16 above, whilst [◊] had significantly lost market share in Mpumalanga, in 2014 it had a very strong presence in Gauteng, North West and Free State, where it was not present in 2008. From the figures, one might conclude that [◊] has downscaled its Mpumalanga operations in order to upscale its other operations in the other regions.

212. Whilst the Inquiry endeavoured to ascertain the growth or decline of small businesses in this area of the value chain, this was a challenging task due to the unavailability of the market share information in this regard, however, judging from [◊] entry into regions where it was not previously present and its ability to maintain a significant market share in the regions that it was present, it is clear that small businesses are not able to place sufficient competitive constraints on the larger processors.

213. The Inquiry held a teleconference call with [◊], a small dairy processor, in order to understand what challenges small dairy processors such as the like, experience. [◊] is a manufacturer of amasi, yoghurt and nectar juices and does not manufacture fresh or UHT milk. Whilst it can easily enter into the milk production market in terms of equipment and infrastructure, it does not see this as a lucrative option since supermarket chains do not afford small processors a route to market as they are of the belief that small processors do not produce the same quality of products as the large processors.

214. [◊] also informed the Inquiry of [◊] which recently exited the milk processing market after being in operation for 30 years. According to [◊] used to supply

793 The reason that market shares are calculated regionally is because the geographic scope for the procurement of raw milk has been defined along regional/provincial markets since raw milk is procured within a geographic locale. This is because of transport costs and the limited shelf life of raw milk, as well as the location of the majority of milk producers.

794 The industry (MPO) does not differentiate between the different types (i.e., regular raw milk, organic raw milk and Ayrshire raw milk) of milk produced and purchased in South Africa.

795 [◊]
Confidential

retail businesses in the Lowveld with 2L fresh milk at R18 per unit, then [3<] entered that area and began selling 2L fresh milk at R14 per unit. This had the effect of forcing [3<] out of the market. The Inquiry was unable to contact [3<] in this regard.

Barriers to entry

215. One of the major barriers to entry in the industry is the importance of logistics in the sector. Apart from the requirements associated with producing the milk, entrants must be able to transport the highly perishable raw milk to the processing plant. This is especially costly since raw milk is low in value relative to its volume.796

216. Additionally, the milk output is not a perfect science and fluctuates daily. The risk associated with this is that tanker routes must be planned daily in order to ensure that the largest volume of milk is collected over the shortest possible distance to enable efficiency. The fact that there is no return load further increases the price. Further down the value chain during transport of finished products from the processing plants to distribution centres and retail stores, there are the same logistics challenges. Managing these logistics processes efficiently often prove to be significant challenge for small and new entrants.797

217. The lack of capital is also a great barrier to entry, more so when considering the costs required to see a product through all stages of the value chain. For instance, with regard to milk, from the raw form (production and/or procurement costs), then to processing, packaging and finally distribution.

Raw Milk Producers

218. According to a report by Who Owns Whom, emerging farmers experience the following barriers to entry into the formal dairy farming industry.798

218.1 Dairy skills are developed over many years and inadequate knowledge and skills are limiting factors in sector development.

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796 Teboho Bosiu; Reena Das Nair and Anthea Paelo, the Global Food Value Chain and Competition Law and Policy in BRICS Countries: Insights from Selected Value Chains in South Africa (November 1, 2017). CCRED Working Paper No. 21, pg. 60, para. 7.4.3
218.2 Since dairy farmers are price-takers there is low profitability associated with milk production.

218.3 Market volatility and the effect of imports in depressing producer prices.

218.4 The facilities require investment which is not sustainable on the volumes produced by emerging farmers and access to start-up capital is limited.

218.5 The market is dominated by three major processors making it difficult for smaller processors as they lack bargaining power, especially during periods of surpluses when the larger processors dump their products in the retail sector at very low prices.

218.6 Quantity requirements and regulations to ensure quality are major deterrents for small farmers to supply processors.

Processors

219. The production of certain of the milk products, especially powdered products, requires the use of expensive equipment such as spray towers, homogenisers, pasteurisers, mixing tanks, silos and steam plants and therefore relatively high capital expenditure create high barriers to entry in this regard. It was said in the merger between Clover and Fonterra\textsuperscript{799} that the technology is largely generic although the market is capital intensive, new entrants can easily access second-hand powder driers for powdered products, which can be purchased in various locations around the world. This capital expenditure can amount to approximately R180 million. It would take about six months to enter this market once equipment has been purchased. Second hand plants could be found in Germany, Argentina and Uruguay at more reasonable prices.

220. It was the Commission’s view that although second hand equipment can be obtained, the commercial constraints for South African firms which manufacture these products locally is prohibitively high due to the high import duties. This indicates that South African firms cannot compete effectively with the rest of the world in these markets. However, entry into these markets could be established by way of importing these products and selling them to the local

\textsuperscript{799} Case Number 92/LM/Nov04
market. Accordingly the Commission established that relatively low capital is required to enter into the market in this way.

221. However, the Commission has in other dairy related investigations engaged with competitors in the market for the manufacture and supply of dairy products to ascertain whether there are barriers to entry in the market and whether these are significant. The Commission had found in previous investigations that the barriers to entry in the milk market are high and include capital investments and branding. Other barriers to entry include economies of scale, capital expenditure, shelf space at retail outlets and consistency of milk supply. [\textsuperscript{800}]

\textit{Retailing}

222. Based on discussions with industry experts, the three largest retailers are responsible for the distribution of approximately 86\% of total dairy sales. The supply terms of retail chains of processed dairy products also include conditions of stocking the products. The NAMC (2004) cited some of the conditions under which retail chains agree to sell processed milk products from processors; these include; a payment of 3 percent of the gross price to retail chains for shelf space, 8 percent rebate on gross in-store sales and 8 percent to promote in-store promotional campaigns. In order to validate if these conditions were still prevalent in the industry, informal discussions were selected processors were conducted. This confirmed that these were still the common terms under which dairy products were sold through retailers. An important consequence of the buying terms of the retailers is declining profit of many processors due to the fact that the total ex-factory costs are higher than the net price received from the retailer.

\textit{Consumption}

223. According to the South African Milk Producer’s Organisation (2017), the liquid dairy products in highest demand are UHT and sterilised milk, and pasteurised milk, and the concentrated dairy products in highest demand are cheese and butter (see Figure 12.23).
Recent pricing trends

Average prices for dairy products in South Africa have been consistently increasing between 2011 and 2016, specifically with regard to fresh and long-life milk. The tables below indicate the average retail prices charged for fresh milk (full cream and low fat) and long-life milk (full cream and low fat) in both 1 litre and 2 litre units, respectively. On average, fresh milk prices increased by 9% for full cream and 10% for low fat during the 2011 - 2016 period.

Table 12.17: Average retail prices of fresh and long life milk (1L), period 2011 – 2016

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fresh Full Cream Milk</td>
<td>1 Litre</td>
<td>8.53</td>
<td>9.38</td>
<td>10.09</td>
<td>11.35</td>
<td>12.13</td>
<td>12.96</td>
</tr>
<tr>
<td>Fresh Low Fat Milk</td>
<td>1 Litre</td>
<td>8.74</td>
<td>9.79</td>
<td>10.78</td>
<td>12.48</td>
<td>13.38</td>
<td>14.36</td>
</tr>
<tr>
<td>Long Life Full Cream Milk</td>
<td>1 Litre</td>
<td>9.55</td>
<td>10.22</td>
<td>10.87</td>
<td>11.98</td>
<td>12.77</td>
<td>13.43</td>
</tr>
<tr>
<td>Long Life Low Fat Milk</td>
<td>1 Litre</td>
<td>9.61</td>
<td>10.41</td>
<td>11.00</td>
<td>12.06</td>
<td>12.68</td>
<td>13.30</td>
</tr>
</tbody>
</table>

Source: Extracted from StatsSA

Table 12.18: Average retail prices of fresh milk (2L), period 2011 – 2016

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fresh Full Cream Milk</td>
<td>2 Litre</td>
<td>16.40</td>
<td>18.16</td>
<td>19.68</td>
<td>xx</td>
<td>xx</td>
<td>xx</td>
</tr>
<tr>
<td>Fresh Low Fat Milk</td>
<td>2 Litre</td>
<td>16.36</td>
<td>17.87</td>
<td>21.68</td>
<td>xx</td>
<td>xx</td>
<td>xx</td>
</tr>
</tbody>
</table>
225. The Consumer Price Index (CPI) measures monthly changes in prices for a range of consumer products. Changes in the CPI record the rate of inflation, whilst the Producer Price Index (PPI) measures the average change in selling prices received by domestic producers of goods and services over time.

226. The figure below sets out PPI indices of raw milk and dairy products and the CPI of milk, cheese and eggs for the period 2012 to 2018.

Figure 12.24: PPI indicates of raw milk and dairy products and CPI of milk, cheese and eggs, Jan 2012 - Feb 2018

Source: Dairy Digits, DAFF and Stats SA

227. According to the PPI for all dairy products for the period 2012 to 2018, the average producer price for milk has been steadily increasing save for a short period between the latter end of 2015 and the beginning of 2016, when the prices for both dairy products and raw milk had significantly decreased (See Figure 12.24) The reasons for this significant drop in prices is currently unclear and that information still needs to be sought out.

228. Despite the significant decrease in the raw milk PPI, there has not been such a significant decrease in the CPI of milk for the same period even though raw milk is a key input into milk. However, it should be noted that the CPI for milk includes eggs and cheese.

Conclusion on dairy value chain

229. It is evident that the dairy industry at both processing and production level are characterized by a few large players in the market. At production level, the significant decrease in numbers of dairy farmers indicates that a number of
farmers have exited the market and a number have opted to consolidate. This is an indication that the market has over time become restrictive and non-conducive to operating small businesses and that economies of scale are required in order keep a business alive. The same can be said for processors since the processing level of the value chain is characterized by a small number of players who each share a significant market share.

230. The major supermarket groups exercise a large measure of influence over the dairy industry and the price of milk, as more than 50% of all dairy products pass through supermarkets. The second-most powerful group is the dairy processors [>. Their power stems from resources and the ability to process milk into other long life dairy products which can be stored for long periods during the season of over-supply in summer. The least powerful group is the farmers. The seasonality of milk production combined with an oligopolistic market, that is one which is controlled by a small group of firms, means that farmers are generally price-takers for produce and experience difficulties in negotiating a good price for their product.\(^{801}\)

231. The role of the retail level of the value chain for the development of food markets cannot be underestimated. Large retail chains with significant market power influence the participation and development of suppliers. Effective competition at this level is important to reduce effects of abuse of buyer power on suppliers. It is therefore important to foster a competitive environment for a diversity of retail models and to keep retail spaces open to entrants to allow them to gain a foothold in the market.\(^{802}\)

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Annexure 4: Objective One - The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy

13.1 Stakeholder submissions on the impact of supermarket chains in non-urban areas

**Gauteng**

233. In Gauteng, the submissions received varied between stakeholders such as associations, wholesalers, government entities research hubs and independent business operators.

234. The Inquiry received submissions at the public hearings that alleged that the township and rural economy faced constraints from the entry of national supermarket chains and as such, there has also been a decline in the number of small independent businesses in those areas. EST submitted that township retail traders are generally not price competitive and therefore cannot compete with the large retailers on price. In an attempt to respond to this competitive strain, small and independent retailers may try to reduce their prices, however, this puts more strain on their margins and eventually leads to the business closing down. EST submitted that the closing down of the independent stores is often an unavoidable eventuality as they have very little leverage to go on when facing competition from large supermarket chains at their doorsteps. It was further submitted that the fact that large supermarket chains have a huge buying power and are able to negotiate favorable terms with suppliers enables them to be price competitive which small independent retailers struggle to achieve. The submission by EST corresponded with submissions made by small traders, in particular spaza shop operators from Polokwane during a meeting with the Inquiry who submitted they could not compete with the large retailers on pricing because of the latter's ability to negotiate favorable pricing with the manufacturers and supplier.

235. The Free Market Foundation stated that the entry of large retailers into the township economy is accompanied by commercial security in the form of title deeds and financing, which is often limited to the formal market. The Free
Market Foundation notes that the lack of access by informal market to capital and title deeds often works at a disadvantage to their disadvantage and has unavoidable negative consequences for these businesses. To this effect, the African Council of Hawkers and Informal Businesses (“ACHIB”) mentioned an incident in the Bruma flea market which was liquidated and a Chinese consortium acquired the property. ACHIB elaborated that small informal traders were presented with an opportunity to occupy the stalls on condition that they provide a R50 000 deposit, of which they could not raise at the time. Given their inability to raise the deposit, approximately 600 small businesses closed down.

236. Glo Bake, a small independent bakery, submits that prior to the entry of national supermarket chains in township and rural areas, their business was doing fairly well. However, post the entry of the national supermarket chains, they experienced a decline in the margins, which is similar to a submission made by Moagi’s Meat supply. Glo Bake submitted they cannot compete with a large retailer that is selling its in-house bread at a very low price that it can never match if it is to remain in business. As a result of this pressure, the business has had to reduce the number of its employees to cut costs.

Limpopo

237. Similar to the submissions of some of the independent retailers in Gauteng, Goseame submitted that following the entry of national supermarket chains near their area of operation, they lost a large count of foot traffic to the supermarket chains. Goseame mainly specializes in fresh fruits and vegetables, which in their view, a mechanism that enabled them to remain competitive in the market. Dry groceries are also a component that Goseame offers, and they submit that they lost a large portion of their margins in dry groceries post the entry of national supermarket chains.

238. During a consultation with the Polokwane Capricorn Municipality (“the municipality”), the authority alluded that when the shopping centre was constructed, the small business owners in the townships were neglected, their existence was overlooked given their perceived informal trader status. According to the municipality, national supermarket chains also provide a variety of product offerings, which is a draw card to the developments. In the municipality’s view, the property developers should have considered the

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804 Submission by Glo Bake at the Gauteng public hearing dated 5 June 2017, Transcript p. 69, para 269.
negative impact that the shopping centres would have on the small business owners beforehand. In addition to this, the municipality however acknowledges the job creation aspect of the entry of national supermarket chains.

**North West**

239. Choppies, a supermarket chain that has recently entered the South African market submitted that the extent of the impact of the entry of national supermarket chains varies per area. According to Choppies, in areas such as Odendaalrus, in the Free State, following the entry of national supermarkets, the consumers were well off, as the entry brought about competitive prices.

**Western Cape**

240. The Gugulethu Liquor Association (“Gugulethu Association”) submitted to the Inquiry during the Cape Town public hearings that in their view, the entry of the supermarket chains resulted in the decline in the number of local traders in the market as a majority of the local traders are forced to exit the market once they become uncompetitive.

241. Representing liquor traders, Gugulethu Association made submissions regarding national supermarket chains opening grocery shops in non-urban areas and also trade in liquor either in a standalone or an in-house liquor stores. Gugulethu Association stated that these national chains often trade for extended hours, i.e. trading from 8:00-20:00 which independent liquor stores such as members of the Gugulethu Association are prohibited from doing in terms of the applicable by-laws. Gugulethu Association further submitted that additionally to the extended trading hours, the retail chains’ liquor stores are able to charge lower prices due to the buying power that they have. As a result, Gugulethu Association’s members who are independent liquor traders, have been negatively affected with the performance of their stores declining following the entrance of these supermarket chains in townships.

**Kwa Zulu Natal**

242. In Kwa Zulu Natal, the Kwa Zulu Natal Youth Chamber of Commerce (“KZN youth chamber”) submitted that there are positive and negative impacts resulting from the entry of national supermarket chains into townships, non-urban and rural areas. On the one hand, national supermarket chains are able
to negotiate better trade deals which affords them the tools to sell at relatively lower prices, which benefit the consumer. Contrary to this, small local traders procure in lower volumes, which in turn impedes their ability to be more price competitive. The UGU Business Association (“the association”) also highlighted that hawkers are impacted by the entry of supermarket chains into the non-urban areas as they are often removed from the premises where the shopping centres are established. In some instances, the hawkers are often set up behind the shopping centre, where there is minimal foot traffic, which also affects the hawkers’ competitiveness. Moreover, Msunduzi Municipality highlighted that in their experience, the primary disadvantage of the entry is that the monetary benefits derived from the trade that takes place in the rural and township areas does not directly benefit the surrounding areas themselves.

243. The South African Traders Association Chatsworth Centre (“SATA”) also submitted that there is a visible decline in the number of independent retailers that continues to trade in the Chatsworth centre. SATA submitted that there were 170 tenants, most of which independent businesses that have over time being replaced by national chain stores including supermarket chains. This also resulted from the increase in rental of between 8-10% which could not be afforded by small independent stores, leading in those trading spaces taken up by national chain stores.

244. To address the ambiguity of the survey results, the responses regarding the proximity of the spaza shop and the supermarket chain was explored further by clustering the sample based on the reported distance to the nearest supermarket. We found that distance to nearest supermarket affects how spazas perceive benefits. shows that a higher % of respondents closer to large retailer disagreed with the statement, compared to the cluster that reported their distance in excess of 2km from the closest supermarket.

245. The statement which considers the perception of supermarket proximity impeding growth, by cluster, is presented in Figure 13.3 and Figure 13.4. It again seems to support the notion that spaza shop owners perceive proximity to

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805 See detailed analysis on buyer power in Objective 5.
806 Submissions by SATA at the KZN public hearings on 06 July 2017, Transcript p42 para 290
807 Three distance clusters were considered namely “less than one km away from the nearest supermarket”, “between 1 and 2 km away from the nearest supermarket” and “more than 2 km away from the nearest supermarket.”
supermarkets negatively. The level of disagreement seems to be inversely related to distance since the highest level of disagreement is associated with the group less than 1km away from the nearest retailer (combined fully disagree and disagreement of 63%). This decreases somewhat, to 59%, for respondents located between 1km and 2km away. Of the respondents located more than 2km away, 44% disagreed with the statement.

13.2 Small Business Survey

Figure 13.1: Primary Concerns/Business Constraint Reported by Spaza Owners (open-ended questions)

Figure 13.2: Percentage of Sample's Level of Agreement with "There is space for spazas and supermarkets in townships"
Figure 13.3: Percentage of Sample's Level of Agreement with "The presence of a large retailer makes it difficult for my business to grow"

Figure 13.4: Percentage of Sample's Level of Agreement with "My business benefits from being close to a large grocery retailer"

Figure 13.5: Percentage of Cluster's Level of Agreement with "My Business Benefits from Being Close to a Large Grocery Retailer"
Figure 13.6: Total average proportion of total household consumption expenditure attributed to Food and non-alcoholic beverages by race


13.3 Literature Review

246. Several authors\(^{808}\) have documented the impact of national supermarkets on the performance and subsistence of small independent retailers. Some of these studies, mostly local, do not focus specifically on national supermarkets, but rather on malls. Since malls are a vehicle for large national supermarkets to access non-urban areas, it can be treated as an appropriate proxy to understanding the impact of large national supermarkets on small retailers and consumers.

International literature

247. In a study by Donaldson and Strangways (1973), the focus is on small independent stores located in Atlanta, Georgia, United States. The findings revealed that well-located small independent stores tend to generate higher sales volumes even in the presence of large national supermarkets. These stores offer a convenience service for customers in their surrounding area.

\(^{808}\) See internationally (Donaldson and Strangways 1973; Sexton 1974; Roger Tym and Partners 2006; United Kingdom Competition and Markets Authority 2008) and locally (Lighthelm and Risenga 2006; Lighthelm 2008, 2010; Demacon 2010; Urban Landmark 2011; Madlala 2015; Dlamini 2015; Nielsen 2016)
Additionally, it was found that small independent stores that are part of a cooperative benefited from cooperative warehouses and procurement, allowing them to purchase stock at more favourable prices and thus price in line with large national supermarkets\(^{\text{809}}\).

248. In a study extending the former, Sexton (1974) documents the importance of product mix on small independent stores' profitability. The results show that the gross margins of small independent stores depends relatively less on frozen foods and relatively more on canned goods. Conversely, national supermarkets in high-income areas received relatively more of their gross margins from convenience products such as frozen foods and disparately less from items such as canned food. Succinctly, the study showed that a wider range of grocery products with longer shelf life in a small independent store located in a poverty stricken area may lead to relatively higher gross margins\(^{\text{810}}\).

249. In Scotland, Roger Tym and Partners (2006) assessed the impact of Tesco’s expansion on the vitality and viability of small local retailers in both urban and rural areas. The assessment focused on: (i) shopper habits; (ii) direction of grocery expenditure; (iii) local retailer business performance; and (iv) changes in the retail structure. The main findings showed that small independent retailers reported a decline in the turnover, low marginal levels of profitability and closure of some stores. The paper concluded that large food stores can and have a detrimental and adverse impact on independent grocery retailers.

250. In the United Kingdom Competition and Markets Authority’s (“UK CMA”) grocery market investigations (2008), the inquiry looked into several issues, amongst which, an examination of the effects of the entry of large grocery stores on the performance (measured as revenue) of incumbent grocery stores in local areas. The regression-based analysis concentrated on how the change in an incumbent store’s revenue varied with the size of an entrant store as well as the distance between the stores. The results showed that entry by a store either 1400m\(^2\) – 4000m\(^2\) or greater than 4000m\(^2\) in size had a much greater negative revenue effect on stores that were less than or equal to 1400m\(^2\) in size. Moreover, entry of stores 280m\(^2\) – 1400m\(^2\) tend to affect only the


revenues of stores 1400m² – 4000m² in size when the stores were closely located (i.e. within 5min drive-time). In conclusion, the paper showed that larger stores place a greater competitive constraint on smaller stores than vice versa. However, in a teleconference with the UK CMA, Bob MacDowall (the head of the inquiry) stated that smaller grocery retailers that closed down when large supermarkets entered their area were inefficient, and as such, the UK CMA could not attribute the liquidations to any competition related concerns.

South African literature

251. Closer to our shores, Tustin and Strydom (2006) investigated the nature and impact of current and potential opportunities emanating from the expansion of large retail supermarket chain stores in townships. The study focused on the opportunities/challenges and threats/weaknesses of these expansions for entrepreneurs and township communities. The findings showed that the ability of large supermarkets to offer low prices imposed huge challenges for small businesses and, more importantly, increased the risk of excluding these smaller retailers from the transforming grocery retail market.

252. In the same year, Ligthelm and Risenga (2006) explored the impact of a shopping mall development (grocery anchor: Shoprite) on small retailers located in Soshanguve, Tshwane. The study surveyed 100 small township retailers and spaza shops surrounding the new mall development in Soshanguve. The descriptive statistics reported that two in every three (59.2%) respondents confirmed a decline in the number of small businesses in their immediate vicinity. 75% of the respondents within 1km and 84.2% within 2km from the mall reported a significant decline in the number of businesses. This seems to imply businesses located further from the mall were more prone

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811 The paper does not specify which model it used, but the quantitative impacts were specified. This means a Probit or Logit model was used, which does not permit reporting of the coefficient magnitudes.
813 Teleconference with Bob MacDowall, Manager, Remedies Monitoring Team, United Kingdom Competition and Market Authority’s market investigations division on 30 June 2016.
815 Descriptive statistics describe, show or summarize data in a meaningful way such that patterns might emerge from the data. Descriptive statistics do not, however, allow us to make conclusions beyond the data analysed or reach conclusions regarding any hypotheses made. They are simply a way to describe our data.
to harm from the new development. Although fewer businesses closer to the mall closed down, those that remained reported a slight decline in their movement of stock, product range and turnover\textsuperscript{816}.

253. In another study related to the former, Ligthelm (2008) investigated the sustainability of both spaza shops and small township retailers in Tshwane townships - Mabopane (grocery anchor: Spar), Garankuwa (grocery anchor: Shoprite) and Temba (grocery anchor: Shoprite). The study employed a survey which sampled 100 small informal and formal township grocery retail stores around the three mall developments. In a nutshell, the descriptive statistics painted a generally negative impact of the shopping malls on the surrounding small informal and formal township retailers. Around 47\% of the respondents reported a decline in the number of small businesses in their immediate vicinity during the first six months of the shopping malls. Similar to the previous study, the impact was dependent on distance from the mall. Respondents further from the mall (5km) generally reported a negative impact as opposed to respondents closer to the mall. Businesses closer to the mall developments stated that they adjusted their business strategies (i.e. assortment of merchandise, price levels, customer service and stock replenishment) to continue serving their immediate and regular customers as convenience stores\textsuperscript{817}.

254. In a separate study conducted around Jabulani mall in Soweto, (grocery anchor: Shoprite), Ligthelm (2010) sampled and interviewed 300 small businesses located in a radius of 5km around the newly established mall. The first round of the survey was conducted in July 2007 (one year after the opening of the mall), repeated in July 2008 and the last round in July 2009. Of the total of 300 businesses selected in 2007, the results extracted from the descriptive statistics showed that almost two in every five (38.3\%) of the businesses closed down during the period from July 2007 to July 2008. By July 2009, almost half of the small businesses were reported to be out of business (47.6\%). The attrition rate was shown to be substantially higher among home-based businesses compared to small businesses that operated from old shopping centres and standalone sites. A caveat on these results; the period between 2007 and 2009 corresponds with the great financial crisis, thus and so, much


of the economic downturn (including compulsory closures) cannot be attributed with certainty to factors outside the severe negative economic conditions that confronted the country at the time. The credibility of this study is thus questionable.\(^{818}\)

255. In a study that covered a wider locality, Urban Landmark (2011) conducted a nationwide study on the impact of South Africa’s growing retail centre market on consumers, business and the economy.\(^{819}\) Six case studies from rural, semi-rural and urban areas were selected for the study, reflecting a fair distribution and variation in terms of socio economic differences. Two of the case studies emanated from Gauteng (Jabulani Mall, Soweto and Central City, Mabopane), and the rest from KwaZulu-Natal (Umlazi Mega City), Western Cape (Liberty Promenade, Mitchell’s plain), Mpumalanga (Thula Plaza, Bushbuckbridge) and Limpopo (Nkowa-Nkowa, Tzaneen). The study used both qualitative and quantitative research methods to collect the primary data. Quantitatively, 700 consumers and 360 local small businesses were enumerated. Qualitatively, face-to-face interviews were conducted with developers and investors involved in the retail centre developments.

256. The key findings pertinent to this section showed that 50% of consumers perceived that the development of the centres caused a decline in their support of local traders. However, some local small businesses saw the development of the retail centre as having a positive effect on their business performance, with 74% reporting growth of 5% to 10% in revenue, while only 25% said their business performance declined. Consistent with other studies, performance varied with distance. Businesses located less than 2km away from the mall, indicated a slight increase in profits, turnover and consumer volumes. Businesses located within 2-5km indicated no change at all, suggesting that the mall had no effect on their performance.

257. In a study conducted in Umlazi and KwaMashu, Dlamini (2015) set out to unpack the perceived challenges associated with the effects of township mall


developments on local informal traders.\textsuperscript{820} The paper drew a sample of 291 outlets from a population of 1170 small retailers in Umlazi and KwaMashu. The descriptive statistics indicated that the development of township malls in the two areas had mostly not been beneficial for local informal traders. Due to increased price competition and the wider variety of goods and services offered by large chain stores, local retailers experienced decreased profitability and customer footfall. Some were entirely displaced and those that survived had to implement improved customer service processes and re-arrange their product mix. However, the author saliently noted that closures could not be solely attributed to the opening of the malls alone. There were other factors observed during the study that contributed to some of the closures, inter alia, generally poor economic conditions, inadequate business management skills and an obdurate approach to business operations.

258. Staying in the zonal area of KwaMashu, Madlala (2016) looked at the competitive pressure a newly opened Pick n Pay store (opened in May 2013) exerted on informal grocery shops and spaza shops.\textsuperscript{821} The methodology employed a "before and after" qualitative approach. In the first round, between March – April 2014, a year after the store opened, interviews were held with 24 current and former informal grocery shop owners trading in Inanda, Ntuzuma and KwaMashu. In the second round, interviews were held again in June 2014.

259. During these second interviews, it was revealed that out of the 24 traders initially sampled, only 10 (41.6\%) were in operation. The most affected traders were those located in close proximity to the Pick n Pay store. The operators reported significant underperformance, citing declining customer footfall, profitability and stock movement. However, those located far from the Pick n Pay store experienced only a slight decline in consumer footfall and profitability. As with the previous author, Madlala (2016) notes that because little was known about the limitations of these businesses before the Pick n Pay store opened, the findings cannot be sole attributable to the impact of the store.


\textsuperscript{821} Madlala, T. T. (2016). Do large retailers displace small informal retailers? The case of a Pick n Pay store in KwaMashu, Durban, South Africa. Economic and Social Development: Book of Proceedings, 163.
Interestingly though, in spite of the outcomes (as ambiguous as they are) of the surveyed literature, Nielsen (2016) reported that the South African non-urban market has experienced an overall increase in the number of small independent retailers (excluding hawkers and table tops). The study asserts that small and independent retailers have grown from 34 000 stores to 134 000 stores in the last 20 years.\textsuperscript{822} \textsuperscript{823} The growth stems from the increasing number of foreign national ran spaza shops, which have dwarfed local ran spaza shops in most townships, peri-urban and rural areas. das Nair and Chisoro (2015) attribute the rebirth in the sustainability and profitability of informal market retailers to collective procurement practices.\textsuperscript{824}

In summary, the surveyed literature provides a variety of factors that determine the impact of the entry of large supermarkets in non-urban areas on small businesses. Location is an important factor determining the sustainability and survival of small business. Secondly, small businesses with a wider product-mix tend to exhibit relatively higher margins even in the presence of large supermarkets. Some findings show that the larger the store, the greater the competitive constraint on smaller retailers, thereby increasing the likelihood of compulsory closure. Large retailers that offer better quality goods and lower prices impose a burden on smaller retailers.

There is uncertainty regarding the likelihood of compulsory closure and closeness to a mall. Some of the surveyed literature states the closer smaller retailers are to supermarkets, the less likely they are to close since supermarkets bring them increased foot traffic. Other evidence suggests the opposite: small retailers close to supermarkets are more likely to close than supermarkets further away. Nonetheless, new reports seem to depart completely from the premise that the entry of supermarkets have caused the closure of small and independent retailers in non-urban areas, suggesting that the proliferation of foreigners in the non-urban grocery market has resulted in a significant increase in the number of small retailers. There is no cogency and

\textsuperscript{822} Meeting between the technical team and Nielsen, 24 February 2016.

\textsuperscript{823} Nielsen (2016), South Africa's not so traditional, traditional trade, available at http://www.nielsen.com/ssa/en/insights/reports/2016/south-africas-not-so-traditional-traditional-trade.html. The data referred to by Nielsen is in respect of what it terms "traditional trade", which includes (i) physical bricks and mortar outlets with a fixed location; (ii) informal, independently owned outlets; and (iii) outlets which stock at least one consumer goods product, selling directly to customers.

uniformity in the literature to form a reasonable conclusion on the impact of large supermarkets on small businesses in non-urban
### EASTERN CAPE

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<tr>
<th>STAKEHOLDER</th>
<th>PLACE AND DATE</th>
<th>TYPE OF ENGAGEMENT</th>
<th>SUMMARY OF VIEWS</th>
</tr>
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<tbody>
<tr>
<td>Small Business Chamber (“SBC”)</td>
<td>EnNgcobo, 26 September 2016</td>
<td>Site Visit</td>
<td>The members of SBC mentioned that it is difficult for them to compete with the large retailers and as a result they are not able to employ people in their shops anymore. Locals find it easier to shop in town and not in the rural areas or townships, they get more convenience in town as the banks and other businesses things are all situated there. Also since social grants are now accessible via the card system used, people find it easier to shop in town since spaza shops do not have speed points. It was also said that some large retailers give credit to social grant card holders a day or so before they actually receive their social grant money.</td>
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### FREE STATE

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<th>STAKEHOLDER</th>
<th>PLACE AND DATE</th>
<th>TYPE OF ENGAGEMENT</th>
<th>SUMMARY OF VIEWS</th>
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<tbody>
<tr>
<td>Bloemfontein Municipality</td>
<td>Bloemfontein, 20 July 2016</td>
<td>Site Visit</td>
<td>The National Planning Commission conducted a study that found that since the entry of malls into the township the number of spaza shops in the townships have decreased.</td>
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### MPUMALANGA

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<tr>
<td>City of Mbombela Municipality</td>
<td>City of Mbombela Municipal Offices, 05 September 2016</td>
<td>Site Visit</td>
<td>The municipality has observed that every time there is an opening of a new mall or a shopping centre, there is also an opportunity created for informal traders to capture the traffic that is directed to and from the mall. The municipality does not think that the opening of malls has any impact on spaza shops.</td>
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The development of malls in the rural areas and townships has created more employment opportunities. It benefits the consumers and general dealers more as malls open until late compared to small businesses. There is also change in transport and access to malls for consumers as they are able to shop closer and do not have to travel long distances any more.

There are informal traders who are selling outside the malls, the opening of malls has created an opportunity for them.

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<th>STAKEHOLDER</th>
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<tr>
<td>Supa Save Malelane</td>
<td>Malelane, 05 September 2016</td>
<td>Site Visit</td>
<td>It was submitted that there are limited opportunities to enter malls. However, Supa Save has not attempted to expand its operations into the malls in those areas.</td>
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<td>Free Market Foundation and the National African Federated Chamber of Commerce</td>
<td>Bryanston 03 May 2016</td>
<td>General consultation</td>
<td>It was stated that when a big retailer goes into the township with a shopping centre, they get title deeds, security, mortgages and financing. The informal traders do not have any of that and cannot be expected to survive.</td>
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<td>The African Council of Hawkers and Informal Business</td>
<td>Commission, DTI Campus</td>
<td>Meeting, 14 March 2016</td>
<td>Property investors are said to typically invest in areas formerly populated by street vendors and hawkers, and visible site of high pedestrian traffic. In this practice, they then evict the street vendors, which impacts negatively on the growth and sustainability of small businesses. The eviction are said to lead to closures of small businesses, as most informal sector owners do not have the skills to</td>
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strategize and offer a commercially viable response to the entry of supermarkets, i.e. sell different merchandise.
An example of the Bruma Lake Flea market was given, wherein the Bruma Lake Flea market was liquidated, and then a Chinese consortium procured the property with the intention to develop a mall. The traders were offered a deal to secure stalls for R50 000 deposit, which is a steep price for small traders. The process lead to the loss of 600 small businesses which were previously housed in Bruma Lake Flea market.

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<td>08 March 2016</td>
<td>There was a complaint that the DSBD has received by a complaint from a number of street vendors that have been driven out of the market by Shoprite and boxer.</td>
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<td>Commission, DTI Campus 18 March 2016</td>
<td>Bibi has had shopping centres built around it and has been able to survive and trade alongside those malls.</td>
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<tr>
<td>Urban Landmark CSIR Offices, Built Environment Offices 18 February 2018</td>
<td>In 2011 Urban Landmark commissioned a study titled “Taking Stock: The impact of the development of formal retail centres in ‘emerging economy’ areas in South Africa (2011)”. The aim of the study was to determine the nature and impact of shopping mall developments in South Africa’s emerging economy, areas with the aim to maximise the positive benefits and minimize the negative impacts arising from the development of these malls. The study looked at the effect of the development of shopping malls in the townships on consumers as well as on small independent businesses. The general findings on the impact on of consumers showed that that consumer they were saving due to easy access to the shopping centres, and lower prices. Small and medium independent businesses operating closer to the shopping centres adjusted, and most had changed strategy by, opening late, diversifying products to include services such as printing and telephones.</td>
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However, the main complaints were largely from the Taxi owners who noticed a drop in the demand for transport to and from the CBD as people were now shopping closer to their homes.

### UNISA BMR

**UNISA, PRETORIA 15 February 2016**

**Meeting**

The BMR economic research division undertook a study on the impact of mall and casino development in Soshanguve and Mamelodi. The results showed that the entry and developments resulted in a negative impact on the growth of small businesses and positive effect on consumers through choice and pricing. In support of this, there is an empirical research report that looked at the impact of mall development on informal small businesses by examining the survival of the small businesses using turnover and expenditure data from 2007 to 2011 on businesses. The results of the study showed that the further away the small business was from the mall, the more the negative impact of the mall on daily operations as pedestrian traffic decreased due to the option for the mall. However, small businesses closer to the mall had less negative impact benefiting from the traffic to the mall.

### EST Africa, Louis Greef

5 June 2017

**Public Hearing**

It was submitted that whenever retailers find themselves under strain as a result of the top retailers moving into townships, peri-urban areas and rural areas, that is when foreign traders start taking over the local owned stores. The local traders then find it more profitable to rent out the store. This happened after chain retailers moved into the townships.

Smaller retailers have to react to the entry of large supermarkets by decreasing the number of products they stock or by cutting the price to such an extent that the business is not economical, resulting in their exit from the market.

### Glo Bake, Noah Msibi

5 June 2017

**Public Hearing**

Glo Bake was doing very well, it was a profitable business selling over a thousand loaves of bread a day. It had roughly 15 employees working under it. The business
started experiencing challenges when bigger retail shops such as Shoprite,
Checkers and Spar moved closer (Notwithstanding that these big retailers brought
about some development in the area).
The business is facing challenges, there are only nine employees left, which will
have to be cut as Noah Msibi cannot afford to pay them. The business struggles
to sell over 500 loaves a day while between 2010 and 2013 it sold over a 1000
loaves a day.

<table>
<thead>
<tr>
<th>Business</th>
<th>Location</th>
<th>Date</th>
<th>Public Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muagi’s Meat Supply, Mgezi Mazibuko</td>
<td>Gauteng, Johannesburg</td>
<td>8 June 2017</td>
<td>The entrance of malls has negatively impacted on their revenue. Their revenue has been falling significantly (by 10% p.a) every year from around 2011 since malls entered near where they are located in Sebokeng. About 10 jobs have also been lost as a result of the losses.</td>
</tr>
<tr>
<td>Gros Super Market, Trully Masinge</td>
<td>Gauteng, Johannesburg</td>
<td>9 June 2017</td>
<td>It was submitted that when a Checkers opened in a mall near where Gros Supermarket is situated in Sebokeng, Gros Supermarket was affected. Gros Supermarket was not making as much profit as before and it lead them to retrenching workers, from 12 to six employees. Thereafter a Spar opened, situated much closer to Gros Supermarket than the Checkers, customers did not have to catch a taxi to get to the Spar. Gros Supermarket was affected even more and again had to retrench workers from six to three employees. Gros Supermarket cannot compete with the Checkers and Spar as they are able to offer cheaper prices than what it is able to offer.</td>
</tr>
<tr>
<td>EarlJay Trading Enterprise, Lucky Kubheka</td>
<td>Gauteng, Johannesburg</td>
<td>09 June 2017</td>
<td>EarlJay Trading Enterprise submitted that it is difficult to say whether the negative impact they have seen in their business is a result of the malls entering the townships or the state of the economy. EarlJay Trading Enterprise stated that it is not too close to the malls, therefore it has not experienced a significant difference in its business, the sales dropped, however not to the extent of closing down the business.</td>
</tr>
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</table>
### LIMPOPO

<table>
<thead>
<tr>
<th>STAKEHOLDER</th>
<th>PLACE AND DATE</th>
<th>TYPE OF ENGAGEMENT</th>
<th>SUMMARY OF VIEWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goseame</td>
<td>Polokwane, 22 August 2016</td>
<td>Site Visit</td>
<td>It was stated that since shops like Cambridge and Shoprite opened up in Seshego, many of the customers no longer come to Goseame as they can get their goods at those stores. They further stated they have been able to curb the effects of these shops opening up as they are known for Fresh Produce and that is what sustains them. Goseame is good in Fresh Produce but poor in dry goods which are the target of feeding schemes. Feeding schemes all go to Makro for those. S, however since Makro opened up nearby Goseame, they have lost their dry goods customers to Makro.</td>
</tr>
<tr>
<td>Polokwane Capricorn Municipality</td>
<td>Polokwane 22 August 2016</td>
<td>Site Visit</td>
<td>The spaza shop forum submitted that building of malls do have a negative effect on spaza shops and small retailers because the consumers are leaving their dwelling places to go and buy bread from the malls and shopping centres. The spaza shop forum acknowledges the fact that the entry of the malls and shopping centres have efficiencies such as job creation. However, property developers who construct the malls have not considered the township economy and the livelihood of small business owners. When the shopping centre was constructed, the small business owners in the townships were neglected, their existence was overlooked because they are down at the ground level. The property developers should have considered the negative impact that the shopping centres would have on the small business owners. We do The spaza shop forum acknowledges the job creation aspect of the shopping</td>
</tr>
</tbody>
</table>
centres but however the small business owners do not benefit from the entry of malls and shopping centres in townships and rural areas. Even though the small traders were not allocated space to trade, there should have at least been a vacuum because the small traders are losing customers daily. The people in the our communities would rather go and buy bread from Shoprite Checkers because of the malls. Small retailers have lost their customers.

### NORTH WEST

<table>
<thead>
<tr>
<th>STAKEHOLDER</th>
<th>PLACE AND DATE</th>
<th>TYPE OF ENGAGEMENT</th>
<th>SUMMARY OF VIEWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Choppies</td>
<td>20 June 2016</td>
<td>Teleconference 20 June 2016</td>
<td>Choppies is of the opinion that the effect of the expansion and consolidation of supermarket chains in rural, peri-urban and townships is different dependings on the town. For example, in Odendaalrus, Freestate where there is a Pick n Pay, USave and Choppies, consumers have benefited from low prices that came with the development of these retailers. While in Modimolle in Limpopo there is Pick n Pay, Shoprite, Choppies and Spar and recently a Checkers opened in a shopping centre. A lot of businesses have closed down and others opened up with the entrance of this shopping centre.</td>
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### WESTERN CAPE

<table>
<thead>
<tr>
<th>STAKEHOLDER</th>
<th>PLACE AND DATE</th>
<th>TYPE OF ENGAGEMENT</th>
<th>SUMMARY OF VIEWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gugulethu Liquor Traders</td>
<td>08 May 2017</td>
<td>Cape Town Public Hearing</td>
<td>The Gugulethu Liquor Traders submitted that the entry of the Gugulethu mall brought about job creation, however in as much as jobs were created others were lost, as there were businesses trading there before the mall.</td>
</tr>
<tr>
<td>STAKEHOLDER</td>
<td>PLACE AND DATE</td>
<td>TYPE OF ENGAGEMENT</td>
<td>SUMMARY OF VIEWS</td>
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<tr>
<td>KZN Youth Chamber of Commerce and Industry, William Zenzile</td>
<td>KZN, 03 July 2017</td>
<td>Public Hearing</td>
<td>According to the KZN Youth Chamber, there has been both a positive and negative impact when shopping centres move into townships. Firstly, for the consumers, it is a positive impact in that they get low-priced goods as these big retailers are able to sell goods at cheaper prices as a result of their buyer power. However, for the small independent retailers, it is a negative impact as they are not able to compete with the big retailers on pricing.</td>
</tr>
<tr>
<td>UGU Association of Business, Wiseman Mcoyi</td>
<td>KZN, 03 July 2017</td>
<td>Public Hearing</td>
<td>Street vendors complain about malls, as they are not allowed to trade close to the malls, if they are lucky they are given space behind the malls, where there is no traffic which disadvantages them.</td>
</tr>
<tr>
<td>Msunduzi Municipality, Rishi Remarak</td>
<td>KZN, 7 July 2017</td>
<td>Public Hearing</td>
<td>It was submitted that the challenge faced by the municipality when malls enter into townships is that the profits that are made by the chain stores in these malls do not stay/circulate within the specific local economy.</td>
</tr>
</tbody>
</table>
13.4 Funding packages available to small and independent retailers

Business funding and/or credit products that are geared towards small and independent retailers, including micro-enterprises

263. Financiers submit that they have various credit products including products that are geared at SMMEs. Financiers note that their lending programs include; overdrafts, short, medium and long term loans (which can be paid between 6 to 60 months). Apart from loans, financiers also offer credit card facilities in both revolving term and monthly payment terms. There are also commercial loans offered for the purposes of procuring property etc. Financiers also offer loans that are geared specifically to asset acquisition for small businesses.

264. Apart from the funding products available, financiers further stated that they have business development programmes that are offered to small businesses which entail project management, finance tool kits, as well as any other day-to-day skills that are needed in running a successful business.

The criteria and/or minimum requirements that a business, particularly a micro-enterprise has to meet to get access to these credit products

265. Financiers submit that in order to make these products available to small businesses, the owners’ credit profile is assessed both business and in their personal capacity. This process, in financiers’ view, assesses the small businesses gearing levels and their general cash flow. Financiers note that of high importance in the requirements, is a good credit record, which is also checked against the National Credit Bureau (“NCB”). Essentially, the process also tests the affordability of the small business to be able to recover the facility offered. Financiers would assess this through financial statements as well. In the event that a small business, whether in their personal or business capacity does not meet the requirements set out by the NCB, they would not be granted any of these products that are available to small businesses.

Classification of small and independent grocery retailers including micro-enterprises such as spaza shops by financier

266. Financiers submit that there are various ways to classify small businesses, however, as financial institutions, they employ the turn over range for each businesses in order to classify them. In the financiers' view, small businesses
are regarded “small” if they have an annual turnover of between R0 to R20 million. Financiers further submit that the categories of small businesses are further segregated by sector such as wholesale and trade, finance, information and technology etc. It is important to note that some financiers generally employ the Small Business Act’s definition of what a small business is.

Factors that give rise to difficulties for financiers to be able to grant credit facilities to micro-enterprises

267. Generally, financiers state that oftentimes applicants that require the financing products available have various challenges make it difficult for them to grant these facilities. These challenges include; affordability, poor credit record, lack of access to proper and sufficient information in order to make informed decisions. This includes understanding lending terms where a small business would opt to source a loan at a loan shark as opposed to a bank where the interests might be geared for their unique case.

268. Financiers also submit that it is pertinent that small businesses provide at least three months bank statements to show the cash flow activities in order to consider them viable. In some cases, financiers would require financial records such as cash journals, procurement of stock records etc. of which in most cases small businesses would fail to produce as they do not keep records of their transactions. All these requirements, according to financiers, are major factors that make it difficult to grant credit to small businesses.

Recommendations on how the barriers to accessing credit facilities that are faced by small businesses can be lowered and what other steps can be taken to improve overall access to credit facilities by micro-enterprises

FNB

269. FNB notes that in their view, they believe customer education around how and what credit is and during which periods of growth one should look at credit and what portion should be based on capital investment. Support to SMME’s should be provided from the government’s side to be able to do viability tests and how to react when competition enters the immediate market and what business steps to take. In addition, better regulation and reporting of all credit facilities to micro-enterprises will allow visibility of credit and ensure accounting of all credit when the ability to repay credit is determined.
Furthermore, at a systemic level, FNB believes that there is great opportunity to shift the current modus operandi of the above supply chain towards a more programmatic and electronic configuration. This would entail the implementation of an information system that would be acceptable to both the informal micro-business such as a spaza or a tavern, as well as to the manufacturers and suppliers that supply them with stock. Such as system should and could offer a real value proposition to all involved by way of digitising the stock ordering, delivery and payment processes along these supply chains. The obvious by-product of such a system would be verifiable data that could potentially be used as a proxy for credit decisioning, and ultimately extending credit facilities to these micro-enterprises. Ancillary benefits would also then include removing cash from the equation due to digitising payments, enhanced access to markets for both the micro-businesses and their suppliers by electronically connecting them via a system, and lastly multiple data spin-off benefits for regulators to further govern many other aspects of this sector including taxation, counterfeit trade, fair trade, licensing etc.

Nedbank

Nedbank suggests that from a regulatory perspective, regulators should ensure that they are mindful of the state in which these small businesses find themselves when they formulate the requirements that small businesses have to meet in order to secure credit facilities from financial service providers. Nedbank suggests that there should be a review of the National Credit Act to exclude micro-enterprises from falling within its provisions and exemption from tax liability (on both the individual and business) if deemed a micro-enterprise would also be a welcomed development.

From a consumer’s point of view, Nedbank proposes that consumers must keep up to date data in respect of their financial activities, especially insofar as it relates to their income and expenditure. This, in Nedbank’s view can be achieved through the opening of transactional accounts with financial institutions as that can be used by credit providers as one of the reference points to determine the consumer’s ability repay the loan. Further to this, Nedbank is of the view that consumer education in the field of financial record keeping and decision making is a crucial aspect to assisting individuals with the knowledge build-up. Lastly, Nedbank recommends that it is also important
that consumers be exposed to mentorship programmes that facilitate exposure to end to end business management.

ABSA

273. ABSA suggests that natural persons under the National Credit Act (“NCA”) seeking credit for business purposes (for example, sole proprietors) should benefit from the exemptions that apply to juristic persons. Alternatively, ABSA suggests that clear guidelines on how to apply the provisions relating to affordability assessment and reckless provisions must be issued (where reliance is placed on a commercial purpose and future, unknown, revenue flow). ABSA notes that the guidelines must take into consideration the constraints discussed above, for example, the lack of adequate documentation to conduct the assessments. Further to this, as far as developing a small business, ABSA recommends that the definition for “small business” should be amended in the National Small Enterprise Act to include businesses in whatever format. This, in their view, would open the door to, sole proprietors for example, to also qualify for development credit under the NCA.

Financial services offered by agencies

Small Enterprise Finance Agency (“SEFA”)

274. The SEFA provides facilities to micro-finance intermediaries to on-lend to micro and survivalist businesses requiring funding of up to R50 000 to assist in expanding the business’ income and asset base. In some instances, if the applicant has a proper credit vetting or depending on the investment policy procedure, the loan amount could be up to R100 000. These transactions are in exceptional cases and determined and assessed at the time of the application. The loans offered to these micro businesses are flexible and structured to meet the financial needs of the micro-finance intermediaries. In addition to this, various equity instruments are considered as part of the investment instrument strategy into the micro-finance intermediaries.

275. Below is the eligibility criteria set for micro businesses:

275.1 The institution’s ability to meet basic criteria and the extent of risk sharing with SEFA.
Alignment of the institution’s operations to SEFA’s developmental objectives.

A minimum of two years in operation, with the demonstration of microfinance lending. Early growth and established intermediary (start-up by exception) who display the potential to meet microenterprise needs and expectations in line with sefa’s mandate. The SMME must be registered and operate within South Africa and comply with all the laws that apply to legal entities in the Republic.

The SMME must comply with relevant statutory and regulatory requirements in terms of governance and compliance including a board, regulatory compliance, risk management policies, reviewers and all other governance requirements as per Companies Act. Institutional Strengthening support will be provided where gaps have been identified.

Lending to be in line with the NCA with relevant and up-to-date registration.

Key personnel – (e.g. senior and executive management) must have the relevant investment and development finance credentials and no less than 5 years proven working experience as SMME investment analysts and / or microfinance specialists.

Loan methodology including policies and systems to be able to assess, disburse, monitor and collect on loans.

Financial systems ability and appropriateness.

A 5-10% own contribution as percentage of loan amount or capital commitment may be required.

Must comply with B-BBEE codes of good practice.

Must be prepared to accept SEFA interventions and business institutional support services.
Credit facility for informal traders

276. In order to ensure that the needs of the micro-sized businesses such as informal traders and street vendors are met, SEFA has designed a funding program aimed at solely uplifting and sustaining micro-enterprises and other informal businesses trading in the Fresh Produce Markets around the country. The program is similar to the other financial programs put in place for small businesses in that informal traders access the funds thereafter the funding takes the form of a ‘revolving loan’ of between R500 and R10 000. Following the approval of the loan application, the same loan amount becomes available for withdrawal on a weekly basis over a 6-month period, providing the client repays the full loan amount, one time each week. As soon as the minimum repayment has been received, the same amount will be available to the client to trade with again. Once the 6 month period has been successfully completed, the trader is required to re-apply for credit if need be.

277. The thresholds for small businesses are categorized as;

277.1 Survivalist and micro-enterprises – loans between R500 and R50 000

277.2 Small Enterprises – loans between R50 000 and R1 million

277.3 Medium enterprises – loans between R1 million and R5 million

Credit guarantee scheme – Banks and other Financial Sectors/Schemes (BFS/S)

278. SEFA developed a credit guarantee scheme which issues a range of credit guarantee products to lenders (commercial bank and other financial institutions) for SMME borrowers whose access to finance is impeded by the fact that they do not have collateral required by the lenders. SMMEs would normally require finance in order to establish, expand or purchase existing businesses. There are three broad categories of indemnities that are available which are; individual, portfolio and institutional indemnities.

279. The financial institution will assess the business plan and loan application in terms of its lending criteria. Following this, SEFA will set certain guidelines for the assessing and monitoring of the loan process on which the indemnity will be enforced. Once the application has been approved, the financial institution
will approach SEFA for indemnity cover and a mentor may be appointed to help with the implementation of the business plan, setting up of operational systems and general business management. The financial institution manages the loan and collects payments for the duration of the loan. The full repayment of the loan remains the responsibility of the applicant.

*Eligibility criteria for the Banks and Financial Sector ("BFS")*

280. Commercial banks are automatically eligible to participate in the Scheme by virtue of them being professional money lenders, registered, regulated and monitored by the Financial Services Board and overseen by the South African Reserve Bank. Other lenders will be incorporated into the scheme provided they meet the legislative conditions;

280.1 They must agree to the terms and conditions of the Scheme, as they would appear in the Indemnity Agreement, and thereafter sign the agreement.

280.2 SEFA will have the right to review their credit lending policies and procedures to the SMME market.

*Eligibility criteria for non-bank financial intermediaries:*

281. The prospective intermediary’s objectives must be in line with the SEFA developmental mandate;

282. The prospective intermediary’s business must be financially sound enough to support its objectives;

283. The prospective intermediary must have sufficient human resource capacity and experience to implement its objectives to the satisfaction of SEFA

284. The prospective intermediary is required to submit a viable, convincing business plan to SEFA before it can be accredited to the Scheme.

285. The RFI/SF must meet the minimum criteria as set out by SEFA
14 Annexe 5: Objective Two - The impact of long-term exclusive lease agreements entered into between property developers and national supermarket chains and the role of financiers in these agreements on competition in the grocery retail sector

14.1 The prevalence of exclusive lease agreements

*Spar*

286. Spar has submitted that because it does not own the vast majority of Spar retail outlets, it is not able to provide complete information on leases\(^{825}\) but it estimates that approximately \([\times]\) of Spar stores have leases containing an exclusivity clause.\(^{826}\) A standard lease agreement for Spar has an average duration of 10 years, often with an option to renew.\(^{827}\)

287. Of the \([\times]\) Spar stores across the country that were in existence as at December 2017, Spar holds \([\times]\) head leases. Head leases mean that Spar signs leases for premises and then subleases the premises to independent Spar retailers.\(^{828}\)

288. \([\times]\).\(^{829}\) \([\times]\).

**Table 14.1: \([\times]\) exclusivity provisions in head leases as at December 2017**

\[\begin{array}{|c|}
\hline
\times \\
\hline
\end{array}\]

*Source: \([\times]\)*

*Shoprite*

289. As at 30 September 2017, Shoprite had \([\times]\) supermarket stores across South Africa, including Shoprite, USave, Checkers and Checkers Hyper stores.\(^{830}\) In

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\(^{825}\) Spar response to final Statement of Issues dated 19 August 2016, p. 20, para. 50.

\(^{826}\) Spar response to final Statement of Issues dated 19 August 2016, p. 20, para. 53.

\(^{827}\) Response to final Statement of Issues dated 19 August 2016, p. 20, para. 52.

\(^{828}\) \([\times]\).

\(^{829}\) \([\times]\).

\(^{830}\) \([\times]\).
addition, Shoprite owned [ Yorkshire] liquor stores in South Africa. Shoprite’s stores are summarized in Table 14.2 below.

Table 14.2: [ Yorkshire] stores in South Africa

[ Yorkshire]

Source: [ Yorkshire]

290. [ Yorkshire]

Figure 14.1: Location of [ Yorkshire] with or without an exclusive agreement

[ Yorkshire]

[ Yorkshire]

291. [ Yorkshire]

Table 14.3: [ Yorkshire] stores in South Africa

[ Yorkshire]

Source: [ Yorkshire]

292. [ Yorkshire]

Figure 14.2: Location of [ Yorkshire] stores which have exclusivity in shopping centres of over 12 000 m²

[ Yorkshire]

293. [ Yorkshire].

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832 Pick n Pay submission, Annexure A, 4 May 2018. This excludes Pick n Pay Clothing, Pick n Pay Pharmacy and Boxer Build stores.
Table 14.4: [✓] exclusivity provisions as at 4 May 2018

[✓]

Source: [✓] submission, 4 May 2018

[✓]

294. [✓] While Woolworths does not have exclusivity provisions in their lease agreements, the Inquiry is of the view that the clauses discussed below could have a similar effect on potential competitors in shopping centres as exclusive lease agreements.

295. [✓].

296. [✓]:

296.1 [✓]. [✓] [✓] [✓] [✓]. [✓]. [✓].

296.2 [✓]. [✓]. [✓]. [✓]. [✓].

297. [✓].

14.2 Justification for exclusive leases

Justification 1: Exclusive lease agreements compensate anchor tenants for the risk of having to sign a long-term lease agreement

298. Pick n Pay and Spar submitted that exclusive lease agreements compensate national supermarket chains for the risk of having to sign a long-term lease agreement.

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833 Pick n Pay Express stores at filling stations and Pick n Pay Spaza shops are excluded from this analysis as these store formats are always stand-alone stores and are not subject to exclusivity clauses.

299. Pick n Pay stated that exclusivity provisions enabled a supermarket to maintain its financial viability in a centre over the period of a long-term lease, specifically in centres where its viability could be threatened if another supermarket opened in the shopping centre.845

300. In Spar’s view, the duration of the exclusive lease is negotiated to compensate the retailer, who has to trade and pay rent regardless of the success of the store.846 [X].847

301. Spar submitted that it is different from the other national supermarket chains because the majority of their stores are owned and operated by independent retailers and are not corporate stores, such as Pick n Pay and Shoprite. This, it submitted, meant that the risk of opening a store in a shopping centre is borne by the independent retailer without the financial standing to support a store that is trading unprofitably as would be the case in respect of Pick n Pay and Shoprite. The Inquiry is of the view that although the majority of Spar stores are independently owned, the affiliation with the Spar brand has allowed the owners of Spar stores to negotiate the inclusion of exclusive lease provisions. Such exclusivity provisions would not, in the Inquiry’s view, be extended to independent retailers who are not affiliated with Spar.

302. In contrast to these arguments, Liberty is of the view that the risk element at present is lower than it was in the past when exclusivity provisions became prevalent in the market. The proliferation of data and information collected by developers and retailers affords them new risk mitigation measures that will negate the need for exclusivity provisions.848 It submitted that deep demographic research through household surveys into understanding what the customers in an area need849 enables developers to build the right size shopping centres in the right locations with the most appropriate tenant mix to meet customers’ demands. Anchor tenants, too, engage in careful demographic research to inform their decision to enter a shopping centre and mitigate risk.850 This was not the case historically when the extent and depth of this type of customer information was not available.

847 [X].
848 Liberty public hearing transcript, 6 Nov 2017, p. 6-7.
Justification 2: Exclusive lease agreements protect the investment made in a store

303. All of the national supermarket chains that have exclusive lease agreements have argued that these exclusivities protect the investment made in the store.

304. Spar submits that the cost of opening up a new Spar store could be anywhere between \( [\langle X \rangle] \). This cost and risk has to be borne by the Spar independent retailers, who do not have the same financial resources as corporate chain grocery retailers who are able to divert money from one store to another. This risk, in Spar's opinion, justifies the need for exclusive lease agreements in respect of independent retailers.\(^{851}\)

305. \( [\langle X \rangle] \).\(^{852}\)

306. Pick n Pay has submitted that without the long-term commitment of an anchor tenant, it would be more difficult for a shopping centre to attract other tenants and consumers. National supermarket chains are required to make a considerable investment into their new stores in new shopping centres for a protracted period of time and incur significant risk in pursuing these opportunities.\(^{853}\)

307. \( [\langle X \rangle] \).\(^{854}\)

308. \( [\langle X \rangle] , [\langle X \rangle] \).\(^{855}\) \( [\langle X \rangle] \).\(^{856}\)

309. In their submissions, Spar gave 3 examples of Spar stores that have lost footfall and revenue when a competing store opened in or near the mall in which the Spar store was located.\(^{857}\) Limpopo Spar and Tops stores started trading at a loss after exclusivity was waived in June 2010 and a Game store started trading groceries in the centre. Subsequently, the store has been sold by the independent retailer to the Spar Group and it has not made any profit since 2010. The Sebokeng Superspar experienced a \( [\langle X \rangle] \) drop in sales and \( [\langle X \rangle] \) decline in profits in 2015 after the landlord of the shopping centre where the Superspar is located built a store for Pick 'n Pay on an adjacent piece of land.

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\(^{851}\) Spar public hearing transcripts, 15 December 2017, p. 25, para. 172-173.
\(^{852}\) \( [\langle X \rangle] \).
\(^{853}\) Pick n Pay Response (03 July 2017), Question 33.
\(^{854}\) \( [\langle X \rangle] \).
\(^{855}\) \( [\langle X \rangle] \).
\(^{856}\) \( [\langle X \rangle] \).
\(^{857}\) Response to final Statement of Issues dated 19 August 2016, p. 23 – 24, para. 57.1 – 57.3.2.
following Sebokeng Superspar’s refusal to waive its exclusivity in the shopping centre. Spar Umlazi also experienced a loss in turnover after Shoprite opened a store opposite the shopping centre where the Spar is located in 2014.

*Justification 3: The low margins earned by supermarkets justify the existence of exclusive lease agreements*

310. [858]

311. While exclusivity clauses are prevalent in respect of national supermarket chains, fashion retailers on the other hand usually require their main competitors to be present in the shopping centre before they will consider becoming a tenant in a development.859 The reason for this, as opined by the national supermarket chains, is due to the higher margins that fashion retailers make per sale when compared to grocery retailers. This allows fashion retailers to forego some sales to competitors.

*Justification 4: Some areas are not able to sustain more than one grocery retailer in a shopping centre*

312. National supermarket chains have indicated that property developers may introduce a second grocery retailer in a shopping centre in order to collect more rent even if the area serviced by the shopping centre does not have the spending power to support a second grocery retailer.

313. According to Pick n Pay, one of the reasons for entering into an exclusive lease agreement with the landlord/developer is to control the different incentives that the parties to the agreement have. Pick n Pay insists on an exclusive lease agreement to ensure the viability of its store because there is a risk that a shopping centre may not perform well. Two grocery retailers in the same centre may lead to one or both retailers failing. The landlord, on the other hand, is primarily interested with increased rent from having a second grocery retailer.860

314. When asked why a landlord would lease space to more than one retailer in a shopping centre that is not likely to support more than one grocery
supermarket, Pick n Pay explained that while it hoped that a developer/funder/landlord is able to correctly predict how much footfall the shopping centre can achieve, this is not always the case.\textsuperscript{861} Pick n Pay claims that there have been instances where landlords or centre owners have miscalculated the amount of customers that can be drawn to the centre, introduced a second grocery retailer and subsequently led to the shopping centre failing.\textsuperscript{862} [\textsuperscript{[87]}].\textsuperscript{863}

315. Property developers, on the other hand, argued that they would not introduce a second food anchor tenant into a shopping centre that is not capable of sustaining more than one food anchor tenant as this may result in the failure of the entire shopping centre.

316. Redefine stated that the size of the centre determines how many food anchors would be sustainable and viable in the centre. Responsible developers will not allow more than one large food retailer into a shopping centre that cannot support additional large food retailers as this will damage their investment as much as it will damage the investment of the retailers. The loss in rental income would mean that the developer would not be able to service the loan for developing the shopping centre.\textsuperscript{864} Redefine has in the past allowed Food Lover’s Market to enter Park Meadows shopping centre in Johannesburg without the consent of Pick ‘n Pay, which had an exclusivity clause in place in the shopping centre. In the view of Redefine, both retailers are trading well in Park Meadows.\textsuperscript{865}

317. Redefine has conceded that it is possible that an irresponsible or desperate property developer or landlord could make tenant mix decisions based on increasing rental income in the short-term that are not aligned with the interest of keeping the shopping centre and all the tenants profitable.\textsuperscript{866} However, property developers and anchor tenants share joint responsibility for the profitability of an anchor tenant in a shopping centre. Redefine is of the view that there have been retailers in shopping centres owned by Redefine that have traded unprofitably due to the retailer failing to meet the needs of the

\textsuperscript{861} Pick n Pay public hearing transcript (open session), 3 Nov 2017, p. 40.
\textsuperscript{862} Pick n Pay public hearing transcript (open session), 3 Nov 2017, p. 41.
\textsuperscript{863} [\textsuperscript{[87]}].
\textsuperscript{864} Redefine public hearing transcripts, 3 November 2017, p. 24.
\textsuperscript{865} Redefine public hearing transcripts, 3 November 2017, p. 24-25.
consumers in the area in terms of merchandise. Therefore, unprofitability of retailers in a shopping centre is not solely as a result of property developers’ choices in terms of tenant mix. For this reason, Redefine monitors the trading densities of every tenant and compares these trading densities to those of similar stores in similar locations as well as similar stores within the same shopping centre. This monitoring is done in order to protect the developer’s capital investment in the shopping centre which, according to Redefine, is far greater than that of the individual retailers.867

318. Redefine also points out that property developers or landlords are also unlikely to introduce a second food anchor tenant in a shopping centre that cannot profitably accommodate two grocery retailers because they wish to achieve turnover rental from their tenants.868 If a retailer is not successful in a shopping centre, they will not achieve the threshold for turnover rental and this has a negative impact on the landlord or property developer’s income. It is in the interest of the owner of the centre to have all the tenants do well.

319. Property developers have submitted that exclusive lease agreements prevent them from expanding and adapting the shopping centre to changing market dynamics and demographics. This is mainly due to the exclusivity clauses, whether complete or partial, applying to any extension or addition to shopping centres.

320. Resilient submitted that they prefer not to have exclusivity clauses in their lease agreements because of the dynamic nature of the market. It cited the example of the Jabulani shopping centre, access to which did not have tarred roads. The community has since expanded and the demographics and profile of the customers have changed, which has warranted an expansion of the shopping centre’s parking area. This means that the requirements and needs of the customers of Jabulani shopping centre have changed, and exclusivity provisions inhibit the developers’ ability to adapt the tenant mix in a shopping centre in order to address the changes.869

321. Emira has indicated that in the event that it would want to expand a centre where an existing tenant has an exclusive lease agreement, it would have to

868 Redefine public hearing transcripts, 3 November 2017, p. 27.
consult the retailer who has exclusivity in the centre before the commencement of the expansion. This means that, should a market study indicate that an expansion of an existing centre is warranted, the new, larger centre is also subject to any exclusivities that were in place before the expansion.

322. Redefine indicated that it no longer allows exclusivity clauses in new developments but there are exclusivity clauses still in force in existing shopping centres that Redefine has purchased. Redefine explained that exclusivity clauses do not only restrict other supermarkets from entering the shopping centre but other tenants, such as bakeries and butcheries through restrictions on their size. This, Redefine stated, inhibits the growth of the shopping centre because a successful tenant will be restricted from reaching its full potential.

*Justification 5: Exclusive lease agreements do not create barriers to entry*

323. The national supermarket chains are of the view that exclusive lease agreements have not created barriers to entry into the grocery retail sector. In this Inquiry, they are the only ones who hold this view.

324. According to Shoprite, there have not been any material changes in the barriers to entry for national or independent retailers in the grocery retail sector since the previous supermarket investigation.

325. According to Pick n Pay, the significant growth in Choppies’ and Food Lovers Market’s respective operations over a short period of time does not give Pick n Pay reason to believe that factors such as exclusive lease agreements are a significant impediment to these supermarket’s entry into the industry. To some extent, even Spar’s submissions imply this in their reference to the entry of these players to negate the impediment caused by exclusive leases.

326. Pick n Pay submitted that South Africa has over 1800 shopping centres which puts it sixth in the world in terms of the number of shopping centres. Pick n Pay argues that this contradicts the notion that the existence of exclusive leases has constrained the development of shopping centres in South Africa.

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870 See October / November Public hearing transcript for Emira (open session); p. 26, para 30.
871 Redefine public hearing transcripts, 3 November 2017, p. 23.
872 See submission by Shoprite, dated 06 July 2017 para 4.1.
873 Pick n Pay Response (03 July 2017), Question 11.
Pick n Pay provided maps indicating the number of competitors that operate close to Pick n Pay stores. It claims that “even those stores with exclusive lease arrangements in relation to particular shopping centres, face a myriad of competitors in close proximity to those stores. This, it states, is indicative of the multiplicity of retail space and the fact that competitors are able to access alternative retail space in circumstances where they cannot secure premises in a particular shopping centre”. This view is contradicted by Choppies. Choppies indicated that in some towns, large grocery retailers have blocked the development of other sites that are adjacent or close to where the major retailer’s store is located. Often, the major retailer has the first option on properties that are adjacent to their stores.

327. Shoprite also submitted that the entry of independent retailers such as Choppies and Food Lover’s Market demonstrate the opportunities that are prevalent in the grocery retail sector. Moreover, forecourt convenience grocery outlets have been introduced at petrol stations which complements the grocery retail sector.

328. Spar is of the view that barriers to entry in the grocery retail market are not high because new malls are constantly being developed and this provides opportunities for retailers, including new entrants, to trade in malls and the land adjacent to malls. However, Spar fails to point out which new entrants are presented with an opportunity to trade in these new shopping centres.

329. As discussed previously, these views are contradicted by the submissions of Choppies and Food Lover’s Market, who have indicated that exclusive lease agreements have affected their ability to compete in shopping centres. The majority of Choppies and Food Lover’s Market stores are located on stand-alone premises. In the case of Choppies, this is not by choice but as a consequence of the exclusive leases.

330. The arguments submitted by the national supermarket chains fail to take into account the large proportion of their stores that are located in shopping centres. This is indicative of the attractiveness of a store being located within a shopping

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877 Pick n Pay Response (03 July 2017), Question 11.
878 Minutes of meeting with Choppies, 2 May 2017, p. 3.
879 See submission by Shoprite, dated 06 July 2017; para 1.7.
880 See submission by Shoprite, dated 06 July 2017, para 1.7.
centre as opposed to a stand-alone store. This is especially the case for speciality stores and smaller retailers who do not have the capital or the ability to attract sufficient footfall to make a stand-alone store viable. It is also possible that the large number of shopping centres in South Africa and the continued development of new centres is as a result of exclusive lease agreements.

**Justification 6: Exclusive lease agreements do not harm consumers**

331. Pick n Pay states that its national pricing strategy is not a function of exclusive lease arrangements. It sets its prices at a national level because it is a national business with central buying and distribution and because it wants to provide customers with uniform prices across its various stores countrywide. Exclusivity arrangements do not enable retailers to charge higher prices because the relevant markets are broader than the individual shopping centre.\(^{882}\)

332. Spar does not believe that exclusivity enables a retailer to raise prices because most shoppers are able to shop at alternative stores and barriers to entry are not sufficiently high to sustain higher prices.\(^{883}\)

333. Pick n Pay has publicly stated that it has a policy not to apply exclusivity to small traders - such as butcheries, bakeries, or other types of speciality stores - that have a size of up to 100m\(^2\) in small shopping centres or 250m\(^2\) in large shopping centres.\(^{884}\) Pick n Pay’s exclusivity provisions in their lease agreements over the past 10 years have generally not been enforced for small traders as defined above.

334. \([\times]^{885}\)

335. \([\times]^{886}\)

336. Spar states that it is different to the corporate chain stores in the split between service departments and groceries. Service departments are the fresh food

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\(^{882}\) Pick n Pay Response (03 July 2017), Question 31

\(^{883}\) Response to final Statement of Issues dated 19 August 2016, p. 21, para. 54.

\(^{884}\) Pick n Pay public hearing transcript (open session), 3 Nov 2017, pg. 10; Pick n Pay presentation, 3 Nov 2017, slide 8.

\(^{885}\) Pick n Pay public hearing transcript (closed session), 3 Nov 2017, p. 3-4.

\(^{886}\) Spar public hearing transcripts, 15 December 2017, p. 68, para. 277.
departments in the store such as a butchery, bakery, delicatessen and fresh produce. [><].

14.3 International experience on exclusive leases in grocery retail markets

337. The UK Competition Commission (“UKCC”) scrutinised the effect of exclusivity arrangements between grocery retailers and landlords on competition in the UK. The UKCC found that exclusivity provisions between large grocery retailers and landlords in highly concentrated markets in which the retailer held a strong position raised barriers to entry into grocery retail and gave rise to poorer outcomes for consumers in terms of quality, prices, and range and service than would have prevailed absent the exclusivity arrangements.

338. A number of steps were taken to restrict the use of exclusivity provisions in lease agreements in the UK, such as:

338.1 Large grocery retailers were to be required not to enforce or seek the enforcement of any of the 30 existing exclusivity arrangements that were identified in the UKCC’s report beyond a period of five years from the date of the report.

338.2 Large grocery retailers were to be required not to enforce or seek the enforcement of any existing exclusivity arrangements beyond those identified in the report after the longer of (i) five years from the date of the report, or (ii) five years from the date the grocery store was opened, where that arrangement relates to land in a highly-concentrated local market where it has a strong local market position and which may restrict grocery retailing or have the equivalent effect.

338.3 Large grocery retailers were to be required not to enforce or seek the enforcement of new exclusivity arrangements once a period of five years from the opening of the grocery store to which the arrangement relates had elapsed.

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UK Competition Commission 2008, The supply of groceries in the UK market investigation.

It is important to note that the UKCC was able to clearly define local markets as only 30 existing exclusivity arrangements were identified in the investigation.

UK Competition Commission 2008, The supply of groceries in the UK market investigation, para. 42 and para. 11.183 – 11.216.
The Australian Competition and Consumer Commission ("ACCC") undertook an inquiry to analyse the extent to which a lack of competition in grocery wholesaling and retailing had contributed to increased grocery prices for consumers. A finding of the inquiry was that high barriers to entry and expansion were among factors limiting competition in the grocery retail market. These barriers were found to be in part attributable to the prevalence of restrictive lease arrangements between shopping centre owners and grocery supermarkets, in particular the two major supermarket chains.

Following the findings of the investigation, the ACCC had engagements with grocery retailers to secure the phasing out of all restrictive provisions in supermarket leases through court enforceable undertakings provided by the retailers. The ACCC succeeded in securing agreement from all grocery retailers that they would not include restrictive provisions in any new supermarket leases, and that in respect of existing leases they would not enforce any restrictive provisions five years after the commencement of trading at the relevant stores benefitting from the restrictive arrangements.

15 Annexure 6: Objective Three – The impact of the dynamics of competition between local and foreign national operated small and independent retailer in township, peri-urban areas, rural and the informal economy on competition.

15.1 Methodology and data

Qualitative evidence gathered from meetings with market participants

The Inquiry employed both quantitative and qualitative evidence. The qualitative evidence was gathered from meetings with various small business associations from around the country as well as re-visits that served as a platform to engage with the the leaders and individual members of the associations. The associations organised the individual small spaza shop owners from a certain area, as opposed to meeting them individually. These platforms allowed operators of spaza shops and other small independent traders who are members and non-members of the business associations to

voice their concerns and make submissions to the Inquiry. In addition, there were submissions at the public hearings that took place in Cape Town, Pretoria and Johannesburg.

342. The second set of qualitative data used comes from meetings with wholesalers. These stakeholders are particularly important as they serve small businesses and provide an insightful view of the procurement practices of small informal grocery retailers.

Quantitative Data from Surveys conducted in various townships, peri-urban and rural areas

343. Small Business Survey: A survey on small and independent retailers operating in the townships, peri-urban and rural areas was conducted assessing the dynamics of competition between local and foreign owned spaza shops.

344. Consumer Survey: The survey sought to understand the shopping behaviour of consumers, comparing and analysing their shopping patterns and preferences in relation to local and foreign owned spaza shops.

345. Before proceeding, the Inquiry highlights a few caveats relating to the investigation of this objective. One of the major obstacles the Inquiry experienced with this Objective was in gathering the appropriate evidence for a complete and methodical analysis. The prevailing information as contained in public debates around this issue contains conflicting views which tend to lack objectivity in that it often favours either of the groups when discussing the reasons for the success or failure of each of the groups. Likewise, because of the nature and complexity of the subject matter, evidence submitted during the information gathering phase of this Inquiry constantly seemed to be in favour of the stakeholder making the submission. In general, the submissions made by each group were almost similar throughout the country - locals casting aspersions on foreign nationals and foreign nationals accrediting their success to skill their organisational structures, effort and perseverance.

346. Another problem that hindered the evidence gathering exercise was the poor participation and cooperation by the larger members of small business associations. One of the major reasons for this problem stems from small informal businesses' lack of understanding of the Commission’s role in the economy. Before this Inquiry, the Commission’s primary stakeholders in
inquiring have largely been formal large businesses who may have had some
interaction with the Commission and who have legal experts who are able to
clarify the role of the Commission. In the current Inquiry, more specifically for
this objective, the primary stakeholder is made up of small informal businesses
who are not aware of the Commission’s role, let alone its existence and who
cannot afford enlisting services of legal experts. This predicament created
difficulties when communicating the purpose and objectives of the Inquiry. This
was evident during the Inquiry’s engagements with small business
constituencies who shared a common misconception that the Commission was
offering financial assistance. As a result, considerable amount of time and
resources was spent explaining the role of the Commission to these
stakeholders in an attempt to get a buy from them.

Further to the above, a recurring concern that manifested in the engagements
with the informal sector organizations was their general discontent towards
government. It was numerous cited that many officials had been in
discussions with these stakeholders but no action was taken to resolve their
problems, in particular concerning the challenges faced by small informal
business operators. The stakeholders who operate small businesses submitted
that they had been promised all sorts of support structures in the past which
were never implemented and as a result grew weary of discussions with any
government institutions. From this, participation was generally poor and non-
interactive for the most part despite the Inquiry’s efforts to formally invite the
stakeholders to consultations, running week long activation initiatives not only
to ensure that stakeholders were aware of the Commission but also about the
Inquiry that the Commission is conducting as well as the objectives covered by
the Inquiry, additionally, visiting the locals at their local municipalities.

The submissions presented in this chapter represent submissions made by the
stakeholders during our engagements. The majority of consumers consulted
seemed to favour foreign owned spaza shops because of their lower prices and
variety of their product offering. In general, local owned spaza shops seems to
receive most of their support from patriotic community members, who choose
not to support foreign owned spaza shops. From a business perspective,
foreigners are said to be educated, savvier in their procurement processes

894 It was submitted in some of the meetings that it was not unusual to find a qualified foreigner, i.e. with
a business degree operating a spaza shop due to ownership structure. As a result, they would be more
efficient and apply their business skill when operating their business.
and more responsive to the needs of the community. Local spaza owners have alluded to being skill deficient, inefficient in their procurement strategy and unresponsive to an environment that not only presents a rise in foreign nationals but also national supermarkets that have moved into townships operating within close proximity to their stores.

349. The qualitative information gathered also represents the views of most small business operators that were consulted across the country. Secondly, the quantitative evidence is more recent, nationally representative and remarkably rich relative to the previous literature. Thirdly, there was input from all interested stakeholders, and the process afforded the affected stakeholders to submit rebuttals, supported by adequate evidence, on any issue that was found not to be satisfactory.

15.2 Literature review

350. In this section, we discuss the findings of previous studies that have been conducted across different parts of the country by different authors on what is perceived to be the contributing factors to the success of foreign operated spaza shops.

351. A wide range of studies have looked into the informal grocery market in non-urban areas. The literature is broadly divided into two categories. One category focuses on identifying the sources of violence against foreign nationals operating spaza shops in townships and rural areas. The other category concentrates on pinpointing the differences in the way local nationals run their spaza shops as opposed to those which are operated by foreign nationals. For purposes of this Inquiry, the focus is on the second category.

352. It has been documented that the survival and prosperity of spaza shops in townships and rural areas thrives on sustained competitive advantage. Badenhorst-Weiss et al (2014) observe that small businesses that prosper often develop a set of core competencies which enable the business to serve the selected target customers better than their competitors. The paper looked into answering how small businesses in Soweto compete and survive against strong competition, following the move of most of the large corporate

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Confidential

retailers into the townships. Scarborough (2011), further states that the competitive advantage of small businesses lies in: (i) the uniqueness of the products they sell; (ii) savings and convenience offered to customers; (iii) services provided to the benefit of customers; (iv) prices charged; and (v) and business operating hours as well credit896.

353. The above factors are referred to and discussed by Liedman (2013) who compared the manner in which foreign and local operated spaza shops operate in terms of: (i) ownership dynamics, (ii) capital investment, (iii) stock procurement, (iv) business operations, and (v) links to distribution networks. The primary findings of the study showed that the business approach and scale of operations of foreign run spaza shops contrast distinctly with the predominantly “survivalist“ business approach of most local spaza shops. The author also reported that social networks play a major role in the observed differences between foreign and local owned spaza shops. In the case of Somalis, the networks enhance their competitive advantage by allowing the members access to various services including: (i) access to cheap labour recruited from Somalia; (ii) strategically locating business in a particular area to establish a Somali stronghold; (iii) group purchasing to secure discounts and operational economies of scale; and (iv) facilitating micro-loaning within group 897.

354. Expounding further on the competitiveness of Somalis, Gastrow and Amit (2013) interviewed 66 shopkeepers in the Western Cape in order to understand their experiences in the informal grocery retail market. The key findings indicated that Somalis: (i) tend to offer low mark-up on goods, (ii) rely heavily on high turnover, (iii) strategically locate their shops in high pedestrian traffic areas, (iv) participate in the practice of “collective buying”; (iv) price compare and identify special offers from wholesalers before making a purchase for their stores; (v) collective investment in shops (the store will often be owned by more than one individual) ; (vi) shareholding in multiple spaza shops; (vii) and are focused on customers’ needs and convenience which include operating within the satisfactory hours for the customer. Furthermore, the study also noted

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difficulties facing local small informal grocery retailers, in particular: (i) the expansion of retail supermarkets in townships; (ii) food price increases that had reduced consumer spending; (iii) lack of business skills; and (iv) mismanagement of business funds.

355. Piper and Charman (2016) approach this topic from a different standpoint, interrogating price competitiveness between the different nationalities in the informal grocery retail market. In stark contrast to most studies, the findings reveal that local traders are slightly cheaper on average than Mozambicans and Zimbabweans, though more expensive than Bangladeshi and Somalis. Furthermore, local owned spaza shops are more likely to offer half a loaf of white bread than most other nationalities. To a certain extent this refutes the notion that local small grocery retailers do not cater to consumer preferences. On the other hand, Somalis and Ethiopians were found more likely to stock sugar than most other nationalities, and Mozambicans and Bangladeshis were found to be “dominant” in the supply of eggs.

356. However, some studies have attributed part of the success of foreign owned spaza shops to illicit activities. SLF(2015) postulates that spaza shops that sell contraband cigarettes (Figure 15.1 below) tend to have a market advantage. SLF make the assumption that cigarettes are a gateway product for consumers to direct them to a spaza shop. The hypothesis is that, the cheaper the cigarette, the more consumers will be directed to the specific spaza shop and thus purchase other products. The descriptive statistics from this study showed that 37 per cent of all (including both local and foreign operated spaza shops) spaza shops sell contraband brand cigarettes. It was further reported that 51 per cent of foreign run spaza shops sell contraband tobacco. SLF further alleged that foreign run shops have greater access to contraband tobacco because they have

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898 This aspect is discussed in detail under Objective 1 of the Inquiry, The
901 This is discussed in detail following a detail study on counterfeit goods found in spaza shops.
902 The Inquiry found computational errors in the specified numbers that give rise to serious limitations in interpreting these results.
the requisite network cooperation and substantial capital to procure these illicit supplies of tobacco.\textsuperscript{903}

**Figure 15.1: Suspected fake cigarettes.**

![Suspected fake cigarettes](image-url)

*Source: SLF, 2017*

357. Despite their relevance and the insight on the matter brought by these studies, there are limitations to conclusion that can be made from them. The majority of the studies were conducted in relation to a specific area and did not cover many areas within the provinces of the country. Therefore, the characteristics and features of a specific area may influence a finding of a study. Different areas are underpinned by individual features that give rise to their identity. For this reason, results found from a specific area may simply be the manifestation of the features that underpin the particular area, and thus cannot be representative of the general population in the South Africa townships and rural areas. Therefore, it could be misleading to assume that 50 per cent of the foreign run spaza shops in all townships and rural areas sell counterfeit cigarettes that have been illegally obtained.

358. One of the earliest works in this area was furnished by Mbonyane (2006) who undertook a study in order to highlight factors that inhibit the success of local traders in Kagiso, Gauteng. A summary of the list of factors identified includes, amongst others: (i) lack of government support for small businesses; (ii)

general lack of business acumen; (iii) lack of customer relations skills; (iv) poor location of businesses; and (v) lack of budget management.

359. Another study, motivated by the role and contributions of spaza shops in creating jobs for the majority of previously disadvantaged South Africans, Moloi (2014) looked into the sustainability of local owned spaza shops in Soshanguve, Pretoria. The study relied on descriptive and qualitative data obtained from interviews with 18 local spaza owners. The findings outlined the following barriers ascribing the failure of spaza shops: (i) lack of financial support, (ii) lack of business management skills, (iii) expensive transportation of stock, (iv) limited trading space, (v) negative competition among spaza shop owners, and (vi) lack of cooperatives among spaza shop owners.

360. In his study, Fatoki (2014) isolates these barriers into internal and external factors. Internal factors are those attributable to the owner. These include lack of management experience, lack of functional skills (e.g. planning, organizing, leading and controlling), poor staff development and poor attitudes towards customers. External factors are those largely uncontrollable and include, non-availability of a logistics chain, high cost of distribution, competition, rising costs of doing business and a lack of finance.

361. In a similar study, Seeletse (2012) offered reasons for the lack of sustainability of small businesses in the West Rand region of the Gauteng Province. Some of the identified common barriers highlighted were: (i) poor customer relations, (ii) poor inventory control, (iii) underdeveloped infrastructure, (iv) lack of finance, and (v) general lack of preparedness in business.

362. In summary, the reviewed outlined several critical managerial skills and competencies required that inhibit South African informal ventures from succeeding in townships and previously disadvantaged communities. Broadly, the identified barriers in the literature can be categorized as, (i) business administration skills, (ii) understanding of regulatory and tax policies, (iii) simple marketing and finance and (iv) customer service skills. These barriers are tested below against stakeholder submissions and surveys.

15.3 Allegations of transgressions

363. During the Inquiry’s country-wide engagements with small business associations and following numerous submissions from industry participants,
there has been a significant number of allegations of criminal related transgressions on the part of foreign spaza shop owners. These allegations may be as a result of a frustration to compete successfully with foreigners, although there is some evidence of criminal transgressions on the part of foreign owned spaza shops. There have been recent anti-immigrant protests lodged against all African immigrants, in Gauteng, for their supposed and unproven criminal activities. However, for the purpose of this Inquiry, it is imperative to outline these allegations in the retail sector in order to form the basis of solid recommendations. The issues herein are tax evasion; predatory pricing; unfair enforcement of regulations as well as shadow banking and finance practices, which we deal with below.

**Tax evasion**

364. Most informal sector businesses are not formally registered (both local and foreign) and thus are untaxed\(^904\). According to the DSBD, any product that carries a tax is always a good product to sell for the benefit of the country’s fiscus. However when the business is not registered for tax or procures the good illegally, the tax proceeds becomes illicit profits\(^905\). An example of a product that earns illicit profits for small retail businesses is cigarettes. Cigarettes carry a sin tax and thus illegally sold cigarettes allow the retailers to evade that tax (recall cigarettes form part of the most purchased items in both local and foreign spaza shops).\(^906\)

365. Conversely, some government stakeholders, hold diverging views on the issue of tax. In dissent, the Capricorn municipality in Limpopo and the Free State DESTEA state that local owned spaza shops are expected to register their businesses and therefore comply with tax requirements.\(^907\) They submit that because foreign spaza owners do not have bank accounts, it is difficult to enforce taxation on their businesses.\(^908\) However, the Western Cape Department of Economic Development confirm that while taxes are generally

\(^904\) Demacon meeting on 17 February 2016.
\(^905\) Department of Small Business Development meeting on 20 March 2016.
\(^906\) Department of Small Business Development meeting on 20 March 2016.
\(^908\) Goseame fruit and vegetables wholesaler meeting on 22 August 2016; Ngcobo Small Business Chamber meeting on 26 September 2016.
paid by formal businesses, the difficulties in monitoring and enforcing tax laws in the informal sector makes tax evasion prevalent. The Somali Community Board submitted that the perception that most of the foreign spaza shop owners are operating their shops in the townships without proper permits or legal requirements to paying tax is exacerbated by fictitious information promulgated by common citizens and those in authority as well.\textsuperscript{909}

Another issue on tax evasion is ghost imports. Ghost exports or formally known as round shipping occurs when false documentation is submitted to indicate that a product was exported, whereas no export took place and then VAT is claimed back illegally. SARS indicated that this practise remains a challenge for them. Borders such as the Lebombo and Beitbridge have generally recorded high VAT refund claim queries. However, at the time of the discussions between the Inquiry and SARS, processes were being put in place to reduce illegal practices. Many stakeholders have complained about this practice but SARS has alluded it is difficult to pin down the perpetrators.\textsuperscript{910}

**Predatory pricing**

It has been purported that foreign spaza shops engage in predatory pricing to drive out competitors in townships, peri-urban and rural areas. It should be noted that the concern is not only reported by local spaza shop owners but also by foreign owners. In Ledig, Rustenburg, Pakistani traders complained about an insurgence of Somalis and Ethiopians who are driving down prices significantly. The alleged practice apparently utilise the illegal funds or refugee package lump sum to hedge loses in order to price significantly low to drive out competition.\textsuperscript{911} These allegations were also raised by local traders in Free State Bloemfontein (Mangaung), Limpopo Polokwane (Capricorn), Gauteng Pretoria (Mamelodi) as well as Northern Cape (Kimberley).

Figure 15.2 below illustrates how this is implemented as expounded by various stakeholders. The aim of the predator is to acquire the target spaza, which, for the purpose of this illustration, is locally owned. Foreigners will enter an area and occupy spaza shop 1 to 5, boxing in the target spaza. The next step is to decrease pedestrian traffic to the target spaza by selling essential perishables at

\textsuperscript{909} Somali Community Board meeting on 22 February 2016.
\textsuperscript{910} South African Revenue Service meeting on 11 August 2016.
\textsuperscript{911} The Economic Development Department (EDD) meeting on 18 March 216.
below cost. These products include among others bread and soft drinks. As customers purchase their daily convenient items from either spaza 1 to 5, the target firm’s profits decline. When profits reach minimum levels that cannot sustain the business operation costs, it is said that the foreigners will then make the offer to acquire or rent the spaza. Consequently, when all six spaza shops are foreign owned, prices of those convenient goods will be raised to recover the losses incurred from the lower prices.

Figure 15.2: An illustration of the predatory pricing practice

![Diagram showing predatory pricing](image)

Source: Sketch by Inquiry

Banking and finance

369. Another allegation raised is the matter of banking and financial transactions by foreign run spaza shops. It is claimed that foreign spaza shop owners do not bank their money locally, and use shadow banking for financial transactions\(^{912}\). SASA alluded that some local banks reject prospective clients with refugee status. But banks such as ABSA and FNB allow some foreigners with refugee status to open bank accounts subject to stringent terms and conditions. The most stringent of the conditions states that if your refugee permit expires, the account is suspended pending the approval of a new permit. A Section 24 refugee status permit to sojourn in the Republic temporarily, which is a permit granted by a Refugee Reception Officer after various considerations, lasts 4 years. Whereas a Section 22 permit is renewed periodically, ranging from 3-6 months. A Section 22 is an asylum seeker permit which is granted by a Refugee Reception Officer pending the approval of the Section 24 application. The

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\(^{912}\) Black Business Council meeting on 25 February 2016.
obstacle lies in the period it takes to apply and get a new permit, as such, it creates a disincentive for foreigners to use formal banking methods. It was submitted that Standard bank and Nedbank do not allow refugee status foreigners banking or credit facilities. A reason has not been furnished to this effect.

Regulation

370. The issue of regulation enforcement has been at the centre of the tensions between local and foreign spaza owners. It is believed that the lax enforcement has abetted the perceived success of foreign nationals. Local traders believe regulations are only applied to the local owned stores and not to the foreign owned stores. This includes enforcement of immigration laws, land zoning and health and safety regulations, amongst others.

371. It is commonly perceived that foreigners sleep in their spaza and small retail stores and retail expired goods. This puts into question issues of health and safety regulations and their enforcement. The alleged conduct against foreigners poses a health risk to consumers purchasing products and a safety risk to the community as these stored are habitually targeted by criminals. To this effect, SASA states that some of their members in Cape Town do sleep in the spaza or shop structure. However, the rooms are properly subdivided into sleeping quarters and food section. SASA provided justifications by stating that this practice is pursuant to safety, as they are unable to secure property to rent for residential purposes and also out of fear of their stores being looted. Additionally, SASA states that their members often start trading at very early hours in the morning and remain open until late in the evening, as such, adding an extra room within the spaza structure allows them to minimize travelling time and the related costs. However, some foreigners have been confirmed to be illegally living within their business premises, as stated by some Somali traders in eThekwini (Kwazulu-Natal) during the Inquiry’s re-visit, as well as one of the participants at the re-visit who works for the refugee’s source services.

372. Municipalities have stated that issues of non-compliance are only uncovered when members of the public lodge complaints against specific traders. A

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914 KwaZulu-Natal Revisit, Confidential Transcript, page 113.
compliance notice would then be issued to the non-compliant trader. However, in some instances, impromptu inspections are conducted quarterly in the shops. But it is alleged that some law enforcement agents do not apply the law because they receive bribes and other sweeteners. A claim by traders in Limpopo is that some South African Police Service officials do not enforce the regulations because they receive groceries for free from foreign nationals.

373. However, some municipalities have observed that some of the by-laws are outdated and cannot be applied to the current situations the municipalities are facing. A solution is for Cooperative Governance and Traditional Affairs (“COGTA”) to assist the municipalities to review the by-laws so that they are in line with the current circumstances. In addition, most by-laws are not reviewed annually. However, due to economic difficulties, these undertaking has been dilatory.

374. Traders have also asserted that they have stopped paying for their trading licenses because the municipality does not regulate or even conduct inspections in the spaza shops.

Small business survey allegations

375. Across a range of activities, there are some business practices that were found to be in contravention of South African law. These were largely in:

375.1 Wholesale merchant linkages;
375.2 Retailing of contraband tobacco;
375.3 Retailing of counterfeit goods; and
375.4 Non-normative and illegal labour practices.

15.4 Counterfeit study findings

Effects of the sale of counterfeit goods by the counterfeit study

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915 Northern Cape Department of Economic Development and Tourism meeting on 13 October 2016.
916 Ngcobo Small Business Chamber meeting on 26 September 2016
The results of the study demonstrate a considerable occurrence of likely counterfeit products retailed in township informal markets. This activity brings about the following wider implications:

376.1 Unfair competitive advantage to those in supply chains that are able to source counterfeit items;

376.2 Potential health risks to the consumer as some of these products are not compliant with health standards;

376.3 Poor quality, which can impact on the reputation, brand identity and market share of legitimate manufacturers;

376.4 Potentially huge losses of VAT, import and duty tax to the South African Revenue Services; and

376.5 Counterfeit products pose a significant loss in income to the legitimate manufacturer.

Recommendations by the counterfeit study

There is a requirement for a licensing system for wholesale and retail grocery businesses, through which owners are compelled towards ‘formalization’ processes. Such processes are presently complex with the rules and regulations being unduly stringent - thus making noncompliance an easier option and rarely enforced. At present the informal nature of the grocery sector is embraced as an integral part of business competitiveness. Developing simple strategies of certification towards formalizing unlicensed traders, can allow for incrementally introducing minimum standards and legal compliance.

Remedies to South Africa’s ‘porous’ border crossings are required. Investment in appropriate technology such as container scanning machines would support in identifying illegal items that may be being transported through border crossings. Border control authorities need to be consulted regarding border security improvements. Furthermore, intelligence services are required to uncover the deep and criminal local, national and transnational networks that operate in this context. Amendments to the 1964 Customs Act detailed by SARS in 2017 may assist this process, which will need bolstering through increased capacitation of customs services.
379. The manufacturers of readily counterfeited brands must evolve increasingly proactive strategies to engage with and limit their exposure to this market challenge. Current efforts focus on brand protection and private investigators at the retail level, and need to become increasingly supply chain driven and co-linked with state investigatory authorities.

380. There is a requirement for a consumer education programme targeted to those exposed to such products in township retail markets. This issue has potential important human health implications that need to be considered.

381. Intelligence operations, coupled with enforcement actions are required at any stages in the supply chain where illegal activities are involved — albeit counterfeit goods, contraband cigarettes or non-legally compliant labor models.
16 Annexure 7: Objective Four - The impact of regulations, including, amongst others, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy

16.1 OECD toolkit methodology

382. As stated under the Introduction to Objective 4, the Inquiry utilized the OECD toolkit\(^{917}\) for purposes of this assessment which sets out a six step process for the purpose of assessment.

383. The six steps involved in assessing the impact which regulations have on the competitive dynamics of a market are: (i) identifying policies or regulations that need to be assessed; (ii) applying a checklist; (iii) identifying potential alternative ways in which to still achieve the purpose of a specific regulation whilst minimizing its negative impact on the state of competition in a market; (iv) selecting the ideal option from the range of alternative options (v) implementing the ideal option from the range of alternative options identified in the previous step; and (vi) reviewing the impact of the alternative option after its implementation to determine whether it was successful and how to further develop areas of improvement.

*The First Step of the OECD Toolkit*

384. The first step of the OECD toolkit, which is to identify those regulations or policies which are problematic; advises that the depth of a competition assessment should be proportional to the extent of the possible negative impact of the relevant policy or regulation. In order to establish this, it is necessary to determine which economic activities fall within the sector being assessed, then to compile an exhaustive list of all the policies and regulations which are relevant to those identified economic activities which take place in the sector. These policies and regulations can ideally be solicited from national legal databases and interactions with stakeholders such as National, Provincial and Local government departments. The Inquiry identified those regulations which affect the day-to-day operations of local businesses in all 9 provinces in South Africa. Some of the aims were to determine which regulations, if any,

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restrict competition by, limiting the number of participants or product ranges in
the grocery retail sector in South Africa; are onerous; excessively enforced or
not enforced at all.

The Second Step of the OECD Toolkit

385. The second step of the OECD’s toolkit applies a checklist against which the
identified policies or regulations are measured. The checklist seeks to ascertain
whether or not the policy or regulation in question has any of the following anti-
competitive effects:

385.1 Limits the number or range of suppliers in specific areas. This is
likely to be the case if the policy/regulation: (i) grants exclusive
rights for a supplier to provide goods or services; (ii) establishes a
license, permit or authorization process as a requirement of
operation; (iii) limits the ability of some types of suppliers to provide
a good or service; (iv) significantly raises costs of entry or exit by a
supplier; (v) creates a geographical barrier to the ability of
companies to supply goods, services, labor or invest capital;

385.2 Limits the ability of suppliers to compete effectively. This is likely to
be the case if the policy/regulation: (i) limits a seller’s ability to set
the prices for goods or services; (ii) limits the freedom of suppliers
to advertise or market their goods or services; (iii) sets standards
for product quality that provide an advantage to some suppliers
over others or that are above the level that some well-informed
customers would choose; and (iv) significantly raises costs of
production for some suppliers relative to others (especially by
treating incumbents differently from new entrants);

385.3 Reduces the incentive of suppliers of compete effectively. This is
likely to be the case if the policy/regulation: (i) creates a self-
regulatory or co-regulatory regime; (ii) requires or encourages
information on supplier outputs, prices, sales or costs to be
published; (iii) exempts the activity of a particular industry or group
of suppliers from the operation of general competition law;

385.4 Limits the choices and information available to customers. This is
likely to be the case if the policy/regulation: (i) limits the ability of
consumers to decide who they purchase from; (ii) reduces mobility of customers between suppliers of goods or services by increasing the implicit or explicit costs of changing suppliers; (iii) fundamentally changes information required by buyers to shop effectively;

385.5 Creates uncertainty amongst small and independent retailers regarding the requirements they are expected to comply with in order to trade and compete effectively;

385.6 Is onerous, time consuming and costly to comply with;

385.7 Is excessively enforced for insignificant transgressions, thereby restricting the participation of small and independent retailers in the market; and

385.8 Is not being enforced, poorly enforced or selectively and corruptly enforced, thus creating uncertainty and an uneven playing field between small and independent retailers in townships, peri-urban and rural areas.

386. When the Checklist shows a positive response, then a preliminary assessment of the effects on competition is recommended. Once a preliminary investigation is completed and if it indicates that there is likely to be significant harm to competition; a full investigation into the competitive restrictions should be carried out.

387. After applying the checklist, having due regard to the submissions received from numerous stakeholders as well as from the Inquiry’s own assessment, it was found that the above discussed categories of regulations warranted further analysis. The Inquiry’s investigation and information gathering activities indicated that the regulations and/or the manner in which they are enforced, indeed resulted in some of the effects which are identified by the second step of the OECD toolkit, as discussed in the preceding paragraphs.

388. Guided by the third to the fifth steps of the OECD toolkit, the Inquiry endeavored to make the relevant recommendations in order to bring about the desired outcomes of regulations in this sector. Steps three to five will be discussed below:
The Third to the Sixth Steps of the OECD Toolkit

389. The third step of the OECD Toolkit entails identifying all policy options which can achieve the desired aims, with the least amount of distortion on actual competition. In order to identify less restrictive alternatives to a policy or regulation, one is first required to have an understanding of the policy or regulation in question, this would involve an understanding of the specific policy or regulation bearing in mind inter alia: the purpose for which it exists, by assessing its' ultimate objective; the specific elements and provisions of the policy or regulation which are likely to generate competition concerns; whether or not these elements or provisions are strictly necessary in order to attain the objective and whether or not they can be amended in a way that does not impede competition, but still attains the objective.

390. The fourth and fifth steps of the OECD toolkit involve the selecting and implementing of the ideal option from the range of alternative options. This means that once all the alternative options are identified, they must be compared against each other in order to make a final recommendation for government action. Once the judgment regarding the best option is made, the recommendations should be presented to the decision makers who will consider and either accept or decline them. If the recommendations are accepted and new legislations are drafted or existing ones are amended, these may only be implemented and enforced according to standard government methods.

391. The sixth and final step involves a review of the impact of interventions based in the competition analysis of the identified policies and regulations. This is done over a period time, after the implementation of the recommendations, in order to ascertain whether or not the process has brought about the desired results. This is specifically to determine whether or not the concerns regarding distortion of competition as a result of the initial policy or regulation, has been dealt with positively.

16.2 Studies into the regulatory framework and actions taken to reduce the regulatory burden

392. Various departments within the South African government have undertaken studies into the impact of regulations and the regulatory framework with the
intention of (i) identifying and reducing the regulatory burdens imposed on businesses by government (in particular those that affects small and medium sized businesses), and (ii) facilitating commerce and stimulating economic growth. We briefly discuss each of these below.

393. On 03 July 2013, The DTI released the SMME Guidelines for Reducing Municipal Red Tape (“Red Tape Guidelines”). The DTI developed the Red Tape Guidelines in partnership with the Department of Cooperative Governance and Traditional Affairs (“COGTA”), and the South African Local Government Association (“SALGA”). The Red Tape Guidelines were developed pursuant to a pilot study conducted by the DTI across twelve municipalities to determine the impact of red tape on the growth of small businesses.

394. One of the key outcomes of the pilot study was that reducing regulatory burdens on small, micro and medium enterprises should become a key focus area of the National Government. Through the Red Tape Guidelines, Government is focused on removing the inefficiencies, which result from the three spheres of government working in silos, while trying to achieve the same end, particularly in their legislative and administrative roles.

395. The National Department of Small Business Development (“DSBD”) and the Department of Performance, Monitoring and Evaluation (“DPME”) appointed Trade and Industrial Policy Strategies (“TIPS”) to conduct a study on the national regulatory burden facing small businesses. TIPS produced a report in 2017, which DSBD shared with the Inquiry. Although it is relevant and instructive, the scope of the TIPS’ study specifically excluded municipal by-laws and focused on the national regulatory system, which generally affects small but formal businesses. The study focused on formal businesses and on large informal businesses to the extent that they would be affected by national legislations, i.e., affecting their ability to reach certain markets as a result of them being informal and not complying with certain legislations. The study also

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918 The Red Tape Guidelines define red tape as “rules, regulations, and/or bureaucratic procedures and processes that are excessively complex and which impose unnecessary delay(s), inaction and/or costs that exceed their benefits, and/or is no longer effective in achieving the purpose for which they were originally created.” It continues to state that “red tape results in undesirable economic, business and/or social impacts or outcomes. Red Tape involves excessive, or unevenly enforced, regulation or rigid conformity to formal rules that is considered redundant or bureaucratic and hinders or prevents effective action or decision-making.”

looked at South African and international studies dealing with regulatory burden on businesses such as the World Economic Forum Global Index.

396. The TIPS study found that there are high costs associated with the process of obtaining trading licenses or permits that are more than onerous on small businesses than it may be for large formal businesses. Small businesses generally spend more time and money in ensuring they comply with legislative requirements than large businesses. Recommendations made to address the concerns have included:

396.1 Calling on government to simplify regulations;
396.2 Government to identify high priority regulations, their objective; and
396.3 To set up mechanism for regulatory impact assessments.

397. On 18 March 2013, the Department of Trade and Industry (“DTI”) released the Business Licensing Bill, to repeal the Businesses Act 71 of 1991 (“the Business Act”), with the aim of eradicating illicit and anti-competitive business practices. The Bill seeks to introduce a requirement that all businesses obtain an operating licence and become registered by local municipalities. This will effectively bring the informal sector to an end. The Business Licensing Bill appears to still be a draft law.

398. With regard to liquor, the DTI published “The Final National Liquor Policy, 2016” in the Government Gazette (“Liquor Policy”). It noted that the apartheid regime prioritised the economic benefits of the liquor industry and neglected the social well-being of the majority of South Africans. The Liquor Policy, therefore, sought to shift the focus towards an approach to economic and social policy that would balance the benefits of liquor trade and the harmful socio-economic effects of liquor use. In addition, the Government sought to restructure the liquor industry in order to facilitate entry and the empowerment of new entrants.

399. In light of the fact that liquor was found to be easily available, the Liquor Policy recommends that the density of liquor outlets be limited through licensing and

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921 Liquor Policy, Government Gazette dated 30 September 2016, P.11, Para 2.1 - 2.2
zoning regulations. It states that the primary regulation for limiting liquor outlet density is to improve public health and safety.922

400. In addition, SALGA’s Draft Strategic Framework 2017 – 2022 entitled “Justice and Social Cohesion through the Integrated Management of Space, Economies and People”, set out the following priority actions for the next eighteen months which were approved by Cabinet:

400.1 “Identify and implement strategic interventions in the identified intermediary, medium and small towns to strengthen planning, governance and economic development in line with the Back to Basics Programme and existing strategic government programmes;

400.2 Develop spatial contracts for key restructuring zones in metropolitan municipalities and intermediate cities;

400.3 Develop and implement a model(s) to improve integrated planning in secondary cities to promote spatial integration and economic development;

400.4 Finalise a model/framework/protocols to fast-track the release and acquisition of state-owned land that is key for spatial transformation;

400.5 Develop and implement a framework to improve alignment and coordination between various strategic infrastructure projects (SIPs) and other strategic initiatives impacting on urban spaces; and

400.6 Upscale the implementation of red tape reduction in priority municipalities.” [own emphasis]

401. There are provinces that have implemented certain strategies to actively advance the reduction of red tape within their provinces. The Western Cape Department of Economic Development and Tourism (“DEDAT”) established the Red Tape Reduction Unit in 2011 in order to help businesses cut through or get around red tape. In 2012, DEDAT commissioned a study to critically examine the City of Cape Town’s by-laws in relation to the informal sector. The final report on this study was released on 31 October 2012 (“the Imthente

922 Liquor Policy, Government Gazette dated 30 September 2016, P.26, Para. 4.1.1.24.5
Study”). We refer to the findings and recommendations of the Imhente Study in more detail below.

402. An excerpt of the Press Summary issued by the KwaZulu-Natal (“KZN”) provincial Department of Cooperative Governance and Traditional Affairs on 09 May 2017 reads “In collaboration with the Department of Small Business Development, SALGA, the International Labour Organisation and DEDTEA, we will during this financial year spearhead the Red Tape Reduction Programme which aims to address administrative, compliance and regulatory processes impacting negatively on SMMEs, including cooperatives, thereby reducing their efficiency. The Red Tape Reduction Programme’s ultimate goal is to improve service delivery and reduce the cost of doing business at local government level. Ten districts and the eThekwini Metro will be supported in dealing with red tape in different areas of their business…” The KZN provincial Department of Economic Development, Tourism and Environmental Affairs made a formal submission during the Inquiry’s public hearings held in Durban on 05 July 2017. We refer to the submissions relevant to the regulatory environment in more detail below.

403. In the Free State, the provincial Department of Economic, Small Business Development, Tourism and Environmental Affairs (“DESTEA”) held an “Indaba” on reducing government red tape on small businesses in March 2016. In its’ presentation, DESTEA noted, among other things, that red tape lead to sharp increases in the cost of doing business and also hampered the performance of emerging, small and medium enterprises. Further, DESTEA proposed to simplify the regulatory process by, among others, creating “a single window station” for small and medium businesses to secure information and advice, in the same place.

404. In addition to the above developments, academic literature also recognises the role that an appropriately designed regulatory regime plays in facilitating entrepreneurship, among others. Studies have shown that there are high rates of new business failure in South Africa, partly resulting from bureaucracy and corruption which often are related to regulatory processes. Of relevance to this

Inquiry, this study considered factors within the regulatory regime, which included processes for registering or licensing a new business, labour restrictions and policy administration, i.e. the process of administering and enforcing applicable laws by authorities. The study found that issues surrounding bureaucratic processes as well as corruption should be addressed in order to create a conducive entrepreneurial environment.

405. Previous studies such as the Economic Development Department’s (“EDD”) Regulatory Impediments Index (EDD 2012) and the Small Business Projects (SBP 2012), were conducted to identify how regulations affect small businesses. Amongst other factors, the study found that government bureaucracy constituted the most burdensome regulatory constraints on small business. In response to this, various regulatory reforms were introduced to make it easier for potential entrepreneurs to start businesses, i.e. SARS introduced a single registration process for new business. Further in 2014, the government introduced the Socio-Economic Impact Assessment System (“SEIAS”) intended to assess costs and benefits of new regulation on a wider group of stakeholders.

406. Despite these regulatory reforms, there are still concerns raised by entrepreneurs and non-profit organisations that there are regulations, rules and government policies which continue to place a burden on small businesses. There is continually a need to review the purpose and objectives of regulations, which are applicable to small businesses in order to assess their impact thereto.

407. Also relevant to this Inquiry, is a study which focused on the impact of municipal regulations on small businesses, focusing on the four categories of small businesses, i.e. micro-survivalist and micro non-survivalist, very small businesses and small and medium enterprises. The study acknowledged that regulations impact businesses differently. It examined, amongst others factors including: municipal business support strategies, financial regulations, non-financial regulations such as town planning and land use management (zoning schemes), business licensing and informal trading.

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408. The above studies and interventions cumulatively point to the need for a streamlined, efficient and enabling regulatory framework in order to create a conducive environment for small business development.

409. During the Inquiry's engagements with small independent businesses, the lack of a supportive business strategy by municipalities was raised as a concern and further alleged to have a negative impact on the sustainability and success of these businesses in the grocery retail sector. With regard to the management of land use rights through zoning and consent by municipalities, studies have found that most of the Apartheid era by-laws and regulations were designed to restrict and curtail businesses in the townships and residential areas populated by Black, Coloured and Indian people, and are still in place.926

16.3 Overview of stakeholder submissions

Submissions by stakeholders during site visits and re-visits

410. Right at the outset, it is important to highlight that the Inquiry endeavoured to engage with both local and foreign national traders in all provinces on the issue of regulations applicable to the grocery retail sector. As alluded to in chapters one and three, despite numerous attempts by the Inquiry to engage with foreign national traders, there was a general unwillingness and/or constant unavailability on the part of the foreign national traders to engage with the Inquiry. Nevertheless, the Inquiry was successful in meeting with foreign national traders in six out of the nine provinces.927 However, as a result of the limited engagements with the foreign national traders, the Inquiry had limited benefit of the views of foreign national traders on these very pertinent issues.

411. This matters because, as will become clearer below, there are allegations of differential treatment between local and foreign national traders in the enforcement of applicable laws by the relevant authorities. It is apt to also point out at this stage that the Inquiry experienced very limited participation by some organs of State, particularly at municipal level, as well as, in respect of some provincial departments and agencies. As entities that are primarily tasked with the enforcement of various regulations in their spheres, their insights would

927 The provinces in which the Inquiry met with foreign national traders are: Northern Cape, North West, Limpopo, Kwa-Zulu Natal, Eastern Cape and Free State. In the remaining provinces namely, Mpumalanga, Western Cape and Gauteng the foreign nationals were unwilling and/or unavailable to meet with the Inquiry.
have proved invaluable to the Inquiry process. This notwithstanding, we now turn to briefly discuss some of the concerns raised during the Inquiry’s interactions with stakeholders.

412. Many participants raised issues regarding unequal enforcement of by-laws by municipalities especially when comparing treatment of local traders and foreign traders in relation to applicable regulations and by-laws. Local traders across the provinces indicated that there were many regulations which were not clear to them and that they were often unsure about which regulations were applicable to their businesses.

413. During a site visit in Limpopo, local traders indicated that the enforcement of health and safety laws were inconsistently enforced between local and foreign national traders. According to them, certain requirements such as ensuring that a spaza shop is properly ventilated with a window is enforced against the local traders whereas foreign traders get off lightly. The perception amongst these traders was that the government does nothing to assist them with regard to unequal and over-enforcement of by-laws by local authorities.

414. In places such as Mthatha in the Eastern Cape and Lebowakgomo in Limpopo, municipalities were, at the time of the public hearings, engaged in “clean up the city” operations to remove informal traders from the Central Business Districts (“CBD”), to a single centralised location. The municipalities submitted that the shift of these informal traders will create a central operation centre where consumers can obtain a variety of products and services in one location. However, the affected informal traders submitted that these initiatives generally work against their businesses, with authorities disregarding the nature of their businesses and the environment necessary for these businesses to succeed. The informal traders submitted that their businesses thrive on foot traffic generated within the CBDs. It was been alleged that often these businesses are moved from busy intersections within the CBDs to isolated areas, where there is no available foot traffic.

415. Local traders in the Eastern Cape submitted that they are required to comply with stringent requirements to set up shop, some of which include obtaining a health and safety certificate, keeping their stores clean and painted, as well as, the requirement that the store should be entirely separate from their dwelling area. They also submitted that the enforcement of these regulations had
ceased. In particular, they alleged that foreign traders were not required to comply with these requirements in order to trade and that they submitted that they have not witnessed inspections by any health and safety inspectors on both local and foreign traders. They further claimed that there are foreign nationals who operate informal businesses and reside in the same building, in violation of stipulated regulations.

416. Various liquor traders complained that by-laws are strictly applied against them in terms of trading hours whereas large retailers like Spar are not as restricted with regards to their operating hours. It was alleged that liquors shops owned by the retail chains would often open as early as 8:00 when the adjoining retail supermarket opens and trade until 20:00 when the supermarket closes. This however is not the case for small independent liquor stores who are generally required to operate between 9:00 and 18:00. The traders point out that whatever social purpose the government sought to achieve by imposing trading times is eroded by the retail chains. Many liquor traders claimed that their patrons were less likely to be affected by road incidents, as many people prefer to consume alcohol in taverns that are closer to where they live.

417. The Inquiry also met with the Free State Provincial Government where various internal departments, such as the Department of Small Business Development ("DSBD") and Consumer Protection Office were represented. The DSBD submitted that it had conducted a study in 2011 in conjunction with the University of Free State in terms of which, it emerged that municipalities had begun placing a hold on the issuing of trade permits as there was (i) an increasing trend in the number of spaza shops and (ii) most of the spaza shops had been taken over by foreign traders. The study also suggested that municipalities found it difficult to track foreign traders because they are not registered business owners and that this tends to give them a competitive edge over their local counterparts as they are not faced with the legal barriers of registration and paying taxes. This had an impact on the slow rate of increase in the number of local owned spaza shops in the Province.

418. In Kwa-Zulu Natal, one of the major concerns raised by traders was the issuing of trading permits. Traders indicated that they faced difficulty in obtaining

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928 Meeting with Mthatha local hawkers, dated 26 September 2016.
929 Meeting with Mthatha local hawkers, dated 26 September 2016.
licenses from the municipalities as municipal officials do not offer effective communication and assistance when dealing with them during the process. This, it was submitted, impedes their ability to trade because once found trading without a permit they are removed from their trading spaces.931

**Overview of submissions by participants during public hearings**

419. As part of the information gathering process, the Inquiry conducted four sets of public hearings which were held in three provinces. The first set of public hearings were held in Cape Town from 8 – 12 May 2017; the second set of public hearings took place in Pretoria and Johannesburg and are collectively referred to as the Gauteng public hearings932, were held from 5 – 9 July 2017; thirdly, the Durban public hearings took place from 3 – 7 July 2017; and the last set of public hearing took place again in Pretoria from 30 October – 6 November 2017. The stakeholders that attended the public hearings included a number of small and independent grocery retailers and liquor traders, owners of small speciality shops such as bakeries, butcheries, associations representing traders and research institutions.

*Cape Town Public Hearings*

420. The submissions from the stakeholders focussed on the enforcement of the applicable regulations of the City of Cape Town Municipality. The Gugulethu Liquor Traders Association (“GLA”) submitted that as small independent retailers, they have been negatively affected by the move of the national supermarket chains, who also trade in liquor, into the townships.933 The GLA alleged that there was differential treatment of the national supermarket chains and local traders in terms of trading times. The GLA submitted that liquor licenses for local traders were restrictive, prohibiting GLA members from trading after 18:00 whereas the national supermarket chains were allowed to trade from 8:00 – 20:00. The GLA’s concern was that the requirement for local traders to close at 18:00 put their members at a disadvantage as they largely cater to the commuter population who generally return from work after 18:00.

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931 Submissions by local traders at the Kwa-Zulu Natal re-visit 21 October 2016, P. 3.
932 Pretoria from 5 – 7 June 2017 and Johannesburg from 8 – 9 June 2017
933 Submissions by the Gugulethu Liquor Traders Association and Siyanda Mnutoza at the Cape Town public hearings dated 08 May 2017.
As such, customers would ordinarily purchase their liquor requirements from
the national supermarket chains as they would still be open for trading.

421. The GLA also submitted that in certain instances the municipality required GLA
members to apply for the rezoning of properties from which they trade, resulting
in continuous harassment from the officials regarding their liquor licenses.

422. Siyanda Mnotoza made submissions regarding what he considered to be
selective and abusive enforcement of regulations by municipal officials in that,
while the shack from which he traded had been demolished twice in four
months, other traders operating from shipping containers were not treated in
the same manner.

423. Skhoma Butchery submitted that it operated as a butchery and a buy-&-braai
business. The business has operated in the Gugulethu Mall from 2010 but only
received a food license in 2017. Skhoma Butchery was not permitted by the
landlord to apply for a liquor licence even though Spur, and later Shoprite, were
permitted to sell liquor from the Gugulethu Mall. Skhoma Butchery also
submitted that the municipality constantly changes regulations without the
knowledge of businesses that would eventually be affected by those laws.

424. The Sustainable Livelihood Foundation (“SLF”), a non-profit organisation,
made a submission during the Cape Town Public Hearing. According to SLF,
they conducted research into the growth and development of micro enterprises
and informal businesses in the informal economy in South Africa. To this end,
SLF researchers cycled around each of the nine major townships in South
Africa over the course of up to six weeks, per township and interviewed every
business which could be found within the informal economy in the townships.
In a nutshell, what came out of SLF’s research, is:

424.1 Street trade, liquor trade and spaza shops are predominant
businesses in these areas, however according to government, since
none of these businesses are registered and documented - none of
them exist.

424.2 This entire economy is reinforced in its informality in that none of it is
documented through financial or banking services.
70% of these enterprises within the informal context are run by foreign nationals. SLF attributes this to under-regulation and the failure of the state to foresee the effects of non-regulation in the entire sector.

Conversely there also exists the problem of over-regulation regarding certain aspects of selected laws for example, liquor in the Western Cape and zoning in various provinces.

Zoning and rezoning requirements has been a major inhibitor of growth on small business development.

Gauteng Public Hearings (Pretoria & Johannesburg)

During the Gauteng public hearings, stakeholders submitted that in general, there was a lack of enforcement of the by-laws, in particular the health and safety, and permit regulations by the authorities. It was submitted that the majority of foreign owned small businesses operate without trading permits and often do not comply with the health and safety regulations. Local traders who conduct their businesses in rural areas also submitted that they are required to pay an arbitrary amount, determined by the Tribal Chief, to the Tribal Authorities in addition to the cost of getting a business permit from the municipality.

The Gauteng Provincial Department of Economic Development ("Gauteng EDD") submitted that within the Gauteng province, there are informal and formal traders that trade without legal documentation. The Gauteng EDD also made submissions in respect of its township revitalisation programme and various initiatives to assist and promote small business development within the Province. Noteworthy, among these, was the recommendation that municipalities should grant land use rights to developers subject to conditions that create a favourable trading environment for small businesses operating in townships, peri-urban areas and in rural areas.

The Inquiry also received a submission from buyer group, UMS. According to UMS, one of the key difficulties for small traders in remaining functional in

Submissions by the South African Bulk entrepreneurs Primary Cooperative Organization ("SABEPCO") at the Gauteng Public Hearings, dated 5 June 2017.

As submitted by the MEC for the Gauteng Provincial Department of Economic Development, 07 June 2017.

Submission by UMS at the Gauteng Public Hearing, dated 6 June 2016, Transcript P.11
the market is the over enforcement of street regulations which in some instances, led to traders closing down their operations.\textsuperscript{937} According to UMS, there are two ways to solve this problem and afford the small retailers access to the market: firstly, by municipalities adopting the "blanket rezoning" approach which was adopted in the City of Cape Town and secondly, by communicating the requirements for zoning laws to independent entrepreneurs so that they are always aware of what requirements they are required to meet.\textsuperscript{938}

\textit{KZN Public Hearings}

428. The UGU Association of Businesses raised issues around the unequal enforcement of regulations, particularly between independent owned liquor stores and liquor stores owned by national chain retailers. According to the Association, independently-owned liquor stores are subjected to distance limitations, as prescribed by the Kwa-Zulu Natal Provincial Liquor Board, such as being not less than 100 meters from a church and 200 metres away from a school, while such limitations do not apply to the national supermarket chains.\textsuperscript{939}

429. The KZN EDD, particularly the Consumer Protections Services, raised issues about the prevalence of expired products not only in the informal sector but in some national supermarket chain stores as well. The KZN EDD also outlined a number of interventions aimed at improving the competitive landscape in the grocery retail sector in KZN such as the requirement that all businesses be licensed in the informal sector through the Business Licensing Bill. This licensing process was aimed at ensuring that only properly registered business could participate in the provincial economy.\textsuperscript{940}

430. The Umsunduzi Municipality\textsuperscript{941} submitted that there were a number of challenges facing small businesses such as, inter alia, the complicated and expensive processes required to rezone a residential property for business. The Municipality noted the changes that will be brought into effect by the Business Licensing Bill as possible solutions to some of these challenges.

\textsuperscript{937} Submission by UMS at the Gauteng Public Hearing Transcript, 6 June 2016, P. 9, Para. 20.
\textsuperscript{938} Submission by UMS at the Gauteng Public Hearing Transcript, 6 June 2016, P. 9, Para. 20.
\textsuperscript{939} Submission by UGU Association of Business at the Kwa-Zulu Natal Public Hearings, Transcript P. 59, Para. 237.
\textsuperscript{940} Submission by Tshepiso Selepe (Director of Consumer Complaints) at the Kwa-Zulu Natal Public Hearings, Transcript P.31, Para. 134.
\textsuperscript{941} Submission by Msunduzi Municipality at the Kwa-Zulu Natal Public Hearings
Engagements with Municipalities

431. The City of Mbombela Municipality submitted that much like the approach adopted in Mthatha and Lebowakgomo, it has launched a “clean-up” operation which relocates local informal trading out of the public transport hubs and into specified trading areas. At the time of the meeting, the City of Mbombela Municipality was being established by the merging of two pre-existing municipalities. This meant that all by-laws and spatial development frameworks from the previous municipalities were to be respectively converted into one. Further, during the initial engagements with the City of Mbombela Municipality, the Youth Forum was threatening violence against foreign traders, alleging unfair trading.

432. The Drakenstein Municipality submitted with regard to the enforcement of by-laws that there are specific law enforcement sections within the municipality which are primarily responsible to (i) check permits of informal traders and (ii) ensure that health and safety by-laws are adhered to, specifically during the preparation of food stuff.

433. The Sol Plaatjes Municipality was one of the 12 municipalities that participated in the pilot study which was conducted by DTI, COGTA and SALGA. The municipality highlighted that as part of the recommendations resulting from the pilot study, municipalities are encouraged to host informal trade forums to afford informal traders with a platform to voice their concerns. However, the municipality raised a concern that it is extremely difficult to persuade the informal traders to congregate on a regular basis.

16.4 Various categories in the City of Cape Town zoning scheme

434. Single Residential Zones (i.e. Conventional Housing Rights and Incremental Housing Rights), confer rights onto the owner of the property to make use of the property in certain ways. Conventional housing rights together with additional rights permits the owner to use the property for residence as well as for other additional rights such as the operation of a bed and breakfast

942 Telecon between Sol Plaatjes Municipality and Inquiry, 22 September 2016
The conditions are that only one of the listed additional use rights that can be conducted at the premises. Incremental housing rights allows a resident to have a dwelling place, second dwelling, utility, service, and additional rights are also allocated to the property owner. The additional rights include a house shop, home occupation, a bed and breakfast, and business operations subject to applicable conditions. Certain additional uses of the property requires the owner to obtain consent from the municipality before embarking on such activities. The owner must also submit building plans to the municipality for additional use of the rights, where there might be informal trading or a house shop. There are also safety requirements that must be put in place, such as firebreaks.

435. General business subzones are areas that have mixed use rights allocated which includes, dwelling house, a second dwelling house, business and informal trading from the premises.

436. Mixed use sub-zones are areas that are zoned for multiple use including business, industry, dwelling and others services such as a hospital or a church. Informal trading is allowed provided that it is conducted on land set aside as a road reserve or identified as a future road reserve. The condition is applicable provided that the informal trader: (i) does not erect a permanent structure on the area where they trade (ii) does not trade in a way that interferes with pedestrians, vehicles and any municipal services; and (iii) does not trade in a way that threatens public health and safety. Residents in mixed use sub-zones can operate a house shop subject to certain conditions, namely:

436.1 The owner of the house shop must reside on the premises;

436.2 The size of the house shop cannot exceed the floor area for the dwelling house;

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943 The property is allocated as residential with additional use rights that allows the resident to use the property for home occupation (not described), home child care and operate a BnB. There is also a limitation of employees that can be employed at the premises.

944 Also that the dominant use of the property will remain for purposes of a dwelling, accommodating a single family. The proprietor of the property must still live on the premises and he/she must obtain consent from the municipality if operating a house shop, a second dwelling etc.

945 "Road reserve" means a designated area of land that contains or is able to contain a public street or public road, including the road and associated verge, which land may or may not be defined by cadastral boundaries;
436.3 There must be a building plan that clearly defines the structure of the house shop and where it is situated;

436.4 No more than 3 persons can be involved in the retail activities of the house shop, including all occupants of the dwelling house;

436.5 No pets are allowed in areas used for the house shop, no door leading into the house shop should open to a bedroom;

436.6 If perishables are sold, there must be refrigeration to store the perishable items;

436.7 The house shop can only operate between 7:00 and 21:00, Mondays to Saturdays and 8:00-13:00 on Sundays; and

436.8 Delivery vehicles should not exceed 3 500 kg.

437. General Residential Sub-zones are areas whose primary use is residential but which also have limited mixed use subject to obtaining consent from the municipality. If approved, the proprietor can conduct other activities such as, operating a house shop or place of worship, as listed on the zoning scheme. The development of a second dwelling is subject to the approval of the building plans by the municipality.

438. Local Business Zones are areas that are intended to be of mixed use offering convenience services to the residential areas located within their close proximity. Provision is made for informal trader to also conduct their business subject to obtaining consent from the municipality. Similarly, supermarkets, restaurants and liquor stores can trade in the area subject to obtaining approval from the municipality.

439. Risk Industry Zone, Transport Zones are areas where the City of Cape Town makes provision for informal trading and the operation of shops subject to obtaining consent from the Council. Informal trading can be conducted on areas demarcated by the Council and in accordance with the provisions of informal trading law.
17. Annexure 8: Objective Five: The impact of the buyer power of buyer groups and other large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy

17.1 Literature Review on Buyer Groups

Introduction

440. This section provides a literature review of the most relevant legal and economic analysis, from South African and international sources of buyer groups.

441. The purpose of this section is to describe: The rationale behind the establishment of buyer groups; the types of buyer groups that may exist; the characteristics of buyer groups (such as the service offering of buyer groups which includes membership rights, decision making processes, negotiation methods with suppliers, etc.); the procompetitive nature of buyer groups; as well as the anticompetitive concerns arising from different types and characteristics of buyer groups.

The legal aspects of buyer groups

442. The major concern highlighted in the literature reviewed is that buyer groups may lead to collusive outcomes – a fuller discussion of this concern is outlined in the subsection below. It follows that, while members of the buyer groups may be active in different markets, buyer groups generally comprise of competitors in the relevant downstream market. Any collaborative action among competitors which may raise competition concerns stands to be assessed under Section 4 of the Competition Act (“the Act”). Buyer groups are formed pursuant to understandings or arrangements that constitute an agreement as contemplated in the Act.

443. In respect of cartels, there is no distinction between fixing the selling or purchase price. Section 4(1) (b) (i) of the Act prohibits the direct or indirect fixing of the purchase or selling price. This is in line with the enforcement provision in international jurisdictions. The Organization for Economic Co-operation and Development (“OECD”) claims that in the United States the per se rule against cartel activity in terms of the Sherman Act of 1890 has never
distinguished between seller cartels and buyer cartels. The Policy goes on to quote a U.S. decision of 2001 in Todd v Exxon Corp in which the court found that “a horizontal conspiracy among buyers to stifle competition is as unlawful as one among sellers.”

444. In South Africa, whether or not a joint purchasing agreement constitutes a buyer cartel will depend on the object, structure of the alliance and the terms of the agreement. The Competition Tribunal (“the Tribunal”) cautioned that even agreements that are seemingly innocuous from a competition law perspective may be designed and structured in a particular manner so to escape scrutiny under the competition laws. Competition authorities are required to analyse the terms of the agreement in order to determine the object and design of the buyer group. In the Ansac cartel the Supreme Court of Appeal (“the SCA”) remarked that the Act prohibits agreements which have as their object the design to avoid competition as opposed to conduct that merely has that incidental effect. This is a decision that introduced the importance of characterisation of conduct including conduct which is alleged to fall within the ambit of section 4(1)(b) of the Act. Similarly, the EC Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements state that “joint purchasing arrangements restrict competition by object if they do not truly concern joint purchasing, but rather serve as a tool to engage in a disguised cartel. In other words, an agreement will have a prohibited object if it is actually designed as a means of implementing one or more hard-core restrictions.”

445. There are no cases that have been decided on the merits by the Tribunal or the courts in South Africa dealing with buyer groups or buyer cartels. The U.S. Supreme Court recognised in Northwest Wholesaler Stationers v Pacific Stationery that buyer groups are “designed to increase economic efficiency and render markets more, rather than less, competitive.” The pro-competitive effects of buyer groups are set out in more detail below.

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946 OECD (2008); Pg. 245-246
947 The Competition Commission v Pioneer Foods (Pty) Ltd Case No 15/CR/Feb07 at paragraph 34
948 American Natural Soda Ash Corporation and another v Competition Commission of SA and others [2003] 1 CPLR 1 (SCA) at paragraph 49
949 EC Guideline at paragraph 205; See also paper on “Joint Purchasing Agreements” produced by K&L Gates and Neil Bayliss.
The economic rationale behind forming buyer groups

446. Economies of scale and scope are often described as being the major barriers to entry in the grocery retail sector.\textsuperscript{951} Economies of scale occur when the average cost per unit of groceries sold by a retailer decrease with the increase in the scale or magnitude of the volume being produced, i.e. the average unit costs of a product reduce significantly as a retailer is able to procure the product at a higher volume. Similarly, economies of scope enable a retailer to derive efficiencies by providing a variety of diversified products to its customers i.e. enable a retailer to derive cost savings gained from selling many different products in the same store.

447. In South Africa, buyer groups are a mechanism used by independent retailers, lacking the required volumes or buyer power and product variety, to enter the South African grocery retail market and compete against the incumbent retailers.\textsuperscript{952} The purpose of a buyer group is to leverage the combined purchasing power of its members to obtain volume discounts or negotiated discounts and thereby collectively achieve the desired economies of scale and scope on products with the intention of resale to end-consumers.\textsuperscript{953} Buyer groups enable smaller firms to act collectively to reach the outcomes of a single buyer, giving them a power akin to that of a monopsonist.\textsuperscript{954}

448. Not all buyer groups exist solely to pool volume orders for its members. Some buyer groups only provide information to their members as a type of "catalogue hub" which informs members about a supplier’s list prices. The members are then expected to negotiate terms with the supplier individually. Other buyer groups play a more active role by negotiating better terms with the suppliers on behalf of their members.\textsuperscript{955}

\textsuperscript{951} For example see: Pg. 179 of ACCC (2008); Para. 7.19 of UKCC (2008); and Pg. 20 of CCRED (2015).
\textsuperscript{952} Competition Tribunal (2009) Case number: 04/LM/Jan09; Para 147.
\textsuperscript{953} OFT (2007); Para 2.2.
\textsuperscript{954} Anderson et al. (2011); Pg. 116.
\textsuperscript{955} OFT (2007); Para 2.7-2.8.
The different forms of buyer power

449. The main purpose of a buyer group is to collectively increase the buyer power of its individual members.\textsuperscript{956} Buyer power can be defined as the situation where a firm or group of firms is able to obtain from a supplier more favourable terms than those available to other buyers.\textsuperscript{957} However, the literature indicates that there are two forms of buyer power: monopsony power and bargaining (or negotiating) power.\textsuperscript{958}

450. According to the OECD, a firm has monopsony power if its share of purchases in the upstream input market is sufficiently large that it can cause the market price to fall by purchasing a lower quantity of product or cause the price to rise by purchasing more of the product.\textsuperscript{959} Chen defines monopsony power as the situation in which suppliers in a perfectly competitive upstream market are forced by the buyer to sell below the normal market price (the competitive price).\textsuperscript{960}

451. The purpose of monopsony power is for the buyer to withhold purchases from suppliers so as to obtain a lower price from the upstream market.\textsuperscript{961} The deadweight loss of monopsony exists independently of what the state of competition is in the downstream market and therefore, it is not certain that end-consumers benefit from monopsony power.\textsuperscript{962}

452. The International League of Competition Law (“LIDC”), notes that laws against unfair trade practices in the grocery retail sector applied to the grocery retail sector are used to curb the negotiation power of large-scale retailers.\textsuperscript{963} Therefore, while it is possible that a retailer may abuse its buyer power in the

\textsuperscript{957} OECD. ‘Buying power: The exercise of market power by dominant buyer’, Report of the Committee of experts on restrictive practices, 1981, p. 10
\textsuperscript{958} OECD, ‘Monopsony and Buyer Power’, 2008, p. 9
\textsuperscript{959} Ibid
\textsuperscript{961} Office of Fair Trade, ‘The competitive effects of buyer groups’, 2007, para 3.59
\textsuperscript{963} Kobel et al, Antitrust in the Groceries Sector & Liability Issues in Relation to Corporate Responsibility; 2015, p. 9
traditional sense (monopsony power), the abuse of buyer power in the grocery retail sector is likely to manifest in other ways.

According to the LIDC the prohibition of practices pertaining to the abuse of buyer power tends to vary from country to country which “reflects the specificities of the tensions between retailers and their suppliers in each country”. In Hungary it is prohibited for suppliers to contribute to a retailer’s price reduction. In Romania it is prohibited or retailers to receive payment for services that are not directly linked to a sales promotion. In France, retailers are prohibited from delaying payment to their suppliers. 964

**Procompetitive outcomes**

454. Buyer groups have been identified as an alternative means for independent retailers to enter the South African grocery retail sector, enabling these retailers to reduce some of the high barriers to entry identified in the market.965

455. The section below details the various efficiency justifications of why small retailers would choose to become members of buyer groups.

*Volume discounts lead to lower costs per unit*

456. The ability of the buyer group to pool the purchases of its members normally leads to suppliers offering volume discounts on the large order made by the buyer group.966 This is generally considered to be the traditional purpose of buyer groups.

*Reduced transaction costs*

457. A buyer group is able to reduce transaction costs by: reducing the search costs between the sources of demand (the members) and the sources of supply (the suppliers); and reducing the number of contracts that have to be entered into with the buyers. For this to be possible the buyer group must be in a better position to enter into contracts with its members than the supplier can with each member individually.967

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964 Kobel et al (2015); Antitrust in the Groceries Sector & Liability Issues in Relation to Corporate Responsibility; Pg. 9 - 10
965 CCRED, ‘Research on Competition and Regulation: Case Study on Fruit and Veg City’, 2015, p. 38
966 Office of Fair Trade, ‘The competitive effects of buyer groups’, 2007, para 3.3
967 Ibid, para 3.7-3.13
Improved productive efficiency

458. The existence of buyer groups can be beneficial to both the members of the group as well as the suppliers that engage with the buyer group. For instance, buyer groups can provide suppliers with demand assurances enabling suppliers to exploit economies of scale and scope. The Office of Fair Trading (“OFT”) notes that buyer groups may allow suppliers to reduce delivery costs by delivering a single large load to various members without having to make numerous back-and-forth deliveries to members located relatively close to one another. If a buyer group provides a shared storage facility, this allows the supplier to make cost-effective ‘top-up’ deliveries to a single location from which the buyer group members can top-up from.968

459. Buyer groups may also enable the supplier to make investments based on a guaranteed minimum quantity of purchases, which individual members may not be able to guarantee on their own. This also enables the supplier to enter into a single contract with the buyer group as opposed to numerous contracts with individual members so as to reach the minimum quantity required to invest.969

Increasing pricing efficiency

460. It is possible that dealing with buyer groups can avoid the problem of double marginalisation. Instead of a supplier adding a mark-up which is above marginal cost to downstream intermediaries (such as retailers), the supplier can supply the product at marginal cost, and charge an additional fee (a franchise fee) to the buyer group. The buyer groups may negotiate on behalf of its members to obtain a lower input price in exchange for paying a fixed fee. The buyer group would then have to recover the fixed fee from its members, which could be done through a membership fee structure.970

Market expansion

461. Buyer groups may be able to sponsor the entry or further investment of suppliers into the relevant market. A buyer group may coordinate and monitor

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968 Ibid, 3.17-3.18
969 Ibid, 3.19-3.20
970 Ibid, 3.24-3.28
the contributions of its members to facilitate the supplier’s investment into producing more products for the buyer group.\textsuperscript{971}

\textit{Increasing competition amongst suppliers}

462. Buyer groups may increase competition among their suppliers by making it easier to switch to alternative suppliers or pooling demand to intensify bidding among the suppliers. The increased competition amongst suppliers may incentivise suppliers to innovate so as to differentiate their products from their competitors.\textsuperscript{972}

\textit{Reducing switching costs}

463. Buyer groups may reduce switching costs by: maintaining a specialist procurement team; searching for alternative suppliers; monitoring the quality of the products produced by rival suppliers; trialling and testing new suppliers; and solving coordination failure among its members.\textsuperscript{973}

\textit{Sponsoring new entry}

464. It may be the case that there are no independent retailers (i.e. retailers not forming part of any buyer groups) who are able to sponsor the entry of a new upstream supplier. This can either be due to the independent retailer simply being too small a competitor to do so, or it could be the result of incumbent suppliers employing divide and conquer tactics against independent retailers in the downstream market such that the independent retailers are unable to coordinate their demand to justify the sponsorship of a new entrant.\textsuperscript{974}

465. As a result, depending on the credibility of the buyer group, even the threat of sponsoring a new entrant into the market has the potential to improve competition in the upstream market as suppliers will provide the buyer group with greater compensation to prevent new entry from occurring.\textsuperscript{975}

\begin{flushleft}
\textsuperscript{971} Ibid, 3.29 and 3.32
\textsuperscript{972} J.D. Dana, ‘Buyer groups as strategic commitments’, \textit{Games and Economic Behaviour}, 2012, Vol. 74, pp. 470 - 485
\textsuperscript{973} Office of Fair Trade, ‘The competitive effects of buyer groups’, 2007, 3.41
\textsuperscript{974} Ibid, 3.43
\textsuperscript{975} Ibid, 3.44
\end{flushleft}
Other Potential Procompetitive Effects

466. In the case where independent retailers require a tender process which involves fixed costs, a buyer group may facilitate a competitive tendering process by pooling the members demand to facilitate the process.\textsuperscript{976}

467. In cases where a buyer group comprises a significant portion of the market and consequently a supplier requires the involvement of the buyer group to obtain the required economies of scale; or the supplier needs to make a deal with the buyer group before it can sell its product to other buyers then this implies the buyer group has the potential to weaken the supplier's fall-back option.\textsuperscript{977}

Buyer groups also raise anti-competitive concerns

468. There are two primary concerns regarding buyer groups. Firstly, they can have the potential to promote collusive behaviour amongst the buyers in the downstream market. Secondly, their potential to abuse their collective buyer power (monopsony power) against upstream suppliers. The latter would be possible if a buyer group is solely created to gain market power over the buyer group’s suppliers, this may lead to problems arising from the buyer power of that buyer group.\textsuperscript{978}

Collusive behaviour

469. It has been argued that the legality of cartel groups facilitates for smart cartelization amongst members of the buyer group.\textsuperscript{979} There has been concern in South Africa as to whether buyer groups and other forms of joint purchasing agreements could be a breach of Section 4(1) (b) of the Competition Act.\textsuperscript{980}

470. According to Doyle & Han (2014), central sourcing through a buyer group allows for retailers to coordinate jointly on wholesale contracts with increased input prices.\textsuperscript{981} In other words, retailers able to act collusively in respect of wholesale contracts by charging higher prices. Therefore, instead of intending

\textsuperscript{976} Ibid, 3.46
\textsuperscript{977} Ibid
\textsuperscript{979} C. Doyle and M.A. Han, ‘Cartelization through buying groups’, Review of Industrial Organisation, 2014, p. 256
\textsuperscript{980} Anderson et al. ‘The assessment of joint purchasing: can too much ‘buying power’ ever be a problem’, Journal of Economic and Financial Sciences, Vol. 4, 2011, p. 114
\textsuperscript{981} C. Doyle and M.A. Han, ‘Cartelization through buying groups’, Review of Industrial Organisation, 2014, p. 256
to reduce the price of inputs for retailers, the input price is kept high which then filters through to end-consumers in the downstream retail market in the form of higher prices for retail products. Increased input prices are then refunded from suppliers to retailers through slotting allowances, allowing the retailers to obtain monopoly profits.982

471. Research shows that cartelisation amongst members of buyer groups is more likely when the buyer group has a closed-membership structure enabling the buyer group to exclude other buyers.983 Open-membership buyer groups make collusion hard to sustain because: there is no credible threat to punish a deviant member by throwing it out of the buyer group; open-membership suggests that membership in the buyer group is large which limits the ability to effectively monitor members within the buyer group; and makes excluding mavericks unlikely.984

472. King (2013) showed that if the buyer group and the supplier985 can enter a market-price contingent contract this could theoretically lead to an increase in the price paid by competitors who are outside of the buyer group.986

473. Other aspects to consider when determining the likelihood of collusion within a buyer group include: whether an agreement on purchasing quantities is in effect an agreement to reduce output to the downstream market; whether the buyer group increases contact amongst its members; the type of information exchanged between the members of the buyer group and its management structure; whether the buyer group members have symmetric terms; whether the buyer group leads to product standardisation amongst its members which in turn leads to less product differentiation in the downstream retail market.987

474. It is cautioned, however, that one cannot simply take a checklist approach to assessing whether a buyer group is a cartel in disguise.988 The efficiency justifications around buyer groups (discussed above) need to also be considered. It is argued that joint purchasing agreements do not necessarily

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982 Ibid
983 Normann et al., ‘Do buyer groups facilitate collusion?’, *Journal of Economic Behaviour & Organisation*, 2015, p. 82.
984 Office of Fair Trade, ‘The competitive effects of buyer groups’, 2007, p. 68
985 King’s model assumed a single upstream supplier.
988 Ibid, pp. 65-67
lead to the same level of harm as joint selling agreements. Therefore, while buyer groups may be a violation of section 4(1) (b), joint purchasing amongst buyer groups should rather be assessed on a rule of reason approach so as to avoid prohibiting buyer groups that give rise to procompetitive effects in the downstream retail market.\textsuperscript{989}

\textit{Abuse of Bargaining Power}

475. Circumstances may arise whereby buyer groups with substantial buyer power can weaken upstream competition in such a way that rival buyers (outsiders) are adversely affected by the conduct.\textsuperscript{990} Such strategies are more likely to occur when the buyer(s) does not only have substantial buyer power but also deals in intermediate markets. Buyer groups that are formed by end consumers are less likely to have an incentive to harm other buyers because they do not compete against each other in a downstream market. In such cases, anticompetitive concerns are more likely to be around rent shifting strategies which is discussed in greater detail below.\textsuperscript{991}

\textit{Input Foreclosure}

476. A powerful buyer may deny rival buyers access to key inputs either by paying the supplier of a key input to exclusively supply the buyer group only, or the buyer group could over-purchase the key input such that rival buyers are faced with higher prices for sourcing the key input.\textsuperscript{992}

\textit{Waterbed Effect}

477. The waterbed effect predicts that as a buyer group is able to extract higher discounts from suppliers that this may lead to a decline in the size of discounts offered to rival buyers.\textsuperscript{993}

\textsuperscript{989} Anderson et al. 'The assessment of joint purchasing: can too much 'buying power' ever be a problem', \textit{Journal of Economic and Financial Sciences}, Vol. 4, 2011, p. 127
\textsuperscript{990} Office of Fair Trade, 'The competitive effects of buyer groups', 2007, para. 6.3
\textsuperscript{991} Ibid, para. 6.4-6.5
\textsuperscript{992} Ibid, para 6.9-6.10
\textsuperscript{993} T. Ravhugoni & M. Ngobese, 'Disappearance of small independent retailers in South Africa: The waterbed and spiral effect of bargaining power', Conference paper, 2010, p. 4
478. Rivals may find it increasingly difficult to compete with the buyer group, marginalising the rival buyer in the downstream market. The waterbed effect, however, may not necessarily lead to end-consumers suffering.  

479. For the waterbed effect to occur, one requires that the decline in demand from rival sales channels allows for the supplier to charge a higher price to those channels.  

Refusal to purchase  

480. If the buyer group comprises many important buyers this may lead to harm to competition by refusing to purchase from one or more suppliers. However, for refusal to purchase from certain suppliers to be a competitive concern, the following conditions must hold: It must be crucial for other suppliers to deal with the buyer group so that the supplier operates efficiently; the excluded supplier(s) needs to be an important supplier to retailers outside of the buyer group; and retailers outside of the buyer group must face worse supply terms as a result of the buyer group’s action.  

Rent sharing  

481. A buyer group and a powerful supplier may agree to a cost raising strategy that may harm downstream competition. The supplier and the buyer group would then share the extra profit as a result of the conduct.  

Rent shifting  

482. A buyer group may harm buyers and their end customers in a different downstream market, through affecting competition among their suppliers. For rent shifting to be a concern there must be a situation in which there are two suppliers who are able to supply two separate markets, markets A and B (A is the larger market). It must be the case that the buyer group only operates in market A, but the suppliers require purchases from the buyer group to supply both markets A and B: i.e. the buyer group enables the suppliers to reach efficient levels of production.

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995 Ibid, para 6.30  
996 Ibid, para 6.35  
997 Ibid, para 6.41  
998 Ibid, para 6.44-6.46
If the conditions described above exist, then it is possible that the buyer group will exclusively purchase products from a single supplier forcing the other supplier to exit both markets A and B. The buyer group can then demand additional payments from the chosen supplier such that the buyer group receives the profits earned by the chosen supplier in market B. The buyer group effectively shifts rents from market B to market A.

*Reduced funds for investment by the upstream supplier*

Powerful buyer groups would not usually have an incentive to harm competition among its suppliers or discourage investment and innovation that would be valued by the end consumer. However, strong buyer groups that extract excess profit from their suppliers may reduce the incentive for suppliers to invest and innovate. The OFT does not consider such conduct to be likely.

*Reduced diversity of products available to the market*

If a buyer group adopts a uniform strategy regarding the procurement of standardised products for each of its members, this may lead to a reduction in production variation which would lead to concerns over end-consumers having fewer products to choose from in the retail market. For this to be a competition concern, a reduction in diversity would have to be linked to an inability of rivals outside the buyer group to compete against the buyer group.

*The Spiral Effect*

The spiral effect may occur as a result of a powerful buyer obtaining lower prices, which in turn makes the buyer a larger competitor in the downstream market which allows the buyer to secure better terms with its suppliers.

**17.2 Types of rebates**

*Basic Rebate*

A basic rebate is a contribution that suppliers make to the retailers in order to do business with them. It is normally expressed as a percentage of sales to
that specific retailer, and it is a guaranteed rebate. According to one of the suppliers\textsuperscript{1003}, a basic rebate is a historic green fee. Suppliers do not receive any reciprocal benefits in return for paying the base rebate. Another supplier submitted that the basic rebate is for getting their products into the retailers’ store.\textsuperscript{1004}

488. Shoprite submitted that a basic rebate is for the cost of doing business\textsuperscript{1005}. These costs include upfront costs of purchasing the stock before it is sold, costs to maintain the inventory, the financial and business-to-business information technology systems, costs to provide for receiving processes at all the sites where stock will be received etc.\textsuperscript{1006} [\textsuperscript{1006}] submitted that the basic rebate is that portion of margin that is guaranteed.\textsuperscript{1007}

489. Suppliers are obligated to pay a basic rebate to the retailers, specifically the national supermarket chains, to be able to do business with them. While the purpose of the basic rebate is not obvious, given that most rebates have specific functions and rationales behind them, such as a distribution allowance, suppliers accept that these rebates have always been present and are part of how the retailing of FMCG products in South Africa. Suppliers submitted that they generally factor the basic rebate into the costs of supplying the products.\textsuperscript{1008}

\textit{Listing fees}

490. Listing fees are used to manage the costs of adding new products onto the shelves of supermarket stores.\textsuperscript{1009} Previously, listing fees were charged in the grocery retail industry in order to afford a supplier an opportunity of having a product on shelf. However, the term “listing fees” has evolved over the years and is now related to work that has been done in managing space profiles.\textsuperscript{1010}

\textsuperscript{1003} [\textsuperscript{1003}].
\textsuperscript{1004} [\textsuperscript{1004}].
\textsuperscript{1005} Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 5, para 30
\textsuperscript{1006} Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 6, para 30
\textsuperscript{1007} [\textsuperscript{1007}].
\textsuperscript{1008} [\textsuperscript{1008}].
\textsuperscript{1009} Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript para 73
\textsuperscript{1010} Submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, Transcript p. 14, para 10.
491. The management of space profiles according to Massmart is essential so as to ensure that the new product can be positioned on the shelf in the right way.\textsuperscript{1011} Massmart submitted that the fees related to space management are generally paid to it by suppliers where both parties (suppliers and Massmart) review what is available on the shelf so as to establish a possibility or need of placing a new product on shelf.\textsuperscript{1012} Due to the limited shelf space, the introduction of a new product could result in the removal of another.\textsuperscript{1013}

492. [X] explained that listing fees have two parts: the administrative costs behind listing the new product; and the larger portion for the retailers to make sure that a supplier is able to support that listing and the product.\textsuperscript{1014} These support activities prove that a supplier will be able to sustain the new product.\textsuperscript{1015}

493. Not all suppliers pay a listing fee, others prefer to promote their products differently. [X] prefers to do their own launch support. This may include advertisements and putting products on display. The launch support is an additional cost that the supplier would incur, and unlike the listing fee, they are not obliged to pay it.\textsuperscript{1016}

494. Not all retailers charge listing fees. For example, [X] is of the view that not charging listing fees gives a retailer more flexibility – if it does not like the product, it does not have to stock it on its shelves. This way [X] is not tied to any one supplier. It was also suggested that larger suppliers agree to pay listing fees because it guarantees space for their products on the shelves.\textsuperscript{1017}

\textit{Advertising Allowance / Fee}

495. The purpose of an advertising allowance/fee is for the supplier to contribute/pay towards the retailer’s costs for promoting/advertising the products of that specific supplier. This enables retailers to plan for their advertising and marketing campaigns in advance.\textsuperscript{1018} The advertising allowance is captured as

\textsuperscript{1011} Submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, Transcript p. 14, para 30.
\textsuperscript{1012} Ibid.
\textsuperscript{1013} Ibid.
\textsuperscript{1014} [X].
\textsuperscript{1015} [X].
\textsuperscript{1016} [X].
\textsuperscript{1017} [X].
\textsuperscript{1018} Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 8, para 30.
a guaranteed minimum amount in order to ensure that the advertising spend is covered.\textsuperscript{1019}

496. In Shoprite’s view, an advertising fee benefits both the retailer and the supplier given that the suppliers benefits from the exposure through “knock and drops”, TV adverts, leaflets etc.\textsuperscript{1020} According to Massmart, advertising allowances allow it to be able to put programs together with suppliers to ensure that the products on offer are relevant at the time the advertisement is aired, and that it is directed to the relevant audience.\textsuperscript{1021}

497. The views of suppliers on the value of advertising allowances are mixed. [\textsuperscript{1022}] considers the advertising allowance as an investment which enables it to have direct contact with consumers.\textsuperscript{1022} [\textsuperscript{1022}] also consider it important to track the advertisements of retailers to ensure that it receives the number that it pays for, and to make sure that it receives value from the advertising allowance that it contributes.\textsuperscript{1023}

498. [\textsuperscript{1024}], a mid-size supplier, was uncertain about whether what they pay the retailers for advertising and marketing goes fully toward advertising or is it retained by the retailer. [\textsuperscript{1024}] cited an instance where it decided not to have its products included in the advertising by a certain retailer, but nevertheless, the retailer deducted the advertising allowance regardless.\textsuperscript{1024}

\textit{Settlement Discount}

499. A settlement discount is provided to retailers to incentivise earlier settlement of their accounts. A supplier may choose to pay retailers a specific percentage when they settle their account much earlier than what is agreed upon in the trading terms. Fruit and Veg City explained that the reason why retailers would receive a settlement discount for paying earlier is because retailers would usually pay within 60 or 90 days. Since cash flow is important for suppliers, the settlement discount is used to incentivise the retailer to pay at an earlier

\textsuperscript{1019} [\textsuperscript{1024}].  
\textsuperscript{1020} Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 8, para 30.  
\textsuperscript{1021} Submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, Transcript p. 13, para 30.  
\textsuperscript{1022} [\textsuperscript{1024}].  
\textsuperscript{1023} [\textsuperscript{1024}].  
\textsuperscript{1024} [\textsuperscript{1024}].
Confidential

date.\textsuperscript{1025} Certain suppliers are not obligated to pay settlement discounts, and do not have any settlement discounts with the retailers.\textsuperscript{1026}

500. Various suppliers have different cash requirements and payment schedules for the various customer groups they serve.\textsuperscript{1027}

501. [\times] submitted that its settlement discounts differs by customer. For its larger retail customers, such as Shoprite they give 1.65%, to incentivise them to pay within 14 days of receiving the invoice. While buyer groups receive 1.5% for settling 14 days from weekly statement, and Massmart receives 1% for 30 days after receiving the invoice.\textsuperscript{1028}

502. [\times] considered the settlement discount to be one of the rebates that it has to pay regardless of whether they see a benefit from it or not.\textsuperscript{1029} Woolworths indicated that it receives a settlement allowance which ranges from 0% to 4.5% depending on the payment period.\textsuperscript{1030} These payment periods generally range between seven, thirty and forty five days from the date which the invoice was delivered.

Distribution Centre / Warehousing Allowance

503. The distribution centre ("DC") or warehousing allowance is the payment made by suppliers to the retailers for re-distributing products from their warehouses/distribution centres to their respective stores. Practically, suppliers deliver to the retailer’s central distribution centre (as opposed to the retailer’s individual stores) and the retailer assumes the responsibility for delivery to its respective stores.

504. Some suppliers such as [\times] and [\times] use criteria to determine whether or not a specific retailer (specifically the wholesalers and buyer groups) qualifies for the DC allowance. [\times] contracts an auditor such as PWC to audit and determine whether the wholesaler qualifies for a distribution allowance.\textsuperscript{1031} [\times] has a published set of criteria for when a retailer would qualify for a distribution

\textsuperscript{1025} Submission by Fruit & Veg City at the Gauteng public hearing (open session) dated 31 October 2017; pp. 49-50.
\textsuperscript{1026} [\times].
\textsuperscript{1027} Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017.
\textsuperscript{1028} [\times].
\textsuperscript{1029} [\times].
\textsuperscript{1030} Submission by Woolworths at the Gauteng public hearing (open session) dated 2 November 2017; p. 16.
\textsuperscript{1031} [\times].
allowance. For example, the retailer is required to have branded stores and to purchase a full basket of [X] products and [X] must be able to track the flow of the goods.

505. [X] submitted that they are obligated to provide distribution services to ensure that their products reach the stores\(^{1032}\). In cases where [X] products are distributed to a DC the retailer will ensure that the products reach the shelf.

506. Suppliers find efficiency in contributing a DC allowance as opposed to delivering to all the individual stores of a retailer across the country. Suppliers submitted that it is cheaper for them to distribute to a centralised DC.\(^{1033}\)

507. The retailers charge a distribution allowance for the costs they incur in storing, handling and re-distributing the products to their respective stores. Spar submitted that it charges a distribution allowance for storing products in its warehouses and distributing the suppliers’ products with Spar’s trucks. The allowance that Spar charges can range from 2% to 15% depending on the type of product.

508. Shoprite submits that a warehousing allowance is a cost that is charged to a supplier for the warehousing and distribution of products through a retailer’s distribution centre. According to Shoprite, there are benefits to employing a centralised DC. A centralised DC removes the risk and logistical costs that suppliers would otherwise incur in order to stock up retailers’ stores. Further to this, Shoprite is of the view that a centralised DC drives efficiencies along the supply chain. Although there are efficiencies that arise in employing a centralised DC, a supplier is at liberty to distribute their stock directly to their store if and as they please, there is no binding whatsoever.\(^{1034}\)

509. Woolworths does not charge a DC allowance.

*Category Management and Data Sharing Agreements*

510. Category management as an offering/service ranges from suppliers buying access to the sales data for their products, to a holistic discussion between the

\(^{1032}\) [X].  
\(^{1033}\) These suppliers include [X].  
\(^{1034}\) Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 7.
suppliers and retailers regarding the specific categories that suppliers operate in.

511. [X] sells access to its EPOS data, which provides the raw sales data for the relevant category.1035 Spar negotiates category management fees with suppliers who wish to participate in the category management process and receive the data relating to their products and categories. Spar submits that this is a voluntary contribution that varies between 0% and 2%.1036

512. Shoprite has a broader category management program which enables the retailers to be more strategic around specific categories where they would want to go into a higher level of detail.1037 Further to this, Shoprite submits that the program enables them to appoint specialists in each identified key category in the business. In Shoprite’s view, the program also affords them, as a retailer, the opportunity to be more customer centric, as they are able to closely monitor these categories.1038 Shoprite notes that the category management program comes at no cost or fee for the suppliers that are involved in the program.

513. Category management research indicates the best way to layout a store, the best promotions to have, or the best ranges to stock that are ultimately beneficial to the shopper.1039 1040 1041 Category management is considered a good methodology for ensuring healthy collaboration between manufacturers and retailers.1042

514. The larger suppliers appear to have a favourable view regarding category management and the data that is provided to them. The category management allowance is paid upfront for the supplier to have a seat at the table when the discussions happen.1043 This is mainly in an advisory capacity. The supplier gives suggestions on how best to run the retailers’ categories.1044

1036 Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 10, para 10.
1037 Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 8, para 10.
1039 [X].
1040 [X].
1041 This is as the data is immediate and more frequent than data bought from data companies, [X]
1042 [X].
1043 [X].
1044 [X].
515. However, concerns have been raised regarding the potential for category management to be abused by larger suppliers. One small supplier of cosmetic products informed the Inquiry that large suppliers sit on these category management committees and determine who can supply the market, and where goods are positioned. The concern amongst other smaller suppliers is that category management has the potential to allow competitors the opportunity to decide where their products can be situated.\textsuperscript{1045}

516. The Inquiry raised this issue with other suppliers. Most clarified that they do not meet with the retailer and their competitors at the same time. They will meet with the retailers individually.\textsuperscript{1046} \textsuperscript{1047} Some suppliers explained that there was a concept of category captains, whereby a supplier whose categories were the best-selling would be the one to head that category. This obviously opened room for the suppliers to be biased towards their own products.

517. It appears that the wholesale channel is unlikely to receive a rebate for category management due to their perceived inability to provide reliable data on their customers' purchases.\textsuperscript{[X]} indicated that all retailers get the same percentage for category management. However, it does not pay category management rebates to buyer groups, as wholesalers as they tend to service traders and not the end consumer.\textsuperscript{1048}

518. The Inquiry has not found evidence that suppliers have been obliged to pay\textsuperscript{1049} for category management and suppliers have chosen to opt out of it. For example, one supplier does its own category management planning internally.\textsuperscript{1050} Another supplier had been approached to contribute to category management with a retailer and on occasion pushed to purchase till slip data relating to their particular categories. However the supplier resisted these requests as it considers itself too small for it to derive much value from such data.\textsuperscript{1051}

\textit{Merchandising services allowance}

\textsuperscript{1045} [X].
\textsuperscript{1046} [X].
\textsuperscript{1047} [X].
\textsuperscript{1048} [X].
\textsuperscript{1049} [X].
\textsuperscript{1050} [X].
\textsuperscript{1051} [X].
519. It was explained to the Inquiry that products on supermarket shelves are generally not placed there by the supermarkets staff but are often placed there by a suppliers’ team of sales and merchandisers. Some retailers prefer to do their own merchandisers or use a third party merchandiser to stock the shelves.

520. Merchandising services are mostly in relation to packing, shelf health, and removing expired products. According to a supplier, it is a standard requirement to ensure that any product on offer is packed according to specific layouts, planner bags and the supplier ensures that there are specific requirements in terms of stock rotation. The visibility of products is high priority for national supermarket chains.

521. According to one supplier, they prefer to use their own merchandisers, as opposed to paying the retailer to merchandise its products in their stores. Some of the larger suppliers indicated that they outsource their merchandising services to a third party company.

522. While suppliers are not required to contribute towards a merchandising allowance, some suppliers are of the view that providing a merchandising service to a supermarket is obligatory. However, a medium sized supplier indicated to the Inquiry that it recovers these merchandising costs in the selling price of its product.

Volume / Growth Rebate

523. The growth rebate is a performance-based rebate and may be expressed in terms of a percentage or monetary value. For example, a supplier may agree with a retailer that if the retailer grows product sales by more than 10%, the supplier will provide a rebate of a particular magnitude. Although the growth rebates are performance-linked, one large supplier considered the growth

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1052 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript para 42.
1053 [X]
1054 [X]
1055 [X]
1056 [X]
1057 [X]
1058 [X]
rebate to be effectively a guaranteed rebate because when the retailer achieves the growth, the supplier is still liable for making the payments.¹⁰⁵⁹

524. One large supplier stated that it generally offers growth rebates to wholesalers (wholesale channel) as well.¹⁰⁶⁰

525. Suppliers also claimed that growth incentive rebates are generally targeted at retailers who typically have lower sales volumes due to the types of customers that they target. For instance Pick n Pay typically services higher LSM customers who tend to buy lower volumes of staple food products. However, because Pick n Pay has a large national footprint and high market share, suppliers would try to incentivise Pick n Pay to increasing their sales of lower value products.¹⁰⁶¹

526. Some suppliers claimed that although they provide volume-based rebates, they have steered away from such rebates. Some of the listed reasons for this decision was that suppliers' products are experiencing growth on their own and that the retailers prefer to have guaranteed rebates for accounting reasons.¹⁰⁶²

*Store Opening Promotional Allowance*

527. Most suppliers¹⁰⁶³ stated that they do not contribute to store openings or store refurbishments allowances, with the exception of [X]. The suppliers only contribute an ad-hoc promotional allowance so that their products are part of the store opening promotions. For example, [X] and [X] stated that they do not contribute to store refurbishments, rather they provides an allowance for new store opening promotions. This is to ensure that when a store opens they are represented¹⁰⁶⁴ and their brands receive as much exposure as possible.¹⁰⁶⁵

528. [X] submitted that store opening allowances are categorised as guaranteed payments, which are termed compulsory.¹⁰⁶⁶ [X] submitted that they are required to contribute towards the opening of new stores as well as refurbishments done in the national supermarket chain stores. [X] is of the

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¹⁰⁵⁹ These suppliers include, [X]
¹⁰⁶⁰ [X]
¹⁰⁶¹ [X]
¹⁰⁶² [X]
¹⁰⁶³ [X]
¹⁰⁶⁴ [X]
¹⁰⁶⁵ [X]
¹⁰⁶⁶ [X]
view that the store opening allowances are required by the retailers as an incentive for them to upgrade the store and make the shopping experience more pleasant in order to attract more consumers.  

529. Shoprite receives refurbishments or store opening contributions from its suppliers as part of promotional support. Shoprite believes that the supplier also benefits when a new store opens, or when it is refurbished. The supplier benefits from the excitement of consumers for the new store and the suppliers are then given a platform to promote their products in the new store.

530. [X] submitted that store opening and re-opening is a once-off fixed amount per opening of a new or a renovated store, to assist with merchandising of the suppliers’ products and the store-specific advertising.

531. Massmart has what it calls funding of stock, and this rebate is stretched into new store opening allowances where Massmart needs to stock the shelves of the store a long time before it is able to open the store and start trading. Massmart submitted that it is common practice in the industry for suppliers to afford retailers extended terms when opening stores.

532. Spar submitted that they do not require a store opening allowance from the suppliers but they do negotiate for the contribution with the suppliers as they will feature their products, and also because when they have a new store opening they undertake a lot of promotions and advertising.

533. Woolworths does not charge new store opening promotional allowances.

**Swell Allowance**

534. The swell allowance is a contribution by suppliers towards damaged and returned products that are centrally distributed. Shoprite explained that as a retailer, they make provisions within their business to cater for costs associated...
with any damages that might occur in light of the stock procured. Shoprite takes into account various other factors, apart from damages, and these factors include returns, wastages as well as the safe disposal of the supplier’s product, of which this fee is charged to the supplier.\textsuperscript{1074}

535. According to a large supplier the value of a swell allowance is that rather than having to dispute every damage, they pay a percentage as an allowance. The swell allowance covers everything that is damaged between receipts and shelf but excludes expired stock and factory faults.\textsuperscript{1075}

536. However, a medium supplier that sells perishable products claimed that the swell allowance can be abused by certain retailers. According to [\textsuperscript{1075}] the challenge with the rejects/expired products is that some store managers order the products to fill the shelves not considering the demand, and when the products go off they send them back to the supplier. This is an extra cost to the supplier and shifts the risk the retailer back to the supplier.\textsuperscript{1076}

\textit{Other rebates}

537. The Inquiry also found that there are other rebates that are not common across all suppliers and retailers. These reflect some of the unique operational requirements of the various retailers from some the suppliers. These rebates are discussed further below.

\textit{Drop Shipment Allowance}

538. A drop shipment discount is an allowance the supplier provides to a customer for ensuring that an account is paid through one channel as opposed to handling multiple accounts. Drop shipment discount will be most applicable to retailers who are able to centralise purchasing and payment systems.\textsuperscript{1077}

539. Spar submitted that it charges a drop shipment allowance to suppliers for administering its account in instances where the supplier makes its own

\textsuperscript{1074} Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 7, ls. 23 - 26.
\textsuperscript{1075} [\textsuperscript{1075}]
\textsuperscript{1076} [\textsuperscript{1076}]
\textsuperscript{1077} [\textsuperscript{1077}]

502
deliveries to Spar stores. The drop shipment allowance can range from 2.5% to 6%.\textsuperscript{1078}

\textit{Demand Planning Allowance}

540. According to Pick 'n Pay demand planning is applicable to fresh and general merchandise and it is charged to suppliers for services provided relating to demand planning to central distribution warehouses.\textsuperscript{1079}

\textit{Training and Development Allowance}

541. [\texttimes] has a training and development allowance that it charges suppliers. The allowance is only applicable to fresh produce suppliers and it is used to train staff on fresh food preparation, presentation, food handling, merchandising and related matters.\textsuperscript{1080}

\textit{Quality Assurance Allowance}

542. Shoprite explained that a quality assurance allowance is a discount granted to retailers for the independent lab testing of the house products manufactured for the retailer’s private house brand.\textsuperscript{1081}

\textit{Margin Degradation Allowance}

543. [\texttimes] submits that a margin degradation is an allowance paid to retailers for any reductions in their turnover (derived from selling [\texttimes] products) between the current financial year and the previous one. [\texttimes] submitted that in instances where there is a need for the allowance, it means that they either did not support the retailer, or their competitors lowered their prices, meaning that the prices of the market came down but [\texttimes] did not and thereby squeezing the margins of the retailer. According to [\texttimes], the retailers want to ensure that they, at least, make the same margins as the previous year. [\texttimes] further submitted that the rationale behind this allowance is to ensure that they as a supplier grow

\textsuperscript{1078} Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript p. 22, para 81
\textsuperscript{1079} [\texttimes]
\textsuperscript{1080} Ibid
\textsuperscript{1081} Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 15, ls. 6 - 9
together with the national supermarket chain, whereas failure to do so could be bad for both businesses.\textsuperscript{1082}

\textit{Debt Net Margin}

544. According to [\textsuperscript{1082}] debt net margin is the difference in the margins that the retailers make from different suppliers of similar products. This margin is a combination of what the retailers make on a supplier's products at the back and at the front margin.\textsuperscript{1083}

\textit{Efficiency Allowance}

545. [\textsuperscript{1082}] submitted that an efficiency allowance is the way in which it shares savings with the retailer. As an example, where previously [\textsuperscript{1082}] would have to deliver stock to the individual retailers across South Africa, if a retailer centralises and has their own distribution centre, the savings that [\textsuperscript{1082}] receives from not having to go to the different locations is shared with the retailer in question\textsuperscript{1084}. Another example is when a retailer orders a full truck, [\textsuperscript{1082}] shares the efficiencies. [\textsuperscript{1082}] incentivises retailers to order a full truck, and in order to make it more efficient savings are shared with the retailer.\textsuperscript{1085}

17.3 \textbf{Description of Rebates by Different Suppliers}

\textsuperscript{1082} [\textsuperscript{1082}]
\textsuperscript{1083} [\textsuperscript{1083}]
\textsuperscript{1084} This appears to be similar to a Distribution Allowance.
\textsuperscript{1085} [\textsuperscript{1085}]
<table>
<thead>
<tr>
<th></th>
<th>[X]</th>
<th>[X]</th>
<th>[X]</th>
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<tbody>
<tr>
<td><strong>Basic Rebate</strong></td>
<td>According to [X] every manufacture is obliged to have a guaranteed rebate. The Guaranteed Rebate would be part of a package which the retailer then would agree to list your products and your categories. Guaranteed rebate should cover the ability to have your products represented in their store, because they say the store is their real estate. That guaranteed rebate is predicated on obviously a number of factors like I have said value given for</td>
<td>Base Rebates are expressed as a percentage of turnover. The percentage is fixed, the turnover is variable and from this perspective [X] needs to guarantee the payment of the base rebates.</td>
<td>Guaranteed Rebate is a percentage that is given as rebate or a discounter tariff from R1 of business. This is for the ability to do business. The guaranteed rebates that [X] offers its customers range between 3% and 5% depending on the product category in question</td>
</tr>
<tr>
<td><strong>Listing Fees</strong></td>
<td>For [X] listing fee would be part of an advertising or promotion allowance because it is not an ongoing fee. There are moments where you may walk away from a listing fee. They are occasions when a retailer may walk away from demanding a listing fee. So, we would separate it out from our guarantee.</td>
<td>Listing Fees are allowances offered to customers specifically for new products.</td>
<td>[X] does not operate with listing fees, what they do similar to listing fees is the support of new products, which they call launch support. This support may include placing it on adverts and putting it on display. The launch support is</td>
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<tr>
<td>Settlement Discount</td>
<td>Settlement Discount is a discount that is paid to [X] customer for incentivising earlier settlement of their accounts. [X] is not obligated to pay settlement discounts, and at the moment it does not have any settlement discounts with its customers.</td>
<td>[X] has Settlement Discounts for its customers, in Modern Trade they give 1.65% to [X] to incentivise them to pay within 14 days of the invoice. While in Traditional Trade they buyer groups get 1.5% for settling 14 days from weekly statement and [X] gets 1% for 30 days.</td>
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<tr>
<td>Growth Incentive</td>
<td>Growth Incentive (performance incentive) is an allowance all [X] customers are entitled to receive for their ability to grow their sales of [X] products in their particular market. Growth Rebate is an allowance that is performance based and may be expressed in terms of a percentage or monetary value. Although the growth rebates are performance linked, [X] submitted it is a guaranteed rebate because when the retailer achieves the growth [X] is liable for making the payments.</td>
<td>The percentage of growth rebates are the same for [X] Modern Trade and Traditional Trade customers, however the way in which they are implemented is what is different. [X] has Growth Drivers (growth incentives) which are only applicable in the Modern Trade area, where</td>
<td></td>
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</table>
Modern Trade focuses on drivers of growth. Modern Trade gives allowances for activities it believes will help the store to be more shoppable for consumers. In Modern Trade drivers of growth include category management and collaborative forecasting, which are not dependent on the growth of products.

Traditional Trade customers get a growth rebate for the output itself.

<table>
<thead>
<tr>
<th>Distribution Allowance</th>
<th>[X] has a Distribution Allowances for distributing products and services to a warehouse of a retailer, and the retailer then delivers to its respective stores. Wholesalers also qualify for the distribution allowance provided they are audited and qualify.</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>[X] is obligated to provide distribution services to ensure that its products reach the stores. In addition to the distribution, [X] also needs to ensure that the products are unpacked and clearly stacked onto the shelves.</td>
</tr>
<tr>
<td>Efficiency Allowance</td>
<td>Efficiency Allowance is a savings that [X] shares with its customers for efficient services. For example, where [X] can distribute to a centralised DC and not respective stores it shares the savings with its customer. The Traditional Trade customers may also receive the efficiency rebate.</td>
</tr>
<tr>
<td>Category Management Allowance</td>
<td>Category Management is one of the range of services offered by the retailer to the supplier, where the retailer provides the sales data that goes through their tills. [✓] contributes towards Category Management (data sharing allowance) for the access to the data that retailers have that is related to their product lines, across Category Management initiatives focus on data sharing, where [✓] shares research with the retailer. This</td>
</tr>
<tr>
<td>Advertising Allowance</td>
<td>[✓] offers its customers Advertising Allowance, it does however monitor to ensure it receives the number of advertisements it pays for. Buyer Groups also get the advertising rebate. [✓] pays Advertising Allowance, it uses the previous year as a base. [✓] expects to receive the same amount and types of advertisements. [✓] also contributes to a non-obligatory Brand Development Premium for the house brands it supplies some national supermarkets, [✓] views this as a form of an advertising allowance.</td>
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</table>
to suppliers. [X] pays for the data because it is the best data you can get. [X] is of the view that category management is a good methodology for ensuring a healthy collaboration between manufacturers and retailers. Various categories. [X] is not obligated to offer category management allowance to retailers, however for the benefit of their brand and improving the shopping experience for retailers [X] provides such allowances. [X] is required to contribute towards the opening of new stores as well as refurbishments done in the national supermarket chain stores. [X] was of the view that the store opening are required by allowance is paid upfront in order to get a seat at the table when the discussions happen. This is mainly on an advisory capacity. For [X] to participate in the category management process it pays between 0.8% and 1% of their nett invoice value. All Modern Trade customers get the same percentage for category management, for Traditional Trade, it is only applicable to the [X]. [X] doesn't pay category management rebates to buyer groups.

<table>
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<tr>
<th>Store Openings Allowance</th>
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<tr>
<td>[X] provides an allowance for store opening promotions. However, it does not contribute to store renovations. [X] has guidelines for store opening allowance. Store Opening Allowances are allowances that are categorised as guaranteed payments, which are termed compulsory. [X] is required to contribute towards the opening of new stores as well as refurbishments done in the national supermarket chain stores. [X] was of the view that the store opening are required by [X] participate in the specials for new store openings, giving their brands as much exposure as possible. This according to [X] is similar to another advertising allowance. [X]</td>
</tr>
</tbody>
</table>
the customers as an incentive for them to upgrade the store and make the shopping experience more pleasant, in order to attract more consumers.

does not offer its customers a allowance for refurbishments.

| Merchandising Allowance | [✘] prefers to use its own merchandisers, as opposed to paying the retailer to merchandise [✘] products in their stores. [✘] outsources its merchandising services to a third party company. | Sales and Merchandising Services are mostly about packing, shelf health, and removing expired products. Sales and merchandising services are obligatory. [✘] provides these services itself or through third parties. | [✘] does not pay retailers any Merchandising Allowance, they contract a third party and provide field sales services to the retailers based on a return on investment model. [✘] will consider all the stores in South Africa and allocate resources based on foot traffic, size, scale and position, and will then provide service to the stores in the proportion that gives them a return on investment. |

<p>| Drop Shipment Discount | A drop shipment discount is slightly different from a settlement discount in that a supplier discounts a customer for ensuring that an account is paid through one channel as opposed to handling multiple accounts. Drop shipment discount will be most applicable to | | |</p>
<table>
<thead>
<tr>
<th>Allowance</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Margin Degradation Allowance</td>
<td>Margin Degradation is an allowance paid to retailers for any reductions in their turnover (derived from selling [?] products) between current financial year and the previous one. [?] is of the view that the rationale behind this allowance is to ensure that they as a supplier grow together with the national supermarket chain, whereas failure to do so could be bad for both businesses</td>
</tr>
<tr>
<td>Debt Net Margin Allowance</td>
<td>A debt net margin is the difference in the margins that the retailers make from different suppliers of similar products. This margin is a combination of what the retailers make on a suppliers' products at the back and at the front margin.</td>
</tr>
<tr>
<td>Swell Allowance</td>
<td>Swell Allowance is an allowance given to customers which covers the cost of destroying damaged products and the cost of the credit notes etc. that apply to [?]. Clover submits that once a product has expired, it is their responsibility as a supplier to remove the product form the shelf.</td>
</tr>
</tbody>
</table>
|                                 | In Modern Trade Unilever has a Swell Allowance which covers damaged products, the damage covered can happen between when the customer takes receipt of the product
that product. It's very fact based value given for value received. and when it gets to the shelf, This excludes expired stock and factory faults.
17.4 Disaggregated milk (fresh and long life products) rebate analysis – differential treatment between retailers and buyer groups

546. The Inquiry identified milk, as opposed to other dairy products such as cheese and yogurt, as it is considered to be a staple food and an essential source of protein. Milk is broadly divided into fresh milk and long life milk. Based on the information provided by the milk processors, the Small Business Survey and site visits to numerous township and rural areas across South Africa, the Inquiry determined that both fresh and long-life milk products are sold in supermarkets while spaza shops typically sell long life milk because of its longer shelf-life, without need for refrigeration.

547. [><]

548. The data suggests that long life milk is the more preferred option in South Africa. The Inquiry decided to analyse both fresh and long life milk, because even though long life is the most sold product, fresh milk is considered an important product that customers visit supermarkets for.\textsuperscript{1086} The most popular bottle size for fresh milk is the 2 litre bottle.\textsuperscript{1087} Long life milk is typically sold in the 1 litre format.\textsuperscript{1088} Accordingly, the Inquiry focussed its analysis on the 2 litre fresh milk and 1 litre long life products.\textsuperscript{1089}

549. [><]

550. [><].

Figure 17.1: Annual volume of milk sold to customers from 2015 - 2017\textsuperscript{1090}

\textsuperscript{1086} Fresh milk’s short shelf life also makes it a product that needs to be sold quickly and may give the supermarkets more leverage when negotiating trading terms because the milk processors cannot afford to let their product expire before negotiating favourable trading terms.

\textsuperscript{1087} [><]

\textsuperscript{1088} [><]

\textsuperscript{1089} For ease of analysis, the Inquiry did not distinguish between the different levels of fat content (i.e. full cream, low fat and fat free) contained in these milk products. Having determined the relevant products for analysis, the Inquiry also considered the relative importance of the different customers served by the milk processors (using revenue contributions as a guide) and the associated rebates paid to each of these customers.

\textsuperscript{1090} [><]
551. [X].

552. [X].

553. Figure 17.2 below illustrates the revenue contributed by each of the top 10 customers of the milk processors for the period 2015 to 2017.

Figure 17.2: Annual value of milk sold to customers from 2015 – 2017

[Insert Figure 17.2]

Source: Dairy processor submissions

554. As expected, the revenue contributions above exhibit a similar pattern to that observed in respect of volume contributions (shown in Figure 17.1).

555. [X], [X].

556. The volume and revenue data of the milk processors showed that the three national supermarket chains, namely, [X], and [X], are consistently amongst the largest individual customers of the milk processors. However, it is noteworthy that the wholesale channel and other distributors also make up a significant combined contribution to the revenue for [X], [X] and [X].

557. Taking the above into account, we now turn to assess the rebates paid by each of the different milk suppliers.

Assessment of the 1lt and 2lt milk rebates paid by [X]

558. The Inquiry first establishes the volume and revenue contributions by the various customers serviced by the milk processors, as seen in Figure 17.1 and Figure 17.2 above, this is to determine which customer groups are likely to receive the most rebates given that they are the most important customers.
559. Figure 17.3 below depicts the volumes and revenues contributed by [X] customers in 2017.

**Figure 17.3:** [X] milk volumes (in litres) and revenue contribution (in Rand) from top 10 customers for period 2017

[\[\text{Figure 17.3} \] \]

*Source: [X]*

560. [X].

561. [X].

562. [X].

563. [X].

564. Figure 17.4 below provides a graphical illustration of the aggregated rebates paid by [X], in 2017, to its top ten customers for its 2 litre full cream milk product.

**Figure 17.4:** [X] 2 litre full cream milk aggregated rebates by customer for 2017

[\[\text{Figure 17.4} \] \]

*Source: [X]*

565. [X].

**Figure 17.5:** [X] 2 litre fresh milk individual rebates by customer for 2017

[\[\text{Figure 17.5} \] \]

*Source: [X]*

566. Figure 17.5 above depicts some of the individual rebate categories that [X] offered to some of its customers for the 2 litre full cream milk in the period 2017.
The growth rebate and how it is distributed among the customers compared with the other rebates confirms the arguments put forward by Buyer Groups which stated that the national supermarket chains receive a substantially larger proportion of their rebates from “guaranteed rebates” which are not linked to growth targets.

Figure 17.6 below shows the aggregated rebates that [X<] offered to some of its customers for the 1 litre long life milk in the period 2017.

Figure 17.6: [X<] 1 litre long life milk aggregated rebates by customer for 2017

Source: [X<]

Figure 17.7 below depicts the individual rebate categories that [X<] offered its customers for its 1 litre long life milk in 2017.

Figure 17.7: [X<] 1 litre long life milk individual rebates by customer for 2017

Source: [X<]
Assessment of the 1lt milk rebates paid by [X]

579. Figure 17.8 below shows the rebates paid by [X] to its four largest customers for the 1 litre [X] milk product.

Figure 17.8: [X] Milk 6 X 1 litre aggregated rebates in 2017

Source: [X]

Assessment of the 1lt milk rebates paid by [X]

582. Figure 17.9 below sets out the rebates paid by [X] to its top customers.

Figure 17.9: [X] aggregated rebates for all products for 2017

Source: [X]

Assessment of the 2lt milk rebates paid by [X]

584. Figure 17.10: [X] 2 litre Full Cream aggregated rebates for 2017
Assessment of the 1lt milk rebates paid by [X].

Figure 17.11: [X] 1 Litre Long Life aggregated rebates infor 2017.

Evidentiary insights from rebates paid by milk producers.

As may be clear from the analysis above, the premise of the Inquiry’s approach was that the customers that contribute the highest volumes and revenue would be considered important customers to the suppliers of FMCG. As such, by virtue of their size, these customers would be expected to possess more significant negotiating power. Accordingly, the more significant negotiating power possessed by these customers would manifest itself in the form of better trading terms from their suppliers. The Inquiry found that the national supermarket chains are primarily the largest and most important individual customers of all the milk processors and this is reflected in the largest individual rebates provided.

The Inquiry found that there were instances in which some customers who purchased and contributed more revenue (than others) were not able to extract...
as much favourable trading terms from their suppliers, for example, \([\times]\) in the case of \([\times]\).

However, the wholesale channel collectively was often of more significance than any individual retailer but likely received lower rebates because each individual buyer group purchased a smaller volume. More importantly, wholesalers were effectively excluded from certain rebates focused on supermarket costs or benefits because they are not vertically integrated, or received lower rebates for the same reason. Given that the independent retailers that depend on the wholesalers also incur many of these costs and yet do not enjoy rebates related to them, results in such retailers likely facing a competitive disadvantage.

17.5 Disaggregated sparkling soft drink products rebate analysis – differential treatment between retailers and buyer groups

The Inquiry determined that sparkling soft-drink products were popular products purchased by end-consumers, in supermarkets and spaza shops. \([\times]\) The soft-drink manufacturers are multi-product firms, selling various flavours of sparkling soft drink products.

These brands can be further separated by the sugar content (eg. Regular, Zero, Life and Light)

| 591. | The Inquiry determined that sparkling soft-drink products were popular products purchased by end-consumers, in supermarkets and spaza shops. \([\times]\) The soft-drink manufacturers are multi-product firms, selling various flavours of sparkling soft drink products. |
| 592. | \([\times]\) \([\times]\) \([\times]\) \([\times]\) |
| 593. | \([\times]\) |
| 594. | The Inquiry requested the sparkling soft-drink manufacturers to provide the revenue and volumes sold to customers making up 80% of their business. This was done to identify the major customers as well as any other customer that makes a significant contribution to the business. |
| 595. | \([\times]\) |
| 596. | Table 17.1 below shows \([\times]\) top ten customers for both of its categories and their relative contribution in terms of both volume and value. |
Table 17.1: Breakdown of [X] Customers by Volume and Value for 2017

[1]

Source: Inquiry’s calculations based on data submitted by [X]

597. [X].
598. [X].
599. [X].
600. [X].
601. [X].
602. [X].

Figure 17.12: Comparison of rebates to [X] largest customers in 2017

[2]

Source: Inquiry’s calculations based on data submitted by [X]

603. We can also take a more disaggregated view from Figure 17.13 below, which compares the rebates that are given to all or most of the [X] customers and those that appear to only be offered to the national supermarkets.

Figure 17.13: [X] rebates by category (2017)

[3]

Source: Inquiry’s calculations based on data submitted by [X]

1100 [X]
Assessment of the [X]

Table 17.2: [X] top 20 customers by revenue 2015 - 2017

Source: Inquiry's calculations based on data submitted by [X]
Figure 17.14: Comparison of rebates to [X] largest customers in 2017

Source: Inquiry’s calculations based on data submitted by [X]

Figure 17.15 below take a more disaggregated by comparing the rebates that are given to all or most of [X] and those that appear to only be offered to the national supermarkets.

Figure 17.15: [X] rebates by category (2017)

Source: Inquiry’s calculations based on data submitted by [X]

Evidentiary insights from rebates paid by soft drink manufacturers

It also appears that the non-integrated nature of independent retailers is a significant disadvantage for them as they do not qualify the types of rebates that the supermarket retailers benefit from as a result of servicing directly to the end consumer.
17.6 Disaggregated washing powder rebate analysis – differential treatment between retailers and buyer groups

Assessment of rebates paid by [✉]

626. Figure 17.16 [✉].

Figure 17.16: [✉] 2kg handwashing powder volumes (in kg) and revenue contribution (in Rand) from top 10 customers for period 2017

[✉]

Source: Inquiry’s calculations based on data submitted by [✉]

627. [✉][1105] [✉][1106] [✉]

628. [✉]Figure 17.16[✉]

629. [✉]Figure 17.16 above. [✉]

630. [✉] Figure 17.16 [✉]

631. [✉]Figure 17.17 [✉]

Figure 17.17: [✉] 2kg handwashing powder aggregated rebates and aggregate rebates excluding distributors and Tally rebate by customer for 2017

[✉]

Source: Inquiry’s calculations based on data submitted by [✉]

632. [✉]

633. [✉]

634. [✉] Figure 17.17 [✉][1107] [✉]

635. [✉]

636. Figure 17.18 [✉]
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**Figure 17.18**: [ясь] 2kg handwashing powder individual rebates by customer for 2017

[ясь]

*Source: Inquiry’s calculations based on data submitted by [ясь]*

637. [ясь]
638. [ясь] Figure 17.18 [ясь] Figure 17.18 [ясь]
639. [ясь]
640. [ясь] [ясь] [ясь] [ясь]

Assessment of rebates paid by [ясь]

641. Figure 17.19 [ясь]

**Figure 17.19**: [ясь] 2kg handwashing powder volumes purchased (in Kg) and revenue contributed (in Rands) by top 10 customers for 2017

[ясь]

*Source: Inquiry’s calculations based on data submitted by [ясь]*

642. [ясь] Figure 17.19 [ясь] [ясь]
643. [ясь] [ясь] [ясь] [ясь] [ясь]
644. [ясь] [ясь]
645. [ясь] Figure 17.20 [ясь]

**Figure 17.20**: [ясь] 2kg hand washing powder aggregated rebates and individual rebates offered to top 10 customers for 2017

[ясь]

\[1108 \text{ [ясь]} \]
\[1109 \text{ [ясь]} \]
\[1110 \text{ [ясь]} \]
\[1111 \text{ [ясь]} \]
\[1112 \text{ [ясь]} \]
\[1113 \text{ [ясь]} \]
\[1114 \text{ [ясь]} \]
Source: Inquiry’s calculations based on data submitted by [X]

646. [X] Figure 17.20 [X]

647. [X] Figure 17.20 [X]

648. [X] Figure 17.20.

649. [X]

650. [X]\textsuperscript{1115} [X]\textsuperscript{1116}

Assessment of rebates paid by [X]

651. [X] Figure 17.21 [X]

Figure 17.21: [X] handwashing powder volumes (in kg) and revenue (in Rands) for 2017\textsuperscript{1117}

\[
[X]
\]

Source: [X]

652. [X] Figure 17.21 [X] Figure 17.21 [X]

653. Figure 17.22 [X]

Figure 17.22: [X] hand washing powder aggregated rebate and individual rebates by customer for 2017\textsuperscript{1118}

\[
[X]
\]

Source: [X]

654. [X] Figure 17.22 [X]\textsuperscript{1119} [X]\textsuperscript{1120} [X].
Evidentiary insights from rebates paid by handwashing powder suppliers

17.7 Disaggregated cooking oil rebate analysis – differential treatment between retailers and buyer groups

Assessment of rebates paid by [X]

Figure 17.23: [X] cooking oil volumes (in litres) and revenue (in Rands) for 2017
Figure 17.24: [X] 2L cooking oil aggregated rebates and individual rebates offered to top 10 customers in 2017

Source: Inquiry’s calculations based on data submitted by [X]

Assessment of rebates paid by [X]

Figure 17.25: [X] cooking oil volumes (in kg) and revenue (in Rands) for 2017

Source: Inquiry’s calculations based on data submitted by [X]
676. [X]

677. [X]

**Figure 17.26:** [X] 2L cooking oil aggregated rebates and individual rebates offered to its top 10 customers in 2017

[Source: Inquiry’s calculations based on data submitted by [X]]

678. [X]

679. [X]

680. [X]

*Assessment of rebates paid by [X]*

681. [X]

*Evidentiary insights from rebates paid by cooking oil suppliers*

682. [X]

683. [X]

684. [X]

685. [X]

---

1138 [X].
1139 [X].
1140 [X].
1141 [X].
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