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south africa

COMPETITION COMMISSION'S GROCERY RETAIL MARKET INQUIRY TRANSCRIPT

4 July

Competition Commission: Chair

1. Good morning everyone. I did an opening introduction yesterday, I am not going to repeat but I want to draw everybody's attention to. And so I am just going to. Very briefly I want to formally greet everybody in attendance and to welcome you to to this inquiry. I want to, I am a Halton Cheadle. I am Professor emeritus at the University of Cape Town and chairing the panel and my colleague here Lulama Mtanga is a competition law expert with extensive experience earned through her former roles at the Competition Commission and as the Director of the firm, Bowman Gilfillan Inc. We also have Ms. Louise du Plessis from the Competition Commission. She is on the right and is here in the capacity as the head of the inquiry's technical team and evidence leader. She and the team of lawyers and economists will be assisting the panel in soliciting evidence and preparing a report for the inquiry.
2. Very briefly, I would like to explain what the inquiry entails an investigation into the state, nature and form of competition in a market as opposed to an investigation of a specific conduct by specific firm. And the inquiry, the object of the inquiry is to promote and maintain competition in the Republic.
3. I don't want to deal with that much more other than to just briefly discuss the conduct of the public inquiry. We cover only specific objectives contained in our terms of reference. This is because, some of the objectives, not all of them because some of the objectives in particular, some of the dealing with informal sector have been extensively discussed and probed during , inquiries, visits and revisits at various sites across the country.
4. The topics to be discussed at this inquiry, at this public hearing are four fold. First impact, negative and positive effects of the entry of national supermarkets chains into townships. The impact of long term exclusive lease agreements and the role of financiers not he competition in the grocery retail market. The impact of regulations, municipal regulations and by laws on competition and the impact of buyer groups and buyer power of fast moving consumer goods on competition in the grocery retail market.

5. We, this is a public inquiry (sound break). Confidential information that is confidential to their business, then we can after the public submission, we can close the meeting and take confidential information or evidence. I think it's important to recognize that failure to answer fully or truthfully is an offense unto the Act and but let me say immediately that so far int he public inquiry we have no body who has refused or failed to answer any question.
6. Finally, we do have the power to summons somebody, to furnish information on the subject of the investigation and again as I have said we have fortunately not had to issue summons to require someone to provide information. In fact, most of the important stakeholders are participating in the public inquiry.
7. Now, just is so far as the rules of public hearing are concerned, we, the session is recorded and streamed on line save for those sections that are confidential. So the confidential elements of the evidence will not be streamed on line. In order to get a proper ventilation of information bear in mind that this is an inquiry and we certainly not cross examining anybody, we are trying to elicit information, trying to understand how this market works. The two of us will ask questions and the evidence leader Ms Du Plessis, may, will also ask questions. We don't take questions from the floor but if any of you have an objection or want to question an issue or seek clarification on an issue. The manner to do this is to do it in writing. You will see on the screen, it will come up throughout the day, you will see the address, both the physical address, the postal address, the email address of the inquiry into the retail sector. You submit any objection, question or point of clarification in writing, to the Commission and we will take it up that way. That's in order for us not to have a serial process of collecting information.
8. I think, with that , I would like to call the first stakeholder. The Khayelitsha Trust, I think it is. Would you give your full names, the description of your interest and then your submission. I wonder, if you press the, yes...

Khayelitsha Community Trust: Thembisa Jemsana

9. Good Morning, my name is Thembisa Jemsana. I represent the Khayelitsha Community. We are based in the City of Cape Town, in the Western Cape. If I may take you through briefly what the community Trust is.

10. The Khayelitsha Community Trust was formed by the City of Cape Town in 2003. The intention behind the Khayelitsha Community Trust was to drive or concentrate focus for development in Khayelitsha. To this end the City of Cape Town is the founding body of the Khayelitsha Community Trust entered into an agreement of cooperation and collaboration with Rand Merchant Bank at the time for the development of phase one of the Khayelitsha of Business districts. It was the first which is now the existing shopping centre in Khayelitsha.

11. For ease of reference we call it KCT mall. There is a land availability agreement that came into effect between the city of Cape Town and the Khayelitsha Community Trust in 2004. This land availability agreement awards development rights to KCT to partner with suitable partners within the private sector to attract investment into Khayelitsha for the development of our number of property and other business opportunities mainly fixated on commercial, retail, residential and community facilities.

12. Stakeholders of Khayelitsha Community Trust or aside from the city of Cape Town who is the land owner include the Khayelitsha development forum and sub-councils and other community voluntary structures.

13. The mission of the Khayelitsha Community Trust as a public benefits organization with an NPO status aims to advance the Khayelitsha business districts through the development of commercial, residential and communal property opportunities.

14. The KCT vision is simple. It is to empower the community of Khayelitsha through the promotion of social and economic development just to explain. The status of the trust as a I will call it a statutory entity, it operates commercially

through subsidiaries so in the land availability document is named the KBD, so Khayelitsha business district management company. K-manco, who is the developer on the nominated developer on behalf of the trust. And that subsidiary then holds two other subsidiaries, KBD retail PTY limited and KBD housing.

15. I think the focus for of the submission will relate to KBD retail as the developer of and property manager of the Khayelitsha Community Trust's retail assets. Just to give a background on Khayelitsha. I had hoped that we would have a Google map just to give context to those who are not familiar with the Western Cape. Khayelistha falls within the Khayelitsha/Mitchells Plain planning district in the city of Cape Town.

16. It is characterized by lower income residents and very high poverty rates with the majority of the residents living in informal dwellings. The Khayelitsha community or the Khayelitsha a business district formed part as well as with Mitchells Plain business district form part of the urban regeneration programs or urban renewal programs of the former presidency which have been carried through especially by the City of Cape Town and other municipalities. That is to say that a number of programs have taken place to invest within the Khayelitsha CBD as we call it the Khayelitsha business district or KBD for short.

17. This aside from the public services and infrastructure I have mentioned the shopping centre that has been built it's been a three hundred bed district hospital by the department of health and home affairs and the social services office as well as other civic amenities.

18. Just to touch on the land availability agreement. Some key highlights which give context to our submission. The city has participated. It is written in the land availability agreement in discussions regarding the upliftment of the community of Khayelitsha and in the drafting of various documents in this regard including the documents titled "Development Principles Khayelitsha CBD Institutional Framework of Stakeholders,

Cooperation and Collaboration Agreements between the Rand Merchant Bank and the City, KBD Proposals for First Developments in the Khayelitsha of Business District Draft One Empowerment Strategy.

19. The city has identified the Khayelitsha Business District Project as a project of high priority and as the anchor project for its initiative in the presidential urban renewal program. The city has identified the KBD projects, am sorry to repeat myself.
20. The next point is since the conclusion of the collaboration and cooperation agreement between and cooperation agreement entered into between the city and RMB, the concept of the Khayelitsha Business District has been developed and is more fully described later, but I will describe it here.
21. The overall intention of the city in finding the KC Trust with the overall was to uplift the community of Khayelitsha. To this end the KC Trust is empowered to procure development as more fully set out in the KC Trust deed. The KC Trust is further empowered to establish legal entities to implement the development and to procure the management of the development. If there are any other questions on the land availability agreement we can come back to so that later on. I'll give context or further detail.
22. The trust, it's worth noting I apologise for not noting earlier, the trust was a municipal entity when it was founded in 2008. City council voted for the trusts to be an independent institution for a number of reasons some of which included the MFMA . And one of those reasons that is important here today is was for Trust to be released from the constraints of operating as a municipal entity so that it would be enabled to operate freely and therefore deliver quickly on its mandate. And it's worth noting that since 2005 when that mall was built, existing KCT Mall there has been no further development that has happened within the CBD under of the mandate of the trust.
23. One important achievement that is also relevant to the context of our submission is the planning, the development planning initiatives and

processes that KCT has undertaken in the past five to six years which culminated in their approval of a spatial development framework. A spatial development framework sets out the general spatial development permit As for the Khayelitsha Business District as a whole. It is a collaborative approach between the Khayelitsha Community Trust and the City of Cape Town with private consultants and the City officials from various departments.

24. This approved development framework builds on several others which have come along. The importance of this is that, after the first one was in the year 2002 other development frameworks were developed between 2011 and 2013 and neither of those were approved and the latest one has been approved and sets in place very specific planning rights which without which the Khayelitsha Commission Trust cannot deliver on its mandate. That is to say if we do not develop or submit plans for development within that context it is unlikely that the City would approve any developments that are here, that we have. What is important there, is to note that the Khayelitsha Business District is about just fifty six hectares .

25. This from a planning perspective and from the perspective of what we have to deliver on our mandate means they can be no singular development. In other words, the days off simply developing just free standing, stand-alone housing or the days of just developing a large box store so a stand-alone shop would not be permitted.

26. The drive of the Integrated Development Plan by the City of Cape Town is to intensify and intensify development by densification so maximum use and best and highest use of the land provided in key or very prime areas prime areas as defined by very accessible to people so or very accessible to integrated transport nodes. So the Khayelitsha Business District qualifies as a prime development area in the context of the southeast Metro of the City of Cape Town. So Khayelitsha Business District has a train station, has a taxi rank and is situated in the center of Khayelitsha particularly the commercial center of Khayelitsha.

27. So along with the institutional and other civic amenities available there, it makes it much more available so that land is much more valuable than other land that you can find in and around Khayelitsha. Simply, because most of the residents will at some point of any day congregate or pass through there. It has become extremely attractive to retailers both retailers who are existing in that district but especially to retailers who are not represented. So brands and other retailers who are not yet represented in Khayelitsha and specifically within the Khayelitsha Business District.

28. It's worth noting that there are other shopping centers in and around Khayelitsha. There are two other shopping centers within about a five kilometer radius of where the KCT mall is. Despite that, we still find that we have to turn away a number of retailers consistently, simply because we cannot accommodate them at the existing shopping center and in 2015 the Khayelitsha board of trustees elected to start a new retail center. In line with the spatial development framework we could not just build a retail center and in fact as dictated by the demand of the residents, there was demand for office space, there was demand for entertainment, there was demand for other services. So we then started conceptualizing what we refer to as the Khayelitsha Business District mixed use retail center for short we just call it the KBD mixed use centre.

29. We appointed an agent, so a broker to generate heat. So go speak to retailers see who is definitely interested. We had had people in and out of our office. We commissioned this agent to follow up on those people as well as to find new retailers. I think at this point it becomes important to note that the events that then followed are what brings us here. Towards the end of 2015 . We had what we call in development stage two. We had completed stage two, this means that we had received a number of offers from retailers, new retailers who wanted space at the new mixed use centre.

30. We had also prepared concept plans that had received endorsement before approval. The City of Cape Town has a requirement that developers first pre-concullt before making final submissions for planning approval. So we went

through about three months consultation to the City of Cape Town. We obviously had secured the professional team at this point, so architects and engineers and so forth. We then went on a stakeholder engagement process where the stakeholders that I mentioned before we consult them as to this is what we have come up with following others stakeholder engagements where we had given had been given the go ahead to start this new development.

31. At that point we had secured two new retailers specifically to a new supermarket retailers in addition which would be complimentary and in addition to the existing retailers in the CBD or in the Khayelitsha Business District at the old shopping centre. This was about November 2015. In March - February excuse me 2016. It then came about that one of the retailers we had proposed was unacceptable or undesirable and so we then also at the same time started receiving offers to lease from an existing retailer at the old shopping center to lease space at the new shopping center.

32. It's also worth noting that this point. We had received a number of shall we say questions around him bringing you supermarket retailers is not going to sit well with the existing supermarket retailers and in fact that you might face obstruction and even legal action. And we did not anticipate that as being a problem considering that when we had planned to redevelop the old shopping center in 2014 or two into the other fourteen and early 2015 we had consulted the existing retailers at the old shopping centre started with the supermarkets that are presently trading there.

33. We had no reason we had we did not receive any opposition at that point to the proposed plans. Since then just to fast forward because I think a lot of then the detail becomes what we would not like to share in a wider forum. So we will ask for some of the information in the detail to be kept confidential so I will just keep it to say that's where we are today. We are now July 2017. We had planned on opening the shopping center in March 2018 at this point all plans came to a standstill following a challenge, a legal challenge by one of the existing supermarket retailers claiming that the new mixed use centre is an extension of the existing shopping center therefore in terms of the lease agreement in the

exclusive rights awarded to that retailer in terms of that lease agreement then prevent the landlord and or the developer which in this case we are both from pursuing this new shopping centre.

34. There was an offer from this retailer for them to occupy space at this new shopping centre. There were a number of offers, the offers varied. So the first was that or one of the offers was that it would move across from the old shopping centre to the new mix use centre. There was another offer saying it would take both of the proposed big boxes set aside for new retailers. There was another option for this retailer, a supermarket retailer having two stores, one at the old shopping centre and one at the planned mixed use centre. Suffice to say all of this created a bit of confusion and some friction especially when there wasn't agreement as to what was the best way forward.
35. In especially given that our mandate was to provide options and alternatives and choices for the residents of Khayelitsha. In other words our obligation is to promote competition, is to promote representation and is to accommodate retailers, business partners and investors who are aligned with the best interests of Khayelitsha.
36. In 2011 and 2012 the Khayelitsha Community Trust had conducted a market study that sought to understand what the residents wanted by way of development and opportunities specifically new retail brands or any preferences with regard to what the Khayelitsha KCT mall offers.
37. Takeaways, I think key take aways from that study which would also be available if you required it. The residents required more alternatives to the existing brands. And the complaint being that if residents wanted to do comparative shopping or preferred other brands to the existing ones. They had to travel to Khayelitsha oh sorry to Mitchells Plain or Somerset West and so it was the desire of the residents that there would be more offered that would enable them or limit them from having to seek public transport travel elsewhere to find what is that they needed. I think from a commercial perspective, it makes sense for us to introduce new brands and try to attract the middle class, the

growing middle class in khayelitsha. And that was the basis of our retail strategy.

38. So, as I was saying, as we stand here today that project came to a stand still. We received notice of a legal challenge from one of the existing retailers and in March we set for arbitration and the award for arbitration went against the Trust. In other words the award of the arbitration was that this retailer was entitled to exert and exercise his exclusivity rights to trade and furthermore on the basis that the new shopping centre was an extension of the old shopping centre and therefore no other supermarkets could trade or no other new supermarkets could trade. I think that that's the gist of our submission at this point.

Competition Commission: Chair

39. I noticed that you were reading a document. Would you would you make that document available to us because you went through your evidence rather quickly that although we I picked up some of the structure of the trust and its relationship with the city we would really appreciate that if you if you would. I mean many parts of your submissions that are particularly interesting to us.

40. Can I just ask you when in the process, the stakeholder process of establishing the KCT Mall, what was the participation of small businesses, small independent businesses in the area of the mall? Was there any engagement with them? Was there any attempt to incorporate them into the mall.

Khayelitsha Community Trust: Thembisa Jemsana

41. Are we talking about the existing shopping centre or the planned?

Competition Commission: Chair

42. Let's just take the existing shopping centre. So when you were establishing the existing shopping centre, there must have been independent retailers that were, small butcheries, bakers, groceries. I would like to know whether there was any stakeholder engagement with them?

Khayelitsha Community Trust: Thembisa Jemsana

43. That was a little bit before my time but one thing that sets Khayelitsha and Khayelitsha residents out is that they really take engagement seriously to the point that I, as a development manager for the Trust feel that sometimes you know we engage too much. However, and that's only just selfish because it means for me weekends I must be working but the Khayelitsha community is very well represented, very organized and very vocal. And I would say that my involvement and observations of that process when we were formulating this development framework as well as the housing plans as well as the other is this mixed use centre you really even the decision to develop this type of house must be you know you have to consult with the Khayelitsha specifically the Khayelitsha Development Forum and the sub-councils.
44. The Khayelitsha Development Forum is significant. It's voice carries a lots of weight. It's a multidisciplinary structure. It consists, it's an umbrella structure that houses other voluntary community associations. There are religious groups presented, there are political groups represented, there are informal traders as the Khayelitsha, the United Khayelitsha Informal Traders Association, UKITA. There is SANCO. There is even the sub-councils of Khayelitsha who are represented there. So in that context and through KDF and you get to meet, chat to and consult with a number of stakeholders.
45. Aside from that, we have had meetings with the United Khayelitsha Informal Trade Association, at that point if I may just call them UKITA. They approached us, saying that, as a development agency of Khayelitsha, could we assist them and guide them. At that point they were looking for land in Philippi or they had identified a trading area in Philippi. However when it came to us between the station and I would say the Walter Sisulu so if I had the map there I would show you but mall, the existing shopping centre is divided into two blocks and through it runs this public thoroughfare.
46. We have since accommodated informal traders there. But before just to answer the question of the chair. It didn't seem that that had been an alternative that was allowed. In short when I arrived at KCT, there was no one there. There

were no traders at the shopping center. We have since the beginning of 2016 engaged with the City's economy development department to collaborate or to ask the City to collaborate with us, in establishing all the City that's its obligation to establish where it sees relevant informal trading areas. So it has an informal trading bylaw and so forth. There isn't one that exists for the Khayelitsha Business District. So to further underline what you are trying to get at chair. So there isn't an informal trading policy or informal trading plan or informal trading plan for the KBD . There are others elsewhere for the other areas. And so, that engagement that we had with the City was to sort of motivate to the City why it should.

47. We know that as the custodian of that district, business district and the developer there, there is an imperative. Aside from the retailers we have to turn away. We have to turn away probably twice as many locals and small businesses and traders who are looking to be represented into a footprint, into a space because there's a lot of foot traffic that passes through the district specifically KCT Mall.

48. One of the initiatives that we started in 2015 was to accommodate mobile restaurants. So one is there's a coffee shop. There's a an entity that was formed by three youngsters barristers from Khayelitsha called Department of Coffee. They had their own funding. They had a mobile restaurant and we then engage with the stakeholders to allow them to position this container there.

49. That was followed by Mamachaka, but it since went under and was relocated or they moved. I'm not sure what happened but that business closed. Then there were, recently we accommodated another mobile restaurant; a young gentleman from Khayelitsha again he produces, he bakes bread. Bread that is suitable for diabetics and other weight loss and other lifestyle diseases. And he supplies some of the existing supermarket retailers at the shopping center as well. He also has a partnership with Virgin Active and. Yeah so.

50. It was easy there to accommodate these three small traders that I mentioned because they had their own funding and they had their own business model

already running and it was then easier to also convince stakeholders. One of the challenges we received at the beginning when we tried to accommodate Department Coffee was the stakeholders saying: “no we don't want this kind of clustered and sort of informal look set up around the shopping centre”. We want our shopping centre to be as orderly as the shopping centres you would find in the established suburbs.

51. If we look today at the number of traders that we accommodated within the styrofoam. They do not qualify in terms of what I mentioned so. They just are subsistence traders and there are many of them. And so it was on that basis that we approached the City to say we could partner to accommodate these traders, build stalls for them and you know provide management services.

Competition Commissioner: Lulama Mtanga

52. Thembisa, can I request that you provide us with an organogram of all the entities that form part of the entities forming part of the Khayelitsha Trust or related Trust and to the extent that your presentation does not speak to that. The whole history. Any other document that can assist us in sketching out that history of all the entities that are involved and the roles that those entities are playing in Khayelitsha.

53. And I just want to know what is the population of do you have the population number of Khayelitsha?

Khayelitsha Community Trust: Thembisa Jemsana

54. This is a....depending on who you speak to and what your source is. I will if you just allow me to scroll through this. OK we do have that data. I will as part of this pack, but I think for the purposes of this meeting.

Competition Commissioner: Lulama Mtanga

55. Sorry, I was going to say even estimation. Your estimation for now will suffice but if you think you may have this elsewhere.

Khayelitsha Community Trust: Thembisa Jemsana

56. It is estimated that they are at least eight hundred thousand people in Khayelitsha or possibly over a million.

Competition Commissioner: Lulama Mtanga

57. And then you said with the mandate that was given to the, I am not sure which of the entities but it was to intensify the development by densification, can you speak to more to what that densification entailed.

Khayelitsha Community Trust: Thembisa Jemsana

58. In this context it's really simple. So if we consider Khayelitsha or the KCT mall or the existing shopping centre; it is two blocks, set out on two urban which are not totally tight. The two urban combined make up an area of around often say fifty thousand square metres. In terms of the planning approvals that we have, so if we talk about densification and intensification of use we can build up to six stories on that land. So if you take fifty thousand square metres and multiply by six you have up to the development bank of up to three hundred thousand.

59. This means that if we consider the opportunities that the Trust has now in terms of a development, that is, to development opportunities we have had at least four healthcare groups approach us to build a private hospital and we have had a local businessman who runs the hardware and gas supply shop, he conceptualized a business to business vegetable grocery and butchery outlets it would have been more or less twenty thousand square metres. So he, his vision was, he would be supplying directly to other businesses specifically traders so negotiating with the farmers, buying in bulk and he would then sell to traders so they could go in. At the moment traders hire a car or whoever has a car and they go to the farms early in the morning and they bring two boxes of bananas or chickens or whatever it may be and they sell it for that day every day. They have no storage and so forth.

60. So his vision was that these traders would not need to travel every day to get stock he would have this outlet that would just sell directly to these traders. So bringing in other words the farm closer to the CBD. So if you think about it in

that context and as well as that, the demand, the actual demand from national retailers, existing retailers and old retailers who are not residents at the KBD as well as you know, at some point we were talking to one of the cinemas, one of the gyms. There was also consortium of young people who wanted to start their own gym and so forth. So all of this in theory could be accommodated just on this. On the sites of the existing shopping centre. So I spoke earlier on about in 2014 we had conceptualized redevelopment of the existing shopping centre. We then came to the conclusion and when I say we, the Khayelitsha Committee Trust through its board of trustees, came to the conclusion that KCT could not undertake this on its own.

61. And there were a number of limitations. So exclusivity clauses for example with existing retailers prevented us from say entertaining any other grocery, butchery, bakery, fishery, dry goods and so on. Which meant that we would then have to look at the big boxes. So when we model a retail center, you have to have your big boxes to say to a large extent or you want to pick boxes to take about 25-30% of your retail space. In essence, I think maybe to cut it short is to say that, you then have to look at say a retailer, big box retailers like furniture shops or appliance shops and that kind of proposal is not so attractive to them at this point.

62. For example, the appliance shop say but you know we're not doing well in central City why would we come to Khayelitsha. Then you have your hardware stores and similarly you know your really big hardware stores prefer stand alone, the yards space for their trucks and so forth. I mean you can't really put a hardware store in a shopping centre. So if you consider that, it would have say a second level maybe at that level you would really need to have some kind of a high end retail you can't have your sort of a hardware, factory outlet type of retail. And so the other constraint was a financially. KCT couldn't fund this on its own and so the decision was taken to board.

63. The board took a decision that KCT would then look for development partners. To partner with on investment to redevelop the Khayelitsha or the KCT mall. Have I answered you adequately.

Competition Commission: Lulama Mtanga

64. Yes you have. Would the Rand Merchant Bank be one of your development partners to help you on the funding side?

Khayelitsha Community Trust: Thembisa Jemsana

65. Yes.

Competition Commission: Lulama Mtanga

66. How big is the existing mall?

Khayelitsha Community Trust: Thembisa Jemsana

67. Rounded Off, It's twenty thousand square metres of lettable space.

Competition Commission: Lulama Mtanga

68. Twenty thousand of lettable space (Gross lettable space) and ahow many grocery retailers are in that mall, currently located in that mall?

Khayelitsha Community Trust: Thembisa Jemsana

69. We have two.

Competition Commission: Lulama Mtanga

70. Who are they?

Khayelitsha Community Trust: Thembisa Jemsana

71. It's the Spar group and it is the Shoprite Checkers group, Checkers group specifically, Shoprite

Competition Commission: Lulama Mtanga

72. And do you have any other small and independent retailers that are situated at the mall other than the mobile people that you mentioned earlier on?

Khayelitsha Community Trust: Thembisa Jemsana

73. No.

Competition Commission: Lulama Mtanga

74. There is no butchery, there is no bakery, nothing.

Khayelitsha Community Trust: Thembisa Jemsana

75. Nothing. We have a number of, we have a waiting list of people who would like to. We have two. We have two butcheries, in fact even yesterday I received another offer so we have three people wanting to be on the waiting lists. And I believe one of them has been before you because I read a document of yeah but in any case the short answer is No. But we do have expressed want from other butcheries. I think even you know one of the challenges we face is you will have a local trader saying you know they want to sell boerewors rolls or without you even knowing someone has set up a stall they're selling chicken wings. Our property portfolio manager will be called you know by one of the supermarkets, why are you letting these people sell, don't you know that we are selling boerewors rolls or samosas, or some you know chicken wings.

76. So we've had to shut down some of those, I think even remember one point I think it was Jet, had started selling dry goods or canned foods and such and there was a protest from one of the supermarket retailers saying you know it's contravening their rights to exclusivity when it came to the supplier of dry goods.

Competition Commission: Lulama Mtanga

77. And. Let's just go back a bit when was the mall developed?

Khayelitsha Community Trust: Thembisa Jemsana

78. In 2005

Competition Commission: Lulama Mtanga

79. Completed in 2005 (Correct) and the exclusivities existed from that time up until now?

Khayelitsha Community Trust: Thembisa Jemsana

80. Existed from that time on or on a ten year renewable period. So in other words we are now in the second term of those ten year renewable periods. In effects, those will be in effect for the next twenty years or for the next eighteen years.

Competition Commission: Lulama Mtanga

81. So have you renewed, so have you entered into the second renewal lease which means for another ten years therefore going for twenty years?

Khayelitsha Community Trust: Thembisa Jemsana

82. Correct. Yes

Competition Commission: Lulama Mtanga

83. OK, OK And. And again you've included exclusivity clauses in those leases?

Khayelitsha Community Trust: Thembisa Jemsana

84. We couldn't remove them.

Competition Commission: Lulama Mtanga

85. You could not remove them? What was the what was the reaction? Did you try to remove them and what was the reaction from the supermarket. You said its Spar and who else (Shoprite) and what was their reaction?

Khayelitsha Community Trust: Thembisa Jemsana

86. No. that was the reaction. It was a complete no. That will not be entertained in any way. We did sit with our broker and Spar trying to sort of explain why we needed for these this exclusivity clause to be either relaxed or completely omitted and I think technically from a legal perspective, the viewpoint was you can't change an existing contract, right or you can have an amendment with both parties, both parties agree but you know.

87. Following that consultation with Spar, for example, when it's lease renewal came up a long discussion was had but ultimately ended up in an undesirable consequence in that aside from that original exclusivity clause there was

another clause added to or contemplated to effect that within five, within a five kilometer radius of the Khayelitsha Community Trust or its subsidiaries couldn't accommodate any other supermarkets so or allow for example a supermarkets such as Game to convert to a big general trader like Game stores to convert to a supermarket as this..

Competition Commission: Lulama Mtanga

88. This is in their renewal agreement?

Khayelitsha Community Trust: Thembisa Jemsana

89. It was in the renewal agreement. It has since stricken out. And there was a another clause that was introduced that in essence and in short has led us to the arbitration process that we went through. So in summary, there was your standard exclusivity clause band then through that intervention of trying to actually relax or to remove that one ended up with even more strenuous one.

Competition Commission: Lulama Mtanga

90. You have mentioned that you document all the approaches received from traders or retailers or parties that local traders or smaller independent traders would like to set up businesses in the mall that you've had to turn down as a result of the exclusivity that Shoprite and Spar have in that mall, would you please make available that list to us? When you provide us with with your presentation.

91. You also mentioned, as you were speaking I could not keep up with you. You mentioned that having some of the traders, probably the informal traders around the mall was viewed as undesirable, am I correct?

Khayelitsha Community Trust: Thembisa Jemsana

92. Let me. Frame it (yeah). The Khayelitsha community has one main complaint and it is that, the existing shopping centre was not built in a way that conformed to their vision and aspirations. So the existing shopping centre is in open air type of. Is an open air shall we say market. So you don't have that indoor enclosed environment. You just simply walk off the street into the shops you

wish to visit. And so this discontent with the architecture of this shopping centre trickles down to other discontents. So the general feeling was that just simply accommodating and when I say accommodating just a simple letting informal traders just place themselves where they will is undesirable and I think it's undesirable for many reasons, you know.

Competition Commission: Lulama Mtanga

93. Undesirable to whom? Who expressed the undesirability?

Khayelitsha Community Trust: Thembisa Jemsana

94. It's a ...I would say if you spoke to stakeholders right. So I mentioned that our key stakeholders aside of the city of Cape Town is the Development Forum. The Development Forum which is represented or at least informal traders, I think two informal trading associations that are presented within that. So there is no question as to whether we should accommodate these informal traders. So every stakeholder meeting; their two complaints - you haven't covered the mall, you haven't enclosed it, you haven't accommodated informal traders. But I think there's a reasonable expectation that there is a way of accommodating those informal traders. At the moment people just bring whatever it is that they can in a box. They put it down and they put a stock and that's it.

95. So it would be desirable from both ourselves as the landlord and the City who manages that space as a public space as well as the stakeholders that there be some means and specifically some financial means to build proper structures for these informal traders. So that they're not forced to sort of a make do. So I would say, the protest is against this make do approach, not against the informal traders and the, shall we say allowing them to trade. Everyone recognises that that's an imperative that cannot be is just simply pushed away or diminished . It is how the informal traders are accommodated and in a way that is conducive to even their own sales, in their own businesses but also to the entire environment.

96. So one of the complaints that you would have as a landlord when it comes to uncontrolled or unmanaged informal trading is people set up where it's best for

them to access foot traffic. And so you would find someone just simple set up outside of someone else's shop. And you know we don't have an Edgars but if I can make an example. If you have an Edgars shop front and there's an informal trader sitting there because he or she sees that Edgars receives the most feet. And also you have fights about you know the first come first serve. We simply seek and we have been under pressure from the community and stakeholders to accommodate informal traders in a dignified way.

Competition Commission: Lulama Mtanga

97. So basically. There's a big, a huge demand for informal traders to be accommodated in this very vibrant lucrative place but also there's the tension comes on how then do you accommodate them and still have all the orderly looking space. (correct)

98. You mentioned the arbitration award that was given would you please provide us with a copy of that?

Khayelitsha Community Trust: Thembisa Jemsana

99. I would have to consult our attorneys first but I think we don't all right if.

Competition Commission: Lulama Mtanga

100. And then we would also like to see the lease agreements that you have with two retailers. The old one as well as the amended ones. As well as the draft lease agreements where you had to strike out the other or turn down the other requests from them for further exclusivity basically. I , we are we would like to see what it is that they are seeking and truly understand how they tried to couch what they were saying , what they wanted to do.

101. And then you said you've also had to accommodate a lot of people through mobile businesses is that and is that a how do I put ,is it that there? Is it an easy way for the traders themselves not for the mall, not for KCT for the actually operator for the person who set up the business. Is that a very easy way or is a way of doing business would it have been preferable for them to

actually have some kind of structure or is it okay? is it acceptable to them that they have these mobile facilities what's your comment on that?

Khayelitsha Community Trust: Thembisa Jemsana

102. Starting with the Spinnach King, the bakery. They would have preferred a shop. A proper structure. Yes, which is why the new sponsor, Virgin Active commissioned this mobile container for them. Department of Coffee has premises across from us, across the station. And it simply wanted to try out it's an extension of its business via this mobile trailer or mobile coffee shop which when it is needed at events they take it to events. So for them the business case is a little bit different. As with Mamachaka, Mamachaka had rolled out this brand, it's a little huts and it did not seem to have been the strategy for them to be accommodated.

Competition Commission: Lulama Mtanga

103. My last question to you is. With the huge demand that you've seen coming from the community wanting to set up businesses in the mall or around the site of the mall. I would like to understand just your view, your observation: is the demand from the township itself, from the community for these kind of shops? Is it people wanting to set up businesses because they know it's a shop that will thrive in my community this is what is required in my community?

Khayelitsha Community Trust: Thembisa Jemsana

104. Are we still talking about these three or just generally?

Competition Commission: Lulama Mtanga

105. Just generally. The approaches you have received for example from the community. People coming from Khayelitsha, itself, trying to set themselves in the mall.

Khayelitsha Community Trust: Thembisa Jemsana

106. A number of. We have had a number of requests this one group or one category shall we say is young entrepreneurs. They're working from home. Either fashion designers and people baking and selling to the

community, cookies ,muffins and so on. The youngsters I mentioned who wanted to start a gym and so on. And number of young people that approach just have a business plan. They know where they want to go and they see it as a starting point and what may main complaint is that they say I'm running this business from home, from my mother's lounge and it's not nice to have to bring clients in such an environment so you know it's an environment that I feel represents my business well. And this category has an intention to grow.

107. On the other end, we have the established businessman and so I mentioned the hardware gas guy, so we have those guys who've been doing this for years and are wanting to expand. Are also such a like the national retailers wanting space at this prime position. And then you have been really informal traders who really are just trying to get through the day and really just trying to make a living and see an opportunity and want to pursue it.

Competition Commission: Lulama Mtanga

108. This is my last question for the mix use centre. You mentioned that you conducted a study and you in that centre you were going to accommodate the needs of the community. Needs which included the fact that they wanted a variety on the supermarket offering because they are having to, they only have Spar and Shoprite and they have to leave if you can if you don't want to shop at Spar or Shoprite, you are forced to go to Mitchells Plain or Somerset, can you, so how many super grocery retailers were you hoping to accommodate in this new setting or when you do provide us with information can you just give us that whole story as to what was the plan. So really, a full picture of what you're trying to do because I think if you had to go through that whole list it may be me take long for us to do so. Thank you

Competition Commission: Louise du Plessis

109. Morning, just a few questions for clarification from my side. How far is the old shopping centre from the new mixed use centre, more or less?

Khayelitsha Community Trust: Thembisa Jemsana

110. I would say just across the road. So at this point that road doesn't exist but it will exist. When the rest of the infrastructure within the CBD is installed. So, I would say there is a road reserve of about thirty six metres in between.

Competition Commission: Louise du Plessis

111. And then how big is the existing mall versus the new mixed use centre just comparatively?

Khayelitsha Community Trust: Thembisa Jemsana

112. The new shopping centre would be slightly bigger to accommodate other commercial uses which I mentioned such as we have been talking of a gym. We have been talking of office space. We see that in the future there will be a need for parking, so we have been designing to accommodate future extensions above the existing shopping center, sorry above the new planned center.

Competition Commission: Louise du Plessis

113. And then you also made mention of the fact that you haven't been able to for example you mentioned Jet that wanted to expand their product mix to also include some grocery products and then you also mentioned an informal trader you gave an example of where you had to close them down because they sold things that were also sold by the anchor tenant. Would it be possible for you to also in your in your subsequent submissions to us, to give us a full list of all these instances and break them down between the more informal businesses that you had to close down and then the more formal business in the mall that you had to prevent from expanding their product mix and as much as possible detail with regard to each instance.

114. I think that would be very useful for us in the work, the analysis that we doing just to give us a you know for example the date, the names of the relevant parties if possible just as much detail as you can with every single instance that you've encountered in that regard.

115. In the next question I just wanted to clarify so the anchor tenants, supermarket tenants in the old mall , am I correct are Spar and Shoprite, does their lease agreements not preclude them both from being there or how does that work?

Khayelitsha Community Trust: Thembisa Jemsana

116. Spar was the first supermarket in the business district followed by Shoprite so Shoprite's lease incorporates a sentence to the effect that no other supermarket retailer except for the existing Spar.

Competition Commission: Louise du Plessis

117. So, Spar was there first. Did they not have any issue with Shoprite coming into that mall?

Khayelitsha Community Trust: Thembisa Jemsana

118. Not to my knowledge.

Competition Commission: Louise du Plessis

119. And I think that is the last question from my side, just all documentation relating to the issues that you've had with exclusivity arrangements in addition to the shops that you've had to close down or limit their product mix ,all other documentation with regard to the challenges that you've had in terms of exclusivity between the, with the opening of the of the mixed use centre that would also help us. Thanks.

Competition Commission: Louise du Plessis

120. Thank you very much it was very useful. And I think we would now take a break for tea or coffee. How long? Ten minutes, should we break for ten minutes?

SESSION 2

Deputy Manager for Consumer Complaints: Desmond Pillay

121. My name is Desmond Pillay and I am the Deputy Manager for Consumer Complaints for in Kwa-Zulu Natal and on my left hand side I have the Director Mr Tshepiso Selepe. Mr Selepe will be giving a full presentation but I will just give you a background on what Consumer Protection is all about and how it started.
122. In 1961, I am sure all of you remember a great statesman by the name of John F Kennedy, who was very interested in protecting the rights of consumers. And in 61 he addressed the United Nations and said that too many poor people are being exploited and the rich and the huge conglomerates are getting away with the proverbial murder, so we came out with two rights. The right to be protected and the right to consumer protection and from that he went back to his attorneys they were consumer lawyers and they came out with eight consumer rights which was presented to the United Nations.
123. Now the head of Consumer Protection is a Consumers International which is based in Switzerland and every year consumer's protection will come out with a theme, which is celebrated on 15th of March, because when JF Kennedy spoke he spoke on the 15th of March. So to commemorate that great day, it's known as World Consumer Rights Day, and its celebrated all throughout the world. Now, I think this year, the theme was pharmaceuticals if I am not mistaken and every year they come out with a theme but, we don't particularly follow that theme, we follow a theme that's more Afrocentric if I can use that term, because prior to Kennedy talking about consumer rights, consumer rights in South Africa was very Eurocentric the majority of people were forgotten and when we celebrated our democracy in 1994 we changed everything.

124. We had two pieces of legislation, the Harmful Businesses Act, which became the Unfair Businesses Practice Act. And now we have various pieces of legislation and you all know it's called the Consumer Protection of Gauteng, the Consumer Protection Act of each province and we also have one, so we have decentralised the legislation. It's a vehicle, it's a legal vehicle that helps to protect the rights of consumers.

125. Concurrent to that, we also have a Consumer Tribunal. We don't have one yet in Kwa Zulu –Natal but that tribunal will have commissioners that will sit from time to time to adjudicate on matters that we can't resolve. In my section, that is compliance handling, my role and my mandate is to adjudicate and to carry out investigations where consumers feel that their rights are being violated.

126. Now I can handle a complaint from a hairdo to a facial to clothes etc. There is various types of complaints that we can handle. To give you an example we have just finished our first quarterly report and we have handled almost 1106 complaints. Which is quite a lot for three months considering that we don't have many staff and that we are fairly low on the ground but that is just a general description of what we do.

127. We also have an education section that is current complaints we handling and the consumer education officers responsible for going out there and educating or informing consumers on their rights and responsibilities so if you are well informed, well-educated then you will know when to complain and you will make a valid complaint and not an invalid complaint.

128. Concurrent to that function, we have the enforcement section. Miss Naidoo sitting there, she heads the enforcement section and I don't envy her job because she has to apply the law and issue a compliance notice, in other words she will carry on inspections at various business places and inform the service provider if they are not following the law and then she will tell. So in a nutshell this is where I come from and my director will take over now. Thank you

Director for Consumer Complaints: Tshepiso Selepe

129. Good morning all, as I have been introduced I am Tshepiso Selepe Director of Consumer Protection Services Kwa Zulu Natal, my colleague here has actually said a mouthful, but I just want to give you a broader picture of basically who we are. We are from the Economic Development Department and Environmental Affairs. We are within a directorate called Business Regulations and within Business Regulations we have Consumer Protection services that's where we are.

130. We work very closely with NCC, the National Consumer Commission and we have decentralised the functions of Consumer Protection throughout the nine provinces and we have the officer of Consumer Protector within the province as well. Our main aim emanates from the Consumer Protections Act and we also have our own legislation within the province the Kwa-Zulu Natal Consumer Protection Act.

131. And just to give you a picture to say why the Consumer Protection. We work very closely with the Competition Commission. We have same interests as yourself as we are here to protect the rights of consumers. But there is also a misconception that we only for consumers. We also for business, also protecting the rights of business, educating businesses and so on.

132. If I give you a bit of the background in terms of how Consumer Protection came into being as my colleague alluded. Prior to 2008, we had consumers and businesses always squabbling around and there was no clear guideline in terms of consumer rights and so on, but after 2008 we had this legislation whereby the legislation which was enacted in the Consumer Protection Act to protect the rights of the consumers. Because most consumers especially the historically disadvantaged were actually denied. So that's where we come in, to say we are here to protect the rights of the consumers and by so doing we will do business inspections on a regular basis.

133. We have various stakeholders that we work with in the province, including Home Affairs, SARS, and Department of Labour whereby we visit various business provinces around the office. We normally target the farfetched rural areas, were we visit supermarkets. We do business inspection and we find

most of the food that are sold are expired groceries in the supermarkets and when we work closely with local municipalities, whereby we actually able to deal with those businesses that are actually taking advantage of our people.

134. We make sure that those goods are actually removed from the shelves and at the same time we have another process whereby we also educate businesses in terms of what is expected of them in terms of protecting the rights of the consumers. We also do various workshops for consumers, as well sensitizing them in terms of what is expected. Of their rights, we actually work very closely with foreign nationals as well. What we picked up is that most businesses in the rural areas are predominantly Chinese businesses and we picked up that was that most of the groceries were actually expired. What we do is that we do not penalise them but we educate them in terms of what has been expected. In terms of our legislation in the country.

135. In a nutshell that is what we do, but at the same time we have our regulation services within our directorate which deals with informal traders, whereby we go around rural areas and working very closely with informal traders unfortunately, my colleagues are not here, I am sure they would have also present in terms of the areas that they have covered and what they actually doing in terms of these.

136. And recently we are busy launching a business bill for Kwa-Zulu Natal from regulation services. We actually have just finished doing our public hearings and the Act will be promulgated and will be effected, which will actually empower most small businesses around the province in terms of capacitating them. The other issue we have picked up with business inspections is that we have noticed that most businesses in the rural areas are operating without business licences so we covered that in our Business Bill to actually accommodate small businesses especially the informal traders in terms of capacitating them and assisting them efficiently. In a nutshell that is what we do as Consumer Protection Services and we would love to build a cordial relationship with the Competition Commission going forward yeah, thank you

Competition Commission: Chair

137. Could I just ask you to give us evidence of the expired grocery inspections? Not necessarily now but give them to us soon.

Director for Consumer Complaints: Tshepiso Selepe

138. In fact, I would actually have loved to have presented what some of our findings here on a slide show but I would forward them to yourselves, they will be available to you and the shops that we visited and what we found in those shops yeah.

Competition Commissioner: Louise du Plessis

139. Uhm do you have the presentation with you now?

Tshepiso Selepe: Director for Consumer Complaints

140. I have got it here on my laptop and I can actually make it available to you guys.

Competition Commissioner: Louise du Plessis

141. And would you like, can you present it now?

Director for Consumer Complaints: Tshepiso Selepe

142. Okay, sure.

Competition Commissioner: Louise du Plessis

143. In the meantime, I can just organise that we do that and we can continue.

Director for Consumer Complaints: Tshepiso Selepe

144. Ladies and gentleman technical glitches sorted out, just to give you a background again to say who we are, we are Consumer Protection Services, based at a provincial office in KZN. We work very closely with NCC and obviously yah. The background behind us coming into being is prior 2008, environment of Consumer Protection was unregulated and post 2008.

145. We are regulated to protect the rights of the disadvantaged consumers, not only disadvantaged but all consumers. If you look at this picture here, prior to 2008 it used to be like this you know it was sort of like a marriage scenario where you have husband and wife not talking to each other, between consumers and businesses. That was prior to 2008, like post we are just in the middle. We are not only one sided we are also protecting businesses as well.

146. That misconception that we only focus on consumers is not true we also protecting businesses. I am not going to take you through the slides but as I have alluded earlier, we have two legislations, we have Consumer Protection Act 68 of 2008 which is a national legislation and we also have our own Kwa Zulu Natal Consumer Protection Act which came into being 1st of April 2011. So that actually covers promotion of any kind of materials, marketing prices, labelling, display selling, deliveries installation, repairs maintenance and product liability so that's what we cover.

147. The role of Consumer Protection Services is, we educate and make awareness campaigns on consumer rights in the province. We investigate consumer complaints and we also ensure there is enforcements and compliance. We have three legs. We have investigations, we have education and we also have inspections and enforcements. So we currently busy establishing our tribunal. We know will actually assist us in times of issuing compliance orders but at the moment we relying on NCC to assist with that.

148. We have various consumer rights, in total we have nine Consumer Rights. The first one: Right to equality to consumer market, Right to privacy, Right to choose, Right to disclosure of information and the Right to fair and responsible marketing and the Right to fair and honest dealings, Right to fair, just reasonable terms and conditions terms and conditions and the Right to fair value and good quality and safety and the right to accountability of all supplies. I am not just going to go in details but the rights are very clear. That's what we actually there to enforce as Consumer Protection Services,

149. As I have alluded earlier on, we have inspections that we conduct with various stakeholders throughout the province. We have SARS assisting us with

the inspections, SAPS, Department of Home affairs, legal authority NCRS, NCR, DEF and municipality, various local municipalities that we work with and as I have alluded earlier on that we go to various district offices and local municipalities. We conducting inspections and we do those inspections mostly we targeting fast moving selling goods in the supermarkets various supermarkets including the big supermarkets like Checkers Shoprite, Pick and Pay and to the rural areas Boxer, Check Star and all those various retail stores and you will be shocked about things that we find in those retail stores that goods that are sold to the public, expired goods that are sold to the public and we are there to ensure that our consumers are protected and are sold good quality products not expired products.

150. The sectors that we targeting when we do inspections is as I have alluded fast moving consumer goods, motor industry, liquor industry, financial services and tourism. But there is an endless list of what we focus on but these are our main priorities when we do those inspections.

151. Findings: these are the findings that we come across when we doing our inspections mostly on FMCG. We find most of the goods are sold to the public and they are expired and some of them are not consumable. We have also found that some of the retail shops are still having the signage to say no refunds, no return and no exchange and we try by all means to educate businesses about CPA and what is expected in terms of the laws and then we actually ensure that they comply with our laws.

152. This is what we found in some of the shops that we visited: the CIPC certificates and the SARS documents which are not legitimate. And we find that most businesses especially foreign national businesses they use local residents, using their details to register businesses and only to find that when you go there the business owner is a foreign national and not a local resident and the person who has actually registered the business doesn't even know that they are owning a business. And the business is flourishing and doing well and they are not benefitting at all.

153. So these are the expired foods that we found on the shelves in various retail shops that we visited and junk food that is rotten and removed from the

shelf. You can see the pictures, there are some chips there which are sold to kids, children and we found that some of these chips they don't have proper labelling and they old and our kids consume these products and they get sick.

154. If you think these were prawn's ladies and gentleman these are just frozen chicken wings dating back as far as 2015 that we have found, so these are the things that we found in the shelves and we removed them immediately from the shelves. Rotten and Frozen meat that is old and expired that we removed in some of the shops. These are the sweets that are found in some of the shops which are consumed by kids and they are old and expired. So you find kids consuming some of these things and getting sick and some of these products had finger nails in it and most where rotten. So these were removed from the shelf.

155. These are health and safety issues that we found. Wires being disconnected not properly in terms of health and safety standards and lying all over the floors and consumers come in the shops and tripping. And this is putting the live of the consumers in danger. You can see that, that's how most of the shops are operating.

156. These are some of the products which are not being properly labelled. You don't know who manufactured these products. You don't even know the quality of these products. What the ingredients of the products are. And these are some of that product that we found when we go and do these inspections. We work very closely with health practitioners which are actually helping us to actually assess these products and we are able to actually remove these from the shelves.

157. These are consumer products which have no expiry date and what we have picked up is that most of these shops, especially in the rural areas they buy most of these products, from the big retail stores at a very discounted rate. And when they sell these products in the rural areas, they sell them very cheap. At a very cheap price. And people will actually go for anything that is cheap because looking at tough economic situations right now, people can't afford. And most of the shops in the rural areas they buy from these big retail stores and they are at a discounted price. And then when they sell these products to

the people in rural areas they remove the expiry date. So that the people cannot detect the expiry date. So these are the things that we pick up in these shops.

158. These are some of the goods that we removed from the stores which are expired and rotten. Some of the baked beans which are damaged, which are not supposed to be sold to the public. They are supposed to be disposed but you find these products still in the shelves and people are selling them. Basically that's that ladies and gentleman. And we find most of these transgressions happen mostly in the rural areas, but we also have some of the retail supermarkets within the CBD still transgressing and we always try by all means to ensure that we enforce the law and we have other stakeholders which are actually supporting us to do this and yeah, basically that's that. Thank you very much.

Competition Commission: Chair

159. Thank you.

Competition Commission: Lulama Mtanga

160. Sorry Sir, I just want you to, for our records, to just repeat your surname is it Selepe or Selebi

161. **Director for Consumer Complaints: Tshepiso Selepe**

162. Its Selepe.

Competition Commission: Lulama Mtanga

163. Okay, thank you.

164. On the enforcement and on the inspection side how big is the KZN team that goes out to do the inspections and enforcements?

Director for Consumer Complaints: Tshepiso Selepe

165. We have two types of inspections. Within our unit we have two people covering the whole province, doing random inspections with various businesses but at the same time we have actually established a forum consisting of various

estate agencies, including ourselves we actually initiated the forum. We have SARS, we have SAPS, we have various departments, department of Home Affairs, Labour and DAF and so on. And we actually drafted a plan that every month we go out and do these inspections as a team because we actually established that when you do these inspections on your own you are not so effective as compared to when you have a whole lot of team. And we found that to be actually working for us so every month we do those inspections with a whole lot of state agencies, in fact we have actually scheduled one for this month which should be end of the month with all these departments.

Competition Commission: Lulama Mtanga

166. With the forum that you have now established, how many people would be in the team to do the inspection?

Director for Consumer Complaints: Tshepiso Selepe

167. Approximately we have a team of 20 people.

Competition Commission: Lulama Mtanga

168. And you all go to one site together?

Director for Consumer Complaints: Tshepiso Selepe

169. We all go to one site together but we split ourselves if we are targeting various sectors. We always prioritise FMCG but at the same time we have people who are interested in regulating the Motor Vehicle industry and Tourism sector, but we all go together and do the briefing together and then we split ourselves in various supermarkets

Competition Commission: Lulama Mtanga

170. On average in one month how many FMCG sites retailers for example is the team now as a forum able to cover?

Director for Consumer Complaints: Tshepiso Selepe

171. We actually cover approximately about 5 shops.

Competition Commission: Lulama Mtanga

172. Do you have a sense of how many retail sites FMCG retailers, in the Province that you need to cover, that exist actually?

Director for Consumer Complaints: Tshepiso Selepe

173. It's quite a lot because KZN is vast. We have about 12 districts we cover all these districts. We go as far as Phungula and all these other rural areas, including Durban, CBD itself, we have actually drafted a plan for the entire financial year to say. We visiting different local municipalities, including the rural areas and Urban areas, so we trying to merge the two.

Competition Commission: Lulama Mtanga

174. The reason I am asking you these questions, is the issue of unhygienic conditions and goods being sold in some of the retail sites in the townships and rural areas has been raised in the submissions that we have received. And we are not familiar with who actually regulates this and how it's done and how effective that regulation is.

175. If for example, you are conducting this inspection, it would help us a great deal perhaps beyond this for you to give us the statistics, how much you covering and just to enable us to get a sense of how effective you are in doing it at least in the province, because we would like for example, if we do come across a province that does this in the most effective manner that we use that model and probably consider it for roll out in the other provinces as a recommendation for example if you could.

Deputy Manager for Consumer Complaints: Desmond Pillay

176. I am sorry ma'am I am sure it would be useful for us to provide you with what we call a trend analysis. It's a patch out which will tell you, what are the difficult complaints that we receive from the consumer complaints as we go out there because that same provided to the powers to be will show where are the rotten tomatoes, the bad cigarettes that's being sold and then you will get an idea. Just to give you an example. I do not know whether this falls under your mandate, but maybe I should say this but if you walk into the townships, particularly the townships like Phoenix, Umlazi, Chatsworth, I am talking about

KZN and on the streets you will find cigarettes that you have never seen in your life, In other words the brands.

177. Now I am a smoker and I know smoking is bad, these brands they are very cheap, you can buy them for R5 a packet. It's very harmful to the body and people are buying it. And we would like to know who is bring it into the country. We suspect that its people from other countries, I don't want to mention those countries right now. But that's one of the things that if it does fall within your mandate its serious business.

178. The second thing that is critical for you guys to understand, and I am going to mention this because when you go into a supermarket, and you buy a simple thing like orange juice, and I have done research on this. You will find that on the back of the fruit juice, if I can use that word you cannot see what preserves the fruit juice and they do it purposely, because they don't want you to see it, you need a magnifying glass. But if you read carefully you will see something called Sodium Benzoate that on five fruit juices. Sodium Benzoate when its mixed with sunlight and mixes with ascorbic acid its liquid benzoin and medicine has stopped it but South Africa has not, that's a serious consumer issue.

179. There are other things that are being sold on the street, and that is why I mentioned the trend analysis. And sorry it's for genital sex of the woman, they prowl on your vanity. If I can be straight forward and they sell creams that have got hydroquinone and hydroquinone has been banned and it was banned in the 1960s. But there are certain creams that are being sold on the road right now which contains hydroquinone which is mercury, and can burn your face and you can get cancer of the skin, so that's why I say these issues that we come across our foot soldiers come across and we provide it to our consumer education. And that is what Mr Selepe showed you from that effect we go to the shops and of course destroy goods, I thought I would just share that with you.

Competition Commission: Lulama Mtanga

180. Your trend analysis would be very good for us; in fact, I was going to move on to the findings and ask to what extent you can share those with us and

I will tell the members of the public the relevance. We have been advised that there are businesses that actually benefit or have an advantage in selling these outdated stuff or counterfeit goods and pricing them at extremely low prices that other competitors or players in the market can't actually match whatsoever. And as a result your properly compliant business is driven out of the market and you are left with parties that are operating selling these kind of products. So it's from that perspective that this would be of relevance to us as the enquiry. So we would like to get your trend analysis.

181. And also I wanted to check what Mr Selepe had said on findings and how shocking the nature of your findings are. We have the big retailers that say when they move to the townships or rural areas when they move to the Peri-Urban areas. They bring quality goods, they bring low prices all sorts of benefits to the consumers and so far we can only rely on what they say and the claims that they are making. And to the extent that those findings, it would be important to see a picture from those findings where all businesses are actually culprits. In selling poor quality all prices are low. Because it's actually poor quality that is being sold in the first place. So we would like to see. Is it possible for you when you share the trend analysis, the pictures of those sellers are to a lesser extent and also to what extent you have found this kind of conduct to be prevalent and probably amongst the big retailers themselves because this is a claim that has been made, so we need to interrogate that. It is part of what competition law is all about. So we would like to have a look at that, without necessarily having to do your work, but we want to understand the claims that have been put to us, because when we measure the benefit to consumer when they say look at the consumer welfare these are some of the claims that are made to this enquiry. Thank you. So when you share the findings will you be able to mention the parties. Is that information confidential or not, I just want to understand now?

Director for Consumer Complaints: Tshepiso Selepe

182. No its actually not confidential, we can share that with you.

Competition Commission: Lulama Mtanga

183. Because it's a contravention of the law, and we would like that, as well as on the counterfeit of goods.

Director for Consumer Complaints: Tshepiso Selepe

184. And just to add, to say how effective are these inspections? I must say that our inspections are very effective, because what we normally do: we visit the area, do the inspection and educate and stuff like that. And after a month or so we go back to the same retailer, just to monitor and check if they comply. So we have established these inspections are actually effective, and we find 100% compliance after we visit those stores. So actually for us we establish this forum is an effective tool to actually utilise, maybe other provinces could actually utilise this. It could be of benefit.

Competition Commission: Lulama Mtanga

185. Are you aware of other provinces that have similar initiatives?

Director for Consumer Complaints: Tshepiso Selepe

186. No, it's only us in the province. That we actually doing this as far as I am concerned.

Competition Commission: Lulama Mtanga

187. And you also mentioned, I didn't hear this part clearly. Where you said on the expired goods, that come from the retailers in the cities and then they get sold to rural areas, and then the expiry dates are removed. Is the removal of the expiry date by the seller or by the purchaser do you know at which point this happens?

Director for Consumer Complaints: Tshepiso Selepe

188. As far as we are concerned we can't pin point a finger to say who actually removes, but we find them with the sellers, the guys that have actually bought the goods from the retailers. Yeah that's the information that we got.

Deputy Manager for Consumer Complaints: Desmond Pillay

189. Sorry, I just need to add this, most of the stores I just want to mention a few names like Edgars and Woolworths comply. Who we find are like the real trouble makers and exploit the poor are those fly by night stores. If I can use the word. The guy that opens the supermarket in the sticks and it's not a famous brand name and what he does as Mr Selepe mentioned, he will buy very cheap and he will sell it to you because you don't know, and so they ply their trade there and you won't know. If you go into grey street Durban you will find a thousand cell phone shops. You will become suspicious like why are they selling so many cell phones. There is something wrong there and it's not the Woolworths or MTN stores, these are the Chinese and the Nigerians, but someone is supplying them with the goods and it's very difficult to find out who is supplying them with the goods.

Competition Commission: Lulama Mtanga

190. There has been an issue or concern of a point being made about the importance of licensing players across the value chain, especially in the grocery retail sector that's one of the submissions that was made yesterday. And would you say it is important that licensing would also deal with the fly by night shops that sell these kind of goods. Secondly as well as the extent to which we can licence the informal traders and how, just comment on the viability and effectiveness of that. Is it not too much work to do, does it not limit who then operates, does it not affect legitimate players negatively because. The Competition Act would frown upon any conduct where you come up with regulations that reduces the number of players unfairly so, that are actually compliant, so what would be the effect of licensing in your view, if this had to happen.

Director for Consumer Complaints: Tshepiso Selepe:

191. As I have alluded earlier on that we are just busy with the Business Bill KZN. In fact, the KZN Business Bill will be compulsory even for informal traders to be registered, to have a license, to be registered and operate. So every trader will be compelled to have a business licence to operate including informal traders.

Competition Commission: Lulama Mtanga

192. And where do they obtain the licences?

Director for Consumer Complaints: Tshepiso Selepe

193. At the local municipalities.

Competition Commission: Lulama Mtanga

194. And have you discussed what sort of formalities have been established with the municipalities to fast track and to also investigate and interrogate these applications and that can be done efficiently so people don't have to wait 4years, 5 years, 10 years for licences to be granted to them. In order for them to operate.

Director for Consumer Complaints: Tshepiso Selepe

195. How we normally do these inspections with the forums, we work very closely with the local municipalities, they are part of our team. When we go to Phongola we work with the Phongola Municipality and we have all the teams joining us and sitting with us and handling and doing these inspections, so we have also worked with most of the municipalities bills and what is expected of them. In terms of capacity and how they can also benefit as municipalities these businesses are being registered so they can actually collect some revenue out of it.

196. So the municipalities have come on board and they are with us and they are aware, that the responsibility lies squarely on their shoulders, to ensure that businesses are registered. So That's something we are working on.

Competition Commission: Lulama Mtanga

197. So as you may be aware one of the areas that this Inquiry is looking at, is the regulatory frame work, within the grocery retail. So I would like to request that you make available that bill to us, as we would also like to make some comments on the bill and see to what extent it assists in whatever concerns that we have identified, but also to ensure that it does not hinder businesses in

a manner that we may not have appreciated as a team dealing with the concerns that you are dealing with.

Director for Consumer Complaints: Tshepiso Selepe

198. My suggestion is that can I perhaps propose that I bring my colleagues on board tomorrow, and present this to the house. So that we have a clearer picture, and you understand where they are coming from and how the bill will be implemented but most importantly we will also touch on the issue of informal traders and how they will be affected by this licensing and so on. They will be able to give you a clear picture as to how this bill will be affecting the informal traders and the General business in KZN.

Competition Commission: Chair

199. Can I just suggest that you make the arrangements with Mrs Du Plessis afterwards?

Director for Consumer Complaints: Tshepiso Selepe

200. Ok

Competition Commission: Lulama Mtanga

201. Your colleagues can come; I have a note from here that they can come, however we would still like to have a look at that bill.

Director for Consumer Complaints: Tshepiso Selepe

202. Okay, alright, sure

Competition Commission: Lulama Mtanga

203. That's my last question, thank you.

Competition Commissioner: Louise du Plessis

204. Morning, and thank you again for presenting, just to echo Mrs Mtanga's views that this is quite an important aspect to the inquiry for the reasons that she has set out. I have a couple of questions for clarity. The first one is regards counterfeit goods. So I think you have shown a lot of information regarding

goods that have expired and you have alluded to the issue of cigarettes that may be counterfeit. We have also received some information regarding brands that are perhaps imitated and that may contain harmful ingredients and so on is that your experience as well and if so what are most common brands in your experience that have been imitated and does contain harmful ingredients?

Deputy Manager for Consumer Complaints: Desmond Pillay

205. It's usually in the cigarette industry. And you will find it as I alluded in the townships. Now you might get a copy Stuyvesant, you might get a copy Dunhill. But the brands that you usually find are the brands that you do not find in South Africa, funny names and they sell very cheaply and on the box they actually don't write the tar quality, by law and health they should do that so. If you are a poor person and you can only afford R10, you going to buy it. And this is a funny exercise I was in the townships one day and asked the vendor where did you get the cigarette from and she didn't tell me, she felt I was affecting her business. I don't blame her she is just selling the stuff, but the thing is that it is very harmful to you.

206. And also sweets as Mr Selepe alluded you also find some funny sweets in the street. They taste like halls for example but they are not, and so we don't know what they have in, we don't have an actual study, to say we have done a particular scientific study on where it comes from or who brings the brand but that as far as I can tell you and I think we need to someone actually needs to do a study.

Director for Consumer Complaints: Tshepiso Selepe

207. I just want to add that most of the guys who are able to tell us if goods are counterfeit or not we normally work with NCRS and SABS as well. Those are the guys who are well equipped to actually establish whether the product is counterfeit or not and we work very closely with them and they are able to share their expertise with us.

Competition Commissioner: Louise du Plessis

208. Okay, thanks, you have shown us the site visits and inspections that you have done, but you also alluded to the fact that you received complaints on a regular basis, have you received complaints regarding goods that are sold in spaza shops specifically and do you have statistics regarding those complaints.

Director for Consumer Complaints: Tshepiso Selepe

209. Not quite, we do not have specific stats on spaza shops. But my colleagues from Business Regulations have specifically conducted an investigation on spaza shops, so they will be in a better position to comment on that, as they have already done a study on spaza shops. And they are the ones who will present tomorrow.

Competition Commissioner: Louise du Plessis

210. But just from the top of your head, have you received complaints not only from consumers, but also from other spaza shops complaining about their competitors selling counterfeit goods?

Director for Consumer Complaints: Tshepiso Selepe:

211. No we did not.

Competition Commissioner: Louise du Plessis

212. Then in one of your slides, you had a picture of goods that were not properly labelled and manufactured, they didn't necessarily look like they were expired and all, but they obviously didn't go through the normal processes of making sure that they are no health risks there. What are the processes if you are making a sauce of some sort and you want to sell it to a retailer? Or in a spaza shop what are the processes that you have to go through in order for that product to be legitimate on the shelf and to make sure that there are no health and safety concerns.

Director for Consumer Complaints: Tshepiso Selepe

213. Okay basically what we expect is that you must have normal ingredients that are expected on any product. The consumers must know what is in that product and what the product is made of so the manufacturer has to ensure that the ingredients are properly labelled on the product and who manufactured those products and when was the product manufactured and when will the product actually expire. So basically those are the critical things that we need to know from the supplier and what supplier need to list when supplying a product to the consumer.

Deputy Manager for Consumer Complaints: Desmond Pillay

214. Just to give an example, you walk into the supermarket and then you buy a globe, you will find the stamp on the globe, it's not there for fun, it's to tell you that it's been tested. If there is no stamp on that globe or there is no code, there is no IOS number. If you put that globe in your room, it could burst into flame and burn your face, so all globes in South Africa that are manufactured by legitimate manufacturers you will see that code.

215. But what we are alluding to is that some of the products that are manufactured from overseas they do not have those numbers, there is no proof of testing or science behind it, so the consumer doesn't know and the globe is a perfect example even a pen has to be tested because it's an instrument that you are using and consumables things that you eat it critical its important, or cosmetics for example now if you go to a regular store if you look at the box you will find it has an IOS number it has been tested that is required by the safety standard the health Act, it's a requirement whether we like it or not. But the products that are coming into South Africa e.g. in Timbuctoo no stamp no nothing and its sold in rural areas because our consumers don't understand and so they are being harmed that's critical.

Competition Commissioner: Louise du Plessis

216. I think that's right yes, if we look at the small suppliers, the entrepreneurs that is making a sauce product that they do then want to sell in a shop, what is the requirement to get an IOS number and who would they have

to approach to get this, the basic regulatory requirement that they would have to fulfil.

Director for Consumer Complaints: Tshepiso Selepe

217. Just to respond on what you are saying, it also depends on the product, for instance we have seen instances where small traders they sell things like atchaar and so on without properly labelling. Without the expiry dates and stuff. What we normally do is, we actually compel them to list the ingredients. What are the ingredients in the product and when was this product manufactured, because it will be unfair to sell some of these products to consumers not knowing when they were manufactured or when they are expiring. So the consumer has the right to know when is this product is expiring and when was it manufactured. So those are the things we expect them to comply with, whether you big or small you still have to comply that's the bottom line, yeah.

Enforcements and Compliance: Narvir Nakuma

218. Apart from the normal inspections that we do where we go into supermarkets etc, we basically go into every store. Every retailer that will fall under the purview of our Act, we would go in and we would inspect, your findings like the sauces etc. We normally do in your home and local industries they don't normally need an IOS number to make their product sellable. What they would basically need to do and we educate, we will go into a home industry or little industry that would sell homemade products and we look at the product and tell them that they need to put in labels, put on a sticker that would show the ingredients of the product and the name of the manufacturer, manufacture date as well as expiry date, that will be sufficient and basically meets our requirements.

219. In instances where they are not sure about compliance we ask them to call everyone in and hold a workshop to educate them on compliance. In terms of counterfeiting goods, we work closely with the NRC, support health etc., so we specifically go for interviews at the ports of entry. The largest port is the Durban port. At any given time you would have a number of containers, so different legal bodies will be there at the port with their various legislation, for

example, if a container came with counterfeit Adidas tekkies we would pass that on to SAPS as that is part of their mandate. We find all kinds of counterfeit goods e.g. sunlight liquid, drills and we would liaise with SAPS and the original manufacture e.g. Unilever that goods have come in with no authorisation letter so they need to come and inspect.

Competition Commissioner: Louise du Plessis

220. Thank you, I think following up from there and taking the focus away from the goods themselves and maybe the conditions of your average spaza shop in a township, urban or rural area what are the basic requirements of that shop, talking in terms of ventilation, electricity and even living conditions, is someone allowed to live in the shop or in a room behind the shop, maybe for clarification what are the basic conditions required for spaza shops?

Director for Consumer Complaints: Tshepiso Selepe

221. Okay, I, our experience it's not only spaza shops, we have seen in some of the retail shops especially if you go to rural areas, the retail shops owned by foreign nationals you find goats are sold in the shop and people are still living there, you find cats and everything else and you find that highly unhygienic. So what we do as I said it's a team of us going there, we have Department of Labour which is there to enforce such laws, the health and safety issues, we also have environment health practitioners, which are there to enforce those laws, so it's a whole lot of us doing that and we try to issue compliance notices and so on to ensure that the businesses they comply with those standards.

Competition Commissioner: Louise du Plessis

222. Okay, so just in terms of those actual standards, I don't think you can actually list all of them right now, but just high level standards that a shop needs to comply with.

Enforcements and Compliance: Narvir Nakuma

223. Well different sectors have to comply with different standards e.g. a retail store, in terms of receipting, every store needs to have a tax number on the receipt. They would have to have the trading name of the business, the

registration number, telephonic details. In terms of the receipting you have to ensure each product are listed as well as the units per purchase. If you are in retail, you are not allowed a product that says no returns or refunds. If it's a blanket sign then we ask you to reword it.

224. If you are in retail that sells consumables, then we need a manufacture date and an expiry date, pricing and good ventilation but normally municipality check ventilation, so we go in stores and check in terms of our law and legislation.

225. If you are in the business of selling furniture. All pieces should be marked and have a code description. If you are selling Nike, Adidas we will ask you for letters of authority from the manufacturer of the product and that will ensure the products, you are selling are not counterfeit.

226. If we go into a workshop for instance, where you are repairing motor vehicles, we would ask for signage to be placed. We would look for invoices and how you invoice your clients etc. So each factor is looked at with laws pertaining to that particular industry.

Director for Consumer Complaints: Tshepiso Selepe

227. If I may add as well regarding the issue of receipts, we picked up that most of the rural shops are small traders they do not issue receipts to customers or consumers. So we always encourage them to comply with that so even ask consumers to always ask for a receipt when making a purchase as it actually makes it easier to go and investigate as we know where the goods was purchased, so those are the things we request the businesses to have in order.

Competition Commissioner: Louise du Plessis

228. One last question of clarity so if you have a shop and have a room at the back of the shop that you actually living in but it's not part of the shop, will that be compliant or not?

Enforcements and Compliance: Narvir Nakuma

229. That would basically be non-compliant, you cannot trade and live in the same place. We found that in Kwa- Zulu Natal and we have referred those matters to the municipality and the municipality has to enforce that order, that shop owners, cannot live in the shop itself.

Competition Commission: Lulama Mtanga

230. Just one last question, you mentioned that with regards to counterfeit goods that come through for example from the Durban Port there are inspectors that will be able to intercept those goods. I just wanted to confirm is that a random search or do you check each and every consignment that comes to the port, how is that done?

Enforcements and Compliance: Narvir Nakuma

231. Unfortunately, it's not each and every container that comes into the port, as they are about anything like 15 000 containers that come through to the Port at any given time and unfortunately there is not enough foot soldiers to check each and every container, the regulators normally look at manifestos sent by the shipping company.

Competition Commission: Lulama Mtanga

232. So, how are you able to clamp down on this issue because it has been raised on a number of submissions? How do we control counterfeit goods coming into the country by land or by sea?

Enforcements and Compliance: Narvir Nakuma

233. Unfortunately, not as this does not fall under the purview of our Act, it would have to be the SAPS. It is only when we do our own inspections that we come across counterfeit goods that we bring it to the attention of the SAPS that this is a container that they should check and we hope they take it up from there.

Competition Commission: Lulama Mtanga

234. Let me confirm, why would it be possible for you to fall within your mandate to check ports yet not check what comes through the borders for the work that you doing?

Enforcements and Compliance: Narvir Nakuma

235. Because under our Act, we look at quality of goods, because one of your rights as a consumer is quality of goods and services. So we look at your electrical appliances in terms of them coming down are they compliant or non-compliant. We can't do the inspection every day because obviously we just have two inspectors to cover the entire province.

Competition Commission: Chair

236. From what I understand that's the function of customs and its units and when you are invited to the port it's because of a container that they believe falls within the entities legislation so they only go on invitation and it's not something they do on a regular basis.

237. Thank you very much indeed and we look forward to your presentation from your Business Unit tomorrow at a time arranged with Mrs Du Plessis, so thank you very much again, are we able to get a copy of your presentation. We will adjourn till 2.

SESSION 3

Competition Commission: Chair

238. I just wanted to say that the stakeholder was here but we just can't locate him so will just wait and try and find him. The stakeholder is not to be found and it's rather unfortunate but accordingly I am going to close today's session and we reopen at 10 O'clock tomorrow, we reconvene at 10 o'clock tomorrow.

