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<td>Australian Competition and Consumer Commission</td>
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<td>BATSA</td>
<td>British American Tobacco South Africa</td>
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<td>BCC</td>
<td>Bibi Cash and Carry</td>
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<td>CAC</td>
<td>Competition Appeal Court</td>
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<td>CBD</td>
<td>Central Business District</td>
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<td>COGTA</td>
<td>Department of Corporate Governance and Traditional Affairs</td>
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<td>Department of Agriculture, Forestry and Fisheries</td>
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<td>Distribution Centre</td>
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<td>Devland Cash and Carry Nelspruit</td>
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<td>Department of Economic Development and Tourism</td>
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<td>DPME</td>
<td>Department of Planning, Monitoring and Evaluation</td>
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<td>DTIC</td>
<td>Department of Trade, Industry and Competition</td>
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HDI
Historically Disadvantaged Individuals

IBC
Independent Buying Consortium

ICC
Independent Cash and Carry Group

IDC
Industrial Development Corporation

IPAP
Industrial Policy Action Plan

ITUP
Informal Traders Upliftment Project

KCT
Khayelitsha Community Trust

KVI
Key Value Item

KZN
KwaZulu-Natal

KZNEDTEA
Department of Economic Development, Tourism and Environmental Affairs

KZNEDTEA
KZN Youth Chamber of Commerce and Industry

LCC
Limpopo Cash and Carry

LEDTEA
Limpopo Economic, Small Business Development, Tourism and Environmental Affairs

LIDC
International League of Competition Law

LSM
Living Standards Measure

MFN
Most Favoured Nation

NAMC
National Agricultural Marketing Council

NAFCOC
National African Federated Chamber of Commerce and Industry

NCB
National Credit Bureau

NCC
National Consumer Commission

NIBUS
National Informal Business Upliftment Strategy

NEF
National Empowerment Fund

OECD
Organisation for Economic Cooperation and Development

OFT
The Office of Fair Trading

PLAAS
Institute for Poverty, Land and Agrarian Studies

PDs
Producer Distributors

RCC
Riviera Cash and Carry

RCSF
Retailer Competitiveness Support Fund

SAB
South African Breweries

SABEPCO
South African Bulk Entrepreneurs Primary Cooperative Organisation

SACSC
The South African Council of Shopping Centres

SAFEX
South African Futures Exchange
SALGA  
South African Local Government Association

SAMILCO  
South African Milk Co-operative

SAPOA  
South African Property Owners Association

SAPS  
South African Police Service

SARS  
South African Revenue Service

SASTA  
South African Spaza and Tuckshop Owners Association

SATA  
South African Trading Association

SCOB  
Somali Community Board of South Africa

SEFA  
Small Enterprise Finance Agency

SEIAS  
Socio-Economic Impact Assessment System

SLF  
Sustainable Livelihoods Foundation

SMME  
Small Medium and Micro Enterprises

SOI  
Statement of Issues

SOIILL  
Southern Oil (Pty) Ltd.

SPLUMA  
Spatial Planning and Land Use Act, 16 of 2013

SSM  
Super Save Malelane

SSP  
Super Save

StatsSA  
Statistics South Africa

TIPS  
Trade and Industrial Policy Strategies

ToR  
Terms of Reference

UHT  
Ultra High Temperature

UKCC  
United Kingdom Competition Commission

UK CMA  
United Kingdom Competition and Markets Authorities

UMS  
Unitrade Management Services

VTA  
Voluntary Trading Association

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

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

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

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

“By-laws” refers to municipal legislation in respect of those matters that fall within the constitutional competence of local government.

“Commuters” refers to people who travel some distance between work and home, on a regular basis.

“Contraband goods” refers to goods that are imported or exported illegally.

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

“Financiers” refers to financial institutions that find and develop their own shopping centres, offer financial services to third party businesses and individuals who either want to build new shopping centres or purchase existing ones. These include, among others, the “big four” banks i.e. Standard Bank of South Africa Limited (“Standard Bank”), Nedbank Group Limited (“Nedbank”), First National Bank (a division of First Rand Limited) (“FNB”) and the Amalgamated Banks of South Africa Limited (“ABSA”).

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

“Foreign national” refers to any person who is not a South African citizen nor a permanent resident in terms of the Immigration Act.

“Foreign owned spaza shops” refers to spaza shops owned or operated by foreign nationals.

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

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

“Immigration Act” refers to the Immigration Act 19 of 2004.

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

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

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

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

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

“Local traders” refers to South African citizens by virtue of them being born in the Republic or by virtue of descent, as defined in the South Africa Citizenship Act No. 88 of 1995. The term ‘local traders’ excludes those individuals who received citizenship through naturalisation.

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

“Minister” means the Minister responsible for trade, industry and competition.

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

“National supermarket chains channel” refers to the retail distribution of FMCG through the national supermarket chains.

“National supermarket chains” is limited to Shoprite Holdings Limited ("Shoprite"), The Spar Group Limited ("Spar"), Pick n Pay (Pty) Ltd ("Pick n Pay"), Woolworths Holdings Limited ("Woolworths"), and Massmart Holdings Limited ("Massmart").

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

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

“Property developers” refers to listed and unlisted companies which are involved in the planning and development of shopping centers and other retail properties. These include companies such as Abland, Redefine, Atterbury and firms such as JHI Properties (Pty) Limited (“JHI”) which do not own shopping centres but offer property services that include retail property management.

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

“Retailer” refers to a firm active in the retailing of groceries and household goods at the retail level.

“Rural” refers to areas that are located outside towns and cities and without access to ordinary public services such as water and sanitation, especially areas of predominant agricultural production.

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

“Small independent retailers” refers to privately owned single or multiple store operations that do not belong to a larger chain or group owned by an individual, a family or by two persons in partnership. These include butcheries, bakeries, delicatessens, fresh and non-fresh grocers and fish mongers.

“Spaza Banner Stores” refers to a group of independent spaza shops that are affiliated with independent wholesalers or buyer groups that operate in the same geographic area and may choose to trade under a collective brand.

“Spaza shop” refers to generally unregistered (and therefore informal in nature) retailers of FMCG, offering convenience shopping to households located around them and are usually run from home.
“Speciality store” refers to a retail store within the grocery retail sector that focuses on a specific product category. Examples of such speciality stores include butcheries, bakeries, delicatessens, liquor stores, and greengrocers.

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

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

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

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

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

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

“Turnover rental” is a percentage of a tenant’s turnover that is payable as rent.

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

“Wholesalers” refers to formally registered independently owned single or multiple location wholesale distributors of grocery products to independent retailers, directly to end consumers (what is known as cash and carry or hybrid stores), to spaza shops and hawkers etc.

“Zoning” refers to the process by which a municipality divides land into zones (such as residential, industrial, business etc.) in terms of which land uses are permitted or prohibited.
ACKNOWLEDGEMENTS

We wish to acknowledge the executive leadership of the Competition Commission, led by Commissioner Tembinkosi Bonakele and Deputy Commissioner Hardin Ratshisusu and the entire Competition Commission team for their continued support of the work of the Grocery Retail Market Inquiry.

The Inquiry benefitted immensely from the active participation of various stakeholders, including the national supermarket chains, small and independent retailers, spaza shop owners, suppliers of FMCGs, individual consumers, industry associations, local municipal authorities, industry regulators and government departments (both provincial and national), among others. We extend our sincere appreciation for your participation, cooperation and valuable submissions and insights.

We also wish to acknowledge the contributions of our technical experts who assisted the Inquiry in various aspects of its work. We wish to acknowledge the contributions made by The Bureau for Food and Agricultural Policy, Enterprises University of Pretoria (Pty) Ltd, Lightstone Explore (Pty) Ltd and Sustainable Livelihoods Foundation NPC.

The successful conclusion of this Inquiry was possible due to the support of the technical team and we appreciate the contribution they made. We also wish to acknowledge the technical oversight provided by the Chief Economist of the Competition Commission, James Hodge.

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The Competition Commission initiated the Grocery Retail Market Inquiry after observing a number of challenges experienced by various players, and in particular, small, medium and micro enterprises, which negatively affected their participation in the South African grocery retail sector. The Commission observed these challenges from a number of complaints that were made to it and which continue to be made to it and which were the subject of discussion in the media. At the heart of these challenges were what appeared to the Commission to be features in the South African grocery retail sector that the Commission believed might prevent, distort or restrict competition within the sector. The Commission tasked the Inquiry with establishing information that could provide the factual and legal basis, upon which the Panel could make evidence-based recommendations to promote competition and the purposes of the Competition Act in the sector.

It gives me great pleasure to present this Final Report containing the findings and recommendations of the Panel in this Inquiry.

Broadly, the Panel has established that given its nature and various linkages in the economy, the grocery retail sector provides the greatest potential to realise and expand the participation of small, medium and micro enterprises in the South African economy. However, this potential is impeded by the existence and prevalence of several features in this sector. First, the entry, expansion and diversification by the national supermarket chains into townships, peri-urban and rural areas and the more recent direct entry by these players in the informal spaza shop segment has, among others, contributed to the observed decline in the number of the small and independent grocery retailers. This phenomenon brought about a significant change in the competitive landscape, to which the small and independent grocery retailers have struggled to adapt. The Inquiry also established that the change in the competitive environment and its negative impact on the sustainability and participation of locally-owned small and independent grocery retailers is exacerbated by the competitive pressure emanating from, among others, the participation of foreign nationals in the informal segment, mainly the spaza shop segment. As a result, the Inquiry found that there is a need for the development and deployment of a competitiveness support strategy to assist these businesses to become more competitive and thriving businesses, particularly in a context where the lack of employment opportunities and economic inequality are on the rise.

The widespread use of long-term exclusive lease agreements by the national supermarket chains...
has created an environment in which there are limited opportunities for small and independent grocery retailers to enter the formal grocery retail sector, particularly in malls and shopping centres (which account for a significant portion of the grocery retailing business in South Africa). This impedes the realisation of the purpose of the Competition Act which seeks, among others, “to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy”. The impediment to competition as a result of these lease agreements also extends to harm to consumers in the form of limited choice of products and alternative grocery retail suppliers in the same mall or shopping centre. The preferential treatment of the national supermarket chains by the suppliers of fast-moving consumer goods is indicative of the significant buyer power that these retailers have. The Inquiry established that this, ultimately, gives the national supermarket chains an advantage over their smaller rivals in the wholesale and independent retail segment who are not able to receive similar treatment. The combination of these features is all the more concerning in the presence of an unsupportive and, at times, constrictive regulatory environment, particularly insofar as it relates to small, medium and micro enterprises.

The Panel, in this Final Report, presents a package of recommendations which it believes will assist in removing the identified distortions to competition in the grocery retail sector and put in place measures to ensure that small, medium and micro enterprises are able to participate effectively in the manner anticipated by the Competition Act. Most importantly, these recommendations are aimed at getting the South African grocery retail sector on the path towards the realisation of inclusive economic participation, an innovative sector and wider choice for consumers at competitive prices.
1. On 30 October 2015, the Competition Commission (“the Commission”) gave notice in the Government Gazette ("Gazette") announcing the establishment of the Grocery Retail Sector Market Inquiry ("the Inquiry") in terms of Section 43B(2) of the Competition Act no 89 of 1998 (as amended) ("the Act"). The Gazette set out the Terms of Reference ("ToR") which would guide the work of the Inquiry.

2. The Commission initiated the Inquiry in order:

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

2.2 to achieve the purpose of the Act.

3. The Inquiry was conducted in four phases:

3.1 phase one involved the publication of the ToR, initial background consultations, literature review and the publication of the Statement of Issues ("SOI"), Guidelines for Participation and Administrative Timelines;

3.2 phase two involved information gathering through site visits and re-visits, surveys, targeted consultations, information requests and public hearings;

3.3 phase three involved the processing and analysing of information, identifying information gaps, follow up consultations, targeted consultations, and information requests to address any identified gaps, culminating in the publication of the Preliminary Report; and

3.4 phase four involved the formulation and testing of recommendations, drafting and publication of the Final Report.

4. The SOI contained the Inquiry’s envisaged framework to assist the participants in the Inquiry to focus on issues that the Inquiry deemed to be the most relevant in answering questions arising from the ToR. In line with the scope of the Inquiry, and as set out in the ToR, the SOI proposed to assess competition in the grocery retail sector according to these stated objectives.

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

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

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

4.4 Objective 4: The impact of regulations, including, among others, municipal...
town planning and by-laws on small and independent retailers in townships, peri-urban and rural areas and the informal economy.

4.5 Objective 5: The impact of buyer groups and buyer power of the national retail chains on small and independent retailers in townships, peri-urban and rural areas and the informal economy.

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

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

6. On the basis of these submissions, the Inquiry published its Preliminary Report on 29 May 2019 setting out its initial findings and proposed recommendations, and invited stakeholders to make submissions in response. Having considered the views and submissions from stakeholders arising from the Preliminary Report, this report reflects the Inquiry’s final findings and recommendations (“the Final Report”).

7. The Inquiry received numerous submissions and comments from stakeholders in response to its Preliminary Report. These included submissions from various national and provincial government departments, industry regulators, industry associations, the national supermarket chains and emerging challenger retailers, small and independent retailers, buyer groups, property owners or developers and managers, banking institutions, FMCG suppliers, spaza shop owners, and academic research institutions. These submissions and comments added to the substantial body of information, evidence and data gathered in the period leading to the publication of the Preliminary Report. The combination of these submissions and comments provides the basis for the Inquiry’s final findings and recommendations as set out in this Final Report.

8. Broadly, the Inquiry found that a combination of features in the grocery retail sector may prevent, distort or restrict competition and negatively impacted on the achievement of the purpose of the Act. In particular, three principal areas of concern warrant remedial action: long-term exclusive lease agreements and buyer power; competitiveness of small and independent retailers; and the regulatory landscape.

Market structure and the Inquiry’s scope of analysis

9. By way of context, the grocery retail sector is characterised by low levels of economic regulation and openness of markets. The openness of the sector has enabled the increased expansion of corporate retailers to the displacement of small and independent businesses. This displacement has been further exacerbated by the ease of entry in the informal segment, leading to the replacement of small and independent retailers, which were primarily family operated and mainly serviced rural and non-urban communities, before the boom
of shopping malls in these areas. It is within this context that the Inquiry has considered the competitive dynamics in the grocery retail sector.

10. There are low barriers to starting survivalist informal spaza shops. However, there are significant challenges to building them into thriving, competitive businesses that can enter the higher value segments within grocery retail, such as tenancy in formal shopping malls. The Inquiry believes that there is a need to remove impediments to the increased and effective participation of SMMEs and operations owned by HDIs in the grocery retail sector. Making markets more inclusive, as anticipated by the provisions on the purpose of the Act, not only addresses social imperatives but also provides a platform for more competitive markets, which benefit consumers.

11. The Inquiry considered the market structure of the grocery retail sector, and found that it is complex, consisting of numerous players including manufacturers or suppliers of grocery retail products, buyer groups and distributors, wholesalers, hybrid wholesalers (i.e. wholesalers that also have retail supermarket offerings), national supermarket chains, speciality stores, emerging challenger retailers, independent retailers (formal and informal) and consumers.

12. At the supplier level, there are a number of firms who manufacture and supply various FMCG products to different retail platforms. These suppliers are of varying sizes, with a limited number of large multi-product firms. Similarly, the wholesale level comprises a number of formal players such as buyer groups and cash and carries, who primarily supply the independent and informal retailers such as spaza shops.

13. The retail level of the value chain is segmented between the formal and informal channels. The formal retail segment is characterised by the presence of the incumbent national supermarket chains, speciality stores and the emerging challenger retailers, while the informal segment mostly has an active presence of small and independent retailers including general dealers and spaza shops. The sale of grocery products takes place through both the formal and informal retail channels. The formal channel is the larger and more important distribution segment. Within the formal channel, a large proportion of grocery product sales (over 50%) takes place in shopping centres which are primarily occupied by national supermarket chains as the anchor tenants.

14. Following the publication of the Preliminary Report, stakeholders submitted that in order for the Inquiry to conduct a competition assessment and make findings, it must define relevant product and geographic markets, in accordance with international standards and previous decisions of the Competition Tribunal (“Tribunal”). Stakeholders also submitted that the Inquiry was inconsistent and contradictory in the use of its ‘market definition’ in that in some instances it considered a broad national grocery retail market, and in others a narrower segment, for formal retailers.

15. The Inquiry sets out below its responses to these stakeholder submissions and sets out a legal framework for the conduct of this Inquiry and the approach adopted in respect of market definition and the appropriate framework to consider in defining the grocery retail market.

16. All the stakeholders that raised concerns regarding the issue of market definition appear to have conflated Chapter 2 and Chapter 4A of the Act. An aspect of importance in making a distinction between the Commission embarking on an investigation that is conducted under Chapter 2 of the Act and conducting a market inquiry, in terms of Chapter 4A, is noting that the Inquiry is much more widely focused. The former is only concerned with prohibited conduct by an individual firm (or group of firms) while the latter is much broader in its reach and is concerned with features of markets that may hinder competition, consumer choice or effective participation, often not ascribed to a single firm.
17. Section 43B of the Act, which deals with the initiation of market inquiries, contemplates that some notion of a market is relevant in the conduct of a market inquiry. However, this is not in the context as may be envisaged in some of the Chapter 2 abuse of dominance cases of the Act.

18. It is also open for the Inquiry to define a product market with certain features, even if this product market is characterised by numerous local markets, as is the case in grocery retail. It is our view that where a feature of the product market, such as exclusive leases, repeats itself across these local geographic markets, it is valid to consider such a feature broadly, and not local market by local market.

19. The second aspect of section 43B is that the basis for the Commission to embark on a market inquiry is to achieve the purposes of the Act which are more broadly defined than pure price competition. This is of relevance to this Inquiry in general, and exclusive leases in particular. The purposes of the Act are also emphasized in the preamble to the Act which states that the Act exists to “provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire”.

20. It is important to note that the use of the word ‘features’ in the wording of this provision allows for a consideration and inclusion of factors that may or may not warrant a market definition. By way of example, the identification of regulatory constraints as a feature that hinders or distorts competition does not, in and of itself, warrant the definition of a market in respect of that issue. It is for this reason that the Inquiry, in its Preliminary Report, identified grocery retailing as the scope for its analysis. This broad approach to its analytical framework allowed the Inquiry to engage with the issues or features within the grocery sector that may have an impact on competition.

21. A market inquiry investigating market features which impact on the purposes of the Act clearly is broader in scope than simply abuse of dominance provisions under section 2. Even within a market inquiry, certain market features may be assessed from the perspective of multiple purposes of the Act. For instance, exclusive leases may be viewed from a hindering of competition perspective (noting this is a lesser test to those in section 2 of the Act), a consumer choice perspective and a participation of SMEs and historically disadvantaged individuals’ perspective. It is thus the view of the Inquiry, that for the legislature not only to employ different tests, but also to distinguish the nature of the conduct that these two processes are concerned with, points to the clear intention by the legislature to have these processes distinguished from each other.

22. The Inquiry believes that the point of defining markets is to allow for the identification of competitive constraints on specific firms, and to be able to estimate the size and position of a firm in a specific market. The market definition process is essentially an analytical tool which assists in identifying these constraints and thus is used where appropriate. The Inquiry further believes that what is more telling in the conduct of a competition analysis is the presence and level of competitive constraints that firms face. Developments in economic literature show that in instances of differentiated product and service markets, such as we have in retail markets, a strict and traditional approach to market definition is not always possible due to the difficulty of determining how close a potential substitute must be in order to be included in the market.

23. Research and legal precedent show that the broad grocery retail market is differentiated between supermarkets and convenience shopping which are differentiated by the type of shopping expedition they primarily seek to service or target, and which is reflected in the size, and range of products on offer. These are not necessarily perfect market boundaries and there will be a competitive overlap between the two. Large supermarkets, which are mainly in malls, may still be conveniently located, and shopping
malls in general also attract daily shoppers. Convenience stores come in various sizes, with some having a fairly extensive range that caters for a larger weekly shop. Similarly, large weekly shopping may obviate the need for some top up convenience shopping, and competitive convenience store pricing may result in some items falling off the weekly list.

24. Alongside these two broad types are the specialist stores. These stores stock a single product range but typically with complementary products. These specialist stores will also interact competitively with the supermarket and convenience stores in various ways.

25. The Inquiry believes that what is most relevant is that there is likely to be a greater closeness of competition between stores located within the same shopping mall for the same product lines. It is less inconvenient for a consumer to purchase some products at one store then move to another store in the same mall for some additional items, than the alternative of visiting numerous different locations. In the same way, shops within a strip mall would also compete more closely if they sold the same product. The rationale here is also convenience.

26. This conclusion has relevance to both grocery competition and to the interaction with speciality stores. The use of exclusivity provisions to keep out specialist stores which only compete with certain product lines, is a recognition that supermarkets do interact competitively with these in a mall and would impact on sales of their own product lines. In considering the importance of shopping malls as destinations for consumers, access to such malls also impacts on other objectives of the Act such as participation in the economy.

27. From a geographic market perspective, the most common approach is to consider localised markets because consumers tend to shop within the vicinity of where they live or work, or on the route to and from work. This focus is reinforced by the fact that shopping malls and strip malls consider the catchment area around their location when determining what their likely footfall will be. However, as much as there is product differentiation, there is also spatial differentiation which impacts on the closeness of competition and competitive constraints imposed by different outlets.

28. The local nature of markets does not eliminate the fact that there are several competitive variables which may be set nationally due to head office purchasing deals. For example, products may be listed nationally, have common retail prices within the supermarket groups, and have coordinated promotions due to national advertising policy. However, some (if not most) aspects of competition are also determined locally. The size of the store, its product range, local promotions and range selection, and store layout are all likely to be impacted by local competition dynamics. While these may not always relate to price (except through promotions), they go to other demand-related variables which affect consumer welfare such as product range, variety and innovation, as well as the overall shopping experience.

29. The Inquiry is of the view that both local and national competition is important. While many aspects of grocery retailing markets may be localised, the nature of the issues under consideration (such as exclusive leases and buyer power) are replicated across the country and thus create a national phenomenon which provides a further reason for the Inquiry’s assessment to be conducted on the basis of the broader retailing of grocery products, taking into account the possible narrower markets that may exist. The adoption of such a broad approach to its assessment, has also allowed the Inquiry to assess the multifaceted nature of the competition dynamics that underscore the issues raised in the ToRs.

**Market concentration**

30. Following the publication of the Preliminary Report, the national supermarket chains submitted that the Inquiry had over-estimated their market shares and the
resultant levels of concentration in the grocery retailing sector. They attributed this mistake to the inclusion of revenue realised from the sales of non-grocery products and out of country sales.

31. The Inquiry accepted the submissions by the national supermarket chains and revised its concentration ratio estimate for grocery retailing. It is important to note that, as in the Preliminary Report, the concentration ratio estimate relied upon by the Inquiry only considered the formal grocery retail segment, including specialist stores. Informal stores are rightly excluded as they do not exert a strong competitive constraint on supermarket chains. Where there is competitive interaction, it is asymmetric, namely supermarkets on spaza shops. In this regard, the Inquiry maintains its view that the grocery retail sector is characterised by high levels of concentration, with the top five retailers accounting for approximately 64% of the market.

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

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

34. The above entry and competitive conditions are applicable to all players that are active in the formal retail channel.

35. It is the view of the Inquiry that the market structure of the grocery retail sector creates a conducive environment for a significantly altered bargaining framework between the national supermarket chains and their suppliers (whether suppliers of FMCG products or property developers). This altered bargaining framework leads to distortions in competition between the national supermarket chains, emerging challenger retailers, specialist stores and those firms that are serviced by the wholesalers and buyer groups, i.e. independent stores and spaza shops.

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

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

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

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

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

39.1 enables or results in the exercise of market power by the national supermarket chains to the exclusion of smaller, independent stores as well as emerging challenger retailers such as OBC, Choppies, Fruit and Veg City and Food Lovers Market; and

39.2 creates a conducive environment for the exercise of buyer power, with its concomitant distortion of competition between the national supermarket chains, wholesalers and independent retailers.

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

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

40.2 entrenching incumbency by the national supermarket chains; and

40.3 raising barriers to entry for small and independent retailers and thus removing a crucial element for competition in the retail ecosystem.

41. Cumulatively, the distortions to competition arising from this pattern have resulted in restricted consumer choice.

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

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

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

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

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

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

47. The Inquiry established that the vast majority of Shoprite and Spar leases, and a majority of Pick n Pay leases, contain exclusivity provisions. Woolworths leases do not contain explicit exclusivity provisions but have provisions which impact on letting and usage. The Inquiry finds that clauses which simply provide a limited exclusion on the zone area around the tenant in respect of certain businesses which pose a risk of undermining the maintenance of health and safety standards of a tenant are not objectionable. These clauses do not restrict the entry of competing rivals in shopping centres nor do they dictate where in the shopping centre a rival tenant can operate their business. However, the Inquiry is of the view that these clauses must have an objective justification and must be reasonably related to such justifications.

48. A number of small independent retailers and the emerging challenger retailers provided evidence of their inability to access shopping centres across the country as a result of the long-term exclusive lease agreements. Property developers also affirmed that these long-term exclusive lease agreements prevent the would-be entrants from entering the shopping centre environment in competition with the national supermarket chains.

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

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

51. The Inquiry finds that the distortion of competition arising from the use of exclusive long-term lease agreements are also aided and abetted by the presence of usage clauses stipulating the purpose of the space that is being leased and limitations on the landlord’s right of letting the rental space. The Inquiry established that the usage clauses essentially stipulate not only current business activities but also those the national supermarket chains could potentially engage in at the shopping centre in future such as sale and hire of video recorders and accessories, electronics and communications.

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

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

54. The Inquiry finds that the justifications provided by the national supermarket chains are not compelling. Although historically the national supermarket chains did not possess sufficient information and the tools to gauge the economic viability of the areas which they were entering and thus relied on exclusivity as a means of protecting themselves, this is no longer the case. With the proliferation of information and the sophistication of research tools, national supermarket chains are able to assess realistically the viability of opening a store in a particular location. Evidence before the Inquiry indicated that a detailed and intensive viability assessment is made by these national supermarket chains before entering into a lease agreement. Further, risk is also reduced for these chains through negotiating low rental rates and transferring more of the development costs onto other tenants, thereby reducing the need for exclusivity clauses. Most importantly, all businesses take on investment risk as part of doing business and the ability of the national retail chains to transfer this risk to property developers and other tenants simply reflects their considerable market power. Other tenants are not able to mitigate such risks in the same manner.

55. The Inquiry received evidence of instances in which the national supermarket chains waived exclusivity provisions in order to allow competitors (including other national supermarket chains, speciality stores and in limited instances, the emerging challenger retailers) to access shopping centres. Whilst some national supermarket chains are becoming more lenient regarding the enforcement of exclusivity against small and specialist stores, the Inquiry remains concerned that they still require limitations on the size of these competing line tenants. The Inquiry finds that the restrictions on size have the effect that line tenants cannot effectively compete and grow their businesses beyond the required floor space imposed by the landlords at the behest of the national supermarket chains.

56. Similarly, while in some large shopping centres there has been a relaxation of the enforcement of exclusivity provisions, such that competing anchor tenants may be present, there is very limited evidence of the emerging challenger retailers such as OBC, Fruit and Veg City, Liquor City and Choppies, being allowed to enter shopping centres. This may be because they lack the negotiating power to force entry into larger malls in competition with the anchor tenant, or a more deliberate strategy by the current dominant chains to keep such emerging challenger retailers by denying them entry specifically. Entry by these emerging challenger retailers into the formal grocery retail sector has largely been outside shopping centres, though very few, such as Food Lovers Market and Fruit and Veg City, have entered the shopping centres. The Inquiry finds that this conduct effectively maintains the incumbency of the national supermarket chains in the shopping centres.
and retail supermarket trade more generally given the importance of shopping centres for consumer shopping expeditions.

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

58. In summary, the Inquiry finds that the pattern of the sustained use of exclusive long-term contracts has not only restricted competition and given rise to consumer harm, but that it also violates the purpose of the Act which seek, amongst others, to ensure that small and medium sized enterprises are afforded an equitable opportunity to participate in the economy. The Inquiry is particularly concerned that these practices have effectively excluded widespread participation in the retail sector where barriers to entry should be low, thus fundamentally undermining the objectives of the Act and broader national economic policies aimed at facilitating transformation and economic inclusion.

59. The Inquiry was made aware of allegations that line tenants are not only affected by exclusive lease agreement clauses but by other terms enforced by property developers such as high rental costs. It was argued that property developers are forced to transfer costs for managing the shopping centre onto the line tenants to appease the requirements of the anchor tenants for low rental rates. The Inquiry is concerned that the higher cost of rental for the smaller tenants limits their ability to effectively compete and to grow their businesses. This constraint applies to existing tenants that are not direct competitors to the national retail chains due to the exclusive leases but would also apply to smaller specialist stores or challenger chains in the event that they gain entry in future. The Inquiry is therefore concerned that simply eliminating exclusive leases may still not achieve greater levels of competition and economic participation if these businesses are faced with high rental costs relative to the national chains.

60. The Inquiry finds that this conduct is generally widespread as part of the business model in the retail property leasing environment. The practice is premised on a number of justifications provided by the property developers which include market forces; size and position of the unit to be let; visibility of the unit to be let; footfall likely to be created by the tenant; depth of the store; the cost of installing the tenant; and trading densities. The Inquiry notes that the bargaining dynamics between landlords and the national supermarket chains do appear to have an influence on the differential treatment accorded to different customer groupings. The Inquiry finds that this conduct is akin to the waterbed effect.

61. The Inquiry acknowledges the complexity associated with the determination of applicable rental rates to different types of customers. It is for this reason that the Inquiry does not make any recommendations in this regard. However, the Inquiry is cognizant of the need to ensure that there is balanced treatment of tenants, premised on the principles of fairness and transparency.

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

62. The Inquiry finds that the presence of buyer groups in the grocery retail sector has beneficial competition outcomes for members (generally traditional and hybrid wholesalers as well as independent grocery retailers), who largely operate in the informal retail trade segment. In particular, buyer groups enable wholesalers and independent retailers that lack scale economies to be able to pool their purchasing power in bargaining with suppliers of FMCG. The Inquiry established that buyer groups play a pivotal role in improving the competitiveness of wholesalers and independent retailers.
63. It is against this finding that the Inquiry assessed the bargaining dynamics between the suppliers of FMCG and the national supermarket chains as well as the buyer groups. The Inquiry sought to determine whether the exercise of buyer power by the national supermarket chains, relative to that of buyer groups and wholesalers serving smaller retailers, had an effect on competition at the grocery retail level of the value chain.

64. The Inquiry finds that the structure of the formal grocery retail segment is characterised by factors that are conducive to the existence of an unequal bargaining framework between the national supermarket chains and suppliers, especially relative to wholesalers and buyer groups. The Inquiry established that the national supermarket chains are a critical route to market for the suppliers of FMCG products, based both on revenue and volume contributions. With few exceptions, there was evidence of the inability of FMCG suppliers to walk away from negotiations with national supermarket chains and the rigidity of trading terms, particularly related to the composition and quantum of the terms. The national supermarket chains are able to extract more favourable trading terms than customers in the informal segment.

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

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

67. The Inquiry is thus of the view that these rebates are more favourably offered to the national supermarket chains, which, as a result reduces, their costs of offering FMCG products, maintains their market positions and provides an unfair competitive advantage over the independent retailers. The costs of the independent retailers, owing to their lack of vertical integration with wholesalers, are not reduced to the same extent. The independent retailers incur all of these costs with no rebates, even in instances where they qualify for the rebates as they conduct the same activities of ultimately placing products on shelf. This ultimately impedes these independent retailers’ ability to compete and grow.

68. Furthermore, whilst some of these rebates paid by FMCG suppliers appeared to be underpinned by productive efficiencies (as in the case of distribution allowances), there were some which did not appear to have any efficiency or beneficial justification, they were simply a reflection of buyer power by the national chains. Further, the Inquiry found mixed evidence about the pass-through of rebates to the final prices paid by consumers. This is particularly concerning since some suppliers factor in the cost of these rebates to the price paid by the national supermarket chains for the products. This could potentially have a price-raising effect on the cost of products to the detriment of consumer welfare where such rebates are not passed through. Further,
there is a lack of transparency regarding back-end margins.

69. The Inquiry has concluded that cumulatively, the grocery retail sector possesses features and characteristics that are conducive to the exercise of buyer power. The indicative evidence obtained through the rebate analysis attests to the exercise of such power to the detriment of independent retailers and smaller retail chains, and potentially also to consumers.

70. Following further engagements with stakeholders, the Inquiry did not receive any evidence that challenged the existence of buyer power by the national supermarket chains. However, the Inquiry noted the justifications proffered for the difference in treatment between the national supermarket chains and other customer segments such wholesalers and independent retailers, namely, the provision of efficient distribution services and valuable data on end-consumer purchases which suppliers can use to improve their business strategies. Wholesalers and independent retailers were said to be unable to offer these services due to their lack of vertical integration. The Inquiry also received submissions, particularly from the suppliers of FMCG products, indicating that there is a recognition of the need for a more balanced treatment of the different customer segments.

71. The Inquiry engaged with stakeholders to discuss possible recommendations to deal with those instances of unreasonable and unjustified differential treatment. The Inquiry decided that a code of conduct premised on the principles of fairness and transparency would be an appropriate and proportionate means of addressing the concerns raised.

72. While the suppliers of FMCG had differing views regarding what should be contained within such a code, and to whom it should apply, the Inquiry found that, in the main, suppliers supported the principles of fairness and transparency.

73. The Inquiry has noted the direct entry and diversification of Shoprite under its “Usave e-Kasi” brand into the spaza shop segment. Given the evidence and discussion of the buyer power possessed by the national supermarket chains, the Inquiry finds such direct entry and competition to spaza shops to be very concerning. Given the asymmetric competition that exists between the national supermarket chains and spaza shops, as well as the massive buyer power held by these retailers, such entry and diversification, if allowed, can only have the effect of obliterating ordinary spaza shops. This conduct warrants action by policy makers.

74. The Inquiry received submissions that indicate how the high levels of concentration in the formal grocery retail sector and the position of the national supermarket chains in the grocery value chain have created disadvantages for smaller suppliers (emergent, black and smallholder producers), and effectively acts to exclude these smaller producers from the agro-food value chain. The Inquiry received evidence indicating that the buyer power of national supermarket chains, exercised in the context of rebates, externalises the risks of national supermarket chains and passes them up the value chain towards farmers and producers and also limits the ability of smaller suppliers to access shelf space in the formal retail segment, as these smaller suppliers cannot afford the rebates required.

75. Some small suppliers believe that access into the formal retail channel can be promoted through supplier development funds. The Inquiry was made aware of the difficulties faced by small suppliers in terms of qualifying for the existing supplier development programmes and substantively benefitting from them.

76. The Inquiry notes that concern over unfair trading conditions in the food value chain, as well as the impact on prices paid to smaller and historically disadvantaged suppliers, has culminated in an amendment to the Act in the form of (a new) section 8(4) directed specifically at the abuse of buyer power by dominant firms in designated sectors.
77. The Inquiry also notes that the national supermarket chains recognise the need to ensure and to increase access by smaller suppliers to shelf space in the formal retail segment. Each of the national supermarket chains have established a supplier development programme in which they have invested funds towards the development of a diversified supply base. This action is commendable and ought to be developed further in order to optimise the gains to competition that arise.

**Shifts in the competitive landscape and the impact on small and independent retailers**

78. The Inquiry notes that spaza shops and independent retailers in peri-urban areas developed at a point in time where, as a result of the apartheid regime’s spatial policies and construction of the economic landscape, there was no close competition whether from national supermarket chains or foreign nationals in the immediate vicinity. Since 1994, this economic landscape has changed dramatically.

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

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

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

82. The Inquiry believes that the entry of national supermarket chains into townships and rural areas has had both negative and positive effects. From a consumer perspective, their entry has provided closer proximity to the source of weekly and monthly shopping activities and offered the range and lower pricing of larger supermarket chains. Historically consumers from township areas would have travelled greater distances to frequent these chains, incurring greater costs in terms of time and transport.

83. From a small and independent business perspective, the evidence is often mixed. The more convenient location of the national supermarket chains means that some convenience shopping which would have occurred at the spaza shops has now shifted to the larger retail chains, negatively affecting the spaza shops. The Inquiry established that, overall, there has been a decline in the number of small independent grocery retailers operating in non-urban areas following the entry of national supermarket chains. However, the shorter shopping hours, a single location on the periphery of the peri-urban areas and big box format means that these supermarket chains have not displaced all convenience
This shift in the competitive landscape has required that local spaza shops respond by adapting their own business models and even locations within peri-urban areas in order to continue to be relevant to consumers in those areas. This adaptation may include longer opening hours or a change in products stocked in order to fulfill the convenience role more appropriately. Location has also become more important. It may involve moving further from the new supermarket location, although the Inquiry also found that those spaza shops and independent retailers that are located closer to the shopping centres have sometimes benefitted from the increased foot traffic in the area.

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

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

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

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

The Inquiry found that trade in counterfeit goods confers some form of price advantage to those that engage in the sale of such goods. There are also broader negative ramifications for the fiscus in terms of lost tax revenue and the increased burden that is likely to be placed on the public healthcare sector. The Inquiry found that while local-owned spaza shops also traded in counterfeit products, the sale of such goods appeared to be more prevalent in foreign-owned spaza shops. This unfair competitive
advantage was also confirmed by the observed trends in consumer preferences as they appear to prefer foreign-owned spaza shops due to, amongst others, lower prices.

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

90.1 an inability to tap into the economies of scale and scope in procurement offered by buyer groups and larger wholesalers due to the smaller and informal nature of these retailers, relative to even independent retail stores that make use of buyer groups, and a lack of cooperation amongst locally-owned spaza shops which prevents them from taking advantage of the opportunities for bulk buying at more competitive prices;

90.2 an inability to tap into credit markets due to again the small and informal nature of these businesses. There is typically a lack of verifiable performance information and systems in place which result in information asymmetries with all potential providers of credit, thereby limiting the ability to ensure greater stock levels and variety to meet the convenience requirements of customers, which is reinforced by the lack of social networks of cooperation;

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

91. In addition, the Inquiry found that the regulatory environment is not conducive to supporting the sustainable competitiveness of small and independent retailers, in competition to supermarket chains, and in many cases, actively undermines their ability to respond to the changing competitive environment.

92. The Inquiry found that local authorities impose restrictive apartheid-era trading times that are at odds with the convenience role that spaza shops and independent traders are best positioned to play. This is especially important in the context of the entry of supermarket chains as the spaza shops need to position themselves firmly as convenience options in order to survive and thrive. It also creates an asymmetry between those shops willing to ignore the trading hours and to pay enforcement officials to ignore the lack of compliance. Such shops are able to gain an advantage in servicing consumer demand to the detriment of those that do comply, which also undermines their transition from informal to formal enterprises.

93. Similarly, in relation to liquor regulation, the Inquiry found differential treatment of small and independent traders and the national supermarket chains that are licensed with longer trading hours. This difference enables the national supermarket chains to be able to service demand in those periods in which the small and independent traders are not able to trade, conferring upon the national supermarkets a level of competitive advantage.

94. In addition, the Inquiry found that the regulatory processes for trading are burdensome for small traders, particularly in relation to zoning and land use. The Inquiry found that the cost and time constraints associated with rezoning of property, depending on the location of the land, are onerous for micro-enterprises and could have a negative impact on potential entrepreneurs. This is especially so in a context where shop owners may need to relocate in response to the entry of supermarket chains and would require new sites zoned for business use.
95. More generally on zoning and trading hours, submissions were made that some municipalities used these laws to push out informal traders in favour of the national supermarket chains and formal independent stores because these stores contribute to municipal taxes. However, the Inquiry notes that the informal businesses also contribute to municipal development and the welfare of their residents in terms of providing economic participation for their owners and convenient shopping for their customers. In addition, these businesses can only be developed into formal tax-paying operations if they are provided with the necessary support from municipalities.

**Recommended remedial action**

96. The Inquiry recommends a number of remedial actions designed to rectify the identified features that have the effect of preventing and distorting competition in the grocery retail sector and inhibiting the effective participation of South African spaza shops and independent retailers in this sector.

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

98. The Inquiry recommends that as of the date of publication of this Final Report:

**Long-term exclusive lease agreements**

98.1 National supermarket chains must, with immediate effect, cease from enforcing exclusivity provisions, or provisions that have a substantially similar effect, in their lease agreements against:

98.1.1 SMME’s;

98.1.2 speciality stores; and

98.1.3 other grocery retailers (including the emerging challenger retailers) in shopping centres located in non-urban areas.

98.2 No new leases or extensions to leases by grocery retailers may incorporate exclusivity clauses (or clauses that have substantially the same effect) or clauses that may serve to restrict the product lines, store size and location of other stores selling grocery items within the shopping centre; and

98.3 Subject to 98.1, the enforcement of exclusivity by the national supermarket chains as against other grocery retailers must be phased out by the next extension of the lease or within five years from the date of the publication of this Final Report, whichever is earlier.

98.4 In order to continue the work of the Inquiry, the Commission must seek to secure voluntary compliance by the national supermarket chains within six months from the date of publication of this Final Report. If the national supermarket chains do not undertake to give effect to these recommendations, the Government should introduce legislation, in the form of a statute, regulations, or a code of practice to give effect to these recommendations.

98.5 Lastly, the above recommendations do not preclude the Commission from pursuing litigation in respect of the existing complaints and evidence gathered in this Inquiry. A final decision on a referral to the Tribunal should have regard to the response of each of the national supermarket chains to the efforts of the Commission in relation to the procurement of voluntary compliance with the above recommendations. The Inquiry is of the view that the evidence gathered in these proceedings may establish a prima facie case for a referral to the Tribunal. However, the Inquiry also accepts that litigation is a protracted process and the interests of consumers may be best
served by an immediate and voluntary compliance by the national supermarket chains.

**Rental rates**

98.6 Property owners and managers of shopping centres must:

98.6.1 use fair, transparent and commercially justifiable criteria in determining differences in rental rates across tenants;

98.6.2 ensure that escalation rates across tenants are uniform unless there are fair, transparent and commercially justifiable reasons for them to differ; and

98.6.3 ensure that lease deposits and shop fitting allowances are based on fair, transparent and commercially justifiable criteria.

98.7 In order to continue with the work done by the Inquiry, the Minister should appoint a facilitator to seek to secure voluntary compliance by landlords and managers of shopping centres. If the facilitator is unable to secure voluntary compliance within six months from the date of publication of this Final Report, the Government should introduce a legislative framework to give effect to these recommendations in the form of a code of good practice and the establishment of an industry Ombudsman to be financed by landlords.

**Buyer power**

98.8 Suppliers of fast-moving consumer goods must ensure:

98.8.1 that trade terms are uniformly available to all retailers, wholesalers and buyer groups;

98.8.2 that the trade terms offered have an objective justification based on cost savings, supply chain efficiencies, efficient risk-sharing or sales promotion. The supplier must clearly stipulate and communicate the link between the trade terms offered and the efficiencies to all retailers, wholesalers and buyer groups;

98.8.3 that the available trade terms and the conditions required to qualify for those terms are clearly communicated to all retailers, wholesalers and buyer groups and applied in a fair and uniform manner;

98.8.4 that the percentage value provided under each trade term to different customers is reasonably related to qualifying criteria and value provided in respect of the objective justification for the trade term; and

98.8.5 that the volume purchased may not form the basis for qualification or relative percentage value offered for any trade term to the designated class of retailers or wholesalers.

98.9 In order to address the challenge faced by small suppliers in accessing the shelf space of the national supermarket chains and taking into account the recent amendments and retailer initiatives noted above, the Inquiry recommends the following actions:

98.9.1 First, that the current draft regulations designating agro-processing and grocery wholesale/retail, as well as the draft enforcement guidelines detailing specific practices as unfair be confirmed in the final regulations and guidelines. It is also recommended that these are widely publicised in order to empower small and historically disadvantaged suppliers in negotiations with the large national retail chains. In addition, the Inquiry recommends that once the regulations and guidelines
are finalised, the Commission must engage the large national retail chains on their procurement practices to ensure that their procurement practices are aligned with the final enforcement guidelines, failing which, it should consider initiating an investigation of these firms’ trading practices.

98.9.2 Second, the enterprise development programmes of the national retail chains should be formalised and strengthened. Accordingly, the Inquiry recommends that the national supermarket chains commit to a formal ongoing programme to develop small and historically disadvantaged suppliers. Furthermore, that such a programme should establish binding industry targets for a proportion of turnover to be supplied by SMMEs and historically disadvantaged suppliers, as well as a proportion of turnover to be spent on the development of new SMME and historically disadvantaged suppliers. These may initially be set in line with current enterprise development spend in order to entrench such programmes. However, the formal commitments should also entail a gradual escalation of these binding commitments over time. This escalation should take into account what is realistic and achievable but should also be ambitious in its efforts to address concentration in the supply chain. Given that it is also the government department that oversees the B-BEEE codes of practice which incorporate an enterprise development component, this industry commitment may be facilitated by the DTIC.

98.10 In order to continue with the work of the Inquiry, the Minister should appoint a facilitator to seek to secure voluntary compliance by suppliers of fast-moving consumer goods. If the facilitator is unable to secure voluntary compliance within six months from the date of publication of this Final Report, the Government should introduce a legislative framework to give effect to these recommendations in the form of a code of good practice and the establishment of an industry Ombudsman financed by suppliers of FMCG.

Competitiveness support for spaza shops and small independent retailers

98.11 Government should facilitate the establishment of distribution centres to be located in peri- and non-urban areas to service small and independent retailers and wholesalers;

98.12 Government should establish an incentive programme that will provide seed finance for innovative commercial models of private businesses that aim to offer the following support for small informal spaza shops:

98.12.1 the effective incorporation of spaza shops into buyer groups and larger wholesale operations in order to assist them to realise economies of scale and scope in purchasing;

98.12.2 the generation of key information on individual spaza shop operations such that the risks of extending credit finance to these shops can be more accurately assessed in order to facilitate credit access for the purchase of stock; and

98.12.3 the development of consumer and business information to assist in the improvement of such businesses, including business and financial management training.
98.13 All three spheres of government involved in the regulation of planning and trade should cooperate with one another to coordinate their activities and legislation in accordance with section 41(h)(iv) of the Constitution and coordinate their actions in terms of section 35 of the Intergovernmental Relations Framework Act, 13 of 2005 to give effect to the following recommendations:

98.13.1 Organised local government must seek to develop a common approach for local government in terms of section 3(3)(a) of the Local Government: Municipal Systems Act, 32 of 2000 to develop uniform guidelines for by-laws and regulations to give effect to these recommendations;

98.13.2 Provinces and municipalities must coordinate and streamline applications for liquor licenses with applications for the rezoning of premises;

98.13.3 Municipalities must review the trading times in by-laws and regulations in relation to spaza shops and street traders, with a view to amending or abolishing those by-laws and regulations in accordance with the uniform guidelines;

98.13.4 Municipalities must fast-track the processing of existing re-zoning requests for spaza shops in township areas;

98.13.5 Municipalities must proactively rezone areas to enable them to carry on business in a more effective and formalised manner and in accordance with the uniform guidelines;

98.13.6 Municipalities must develop and implement preferred zoning processes and practices that facilitate ease of entry for SMMEs in non-urban areas including imposing conditions on the approval of shopping centre developments to secure the inclusion of SMME businesses in and around shopping centres; and

98.13.7 Municipalities must develop and implement a simplified framework for the registration of informal businesses, particularly spaza shops.

98.14 In so far as counterfeit goods are concerned, it is recommended that:

98.14.1 Law enforcement officers appointed by municipalities are given powers to enforce the Counterfeit Goods Act, 37 of 1997 either under section 22 of that Act or by way of declaration in terms of section 334(1) of the Criminal Procedure Act, 51 of 1977; and

98.14.2 There must be increased coordination between the South African Revenue Services, South African Police Services and municipalities to facilitate proactive policing of counterfeit goods.

99. Given the multiplicity of issues that appear to distort and impede competition in the South African grocery retail sector, the Inquiry recommends that government should develop a legislative framework with a statutory industry body for the regulation of the retail sector in South Africa, taking into account, among others, the findings and recommendations of this Inquiry.
1.1 BACKGROUND

1. Following the publication of the final ToR by the Commission on 30 October 2015, the Inquiry officially commenced on 27 November 2015. The Commission initiated the Inquiry in order:

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

1.2 to achieve the purpose of the Competition Act 1998, (Act No. 89 of 1998, as amended) (“the Act”).

2. The Inquiry was conducted in four phases:

2.1 phase 1: the publication of the ToR, initial background consultations, literature review and the publication of the Statement of Issues (“SOI”), Guidelines for Participation and Administrative Timelines;

2.2 phase 2: information gathering through site visits and re-visits, surveys, targeted consultations, information requests and public hearings;

2.3 phase 3: processing and analysing information, drafting of a Preliminary Report, identifying information gaps and follow up consultations, targeted consultations, information requests and public hearings to address any identified gaps; and

2.4 phase 4: formulation and testing of recommendations, drafting and publication of the final report.

3. The SOI contained the Inquiry’s envisaged framework to assist participants to focus on issues that the Inquiry envisaged to be the most relevant in answering questions arising from the ToR. In line with the scope of the Inquiry, and as set out in the ToR, the SOI proposed to assess competition in the grocery retail sector according to the following objectives:

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

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

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

3.4 objective 4: the impact of regulations, including, among others, municipal town planning and by-laws on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy;
3.5 objective 5: the impact of buyer groups on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy; and

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

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

5. On 29 May 2019, the Inquiry published its Preliminary Report setting out its initial findings and proposed recommendations and invited stakeholders to make submissions in response to it. Having considered the views and submissions from stakeholders arising from the Preliminary Report, this report sets out the Inquiry’s final findings and recommendations.

6. The Inquiry received numerous submissions from stakeholders in response to its Preliminary Report. These included various national and provincial government departments, industry regulators, industry associations, the national supermarket chains and emerging challenger retailers, small and independent retailers, buyer groups, property owners or developers and managers, banking institutions, suppliers of FMCG, spaza shops and their associations, and research institutions. These submissions and comments added to the substantial body of information, evidence and data gathered in the period leading to the publication of the Preliminary Report and have been included in this Final Report. They form the basis for the Inquiry’s final findings and recommendations.

1.2 STRUCTURE OF THE REPORT

7. This Final Report is structured as follows:

7.1 chapter one deals with the process followed in the conduct of the Inquiry;

7.2 chapter two provides a comprehensive background of the grocery retail sector, and addresses, among others, issues of market definition and concentration;

7.3 chapter three deals with the value chain analysis, the placement of small and independent retailers, the challenges faced, and competitive strategies employed by these players in the broader grocery retail sector and provides the background that underpins the analysis conducted in this Inquiry;

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1 Following the publication of the ToR, published in Government Gazette No.39347 of 30 October 2015, the Inquiry conducted initial engagements with various stakeholders leading to a Draft SOI published on 17 May 2016 for comments. The Draft SOI set out in a detailed manner the issues that would be assessed in each of the objectives. The Inquiry received comments from stakeholders on the draft SOI, and other related issues that had not been covered by the Inquiry relating to Objective 5 (buyer groups). In line with section 4.3 of the ToR, the Inquiry expanded the framework for assessment as reflected in para 96 of the final SOI published on 15 July 2019, to include the assessment of the impact of the buyer power of large purchasers of FMCG products on small and independent retailers in townships, peri-urban areas, rural areas and the informal economy.
7.4 Chapter four assesses the impact of the entry of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy in general;

7.5 Chapter five examines the impact of long-term exclusive leases in the grocery retail sector;

7.6 Chapter six evaluates the competitive dynamic between local and foreign national operated small and independent retailers in townships, peri-urban areas, rural and the informal economy;

7.7 Chapter seven assesses the regulatory landscape in the South African grocery retail sector and its impact on small and independent retailers;

7.8 Chapter eight deals with the assessment of the impact of buyer groups and buyer power on competition in the grocery retail sector; and

7.9 Chapter nine concludes by setting out the final findings and recommendations of the Inquiry.
2.1 CONTEXTUAL BACKGROUND

8. The post-apartheid grocery retail sector has developed in line with the principles of trade liberalization which encourage openness of markets. One of the hallmarks of the South African grocery retail sector, contrary to other jurisdictions such as India, is the low level of economic regulation which has facilitated ease of entry in the sector at both the formal and informal levels. The Indian retail market is characterised by a large presence of small and independent operations, the so-called mom and pop shops, with very limited corporate presence (both domestically- and foreign-owned). Sebastian and Gupta (2018) estimate that the share of corporate retail operations (as a proportion of total grocery retail activities) was approximately 8% in the 2017 financial year.2 Although the Indian retail sector has been on a path of liberalisation since the early 1990s, the government of India has exercised caution in opening up their markets.3

9. India still has a cap of 51% equity ownership by foreign investors in multi brand retail trading. The multi brand retail trading policy specifies that if the minimum investment amount is US $ 100 million, at least 50% of the investment must go towards back-end infrastructure, that the stores must be restricted to cities with a population of one million or more, at least 30% of manufactured items must be procured through domestic small and medium enterprises, and approval from the state is required for the foreign investor to enter.4 So far India only has one foreign player, Tesco, that received approval for opening stores under the multi-brand retail policy.5

10. In South Africa, the openness of the sector has enabled the increased expansion of corporate retailers to the displacement of small and independent businesses. This displacement has been further exacerbated by the ease of entry in the informal segment, leading to the replacement of small and independent retailers, which tend to be family owned, that largely used to service communities before the boom of retail chains in both urban and rural areas. It is in this context that the Inquiry has considered the competitive dynamics in the South African grocery retail sector.

11. It is important to note that South Africa’s socio-economic context is characterised by high levels of unemployment, poverty and inequality. There is, therefore, a need to ensure that impediments to increased and effective participation of SMMEs and operations owned by HDIs in the grocery retail sector are removed. While there may be low barriers to starting survivalist informal spaza shops, there

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4 See Arora, R. 2017. FDI in multi brands retail in India. *Journal of Retail Marketing and Distribution Management.* 1(1). 7-12.
are far greater challenges to building such shops into thriving, competitive businesses or entering into the higher value segments within grocery retail, such as tenancy in formal shopping malls. Reducing the barriers would further the purpose of the Act by promoting inclusive economic participation and vibrant SMME presence, which is a feature of most high growth developing nations. In most countries, grocery retailing is contested by large numbers of independent specialist and convenience stores trading alongside supermarket chains, and which compete effectively with such chains. This contest is noticeably much more limited in South Africa.

12. The Inquiry believes that making markets more inclusive, as anticipated in the provisions of the Act, not only addresses social imperatives but also provides a platform for more competitive markets which benefit consumers. Most economists see a large and vibrant SMME sector as essential in providing dynamism, growth and employment opportunities in the economy. The consumer benefits may manifest themselves in lower prices, but equally important are the benefits from greater choice, more product variety and innovation. Achieving these goals requires building SMMEs that can effectively participate in the economy and are not just a survivalist and temporary alternative to unemployment.

2.2 STRUCTURE OF THE GROCERY RETAIL SECTOR

13. As set out in the Inquiry’s SOI, the grocery retail sector is complex and consists of: (i) manufacturers or suppliers of grocery retail

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Figure 2.1: The grocery retail sector value chain

Source: Tribunal decision in the Masscash/Finro merger, Case No: 04/LM/Jan09

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6 See Section 2(d) – (f) of the Act.
products; (ii) buyer groups and distributors; (iii) wholesalers; (iv) hybrid wholesaler retailers (i.e. wholesalers that also have retail supermarket offerings); (v) national supermarket chains and independent retailers (formal and informal); and (vi) consumers, as set out in Figure 2.1.

14. According to Who Owns Whom\(^7\), the structure of the South African grocery retail sector is characterised by a significant number of suppliers of FMCG (in the various sub-sectors), a few national supermarket chains in the formal retail channel, as well as a number of firms active in the broader wholesale and independent retail channel (formal and informal).

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

16. At the wholesale level,\(^8\) there are a number of players, including wholesalers and cash and carries.\(^9\) Wholesalers are formally registered independently owned single or multiple location suppliers of grocery products to independent retailers, and directly to end consumers (what is known as cash and carry or hybrid stores), to spaza shops and hawkers who sell to end consumers.

17. The retail level of the value chain is segmented between the formal and informal channels. The formal retail segment is characterised by the presence of the incumbent national supermarket chains, specialty stores and the emerging challenger retailers, while the informal segment mostly has an active presence of small and independent retailers including general dealers and spaza shops, among others. These small and independent retailers tend to be serviced by wholesalers that, in some instances, may deal with suppliers directly or belong to a buyer group. The national supermarket chains and the emerging challenger retailers tend to deal directly with FMCG suppliers. The different categories of players active in the retailing of grocery products are briefly described below.

17.1 National supermarket chains have operations throughout South Africa (and in some instances have spread into other parts of the continent) which carry a full range of grocery products. These firms not only have a well-developed retail network (which comprises, among others, corporate owned, franchisees and affiliated stores) but also an integrated wholesaling function in terms of which they procure products directly from grocery suppliers and make use of distribution centres to aggregate supply and distribute to individual stores. It is for this reason that the national supermarket chains, unlike other retailers, are considered to be vertically integrated. Further, national supermarket chains generally operate within nationally set and uniform retail aspects such as pricing, branding, and quality standards, among others. Furthermore, these retail operations are generally categorised into different but uniform store sizes which are deployed in different locations as dictated by the nature of the market and competition in those local areas. The firms that fall in this category of national supermarket chains include, among others, Shoprite, Woolworths, Pick n Pay, SPAR and Massmart.

17.2 Emerging challenger retailers are recent entrants to the formal retailing of grocery products in South Africa

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\(^7\) See section 11.1 under Annexure 2 that lists suppliers active in the different FMCGs sub-sectors in accordance with the corresponding Who Owns Whom sector reports.

\(^8\) This channel mainly consists of formal businesses, such as buyer groups and cash and carries, which service the informal sector.

\(^9\) These include, among others, Jumbo Cash & Carry and Shield (which belong to the Massmart Group); Power Trade, Food Town and Best Buy, which belong UMS buyer group; IBC’s various members, including, Save Group, Tradeport/Ohlanga Group, Afrisave C&C; EST; Lifestyle supermarket, Top Team supermarket and Roots Butchery, belonging to the ICC buyer group; and Trade Zone and Food Zone belonging to the Buying Exchange Company.
and operate in particular parts of the country. These players operate mid-sized and large grocery stores (some of which only focus on particular product categories) and in some greater respects function in a similar fashion to the national supermarket chains. Firms that fall under this category include, among others, Choppies, Massmart’s grocery business, Fruit and Veg City and Food Lovers Market.

17.3 Speciality stores are generally independently owned single or multiple location operations that retail specific product categories only, such as butcheries, liquor stores, bakeries, fishmongers, fresh fruit and vegetables and delicatessens. However, some chain store formats do exist, such as OBC (butcheries) and Liquor City (liquor), which may operate on a franchise or corporate store basis.

17.4 Independent retailers are providers of grocery products on the fringes of the formal sector and within the informal economy, ranging from general dealers to spaza shops. These players are typically dependent on wholesalers for the supply of grocery products.

18. Traditionally, the manufacturer’s products were distributed to retail stores through a distributor or wholesaler. However, large national supermarket chains have over the past 50 years become vertically integrated upwards along the value chain, fulfilling the role of both distributor and retailer. Further, a more recent phenomenon is the adoption by the buyer groups and/or their members of centralised distribution. These buyer groups are now establishing distribution warehouses. Furthermore, independent retailers make use of third-party distributors, join buyer groups that fulfil the role of distributor of goods to their stores, or purchase goods for onselling from a wholesaler such as Makro and Jumbo Cash and Carry.

19. As will be discussed below in section 8.8, while the sale of grocery products takes place through both the formal and informal retail channels, the formal channel remains the largest and more important distribution segment. Within the formal channel, a large proportion of grocery product sales takes place in shopping centres which are, mainly, occupied by national supermarket chains as anchor tenants.

2.3 THE NUMBER AND DISTRIBUTION OF NATIONAL SUPERMARKET CHAINS IN SOUTH AFRICA

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

21. National supermarket chains have been able to open stores through expansion, diversification and consolidation.

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

22.1 First, national supermarkets expand their footprint through shopping centres and malls. Townships and rural areas have experienced the expansion of national supermarket chains such as, Shoprite in Jabulani Mall, Soweto (Gauteng), Shoprite in Paledi Mall, Mankweng (Limpopo) and Pick 'n Pay in 10 The large national supermarket chains, as well as smaller supermarket chain stores, have distribution centres across the country that distribute goods to their retail stores.
11 Independent Cash and Carry is an example of such a buyer group.
Figure 2.2: Supermarkets across South Africa

Source: Inquiry’s mapping based on submissions by parties, 2017

Figure 2.3: Shoprite in Paledi Mall, Mankweng, Limpopo

Source: Paledi Mall, 2017
22.2 The second way is through the conversion of spaza shops in townships, peri-urban and rural areas into franchise convenience stores. This initiative has been largely pioneered by the partnership between Gauteng Department of Economic Development ("GDED") and Pick n Pay's spaza-to-store conversion project (See Figure 2.4).

22.3 Thirdly, some filling station convenience stores are often converted into franchise stores. For example, British Petroleum’s ("BP's") convenience stores have been converted into Pick n Pay franchises, Caltex stores into Food Lover's Market franchises under the FreshStop brand and Engen convenience stores into Woolworths franchises (see Figure 2.5).

23. Diversification refers to the strategy by national supermarket chains of offering varied retailing experience tailored to the demands of customers in certain income groups and areas, for example, a national supermarket chain setting up partitioned versions of their stores, i.e. hypermarkets, family value stores, convenience stores and express filling station stores bearing the name and branding of a national supermarket chain (see Figure 2.6). This strategy allows national supermarket chain stores to become more diverse by offering different store formats of their shops to customers in different living standards measure ("LSM") categories to those that they traditionally offered.

24. Further, the stores have diversified the product ranges that they offer. Examples include diversification into the liquor store business in competition with independent liquor store retailers as well as USave, Boxer and Cambridge formats in competition with general dealers.

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

2.4 TYPES OF SHOPPING CENTRES

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

27. There are different types and classifications of shopping centres and decisions regarding the size, location and tenant mix of the shopping centre are based on the functions and characteristics of the type of shopping centre that the property developer wishes to build. In 2016, the South African Council of Shopping Centres (“SACSC”) published guidelines setting out the classification of
Table 2.1: Classification of shopping centres in South Africa

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

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

shopping centres and the salient features of each. A summary of the different types of shopping centres in terms of Gross Lettable Area ("GLA"), number of stores and number of anchor tenants is set out in Table 2.1. above.

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

29. Neighbourhood centres fulfil a convenience role for a surrounding neighbourhood within a 2 kilometre range. Critical aspects of neighbourhood centres include a well-known food anchor tenant, sufficient parking, and a good location offering easy access to residents from the surrounding suburbs. The anchor tenant in neighbourhood centres is usually larger than 1400m², typically SPAR, Pick n Pay, Checkers, Shoprite, Woolworths Food and Food Lover’s Market.12

30. Community centres offer a larger variety of convenience products than neighbourhood centres. Anchor tenants in community centres are full line national supermarket chains, which may be in excess of 2500m².13

31. Small regional centres serve a broader community than neighbourhood centres and community centres. The tenant mix in these centres is wider and the centre is located where it is visible to passing traffic and easily accessible to residents in the region. A national supermarket chain, which is an anchor tenant in a small regional shopping centre may have a large store of more than 4000m².14

32. Regional shopping centres offer a wide range of stores, parking facilities and a wide entertainment component. They serve a large primary and secondary catchment area and are usually located on provincial roads linked to national roads. In most cases, two large supermarkets, larger than 5000m² or one large supermarket of between 8000m² and 12000m² are food anchor tenants in regional centres.15

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

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

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

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12 It is possible to have two retailers as anchor tenants to provide a variety of grocery products. Line tenants usually include pharmacies, butcheries, liquor stores as well as restaurant and banking facilities. Independent
13 Where the market is large enough to support more than one national supermarket chain, an additional supermarket chain may be included as a second anchor tenant. Line tenants include national clothing retail stores, restaurants and takeaways, banking services, and convenience retailers such as pharmacies, butcheries, hairdressers and liquor stores.
14 A small regional shopping centre may, when a market is large enough, have up to three national supermarket chains as anchor tenants. National clothing retail stores are also required as anchor tenants in small regional shopping centres. The focus of the tenant mix is on comparative shopping in clothing and household items in small regional centres.
15 However, it is possible to have a third food anchor tenant present in the centre. National clothing retailers are required as fashion anchor tenants in regional shopping centres. Line tenants include boutiques and shoe stores, food court areas, homeware and décor stores, services such as banking, cell phone service centres and post offices, and entertainment such as cinemas and games arcades.
are mostly occupied by traders requiring large space and are usually located next to a regional shopping centre.\(^\text{16}\)

36. Filling station stores are located in forecourts at petrol stations and provide convenience shopping on a 24-hour basis to local and passing vehicle traffic as well as to residents living in close proximity. National supermarket chains have entered this market in recent years by collaborating with filling stations.\(^\text{17}\)

37. In 2019, the SACSC published an updated Shopping Centre Directory. While the core shopping centre categories have remained, the SACSC Shopping Centre Directory identifies a lower number of shopping centres in 2019 (approximately 1250) as compared to 2015 (approximately 1942). This is primarily due to the SACSC no longer counting shopping centres below 5000m\(^2\) in size.

2.5 SCOPE OF ANALYSIS

38. This section sets out the Inquiry’s initial approach to the scope of analysis, as reflected in its published Preliminary Report, and discusses stakeholder submissions, which mainly noted that in order for the Inquiry to conduct a competition assessment and make findings, it must first define the relevant markets in accordance with international standards and case law. Lastly, the Inquiry responds to the submissions and provides its final views on the scope of analysis.

Inquiry’s initial view

39. The grocery retail sector is characterised by a complex set of heterogeneous products and services in interrelated markets. The products and services provided by grocery retailers (both formal and informal, in their respective categories) are provided under similar competitive and entry conditions. In essence, while there may exist local markets for grocery retail, across the country such markets show similar features that can be analysed collectively.

39.1 From a demand side perspective, the Inquiry noted that the decisions made by consumers are typically based on similar considerations of price, availability, convenience and quality within their local area, regardless of the LSM group and geography. Consumers undertake weekly or monthly shopping trips, as well as daily convenience shopping, to top up for individual meals or necessity items.

39.2 On the supply side, convenience outlets may take the form of spaza shops in townships or smaller chain store operations in strip malls or service stations in higher income areas. Either way, the product range and pricing differ to those of supermarkets given their convenience role. Similarly, specialist grocery stores focused on one product line, such as bakeries or butcheries, will compete with the supermarket and convenience outlet for a specific product line, but are not substitutes for the entire weekly or daily shopping.

39.3 Also, on the supply side, shopping malls exist in most middle-income areas and increasingly in townships. Such malls typically have an anchor grocery tenant which frequently demands exclusivity. Such exclusivity usually extends to specialist stores and not just other full line grocery chains. There also exist smaller strip malls where convenience outlets operate, or in the case of township areas, a plethora of spaza shops.

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\(^\text{16}\) Typical tenants of a value centre include specialised retailers occupying a large space and offering a wide variety of products such as Hi-Fi Corporation and Toys R Us, home improvement facilities like hardware, paint, furniture and tiles, and hyper grocery stores. A small component of fast food outlets is also usually present.

\(^\text{17}\) Woolworths is present in Engen forecourts; Pick n Pay Express stores are located in BP filling stations and Food Lover’s Market has collaborated with Caltex to place Fresh Stop stores in Caltex forecourts. Larger petrol stations also offer takeaway facilities such as Steers, Wimpy, Mugg & Bean and Wild Bean Café.
Having regard to case precedent, the Inquiry noted that the competition authorities in South Africa have considered the size and format of retail stores, their product offerings and whether or not they belong to a vertically integrated group when attempting to define markets. This consideration reflects the differentiation within grocery retail, where similar outlets place the strongest constraint on one another even if there is some interaction between outlets of different types. For example, larger supermarkets may compete for weekly shopping, but also attract some daily convenience shopping and thus attract customers from convenience outlets.

A large supermarket attracting convenience customers is also reflective of asymmetrical substitution that may exist between different size stores and store formats. For example, it was found that while spaza shops provide a convenience role, they do not substitute for weekly or monthly shopping at a supermarket. Township residents would travel outside their area to do the weekly or monthly shopping if no local supermarket existed. However, the converse is not necessarily true as a township national supermarket chain may also take some convenience shopping from the spaza shops, especially if it is conveniently located around commuter hub points.

Having in mind the multitude of products and geographic areas in which grocery retailers compete, the Inquiry found that it would be inefficient and unwieldy to analyse hundreds of individual markets. The Inquiry concluded that, in the interest of expedition, it would be analytically appropriate to focus the analysis of the grocery retail sector broadly in terms of the formal and informal grocery retail services. This approach is well supported by case law which permits competition assessments to cluster individual service or product markets for administrative convenience if the competitive conditions of the two markets are similar (homogeneous) enough to analyse them together.

Stakeholder submissions in response to the Preliminary Report

The approach adopted by the Inquiry was criticised by some stakeholders who expressed concerns that this does not amount to market definition as would be the case in competition investigations. Briefly, stakeholders submitted that for the Inquiry to conduct a competition assessment and make findings, it must first define relevant markets in accordance with international standards and previous decisions of the Competition Tribunal (“Tribunal”).

[\text{\textit{\textdagger}}] argued that the framework to deal with vertical restraints and potential foreclosure should include an analysis of the relevant markets among other considerations, and that the Inquiry’s Preliminary Report fell short in this regard. Specifically, [\text{\textdagger}}] submitted that the analysis lacked evidence indicating that a shopping centre could be classified as a separate market on competition law grounds.

[\text{\textdagger}}] supported the need for the definition of relevant markets as a prerequisite for a
competition assessment. Submission by [X]. [X] also submitted that despite the guidance from the Tribunal in the Massmart case the Inquiry had failed to properly consider the relevant market when making determinations as to whether a competitor has been foreclosed from a market. See [X]. See also Submission by [X]. [X] also supported this view indicating that the Inquiry simply referred to products and geographies within its scope and that it did not explain its economic framework for analysis and market definition, such as assessing supermarket retailers as competing in differentiated markets. Submission by [X]. [X] also echoed the criticism regarding the lack of a market definition.

46. [X], [X] and [X] also submitted that the Inquiry was inconsistent and contradictory in the use of its market definition in that in some instances it considered a broad national grocery sector market and in others a narrower segment for formal retailers. [X] further submitted that when it comes to the issue of assessing topics such as exclusive leases, a market definition premised on a national market in respect of the “broad grocery retail sector”, is not a proper or appropriate basis for a competition law assessment for the reasons set out by the Tribunal in the Massmart case and in light of the views expressed by the UKCC in a similar inquiry into the grocery sector in 2008.

47. [X] and [X] also cited previous cases decided by the Tribunal as well as international market inquiries in the grocery sector, illustrating the approaches that have been adopted in defining the grocery retail market. These approaches are summarised and the cases cited therein are referred to in section 10.9 of Annexure 1.

The Inquiry’s response and final view

48. The Inquiry sets out its views below regarding the submissions of the various stakeholders and states its view in respect of the legal framework for the conduct of this market inquiry and distinguishes this from the legal test required in the context of prohibited restrictive practices. The Inquiry then discusses the approach it adopted in market definition and the appropriate framework to consider in defining the grocery retail market.

Legal framework

49. Section 43B of the Act, which deals with the initiation of market inquiries, states: “The Competition Commission, acting within its functions set out in section 21(1), and on its own initiative, or in response to a request from the Minister, may conduct a market inquiry at any time, subject to subsections (2) to (4)– (i) if it has reason to believe that any feature or combination of features of a market for any goods or services prevents, distorts or restricts competition within that market; or (ii) to achieve the purposes of this Act.”

50. The section contemplates that some notion of a market is relevant in the conduct of a market inquiry. However, it is important to note at the outset that the legal focus of a market inquiry can differ from that of an investigation. In market inquiries, the focus is the distortion or restriction of competition as opposed to a substantial lessening of competition. It is also open for the Inquiry to define a product market with certain features, even if this product market is characterised by numerous local markets, as is the case in grocery retail (defined below). It is the Inquiry’s view that where a feature

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23 Submission by [X]. [X] also submitted that despite the guidance from the Tribunal in the Massmart case the Inquiry had failed to properly consider the relevant market when making determinations as to whether a competitor has been foreclosed from a market. See [X]. See also Submission by [X].
24 Submission by [X].
25 Submission by [X].
26 Submission by [X].
27 Submission by [X]. Submission by [X] and Submission by [X].
28 Submission by [X].
29 Submission by [X].
of the product market, such as exclusive leases, repeats itself throughout these local geographic markets, it is valid to consider such a feature broadly, and not local market by local market. Developments in economic research show that in instances of differentiated product and service markets such as we have in retail markets, a strict and traditional approach to market definition is not always possible due to the difficulty of determining how close a potential substitute must be in order to be included in the market. 

51. The second aspect of section 43B is that the basis for the Commission to embark on a market inquiry is to achieve the purposes of the Act. The purposes of the Act are more broadly defined than pure price competition. This is of relevance to this Inquiry, and to exclusive leases in particular:

“The purpose of this Act is to promote and maintain competition in the Republic in order - (a) to promote the efficiency, adaptability and development of the economy; (b) to provide consumers with competitive prices and product choices; (c) to promote employment and advance the social and economic welfare of South Africans; (d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic; (e) to ensure that small and medium sized enterprises have an equitable opportunity to participate in the economy; and (f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.”

52. The Inquiry notes that section 2(f) goes beyond minority Black Economic Empowerment (“BEE”) stakes in a major retailer. This section expressly envisages the presence of more firms wholly owned or controlled by historically disadvantaged persons. Similarly, section 2(e) cannot be achieved by promoting major retail groups at the expense of small and medium-sized enterprises. It is also for this reason that, read in the context of the whole of section 2, providing consumers with product choices as contemplated in section 2(b) can only be viewed to indicate a desire by the legislature for a large variety of establishments. The purposes of the Act are also borne out by the preamble to the Act which states that the Act exists to “provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire”.

53. It is for this reason that the Inquiry believes that in the context of this particular Inquiry, the objectives of the Act must carry weight in any interpretation of section 43B, in particular, when the provision(s) being interpreted already make reference to, or are premised on, these objectives of the Act.

54. All the stakeholders who raised concerns regarding the issue of market definition appear to have conflated Chapter 2 and Chapter 4A of the Act. Another aspect of importance in making a distinction between the Commission embarking on an investigation that is conducted under Chapter 2 of the Act and conducting a market inquiry (in terms of Chapter 4A) is noting that the Inquiry is much more widely focused. The former is only concerned with prohibited conduct by an individual firm (or group of firms) while the latter is much broader in its reach and is concerned with features of markets that may hinder competition, consumer choice or effective participation, often not ascribed to a single firm. In this context it is important to note that the use of the word ‘features’ in the wording of this provision allows for a consideration and inclusion of factors that

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exist in an industry, and that such features may or may not warrant a market definition. By way of example, the identification of regulatory constraints as a feature that hinders or distorts competition does not, in and of itself, warrant the definition of a market in respect of that issue. It is for this reason that the Inquiry, in its Preliminary Report, identified grocery retailing as the scope of its analysis. This broad approach to its analytical framework allowed the Inquiry to engage with the issues or features within the grocery sector that may have some impact on competition.

55. It is thus the view of this Inquiry that for the legislature not only to employ different tests but to also distinguish the nature of the conduct that these two processes are concerned with, points to the clear intention by the legislature to have these processes distinguished from each other. Any temptation to conflate the two, whether such conflation is erroneous, opportunistic or merely fortuitous, should therefore be avoided.

**Approach to market definition**

56. Market definition is an analytical tool which assists in identifying the scope of competition, and in so doing it involves identifying products which are substitutable from the perspective of customers. Ultimately, the point of defining markets is to allow for the identification of competitive constraints on specific firms, and to be able to estimate the size and position of a firm in a specific market. While the Inquiry notes that market definition is an important step in any competition analysis, it also notes that it is an analytical tool that must be used where appropriate. The Inquiry believes that what is more telling in the conduct of competition analysis is the presence and level of competitive constraints that firms face. In this instance, the Inquiry is able to identify features of the grocery retail sector, such as exclusive leases, which distort or restrict competition, without utilising the traditional method of defining a market.

57. The Inquiry acknowledges that both local and national competition are important in the grocery retail sector. However, the nature of the issues under consideration, such as exclusive leases, are replicated across the country and this creates a national phenomenon. Similarly, the procurement markets, particularly in the context of FMCG, are national. These are some of the reasons that the Inquiry's assessment is conducted based on the broader retailing of grocery products. However, this does not mean that possible narrower markets that may exist are not considered. The adoption of a broad approach allows the Inquiry to assess appropriately the multifaceted nature of the competition dynamics that underscore the issues raised in the ToRs.

**Relevant market features that inform market definition in grocery retailing**

58. Research and legal precedent show that the broad grocery market is differentiated between supermarkets and convenience shopping, which are differentiated by the type of shopping expedition they primarily seek to service or target, which is reflected in the size, and range of products on offer. For example, supermarkets primarily cater for weekly or monthly shopping expeditions, with a wide range of products, including fresh items but also a wide range of household food and cleaning items. In contrast, convenience stores have a more limited stock range and aim to target

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33 The sizes of different store types are shown in section 2.4 above.
daily top up shopping expeditions as the description suggests. This top up may be items which the household has run out of or ingredients for the daily meal. These stores are of a smaller size, have a more limited range, and are likely to be more conveniently located in strip malls for quick entry and exit.

59. It is important to recognise that these are not necessarily perfect market boundaries and that there will be a competitive overlap between the two. Larger supermarkets may still be conveniently located, and shopping malls in general also attract daily shoppers. Similarly, convenience stores come in various sizes, with some having a fairly extensive range that caters for a larger weekly shopping. For instance, many SPAR stores are located in strip malls. Furthermore, a large weekly shopping may obviate the need for some top up convenience shopping, and competitive convenience store pricing may result in some items falling off the weekly list. The UK Grocery Inquiry seems to have adopted this approach, where a market for large supermarkets was defined, and, in addition, a market for convenience shopping but which included the larger supermarkets in recognition of this overlap.34

60. Alongside these two broad types are the specialist stores. These stores stock a single product range (e.g., fruit and vegetables, bakery, butchery, liquor) but typically with complementary products (e.g. delicatessen range, sauces). These specialist stores will also competitively interact with the supermarket and convenience stores in various ways. For example, a specialist butcher may be used for the weekly shopping and displace the meat sales of the national supermarket, or a bakery may displace the convenience store for fresh daily bread supply.

61. From a geographic market perspective, the most common approach is to consider localised markets since consumers tend to shop within the vicinity of where they live or work, or on the route to and from work.35 This is reinforced in that shopping malls and strip malls consider the catchment area around their positions when determining what their likely footfall will be.

62. However, as much as there is product differentiation, there is also spatial differentiation which impacts on the closeness of competition and competitive constraints imposed by different outlets. As identified under the product market discussion, convenience stores are likely to be spatially differentiated to supermarkets as they fulfil different shopping needs. These may be located in smaller strip malls rather than large shopping malls.

63. It is of relevance to the Inquiry that there is likely to be a greater closeness of competition between stores located in the same shopping mall for the same product lines. This is because a shopping mall entails a destination shopping decision, and the range of stores are all conveniently located within a single venue. As a result, it is less inconvenient for a consumer to purchase some products at one store and then move on to another store for some additional items. The alternative of visiting numerous different locations is less convenient and, therefore, less likely. In the same way, shops in a strip mall would also compete more closely if they sold the same product.

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34 UK Competition Commission report titled “The supply of groceries in the UK market investigation”, 30 April 2008, pp. 47 - 83.
35 See the following cases: Pick n Pay Retailers (Pty) Ltd and Trio Belville (Pty) Ltd [2015] (Tribunal Case No:LM242Mar15) where the Tribunal concurred with the Commission on a market for grocery retail within a 3 kilometre radius from the target store; The SPAR Group Ltd and Florida Foodliner (Pty) Ltd [2015] (Tribunal Case No:020925) where the Tribunal also concurred with the Commission on a market for retail groceries within 1.5 kilometre radius of the target firms. The SPAR Group Ltd and Kwankwenke Trading CC [2015] (Tribunal Case No: LM006Apr15), the Tribunal accepted the relevant market as being market of retail groceries within 1.5 kilometres of the target firm; Shoprite Checkers (Pty) Ltd and Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd [2005] (Tribunal Case No:47/LM/Jun05) although the Tribunal did not reach a definitive view, it held that the geographic market is likely local; and Pick n Pay Retailers (Pty) Ltd and Boxer [2002] (Tribunal Case: 52/LM/Jul02) in which the Tribunal held that the retail market for FMCGs is local.
64. This analysis has relevance to both grocery competition and to the interaction with specialist stores. For example, the use of exclusivity provisions to keep out specialist stores which only compete with certain product lines is a recognition that supermarkets face competitive constraints more closely from specialist stores within a mall context when such stores’ products would impact on sales of a supermarket’s own product lines. Indeed, the motivation for exclusive leases within shopping malls indicates that supermarket chains expect to lose sales to any supermarket or specialist store within their locality or vicinity, in this case the shopping mall. The potential loss of sales means that in the event the rival store was in the same shopping mall as the supermarket then the supermarket may have to respond competitively in order not to lose sales.

65. The local nature of markets does not eliminate the fact that there are several competitive variables which may be set nationally due to head office purchasing deals. For example, products may be listed nationally, have common retail prices within the supermarket groups, and have coordinated promotions due to national advertising policy. However, some (if not most) aspects of competition are also determined locally. The size of the store, its product range, local promotions and range selection, and store layout are all likely to be impacted by local competition dynamics. While these may not always relate to price (except through promotions), they go to other demand-related variables which affect consumer welfare such as product range, variety and innovation, as well as the shopping experience.

Framework for defining markets and case precedent for the grocery retail sector

66. Market definition is typically informed by the thought experiment called the hypothetical monopolist test (“HMT”). This involves identifying the narrowest product or geographic market and considering whether a hypothetical monopolist over that product or geography could profitably raise prices by a small but significant non-transitory amount (SSNIP test), typically 5-10%. Such an increase is only profitable if there is insufficient substitution away from the hypothetical monopolist to other products or geographies. If it is not profitable, then the market is expanded, and the HMT reapplied until a SSNIP is profitable.

67. Such an assessment of the relevant markets in the retailing of grocery products must consider various important factors. On the demand side, the HMT needs to consider typical consumer shopping behaviour, including the role of factors, other than price, such as convenience and shopping trip types. From a supply side perspective, the first aspect is to understand that retailers are selling a portfolio of products and not just a single product against which the HMT may be applied. In addition, there is an acceptance that various retailers exhibit different levels of differentiation. This is evident through differences in pricing, branding, product range and quantity, product quality, service standards, store layout, location, and opening hours, among others.

68. In differentiated markets, the focus is most often on closeness of competition when assessing competitive dynamics either for merger control or conduct. The US Horizontal Merger Guidelines provide a useful synopsis of how such differentiation may be treated within market definition and why narrower markets are typically preferred to broader ones in most cases.

“Defining a market broadly to include relatively distant product or geographic substitutes can lead to misleading market shares. This is because the competitive significance of distant substitutes is unlikely to be commensurate with their shares in a broad market. Although excluding more distant substitutes from the market inevitably understates their competitive significance to some degree, doing so often provides a more accurate indicator of the competitive effects of the merger than would the alternative of including them and overstating their
competitive significance as proportional to their shares in an expanded market. Market shares of different products in narrowly defined markets are more likely to capture the relative competitive significance of these products, and often more accurately reflect competition between close substitutes. As a result, properly defined antitrust markets often exclude some substitutes to which some customers might turn in the face of a price increase even if such substitutes provide alternatives for those customers. However, a group of products is too narrow to constitute a relevant market if competition from products outside that group is so ample that even the complete elimination of competition within the group would not significantly harm either direct customers or downstream consumers. The hypothetical monopolist test (see Section 4.1.1) is designed to ensure that candidate markets are not overly narrow in this respect.36

69. Several investigations and market inquiries that have assessed the state of competition in the grocery retail sector have relied on a number of methodological approaches. By way of example, the UK CC, in its investigation of the UK grocery retail sector, employed complex econometric and other quantitative tools to define markets. It considered econometric estimation of consumer demand for groceries, the relationship between store profit margins and local concentrations, and new store entry on revenues of existing stores. The authority adopted narrow relevant markets for (i) larger grocery stores, where other large grocery stores place a competitive constraint; (ii) mid-sized stores, where other mid-sized and larger grocery stores also compete; and (iii) convenience stores, where all grocery stores (convenience, mid-sized and larger grocery stores) compete.37 In other words, it identified asymmetric constraints between large supermarkets, medium sized supermarkets and convenience outlets.

70. Another approach adopted in defining markets in the retailing of grocery products is the so-called ‘shopping-mission-centred approach’. This methodology is premised on the view that consumers conduct different shopping expeditions (i.e. monthly or weekly bulk shopping relative to day to day convenience shopping) and that different retailers respond to and satisfy these needs. The argument is that consumers conduct their monthly or weekly bulk shopping at national supermarket chains which provide one stop shopping while convenience shopping may be conducted in a number of locations, including the national chains, independent stores, convenience stores and the like. This approach comes to similar conclusions about the relevant markets as that of the UK Grocery Inquiry.

71. International case precedent and market inquiries show that the approach adopted for geographic market purposes is premised on customer travel patterns and distance, which indicated local markets. This conclusion is discussed in detail in section 10.9 of Annexure 1.

72. Notwithstanding the above, another aspect that is national in scope is the purchasing markets for grocery products by grocery retailers. Here, the national sales of the retailers are leveraged to negotiate supply agreements and, therefore, a national market is more appropriate from the perspective of assessing buyer power. The same can be said for similar purchasing side markets such as the negotiation of rental space in shopping malls or other distribution agreements with product or service suppliers. This is seen largely through the fact that national retailers, in general, are considered to be more credible and attractive to have as tenants in a shopping centre. Hence, these retailers, particularly the national supermarket chains, are able to leverage their bargaining power in the negotiations for rental space.

37 See UK Competition Commission report titled The supply of groceries in the UK market investigation, 30 April 2008, pp. 47 – 83.
Accordingly, it seems that both local and national competition is important, particularly given that the issues under consideration are national. While grocery retailing markets may be localised, the nature of the issues under consideration (such as exclusive leases) are replicated across the country and thus create a national phenomenon. Similarly, it is well accepted that procurement markets, particularly in the context of FMCG, are national. As such, this conclusion provides another justification for the Inquiry's assessment, conducted on the basis of the broader retailing of grocery products in South Africa, that possible existence of narrower markets should be taken into account. The adoption of such a broad approach to its assessment also allows the Inquiry to assess appropriately the multifaceted nature of the competition dynamics that underscore the issues raised in the ToRs.

Lastly, the Inquiry notes the criticism regarding its deviation from case precedence. However, it is a well-established practice in competition enforcement, that matters are dealt with on a case by case basis, considering the factual circumstances, evidence, market dynamics and specific issues prevalent in each case. The Inquiry believes that reliance on local and international case precedence is persuasive but not binding.

2.6 MARKET SHARES AND CONCENTRATION

This section briefly discusses the Inquiry's findings on concentration levels as stated in its Preliminary Report, provides a summary of the submissions in response thereto, and provides the Inquiry's final view on this issue.

The Inquiry's initial views

The Inquiry's ToR cited the Barclays\(^\text{38}\) and Who Owns Whom\(^\text{39}\) reports that estimated that the five largest players in the grocery retail sector collectively accounted for between 80% and 90% of the market in South Africa in 2014. This was taken as a point of departure by the Inquiry to investigate the competition dynamics in the grocery retail sector.

In 2017, Statistics South Africa ("StatsSA") published a Retail Trade Industry report for 2015, which the Inquiry relied upon in estimating market shares for the formal grocery retail segment.\(^\text{40}\) In its Preliminary Report, the Inquiry found that the national supermarket chains, namely, Shoprite, Pick n Pay, SPAR and Woolworths, collectively accounted for 72% of the formal grocery retail segment, based on their turnover figures for 2015.

Submissions received after the publication of the preliminary findings

The national supermarket chains\(^\text{41}\) submitted that the Inquiry had over-estimated their market share and that the data relied upon included (i) sales of non-grocery products and (ii) sales derived in other countries and excluded the sales of other general products sold by the retailers.

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38 Barclays (16 July 2014), South African food and general retail report, p. 10.
40 The formal grocery retail sector comprises both the specialised stores and non-specialised stores. The Inquiry found that 81% of sales within the formal grocery retail segment in 2015 occurred in non-specialised stores while the remaining 19% was attributed to specialised stores. To obtain the total grocery retail sector revenues, using the StatsSA data, the Inquiry aggregated the non-specialised stores with food, beverages and tobacco predominating under SIC 6211 and the food, beverages and tobacco in specialised stores under SIC 6220. The Inquiry then used the national supermarket chains’ revenues for 2015 in order to approximate their market shares.
41 [X].
79. According to [X], the Inquiry overestimated the sales of the four largest players by including sales that fall outside the grocery sector, such as furniture and building materials as well as including sales that these players make outside South Africa. [X] submitted that the Inquiry underestimated the size of the formal retail grocery sector by excluding a category of sales from non-specialised stores. [X] submitted that the Inquiry's market shares are incorrect and over-estimated as the [X] annual revenue figure used included [X] operations in other countries, as well as its non-grocery operations (namely, [X]). [X] submitted that its market share was overestimated as its national share is approximately [X] and that the StatsSA data is outdated.

80. Broadly, the national supermarket chains submitted that they are not dominant in the grocery retail sector, stating that collective dominance is not applicable in the South African competition regime. These retailers also criticised the Inquiry for not showing that they possess market power. [X] submitted that the Inquiry could have undertaken a profitability study to assess market power, and that this assessment would find that its profit margins are low in comparison to international benchmarks. [X] stated that the Inquiry's market power assessment is flawed as it did not define markets, incorrectly included [X] and did not establish that the national supermarket chains possessed market power in the broad grocery retail sector. [X] also submitted that when the broad grocery sector is considered, including both the national supermarket chains, the challenger retailers and wholesalers, it is unlikely that a finding of concentration can be sustained.

81. Other stakeholders, however, agreed with the Inquiry in terms of the high levels of concentration in the grocery retail sector. PLAAS (The Institute for Poverty, Land and Agrarian Studies) supported the Inquiry’s findings regarding concentration in the retail sector and, in particular, the market power that national supermarket chains possess.

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42 See submission by [X], dated 28 June 2019, para 3.3.
43 See submission by [X], dated 28 June 2019, para 90. [X] also submitted that the Inquiry has disregarded the “other non-specialised stores” under SIC code 6219 in calculating the market shares. This category covers the sale of general merchandise like appliances, toys sports goods and wearing apparels. According to [X] these are products sold by it and its competitors and, as such, contribute to their revenue. See [X].
44 [X] submitted that its turnover in Southern Africa was [X] including [X] turnover of [X]. See [X] submission dated 28 June 2019, para 3.9.4. It submitted that its market share based on grocery related sales is [X] and not the [X] stated by the Inquiry. This is based on its revenue of [X]. [X] also submitted that this market share is still overstated as it included sales in Botswana, Mozambique, Namibia, Zambia and Zimbabwe.
45 See submission by [X], dated 28 June 2019, para 101 - 105.
46 See submission by [X], dated 28 June 2019.
47 See submission by [X], dated 28 June 2019, and [X] dated 28 June 2019.
48 [X] further submitted that the Inquiry drew the wrong conclusions about concentration and the functioning of the market as a result of incorrectly interpreting the StatsSA data. [X] submitted that challenger retailers have grown their sales and expanded in the grocery sector at a faster rate than [X] and other major retailers which [X] believes provides testimony to the real dynamics of the sector and the ability of small players to emerge and grow rapidly. See [X] submission dated 28 June 2019, para 10.
49 See submission by [X].
50 See submission by [X].
51 See submission by PLAAS, dated 28 June 2019. PLAAS submitted that research confirms that the market power exercised by national supermarket chains plays a central role in the dynamics of productive sectors. PLAAS believes that the development of buyer-driven value chains that are governed by supermarkets has encouraged wider trends towards concentration in the production components of the food value chains, and not only in fresh produce but also in livestock, dairy and field crops. PLAAS states that the position of the national supermarket chains has created significant disadvantages for smaller suppliers and other actors in the value chain upstream from supermarkets. PLAAS further submits that the concentration in the grocery sector has adverse effects on the small scale, emergent primary producers or farmers.
The Inquiry's final view

82. The Inquiry has duly considered the submissions by the stakeholders. However, it concludes that the approach adopted in the Preliminary Report is sound, albeit subject to some adjustments to the market share calculations.

83. First, while there may exist a multitude of local markets, it is appropriate to consider a national perspective on concentration as this will effectively mirror what is happening on a localised level and data is more readily available. In fact, localised markets are likely to be more concentrated than the national market analysis reveals in many cases as not all national chains will be present within a particular consumer catchment area, and very often specialist stores are excluded from shopping malls due to exclusivity provisions. A national picture also provides a useful perspective on the purchasing markets identified above, for both rental and products.

84. Second, in taking a national perspective, it is also appropriate to limit the scope to the formal grocery retail segment, which includes specialist stores. Informal stores are rightly excluded as they do not exert a strong competitive constraint on national supermarket chains. Where there is competitive interaction, it is asymmetrically in the other direction (namely supermarkets on spaza shops). This conclusion is also consistent with, and supported by, case precedent in grocery retail. In fact, on the basis of the relevant market discussion, this could be assessed even more narrowly around national supermarket chains rather than including other convenience and specialist stores in assessing the true closeness of competition.

85. In terms of determining market share and concentration, Table 2.2 provides the formal grocery retail sector's estimated market share according to the Retail Trade Industry Report of 2015, published by StatsSA in 2017. The Inquiry notes the criticism that the data relied upon is old considering that this Final Report is being released in 2019. However, given that there is no other alternative dataset that provides more recent data, the StatsSA 2015 data remain the best available information. Most importantly, no compelling evidence has been led to suggest that the picture in 2019 is vastly different to that in 2015.

86. In estimating the total size of the formal grocery retail segment, the Inquiry relied on the total income from the sales of food, beverages and tobacco, as reported by StatsSA for the period 2015. This estimate excludes non-grocery products such as pharmaceuticals, clothing, furniture, appliances and hardware.

87. In estimating the individual firms’ market shares, the Inquiry only considered the revenue derived from the sale of grocery products in the formal sector in South Africa.

88. It is also important to note that in assessing the share of the largest grocery retailers in the formal grocery retail segment, the Inquiry employed a well-accepted tool, namely, the concentration ratio. The concentration ratio adopted by the Inquiry is based on the top five largest retailers of grocery products in South Africa namely, Shoprite, Pick n Pay, SPAR, Woolworths and Massmart.

89. As is clear from Table 2.2 below, the concentration ratio for the top five largest retailers of grocery products in South Africa is approximately 64%. The Inquiry maintains its view that the formal grocery retail sector is highly concentrated.

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52 See Table 17 of StatsSA Retail Trade Industry 2015, p.28, which records the total income sales of only food, beverages and tobacco. In its Preliminary Report the Inquiry had combined the turnover of the categories: Non-specialised stores with food, beverages; and tobacco predominating and Food, beverages and tobacco in specialised stores (from Table C of the StatsSA report) to estimate the size of the grocery retail sector. The Inquiry has now relied on Table 17 which strictly records sales of Food, beverages and tobacco for all stores that sell these (excluding all non-grocery products). The Inquiry concludes that this is a better estimate of the formal grocery retail size in South Africa.

53 Also adjusting the revenues for non-grocery products such as white goods and clothing. The revenue data for Shoprite, Pick n Pay, Woolworths and Massmart primarily comprised their grocery sales in South Africa. It is important to note that SPAR provided data for its Southern Africa grocery retail operations.
2.7 BARRIERS TO ENTRY IN THE GROCERY RETAIL SECTOR

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

90.1 first, the required capital costs (including, among others, land and buildings, establishing a distribution network) were found to be significant;

### Table 2.2: Market shares in the formal grocery sector 2015

<table>
<thead>
<tr>
<th>Retailer</th>
<th>Sales (R million)</th>
<th>Estimated market share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shoprite</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>SPAR</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Pick n Pay</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Woolworths</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Massmart</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Others</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Total</td>
<td>328 708</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: StatsSA Retail Trade Industry, 2015, Table 17, p.28 and national supermarket chains’ 2015 annual reports

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54 Shoprite’s revenue data used for calculating the estimated market shares is based on the turnover for Supermarkets RSA division which consists of the following supermarket brands: Checkers, Shoprite, and Usave. See https://www.shopriteholdings.co.za/content/dam/MediaPortal/documents/shoprite-holdings/integrated-report/2015/5527_SR_IR2015_E.pdf. The turnover has been adjusted for non-grocery sales in accordance with Shoprite’s submission dated 16 October 2019.

55 SPAR’s revenue data was derived from its submission dated 28 June 2019 as well as its 2015 financial results presentation published in November 2015 which sets out the SPAR (and its liquor business, Tops) revenue for Southern Africa. See https://investor-relations.spar.co.za/wp-content/uploads/2015/11/SPAR-Results-Presentation-Nov-2015.pdf. The Inquiry notes that SPAR’s market share may be overstated as it includes non-South Africa turnover, however SPAR submitted this data, acknowledging that it is overstated in response to the Inquiry’s Preliminary Report. The Inquiry is of the view that it is appropriate to group SPAR with the national supermarket chains in Table 2.2 above, SPAR itself in its submissions/fillings to the Commission, when estimating its market share, includes the national supermarket chains, i.e. Shoprite, Pick n Pay and Woolworths and Massmart (who are not wholesalers as SPAR identifies itself) as its competitors. Example of these merger fillings include acquisitions by the SPAR Group under the following commission case numbers, 2019AUG0049, 2019May0023, 2017AUG0070, 2017AUG0030, 2017JUL0032, 2014DEC0755 and 2015APR0167.


57 Woolworths’ revenue data was derived from its annual financial statement for the 2015FY which provided sales revenue from its food division in South Africa. See https://www.woolworthsholdings.co.za/wp-content/uploads/2017/12/whl_2015_afs1.pdf.

58 Massmart’s revenue data was derived from its submission dated 3 October 2019 and its 2015 annual report, see http://www.massmart.co.za/results2015/wp-content/uploads/Massmart-Results-2015-2.pdf.

59 Case No: 04/LM/Jan09.

60 Case No: 52/LM/Jul02.

90.2 Second, economies of scale\(^62\) and scope\(^63\) were considered to be crucial for effective competition, particularly as they related to a retail firm’s ability to obtain favourable trading terms, rebates and advertising allowances and, from a supplier’s perspective, economies of scale were considered a crucial aspect for the realisation of productive efficiencies;

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

91. The Inquiry noted that the market dynamics in the retail sector have largely remained the same, characterised by high barriers to entry, particularly in the higher value segments within the grocery retail value chain. By contrast, the Inquiry notes that there are low barriers to starting survivalist informal spaza shops.

2.8 EMPLOYMENT WITHIN THE GROCERY RETAIL SECTOR

92. The grocery retailer sector is a source of employment for many South Africans. Due to the difficulties faced in estimating the size of the informal grocery retail market, this discussion is limited to the formal segment of the market.

93. According to StatsSA, 302,433 persons were employed in non-specialised stores with food, beverages and tobacco predominating in 2015. This represents 37% of the total employment created by the retail sector as a whole. Further, the number of people employed in these stores increased by 109% between 2005 and 2015.\(^64\)

94. In specialised food, beverage and tobacco stores, the number of persons employed in 2015 amounted to 60,678, indicating a 12% decrease in employment since 2005. Employment in specialised food, beverage and tobacco stores contributed 7.5% to the total employment opportunities in the retail sector as a whole.\(^65\)

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

2.9 CONSUMER BEHAVIOUR WITHIN THE GROCERY RETAIL SECTOR

96. In September 2016, the Inquiry commissioned a consumer survey to understand general shopping behaviour and preferences by consumers. The survey interviewed 1,558 respondents, ranging between 18 and 70 years old across 10 selected areas of the country i.e. Winterveldt and Ivory Park in Gauteng, Vrygrond in the Western Cape, Mmabatho in the North West, Embalenhle in Mpumalanga, Thabong in the Free State, Mthatha in the Eastern Cape, Kimberley in the Northern Cape, Giyani in Limpopo and KwaMashu in KwaZulu-Natal province.

97. The survey sought to understand:

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

97.2 shopping places that are frequented for convenience weekly or monthly shopping; and

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\(^62\) Economies of scale were found to be important in lowering costs by allowing retailers to maximise the efficiencies of their warehousing and distribution facilities. Further, various costs of running a grocery retail chain do not increase proportionally with the number of outlets.

\(^63\) The Commission found that grocery retailers benefit from supplying a large number of products and that the costs of supplying products do not increase in proportion with the widening of product range. Further, the grocery retailers benefit from being a “one-stop-shop” solution in terms of attracting larger numbers of customers.


97.3 the average disposable income spent on grocery items per month.

98. The results of the survey revealed that:

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

98.2 a significant part of lower income earners do their weekly or monthly shopping outside their local area in shopping centres;

98.3 a high proportion of the higher income earners conduct their daily shopping at the local supermarket;

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

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

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

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

102. Figure 2.8 below identifies two types of shopping missions and the type of outlets that a consumer is likely to visit for that specific shopping mission. The survey indicated that around 55% of the respondents in the survey recorded doing

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

![Bar chart showing the percentage of respondents who visited different outlet types within two weeks.](Image)

Source: Competition Commission Consumer Survey
Figure 2.8: Types of shopping missions per different outlet types

Source: Competition Commission Consumer Survey

Figure 2.9: From whom newly opened supermarkets took market share

Source: Competition Commission Consumer Survey
their weekly or monthly shopping at their local supermarket. Although lower, a significant percentage (43%) also used local supermarkets for convenience shopping. Similarly, a higher percentage (33%) of respondents recorded doing shopping at supermarkets outside of their local area for their weekly shopping than the percentage of people (13%) using outlying supermarkets for convenience shopping. Given the additional transport costs required to travel to an outside shopping centre, it makes sense that a consumer would primarily visit an outside supermarket for major grocery purchases. In addition, the consumer survey also confirmed that the primary reason for visiting a spaza shop was for convenience shopping (or top-up shopping) instead of weekly or monthly shopping.

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

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

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

66 Consumer Survey Presentation, Slide 25.
Figure 2.10: Reasons for going to the nearest mall/shopping centre

Source: Competition Commission Consumer Survey

Figure 2.11: Location of the closest supermarket

Source: Competition Commission Consumer Survey
3.1 INTRODUCTION

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

In order to answer these questions, the following objectives were pursued:

107.1 to determine how spaza shops fit into formal value chains of key food products, thereby providing key background information on the relationship between formal and informal grocery retailing;

107.2 to understand competitive strategies of spaza shops, in relation to the practices of formal retailers in townships;

107.3 to understand the business challenges faced by spaza shops; and

107.4 to understand consumer patterns and consumer preferences for purchases at spaza shops vis-à-vis purchases at formal retailers in townships.

The achievement of these objectives would not conclusively determine whether supermarkets encroach on spaza markets, and, in turn, affect the livelihoods of spaza shop operators. It, however, does serve to contextualise spaza shops’ connections with suppliers, other retail formats and township (food) consumers, in order to enable general interpretations on the relationship between spaza shops and formal food retailing in informal areas.

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

68 This section will have a specific focus on price differences and/or relationships. An understanding of price relationships, and the broader competitive strategy, serves to inform spaza strategies that facilitate business feasibility related to informal retailing.

69 This serves to contextualise how spaza shops perceive proximity to formal retailers amidst the myriad of factors that previous researchers have noted as constraining factors to informal retail (see, among others, Kroili et al. (2017), Lichthelm (2004), Perks (2010) and Charman (2017).

70 There have been multiple studies on the effect of supermarkets on informal retailing in townships (see, among others, Lichthelm (2008), Charman et al. (2012) and Piper and Yu (2016)). These studies, however, have a common limitation in that they do not consider consumer preferences, related to food and grocery purchases, of township dwellers. Since strong demand is the lifeblood of any business, it is imperative that consumption issues are included to form a holistic picture.
3.2 METHODOLOGY

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

Phase 1

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

110.1 washing powder;
110.2 wheat to bread;
110.3 maize to maize meal;
110.4 sunflower seed to cooking oil; and
110.5 raw milk to fresh milk/UHT.

Phase 2

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

Focus Areas

112. The survey focused on four metropolitan municipal areas: the cities of Ekurhuleni, Johannesburg, eThekwini and Cape Town. These are the four largest metros in the country and had a collective population of just below 15 million people in 2011.71

113. Within these metros two to three townships were identified as survey target areas. Due to the time constraints associated with the project, the decision on which areas to target were determined on the basis of the existence of an already established survey in these areas. The townships identified, per metro, are presented in Table 3.1 below.

Table 3.1: Focus Areas for Survey Collection

<table>
<thead>
<tr>
<th>Focus Area 1</th>
<th>City of JHB</th>
<th>City of CPT</th>
<th>Ethekwini</th>
<th>Ekuruleni</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soweto - Eldorado Park</td>
<td>Soweto - Dobsonville</td>
<td>Khayelitsha - Harare</td>
<td>KwaMashu</td>
<td>Thembisa</td>
</tr>
<tr>
<td>Khayelitsha - Makaza</td>
<td>Delft</td>
<td>Umhlozi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illovo</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Sampling

114. Within each of these areas, maximum variation purposive sampling was undertaken. Purposive sampling is a type of non-probability sampling with the objective of capturing a wide range of respondents. The basic principle behind this type of sampling is to gain an improved understanding of a specific research object or principle by considering it in various forms. Approximately 30 spaza shops and 30 consumer respondents were surveyed per area amounting to a total sample of 300 spaza shops respondents and 300 consumer respondents. Specific supermarkets in each area were also identified and a once-off price recording was conducted in parallel to the spaza and consumer surveys.

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

3.3 VALUE CHAIN GOVERNANCE

116. The type of relationship that governs a value chain transaction generally depends on the costs associated with that particular transaction. In other words, if it is relatively easy to transact and the information is relatively symmetric, with no risk of exploitation between parties, the market structure will prevail as the best mechanism to govern a transaction. However, the market mechanism might not be ideal for all transactions. When it becomes more costly to transact because of hidden information or hidden characteristics, or when the risk of exploitation increases, a mechanism that exerts greater control such as a formal contract, or even vertical integration are better-suited (Williamson, 2002). It is, therefore, possible to see many different mechanisms governing the different transactions in the same value chain.

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

Maize to maize meal

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

119. The transactions between the maize milling companies and formal retailers differ between product lines and across retail chains. Although most of these transactions are governed by contractual relationships with predetermined specifications, it can range from procurement through a central distribution centre or procurement

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72 The discussions and assertions presented here are based on extensive experience in working in the selected value chain by BFAP’s institutional economist, Dr. Melissa van der Merwe. The features and characteristics which are, therefore, not directly referenced or indicated as obtained from discussions from industry experts should be considered with the expertise of Dr. van der Merwe in mind.
at store level. Additionally, in some instances, retailers take ownership of the procured products, and in other instances, the processor rents shelf space for its products. Discussions with industry experts revealed that orders are usually placed weekly, depending on sales, and prices are negotiated quarterly. For low-value goods such as maize meal, profits are quite small, and the payment terms are usually between 60 and 90 days.

Wheat to bread

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

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

Oil seeds to cooking oil

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

123. The terms of transactions between crushers and refineries differ depending on the level of integration in the chain. In some instances, crushing and refinement are integrated into a single company, implying no interim transaction. When refinement is not vertically integrated with crushing, the transaction between the two is typically governed by relational contracting, to ensure sufficient throughput. Within the contracting relationship, oil prices remain determined by import parity levels, as South Africa remains a net importer of oil.
124. The terms of transactions between processors (either integrated crushing and refinement or independent refineries and bottling plants) and retailers are more uncertain and have not been researched widely in South Africa. Such relationships are also very diverse and differ amongst product lines and across retail chains. Some retailers have central procurement strategies through their own distribution centres, while others procure locally at store level. Discussions with key stakeholders highlighted that some retail groups do not take ownership of products. Instead, they provide shelf space to processors and pay them after the product is sold - typically on 90-day terms.

125. Long payment terms are particularly relevant to low-value goods, where profits are small and sometimes even negative but are effective at drawing consumers into the relevant store. Within the vegetable oil space, low-value blends would fall into this category, whereas higher value products such as canola would not. Prices are typically negotiated on a quarterly basis, with product orders placed weekly, depending on consumer sales trends. Discussions with industry experts revealed that a share of the final price is allocated to the retailer to cover merchandising costs, such as advertising and promotions. Processors are expected to provide different product lines aimed at consumers of various backgrounds and income levels, as well as different packaging sizes.

**Milk**

126. As a result of the high perishability of raw milk, the governance of the milk value chain is more regulated than that of maize meal, bread, and cooking oil. The transaction between the milk producer and the milk processor is typically governed by contractual arrangements. Depending on the transaction and the needs of the transacting parties, these contracts can either be formal written contracts or verbal agreements between the producer and processor.

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

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

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

3.4 THE POSITIONING OF SPAZA SHOPS IN FORMAL VALUE CHAINS

130. The Inquiry considered the position of informal retailing and how it fits into the chains described above, analysing data collected by surveying 300 spaza shop operators.

Procurement practices

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

132. In the case of milk, spaza shops predominantly stock UHT milk and, therefore, perishability considerations are less important. As a result, around 16% of the total sample sourced directly from the processors. The remainder of the sample predominantly relied on wholesalers for supply of milk (76%), whilst 6% sourced milk from the nearest supermarket and 2% of the sample reported not stocking milk. Results further suggested that larger spaza shops were more likely to be serviced directly by milk suppliers, with 25% of spaza shops with sales in excess of R1 000 per day, being serviced directly, as opposed to only 12% of spazas with sales less than R1 000 per day. This was considered to be suggestive of the need for scale in order to benefit from supplier (processor) delivery and distribution networks.

133. Cooking oil and maize meal, which are products that can be kept in inventory, were mainly sourced from wholesalers (89% and 86% respectively). The frequency with which these products were procured was also significantly less compared to bread and milk. Table 3.2 below provides a summary of the key findings associated with sales and procurement practices of the surveyed stores.

<table>
<thead>
<tr>
<th></th>
<th>Bread</th>
<th>Maize Meal</th>
<th>Cooking Oil</th>
<th>Milk</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Main Supply Source</strong></td>
<td>Direct from baker (85% of sample)</td>
<td>Nearest Wholesaler (86% of sample)</td>
<td>Nearest Wholesaler (89% of sample)</td>
<td>Nearest Wholesaler (76% of sample)</td>
</tr>
<tr>
<td><strong>Most reported purchasing frequency</strong></td>
<td>Every day (85% of sample)</td>
<td>Once a week less (90% of sample)</td>
<td>Once a week less (93% of sample)</td>
<td>Twice a week (26% of sample)</td>
</tr>
<tr>
<td><strong>% of respondents making use of credit in procurement</strong></td>
<td>4.4%</td>
<td>3%</td>
<td>5%</td>
<td>3%</td>
</tr>
<tr>
<td><strong>Product Collection / Delivery</strong></td>
<td>Supplier delivery (85% of sample)</td>
<td>Own transport (85% of sample)</td>
<td>Own transport (84% of sample)</td>
<td>Own transport (74% of sample)</td>
</tr>
</tbody>
</table>
134. In order to understand the motivation for using the preferred source of supply, the primary considerations disaggregated by product, are depicted from Figure 3.1 to Figure 3.3. The total sample was clustered into different supply source options, namely: supermarket; wholesaler; and supplier (processor). In the case of bread, only the Processor and Wholesale cluster were considered, since only 1% of the sample indicated supermarkets as supply choice.

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

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

137. In the case of milk, the reliance on the nearest wholesaler for supply was found to be marginally less than in the case of maize meal and cooking oil, with 76% sourcing milk from wholesalers, 16% directly from suppliers (processors) and 5% of retailers. If these supply choices are considered per cluster, the main reason for making use of processors was related to quality, with 48% of the total cluster noting this as the primary reason for their supply choice. The quality notion was mostly related to freshness and, as a result, it seems fair to deduce that processors were mostly used for fresh milk procurement. Convenience was identified by a large proportion of the supplier cluster with 41% noting that this was the main reason for procurement directly from

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

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Wholesaler</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price</td>
<td>Quality</td>
</tr>
</tbody>
</table>

---
processors. The convenience factor here is mostly related to delivery. With regards to wholesaling and retailing, favourable price levels and convenience were stated as the primary reasons for supply choice. Convenience in this context was again mainly related to proximity to the supply source (See Figure 3.3).

Sales patterns

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

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

**Concluding remarks on procurement and sales practices**

140. The results presented in this section contextualise the procurement and sales practices of spaza shops in order to understand how they fit into the supply chains. It was found that products that are non-perishable are sourced almost exclusively from wholesalers on a relatively infrequent basis (less frequent than once a week). Perishable products, in turn, are sourced directly from suppliers due to convenience factors but also to ensure quality and freshness. Figure 3.5 can, therefore, represent the end nodes of supply chains for perishable and non-perishable products. It seems that wholesalers almost serve the purpose of a self-servicing distribution centre, used by spaza shop operators, for non-perishable products.

141. In terms of governance, transactions between spaza shops and suppliers can generally be classified as arm’s length. There are, however, instances, where due to the frequency of the transaction, the transaction(s) can be classified as relational contracting. Product examples are bread and milk, specifically when these products are delivered to the spaza shop.

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

3.5 COMPETITIVE STRATEGY ANALYSIS

Competitive strategies of spaza shops

143. The competitive interaction between spaza shops and national supermarket chains has been widely researched. Lichthelm (2008) found that the opening of retail establishments (national supermarket chains) in townships did have a negative effect on the number of spaza shops in operation and on the turnover levels of those that remained in business subsequent to the opening of the formal retail stores. Madlala (2015), produced similar results, noting that spaza shops experienced lower consumer volumes, subsequent to the opening of a supermarket in close proximity and responded by adjusting their marketing strategy. By contrast, Peyton et al. (2014) note that although supermarket expansion in informal economies has been pervasive, consumption patterns of poor households are often incompatible with the competitive strategies of national supermarket chains.73

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

Spaza business challenges

145. The literature on informal trading in South African townships has noted numerous factors that affect the feasibility of these businesses.

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73 Peyton (2014) finds that marginalised consumers are often not able to afford larg(er) packing formats associated with formal retail and that spaza shops speaks to this need by providing smaller packing sizes for example instead of a 700g loaf of bread, spazas offer half a loaf of bread.
Kroll et al. (2017) highlight the establishment of formal retail outlets in townships, combined with the disbursement of social grants through these outlets as one of the key problems. Coetzer and Pascarel (2014), in turn, note the business acumen of store owners and lower volumes (which ultimately require higher prices) as key factors that affect the feasibility of these establishments negatively. Other reasons that are noted was the generally anti-foreign sentiment towards informal businesses, access to capital, issues related to infrastructure and regulatory issues.

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

3.6 ISSUES AND CONSTRAINTS AFFECTING BUSINESS OPERATIONS OF SPAZA SHOPS

147. In conventional business analysis, opportunities and constraints are analysed through the well-known Porter (2008) approach. Whilst providing valuable guidance, the issues conventionally analysed with this approach were supplemented by issues identified from the literature, specifically on the informal economy, in order to tailor it to an informal food retailing business. It should also be noted that the issues considered here had a strong focus on factors related to competitiveness since the ultimate objective of this analyses is to determine if livelihoods derived from informal food trading is affected.

![Figure 3.6: Constraints experienced by spaza shops](image-url)
by competition from formal retailing. The factors considered in Porter’s competitiveness strategy were, therefore, used as a point of departure, whilst combining it with broader literature on informal retailing, to derive the factors presented in Figure 3.6 which shows that Crime was the most noted constraint with 64% of the sample rating crime as “Very Constraining.” This was followed by 59% of the sample rating Price Competition from other Spazas as “Very Constraining.” Rated third, was Price Competition from Supermarkets (53%).

148. To account for the heterogeneity of the enterprises included in the sample, open-ended questions on constraints and issues were also included in the survey in order to account for possible issues that were not captured through the structured questions. These issues are summarised in Figure 3.7 below. Competition and crime were again listed as the main issues affecting the business viability of spaza shops. Other issues that were prevalent, although not rated high in the “primary concern” category, were supply related issues and language or prejudice against foreign owned enterprises. Infrastructural issues related to electricity and shop space were also mentioned frequently. Results from the structured and open-ended questions, therefore, validate one another in that competition and crime are the biggest issues that affect spaza business operations.

149. The nature of crime faced by spaza shops are diverse. Ranging from minor stock theft incidents to more serious incidents related to vandalism, intimidations and violent attacks. Perks (2010) noted that spaza shops in the Nelson Mandela Bay Metropolitan are often the victims of break-ins, vandalism and physical attacks. It is further noted that large amounts of stock attract crime and, therefore, shops keep small inventories.

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

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

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

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

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

154. The first was a general question that dealt with spaza shop owners or managers perceptions on whether there is space for both retail formats in informal settlements. The results are presented in Figure 3.8 below.

155. Figure 3.9 shows that 44% of respondents agreed with the statement that there is room for both spaza shops and large(r) supermarkets can operate in township areas. In terms of how proximity affected spaza business prospects Figure 3.9 shows that the
majority of spaza shop owners/managers perceived the presence of supermarkets in townships as growth constraining.

156. The above perception was validated with a question that explored the possibility of supermarket proximity being beneficial to spaza shops. Here respondents again had to express their level of agreement. The results are set out in Figure 3.9 above.

157. Figure 3.10 and Figure 3.11 seem somewhat contradictory in that the majority of the respondents answered they felt that there is space for both retail formats (See also Figure 3.8 above) but, overall, respondents perceived the proximity of supermarkets as being growth constraining and having no benefits to their business. Due to this ambiguity, perceptions related to proximity are explored further by clustering the
158. Three distance clusters are considered, namely: “less than one km away from the nearest supermarket”; “between 1 and 2km away from the nearest supermarket”; and “more than 2 km away from the nearest supermarket.” The statement concerning benefits of proximity perceptions shows that distance to nearest supermarket affects how spaza shops perceive benefits. Figure 3.11 shows that a higher percentage of respondents closer to large retailer disagreed with the statement, compared to the cluster that reported their distance in excess of 2km from the closest supermarket.

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

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

161. In order to validate the differences between how the distance clusters perceived the benefits and threats related to growth, as apparent in Figure 3.9 and Figure 3.12, the Kruskal-Wallis test was applied. Formally, the hypotheses are presented in Table 3.3 below.

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

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

164. This classification was then used to determine if the size has an impact on whether supplies are (sometimes) sourced from the closest supermarket or large retailer. The logic here is that smaller sizes might be more inclined to source products from supermarkets in close proximity since they do not benefit from scale in terms of delivery and inventory capacity. The selection of products considered is maize meal, cooking oil, milk and bread. This is because in the case of bread, only around 10% of the sample reported obtaining bread from retail formats (90% reported being serviced directly by suppliers). The disaggregated results are presented in Figure 3.13.
Figure 3.13: Percentage of Sample's Level of Agreement with "Large local grocery retailers are an attractive source for food/grocery supplies"

<table>
<thead>
<tr>
<th>Level of Agreement</th>
<th>Cooking Oil</th>
<th>Milk</th>
<th>Maize Meal</th>
<th>Bread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fully Disagree</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disagree</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neutral</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agree</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fully Agree</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 3.14: Percentage of Cluster's Level of Agreement with "Large local grocery retailers are an attractive Source for Food/Grocery Supplies"

**Milk**

Agree

Disagree

**Maize Meal**

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

Conclusion

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

3.7 CONSUMPTION PATTERNS IN TOWNSHIPS

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

Consumer shopping patterns

168. In order to understand the food purchasing behaviour of consumers in townships, key findings in terms of purchasing preferences and frequency are presented in the graphs below. Figure 3.15 serves as background on the income distribution of the sample. From this figure, it is evident that almost 20% of the sample earns between R1501 and R3000 per month. Approximately 30% of the sample earned between R3001 and R5000 per month and around 27% earned between R5001 and R10 000 per month. The sources of income are subsequently presented in Figure 3.16 The overwhelming primary source of income for the sample was reported to be wages and salaries of a household member. In terms of employment, 29.7% of the sample indicated that they are currently unemployed.
169. Figure 3.17 and Figure 3.18 considers the various consumer motives for shopping at different retail formats. Figure 3.17 specifically considers the key reasons for spaza shop inclinations. Here, the primary reason for spaza shop patronage is related to convenience in terms of location with convenience in terms of shopping hours rating the highest in terms of a secondary characteristic. If this is compared to the results of Figure 3.18 which represents reasons for supermarket patronage, the difference is striking. Here, consumers cited price factors as the primary motivation for favouring supermarkets, with the secondary consideration, ranking the highest, being product variety. This seems to suggest that consumers perceive the different retail formats independently and favour the different formats for different reasons.

170. Figure 3.19 and Figure 3.20 relates to purchasing frequency and monthly food spend at supermarkets and spaza shops. From Figure 3.19 it is apparent that spaza shop purchases were reported to be much more frequent compared to purchases at supermarkets. The majority of the sample reported that they visit a spaza shop once a week or more. In terms of supermarkets, the largest share of consumers (50%) indicated that they purchase at these outlets once a month with a high proportion also purchasing weekly. This supports the notion that supermarkets cater for weekly/monthly shopping trips and spaza shops are used for convenient daily top-up shopping trips.
171. Figure 3.20 shows that almost 50% of the sample reported that they spend less than 20% of their total food expenditure at spaza shops. Contrastingly, just over 40% of the sample indicated that they spend between 60% and 80% of their total food expenditure at supermarkets. The most important products purchased at spaza shops were reported to be bread, milk, sugar and convenience products such as crisps or sugary drinks. Non-food related spaza purchases often mentioned were airtime and paraffin.

172. Since price is a key factor in terms of competition, consumer patterns related to price were tested by determining their level of agreement with statements related to price. Figure 3.21 and Figure 3.22 set out how consumers behave with regard to price differences between spaza shops. It is apparent that almost 40% agreed with the statement that they shopped around between spaza shops to find the best price, with roughly 17% strongly agreeing with this statement, see Figure 3.21. The level of agreement with searching for the best price between formal and informal outlets is even stronger with 36% agreeing and 28% strongly agreeing with the statement which would suggest that there is a form of price competition between the two retail formats.
173. In terms of explicitly analysing consumer preferences for a specific retail format (spaza or supermarket) consumers were asked to indicate their outlet preference for 7 different products. The various products considered, and their associated percentage of sample preferences are depicted in Figure 3.23 below. Here it is apparent that bread and milk purchases were overwhelmingly preferred at spaza outlets, whereas maize meal, cooking oil and sugar purchases were preferred at supermarkets. Potatoes and tomatoes were more evenly distributed between the two formats.
174. In order to determine if the preferences as indicated in Figure 3.23, are related to specific consumer attributes, a probit model for each of the products under consideration was estimated (see Table 3.4 below). The four consumer attributes that were considered as explanatory variables were gender, age, employment status and income level. The probit estimates were subsequently used to determine the probability of a change to purchase at a supermarket given an incremental change in one of the explanatory variables and the associated marginal effects.

Table 3.4: Estimation Results of Binary Probit model

<table>
<thead>
<tr>
<th>Product</th>
<th>Variable</th>
<th>β</th>
<th>Marginal Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bread</td>
<td>Gender</td>
<td>0.13</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>Age</td>
<td>-0.05</td>
<td>-0.01</td>
</tr>
<tr>
<td></td>
<td>Employment Status</td>
<td>0.37*</td>
<td>0.08*</td>
</tr>
<tr>
<td></td>
<td>Income</td>
<td>0.1</td>
<td>0.02</td>
</tr>
<tr>
<td>Milk</td>
<td>Gender</td>
<td>0.29</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>Age</td>
<td>-0.03</td>
<td>-0.01</td>
</tr>
<tr>
<td></td>
<td>Employment Status</td>
<td>0.26</td>
<td>0.09</td>
</tr>
<tr>
<td></td>
<td>Income</td>
<td>0.11*</td>
<td>0.04*</td>
</tr>
<tr>
<td>Maize Meal</td>
<td>Gender</td>
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<td>-0.06</td>
</tr>
<tr>
<td></td>
<td>Age</td>
<td>-0.04</td>
<td>-0.01</td>
</tr>
<tr>
<td></td>
<td>Employment Status</td>
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<td>-0.04</td>
</tr>
<tr>
<td></td>
<td>Income</td>
<td>-0.15**</td>
<td>-0.04**</td>
</tr>
<tr>
<td>Cooking Oil</td>
<td>Gender</td>
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<td>-0.26</td>
</tr>
<tr>
<td></td>
<td>Age</td>
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<td>0.02</td>
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<tr>
<td></td>
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<td>-0.01</td>
</tr>
<tr>
<td></td>
<td>Income</td>
<td>-0.16**</td>
<td>-0.04**</td>
</tr>
<tr>
<td>Potatoes</td>
<td>Gender</td>
<td>-0.009</td>
<td>-0.003</td>
</tr>
<tr>
<td></td>
<td>Age</td>
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<td>-0.02</td>
</tr>
<tr>
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<tr>
<td></td>
<td>Income</td>
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<td>-0.03</td>
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<tr>
<td>Tomatoes</td>
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<tr>
<td>Sugar</td>
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<td>0.04</td>
</tr>
<tr>
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<td>Employment Status</td>
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</tr>
<tr>
<td></td>
<td>Income</td>
<td>-0.19**</td>
<td>-0.05**</td>
</tr>
</tbody>
</table>
175. In Table 3.4 a 10% significance is denoted by *, a 5% significance is denoted by ** and a 1% significance is denoted by ***. This suggests that income is a significant determinant for outlet choice in the case of milk, maize meal, cooking oil and sugar. Employment status was found to be a significant determinant for bread. Tomatoes and potatoes did not have any significant determinants amongst the demographic determinants considered here. This could probably be attributed to spaza shops not frequently stocking these products. The computed marginal effects also show that bread buyers that are unemployed are 8% more likely to buy bread from spaza shops than supermarkets. Contrastingly, for milk, the marginal effect on income suggests that persons in higher income categories are more likely choose spaza shops. The marginal effects for maize meal, cooking oil and sugar, in turn, points to an increase in the likelihood that the consumer will choose local supermarkets when their income increases.

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

3.8 CONCLUSION

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

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

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

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

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

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

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

184. Therefore, the Inquiry is of the opinion, that despite competitive behaviour between formal and informal retail, there is room in townships for both formats. The absence of supermarkets in townships would potentially make the survival of informal retail format somewhat more feasible but would ultimately deprive township consumers of access to the benefits associated with large-scale, formal retailing.
These include in-store value propositions in terms of product variety and prices and substantial investments in sophisticated and efficient value chains. From a holistic point of view, both formats are essential in township economies. It would serve policy makers well to strengthen informal economy entrepreneurs by focusing on some of the constraining issues, not directly related to competition, identified here and in the scholarly literature including curbing crime and strengthening the business acumen of spaza shop operators.
4.1 INTRODUCTION

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

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

187. Small businesses are recognized as one of the effective ways to address the challenges posed by high levels of unemployment, by providing individuals with a source of income and empowerment. When compared to other developing countries, the South African level of entrepreneurship has been measured to be one of the lowest.74 This is despite the increase in the number of South Africans who believe there are good opportunities for starting a business in their area, as well as those who believe that they have the necessary skills, knowledge and experience to start a business.

188. This chapter is structured as follows: section two considers the various strategies employed by the national supermarket chains in their entry into non-urban areas; section three considers the trends on entry of the national supermarket chains and exit of spaza shops in non-urban areas as well as barriers and constraints affecting the business operations of spaza shops in these areas; section four considers the impact on employment while section five explores...
the impact on consumers; section six presents the Inquiry’s preliminary findings; section seven presents a summary of stakeholder submission in response to the preliminary findings; and section eight sets out the Inquiry’s responses; section nine discusses the Inquiry’s final findings and recommendations.

4.2 THE EXPANSION, DIVERSIFICATION AND CONSOLIDATION OF NATIONAL SUPERMARKET CHAINS INTO TOWNSHIPS, PERI-URBAN AREAS AND THE RURAL AREAS.

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

190. National supermarket chains have been expanding their footprint in these areas, occupying shopping centres and malls located in townships, peri-urban and rural areas, directly servicing areas that were previously serviced by largely locally owned small and independent retailers largely locally owned. Recently, some of the national supermarket chains have been extending their footprint. Woolworths and Pick n Pay have expanded as branded convenience stores open for 24 hours, located in filling stations but mostly in urban areas.

191. Of critical relevance for this chapter is the recent expansion and entry by Pick n Pay and Shoprite into the spaza shop retail space in non-urban areas. Pick ‘n Pay’s approach has been to convert independent spaza shops into Pick n Pay branded and modelled convenience stores in non-urban areas. Shoprite has, through its Usave brand, introduced container stores in townships, the “Usave eKasi”. It is important to note that the Shoprite Usave eKasi spaza shops are corporately owned by Shoprite while the Pick n Pay spaza shops are independently owned by the original spaza shop owners.

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

193. It is also noted that prior 1994, the small independent businesses operating in these areas were largely owned by South African citizens, in contrast to the current situation.

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

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75 Usave eKasi is a small format modular store of which the first Usave eKasi opened in June 2017 in Spruitview, Gauteng.
76 The developments post 1994 are discussed in detail under Chapter 6 in assessing the dynamics of competition between local and foreign national operated businesses.
77 Refer to a detailed discussion under section 3.5 on the competitive strategy of spaza shops in Chapter 3. These are consumers who may not be able to afford purchasing a bag of rice (500g) but would be able to buy a cup of rice as offered by some of the spaza shops.
78 This was also a finding made by Peyton et al (2014). This finding is also discussed under the competitive strategies of spaza shops in responding to the competition challenge from the large supermarket chains.
“2. The purpose of this Act is to promote and maintain competition in the Republic in order

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

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

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

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

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

195. In particular, the Inquiry sought to examine:

195.1 whether the entry of national supermarket chains in townships, peri-urban and rural areas has led to an increase or a decrease in the number and performance (turnover) of small and independent retailers in these areas;

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

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

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

4.3 THE IMPACT OF NATIONAL SUPERMARKET CHAINS ON THE PERFORMANCE AND THE NUMBER OF SMALL AND INDEPENDENT RETAILERS

Trends in the entry and exit of small independent stores

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

197. Previous studies have shown a decrease in the number of small and independent retailers trading in these areas.79 Some research points to a high correlation between the decline in the performance of small informal businesses and national supermarkets broadening their geographic footprint in townships and non-urban areas.80 Further, it has been hypothesized that the shrinking township informal and formal grocery retail market, and the subsequent rise of national supermarkets have negatively impacted profits, employment, entrepreneurship, product offerings and operational strategies of independent small businesses.81 Although there is an abundance of commentary on this issue, most of it has been found to be inconclusive, anecdotal, and inadequate to produce any irrefutable inference.82

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80 Of course, correlation is not causation.
82 Vanya Gastrow comment on ToR dated 25 June 2015, p 2, para 1.2.
198. The anecdotal evidence provided to the Inquiry shows that there has been an exit of small businesses, especially following the entry of national supermarket chains within the vicinity of small independent businesses.

199. On the positive side, from the consumer perspective, the bulk of the submissions suggest that the entry of large national supermarket chains offers a variety of products at relatively lower prices and there are other incidental lifestyle benefits that comes with these developments. The negative side is that as a result of wide product offerings, lower prices, and convenience brought by national supermarket chains, smaller traders lose their regular customers and ability to compete effectively.83

Submissions from stakeholders84

200. Public consultations with small independent traders across the country produced differing views regarding the impact of the entry of national supermarket chains on their businesses and other businesses in non-urban areas.85 Each trader’s experience differed depending on a number of factors such as the location of their business in relation to the shopping centre where national supermarket chains are located, the location of other small independent retailers, the type of business and the product offering.

201. In areas like KwaMashu and townships on the periphery of Polokwane, the general view presented by formal and informal business operators was that the wider product offerings by national supermarkets adversely impacts the performance of small grocery retailers, resulting in closures of most of these businesses as they cease being competitive, particularly on price and product variety.86

202. On the other hand, a view also emerged that national supermarkets entering non-urban areas presented small independent retailers with an opportunity to capture the foot traffic that is directed to and from the malls anchored by these large national supermarkets, depending on the location of the small business in relation to the national supermarkets.87 This argument was submitted with the acceptance that it would to some extent require the small business in question to diversify its offering and offer better quality of products than large retailers.

The small business surveys

203. To supplement stakeholder submissions, the Inquiry commissioned a survey, to, amongst other things, assess the entry and exit trends of small and independent retailers and their performance considering the increase of shopping malls and centers anchored by large supermarket chains. In 2017, the Inquiry contracted the Sustainable Livelihoods Foundation88 (“SLF”) to conduct a small business survey (“small business survey”). SLF had previously conducted a similar study in this sector, the Inquiry sought to conduct a comparative study of the areas previously surveyed.

204. The small business survey selected non-urban residential areas in different provinces.

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83 Factors such as the inability of smaller traders to buy in bulk from suppliers and wholesalers offsets their ability to sell at competitive prices.
84 See section 13.1 in Annexure 4.
87 Minutes of the meeting between City of Mbombela and the Inquiry, dated 05 September 2016.
88 In addition to having conducted other related surveys in the informal sector, SLF had previously done work similar that of the Inquiry.
The areas that had been previously surveyed by SLF were Ivory Park (Gauteng), KwaMashu (KwaZulu-Natal), Thabong (Free State) and Vrygrond (Western Cape). In addition to the areas that had been previously surveyed, SLF conducted further surveys in five other provinces that had never been surveyed. The areas surveyed were De Aar (Northern Cape), Phokeng (North West), Modjadji (Limpopo), Nkomazi (Mpumalanga) and Lusikisiki (Eastern Cape). Altogether, SLF visited and interviewed 1 181 informal retail grocery outlets.

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

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

207. In Ivory Park, the number of spaza shops declined by 3.3%. There was already a Pick ’n Pay store in operation when the area was first surveyed in 2012. Therefore, attrition could not be directly attributed to the presence of the Pick n Pay store.

208. In Vrygrond, the decline was at an estimated 16.9%, and KwaMashu is said to have seen

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

90 In 2012 KwaMashu South African-owned informal grocery retailers exceeded foreign owned retailers. The 2017 survey found that South African-owned small retailers had drastically declined. On the other hand, the number of foreign owned retailers remained relatively unchanged in the same period.

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a decline of 71%. On the contrary, Thabong experienced an increase of approximately 59.2% small retailers.91

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

The results of the business survey on areas not previously surveyed

210. The Inquiry extended the areas to be surveyed to other provinces focusing on De Aar, Phokeng, Nkomazi, Lusikisiki and Modjadji, Modjadiskloof. The survey found that South African ownership share of the township spaza market had declined. In particular, the survey revealed that foreign nationals own approximately 80% of the spaza shops in areas such as Phokeng, in the North West.92

Conclusion on the findings of the small business survey

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

212. In KwaMashu a Pick n Pay store opened following the 2012 survey by SLF. Based on the available evidence, we cannot conclude that the Pick n Pay supermarket in KwaMashu as cited by Madlala (2016) resulted in the changing dynamics in the number of small independent stores as found during the 2017 survey. If indeed the opening of the supermarket caused the decline, other factors, such as those cited by Madlala (2016) (i.e. management skills) and other various factors that can be seen below in the barriers faced by small traders, would be more appropriate in explaining the closures of these businesses.

213. The survey in the Thabong area exhibited atypical trends from all the other regions. Although the Thabong Shopping Centre underwent massive extensions in 2014 and 2015, which included adding two grocery retailers, Superspar and Pick n Pay, the survey data shows that the number of small retailers since the last survey period (2015) increased from 51 to 125.93 The findings suggest that between 2015 and 2017 small retailers in Thabong more than doubled in growth. The positive outcome is marked by an increase in both foreign and South African owned small retailers. This result contradicts the proposition that the entry of national supermarkets leads to a decline in the number of small businesses.

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

215. The increase in the number of small grocery retailers close to shopping centers supports the finding by another survey that found that there could be synergy between spaza shops and national supermarkets co-existing for the benefit of consumers. We conclude that the patterns expressed in these numbers clearly indicates that there are other factors that are contributing to the

decline of small independent retailers in these areas and that such impact cannot be attributed only to the increasing shopping centre and mall developments occupied by the large supermarket chains.

Consumer survey

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

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

Competitive strategies of spaza shops

218. Spaza shops and supermarket chains sell groceries in parallel. As a result, there is an expected level of competitive interaction between them. Lichthelm (2008) found that the opening of these retail establishments (national supermarket chains) in townships did have a negative effect on the number of spaza shops in operation and on the turnover levels of those that remained in business subsequent to the opening of the formal retail stores. Mdlala (2015), produced similar results, noting that spazas experienced lower consumer volumes, subsequent to the opening of a supermarket in close proximity and responded by adjusting their marketing strategy. Contrastingly, Peyton et al. (2014) note that although supermarket expansion in informal economies have been pervasive, consumption patterns of poor households are often incompatible with the competitive strategies of national supermarket chains.

219. Competition can manifest in various forms such as convenience offerings in shopping hours, the convenience of location, credit provision, product mix and price. The next section evaluates some of the aspects

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94 The level of competition between spaza shops and national supermarket chains has been widely researched in the scholarly literature. Peyton (2014) finds that marginalised consumers are often not able to afford larger packing formats associated with formal retail and that spaza shops speak to this need by providing smaller packing sizes for example instead of a 700g loaf of bread, spazas offer half a loaf of bread, affordable for the low income group.

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

Source: Inquiry consumer survey, 2017
related to the competitive strategies of spaza shops, specifically examining credit provision, convenience and prices.

Extended trading hours

220. Spaza shops are positioned to compete on convenience related to accessibility (in terms of operating hours and proximity) relative to the national supermarket chains.96

221. The majority of spaza shops surveyed indicated that they operate for extended hours as this is a critical component of their competitive strategy. From the survey, only 3 respondents out of the total sample of 300 spaza shop, indicated that they did not have extended shopping hours.97

Credit provision

222. Spaza shops are also generally known to offer their customers credit in the form of allowing customers to take basic items from their shops on credit payable monthly or weekly depending on the arrangement.98 Further to offering food on credit, some spaza shop owners also offer credit/loans to customers within their communities.99 Approximately 30% of the spazas interviewed indicated that they provide credit. What is, however, striking is that an additional 42 respondents (14% of the total sample) cited customers not repaying their debt as a severe business constraint, even though they indicated that they do not provide credit. This discrepancy points to the level of credit provision potentially being as high as 44%.100

Prices

223. The Inquiry collected samples of associated brands for specified unit sizes to compare prices of the products between spaza shops and national supermarket chains.101 The descriptive statistics of spaza prices and national supermarket chain prices (for the products under consideration) are presented in Table 4.1 and Table 4.2. The number of price observations exceeds the number of spaza, and supermarket units interviewed since more than one price per product were collected per establishment.102

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

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96 This was cited in the consumer survey as one of the reasons for spaza shop patronage, convenience in location and trading hours.
97 Extended operating hours were classified as anything other/longer than traditional retail hours of 09:00-19:00.
98 This was found to be more prevalent with foreign traders with local spaza shop owners submitting they did not generally offer credit to their customers.
99 Local traders also informed the inquiry that they did not offer loans to customers as the risk of repayment were too high.
100 An alternative answer could be that credit-provision was perceived as a constraint in that spaza operators are unable to offer credit to customers. This inability is as a result of high defaulting rates of customers. Another interesting result was that only 36% of 26% reported to supply credit, stated the terms for providing this service. From these responses, it also seems that this service is mostly provided free of charge, with only two respondents specifying interest terms. The payment period, where specified, varied significantly between respondents but ranged from a few days to month end, which in severe cases can imply as much as 30 days.
101 Spazas usually supply more than one-unit size of a product, for example 500ml milk, 1 litre milk and 2 litre milk. In selected instances spazas also stock more than one brand per product line.
102 The protocol, with regards to price collections, was for enumerators to collect prices, brands and unit size from spaza shops for the products under consideration. In the case of supermarkets, enumerators were instructed to collect the three lowest prices, with associated brands for specified unit sizes. Here the unit sizes were specified and restricted to the sizes/packaging that is known to have the largest sales volumes. Industry experts suggested that these are 700g loaves of bread, 2-litre bottles of milk, 5kg bags for maize meal and 750ml for cooking oil.
The differences between the products under consideration are depicted in Figure 4.3 above. The comparative study found that the largest differences between spaza shop and national supermarkets chains prices were for milk and maize meal, with average spaza shops being approximately 40% higher for both products. It should, however, be noted that spazas are more inclined to sell smaller unit sizes which are comparatively more expensive (per unit) than their larger unit size equivalents. In the case of cooking oil, average prices at spaza outlets were 2% lower than averages.

This would likely amplify the price difference. If actual product sizes were to be compared, this difference could be somewhat less.

Table 4.1: Descriptive price statistics of spaza shops

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

Table 4.2: Descriptive price statistics of supermarkets

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

Figure 4.3: Outlet price difference
recorded for supermarkets. Except for cooking oil, all differences between average spaza shop prices and average supermarket prices were significant.

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

227. In terms of relating pricing to proximity to national supermarket chain stores, the aggregate sample was divided into three clusters namely “more than 2km away from nearest supermarket”, “between 1km and 2km away from the nearest supermarket”, and “less than 1 km away from the nearest supermarket”. The average price per product is presented in each cluster in the table below.

228. What is apparent from Table 4.3 is that prices tend to increase as the distance to supermarkets increase. What was observed from the test was that there was not much difference in price when the spaza shop was located less that 1km away from a supermarket, whereas for spaza shops located in excess of 2km from supermarkets were inclined to charge higher prices.104

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

Pricing strategy in relation to prices of national supermarket chain stores

229. The analysis in this section is based on a question on price setting in spaza shops, and whether prices are derived from corresponding prices at large retailers.105

230. As shown in Figure 4.4 the survey inquired whether spaza shop operators considered the prices of national supermarket chain stores when setting prices in their stores. Around 48% of the respondents admitted to considering supermarket chain stores’ prices and, in fact, set their prices in relation to prices of these stores.106 34% of spaza shop operators stated they did not benchmark their prices with supermarket chain stores.107 This suggests that there is a pricing relationship between spaza shops and national supermarket chain stores. Further disaggregation by turnover level, which is a proxy for store size and different distance clusters, was also undertaken (see Figure 4.5).

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

106 Fully Agree and Agree response combined.

107 Disagree and Fully Disagree combined.

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

<table>
<thead>
<tr>
<th></th>
<th>Brown Bread (700g)</th>
<th>White Bread (700g)</th>
<th>Milk (1 litre)</th>
<th>Maize Meal (1 kg)</th>
<th>Cooking Oil (750 ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 km away</td>
<td>11.66</td>
<td>12.31</td>
<td>15.28</td>
<td>10.17</td>
<td>17.10</td>
</tr>
<tr>
<td>Between 1km and 2km away</td>
<td>11.52</td>
<td>12.33</td>
<td>15.91</td>
<td>10.44</td>
<td>17.68</td>
</tr>
<tr>
<td>More than 2km away</td>
<td>12.31</td>
<td>15.93</td>
<td>20.22</td>
<td>11.14</td>
<td>17.94</td>
</tr>
<tr>
<td>Average Supermarket Price</td>
<td>10.72</td>
<td>12.42</td>
<td>12.37</td>
<td>7.43</td>
<td>18.02</td>
</tr>
</tbody>
</table>
Figure 4.4: Percentage of small business operators in agreement with "I set my product prices based on prices in national supermarket chains".

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

[Graphs showing percentage of agreement and disagreement for sales and distance based on clusters.]
231. Figure 4.5 shows that spaza shops with a smaller turnover tend to show a higher level of agreement with the statement that they set their prices according to prices at national supermarket chain stores. Contrastingly, spaza shops further away from large retailers tend to show a higher level of agreement with the view that they set their prices based on the prices of national supermarket chains.

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

Submissions from small business operators

232. The Inquiry examined the competitive strategies of spaza shops in responding to competitive pressure from the large supermarket chains. Submissions from some stakeholders suggest that small and independent retailers often alter their product mix in response to competitive pressures from supermarket chains.108

Consumer survey

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

234. In short, there is strong evidence to support the premise that small independent retailers have adopted a strategy of altering their products when large retailers enter their areas. Small and independent traders also tend to switch to prepared food and refreshments in response to the dwindling profits from grocery items. Furthermore, evidence from the consumer survey shows that some small retailers, more especially foreign retailers, turn to perishable products that are commonly used or consumed daily such as bread and milk.

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

Table 4.4: Top five products purchased by typed of retailer

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

Source: Inquiry consumer survey, 2017

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108 For instance, the African Council of Hawkers and Informal Business stated that street hawkers trading outside Eastgate Mall opted to sell smaller portions of their fresh produce (i.e. a single apple) in response to the presence of a large retail store inside the mall that offered consumers cheaper fresh produce in bulks.

In Polokwane, small retailers resorted to selling prepared food (e.g. magwinya (vetkoek), kotas (version of a bunny chow) and chips) to serve the employees in the shopping centres and malls, whilst other traders diverted from selling grocery items to selling prepared food for school children.
236. The surveys, literature and face-to-face engagements all presented inconclusive outcomes on the impact of large national supermarkets entering non-urban areas on small and independent retailers. However, this does not imply that the entry of large retailers in non-urban areas has had no impact on small and independent retailers. There are other factors that have contributed to the decline in the number of small independent retailers which are discussed in detail below.

**Barriers and constraints affecting business operations of small and independent businesses**

237. There are numerous issues, which include idiosyncratic problems associated with spaza shops and informal traders that could influence their business viability and the ability to respond effectively to competitive pressures from competing large national grocery retailers. As a result, the complexity of successful small-scale grocery trading within townships should not be underestimated.

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

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

240. Constraints were raised by business operators during direct engagements with the Inquiry.

241. The main concerns raised by spaza shop operators during our engagements with small business operators were:

- 241.1 procurement or sourcing of goods for their businesses;
- 241.2 access to finance; and
- 241.3 lack of business and entrepreneurial skills.

**Procurement or sourcing of goods for small and independent retailers**

242. Submissions from the operators of small independent grocery retailers show that one of the main challenges they face is the ability to source goods from the suppliers under terms and conditions applicable to the large retailers. It was claimed that the large retailers have buyer power which is exercised to the detriment of buyer groups, independent wholesalers and small retailers.

243. Most of the small and independent retailers do not have the capacity to source goods in bulk, as this would require the use of transport and storage facilities and large

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

110 It should also be noted that the factors considered in Porter’s competitiveness strategy were therefore used as a point of departure combined with the broader literature on informal retailing, to derive the factors presented in the figure 27 shows that crime was the most noted constraint with 64% of the sample rating crime as “Very Constraining”. This was followed by 59% of the sample rating Price Competition from other Spazas as “Very Constraining.” Rated third, was Price Competition from Supermarkets (53%).

111 Further detail on other issues and constraints faced by small businesses is discussed under sections 3.5 and 3.6 of Chapter 3, pp.81-89, pp.55 - 67.

112 Submission by EST and UMS, at the Gauteng Public Hearings dated 5 June 2017). See detailed discussion on buyer power in Chapter 8.
capital.113 Most suppliers would not directly sell to small independent retailers as they generally do not have the financial means to buy in bulk and meet the minimum quantity requirements.

244. A survey conducted on spaza shops indicated that these businesses preferred to procure non-perishable products from wholesalers on a relatively infrequent basis and perishables directly from suppliers due to convenience (i.e. free delivery) and for quality issues.114

245. Being aware of the challenges they face when purchasing directly from the suppliers and manufacturers, the majority of the small and independent businesses have resorted to aggregating their purchases hoping to get better prices and trading conditions from the suppliers.115 Nevertheless, the small and independent retailers submit that they continue to face unfavourable trading conditions that makes it difficult to compete with large supermarket chains, especially to be price competitive.116 There is a need for innovative solutions aimed at enabling efficient procurement processes complemented by appropriate infrastructure mechanisms such as centralised distribution centres in non-urban areas.117

Efforts to assist small independent businesses with the procurement of goods.

246. There have been efforts to enhance the competitiveness of small independent local traders in the Free State.118 There were further discussions with suppliers such as Tiger Brands to get them to introduce a supply model to assist spaza shops in procuring stock, which is discussed in Chapter 6 below. There are also secondary cooperatives that have been set up in the Free State province to assist with procurement as well as to negotiate with local cash and carriers and wholesalers to enter into partnerships with spaza shops for procurement purposes.119

247. The Inquiry engaged with the Department of Small Business Development (“DSBD”) relating to the training and development of small and independent businesses. The DSBD advised the Inquiry about the National Informal Business Upliftment Strategy (“NIBUS”) that is designed to address the development of small businesses at the lower base of small SMME’s. The programme strategically targeted entrepreneurs in the informal economy with the intention to increase the competitiveness of traders i.e., spaza shops and, general dealers. The DSBD submitted that part of the activities to increase the competitiveness of these businesses included bulk buying, warehousing and distribution.120 In addition, there are programmes such as the Shared economic Infrastructure Facility where a number of informal traders, micro businesses and cooperatives can operate under shared facilities.

248. During the Inquiry’s public hearings in KwaZulu Natal, the KZN:EDTea submitted that it had been working on developing instruments through the 2015 KZN Business Bill that aimed to provide support mechanism to informal businesses in the province. The KZN:EDTea noted that the

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113 Minutes of the meeting between the Small Business Chamber and the Inquiry, dated 26 September 2016, p2, para 2.2.
115 However, the South African Bulk Entrepreneurs Primary Cooperative Operation (“SABEPCO”) continued to receive challenges when purchasing directly from manufacturers, in particular in respect of maize meal where they allege they were not being offered competitive prices in comparison to the prices offered to supermarket chains and some foreign owned wholesalers irrespective of the bulk quantities they were purchasing. In addition to discrimination received from the manufacturers and direct suppliers, these businesses alleged facing price discrimination from foreign owned wholesalers offering better prices and trading conditions to foreign owned spaza shops.
116 The MJ Group Companies (“MJ Group”) also submitted that due to the buying power that large supermarket chains possess, it is practically impossible for them as small independent retailers to compete with the large retailers on pricing. The submission further referred to high rentals, exclusive leases as additional challenges facing small businesses.
117 Minutes of meeting between Small Business Chamber and the Inquiry, dated 26 September 2016, p2, Para 2.2.
118 The Free State province compiled a draft policy aimed at developing ways to unfold the benefit derived by SMMEs from sourcing products from local suppliers or at a provincial level.
119 The BB cash and carry initiative is discussed in detail in Chapter 6, para 6.5, p 181.
120 Submission by the DSBD to the Inquiry, dated 04 June 2018.
municipalities’ Integrated Development Plans incorporate the informal economy and that, all the municipalities within the province are able to offer resources to the informal economy, and that the province has a standardized framework for the regulation of informal trading.

249. To support small and micro businesses, the KZN provincial government planned to open a total of 11 warehouses across the province. This was aimed at enabling informal retail businesses such as spaza shops to access products at competitive prices which in turn will enable them to sell the products at competitive prices to consumers. Through the warehouse initiative, spaza shops are able to benefit from bulk buying, securing savings that enable them to be more efficient and price competitive. The province partnered with Ithala Development Finance Corporation to develop the programme and to act as the implementing agent on behalf of the KZN:EDTea. The first warehouse, being part of the provincial government’s Bulk Buying and Warehousing initiative opened during the first quarter of 2019, in Mandeni.121

250. In Tshwane, the Department of Economic Development (“EDD”) stated that it had conducted a survey on a sample of spaza shops operating in and around Mamelodi, Soshanguve and other townships in Pretoria. Following the survey, which covered spaza shops, general dealers and independent wholesalers, the EDD developed training schemes and educational programmes aimed at equipping these businesses to sustain themselves and to compete effectively. The Gauteng Department of Economic Development (“GDED”), in partnership with Pick n Pay initiated a pilot project aimed at assisting struggling independent township traders in particular spaza shops operating in townships. The project was launched as part of the GDED’s Township Economy Revitalisation project aimed at assisting small businesses, which are operating in the townships. Pick n Pay together with the GDED have put up a partnership model offered to small businesses. Amongst others features, the initiative offered the Pick n Pay Preferential Procurement Process for spaza shops buying from Pick n Pay and introduced a Pick n Pay spaza model pilot in the townships.

251. Under the agreement concluded between Pick n Pay and the GDED, the department would mobilize spaza shops around the province to participate in product development programmes and workshops organised by Pick n Pay. The programme is aimed at local-owned spaza shops and intends to assist them to become more competitive and to withstand the competitive pressure they face from shopping centre developments and foreign owned spaza shops. However, the Inquiry received complaints from the store owners citing various concerns regarding the manner in which the programme was operated and the impact that this had on their businesses and profitability.

Access to finance

252. The majority of local entrepreneurs with whom the Inquiry engaged submitted that one of the major challenges they face as operators of small businesses is access to finance. According to these entrepreneurs, the financial sector does not offer adequate support to entrepreneurs living in townships, peri-urban and rural areas. The entrepreneurs stated that they must rely on their own savings or borrow from friends and family to start their businesses. In addition to this, a study by Finfind122 showed that in the instances where smaller traders applied for funding, the reasons for applying, the terms of finance, the rates charged as well as the reasons why some of the applications were unsuccessful were not publicly available. Hence, smaller traders

121 Submission by the KZN:EDTea during the KZN Public Hearings on 05 July 2017. It claimed that it was the first province to produce a developmental legislation that supports the informal economy. See: https://www.vukuzenzele.gov.za/bulk-buying-give-entrepreneurs-edge.
were not able to compare offers. The study also showed that only 1% of small traders access formal financing, and 87% do not access financing.\textsuperscript{123}

253. For historical reasons, local small independent retailers, local spaza shop owners, have unremittingly submitted to the Inquiry the challenges of accessing funding for their start-ups and for the purchase of stock in bulk, enabling them to save on their input costs and price competitively in relation to foreign owned spaza shops. Due to the informal nature of the businesses, they have no access to capital or to the collateral required to finance the start up or expansion.

254. The small business operators further claimed that government does not have provisions in its Small Medium and Micro Enterprises ("SMME") support programmes to assist independent businesses by offering finance or credit to procure goods in bulk enabling them to save on their input costs. Small business operators submitted that commercial banks that provide finance to small businesses charge high rates, making it virtually impossible for the businesses to invest and innovate. The FinFind report stated that although the national government attempts to increase the credit facilities available to smaller traders, the private sector only contributes a minimal portion to these credit facilities.\textsuperscript{124}

255. Studies suggest that there are various obstacles confronting small and independent traders seeking access to funding. For instance, there are high research costs, a lack of skills and the know-how to be able to produce good quality financial records, poor business models, inadequate collateral, bad credit history (in some cases, most smaller traders do not have a credit history) as well as the lack of access to markets.\textsuperscript{125}

256. However, Big Save advised that some financial institutions are trying to create initiatives that cater solely for the informal traders given their unique nature of operations.\textsuperscript{126} In particular, Big Save explained that they have a My Spaza initiative which assist with finances and offers its members credit facilities to be able to procure stock. A similar initiative was established by Bibi Cash and Carry ("Bibi").\textsuperscript{127} Bibi noted that access to finance for local traders, which is allegedly a barrier for local traders, are one of the facilities that are offered to local traders.

257. The Inquiry also considered various government funding programmes available through various agencies at national and provincial level to assess whether they can be accessed by small and independent retailers including spaza shops. The Inquiry considered programmes including but not limited to, the Small Enterprise Finance Agency and (SEFA) National Youth Development Agency (NYDA). Government funded agencies were generally found to have qualifying criteria that effectively made them inaccessible to most small and independent retailers, specifically at the level of spaza shops. Other government supported programmes, such as the Provincial Development Corporations located in every province, were found to be offering funding and skills development support to specific sectors but did not cover the grocery retail sector, thereby excluding spaza shops.

Lack of business skills

258. One factor that was raised by some of the operators of small retail businesses was the lack of business skills or the need to have those improved in order to remain or become more competitive. Other traders submitted to the Inquiry that contrary to popular belief, they have the necessary

\textsuperscript{123} Ibid.
\textsuperscript{124} Ibid.
\textsuperscript{126} Minutes of the meeting between Big Save and the Inquiry, dated 17 July 2016, p.4.
\textsuperscript{127} Minutes of the meeting between Bibi Cash and Carry and the Inquiry, dated 18 March 2016, p3, para 3.4.
business acumen that enables them to operate a profitable business, submitting this was not the reason their businesses were not successful. 128

259. Big Save in conjunction with Absa and Ispaza Sum Holdings launched an initiative aimed at equipping local owned spaza shops with businesses skills through training which affords informal traders opportunities and trainings to gain the necessary skills to remain profitable and ways to adopt to the changes in the grocery retail market. 129 According to Big Save, this initiative further includes models on more efficient ways to procure stock. 130

260. The DSBD also advised that under the NIBUS initiative, training and development programmes would be put in place to assist informal businesses with business skills training them to run their businesses efficiently and profitably.

4.4 THE IMPACT OF THE ENTRY OF NATIONAL SUPERMARKET CHAIN STORES IN TOWNSHIPS, PERI-URBAN AREAS AND RURAL AREAS ON EMPLOYMENT

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

262. The wholesale and retail trade sector is one of the major contributors of employment, contributing more jobs to the economy than manufacturing, mining and construction sectors. 131 Figure 4.6 summarizes employment figures of formal and informal employment in the retail trade sector as a percentage of total employment. Holistically, formal and informal employment accounted for 37.2% of total employment in 2015.

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

Submissions from stakeholders

264. The municipalities that met with the Inquiry could not indicate the number of people employed in the retail sectors. However, despite not having specific numbers of jobs created through shopping centre developments, all municipalities argued that the opening of the large retailers in the affected areas created more jobs than the small independent retailers cumulatively. Similar acknowledgements were mentioned by the Capricorn District Spaza Forum, 132 which indicated that the malls created job opportunities for locals, though they also stated that small independent retailers created opportunities for employment, despite being at a small scale. 133

Consumer survey

265. In Figure 4.7, surveyed customers were asked if they worked at the local mall, or knew of anyone from the community who worked at the mall. 63% of the respondents did not work or know anyone who worked at the mall. 6% of the respondents worked at the mall and the rest knew of a community member who was employed in the mall. No

128 A variety of local traders in Rustenburg have emphasised that the challenges they face as small business has little to do with their lack of business skills. Like traders in Rustenburg, SABEPCO also stated that the bulk of the businesses they operate were inherited from the previous generation, which in their view suggests that they have the skills which they inherited from their predecessors. Submission by SABEPCO, dated 4 November 2016.

129 Previously called the My Spaza project, operating in Mamelodi and surrounding areas.

130 Minutes of meeting between Big Save and the Inquiry, dated 17 July 2016, p4. A more detailed comparison on the business skills between the local and the foreign trades, as well as possible factors as to why foreign traders allegedly remain successful are discussed in Objective 3 of this report.


132 Minutes of meeting between Capricorn Municipality and the Inquiry dated 22 August 2016, p.2.

133 Minutes of meeting between Capricorn Municipality and the Inquiry dated 22 August 2016, p.2.
Figure 4.6: Formal and informal employment in retail trade as a percentage of total employment

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
<th>Food beverages and tobacco in specialised stores</th>
<th>Non-specialised stores with food, beverages and tobacco predominating</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>25%</td>
<td>11.8</td>
<td>37.2</td>
</tr>
<tr>
<td>2009</td>
<td>29.7%</td>
<td>8.6</td>
<td>37.2</td>
</tr>
<tr>
<td>2012</td>
<td>34%</td>
<td>7.8</td>
<td>37.2</td>
</tr>
<tr>
<td>2015</td>
<td>37.2%</td>
<td>7.5</td>
<td>37.2</td>
</tr>
</tbody>
</table>

Source: StatsSA Retail Trade Industry survey, 2017

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

- I don’t anyone: 63%
- I know someone who works at the mall: 31%
- I work at the mall: 6%

Source: Inquiry consumer survey, 2017
specification was provided on where in the mall the respondents or their peers worked. The consumer survey simply gives high level glimpse of employment at the mall, but it cannot speak to the employment created by the large retail stores.

266. In summary, there are mixed views on the impact of the entry of national supermarket chains on employment in township, peri-urban and rural areas. Customers might not know any of the locals who are employed at these national supermarket chains because of the merchandising services that are employed by suppliers across most national supermarket chains. Merchandisers are employees often appointed through an agent to take care of the respective suppliers’ stock in national supermarket chains. The Inquiry acknowledge the employment opportunities created by the opening of national supermarket chains; however, it should also be noted that the closure of a local-owned small business results in loss of employment and a means to make a living for the owner.

4.5 THE IMPACT OF THE ENTRY OF NATIONAL SUPERMARKET CHAIN STORES IN TOWNSHIPS, PERI-URBAN AREAS AND RURAL AREAS ON CONSUMERS

267. National supermarkets’ entry into townships, peri-urban and rural areas impact the local economy through both businesses and consumers. It is assumed that consumers benefit from the efficiencies that large national supermarket chain stores gain from their sophisticated supply chain practices and diverse mix of retail outlets that caters for consumer specific demands.134 National supermarkets are said to be offering consumers lower prices and a wider product variety, resulting in income and time saving. In order to obtain direct submissions from the consumers, the Inquiry relied heavily on the consumer survey, in addition to the direct engagements that the Inquiry had with stakeholders during meetings, site visits and at public hearings.

Consumer welfare

268. One of South Africa’s research houses, Demacon (2010) undertook an in-depth study of the impact of Jabulani Mall on the local community.135 The study employed a household survey within a 10km radius of the mall in order to study past and current consumer behaviour. The reported effects on consumers were (i) reduced travel times to retail centres, (ii) reduced average travel costs to retail centres, (iii) provision of quality goods and services, (iv) lower prices and (v) general convenience owing to the one-stop offering of a mall. A study conducted by the University of South Africa (“UNISA”) also showed that at large, consumers in Soshanguve gained the benefit of having a variety in the product choice as well as the prices offered from the entry of a development.136 The Inquiry explored the factors that were examined by Demacon to measure the impact on consumers of the entry of national supermarket chains on consumers below.

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

134 Submission by Pick n Pay to SOI dated 14 June 2016, p2, para 5.
Figure 4.8: Total average proportion of total household consumption expenditure attributed to Food and non-alcoholic beverages by race


Figure 4.9: Total average annual income by race

from 27% and 23% in 1990 to 16.4% and 6.7% respectively in 2010/2011. In light of some of the submissions that the Inquiry received, i.e. that the national retailers are generally cheaper, from these statistics, one could assume that the decreases may be attributed in some part to the widening geographic footprint of national supermarket chain stores offering cheaper competitive prices and quantities, thus resulting in an absolute decline in total food expenditure. However, there are other factors such as an income effect that may have contributed to the results.

270. Figure 4.9 reports total annual average income by race. As depicted, total annual average income has been increasing. In 1990, Black people earned 31% of the total national average annual income (R39 000) or R12 000 per household. In 2010/2011, the average black household was earning 58% of the national average (R119 542) or R69 632 in level terms.

271. In light of these statistics, the question is whether the reduction in consumers’ expenditure on food and non-alcoholic beverages emanated from the lower prices and associated efficiencies from innovative national supermarket chain stores or whether the increase in average income over time brought about a broad-base increase in expenditure on other items (luxury), thus decreasing the share of food and non-alcoholic expenditure.\(^{137}\) From an economics perspective, this represents a substitution or an income effect paradox.\(^{138}\) Such questions require more rigorous statistical tools to solve.

Reduced travel times to retail centre

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

Provision of quality goods and a shopping experience

273. In Figure 4.11 above, consumers in different income bands, indicate the reasons for shopping at national supermarket chains. A larger proportion of shoppers at the national supermarket chains indicate that they do so for lower prices, albeit this proportion differs by chain. For instance, approximately 39% of consumers state that they shop at a Pick n Pay for the low prices, but this is higher for value chains such as Massmart (79%) and Shoprite (72%). Another significant reason for consumers shopping at national supermarket chains is the offer of fresh products, accounting for 35% of customers for SPAR, and 25% for Pick ‘n Pay. For consumers who are less price sensitive, such as Woolworths consumers, the quality of produce is cited as the reason for shopping at a national supermarket chain (55% for Woolworths).

274. During some of the Inquiry’s engagements with stakeholders, it was alleged that large national supermarkets do not offer quality grocery products to all consumers. Low-

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\(^{137}\) In accordance with literature on conspicuous spending and status, several studies (see Kaus 2013, Burger et al 2014) have found that, as income rises, black and coloured households spend relatively more on visible consumption comparable to White households. Many reasons have been advanced including an issue of “asset deficits” (see Van Der Berg 2007). By increasing expenditure on “catching up”, the base effects result in a decline in the share of other items.

\(^{138}\) The substitution effect is the change in consumption patterns due to a change in the relative prices of goods. The income effect is the change in consumption patterns due to the change in purchasing power which result from income increases, price changes, or even currency fluctuations.
income customers were said to be sold nutritionally poor foods, whereas the stores in wealthier areas offer healthier options. Large national supermarkets chains also provide customers with quality products. It is submitted that although customers are brand conscious, quality is of the utmost importance and customers are willing to pay for good quality products.140 Moreover, costumers are price sensitive, especially those at the lower end of the income band. Small deviations in prices between different branded products will sway customers to substitute to cheaper options. To account for this high price elasticity of demand, large national supermarkets offer customers a variety of products at favourable prices which most small independent retailers

139 Submission by Rasta Vuyisile Dlamaini, 14 November 2016, p.76.
140 Minutes of meeting between Jwayelani and the Inquiry, dated 17 August 2016, p.6, para 2.5.
are not able to do. At most, a small independent retailer would offer customers just two brands of an item.

**Convenience and one-stop offering at a mall**

**Submissions from stakeholders**

276. Some stakeholders claimed that national supermarkets, especially those located in malls, provide customers with the convenience of a one-stop shopping experience thereby saving transport costs, which are a huge burden on most low-income households. In addition, it was claimed that customers are able to access their social grants from till points, thus affording national supermarkets the ability to extend credit facilities for grocery shopping.

277. It has been asserted that national supermarkets form part of a bigger network in the grocery market, allowing suppliers to reach wider markets, which benefits customers as it exposes them to a broad range of products in one store, thus decreasing search costs.

278. Stakeholders argued that national supermarkets provide consumers with savings stemming from lower prices and reduced transport costs. In the next section, the paper will consider evidence from the consumer survey to assess these submissions.

**Consumer survey - Convenience**

279. Figure 4.12 below provide data describing where consumers do most of their daily, weekly and monthly grocery shopping by type of retailer. Local supermarkets are mostly used for monthly shopping, which contradicts some studies that submit that consumers in townships still prefer outside shopping malls. The survey clearly shows that spaza shops are used almost exclusively

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Figure 4.12: Frequency of grocery shopping by type of retailers

![Figure 4.12: Frequency of grocery shopping by type of retailers](source: Commission consumer survey, 2017)

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142 The StatsSA Measuring household expenditure on public transport report showed that more than two-thirds of households who fall in the lowest income quintile spent more than 20% of their monthly household income per capita on public transport. Minutes of meeting between Spar Ngcobo and the Inquiry, dated 27 September 2016, p5, para 2.5.


for daily/convenience shopping. However, the data also reveal that consumers make use of local supermarkets for their daily or convenience shopping. Interestingly, the survey shows that the top five products in the monthly grocery bag and the convenience bag are similar. These are maize meal, rice, meat (beef or pork), bread and cleaning products.

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

281. It is often suggested that national supermarkets attract customers to malls, which provides a one-stop shopping and errand experience. Figure 4.13 presents descriptive statistics of other activities carried out by consumers who do their grocery shopping in malls. The descriptive statistics present enough evidence to support the notion that complementary to grocery shopping, consumers often use the opportunity to do their banking, clothing shopping, general shopping and to eat out, which supports the claim that national supermarkets entering townships, peri-urban and rural areas bring an extra element of convenience to the customer.

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

4.6 PRELIMINARY FINDINGS

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

283.1 The entry of national supermarket chains into non-urban areas has shifted the competitive landscape

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146 From submissions received from the small business operators and from the results of the survey that focused on small businesses and evidence collected depending on a number of factors such as the location, the offering and the ability of the affected business to adapt to pressure as a result of changes in the market.
in these areas such that there is an observed diversion of customer demand from small and independent businesses, and displacement of small and independent businesses.

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

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

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

285. Small and independent retailers face a number of barriers and constraints which impact on their competitiveness in relation to national supermarket chains including:

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

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

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

286. Benefits created by the entry of national supermarket chains largely relate to consumer welfare gains in the form of lower prices, consumer choice, time and transport cost savings as well as general convenience.

4.7 SUBMISSIONS IN RESPONSE TO THE PRELIMINARY FINDINGS AND RECOMMENDATIONS

287. Following the publication of the Preliminary Report the Inquiry held a workshop with government departments and industry regulators, presenting its findings and further soliciting the stakeholders’ views on the preliminary findings and recommendations. In general, the stakeholders’ submissions and comments agreed with the Inquiry’s preliminary findings and recommendations.147

288. PLAAS submitted that the findings of the Inquiry are significant for rural and economic development policies and for the ability to promote reform to support employment, inclusive growth and a sustainable livelihood. PLAAS further linked the domination of large supermarkets in the agro-food value chain to land reform,

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submitting that the continued domination by national supermarket chains blocks the success of the land reform programmes and policies aimed at creating opportunities for emergent entrepreneurs. Moreover, for emergent entrepreneurs these programmes and policies are being undermined by the dominant macro-economic conditions. PLAAS further claimed that this has also created significant disadvantages for smaller producers, and effectively acted to exclude emergent, black and smallholder producers from agro-food value chains.  

289. PLAAS believes that a diverse retail economy (strong local and independent) is important for the success of the land reform programme and that policies must promote synergies between the development of a successful SMME sector and opportunities for informal, local and independent retailers.  

290. Overall, the submissions by PLAAS supported the preliminary findings and recommendations. They further argued that the effects are not only felt at a retail level but prevent small scale farmers, who are generally historically disadvantaged persons from participation in the agro-value chain.  

291. The Inquiry also received submissions from [X] which challenged some of the preliminary findings, in particular the conclusion by the Inquiry that the entry of national supermarket chains into non-urban areas has shifted the competitive landscape, contributing to the decline in the number of small and independent retailers. [X] also challenged the basis for the Inquiry's preliminary findings alleging numerous flaws in the evidence relied upon by the Inquiry for its findings.  

292. [X] submitted that the Inquiry had failed to demonstrate that the expansion of supermarkets and shopping malls into non-urban areas has been the causal explanation for a material decline in the number of spaza shops as opposed to factors such as competition from foreign owned spaza stores or lack of management skills.  

293. In agreement with the preliminary findings, NAFCOC submitted that it had conducted studies in the sector which confirmed the findings of the Inquiry. NAFCOC further stated that it had found that there is resentment from smaller independent retailers who feel that they had identified a demand in the market for themselves in the non-urban areas but that, the larger retailers have since moved into that space. According to NAFCOC, research conducted in Mamelodi where EDD had requested a service provider to compile a list of the spaza shops, found that 90% of the spaza shops belonged to foreign nationals. Similar results were found in Soweto. The studies also found evidence of cross ownership amongst foreign owned spaza shops (one owner having more than one spaza shop). NAFCOC further submitted that it is important for government institutions to offer support to small and independent businesses to supplement projects and offerings that non-profit organisations working with small businesses have in place.  

Submissions on recommendations to improve the competitiveness of small and independent businesses  

294. On the issue of procurement practices by small independent businesses, the GDED and the DTIC argued that instead of focusing on procuring from the large suppliers, small businesses (spaza shops) must also look into procuring from upcoming small-scale producers located in townships and rural areas as this would also create a route to market for these new players. The GDED and the DTIC stated that government should develop policies and a regulatory

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148 Submission by PLAAS responding to the Preliminary Report, dated 28 June 2019  
149 Ibid.  
150 Written submission from PLAAS dated 28 June 2019.  
151 Submission by a representative of NAFCOC during a stakeholder workshop with the Inquiry, 13 June 2019.
regime that makes it easy for the new producers to supply these businesses and create incentives for procuring from small local producers.

295. Stakeholders agreed that coordinating collective buying amongst local owners is one area that should be improved. Some of the provinces are already in the process of developing strategies to address bulk buying with some having already implemented policies to assist small businesses. The DTIC further highlighted the importance of competition law and policy to bridge the gap between the so-called first and second economies.

296. Suppliers of FMCG largely acknowledged the need to support small and independent business who operate in the wholesale and informal retail channels. Some of the suppliers made recommendations for initiatives that can be adopted by them to assist these businesses. This is discussed in greater detail in Chapter 8 which assesses buyer groups and buyer power.

297. The World Bank also observed that shopping mall development in township areas was not inclusive of small traders within the mall nor of informal traders in the external area surrounding the malls. It was suggested that municipalities could do more to impose conditions on township developments to ensure space for smaller traders within the mall and space for informal traders to operate externally. This had been implemented successfully in other countries by attaching conditions to a development requiring the developer to uplift informal.

298. Lastly, in line with the findings in the Preliminary Report, the importance of the authorities engaging and consulting with informal traders and vendors to understand their needs prior to implementing initiatives aimed at helping these businesses was also emphasized.

4.8 THE INQUIRY’S VIEW

299. The comments and submissions received from stakeholders were generally in agreement with both the findings and the recommendations made in the Preliminary Report, with few disagreements. The Inquiry welcomes the support provided and engagements by stakeholders on these issues and notes that the findings and recommendations set out in its Preliminary Report remain.

4.9 FINAL FINDINGS

300. The Inquiry finds that the entry of national supermarket chains in non-urban areas has had both negative and positive effects on the performance of small and independent grocery retailers. The entry of national supermarket chains as supermarket stores, convenience stores as well as recently through the spaza shop model has, together with other factors, contributed to a decline in the number of small independent grocery retailers operating in non-urban areas. The Inquiry finds it concerning that these developments by the national supermarket chains, particularly where the retailers are expanding their presence to compete directly with spaza shops will exacerbate the observed displacement of small and independent retailers in the non-urban areas. However, there are positive consumer-welfare enhancing outcomes that are associated with this phenomenon.

301. In addition to the competitive pressure faced by small and independent grocery

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152 Submissions during a workshop by KZN: EDT, working on a strategy to institute government warehouses to support small businesses, L: EDTea with a model that is said to be working and the DTIC.

153 Chapter 8, par 8.10.

154 The submission by World Bank corroborates submissions made by small and independent businesses, i.e. Skhoma Butchery that had to fight to be allowed space to trade inside a mall that had been developed in an area the businesses had been trading from for years.

155 The city of Mumbai in India, and Colombo, Sri Lanka, were identified as examples of success.

retailers and the resultant displacement of these businesses, the Inquiry has found that there is a clear inability to adapt to changing competitive conditions. The Inquiry finds that small and independent retailers are faced with several challenges, including the (i) inability to realise economies of scale in procurement and its concomitant price implications for the purchase of grocery products, (ii) lack of access to credit markets, and (iii) the need for the professionalisation of spaza shops so that they can become sustainable enterprises.
5.1 INTRODUCTION

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

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

303.1 the prevalence and duration of exclusive lease agreements entered into between property developers and the national supermarket chains in South Africa, by also seeking to understand the role of financiers in these agreements on competition in the grocery retail sector;

303.2 the extent to which long-term exclusive lease agreements entered into between property developers and national supermarket chains have excluded small businesses and larger competitors or potential competitors from entering malls, and from competing effectively on the basis that they do not have access to suitable retail space, as contemplated by the provisions of sections 2(e) of the Act;\(^\text{157}\)

303.3 the extent to which the use of long-term exclusive lease agreements has contributed to the high levels of concentration in the sector, as contemplated by the provisions of section 2(f) of the Act;\(^\text{158}\) and

303.4 the extent to which long-term exclusive lease agreements entered into between property developers and national supermarket chains have benefited or harmed consumers and led to increased or decreased efficiencies, as contemplated by the provisions of sections 2(a) and 2(b) of the Act.\(^\text{159}\)

304. This chapter is structured as follows: section two identifies the role players involved in the development of shopping centres; section

\(\text{157}\) Section 2(e) of the Act sets out the purpose of the Act as “to ensure the small and medium-sized enterprises have an equitable opportunity to participate in the economy”.

\(\text{158}\) Section 2(f) of the Act sets out the purpose of the Act as “to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

\(\text{159}\) Section 2(a) of the Act sets out the purpose of the Act as “to promote the efficiency, adaptability and development of the economy”. Section 2(b) of the Act sets out the purpose of the Act as “to provide consumers with competitive prices and product choices.”
three assesses the competitive impact of long-term exclusive lease agreements; section four provides the justifications for long-term exclusive lease agreements; section five provides evidence of instances where the national supermarket chains have waived the enforcement of exclusivity provisions in lease agreements; section six considers the international experience of exclusive lease agreements in grocery retailing; section seven discusses others barriers to entry and expansion in shopping centres; section eight sets out the Inquiry’s preliminary findings; section nine considers submissions made in response to the preliminary report; section ten discusses the Inquiry’s views on long-term exclusive lease agreements and rental rates; and section eleven concludes by setting out the Inquiry’s final findings and recommendations.

5.2 ROLE PLAYERS IN THE DEVELOPMENT OF SHOPPING CENTRES

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

Financiers

306. Financiers were asked to elaborate on the factors taken into account when considering the financing of a shopping centre. Financiers indicated that the most important requirement for a property developer to acquire finance for developing a shopping centre is that the shopping centre must be able to generate cash flow.¹⁶⁰

307. The South African Property Owners Association (“SAPOA”) is an industry association whose members own an estimated 90% of the commercial, retail, office and industrial properties in South Africa. Some SAPOA members submitted that “financiers require property developers to secure an agreed minimum pre-let percentage before funds will be disbursed under the loan agreement. Financiers seek comfort in a sustainable and secure rental income stream from reputable anchor tenants to constitute a substantial percentage of such pre-let.”¹⁶¹

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

309. Financiers generally offer a ten (10) year loan. Consequently, property developers and national supermarket chains conclude lease agreements that endure for at least ten (10) years.¹⁶²

¹⁶⁰ The reason for this requirement is that the shopping centre must generate enough profit to enable the property developer to repay the loan, necessary to develop the shopping centre. This is the case regardless of whether the shopping centre is located in urban, peri-urban, township, or rural areas.
¹⁶¹ Submissions from SAPOA members, dated 24 August 2016.
¹⁶² Masingita submits that a standard lease between a developer and an anchor tenant would have an initial period of ten years and thereafter have options to renew the lease. Submission by Masingita Group at the Gauteng public hearing dated 30 November 2017, Transcript p. 21, ls. 18 – 26.
310. Financiers require property developers to put up security for the duration of the loan. Security may be in the form of suretyship or mortgage bond taken by the property developer on the shopping centre which is the subject matter of the loan or another property or both. In the case of new entrants or property developers whose professional team does not have the required experience in developing similar shopping centres, financiers require security in the form of mortgage bonds on more than one property. In some instances, financiers require a minority stake in the shopping centre where the developer and the professional team possess the requisite experience in developing similar shopping centres.

Property Developers

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

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

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

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

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

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

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

Anchor tenants

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

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

318. National supermarket chains require retail space within shopping centres for a variety of reasons such as security and convenience for shoppers. In particular, a property developer, explained that shopping centres, as opposed to stand-alone stores, have various benefits that are not available in a stand-alone setting. Masingita, which is a property developer, stated that apart from the variety offered at a shopping centre, a shopping centre is said to be convenient if the centre is usually located closer to consumers, which saves consumers transport costs and enhances convenience given that the service offering is also wider, which is complementary to the grocery retail offering brought by national supermarket chains.164

5.3 ASSESSMENT OF THE COMPETITIVE IMPACT OF LONG-TERM EXCLUSIVE LEASE AGREEMENTS

319. Lease agreements for anchor tenants are concluded before the construction of a shopping centre, whereas, lease agreements for smaller retailers and line tenants that wish to lease space in the centre are usually concluded once construction has commenced or after the new shopping centre has been completed. The lease agreements with tenants in shopping centres, in addition to the standard clauses in respect of duration and rent, include provisions such as:

319.1 long leases for anchor tenants and short leases for line tenants;
319.2 exclusivity clauses typically with food anchor tenants (supermarkets);
319.3 the location and size of the store;
319.4 usage clauses limiting the use of the space that is being leased; and
319.5 a base rent and a rent determined on turnover.

320. Exclusivity clauses in lease agreements limit the property developer’s rights to lease space in the shopping centre to businesses that provide products or services that are similar or in competition to the national supermarket chains or parties for whose benefit the exclusive lease agreement was entered into. Exclusive lease agreements are generally in favour of national supermarket chains such as Shoprite, Checkers, Pick n Pay and Spar, who are considered food anchor tenants in shopping centres. There have been allegations that Massmart also has exclusivity provisions in their lease agreements. Massmart denied that they have entered into any exclusive lease agreements and that Massmart has a policy of not enforcing any exclusivity provisions contained in lease agreements prior to Massmart taking over the lease.166

321. Exclusivity provisions can be either complete or partial. Complete exclusivities often prevent the landlord from letting space to a tenant that would operate businesses such as a supermarket, bakery, butchery, delicatessen, pharmacy and liquor store for the duration of the national supermarket chain’s lease or its renewal.

164 Submission of a presentation (open session) by Masingita Group at the Gauteng public hearing dated 30 November 2017, slide 12.
165 Emira noted that Rhino Cash and Carry, which is owned by Massmart, has an exclusive lease agreement in a shopping centre located in Kokstad, however, the exclusivity agreement existed before Massmart acquired Rhino Cash and Carry. Submission by Emira at the Gauteng Public hearing dated 06 November 2017, Transcript pp. 11-14.
166 Submission from Massmart dated 11 June 2018, p. 2, para. 2.2.2.
167 Complete exclusivity refers to the prohibition of any business that is considered to be in competition with the national supermarket chain within the shopping centre. Partial exclusivity provisions allow the national supermarket chains to limit the size of competing stores or product range of competing stores within the shopping centre for the duration of the national supermarket chain’s lease or its renewal.
its renewal, whether or not the national supermarket chain is currently providing these products.168

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

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

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

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

Financiers

325. The information provided to the Commission during and after the previous (supermarket) investigation indicated that financiers required exclusivity in lease agreements before they approved the loan for financing the construction of a shopping centre. In addition, the Inquiry consulted two other financiers170 and requested Standard Bank and Nedbank to make submissions at public hearings. All of the financiers with whom the Inquiry engaged confirmed that they neither participate in negotiations of lease agreements between tenants and property developers, nor do they become involved in the selection of appropriate tenants in shopping centres. Furthermore, all financiers confirmed that they do not require exclusivity in the lease agreements in order to approve applications for loans sought for financing shopping centres.

327. SAPOA, citing one of its members, submitted that “financiers do not require exclusivity provisions, the main requirement is that of income security, and exclusivities could potentially be to the detriment of an investment”.171

328. The Inquiry has found that, although financiers do not require exclusivity agreements, they do require developers to secure long-term lease agreements with an anchor tenant, such as a national supermarket chain in order to approve a loan for the financing of a shopping centre.172

Property Developers

329. The Inquiry found that property developers do not require exclusivity provisions to be included in lease agreements with anchor tenants.173 A SAPOA member noted that “property owners have never been required to include exclusivity clauses in lease agreements in order to secure financing for tenant installation projects. There has not been, in our experience, an instance where the financiers required exclusivity clauses to form part of the agreement in order to secure the financing”.174

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168 For example, SAPOA members have submitted that national supermarket chains have in the past included pharmacies in the exclusivity provisions even though the supermarket was not planning on opening an in-store pharmacy at the time of concluding the lease.
169 [X].
170 [X].
172 Submission by Nedbank at the Gauteng public hearing (Open session), dated 1 November 2017, p. 15.
330. The Inquiry requested property developers who rely on loans from financiers to finance shopping centres, such as Masingita, to make submissions in the public hearings. The Inquiry also received submissions from Redefine Properties Ltd (“Redefine”), Liberty Property Group (“Liberty”), Emira Property Fund Ltd (“Emira”) and Resilient REIT Ltd (“Resilient”), all of whom are listed property funds that finance their own shopping centres. They all confirmed that exclusivity in lease agreements are not required by financiers in order to secure finance for a loan to develop a shopping centre, neither are they requested to be included in lease agreements by property developers.  

331. Redefine explained that generally, national supermarket chains request exclusive lease agreements as a way to protect their anchor tenancy in the shopping centre in question. Redefine further noted that some exclusivity clauses found in their lease agreements have been enforced for over 25 years. Redefine has further indicated that they do not allow the negotiation of exclusive lease agreements in new shopping centres that they develop but that they have inherited pre-existing exclusivity agreements when purchasing existing shopping centres; Redefine has frankly stated that they “hate them”.  

332. Masingita submitted that national anchor tenants have a form of leverage over developers given that it is an industry norm that a financier would not approve a loan without securing the 70% national anchor tenancy. This implies that the less market power a property developer has, the more likely national supermarket chains will require or impose exclusivity on the shopping centre.  

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

National Supermarket Chains  

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

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

336. National supermarket chains suggested that exclusive leases are justified for the following reasons:

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

336.2 they protect the investment made to open a new store and the investment into refurbishing the store;

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

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

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

336.6 exclusive lease agreements do not cause harm to consumers through increased prices or decreased quality of goods.

The prevalence of exclusive lease agreements

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

340. Of its \[X\] stores (including Shoprite, USave, Checkers, Checkers Hyper stores and its liquor stores), Shoprite submitted that approximately \[Y\] contained exclusivity provisions. Of the \[Z\] SPAR stores in South Africa, SPAR held \[W\] containing a range of partial and complete exclusivity provisions. This does not include information on those leases to which SPAR alleged they were not privy and thus not able to provide to the Inquiry. In respect of Pick n Pay, the Inquiry found that while it had \[K\] corporate-owned and franchised stores (including Pick n Pay and Boxer stores, Pick n Pay Liquor and Boxer Liquor stores), \[L\] of these were located in a shopping centre. Of the stores located in a shopping centre, \[M\] had complete exclusivity while \[N\] had partial exclusivity. Woolworths, on the other hand, submitted that it does not incorporate exclusivity provision in its lease agreements. However, the Inquiry found that Woolworths’ standard
lease agreement contains provisions which are akin to some form of exclusivity insofar as they relate to the positioning of certain stores.

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

Review of lease agreements submitted to the Inquiry

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

Duration of the lease and renewal periods

Shoprite

343. Shoprite’s approach to the duration of lease agreements entered into with property developers involves an agreement based on an “initial lease period” which is subject to renewals. From Shoprite’s lease agreements it appears that there is a [X] approach to the initial lease period and accordingly these periods [X]. The initial lease periods range from a duration of [X] to [X] years.

344. Renewal options in favour of Shoprite also [X] depending on the length of the initial lease period. The Inquiry found instances where an initial period of [X] years was subject to [X] renewals, the first being for a period of [X] years and the second for a period of [X] years, which would amount to a lease for a duration of [X] years if Shoprite elected to exercise its rights under the lease. The Inquiry found instances where an initial period of [X] years was subject to [X] renewals, the first being for a period of [X] years and the second for a period of [X] years, which would amount to a lease for a duration of [X] years if Shoprite elected to exercise its rights under the lease. On the other hand, a lease agreement with an initial lease period of [X] years was subject to [X] rights of renewals of [X] years each, which would amount to a duration of [X] years if it exercised its rights under the lease.

SPAR

345. SPAR submitted [X] lease agreements and based on them SPAR appears to adopt a [X] approach in its determination of the initial lease period across all its lease agreements.

346. The initial lease period is for a duration of [X] years across all the lease agreements subject to [X] options for renewal. Each renewal is for a period of [X] years, each constituting a separate option that does not have any bearing on another. Only in limited circumstances were SPAR leases found to provide for [X] options and not for [X] options, which seems to be the norm.

347. SPAR lease agreements extend for [X] years with the potential of an additional [X] years through renewals should the rights of renewal be exercised. This translates to a period of [X] years in total.

Pick n Pay

348. Pick n Pay lease agreements do not provide a [X] initial period - they [X] for periods of [X] to [X] years, with [X] years being the predominant duration each with different renewal options:

348.1 if the initial lease period is for [X] years, there are [X] options of renewal for a period of [X] years each with a total period of [X] years;

348.2 if the initial lease period is for [X] years, there are [X] successive options of renewal for a period of [X] years each with a total period of [X] years;

348.3 if the initial lease period is for [X] years, there are [X] successive options of renewal for a period of [X] years each with a total period of [X] years;

348.4 if the initial lease period is for [X] years, [X] but there are rights for [X] on either the [X] or [X] of the lease agreement with a total period of [X] years; and
348.5 where the lease period is for the duration of [X] years, Pick n Pay is granted options to renew the lease agreement on either the [X] and [X] of the lease agreement.

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

**Shoprite**

349. Shoprite lease agreements indicate that Shoprite is entitled to use the premises for any of the following purposes: [X] and any other purpose incidental or connected to these purposes.

350. The lease agreements also indicate that there are [X] of the goods and merchandise and services that may be conducted by Shoprite.

**SPAR**

351. SPAR lease agreements indicate that premises are let to SPAR for purposes of conducting the business of [X] which incorporates [X] and such other services that may be associated with [X].

352. Pick n Pay lease agreements provide that Pick n Pay may use the premises for the purpose of carrying on the business of [X] in accordance with the business of Pick n Pay. The leases specifically state that this business includes [X].

**Limitations to the landlord’s right to let**

353. Although some of the exclusivity clauses contained in the lease agreements submitted by the anchor tenants have since been waived, this section considers the various exclusivity clauses found in the lease agreements in so far as they may not have been waived and are still applicable in various other shopping centres.

**Shoprite**

354. Shoprite lease agreements provide that the landlord shall not, during the term of the lease agreement or any renewals, allow for [X]. The landlord may further not permit any premises on the property [X].

355. Shoprite lease agreements also contain [X] which may be exclusionary in nature. These rights grant [X]. The [X] also give Shoprite [X].

356. One of the lease agreements makes provision for circumstances where there are [X]. An obligation is also placed on the landlord to ensure that [X] do not [X].

357. One of the clauses specifies the [X]. It provides that the landlord is [X]. The lease also requires the landlord to [X]. It also requires the landlord to [X]. This lease agreement does, however, permit a [X] and the [X]. A [X] is also permitted if Shoprite does not [X].

358. Shoprite’s lease agreements also allow for Shoprite to trade in the leased premises at [X].

**SPAR**

359. SPAR’s exclusive lease agreements state that the landlord shall not during the duration of the lease [X] without the prior consent of SPAR, which consent shall not be unreasonably withheld.

360. The lease agreements restrict the landlord from [X].

361. Some leases do not permit a [X].

362. Some of the lease agreements make specific reference to [X] being permitted to trade in the shopping centre provided that its [X].

**Pick n Pay**

363. Pick n Pay exclusive clauses are [X] and they seem to [X]. Some leases prevent the landlord from leasing to [X]. Other leases allow for a [X] to have a [X] provided that the [X] does not [X]. Further, the [X].

364. In other leases, Pick n Pay permits a [X] to be included as a tenant in the shopping centre but [X].

365. Another form of exclusivity is made in respect of [X]. There are also exclusivity provisions in respect of [X] or any other establishment that attracts [X]. These are establishments that do not suit [X].
366. The majority of the lease agreements also provide that [K] without Pick n Pay’s prior written consent which consent may not unreasonably be withheld.

Distortions to competition as a result of long-term exclusive lease agreements

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

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

369. Unitrade Management Services (“UMS”) is a buyer group and a voluntary trading association that represents small independent businesses active across South Africa. UMS submitted that exclusive leases should be phased out in order to give small independent retailers space to trade within malls and shopping centres. Further, UMS suggested that exclusivity should be limited to 5 years in order for the retailer to recoup their investment. Thereafter, no exclusivity agreements should be permitted in the development.**185** UMS submitted that 5-year exclusivity agreements would be sufficient to allow the centre to become sustainable as well as allowing the tenant with the exclusivity to build a reputation.**186** Independent retailers cannot necessarily afford the rent in large malls and, therefore, UMS suggested that independent retailers with smaller stores should be able to lease space in small convenience centres without the hindrance of exclusivity clauses. Small convenience centres on busy main roads can become hubs with increased footfall, thereby allowing independent retailers such as bakeries, butcheries and greengrocers to expand.**187**

370. Liquor City is a liquor store franchise business with a presence across South Africa and has experienced difficulties following the entrance of liquor stores affiliated with large supermarket retailers. Liquor City submitted that exclusive leases have led to some of their leases not being renewed after a large retailer obtained a lease with exclusivity provisions in the shopping centre. For example, in [K] a [K], which had been leasing a space in a shopping centre for 18 years was given notice to vacate and pay for the costs of stripping the store to a vacant shell in favour of a liquor store affiliated with [K]. The master lease**188** of the centre was held by [K].**189** The reasons given to Liquor City in a letter stated that “[K]”**190** Liquor City stated that it has had to close many stores over the last two years as a result of exclusive leases.**191** Their attempts to open stores in many shopping centres have also failed due to preference given to liquor stores affiliated with large supermarkets.**192**

371. Liquor City submitted that within a period of nine months it had [K] franchisee stores closed due to non-renewal of lease agreements because of the pending entry of the national supermarket chains’ liquor businesses in the relevant shopping centres. It submitted that [K] was pending closure as a result of [K] and [K] forcing the landlord to refuse to renew [K] lease agreement.
in order for \( \mathcal{K} \) and \( \mathcal{L} \) to open up their own liquor stores in the centre.\(^{194} \)

372. In addition, Mr Walter Hlope made the submission that he was offered a franchise by Liquor City in early 2015 but was unable to lease space in various shopping centres\(^{195} \) for a liquor store even though there were empty leasable spaces in those shopping centres.\(^{196} \) Mr. Hlope indicated that the landlords at the various shopping centres refused to lease space to him because the large retailers located in the shopping centres already had or were planning on opening their own liquor stores.\(^{197} \) Mr. Hlope indicated that it is preferable to have a store within a shopping centre for security reasons.\(^{198} \)

373. Earljay Trading Enterprise (“Earljay”) has been operating in stand-alone stores in Tembisa since 2006.\(^{199} \) Earljay submitted that it had applied to operate a butchery in a shopping centre in Kaalfontein, Tembisa which is nearing completion. Boxer is the anchor tenant. During negotiations for leasing space in the shopping centre, the developer indicated that Earljay would require permission from Boxer to trade in the shopping centre. At the time of the public hearings, Earljay was still waiting on the approval from Boxer.\(^{200} \) The benefit of opening a store in a mall or shopping centre, in Earljay’s view, is the foot traffic in a mall.\(^{201} \)

374. Mr Kunene, representing the KZN Youth Chamber of Commerce and Industry (“KZNYC”), submitted that exclusive lease agreements should not be allowed because it is difficult for individuals to open up their own stores, such as a liquor store, if a major anchor tenant has its own liquor outlet.\(^{202} \) In Mr Kunene’s view, small businesses that are likely to be affected by exclusive lease agreements include butcheries and bakeries. According to KZNYC, these businesses have been the main source of income for businessmen in the townships.\(^{203} \)

375. The Khayelitsha Community Trust (“KCT”) explained the difficulty it encountered when it tried to build a new mixed-use centre in 2015 to accommodate businesses that were unable to enter the existing Khayelitsha Mall due to lack of space.\(^{204} \) The existing mall currently has a SPAR and Shoprite located inside the shopping centre.\(^{205} \) The new development came to a standstill when SPAR legally challenged the development claiming that the new mixed-use centre was an extension of the existing shopping centre. SPAR claimed that in terms of the lease agreement the exclusive rights awarded to the tenant prevented the landlord and developer from pursuing other supermarket retailers to enter the new development.\(^{206} \)

376. There were discussions with the existing tenants around allowing them to relocate from the old mall to the new development, or alternatively to have two shops, one located in the old mall and another in the new development.\(^{207} \) An agreement was not reached and the dispute was referred to arbitration. The arbitrator ruled in favour of SPAR, that the new development was an extension of the old shopping centre and that the retailer was entitled to exert and exercise its exclusive right to trade to

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194 Submission by Liquor City dated 16 March 2017.
195 Golden Walk, Germiston; Naledi Mall, Vosloorus; Alberton Centre, Alberton; Springs Mall, Springs; Mall at Newmarket, Alberton.
196 Submission by Liquor City at the Gauteng public hearing dated 7 June 2017, p. 61, para. 376.
198 Ibid, p. 69, paras. 448 – 453.
199 Submission by Earljay at the Gauteng public hearing dated 9 June 2017, p. 57, para. 302.
201 Ibid, p. 65, para. 366.
202 Submission by KZN Youth Chamber of Commerce at the Kwa-Zulu Natal public hearing, dated 3 July 2017.
203 Ibid, para 115.
204 Submission by Khayelitsha Community Trust at the Kwa-Zulu Natal public hearing dated 4 July 2017, para 20.
205 Ibid, para 62.
206 Ibid, para 25.
prevent any other supermarket trading in the new development.\textsuperscript{208}

377. KCT submitted that the exclusivity clause with SPAR and Shoprite prevented it from allowing any other grocery, butchery, bakery, or fishery retailer from entering the existing shopping centre.\textsuperscript{209} KCT claims that they have had two butchers asking to be on the waiting list.\textsuperscript{210} KCT’s property portfolio manager has also been called by the existing supermarkets to shut down local traders selling boerewors rolls and samoosas within the shopping centre because the supermarket sells these products as well.\textsuperscript{211} There was also an instance where Jet started to sell dry goods and canned food, but this was claimed to be in contravention of the supermarket’s right to exclusivity.\textsuperscript{212}

378. KCT submitted that the lease agreement had a 10 year renewal period and the second term of the lease agreement has already come into effect.\textsuperscript{213} KCT could not remove the exclusivity clause from the renewed lease agreement (with SPAR).\textsuperscript{214} In fact, after renegotiating the lease agreement, KCT claims an additional clause was entered that KCT or its subsidiaries could not accommodate any other supermarkets within 5km of the existing mall or allow a general merchant such as Game to convert to a supermarket.\textsuperscript{215}

379. SPAR responded to the submission made by KCT.\textsuperscript{216} SPAR indicated that the shopping centre was extended, as was the intention from the time that SPAR entered the shopping centre.\textsuperscript{217} SPAR enforced the exclusivity provision in the lease agreement which reads “Save for a proposed Game general merchandise store... and the existing Shoprite Supermarket, the landlord shall not during the period of this lease or any renewal thereof, lease any other portion of the shopping centre or any extension or addition thereto, to a national supermarket group/chain that may now or hitherto be in existence”.\textsuperscript{218} The appeal arbitrator held that what KCT saw as a new centre was in fact an extension of the existing centre and that the exclusivity provision in favour of SPAR should therefore be upheld.\textsuperscript{219} SPAR has also indicated that the exclusivity provision was not amended.\textsuperscript{220}

380. As indicated previously, SAPOA surveyed its members regarding their views on who has been affected by exclusive leases. According to one member who wished to remain anonymous: “There are numerous small retailers that have been denied tenure at shopping centres because of the exclusivity clauses contained in anchor tenant leases. These include butcheries, green grocers and bakeries. In many cases the exclusivity will be linked to a particular size of the butchery or bakery. The limitation on the size is also prohibitive, as a butchery will often not be viable on a smaller footprint”.\textsuperscript{221}

381. According to another SAPOA member: “The bigger issue is where existing exclusivity clauses limit the landlords in accommodating smaller specialised retailers. Given the growth of specialised bakeries, butcheries and delis, the consumer’s right to choose is impacted”.\textsuperscript{222} Similarly, another

\textsuperscript{208} Ibid, paras 20 and 30. This did not take into consideration the effect of this decision from the perspective of the Competition Act.

\textsuperscript{209} Ibid, para 53.

\textsuperscript{210} Ibid, para 66.

\textsuperscript{211} Ibid, para 66.

\textsuperscript{212} Ibid, para 67.

\textsuperscript{213} Ibid, para 71.

\textsuperscript{214} Ibid, para 75.

\textsuperscript{215} Ibid, para 77.

\textsuperscript{216} Submission by a letter from Spar, dated 5 February 2018.

\textsuperscript{217} Ibid, para. 3.3.

\textsuperscript{218} Ibid, para. 3.4.

\textsuperscript{219} Ibid, para. 3.5.

\textsuperscript{220} Ibid 2018, para. 3.2.


\textsuperscript{222} Ibid.
SAPOA member submitted that exclusivity clauses “hamper small business growth and prevent innovation and entrepreneurship in this sector. A consequence is it has hampered the growth of employment in South Africa”.223

382. According to another SAPOA member, “the only instance that I am aware of where a small specialised retailer was denied access to a shopping centre due to an exclusivity clause was a particular butcher”.224 According to another member, “the exclusivity provisions have also restricted locations of coffee shops and affected small butcheries and bakeries”.225

383. Another member gave the example of [X] which was declined access at the [X]. This denied consumers in the immediate area access to affordable meat and forced them to buy at [X].226 Another member stated that “The current exclusivities in place have resulted in entrepreneurial and artisanal types such as butcheries, bakeries and fishmongers almost to disappear off the retail landscape”.227

384. [X] submitted that invariably the landlords decline access and verbally communicate the reason as the existence of an exclusivity clause. [X] submitted that notwithstanding requests for the landlords to record these refusals in writing, this is not being done.228 [X] provided some documentary evidence where it was refused entry into the following shopping centres: [X].229

385. [X] argued that exclusive lease agreements are anti-competitive and restrict young entrepreneurs from opening an [X] franchise business in a shopping centre. For example, the customers at the [X] have been deprived “from obtaining an alternative shopping experience and freedom of choice in terms of buying quality products at competitive prices”.230

386. [X] concurred that exclusivity clauses between anchor tenants and landlords have inhibited the ability of other retailers from entering or expanding into a shopping centre.231 In its submissions, [X] stated that exclusivity clauses should only endure for as long as is necessary to recover a retailer’s initial investment and for no longer than 5 years. Further, the period of a lease, including renewals, as well as usage and tenant mix clauses should not be held to the same time restriction of 5 years, since these do not, in [X] view, constitute an outright restriction on entry or expansion.232

387. [X] submitted that it does not support exclusive leases and does not believe that such leases should be a feature of the market place.233 [X] noted that clauses that restrict the size of a retailer trading in a shopping centre do not allow the affected business to grow and are equivalent to an exclusive lease.234 However in later submissions, [X] revised its view and submitted that long-term exclusive lease agreements should be allowed for recoupment of the initial investments by retailers. According to [X], the time required for the recoupment of the initial investment depends on a number of factors such as the location of a shopping centre and the volume of products sold in the store. [X] further submitted that it cannot be said that the duration of long-term exclusive lease agreements be limited to five years or that these long-term lease agreements should not be a feature of the market.

388. Finally, the exclusivity provisions may also impact on the product range of existing...
smaller independent traders in a shopping mall. For instance, Representatives of the South African Trading Association ("SATA") indicated that long-term tenants in the Chatsworth Centre such as a Mr. Pillay once approached the landlord to be permitted to sell cell phones from his store because people were no longer buying photo cameras. The landlord did not permit Mr Pillay to sell cell phones because it was not in his lease. However, Mr Pillay claims that other national retailers in the mall, such as Foschini, Markham and Milady’s are allowed to sell cell phones.235

391. Jwayelani claimed that it has not been able to enter shopping centres due to exclusive lease agreements. The reason given by property developers for not allowing it to trade in shopping centres is that "it does not fit the customer profile [of the mall]".239 Jwayelani submitted that it prefers to be in shopping centres because many customers frequent shopping centres for a one stop shopping experience. Jwayelani is currently only trading in two shopping centres. The first one is [X]. In that mall there is a [X]. The anchor tenant in that mall is [X]. The second mall is located in [X] and the anchor tenant [X].

Small national and regional supermarket chains

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

390. Choppies is a regional supermarket chain that entered the South African market in 2010. It is currently active in Limpopo, the North West, Gauteng, Mpumalanga, the Northern Cape, the Free State and recently, KwaZulu Natal, following their acquisition of Jwayelani stores in KwaZulu Natal. Jwayelani is a chain of regional supermarkets and butcheries. Since 2010, Choppies claims to have experienced significant challenges in entering shopping centres.236 Choppies submitted that this is perhaps attributed to retail property developers not recognising Choppies as a national anchor tenant although the reasons for rejection when attempting to lease space are not disclosed.237 As a result, in many instances, Choppies has either had to buy out and occupy old standalone stores or buy the property (strip centres and stand-alone properties) where its stores are located. Choppies is of the view that exclusive lease agreements hinder competition and that there are no positive justifications for such agreements.238

392. Exclusivity agreements may have affected Choppies’ (and by extension, Jwayelani’s) ability to lease space in the past. Choppies has a negative view of exclusivity lease agreements and has never insisted on such agreements when opening a new store. In its view, exclusivity arrangements hinder competition and do not have any positivejustifications. Choppies further submitted that it is likely that exclusivity lease agreements limit product choice and may lead to higher prices for consumers.240

393. Food Lover’s Market ("FLM") is a grocery retailer that focuses on fresh and perishable food.241 As a newer entrant into the grocery retail market,242 FLM has experienced barriers...
to entry related to exclusive leases granted by landlords to anchor tenants in national shopping centres.  

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

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

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

397. From the below, it is evident that FLM has experienced exclusivity agreements as a barrier to entry into malls and shopping centres throughout the country. In the two instances where FLM was prevented from offering their full range of products and services, it was eventually able to introduce their full offering following lengthy negotiations.

Table 5.1: FLM’s barriers to entry due to exclusive lease agreements

<table>
<thead>
<tr>
<th>Centre/Area</th>
<th>Retailer with exclusive lease agreement</th>
<th>Entry prevented</th>
<th>Limited offering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carnival City Mall, Brakpan, Gauteng</td>
<td>Checkers</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Riverwalk Centre, Potchefstroom, North West</td>
<td>Shoprite</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Bethlehem Mall, Bethlehem, Free State</td>
<td>Pick n Pay</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Paarl Mall, Paarl, Western Cape</td>
<td>Pick n Pay</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Newcastle Mall, Newcastle, KZN</td>
<td>Checkers</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Soneike Shopping Centre, Kuilsriver, Western Cape</td>
<td>Pick n Pay</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Kathu Village Mall, Kathu, Northern Cape</td>
<td>SPAR</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Boardwalk Centre, Inkwazi Mall, Richards Bay, KZN</td>
<td>Pick n Pay</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Crescent, Umhlanga Ridge, KZN</td>
<td>Pick n Pay</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Source: FLM submission on 31 May 2017

245 Ibid, p. 15.
246 Ibid, p. 17.
247 Ibid, p. 11.
248 Spar was willing to waive their exclusivity on condition that the landlord reduce the turnover rental percentage in the lease agreement and upgrade and extend Spar’s delivery yard at the landlord’s cost. The landlord was not willing to do so, and Spar refused to waive their exclusivity.
398. In the case of Boardwalk Centre in KZN, the store was first opened as a Fruit and Veg City store in 2010, offering only fresh produce because Pick n Pay would not allow FLM to open a store with their full offering. In 2016, the store was able to start trading with their full offering. Similarly, the store in Umhlanga Ridge was opened as a Fruit and Veg City store in 2009 because Pick n Pay refused to allow FLM to open a store with their full offering. After four years of negotiations, Pick n Pay agreed to waive their exclusivity and a FLM with full offering was established.249

399. FLM believes that an exclusive lease is a trade-off between the anchor tenant and the developer and that there is no valid reason for the inclusion of exclusivity clauses in lease agreements.250 FLM submitted that it has never and will never require an exclusive lease provision from shopping centres or mall owners.251 FLM also submitted that the grocery retail sector has become more competitive following the Commission’s previous investigation into exclusive lease agreements. They further submitted that developers and landlords are less inclined to grant exclusivity in new shopping centres and are willing to accommodate FLM, even in instances where there is an exclusivity agreement in place that has not been waived.252

Major hybrid wholesalers and retailers of general merchandise and food products

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

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

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

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

404. [X] tried to [X] of its [X] stores to include [X], with many of these stores being subject to some form of exclusivity constraint. The forms of exclusivity, according to [X], included factors such as, but not limited to, [X].253 According to [X], [X] has been precluded from consistently and efficiently rolling out its [X].

405. In October 2014, Massmart filed a complaint with the Commission alleging that Shoprite Checkers, Pick n Pay, and SPAR are abusing their dominance by entering into long-term exclusive lease agreements with property developers.254 Massmart has submitted that exclusive lease agreements are anti-competitive in that they prevent entry or expansion by new retailers into shopping

251 Submission by FLM, dated 31 May 2017, p. 11 - 12, paras. 17.4 - 18.
253 [X].
254 Competition Commission case number 2014Oct0612.
centres where one or more of the three large retailers are incumbent.

406. In [X] view, there is no logical justification for exclusivity. [X] stated that although retailers that request exclusivity suggest that it is a form of protection in the market, it considers such exclusivity to be an unfair practice that removes the freedom of choice from consumers.255 [X] pointed out that the terms of exclusivity range from the refusal of entry of a competing retailer or a retailer that trades in a similar trade, to the refusal of a certain tenant of a certain size to open a store or to refuse the expansion of a tenant to a certain size.256 [X] submitted that in some instances, the exclusivity restricts the type of product offerings in another tenant's store257

407. [X] conceded that in a high risk retail development, where the area is new and with no commercial background, an exclusive lease might be justified subject to a restricted duration.258 [X] suggested that the period of exclusivity must be justifiable and that the period of exclusivity must be between three and five years.259

408. [X] indicated that in instances where there were no exclusivity leases or when exclusivity provisions in leases were waived in its favour, it was able to enter into competitive markets and offer more product ranges to consumers.260

Previous investigations by the Competition Commission

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

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

410.1 Mass Stores Proprietary Limited vs. Shoprite Checkers Proprietary Limited and Hyprop Investments Limited (October 2013);

410.2 South African Property Owners Association NPC vs. Pick ’n Pay Group, Shop Rite and SPAR Group (September 2014);

410.3 Mr. SA Mahwiliri vs. Mr. Isaac Kriel (September 2014);

410.4 Massmart Holdings Limited vs. Shoprite Checkers and Others (October 2014); and

410.5 Mr. Walter Hlophe vs. supermarket chains - Shoprite Checkers; Pick ‘n Pay; SPAR; and Game (December 2014).

The extent to which exclusive lease agreements have contributed to the high level of concentration in the formal grocery retail sector

411. The Inquiry considered the effect of exclusive lease agreements on the concentration

255 [X].
256 [X].
257 [X].
258 [X].
259 [X].
260 [X].
levels of the formal grocery retail sector. The Inquiry focused on the levels of concentration in the formal sector because exclusive lease agreements by their nature affect stakeholders that are active in the formal retail sector and not necessarily the informal sector.

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

413. While it was argued that emerging challenger retailers can compete from stores that are not located in shopping centres, the evidence gathered suggests that the majority of consumers shop at formal supermarkets as opposed to the informal sector.261 As indicated previously, the formal supermarkets are largely located in shopping centres. The evidence presented indicates that other players within the grocery retail sector have been precluded from opening stores in shopping centres. Denying independent retail stores the opportunity to trade in shopping centres could potentially result in their failure as they are not able to attract as much foot traffic in their isolated location as a stand-alone store. This has the direct effect of reducing the number of independent retail traders and reducing their ability to compete with national supermarket chains in shopping centres.

414. The Inquiry evaluated the extent to which long-term exclusive lease agreements have benefited or harmed consumers and led to increased or decreased efficiencies.

415. According to Masingita, apart from exclusive leases bearing a competitive constraint on potential entrants in the market, they can also be harmful to consumers.262 In support of this notion, Emira also submitted that exclusivity is a condition the retail market would be better off without because exclusive leases can act as a hurdle for the property owner to bring in new tenants.263

416. SAPOA, in its own name, filed a complaint with the Commission alleging that Shoprite Checkers, Pick n Pay, and SPAR continue to enforce long-term exclusive agreements in shopping centres where they are anchor tenants resulting in consumer harm and the exclusion of potential new entrants in the market.264 SAPOA included views from its members who own shopping centres, to support its assertions that long-term exclusive lease agreements in shopping centres are not good for competition and consumers.

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

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261 Submission by Shoprite dated 06 July 2017; para 1.7.
262 Submission of a presentation (open session) by Masingita at the Gauteng public hearing, dated 3 November; slide 19.
263 Submission by Emira at the Gauteng public hearing dated 6 November 2017, (open session); para 30, p. 29.
264 Commission case number 2014Sep0456.
418. Aside from the adverse impact on consumer choice, the Inquiry is of the view that these leases are likely to have negative effects on price competition.

418.1 At a narrow level, the leases have restricted competing alternatives within individual shopping centres where consumers are more easily able to compare pricing and substitute purchases across stores, whether for the whole shop or a part of it. The very fact that supermarket chains seek exclusivity in the fear of revenue being diverted to alternatives supports this hypothesis.

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

5.4 JUSTIFICATIONS FOR EXCLUSIVE LEASE AGREEMENTS

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

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

<table>
<thead>
<tr>
<th>Justification</th>
<th>[✓]</th>
<th>[✗]</th>
<th>[✗]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusive lease agreements compensate the anchor tenant for having to sign a</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>long-term lease where they are expected to trade and pay rent for the duration</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>of the lease, regardless of the profitability of the store</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusive leases protect the investment of opening a new store and continuously</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>refurbishing a store in a shopping centre</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supermarkets operate at low margins and therefore a small loss in the volume</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>of sales through the introduction of a competitor in the shopping centre has</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a significant impact on the profitability of a supermarket</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The spending power of the market within the area serviced by a shopping centre</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>may not support the introduction of a competing store</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusive lease agreements do not constitute a barrier to entry for smaller</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>players in the market</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusive lease agreements do not cause harm to consumers through increased</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>prices and/or decreased quality of goods</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Further detail regarding the submissions of the national supermarket chains on this issue is set out in 14.2 of Annexure 5.

Other justifications for exclusive lease agreements

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

Not all SAPOA members are against supermarkets requiring an exclusive lease clause. For example, one of the anonymous members who made submissions in relation to exclusive leases argues that the benefits of having the anchor tenant within the property outweigh the potential negative impacts. In their experience, smaller businesses (that are likely to compete with the large retail anchor tenants) are unable to generate sufficient revenue in a centre which occupies a bigger, well known branded tenant and are, as such, not attracted to these buildings, irrespective of any restrictions imposed in terms of an exclusivity clause.

5.5 WAIVERS OF EXCLUSIVE LEASE AGREEMENTS

This section provides a detailed assessment of occurrences where a national supermarket chain has waived its right to exclusivity to accommodate the introduction of another grocery anchor tenant to enter a shopping centre as well as the waiving of exclusivity to accommodate the entry of small business and speciality stores in a shopping centre. The analysis is based on information submitted by Shoprite, Pick n Pay and SPAR in response to information requests. The section also provides a summary of the commitments proposed by Shoprite, Pick n Pay and SPAR to cease to enforce exclusivity in certain shopping centres across South Africa.

Waiving of exclusivity to accommodate other national retailers

The Inquiry requested that Shoprite, Pick n Pay and SPAR provide detailed information regarding where and when they had waived exclusivity for another grocery anchor tenant to enter a shopping centre.

Food Lovers Market / Fruit & Veg City

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

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

428. Shoprite identified four occasions when it waived exclusivity to allow for the entry of FLM into a shopping centre.  

429. In the other three instances, Shoprite permitted the entry of FLM on condition that the landlord agreed to certain conditions regarding the location and size of the store.  

430. Pick n Pay identified six instances between 2006 and 2011 where it waived exclusivity to allow FLM to enter the shopping centre, namely:  

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

### Woolworths  

434. Shoprite identified two malls with whom it shares partial exclusivity with Woolworths:  

### Table 5.3: Instances where exclusivity was waived to allow other national supermarket chains to trade  

<table>
<thead>
<tr>
<th>Centre/Area</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weskus Mall, Vredenburg, Western Cape</td>
<td>Checkers waived their exclusivity after negotiations with the landlord</td>
</tr>
<tr>
<td>Arbour Crossing, Amanzimtoti, KZN</td>
<td>Pick n Pay agreed to waive their exclusivity</td>
</tr>
<tr>
<td>Westwood Mall, Durban, KZN</td>
<td>Pick n Pay agreed to waive their exclusivity</td>
</tr>
<tr>
<td>Park Meadows, Johannesburg, Gauteng</td>
<td>Pick n Pay refused to waive their exclusivity, but the landlord accommodated FLM</td>
</tr>
<tr>
<td>Diamond Pavilion, Kimberly, Northern Cape</td>
<td>Checkers waived their exclusivity</td>
</tr>
<tr>
<td>Parow Shopping Centre, Parow, Western Cape</td>
<td>Shoprite waived their exclusivity</td>
</tr>
</tbody>
</table>

Source: FLM submission
435. Pick n Pay identified seven instances in which it permitted a Woolworths Food store to enter a shopping centre in which Pick n Pay already had an exclusive lease agreement: [X].

436. Pick n Pay submitted that the main reason why it waived its exclusivity for [X] in all six shopping centres was that: "[X]."

437. SPAR did not identify instances in which it has waived exclusivity to allow for a Woolworths store to enter a shopping centre in which SPAR had an exclusive lease agreement in place.

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

**Game (FoodCo)**

439. Shoprite identified three instances when it has effectively waived its exclusivity in the face of a Game store opening a grocery section (FoodCo) in a shopping centre with existing exclusivity: [X].

440. Shoprite also submitted that there was a [X].

441. Pick n Pay submitted that on [X], it waived exclusivity for the entry of a [X] at the [X] shopping centre in an attempt to generate more footfall at the shopping centre. Pick n Pay did not require compensation for waiving the lease.

**Pick n Pay**

442. Pick n Pay identified three instances when it waived its exclusivity to allow for the entry of a [X] store into the [X] shopping centres.

443. [X].

444. [X].

445. [X].

**Shoprite/Checkers**

446. Shoprite identified three instances ([X] shopping centres) when it has waived exclusivity in order to accommodate Pick n Pay.

**Waiving of exclusivity to accommodate a small business or speciality store**

**Butcheries**

447. Shoprite identified three instances when it waived its exclusivity to allow for the entry of a butchery into some of the shopping centres where its stores are anchor tenants. These waivers took place at [X].

448. [X]. [X].

449. Pick n Pay identified four instances in which it permitted a butchery or a biltong store to enter a shopping centre in which Pick n Pay already had an exclusive lease agreement. These instances took place at the [X] shopping centres. In the case of [X].

450. [X].
Bakeries

451. Pick n Pay identified four instances where it waived exclusivity for a bakery to enter a shopping centre. These were in [刊]. In the case of [刊].295

452. [刊].296 [刊]. These limitations, in the Inquiry’s view, still limit the growth potential of the new tenants, such as those referred to above.

Fresh Fruit and Vegetable Merchant

453. Shoprite identified one example where it waived its exclusivity to allow for the entry of a fresh fruit and vegetable store, [刊].297

Evidentiary insights on waivers on exclusive lease agreements

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

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

Waiving of future exclusive leases

456. In light of the Inquiry, national supermarket chains made proposals regarding the waiving of exclusive lease agreements. The Inquiry has received proposals from Pick n Pay, Shoprite and SPAR. Each proposal is set out below.

Pick n Pay

457. Pick n Pay’s proposal and conditions.

457.1 [刊]

457.2 [刊]

457.3 [刊]

457.4 [刊]

457.5 [刊].298

Shoprite

458. The conditions set out in Shoprite’s proposal were that:

458.1 [刊]

458.1.1 [刊]

458.1.2 [刊].

458.2 [刊]

458.2.1 [刊].299

458.2.2 [刊].300

459. [刊].301


Spar

461. Spar’s proposal and conditions.

461.1 [刊]

461.2 [刊]

461.3 [刊].

295 [刊].

296 [刊].

297 [刊].

298 Proposal by Pick n Pay, dated 17 April 2018.

299 Service department refers to butchery, bakery, fish shop, delicatessen, fresh fruit and vegetable merchant, liquor and pharmacy.


301 Ibid.
5.6 INTERNATIONAL EXPERIENCE ON EXCLUSIVE LEASES IN GROCERY RETAIL MARKETS

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

5.7 OTHER BARRIERS TO ENTRY AND EXPANSION IN SHOPPING CENTRES

463. During the course of the Inquiry, other barriers to entry, such as differential treatment with regard to rental rates in shopping centres were identified by stakeholders. These barriers were highlighted for further engagement.

Rentals Rates

464. In Masingita’s developments, the rental fee with anchor tenants is usually negotiated before construction commences on the development and only negotiated after the development is completed with line tenants. Emira noted that the size of the shop is a determining factor of the rental fee payable in any property development.303 Moreover, Emira stated that the larger the store size, the less rental payable per square metre, which is motivated by bulk buying or bulk renting.304 Masingita explained that base rentals are market related and are based on the size of the centre and the year in which the development anticipated commencing trade. A base rental is defined by Masingita as a rental payable by the lessee in accordance with the size of the store and rate per square meter agreed on and the rate is usually lower for tenants who occupy a larger space.305

465. On the other hand, Emira defined a base rental as a standard market related rental fee paid by tenants.306 Masingita defined a turnover rental as a percentage of turnover paid by the lessee to the lessor as additional rental.307 Emira stated that some national anchor tenants have a base rental and in the following year, the base rental is recalculated.308 On the other hand, there are other retailers, such as Woolworths, who are exempted from any escalations.309

466. In terms of rental and other costs of operating in a shopping centre, Redefine explained that there is base rental, which is calculated per square metre and a turnover rental, which is a percentage of the tenant’s turnover. The tenant is required to pay whichever is the higher of the base rental or turnover rental. Additionally, there may be a merchant’s association contribution which

303 Submission by Emira at the Gauteng public hearing, 6 November 2017 (open session); p. 34, para 30.
304 Ibid.
305 Submission by Masingita at the Gauteng public hearing, 3 November 2017 (open session); p. 20.
306 Submission by Emira at the Gauteng public hearing, 6 November 2017 (open session); p. 33, para 20
307 Submission by Masingita at the Gauteng public hearing, 3 November 2017 (open session); p. 20.
308 Submission by Emira at the Gauteng public hearing, 6 November 2017 (open session); p. 34, para 20
the landlord also contributes towards that is used for promotions within the shopping centre. Tenants also required to pay water and electrical charges as well as municipal rates. There is also usually a contribution towards operating costs for cleaning and security for common areas. All of these costs, other than rental, are calculated on a pro rata basis, depending on the space that the tenant occupies within the shopping centre.310

467. Redefine explained that the difference in rental per square metre between tenants is based on the amount of space they wish to occupy as well as the shape and location of the shop. The security of income also plays a part in the rental rate. Listed companies usually sign 10-year leases and it is most likely that the landlord will be able to collect rent from these tenants for 10 years. The smaller businesses have a higher credit risk which is factored into the rental rate. Anchor tenants know what their turnover would be on a certain size store and know the rental rate that they can afford. If the landlord wanted to charge a higher rental to the anchor tenants, they would not rent space in the development and the development would not receive financial backing from financiers which would mean that the development would not be built.

468. Additionally, Redefine explained to the Inquiry that tenants earn different margins. In particular, grocery tenants earn very small margins. A tenant who has a large space and low margins would pay a lower rental per square metre than a tenant renting a small space with large margins.311 In Redefine’s view, this does not preclude smaller businesses from entering shopping centres, as the increase in foot traffic that a small business would experience when located in a shopping centre could increase their turnover, thereby enabling the small tenant to pay the higher rental rate.312

469. Ugu Association of Business claimed that the method used to determine the rental in the lease agreement is not clearly communicated to their members. For example, it claimed that members will be told that the rent at a shopping centre is R15 000 but when they approach the management of the shopping centre they are told that it is R21 000 and the members are not told how the rent was calculated.313

470. Representatives of the South African Trading Association (“SATA”) and tenants of Chatsworth Centre claimed during the KZN public hearings that over the last 28 years smaller tenants have been slowly replaced by major national stores. Chatsworth Centre used to have 170 tenants; however, this has dropped to approximately 105 tenants due to revamps and loss of trade at the mall.314

471. Long-term tenants at Chatsworth centre, such as Mr Pillay, have complained to the landlord about the annual increase in their rentals of between 8 to 10%, and believe that there should be a cap for long-term tenants. It is claimed that the landlord has not listened.315

472. The Inquiry further received a complaint on 10 June 2018, alleging that small store tenants pay a much higher rental rate than that of anchor tenants.316 Roma Gioielli Jewellers, situated in Woodlands Boulevard shopping centre in Pretoria, has alleged that the rental rate for line tenants in this shopping centre have been increased in order to pay for shop fittings and rental for an anchor tenant that will soon be entering the shopping centre.

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

5.8 PRELIMINARY FINDINGS

Long-term exclusive lease agreements

474. When considering the prevalence of exclusive leases, the Inquiry found that exclusive leases are prevalent across South Africa and that they give rise to the exclusion of emerging challenger retailers. It further found that these long-term exclusive lease agreements have excluded small businesses and larger competitors or potential competitors from entering malls, and from competing effectively on the basis that they do not have access to suitable retail space.

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

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

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

478. The evidence indicates that exclusive lease agreements have restricted consumer choice within a shopping centre. Despite this proliferation of shopping centres, the consumer choice within shopping centres has largely been confined to the limited pool of national supermarket chains that have been considered suitable to be anchor tenants due to the prevalence of exclusive leases. The evidence that such leases have served to exclude emerging retailers and specialist stores from shopping malls across most of the country demonstrates that consumer choice in general has been limited and price competition hindered.

Rental Rates

479. In the preliminary findings, the Inquiry was mindful that the elimination of exclusive leases may still not have the desired effect of enhancing competition and economic participation if rental rates remained highly discriminatory in favour of the national retail chains. For this reason, the Inquiry concluded that changes need to occur with regard to (1) the manner in which rental rates are determined, and (2) the extent of the differentials that currently exist in shopping malls across the country.

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

481. The Inquiry intended to embark on further consultation with property developers, supermarket chains, emerging retail chains and independent stores in order to identify a workable transition model. In addition, the Inquiry would engage with the Department

317  Minutes of the Meeting between ExactAfrica and the Inquiry, dated 1 August 2017, p1.
318  Minutes of the Meeting between ExactAfrica and the Inquiry, dated 7 July 2016.
of Trade and Industry as to how such a transition model may fit within the regulatory framework for grocery retail envisaged above. If these discussions failed, the Inquiry recommended that the Commission initiate and investigate the exclusionary effects of such rental differentials as against the larger property developers whose practices have a more widespread impact on the market under the new section 9(1)(a)(ii) or the existing section 5(1) of the Competition Act no 89 of 1998 (as amended) (the “Competition Act”) where the amendments now waive the yellow card for offences. Alternatively, it could be explored under the indirect effect of buyer power as against the national retail chains under the new section 8(4) of the Competition Act.

5.9 SUBMISSIONS IN RESPONSE TO PRELIMINARY FINDINGS AND RECOMMENDATIONS

482. Subsequent to the publication of its preliminary findings, the Inquiry received submissions from numerous stakeholders in relation to long-term exclusive lease agreements and rental rates. These submissions are discussed below.

Submissions on long-term exclusive lease agreements

483. As a point of departure, it is worth noting that the incumbent national supermarket chains (Shoprite, Pick n Pay, Woolworths and SPAR) made similar arguments in expressing their disagreement with the Inquiry’s findings on long-term exclusive lease agreements.319

484. The national supermarket chains argued that the Inquiry erred in identifying the four retailers and making recommendations that apply to those retailers alone.320 [X] submitted that a better approach would have been to require that no supermarket of any retailer selling groceries must enjoy exclusivity, if exclusivity is not desirable in the retail space. Further that this equal regulation of the market would address the concerns identified by the Inquiry.321

Prevalence of exclusive lease agreements

485. The Inquiry did not receive any dissent from any of the stakeholders regarding the prevalence of long-term exclusive lease agreements. The national supermarket chains each submitted the number of outlets at which they have exclusive lease agreements in their favour and collectively. This amounted to approximately 1724 of both complete and partial exclusivities. The lack of dispute is to be expected since according to the Southern African Shopping Centres’ Directory 2015 edition322 there are approximately 1942 shopping centres in South Africa. A significant portion of the shopping centre environment is, therefore, covered by long-term exclusive lease agreements.323 However, the Inquiry notes that the numbers submitted by the national retailers also include stand-alone outlets which are not located in shopping centres, though this number appears to be minimal.324

486. In its estimate, the Inquiry sought to be conservative and only considered the shopping centre environment, excluding those stand-alone outlets which are covered by exclusive lease agreements. Based on this

319 Submissions by [X] and [X] all dated 28 June 2019.
320 [X].
321 [X].
323 [X] submitted that out of the [X] stores across South Africa [X] contain complete exclusivity and [X] contain partial exclusivity. This amounts to [X] lease agreements which contain some exclusivity. ([X].) [X] submitted that approximately [X] of its [X] lease agreements contain exclusivity, which is about [X] of its lease agreements which contain exclusivity. ([X]) [X] submitted that [X] of its stores contain complete exclusivity and [X] contain partial exclusivity. This amounts to [X] of its lease agreements which contain some exclusivity. ([X].)
324 [X] has 32 stand-alone outlets, [X] has 97 stand-alone outlets. [X] did not make a distinction of its stand-alone stores, however the Inquiry notes that there are 311 [X] outlets which, in the Inquiry’s understanding, are generally stand-alone stores. Similarly, the Inquiry notes that some [X] outlets are not located in shopping centres.
calculation, it appears that approximately 66% of the shopping centres are subject to long-term exclusive lease agreements.

487. Encouragingly, there seems to be a change occurring in the industry whereby developers are pushing back and refusing to grant exclusivity in some cases. In addition, a number of the retailers have invested without exclusivity. This change was confirmed by various stakeholders who indicated that there is a alteration in the conduct of the national supermarket chains, particularly in respect of new retail developments. Some stakeholders also indicated that the change in the conduct of the national supermarket chains coincided with the commencement of this Inquiry.\(^{325}\) The fact that such exclusivity is not being sought or given in recent developments is evidence, which to this Inquiry, indicates that such exclusivity is not necessarily required for investment as claimed by the national supermarket chains.

488. [\(\star\)] however, submitted that its stores have not contributed to the observed prevalence of long-term lease agreements because only 30% of its head lease agreements contain exclusivity which suggests that less of its lease agreements contain exclusivity in general.\(^{326}\) However, [\(\star\)] also submitted that the other lease agreements entered into by the individual [\(\star\)] stores are on substantially similar terms and conditions to those contained in its head leases.\(^{327}\)

489. [\(\star\)] further argued that the Inquiry incorrectly grouped it with the other national supermarket chains whose stores are mainly in larger shopping centres and have long-term exclusive leases. [\(\star\)] argued that it is essentially a voluntary trading association mainly made up of small independent retail businesses, some of which are historically disadvantaged individuals. It further submitted that its stores are mainly stand-alone and located in convenience centres and that the Inquiry ought to have included its stores in the category of retailers that are in stand-alone premises.

**Exclusion of small businesses**

490. [\(\star\)] argued that the Inquiry’s assessment did not consider the extent to which competitors have access to shopping centres and that the Inquiry failed to analyse the portion of shopping centres that have exclusive lease agreements and whether the size of the mall in which exclusivity is applicable permits competition and alternative rental properties in the area. [\(\star\)] also argued that the Inquiry did not assess the extent of competition for entry into new shopping centres. Accordingly, [\(\star\)] submitted that although old shopping centres have exclusivity, new shopping centres are still subject to competition between prospective anchor tenants.

491. [\(\star\)] submitted that the Inquiry provided no evidence to demonstrate that long-term exclusive leases give rise to material competition law concerns and that even if the Inquiry were able to establish evidence to this effect, it would still need to show that any remedy is proportionate and effective. [\(\star\)] also submitted that the exclusion of small businesses was not purely a function of long-term exclusive lease agreements but that there are examples where landlords concluded that small grocers with an apparently unconducive retail offering would not be an attractive addition in terms of atmosphere, customer experience and tenant mix and, therefore, refused space in malls regardless of whether leases were exclusive or not.

492. In contrast to the major retailers, the majority by far of the stakeholders in the banking and property development sectors were in full support of the Inquiry’s findings.

493. During a meeting between the Inquiry and [\(\star\)], numerous examples where submitted in which exclusive lease agreements have placed constraints on the ability to place

\(^{325}\) [\(\star\)].\(^{326}\) [\(\star\)].\(^{327}\) [\(\star\)].
speciality and alternative retailers in its shopping centres and thereby resulting in the exclusion of these small businesses.328 [X] also submitted that national supermarket chains sometimes claim exclusivity over adjacent properties citing a case where it extended one of its shopping centres and the anchor tenant enforced its exclusivity on all property surrounding the shopping centre, including land adjacent to the centre which prevented another grocery tenant from being brought in.329 [X] indicated that it was faced with a similar concern where exclusivity was extended to include an extension of one of its shopping centres.330

494. [X] submitted that long-term exclusive lease agreements have prevented entrepreneurs from opening smaller and speciality stores such as bakeries and butcheries.331 Similarly, [X] submitted that exclusive clauses limit the landlord’s ability to ensure that all possible lettable area in a retail centre is let by reducing the number of potential tenants that it can approach. It also submitted that these clauses remove a certain layer of discretion which a landlord would ordinarily have as to how best to let its lettable space and promote its tenant mix.332

495. [X], which is a speciality store, provided the Inquiry with examples of instances where its stores were affected by exclusivity in lease agreements.333 It is worth noting that on numerous occasions [X] was outrightly refused to enter some shopping centres due to exclusivity arrangements. However, there have been cases where exclusivity was waived in its favour and [X] was able to trade alongside a national retailer in the same shopping centre.334

496. In addition to smaller supermarkets and speciality stores, [X] claims it has observed that a substantial number of liquor stores have closed as a result of exclusivity in lease agreements and the conduct of the national supermarket chains.335

497. [X] submitted that it has received interest from competing retailers to take up premises in a centre already anchored by an opposing retailer where, from its perspective, the presence of a second retailer would enhance the centre and draw more feet. Due to exclusivity clauses in the lease, it has been unable to proceed with these potential deals to the detriment of the centre. As an example, at [X] the existing anchor, [X], refused to waive exclusivity in favour of [X] and only waived the clause in favour of [X] who are in the same group.336

498. It further noted that as a landlord it is mindful of ensuring the success of all its tenants. It would thus not place another competitive retailer in its centres where it believed that the new retailers would severely impact on the existing retailer’s business. It argued that it believes that tenant mix and what is best for the centre should be determined by the landlord rather than through the enforcement of exclusivity clauses, which [X] believes have a negative impact on its centres. It also made a submission relating to the insistence by a retailer to enforce its exclusivity in a township mall, thereby refusing a rival retailer from taking occupancy in that centre.

Benefits or harm to consumers

499. With regard to benefits or harm to consumers, [X] submitted that the Inquiry, unlike the UK Inquiry, did not assess the harm or benefit to

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328 [X]. One of the examples related to the refusal of a Halaal butchery in a shopping centre where the lease agreement with the anchor tenant specifically stipulates the names of the tenants that are not allowed to trade therein.

329 [X].
330 [X].
331 [X].
332 [X].
333 [X].
334 [X].
335 [X]. In addition, [X] also submitted various instances where its stores were notified that the contract would not be renewed, or that its stores could not trade in a shopping centres because the anchor tenant sought to trade in that shopping centre.
336 [X].
consumer in relation to individual stores or shopping centres when assessing whether local markets are concentrated and what alternatives customers may have to those outlets. Further it argued that, the assertion that exclusive lease agreements are likely to have a negative effect on price competition is not supported by the evidence of the Inquiry.337

500. The [X] submission is deficient in two respects. First, it focuses unduly on price competition rather than other features of competition, such as providing consumers with greater product variety and choice. These are real benefits of competition which both the preamble to the Act and its purposes aptly recognise. Second, [X] completely ignores the role of promoting the opportunity to participate in the national economy which features prominently and is central in the objectives of the Act. Whilst some of [X] stores may be owned by historically disadvantaged individuals or be SMMEs, this does not make the exclusion of other such SMMEs any more palatable. Ample evidence has been provided on such harm. Finally, on the issue of price competition itself, the very rationale put forward for exclusivity reveals that price competition is being undermined. In essence, exclusivity is demanded to protect sales from other stores that might sell the same product lines in the same centre in competition to the incumbent retailers. This indicates that the likely counterfactual, absent exclusivity, is that the sales of the incumbent retailer would be threatened by the presence of a competitor in the same centre and in order to protect sales, the incumbent retailers would require greater focus on price, range or quality.

501. The submissions received by the Inquiry from numerous property developers indicate overwhelmingly that exclusive lease agreements affect investors because they impede possible changes of shopping centres to keep up with customer trends, demands and the flexibility of the mall to meet those trends and demands.338

502. [X] submitted that the removal of exclusivity clauses would only serve to enhance the centres and provide a better offering to the respective customer base of those centres.

503. [X], in explaining the effects that exclusivity in long term lease agreements had on its business, submitted that tenant mix is key and that it is critical for landlords to provide customers with the best experience and offering in the market.339 [X] argued that exclusivity over a large centre is detrimental to property owners and limits customer choice.

504. [X] argued that the sustainability of a shopping centre is reliant on it keeping up with customer trends and demands, and those trends and demands are, therefore, attracting the correct tenant mix which is impeded by the duration of exclusive leases. It argued that it is unreasonable to expect a market to be static for the full length of a national supermarket’s lease agreement. Landlords such as [X] who invest in peri-urban and townships are best positioned to place and accommodate smaller local tenants who enter these markets on a regular basis. In this regard, it argued that small businesses and new tenants enter the market on a regular basis and landlords should be placed in a position to accommodate smaller and local tenants.

505. [X] submitted that it does not support exclusivity in lease agreements and that the number of shopping centres have increased and for them to be successful, it is essential that the correct tenant mix which will attract customers is secured by the landlord. Like many of the other property investors, [X] indicated that many of these leases which contain exclusivity are inherited and have not been necessarily entered into by themselves.340

337 [X].
338 Property developers who indicated that exclusive lease agreements have a negative effect include the following: [X].
339 [X].
340 [X].
506. [X], while concurring with the justifications for the exclusive leases as identified in the Preliminary Report, also noted the negatives that arise from such leases. [X] submitted that the rental income generated by the shopping centre may also be limited as the tenant “pool” is limited due to the exclusivity clause barring the shopping centre owner from allowing certain tenant types in the shopping centre. This may also create an oversupply of a certain tenant offering i.e. there may be too many of a certain kind of retailer who is not impacted by exclusivity because the developer cannot fill vacant space with tenants that are impacted by exclusivity.341

507. Without belabouring the points made, the above are some of the numerous objections received by the Inquiry of the effects of exclusivity leases in shopping centres.

Justification for exclusive lease agreements

508. As was indicated in the Preliminary Report, national supermarket chains indicated that exclusive lease agreements are needed in order to allow for the recoupment of investments made.

509. [X] maintained that exclusive lease clauses should be aimed at the recoupment by a retailer of the capital it invested in a store by the end of the exclusivity period. According to [X], the period of recoupment will depend on numerous factors, including location, brand and volume of products sold in the store.342

510. [X] indicated that the quid pro quo of exclusive leases has been the expectation that retailers commit to long leases often extending beyond 10 years, along with a commitment to rental obligations, irrespective of the commercial success or failure of the store in question.343

511. The Inquiry notes that although the retailers justify the inclusion of exclusive clauses in their lease agreements on the basis of investments made, they have not presented any evidence to substantiate their claims.

512. Contrary to the views above, [X] indicated that the argument of recoupment of investments by the retailers is disproved by the fact that the exclusivity is generally against the smaller players and not their direct competitors. Further, [X] indicated that it has observed instances where one large retailer waived exclusivity for another, yet still enforced it on smaller retailers.344

513. [X] submitted that exclusivity has nothing to do with protecting the retailers’ investments, since the retailers conduct their own feasibility studies and are aware of what the market can withstand by the time they decide to enter a shopping centre. The exclusivity, according to the [X], is merely to protect the retailers against competition within the centre, especially when the property developer or owner expands the centre.345

514. [X] argued that exclusivity would only be justified for the time which it would take the supermarket to recoup its full investment as the anchor of a mall. However, the risk element has become lower due to the proliferation of data and information which allows for better risk assessments. [X] submitted that there are newer risk mitigation elements which developers and retailers can apply which negate the need to include exclusivity provisions.346

515. In the Inquiry’s engagement with property developers and owners as well as the national banks, it was submitted that financiers do not require exclusivity to be secured by property developers prior to them securing financing of a mall or shopping centre.
Financiers do, however, require that a mall or shopping centre be secured to a certain percentage, but that requirement does not include the securing of an exclusive lease agreement from anchor tenants.347

516. In addition to the investment justification set out above, the Inquiry also received claims that some shopping centres, by virtue of their size, cannot have more than one supermarket operating, and, for this reason, exclusivity in those instances should be allowed.348

517. [X] indicated that centres which are, for example, as small as 25 000 - 30 000m² generally only warrant a single grocery retailer of about 3000 – 4000m². According to [X], given that national supermarket chains pay lower rentals, it is unsustainable to have two of them in a small centre and that the market would not allow for more than one supermarket in a centre of that size.349

518. In addition, [X] submitted that although a shopping centre may not accommodate more than one supermarket at a point in time, shopping centres tend to expand, and the challenge arises where a property developer recovers the investment within five years and elects to expand the centre. In such a case, the market then allows for a second supermarket but due to exclusivity, this becomes difficult for the developer.350 In this regard, the Inquiry notes that it has received numerous submissions from property developers that not only highlight this practice but overwhelmingly object to it.

Clauses that have an effect on letting and usage

519. In its Preliminary Report, the Inquiry referred to clauses which do not exclude outright, but nevertheless have an exclusionary effect, as was the case particularly in clauses contained in the [X] lease agreements. The Inquiry then found that such clauses are akin to some sort of exclusivity insofar as they relate to positioning of certain stores of which exclusivity is demonstrated in the tenant mix and usage clauses, example of which are contained in Paragraph 14.4 of Annexure 5.

520. [X] submitted that there is no basis for its tenant mix clauses to raise concerns given that they are not outright exclusivity provisions. According to [X], these clauses, unlike outright exclusivity, do not prevent competing retailers from operating in a shopping centre but merely seek to ensure an optimal tenant mix and cannot be said to have the same anti-competitive effect as outright exclusive clauses. [X] also submitted that these clauses are aimed at protecting the goodwill of [X] brand and business, and the health and safety of its products, employees, agents, suppliers or customers.351 It argued that these clauses have resulted in improved product offerings to customers, both in terms of grocery products and retail space, which has increased competition between retailers on the one hand, and between property developers or owners on the other.352

521. [X] also submitted that in its tenant mix clauses, it does not require that certain tenants trade from the shopping centre but that the tenants which were disclosed as being secured in the shopping centre on the day of its signature remain consistent with the actual tenant mix.

522. [X] also indicated that influence on tenant mix exists separately from the exclusive clauses in the agreements and that influence on tenant mix cannot result in any anti-competitive effect. Further[X] submitted that tenant mix clauses are not part of exclusivity as an appropriate tenant mix is important for a shopping centre.353 Furthermore, [X]

347  [X].
348  [X].
349  [X].
350  [X] also held a similar view.
351  [X].
352  [X].
353  [X].
argued that a retailer must know the tenant mix in order to invest appropriately and be able to resist undesirable tenants. In this regard, the tenants must be complimentary to the sale of food as the inclusion of undesirable tenants would have an adverse effect on the reputation of the business. According to [X], appropriate decisions to invest or continue investing cannot be made where the supermarket does not know the tenants mix and feasibility studies cannot be undertaken unless the retailer understands what other tenants will be present in the centre.

523. [X] confirmed that anchor tenants generally do not dictate the tenants that go into a shopping centre but that they require notification of the tenants in order to make commercial decisions and to decide whether they wish to trade from that centre. This, according to [X], also assists anchor tenants to determine the possibility of success and projected turnovers.

524. In addition, [X] submitted that the Inquiry misunderstood the market forces, as the reality is that the selection of anchor tenant lies with the property developer who may prefer a certain anchor supermarket brand above another in line with the target market of the shopping centre.

Submissions on rental rates

525. The Inquiry also received concerns that, in comparison to the national retail chains, line tenants are being charged substantially higher rental rates. According to the allegation, these substantially higher rental rates have an exclusionary effect on line tenants and independent retailers by creating high barriers to entry and expansion into or within the shopping centre space.

526. The Inquiry received criticism for its consideration of differential rental rates and their possible effect on the ability of small businesses to enter and expand into the grocery retail market. Stakeholders stated that the Inquiry’s consideration thereof falls outside the scope of the Inquiry as it did not form part of the initial ToR.

527. The foregoing notwithstanding, stakeholders, such as property developers, financiers and anchor tenants or the national supermarket chains made submissions on the concerns raised with regard to differential rental rates. All the submissions made, indeed confirm the existence of differential treatment of tenants by property owners. This differential cuts across the various payments which different categories of tenants are required to make as part of their monthly rental payments, including base rentals, turnover rentals, rates of escalation, deposits and contributions to costs, as explained above.

528. However, landlords vehemently disagreed with the assertion that the differentials in rental rates may prejudice small retailers, stating that there is no inequitable distortion in rental rates between anchor tenants and line tenants.

529. [X], a national supermarket chain, submitted that the Inquiry’s concerns with differential rental rates are inaccurate since differentials are justified and there are sound commercial considerations as to why

354 [X].
355 [X].
356 [X].
357 In this context, ‘rental rates’ are used inclusively and refers to base rentals; turnover rentals; rates of escalations; deposits; as well as, other cost contributions which tenants are required to make in order to be a part of a the tenant mix in a shopping centre such as: marketing; common use of water and electricity utilities and the upkeep of the common areas in the shopping centre.
358 [X].
359 [X].
360 [X].
361 [X].
362 [X].
363 [X].
364 [X].
anchor tenants would receive lower rental rates than line tenants. It further argued that there is nothing inherently anti-competitive in the practice and submitted justifications for which anchor tenants would receive lower rental rates compared to line tenants. Some of the justifications offered by [X], include that:

529.1 anchor tenants enter into long term rental agreements, which generally range from 10 - 20 years;

529.2 anchor tenants generally rent much larger proportions of floor space and are key to the long-term viability of a shopping centre; and

529.3 anchor tenants are often brand names which are important in attracting consumers to the shopping centre.

530. [X], a grocery retailer,365 echoed these sentiments stating that although anchor tenants pay lower rental rates per square metre, this contributes to a larger Rand value in terms of the size of the stores which anchor tenants occupy. It added that, anchor tenants play a fundamental role in attracting feet to the shopping centres within which they are located through, among others, national marketing and advertising.

531. On the other hand, [X], a specialist retailer,366 submitted that it has not experienced any instance of differential treatment regarding rental rates from the property developers and that these should continue to be determined by the market.

532. In general, property developers submitted that the market for lettable retail space is highly competitive and that rental rates are generally determined by a consideration of numerous factors such as: market forces; size and position of the unit to be let; visibility of the unit to be let; footfall likely to be created by the tenant; depth of the store; cost of installing the tenant and trading densities. These factors will make up a tenants’ base rental.

533. [X] made the following submission on the factors that are taken into account in determining its rentals:

533.1.1 [X];

533.1.2 [X];

533.1.3 [X];

533.1.4 [X];

533.1.5 [X];

533.1.6 [X]; and

533.1.7 [X].

533.2 The turnover generated by the tenant and the tenant’s ability to pay. These factors will make up a tenant’s turnover rental.

534. Property developers, [X] submitted that anchor tenants and national tenants pay lower base rentals per square metre, when compared to line tenants. [X], a financial services provider,367 submitted that it is aware of this practice. In some instances, this has been attributed to the size of the space which anchor tenants and national tenants rent and the footfall that they create.

535. Property developers, [X]368 and [X]369 clarified the technique used for the determination of rental rates across the various categories of tenants stating that it entails a mathematical calculation whereby a property developer considers, for example, that [X], the property developer will then calculate backwards in order to determine the rental rate of the other categories of tenants, so as to achieve the desired return on cost. It was also submitted that the national retail chains can simply refuse to be a part of the

365 [X].
366 [X].
367 [X].
368 [X].
369 [X].
shopping centre if the rental rate offered to them, appears unfavourable. As a result, property developers are forced to balance the equation in a manner that ensures the national retailers’ participation.

536. Some stakeholders submitted that in addition to the base rental, the anchor tenants and national tenants are required to pay a turnover rental which is generally threshold dependent. This means that the tenant will be required to pay, typically between \([\times]\) and \([\times]\) of their turnover, after meeting the threshold requirements of the lease agreement. Importantly, \([\times]\), \([\times]\) and \([\times]\) submitted that the turnover rental generally only applies to anchor tenants and national tenants and does not apply to line tenants due to uncertainty in performance and typically, independent retailers have inadequate record keeping processes. The Inquiry notes, however, that \([\times]\) charges line tenants an additional turnover rental rate which is in the region of between \([\times]\) and \([\times]\) of the line tenant’s turnover whilst the anchor tenants are charged between \([\times]\) and \([\times]\) of their annual turnover.

537. In general, property developers submitted that, their requirement of a deposit or security is dependent on the risk profile and financial security of the tenant. So, a tenant who has a poor credit history or is not a well-established brand, will be required to pay a deposit. According to most property developers anchor tenants and national tenants are typically seen as low risk tenants and are not required to pay deposits. \([\times]\) submitted that national franchisees, regional stores and line stores receive a year-on-year escalation of between \([\times]\) to \([\times]\), national franchisees, regional stores and line stores receive a year-on-year escalation of between \([\times]\) to \([\times]\). \([\times]\) submitted that an important determining factor regarding rates of escalation is the length of a lease agreement, specifically stating that longer leases will not be subjected to higher rates of escalation as they acknowledge the compound effect over time.

538. Deposit requirements which are imposed differ between property developers. \([\times]\) submitted that it requires \([\times]\) months of the final years rental, \([\times]\) while \([\times]\) indicated that it requires \([\times]\) months of the final years rental. \([\times]\) Another submitted that it makes use of a formula which it substitutes to calculate the required deposit from a specific tenant.

539. Property developers submitted that rates of escalation of rentals are generally determined by considering economic market conditions, inflation, CPI, supply and demand of the unit, prevailing interest rates and the length of the lease agreement. In general, the rates of escalation differ from tenant-to-tenant. \([\times]\) noted that while anchor tenants and national tenants typically receive a rate of escalation of between \([\times]\) and \([\times]\), national franchisees, regional stores and line stores receive a year-on-year escalation of between \([\times]\) to \([\times]\). \([\times]\) submitted that an important determining factor regarding rates of escalation is the length of a lease agreement, specifically stating that longer leases will not be subjected to higher rates of escalation as they acknowledge the compound effect over time.

540. Generally, property developers submit that operational cost contributions such as marketing, utilities in the common area, upkeep and cleaning of the common areas and security - are included in the gross rental which is usually charged as a base rental to tenants. \([\times]\) submitted that although it attempts to secure a contribution from all tenants, the anchor tenants and national tenants refuse to contribute, especially to the marketing fund, stating that their nationwide advertising campaigns make up for this portion of the contribution. The Inquiry also noted from \([\times]\) submission that none of the anchor tenants and national tenants contribute to common area costs whilst the line tenants do.

\[370 \quad [\times].\]
\[371 \quad [\times].\]
\[372 \quad [\times].\]
\[373 \quad [\times] submitted that its formula entails: Deposit = \([\times].\)\]
5.10 THE INQUIRY’S VIEWS ON LONG-TERM EXCLUSIVE LEASE AGREEMENTS AND RENTAL RATES

Long-term exclusive lease agreements

541. The Inquiry has concluded that the prevalence of long-term exclusive lease agreements, their significantly long duration and the resulting exclusion of competing retailers, as well as the limitation on consumer choice, amount to a distortion of competition in the grocery retail sector. The focus on specialist retailers also has detrimental effects on participation in the economy of SMMEs and firms owned or controlled by historically disadvantaged persons.

542. Long-term exclusive lease agreements limit specialist stores from accessing shopping centers. As a result, and in addition to the negative effect on competition, they also have a detrimental effect on the participation of SMMEs and firms owned or controlled by historically disadvantaged persons.

543. Having reviewed the submissions in respect of the tenants mix and usage clauses included in some retailer lease agreements, the Inquiry has reached the following conclusions.

543.1 Clauses which simply record the tenant mix that the landlord has secured for the property and which inform the decision to invest in the shopping centre by the retailer are not objectionable. Such clauses do not restrict access to the shopping centre and do not provide rights to do so in future.

543.2 Clauses which restrict third party tenants in respect of the product lines and store size are objectionable as they effectively enforce a form of limited exclusivity. Such clauses do not unduly restrict the business choices of third parties but do impede or prevent rivals of the incumbent tenant(s) from expanding within the grocery retail market. Restrictions on location within the shopping centre also fall within the category of anti-competitive clauses, as certain locations within the centre may be less effective in drawing the customer demands required by the business. The negative effect may be more glaring and felt more acutely in the per-urban, township and rural areas where there may be limited (suitable) spaces to set up or operate business. The result may be to effectively exclude that prospective tenant if the location is unsuitable.

544. Clauses which simply provide a limited exclusion on the zone area around the tenant in respect of certain businesses which pose a risk of undermining the maintenance of health and safety standards of a tenant are not objectionable. This is because these clauses do not dictate where in the shopping centre a rival tenant, in particular, can operate their business. However, these clauses must have an objective justification and must be reasonably related to such justifications.

545. So far as the argument of SPAR is concerned on its categorisation and being grouped with the other national supermarket chains, the Inquiry does not find its submissions compelling for a number of reasons. While its corporate structuring may affirm the view that SPAR stores are independently owned, it seems that on the aspect of contracting for long-term exclusive leases, there is a concertation of behaviour which is premised on the fact that (i) SPAR generally initiates the negotiations for these contracts and then hands over to the affected store owner for finalisation, and (ii) the SPAR brand’s credibility provides the individual store owners with leverage that they otherwise would not enjoy in the absence of SPAR’s corporate backing. The fact that the individual store owners are able to obtain long-term lease agreements that are “on substantially similar terms and conditions” as those contained in the SPAR corporately held and head leases is testament to the leverage that the independent owners have from the SPAR brand.
546. SPAR's argument and submissions on this matter appears to be counterintuitive. The Inquiry has found that the presence of long-term exclusive lease agreements has had the most negative and direct impact on small and independent retailers. However, throughout this Inquiry, SPAR has been vociferously in support of the continuation of exclusive clauses in leases in their current form, arguing that because its associated stores are small and independently owned. In this regard, they argue that they, unlike corporate retailers, require protection of their investments. SPAR's siding with the national supermarket chains, unlike other small and independent retailers, shows that it is not negatively affected by these clauses.

547. Lastly, the Inquiry was criticised for not having set out sufficient evidence to demonstrate the anticompetitive effects that arise from this practice. The Inquiry believes that the legal test for the conduct of a market inquiry differs from that of an investigation which requires the demonstration of a substantial lessening of competition. The Inquiry notes that The Competition Commission v South African Airways (Pty) Ltd case (the “SAA case”) provides some guidance regarding the establishment of competitive harm. It is important to note that the question of whether or not the conduct has an anti-competitive effect is answered in the affirmative if there is (i) evidence of actual harm to consumer welfare or (ii) if the exclusionary act is substantial or significant in terms of its effect in foreclosing the market to rivals. According to the Tribunal, the latter part is based on reasonable inferences drawn from proven facts. If the answer to that question is yes, it can be concluded that the conduct will have an anti-competitive effect.  

548. It is important to note that exclusive lease agreements are by their very design exclusionary. The incorporation of exclusivity provisions in lease agreements is in recognition of the existence of potential competition which the retailers do not wish to face. The retailers in question expressly recognises that another competitor will reduce its sales - the outcome of competition. As previously indicated, the Inquiry has found that the practice of long-term exclusive lease agreements is widely prevalent, and this has not been refuted on the evidence before the Inquiry. The inference under the test in the SAA case is, therefore, that these leases result in likely foreclosure. The evidence gathered, in the Preliminary Report and this Final Report, of instances of exclusion as a result of the exclusive lease agreements provide a sufficient basis for reasonable inferences to be drawn regarding the effect of these lease agreements. Indeed, given the prevalence and exclusionary nature of such agreements as a matter of design, the only debate is whether these protect investment incentives and therefore are on balance beneficial. As discussed above, no persuasive evidence was provided to this effect.

Rental rates

549. The Inquiry wishes to clarify that it raised this concern based on the extent of the differential and that it does not seek to recommend the outlawing of the differential itself.

550. In this regard, the Inquiry highlights that section 4.3.4 of the ToR which sets out the considerations which the Panel may have when conducting the Inquiry, specifically states that the panel may consider “other issues of public interest and consumer harm in the grocery retail sector.”

551. While the Inquiry notes the justifications raised by the property developers in defence of the differentials in rental rates, the Inquiry’s main concern remains the impact which the extent of these differentials could have on: (i) the sustainability of small and independent retailers within the shopping centre space; and (ii) the ability of small and independent

374 The Competition Commission v South Africa Airways (Pty) Ltd 18/CR/Mar01.
375 Section 4.3 and 4.3.4 of the ToR.
retailers to enter into shopping centre space and effectively compete therein.

552. Most importantly, it must be noted that the Inquiry does not make an adverse finding against any party regarding the extent of differential rental rates but seeks to highlight the ensuing cost risk for small, independent retailers within the shopping centre space. The example of the determination of rental rates by property developers provided above, is a clear demonstration of how rental rate determination across the various categories of tenants can have a knock-on effect akin to the waterbed effect as set out in economic literature.

553. The Inquiry does not make a recommendation with regard to the determination of rental rates as it is mindful that a heavy-handed intervention, with regard to the extent of the differentials in rental rates, may cause unintended consequences in the industry. Some of the unintended consequences include that property owners may avoid concluding agreements with small and independent retailers and other line tenants altogether.

554. However, being cognizant of the need to ensure that there is balanced treatment of tenants, premised on the principles of fairness and transparency, the Inquiry proposed a voluntary Code of Practice and engaged with property owners and developers to subscribe thereto.

555. The purpose of a code of practice was to facilitate the principles of transparency and fairness during the negotiation processes which take place when lease agreements are concluded. The draft code of practice proposed by the Inquiry sought to achieve a fair and transparent relationship between retail property owners and their SMME tenants or tenants that are owned or controlled by historically disadvantaged persons ("HDP") within retail outlets. The Inquiry is of the view that transparency engenders a fair-trading relationship hence this was the focus of the draft Code of Practice.

556. Submissions received from some property developers expressed support for the establishment of a code of practice that would be beneficial for both the retailers and property developers provided that it is in itself clear and fair. Other property developers sought clarity on certain matters such as: the legal status of the document; the enforcement mechanisms envisaged; and the possible sanctions which may arise from non-compliance. One property developer submitted that it does not believe that there is a need for the Inquiry to intervene as the market for lettable retail property is already dynamic and competitive. Other property developers expressed the view that the draft code of practice amounts to price regulation and will limit their ability to negotiate effectively with tenants. The Inquiry disagrees with this view as nothing in its proposed draft code of practice regulates price.

557. Lastly, and submitted that there is a need for further engagement with regard to rental rates and that this may extend beyond the timeline of the Inquiry. The Inquiry agrees with the proposal regarding continued engagement and it is for this reason that it recommends that the Minister appoints a facilitator to continue with the Inquiry’s engagement with developers and landlords.

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376 The purpose of the draft Code of Conduct be to remove impediments and thereby increase participation of SMMEs and HDP retailers in the grocery retail sector and ensure compliance with the new price discrimination provisions.

377 [K]

378 [K]

379 [K]

380 [K]

381 [K]

382 [K]
5.11 FINAL FINDINGS

Long term exclusive lease agreements

558. The Inquiry remains of the view that the practice of long-term exclusive lease agreements is widely prevalent and that the foreclosure of competing retailers, particularly small and independent retailers as well as emerging challenger retailers, is sustained over significantly long periods. This practice gives rise to customer harm as it limits consumer choice within shopping centres. The continued presence of such long-term exclusive lease agreements will perpetuate the observed concentration levels and sustain the existing incumbency patterns and thus deprive consumers of dynamism and innovation in the grocery retail sector. Accordingly, this feature of the market i.e. long-term exclusive lease agreements leads to a distortion of competition and there are no compelling justifications to substantiate the continued unfettered presence of such lease agreements.

Rental Rates

559. With regard to differential treatment in respect of rental rates, the Inquiry finds that the conduct is generally widely practiced as part of the business model in the retail property leasing environment. The practice is premised on a number of justifications submitted by the property developers which include, among others, market forces; size and position of the unit to be let; visibility of the unit to be let; footfall likely to be created by the tenant; depth of the store; cost of installing the tenant and trading densities. Nevertheless, the Inquiry notes that the bargaining dynamics between landlords and the national supermarket chains do appear to have an influence on the differential treatment accorded to different customer groupings. The Inquiry finds that this is akin to the waterbed effect.

560. The Inquiry acknowledges the complexity associated with the determination of applicable rental rates to different types of customers. It is for this reason that the Inquiry does not make recommendations in this regard. However, the Inquiry is cognizant of the need to ensure that there is balanced treatment of tenants, premised on the principles of fairness and transparency and it is on this basis that the Inquiry makes its recommendations (see Framework on Fairness and Transparency attached under Paragraph 14.5 of Annexure 5).
6.1 INTRODUCTION

561. The democratic dispensation has seen increasing numbers of foreign nationals making South Africa their home. The growing number of foreign nationals and the rapid increase in the number of formal retail chains opening up stores in non-urban areas has prompted some research to study the impact of these developments on small and independent businesses both local- and foreign- owned. Several studies have reported that there has been a decline in the number of small businesses especially those that operated within the vicinity of a shopping mall.

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

563. It is public knowledge that foreign owned spaza shops are perceived to be more successful than local owned spaza shops. In the past, and most recently in Kwa-Zulu Natal, this has contributed to tensions between South African nationals and foreign nationals, especially in townships and rural areas and sometimes spreading into urban areas. Central to this dynamic of conflict appears to be perceptions of how foreign-owned spaza shops, and, to a degree, formal and semi-formal retailers conduct their business compared to local-owned spaza shops.

564. Some of the local retailers allege that the underlying reasons for the violence is that the foreign owned retailers thrive under unfair advantages which undermine the viability of the local-owned retail stores. Allegations that have been made against foreign operated retailers, in public and during the Inquiry’s engagements with local traders, include that foreign nationals

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383 In particular, the majority in the township and rural areas where they are making a living largely by opening businesses in the informal grocery retail sector, more specifically by opening spaza shops.


In addition to the decline in the number of small businesses, other studies have found that over the years, foreign owned spaza shops have grown considerably in comparison to local-owned spaza shops. A study conducted by the Sustainable Livelihoods Foundation indicated that, contrary to some studies, this influx did not increase the number of spaza shops operating in non-urban areas but rather that the influx resulted in the local-owned spaza shops being taken over by the foreign nationals;

In 2015, an Inter-Ministerial Committee Report, compiled by the South African Police Service (“SAPS”), Department of Home Affairs and Department of Small Business Development Ministers (“DSBD”) revealed that foreign nationals owned up to three times more spaza shops than South Africans in some non-urban areas.

In some instances, the tensions have sparked into violence resulting in the burning and looting of retail businesses owned by foreign nationals and the unfortunate loss of lives. This evolving pattern of ownership and operation has since 1994 become a focus of deep conflict, erupting most dramatically in the xenophobic attacks in 2008 and 2015 which revealed profound underlying tensions between South African born township residents and residents drawn from across the continent and from South Asia.
operate without trading licences; do not comply with statutory tax requirements; receive preferential treatment from most wholesalers due to their shared religious beliefs; and have access to counterfeit goods.

565. This supposed unfair advantage, together with other factors considered in this Inquiry, are perceived to be the cause for foreign owned spaza shops’ better performance than the majority of local-owned spaza shops. The tension arising from these perceptions and the economic insecurity of unemployed local citizens are said to be some of the causes for xenophobic violence directed against foreigners. 386

566. The Inquiry has sought to ascertain the extent to which specific factors contribute to different business outcomes between foreign and local owned businesses. The Inquiry has also sought to understand the dynamics of competition between foreign owned and local owned spaza shops in line with sections 2(b), (c), (e), (f) and (g) of the Act.

567. In particular, the factors which the Inquiry sought to assess include:

567.1 the reasons why foreign operated spaza shops are perceived to be more successful than local owned spaza shops, and the factors contributing to their perceived success;

567.2 the barriers faced by local owned spaza shops, which are likely to inhibit their ability to effectively respond to the competitive pressure faced by them from foreign operated spaza shops;

567.3 the effects (positive or negative) of the dynamics of competition between foreign and local national operated spaza shops on local manufacturers, buyer groups, wholesalers and upstream suppliers; and

567.4 the effects (positive or negative) of the dynamics of competition between foreign and local operated spaza shops on employment in the sector.

Limitations and conceptual constraints on meeting some of the goals of this objective

568. The Inquiry faced fundamental problems in gathering the appropriate evidence necessary for a comprehensive analysis of the issues. The public debates have been, and are, marked by deeply conflicting, and often contradictory views, characterised by prejudice by “one” against “the other”. The submissions made by each group were similar throughout the country with locals casting accusations on foreign nationals and foreign nationals claiming that their business success was solely due to their skills, their organisational structures, and their effort and perseverance.

569. The evidence gathering exercise was further distorted by the poor participation and cooperation by foreign nationals, despite numerous efforts made to secure their participation in the Inquiry. In those instances where the Inquiry did manage to engage foreign traders, the information

386 A few instances of when tensions actually sparked into violent protest action includes the December 1994 and January 1995 marches in the Alexandra Township outside of Johannesburg. Local protestors destroyed the homes and shops of suspected undocumented migrants and demanded their immediate extradition. The most violent demonstrations came in 2008, when wildfire attacks spread from Alexandra Township to other townships in Gauteng and to the rural areas of Limpopo. This resulted in 342 foreign owned shops being looted and 213 being burnt down. Most recently, in 2015, an estimated 120 shops owned by Somali and Bangladeshi nationals across Snake Park, Zola, Meadowlands, Slovoville, Kagiso, Zondi and Emdeni in Soweto were looted. SAhistory.org.za (8 June 2018) Xenophobic violence in democratic South Africa [Online]. Available at: http://www.sahistory.org.za/article/xenophobic-violence-democratic-south-africa [Accesses on 14 March 2017]; In addition, there have also been numerous marches in particular in the township areas. One of the most recent examples was in February 2017, when community members from various townships around Tshwane organized “anti-immigrant marches” in demonstration against African foreign nationals “taking their jobs and businesses”. These marches were accompanied by violent conduct and gross looting of stores in non-urban areas.
submitted was very limited and the shopkeepers were often not willing to engage with the Inquiry. Foreign nationals indicated that they did not engage because of fear for their safety. The Inquiry identified language barriers as one of the challenges preventing effective participation by foreign nationals in the Inquiry process which was alleviated to a degree by the translation of Inquiry documents.387

570. To better facilitate the participation of foreign nationals in the proceedings, the Inquiry enlisted the assistance of the diplomatic corps and various business groupings representing foreign nationals, but this was not successful.388

571. Effectively, the Inquiry did not benefit from substantial inputs by foreign traders in the process. Despite these limitations, the Inquiry assessed the submissions from both parties with caution to ensure that the assessment and the conclusions drawn from the evidence submitted are as objective as possible. The various challenges faced by the Inquiry is discussed in section 15.1 of Annexure 5. To counter such shortcomings, the Inquiry has drawn on the existing scholarly literature and has employed both quantitative and qualitative evidence. The qualitative evidence largely reflects information that was gathered during meetings with various stakeholders.

572. This chapter is structured as follows: section two provides the relevant literature review; section three considers various factors which are said to contribute to the success of foreign owned spaza shops; section four discusses the impact of the identified barriers on local-owned spaza shops; section five looks at initiatives aimed at assisting local owned spaza shops to better compete with foreign owned spaza shops; section six assesses the impact of the competition between local and foreign owned spaza shops on consumers and section seven examines the impact on employment; section eight presents the Inquiry’s preliminary findings; section nine presents a summary of stakeholder submissions in response to the preliminary findings and section ten sets out the Inquiry’s views; section eleven sets out the Inquiry’s final findings and recommendations.

6.2 STUDIES ON THE INTERACTION BETWEEN LOCAL AND FOREIGN OWNED INFORMAL GROCERY RETAIL OPERATIONS

573. By way of context and in an effort to supplement the evidence gathered, the Inquiry has considered academic literature on the interaction between local- and foreign- owned informal grocery retail operations in South Africa. A detailed exposition of the literature review is set out in section 15.2 of Annexure 6.

574. The reviewed literature is broadly divided into two categories. One category focuses on identifying the sources of violence against foreign nationals operating spaza shops in non-urban areas, with a particular focus on xenophobia, local grievances and local politics, and the extent of manipulation by local and national political actors. The other category focuses on pinpointing the differences in the ways that local nationals run their spaza shops. For purposes of this Inquiry, the focus is wholly on the second category as the Inquiry seeks to gain insights on the factors which contribute to the perceived success of foreign nationals in operating spaza shops.389

387 To address this concern pamphlets, questionnaires, invitations and other documents related to the Inquiry, in particular those communicating with traders in the informal sector were translated to various languages to ensure that the Inquiry was reaching all stakeholders. Documents were also translated into the following foreign languages Swahili, Somali, Bengali and Amharic and also in local languages, i.e. Tswana, Zulu, Tsonga, Swati, and Sotho languages. These translated copies were also taken along by the team during the site visits when engaging with foreign nationals.

388 The Inquiry contacted representatives of the Pakistan High Commission and the Ethiopian Embassy, requesting their assistance in facilitating meetings with nationals from their countries who operate businesses in the grocery retail sector. Following numerous requests and follow ups, the Inquiry was unsuccessful in securing meetings with foreign nationals from these countries.

389 It has been well documented that the survival and prosperity of spaza shops in townships and rural areas thrive on sustained competitive advantage.
575. In summary, the studies reviewed, outline critical managerial skills and competencies required, which inhibit local informal ventures from succeeding in townships and in previously disadvantaged communities more generally. Broadly, the identified barriers in the literature can be categorized as: (i) business administration skills, (ii) understanding of regulatory and tax policies, (iii) simple marketing and financial skills, and (iv) customer service skills. These identified barriers are tested below against stakeholder submissions and surveys.

6.3 THE REASONS WHY FOREIGN OWNED SPAZA SHOPS ARE PERCEIVED TO BE MORE SUCCESSFUL THAN LOCAL OWNED SPAZA SHOPS

576. The Inquiry considered various factors which are said to contribute to the success of foreign owned spaza shops as identified in academic literature and in submissions in hearings. The Inquiry, accordingly, considered the factors set out below.

576.1 Ownership dynamics and vertical integration between spaza shops and wholesalers.

576.2 Trading hours and location.

576.3 Stock diversity, product choice and packaging.

576.4 Procurement of goods.

576.5 Regulations and by-laws.

576.6 Counterfeit goods.

576.7 Price competition.

577. The factors considered below, indicate that foreign traders have a competitive advantage over the locals. The Inquiry noted that some of these advantages may sometimes be ascribed to the creativity and business acumen of foreign traders. However, other factors that may grant foreign traders a competitive advantage are illegal in nature and these are briefly discussed below.

Ownership structure and integration between spaza shops and wholesalers

578. Similar to the findings in the academic literature, the Inquiry found that the manner in which ownership of spaza shops is structured contributes to the dynamics of competition between local and foreign owned spaza shops.

579. The Inquiry, through the small business survey, found that foreign nationals employ a number of ownership strategies which include (i) horizontal models (shareholding or operational ties to other township retail outlets), (ii) vertical linkages (with the spaza shop being an ‘outlet’ for the formally registered wholesaler), (iii) cooperative strategies of working with separate but allied retail outlets to share opportunities for bulk purchasing and synergizing deliveries, and (iv) maintaining ‘multiple retail outlets’ under central control elsewhere. During interviews with Somali and Ethiopian shopkeepers surveyed in Vrygrond, at least 17 respondents interviewed knew of at least 45 shops owned by more than a single owner. The key observation in this regard is that foreign traders, unlike local traders, tend to operate their spaza shops in partnerships as opposed to sole ownership. This allows for both managerial and capital
synergies to be realised and thus improved competitiveness.

580. In addition to the ownership model adopted by networks of foreign owned spaza shops these are vertical linkages with wholesale operations. The Inquiry found a trend by foreign-owned spaza shops to be linked to a wholesaler (usually also foreign-owned) operating in the Central Business Districts (“CBD”) across the country. During its site visits, the Inquiry collected anecdotal evidence of such linkages. This vertical integration strategy by foreign traders fits within the network-based approach to operating their spaza shops in contrast with the micro-scale ‘survivalist’ business approach of most local-owned spaza shops.

581. These vertical linkages were also confirmed by local owned spaza shop associations and individual spaza shop owners who stated that because of the direct or indirect link between foreign owned spaza shops and wholesalers, they could not compete with foreign owned spaza shops on pricing. The local traders stated that foreign owned wholesalers engage in differential treatment in that foreign owned spaza shops enjoy preferential pricing when sourcing products from these wholesalers. Foreign nationals in KwaZulu-Natal have however indicated that they are not aware of foreign wholesale owners who also own spaza shops. It is difficult to disentangle whether there is preference or simply that locally-owned stores are unable to access buyer groups and wholesalers due to their survivalist mode of operation.

582. With regard to local-owned spaza shops, the Inquiry found that these tend to be owned by an individual and serve as the owner’s primary source of income which implied that local owned spaza shops are often run with a survivalist approach. This becomes a challenge for the business especially when it has to raise capital, expand, purchase stock, and employ workers.

583. The ownership structure of foreign-owned spaza shops confers some advantages that local spaza shop owners do not enjoy. These, among others, include the ability to pool resources to raise capital to expand and to purchase stock for the shops, coordinated logistical support for the transportation of products from wholesalers, and improved purchasing which may result in lower pricing. Cumulatively, these factors enable the foreign-owned spaza shops to realise economies of scale and this confers some level of competitive advantage relative to the local-owned spaza shops.

584. Another trend that was observed is that foreign nationals may approach local spaza shops that are seemingly struggling and

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394 The Inquiry’s site visits were conducted in the following locations: Limpopo (“Polokwane), Eastern Cape (Mthatha) and Mpumalanga (Nelspruit). The wholesalers are often owned by a group of foreign nationals who may have started operating the business as spaza shops in the township and eventually growing them up the supply chain to a wholesaler or a cash and carry outlet whilst still retaining some interest (direct or indirect) in the spaza shop. The fact that most foreign nationals start business at spaza shop level and ultimately grow the businesses to become suppliers at the wholesale level was also confirmed by the Somali Association Board. In certain instances, the link would be in the form of the owner(s) of the wholesaler sponsoring the entry of a foreign owned spaza shop. This provides efficiencies to the foreign-owned spaza shops, thereby giving these foreign-owned spaza shops a competitive edge over those owned by local nationals.

395 Local traders indicated that the link between foreign owned wholesalers and spaza shops could be seen in the preferential treatment these wholesalers give to foreign owned spaza shops. These allegations were made by traders in the following locations during the Inquiry’s site and re-visits: Submission by local traders at the Kwa-Zulu Natal re-visit, Durban, 2016, Transcript pp.6-9; Submission by local traders at the Limpopo re-visit, Polokwane, dated 4 November 2016, Transcript p.57; Submission by local traders at the Mpumalanga re-visit, Nelspruit, dated 9 November 2016, Transcript, pp. 20 - 33; During the Limpopo re-visit, one of the traders indicated that they witnessed a number of vans owned by well-known local wholesalers that would go around the Seshego Township on Wednesdays collecting cash from foreign owned spaza shops. In addition to collecting the cash, these vans would frequently collect lists of items to be ‘purchased’ from the wholesaler of which items would later be delivered to the spaza shops.

396 This allegation relates to some of the Inquiry’s findings raising concerns of possible price discrimination by foreign owned wholesalers on the trading terms offered to foreign owned spaza shops.

397 Submission by local traders Kwa-Zulu Natal, Durban, site-visit, 2016, Transcript p.107.

398 Findings from the Inquiry’s questionnaire.
offer to rent these premises. This trend was also observed by Elite Star Trading ("EST"), a buyer group, which submitted that in the event that a local trader is unable to sustain their business post entry, they are often afforded an opportunity to lease out their spaza shop to foreign national traders.\(^{399}\) This would suggest that in some instances the decline in locally owned stores would have occurred regardless, and that the foreign ownership provides an opportunity for the business to survive.

**Trading hours and strategic location**

585. Most small business stakeholders submitted that other factors fostering the success of foreign owned spaza shops is their choice of shop location and operating hours. Spaza shops are, by their nature, convenience stores that offer core household grocery items. Therefore, their location and accessibility are crucial for the consumer.

586. Foreign owned spaza shops were said to strategically locate themselves in high pedestrian intersections. As previously noted, foreign nationals rent out space, from locals, and in areas that were already operating as spaza shops.

587. Stakeholders also submitted that foreign owned spaza shops open throughout the year including public holidays and that on these days, communities often use the foreign spaza shops to replenish their necessities.\(^{400}\) It was also noted that the majority of the operators or shopkeepers of foreign-owned spaza shops are males who often do not have families in South Africa, making it possible for them to trade longer hours and during holidays. This is different from the majority of local-owned spaza shops which are often run by women who are more likely to have young children and, therefore, to have household obligations.

588. The Somali Community Board of South Africa ("SCOB")\(^{401}\) submitted that the operating hours of foreign owned spaza shops are generally between 5:00 and 23:00. During this time, there is high demand for essentials such as bread, milk and eggs. In this period, according to SCOB, the Somali spaza shops generally make sales of up to R 3000, an amount that is considered substantial in this segment of the grocery retail sector. SCOB submitted that local-owned spaza shops generally only open later at around 7:00 and close earlier, typically around 17:00 or 18:00. SCOB further submitted that by operating largely outside of what would be considered to be the peak hours for spaza shops, local-owned spaza shops miss out on the significant sales made during these critical periods. According to SCOB, foreign owned spaza shops capitalise through their operating hours, capturing the demand of workers that return to the non-urban areas late in the evening.\(^{402}\)

589. The views by SCOB were partly confirmed by some local stakeholders who indicated that they open at 9:00 for students and again between 18:00 and 21:00.\(^{403}\) These stakeholders also submitted that the regulations on trading hours are not strictly enforced.

590. The Inquiry's business survey established from both local- and foreign-owned spaza shops their opening and closing times to establish whether the views received by

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399 In instances where local spaza shop owners decline the offer to purchase, it was submitted, several times, that foreign nationals tend to engage in a strategy of setting up shop surrounding the local trader with the intention to force them out of the market through very low prices. Often the very low prices attract customers to the foreign owned spaza shop, leaving the locally owned spaza shop struggling to make sales, and operating at a loss. As a result, local spaza shop owners faced with this dilemma are eventually forced to rent out or even sell their spaza shops to foreigners in order to make some income.

400 Minutes of a meeting between Free State Department of Economic, Small Business Development, Tourism and Environmental Affairs and the Inquiry, dated 20 July 2016.

401 Minutes of a meeting between the Somali Community Board of South Africa and the Inquiry, dated 22 February 2016, p.5, para.251.

402 Ibid.

403 It is noteworthy that these stakeholders indicated that this is due to the fact that they are located closer to schools and, therefore, their operating hours are aligned to the opening of schools and are not the usual spaza shop operating times which that cater to household needs.
the Inquiry were accurate. Table 6.1 above indicates the average trading times as submitted by the spaza shops which were interviewed during the survey.

591. As seen in Table 6.1 above, it appears that local- and foreign- owned spaza shops open at the same time however foreign- owned spaza shops close their shops an hour after the local- owned spaza shops.

592. The Inquiry’s consumer survey also sought to determine the average operating hours of both local- and foreign- owned spaza shops from the perspective of customers. The results are shown in the Table 6.2 above.

593. Table 6.2 above summarises consumer responses regarding the average opening and closing times of spaza shops in their respective areas. From the views submitted by consumers, it appears that local- and foreign-owned spaza shops open at roughly the same time. Similar to the business survey’s findings, the only difference noted from the submissions, is the closing time. However, when the question was posed more unambiguously, “In terms of opening and closing times of local-owned spaza shops and foreign-owned spaza shops, which of the following applies?” 70 percent of the respondents stated that “Foreign shops open earlier and close later than local shops”.

594. Foreign-owned spaza shops which open for longer hours are generating more income as there is clearly a need for the customers to access a shop that is open beyond official trading hours. In areas where there are clear by-laws that stipulate the trading times for informal businesses such as spaza shops and hawkers, spaza shop operators who do not adhere to the official trading hours clearly benefit. Depending on whether by-laws regarding trading hours are enforced or not, traders that do not comply, enjoy the benefit of servicing demand that exists in these periods at the expense of those operators that comply with the prescribed trading hours.

595. As will be discussed in Chapter 7 below, the Inquiry found that there is limited enforcement of trading hours by most municipalities.

Stock diversity, product choice and packaging

596. Submissions by stakeholders and the results of the consumer survey, indicated that foreign-owned spaza shops supply a wider variety and larger volume of groceries as compared to local-owned spaza shops. Submissions also indicated that foreign-owned spaza shops package their items in quantities that make it affordable for the consumers, i.e. selling one nappy as opposed to a pack of nappies which may be unaffordable at that time for the consumer.

Table 6.1: Average operating hours of local and foreign owned spaza shops

<table>
<thead>
<tr>
<th></th>
<th>Opening time</th>
<th>Closing time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local spaza shop</td>
<td>06:00-07:00</td>
<td>20:00-21:00</td>
</tr>
<tr>
<td>Foreign spaza shop</td>
<td>06:00-07:00</td>
<td>21:00-22:00</td>
</tr>
</tbody>
</table>

Source: Small Business Survey

Table 6.2: Average operating hours of local and foreign owned spaza shops

<table>
<thead>
<tr>
<th></th>
<th>Opening time</th>
<th>Closing time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local spaza shop</td>
<td>6:00</td>
<td>20:00</td>
</tr>
<tr>
<td>Foreign spaza shop</td>
<td>6:00</td>
<td>21:00</td>
</tr>
</tbody>
</table>

Source: Small Business Survey
597. On the other hand, local-owned spaza shops were considered to offer items that customers found to be generally expensive and readily available at national supermarket chains (in higher volumes and at cheaper prices). As a result, local-owned spaza shops are less attractive to consumers who would rather source cheaper prices on individual items or save by buying in higher volumes from the large retail stores.

**Products offered by type of spaza**

598. Foreign-owned spaza shops supply products that are more frequently demanded by consumers and with a shorter shelf life. Figure 6.1 above presents the top ten products that consumers buy from local-owned spaza shops. Over half of the consumers report using local-owned spaza shops primarily for the procurement of bread. The second most prominent item purchased at a local-owned spaza shop is airtime.

599. Figure 6.2 above presents the top ten items purchased at foreign-owned spaza shops. Although both groups mainly serve their respective communities with bread and airtime, foreign-owned spaza shops
seem to leverage on smaller grocery items. Dairy and refreshments were also found to make up a significant portion of the basket of goods offered to consumers with the remaining items typically sold in small volumes. Vegetables like tomatoes can easily be sold individually rather than in batches. Cigarettes, candles and spice packets also offer perfect examples of items that can be sold loosely, which is a competitive advantage for foreign-owned spaza shops over local-owned spaza shops. In addition, the product offerings from foreign-owned spaza shops also include vegetables, spices and paraffin. To conclude, a wider product offering undoubtedly makes foreign-owned spaza shops more competitive than local-owned spaza shops who have not differentiated their products enough from the supermarkets.

600. Foreign-owned spaza shops were found to be willing to sell unpackaged individual items to make what would otherwise be unaffordable items affordable, including products such as children's nappies, rice and sugar sold in cups and lose teabags. The Inquiry notes that there may be health implications from this practice. As will become clearer in Chapter 7 below, it would seem there is no regular or strong enforcement of the health and safety standards in the informal grocery retail sector.

Sale of counterfeit goods in spaza shops

601. Another factor found to have a potential impact on the competition dynamic between foreign-owned and local spaza shops was the sale of counterfeit goods. With this practice having been raised as an issue of concern by local spaza shop operators during site visits, and also having been observed by the Inquiry during some of the site visits, the Inquiry commissioned a study to investigate the issue of counterfeit goods in the informal sector. During its site visits, the Inquiry observed that the most prevalent counterfeit goods sold were contraband cigarettes. Foreign-owned spaza shops were generally found to be selling contraband cigarettes which has the potential of attracting more traffic to these shops, strengthening their business position.

602. The study was conducted in 50 spaza shops to determine the extent of the prevalence of counterfeit goods in the informal sector and the alleged unfair advantage conferred on spaza shops that have access to these goods.404

603. Local traders alleged that the sale of these products largely occurs in foreign owned spaza shops. Further, it was alleged that it is the foreign traders who have access to these products and sell them at low prices, to the detriment of local traders who cannot access them.

604. A total of 23 specific items were purchased (when available) in each of the 50 sites visited. In addition, the researchers purchased these same items from up to three formal retail supermarkets (Shoprite, Spar and Pick n Pay) for purposes of comparative analysis. It is important to note that the spaza shops chosen reflected the shop ownership demographic within the area.

605. The purchased items from the spaza shops were labelled, aggregated, scrutinised and compared to those purchased from the formal stores to examine any discrepancies in packaging, standards, appearance, smell, taste, ‘feel’, and other factors.

606. The various samples which were purchased by the researchers were submitted to the relevant brand owning manufacturers for analysis and review. Furthermore, the researchers liaised with “brand protection” lawyers Spoor and Fisher, who represent various South African manufacturers relevant to this study and who provided a fraud specialist private investigator to review the samples.

404 As part of the study, the researchers contacted and received feedback from various corporate companies whose products are traded within the informal grocery sector, as well as inputs from a private investigator.
607. Of the 50 spaza shops in the nine provinces from which products were purchased, a minimum of one likely counterfeit item or more was detected in 45 of the outlets (90%). It was also found that whilst some local-owned spaza shops also stocked what appeared to be counterfeit goods, these goods appeared to be more prevalent in foreign owned spaza shops. This could partly be attributed to the fact that local-owned spaza shops are generally smaller in size and have a limited range of stock.

608. The study also found that the prevalence of counterfeit goods in spaza shops suggests a strong supply chain link between wholesalers and the black/grey markets since spaza shops procure the majority of the stock products from wholesalers.

609. The findings of possible counterfeit items found by the counterfeit study are summarised in Table 6.3 above. The table does not include all the products which were sampled but only those which were suspected to be counterfeit.

<table>
<thead>
<tr>
<th>Item type</th>
<th>Popular Item Brand</th>
<th>Manufacturer</th>
<th>Evidence of fraud or illegality</th>
<th>Percentage of likely counterfeit items in sample group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matches</td>
<td>Lion</td>
<td>Lion Match Co.</td>
<td>Yes</td>
<td>Pending results from manufacturer</td>
</tr>
<tr>
<td>Rice (cheapest)</td>
<td>Tastic</td>
<td>NA</td>
<td>Yes</td>
<td>Indeterminate</td>
</tr>
<tr>
<td>Maize meal</td>
<td>Ace/ white Star</td>
<td>Tiger Brands</td>
<td>Yes</td>
<td>11.5%</td>
</tr>
<tr>
<td>Stock cubes</td>
<td>Knorr</td>
<td>Unilever</td>
<td>Yes</td>
<td>5.8%</td>
</tr>
<tr>
<td>Razor blades</td>
<td>Supermax / Gillette</td>
<td>Supermax / Gillette</td>
<td>Yes</td>
<td>76%</td>
</tr>
<tr>
<td>Sanitary pads</td>
<td>Always</td>
<td>Proctor and Gamble</td>
<td>Yes</td>
<td>47.2%</td>
</tr>
<tr>
<td>Shoe polish</td>
<td>Kiwi</td>
<td>SC Johnson</td>
<td>Yes</td>
<td>26.6%</td>
</tr>
<tr>
<td>Cigarette papers</td>
<td>Rizla</td>
<td>Imperial Tobacco Company</td>
<td>Yes</td>
<td>78%</td>
</tr>
<tr>
<td>Cortizone cream</td>
<td>Movate</td>
<td></td>
<td>Yes</td>
<td>Samples are illegally traded (prescription required)</td>
</tr>
<tr>
<td>Headache medicine</td>
<td>Grandpa</td>
<td>GlaxoSmithKline</td>
<td>Yes</td>
<td>25%</td>
</tr>
<tr>
<td>Medicinal Tea</td>
<td>Hamburg</td>
<td>AspenPharma</td>
<td>Yes</td>
<td>87.5%</td>
</tr>
<tr>
<td>Yeast</td>
<td>Anchor/Gold star</td>
<td>Anchor Yeast</td>
<td>Yes</td>
<td>24.2%</td>
</tr>
<tr>
<td>Zambuk</td>
<td></td>
<td>Bayer</td>
<td>Yes</td>
<td>58%</td>
</tr>
</tbody>
</table>

610. Many of the items which the researchers and brand protection specialists suspected to be counterfeit were identifiable due to obvious printing mistakes, or superseded packaging styles. An example is ‘SuperMax’ razor blades which is depicted in Figure 6.3 and Figure 6.4 below.

611. The Inquiry is concerned that the sale of counterfeit goods appears to confer, upon those spaza shops selling such goods, an unfair competitive advantage as counterfeits are generally cheaper than original branded goods. There are also broader negative ramifications for the fiscus, lost tax revenue, and the burden that is likely to be placed on the public healthcare sector by the consumption of untested products. A detailed discussion on tax evasion is set out in section 15.3 of Annexure 6. The counterfeit study also made findings on the effects of counterfeit goods alongside the recommendations on how these goods
could be dealt with, discussed in section 15.4 of Annexure 6.

612. Some complaints had been made to government institutions, raising concerns about foreign traders bringing large quantities of counterfeit goods into the country to sell in spaza shops to desperate customers. It was also submitted that foreign traders were selling damaged goods, repackaging and selling at cheaper prices at the expense of local traders who would sell the original graded items at a higher price.407

407 Submission by local traders at the North West re-visit, Rustenburg re-visit, dated 14 November 2016, p.47.
During its site visits, the Inquiry observed that the most prevalent counterfeit goods sold were contraband cigarettes. Foreign-owned spaza shops were generally found to be selling contraband cigarettes which has the potential of attracting more traffic to these shops, strengthening their business position. A recent presentation in Parliament noted that cigarette smuggling is on the increase in South Africa, with the country also ranked amongst the world’s top five countries in respect of trade in illicit cigarettes.\(^{408}\)

In July 2018, the South African Police Services (SAPS) in Hartswater, Northern Cape Province, found a counterfeit products factory worth R77 million, which produced well known branded spices, baking powder, instant yeast and sanitary towels, amongst others. This corroborates the existence of counterfeit products within the grocery retail sector.\(^{409}\)

The Inquiry also engaged with the National Consumer Commission (“NCC”) as well as the Department of Health (Food Control and Environmental Health Departments), to obtain any information and complaints which these organisations may have received regarding the prevalence of counterfeit goods in the market. None had received formal complaints or submissions and, therefore, no work had been conducted regarding the sale of counterfeit products.

The Inquiry noted that the prevalence of trading in counterfeit good goes beyond grocery items and includes clothing and footwear as well as revealed by the recent confiscation and burning of counterfeit goods, by the SAPS in Gauteng, with an estimated value of R500 million.\(^{410}\)

The findings by the counterfeit study, the numerous incidents found by the Inquiry and news reports indicate that the trade and prevalence of counterfeit goods within the Republic is a clear issue that cannot be ignored. There is therefore a need for increased enforcement intervention in order to reduce and eliminate the sale of these products in the South African grocery retail sector.

Selective enforcement of applicable laws

It was alleged in submissions that foreign-owned spaza shops also operate without due regard to the applicable laws and regulations. Some of the alleged practices include controversial allegations of joint residence and business location said to pose serious health risks, conducting business without official registration and licensing, and lack of tax compliance.

It was further submitted by local spaza shop operators that foreign traders were taking advantage of the lack of enforcement of applicable laws and regulations by the relevant authorities. However, the Inquiry found it was not only foreign-owned spaza shops that operated without trading licences. There were also local-owned spaza shops that operated without trading licences and that, therefore, the concern regarding selective enforcement affected all informal traders whether local or foreign nationals.

In its engagements with local authorities, the Inquiry found that one of the reasons why there is a lack of, or selective enforcement, is due to the fact that municipalities lack sufficient resources either to conduct inspections or to enforce the applicable by-laws and regulations.

\(^{408}\) In May 2018, the Finance Standing Committee, in Parliament, was briefed by several bodies on the illicit financial flows in the Tobacco industry. Among the presenters were the Hawks, SAPS, SARS, National Prosecuting Authority, National Treasury, Financial Intelligence Centre, the Fair-Trade Independent Tobacco Association and the Tobacco Institute of South Africa.


621. In addition to the lack of enforcement, traders allege that regulations are sometimes selectively enforced.\textsuperscript{411} One of the examples provided by local spaza owners was the use of RDP houses to conduct businesses. Local spaza shop owners in Rustenburg, Polokwane and Kimberley submitted they are strictly prohibited from running a spaza shop in an RDP house without rezoning the property and that officials would enforce this against them, yet many foreign traders are able to operate their shops or spaza shops from these houses.\textsuperscript{412}

622. Further, on the issue of health inspections, local traders submitted that officials frequently visit their spaza shops for inspection but do not visit foreign owned spaza shops to check for compliance.\textsuperscript{413}

623. In response to the allegations by local traders, SCOB submitted that what seemed to be selective enforcement as perceived by locals, was in fact a result of bribery solicited by enforcement authorities. SCOB submitted that their members that own spaza shops were sometimes targeted by officials for inspections relating to health and safety, trading times, counterfeit goods, with the intention to solicit bribes in exchange for not being found to have contravened by-laws.\textsuperscript{414}

624. The Inquiry received several allegations indicating that during inspections, officials who conduct these inspections sometimes require bribes from traders who do not comply with applicable regulations.

**Procurement of Goods**

625. Representatives from foreign-owned spaza shops submitted that foreign spaza shop owners share transport and rotate amongst themselves the sourcing of goods, leaving those that are not responsible on the day to continue operating the stores which would otherwise be closed.\textsuperscript{415} In some cases, they would often have national partnerships of up to 20 stores, which allows them to buy stock in bulk and take advantage of the volume discounts which are then passed down to customers through lower prices. Other foreign traders submitted that they tasked each other to vigorously search for best prices, comparing different wholesalers and even retailers before making a purchase to ensure they get the best price that allows them to offer cheaper prices to their customers. From the submission of the foreign traders, it is clear that they generally have a clear strategy to be as competitive as possible especially on prices and to have a wide variety of products available in their stores.

626. On the other hand, local spaza shop owners stated that it is difficult for them to buy collectively because each member of the association sells different products.\textsuperscript{416} However, some local spaza shop owners are said to be adopting the strategy of collective buying which affords them discounts at various wholesalers. An example is the initiative by the SABEPCO group in Limpopo which has been in negotiation with various large suppliers albeit unsuccessfully.

627. It was alleged that some foreign-owned wholesalers tend to offer credit and lower prices as well as discounts to foreign-owned spaza shops making it impossible for local traders to compete with foreign traders successfully. The allegation of discriminatory pricing was also made by the UGU Association of Businesses during the public hearings in Kwa-Zulu Natal, submitting that

\textsuperscript{411} Local spaza shop owners submitted that the officials, in particular the police, do not enforce the applicable by-laws on foreign-owned spaza shops.

\textsuperscript{412} Ibid.

\textsuperscript{413} Submission by local traders at the Limpopo re-visit, Polokwane, dated 4 November 2016, p.65.

\textsuperscript{414} Minutes of a meeting between Somali Community Board and the Inquiry, dated 22 February 2016, p.3, para. 2.3.1.

\textsuperscript{415} One important activity on operating a grocery retail is being able to source and procure trading stock at competitive prices to enable the store to effectively compete by offering its customers good prices. Related to procuring stock at good prices is also being able to have a procurement strategy that does not negatively affect the business, i.e. ensuring shop is regularly stocked with basic essentials and continuous trading.

\textsuperscript{416} Minutes of the meeting between Engcobo Small Business Chamber and the Inquiry dated 26 September 2016, p.3, para.2.3.
these wholesalers effectively have ‘local prices’ and ‘foreign prices’. Local traders claimed that they are denied stock on credit, which makes it difficult for them to compete with foreign traders.

628. Local spaza shop owners further alleged that foreign nationals come into the country without the start-up capital necessary to buy the stock they need to trade and that at their request, the start-up capital is granted by wholesalers in the form of stock, which is later paid back. Anecdotal evidence from a local spaza shop owner indicated that he had witnessed, on several occasions, foreign spaza shop owners having membership cards that could be used when they purchased their stock from foreign owned wholesalers, which membership cards qualifies them for certain discounts and benefits. According to him, these membership cards are not offered to local spaza shop owners irrespective of the fact that local spaza shop owners purchase the same amount of stock as foreign spaza shop owners or more.

629. In engagements with local spaza shop owners, some operators informed the Inquiry that they would like to operate their businesses by adopting some of the strategies used by foreign nationals, in particular pooling their money to buy in bulk and get savings but as they also lacked the capital to purchase in bulk for their stores. Local spaza shop operators admitted that some of the foreign national business strategies could improve their businesses if applied.

Price Competition

630. Price competition between local- and foreign-owned spaza shops seem to be at the centre of the claims that foreign-owned spaza shops outcompete local-owned spaza shops. Academic studies show that the foreign-owned spaza shops are perceived to have cheaper prices.

631. Foreign spaza shop owners submitted that they are generally cheaper than most national supermarket retail chains due to their procurement strategies of securing stock from wholesalers at lower prices and passing those on to their customers.

632. Local spaza shop owners submitted that they cannot compete with foreign owned spaza shops on pricing as the owners of the spaza shops are also the suppliers with links to the wholesalers. There is a perception amongst consumers that foreign owned spaza shops are cheaper than local-owned spaza shops. In addition, it was alleged that foreign owned spaza shops also offer credit to local customers, which tends to attract more customers.

633. Figure 6.5 presents the data responses by consumers on the type of spaza shop they prefer to use for their shopping. In total, almost half (48.2 per cent) of the consumers surveyed indicated an inclination towards foreign-owned spaza shops. Only 16.57 per cent indicated a preference for local-owned spaza shops. The remainder of the consumers showed no preference. It is also important to note that the preference is attributed to, among others the competitive prices offered by foreign-owned spaza shops.

634. On the distance or proximity of spaza shops, 75% of consumers indicated that there is a foreign spaza shop close to where they live in contrast to 64% for local spaza shops. Consumers also indicated that there are generally more foreign-owned spaza shops in townships than there are local-owned spaza shops. This makes foreign-owned spaza shops more accessible and may explain the relatively high preference for them by consumers, over and above their cheaper prices.

417 Minutes of the meeting between Capricorn Municipality and the Inquiry dated 22 August 2016, p.6; Submission by UGU Association of Business at the KwaZulu-Natal public hearing, Durban, public hearings, dated 3 July 2017, p.39, para.150-151.
418 Submission by local traders at the Mpumalanga re-visit, Nelspruit, dated 9 November 2016, p.20. Anecdotal evidence from a local spaza shop owner indicated that he had witnessed, on several occasions, foreign spaza shop owners having membership cards that could be used when they purchased their stock from foreign owned wholesalers, which membership cards qualifies them for certain discounts and benefits. According to him, these membership cards are not offered to local spaza shop owners irrespective of the fact that local spaza shop owners purchase the same amount of stock as foreign spaza shop owners or more.
419 Previous studies conducted on this aspect have suggested that the real difference on the average prices between local- and foreign-owned spaza shops is not large.
6.4 BARRIERS FACED BY LOCAL NATIONALS TO COMPETE WITH FOREIGN NATIONALS

635. There are various hurdles faced by local spaza shop owners that inhibit their ability to compete with foreign spaza shop owners including access to finance, lack of business skills and procurement or sourcing of goods, as identified in Chapter 4. In addition, the Inquiry also notes that regulatory policies and the general condition of the economy act as barriers which local-owned businesses face and which inhibit them from competing effectively with foreign nationals.422 The analysis below discusses the impact of the barriers on local-owned spaza shops’ ability to respond to competition from foreign traders and considers the funding models available from banks and government agencies.

422 Numerous local traders across various locations during the Inquiry’s site visits and re-visits raised these factors as barriers.

423 Meeting between the Inquiry and the Somali Association of South Africa on 25 November 2016.

424 Many foreign spaza shop owners hold business related qualifications earned in their countries of origin (Meeting between the Inquiry and the City of Mbombela on 05 September 2016).

425 The skills transfer continues as the astute spaza shop owners recruit immigrants whom they train to run their shops with some eventually becoming storeowners.

426 The Wholesale and Retail Sector Education (“WRSETA”) has also found the lack of business skills as one of the main reasons why informal spaza shops do not grow and not necessarily the lack of money as submitted by some business operators (WRSETA Western Cape workshop for informal businesses on 18 March 2018 in Langa, Cape Town); Meeting between the Inquiry and the SABEPCO meeting on 27 October 2016.

Business skills

636. Stakeholders423 submitted that majority of foreign spaza shop owners are highly skilled and trained in the retail market.424 In some instances, the skills arise from previous employment in the retail sector in their countries of origin, through either family businesses or from the many retail stores in the area425. In contrast to foreign nationals, local spaza shop owners and other small independent retailers (i.e. grocers, small bakery owners) voiced a need for training.426

637. In response to this call for skills development, the government has introduced many initiatives aimed at supporting small businesses in the retail space. One example is the Department of Economic Development’s training on financial literacy
and business sustainability. In addition there is the Big Save and Absa initiative as well as the DSBD development programme which are all discussed in Chapter 4.

**Start-up capital**

638. Local traders submitted that there is a need for access to capital and that there is limited assistance from government. The Inquiry reviewed available funding models supported by government as well as financiers. The findings suggest that the models available to small businesses are not geared to cater for spaza shops given their informal nature. A detailed review of these packages is found in section 13.4 of Annexure 3. Further, these traders submitted that because of the nature of businesses they run, financial institutions are unlikely to extend credit facilities to them.

639. It was submitted that foreign-owned businesses are able to access funding from their home countries which gives them an advantage over local businesses. This has been denied by representatives of foreign-owned businesses, who stated that they do not receive financial assistance from their home countries.

640. The Inquiry considered the StatsSA Survey of Employers and the Self-employed (2013) to better understand the trends in respect of sources of capital necessary to start a business.

641. Figure 6.6 above shows descriptive statistics from StatsSA’s Survey of Employers and the Self-employed regarding their source of income for start-ups. The survey shows that the majority of start-ups relied on using their previous or current wages for funding. The survey also showed that a little over 11 per cent of the surveyed individuals used loans from commercial banks. Three per cent of the surveyed business operators cited using

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427 The DSBS also has projects that are aimed at developing the capacity of the local informal traders/retailers to increase their competitiveness. Some of the activities included in the project involve offering business training, coaching, mentoring services to these entrepreneurs as well as provide infrastructure support (The Department of Economic Development meeting dated March 2016, para 5.3, pp9); and Project: Informal Traders Upliftment Project (‘ITUP’), part of the National Informal Business Upliftment Strategy initiated by the DSBD.

428 During the KwaZulu-Natal public hearings, it was submitted by the Msunduzi Municipality that one of the main complaints received from the local traders was access to capital. Local traders submitted to the municipality that foreign traders received financial assistance for their businesses in addition to them pooling together their financial resources to purchase stock in bulk from wholesalers.
a “mashonisa”\textsuperscript{429} to source funding for their start-up. On the other hand, 76 per cent cited having obtained their start-up capital from friends and relatives who granted them a loan.

6.5 VARIOUS ACTIONS TO ASSIST LOCAL OWNED SPAZA SHOPS TO BETTER COMPETE WITH FOREIGN-OWNED SPAZA SHOPS

642. The Inquiry sought to establish steps taken (if any) by government and private entities to address the competitive pressure faced by local-owned spaza shops from foreign-owned spaza shops. This stemmed from the view that part of the contributing factors to the observed attacks on foreign nationals in certain areas was the alleged displacement of local spaza shops by foreign nationals and the economic insecurity of unemployed South Africans. The initiatives discussed below are generally directed at local traders to assist them to better compete with foreign owned spaza shops.

\textit{Bibi Cash and Carry and Free State Department of Economic Development}

643. The Free State Department of Economic Development, Small Business Development, Tourism and Environmental Affairs (“Free State DESTEA”) had a partnership with BiBi Cash and Carry (“BiBi”) where in terms of the Memorandum of Understanding, BiBi undertook to train traders and grant a loan of about R 600 000 as well as a container store to each trader. In addition, Bibi would deliver various products to these stores as a supplier, simplifying the procurement processes for these small businesses. The model was not successful due to misunderstandings between the parties and it was not feasible for the traders to pay back loans of R 600 000 especially if the store became insolvent because of market dynamics.

644. In addition, delivery logistics were not practical. Following the failure of the BiBi project, the Free State DESTEA commenced discussions with Tiger Brands in terms of which local owned spaza shops were to be rebranded and assisted by Tiger Brands to participate in bulk buying. According to Free State DESTEA, after it became aware of the challenges faced by spaza shops as well as the costs linked to setting up a store, it approached Tiger Brands to assist spaza shops in the area by providing financial management skills and ways in which the spaza shops could purchase stock in bulk. The spaza shops would operate under a model that is similar to that of a franchise.\textsuperscript{430} Unfortunately, at the time of engagements with the Inquiry, this project had not commenced.

\textit{Big Save and eSpaza Sum Holdings Initiative}

645. In Tshwane, a network of 22 spaza shops located in Mamelodi Township had organised themselves under the brand “eSpaza Sum”. eSpaza Sum was formally registered under the name eSpaza Sum Holdings and had managed to obtain a R3.5 million loan from Absa Bank on behalf of the spaza shops who are part of eSpaza Sum. The idea behind organising spaza shops under eSpaza Sam was to form a registered entity, which would have the ability to apply for loan agreements with Absa Bank since spaza shops are generally not formally registered, do not have bank accounts from which they operate their businesses or records of their costs and profits and therefore do not meet the criteria that banks require for loan agreements. The issue of access to financing is discussed in detail under Chapter 4.

646. eSpaza Sum would in turn, grant to the spaza shops, start-up capital which was expected to be paid back. In addition to the start-up capital, eSpaza Sam negotiated discounts with Big Save, which is a large cash and

\textsuperscript{429} This refers to unsecured cash loan providers who are notorious for charging high interest rates. These are colloquially referred to as loan sharks.

\textsuperscript{430} Minutes of a meeting between Free State Department of Economic, Small Business Development, Tourism and Environmental Affairs and the Inquiry, dated 20 July 2016.
carry located in Mamelodi Township on the outskirts of Tshwane, in terms of which the spaza shops would procure their stock from Big Save at lower prices.

647. This model was not only an attempt to assist spaza shops with the capital they required to start their businesses but sought to uplift and modernise spaza shops in Mamelodi and Pretoria West as well as offer various other support structures such as management skills and marketing skills.

648. This model unfortunately failed because the spaza shop owners who were part of the project did not commit to attending the training sessions organised. It is, however, worth noting that because local spaza shops are usually run by single individuals, it is difficult for them to attend training as they would need to close shop for that period and therefore lose out on sales.

6.6 IMPACT OF THE DYNAMICS OF COMPETITION BETWEEN LOCAL AND FOREIGN NATIONAL OPERATED SMALL AND INDEPENDENT RETAILERS ON CONSUMER WELFARE

649. The section below assesses the impact of the competition between local and foreign national operators, on consumers.

650. The consumer survey commissioned by the Inquiry elicited the views of consumers about the benefits, if any, arising from the dynamics of competition between foreign and local run spaza shops. The survey also sought to understand the reasons for consumers preferring to shop from either a local- or foreign owned spaza shop.

651. Figure 6.7 summarizes the top five reasons consumers reported as the factors for their preference to shop in local-owned spaza shops. The most prominent, as depicted in Figure 6.7, is patriotism. The second reason cited by consumers is that local traders supply good quality products. The third reason reported relates to the hygiene of the spaza shop, as most consumers deem local-owned spaza shops to be cleaner than foreign owned spaza shops.431

652. Figure 6.8 shows the reasons for shopping at foreign-owned spaza shops. It would appear that foreign-owned spaza shops are preferred firstly for their lower prices and secondly, for being located closer to home for most consumers. Thirdly, the convenience of the operating hours attracts consumers to foreign owned spaza shops. Fourthly, consumers also reported the availability of credit (i.e., being able to take products from the spaza shop on credit).

431 This section focuses on consumer preferences between local and foreign owned spaza shops. The Inquiry notes that consumers have indicated that they prefer to purchase their groceries from malls as discussed under Objective 1.
as an appealing feature. Lastly, consumers emphasized the availability of stock as an important factor for their preference for foreign-owned spaza shops.

653. It appears that foreign-owned small retailers offer consumers favourable prices and wider product choice while local-owned spaza shops are seemingly patronised in the interest of loyalty and for being cleaner and offering grocery items of better quality.

654. Over and above these findings, the Consumer survey also found that 50% of respondents generally prefer foreign-owned spaza shops and fewer than 20% prefer local-owned spaza shops.

6.7 IMPACT OF THE DYNAMICS OF COMPETITION BETWEEN LOCAL AND FOREIGN NATIONAL

OPERATED SMALL AND INDEPENDENT RETAILERS ON EMPLOYMENT

655. There has been very little scholarly research on the impact of spaza shops on employment. In assessing the impact of spaza shops on employment, the Inquiry relied largely, therefore, on stakeholder submissions and the small business survey. The key findings show that although foreign traders collectively seem to have more employees, their employees are largely foreigners. On the other hand, although it might appear that local traders employ less people, they account for more South African employees in the informal grocery retail sector. Figure 6.9 below presents the results from the small business survey on the number of employees of foreign-owned spaza shops.

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

<table>
<thead>
<tr>
<th>Nationality of spaza owner</th>
<th>Number of outlets with one employee or more</th>
<th>Number of South Africans employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladeshi</td>
<td>102</td>
<td>9</td>
</tr>
<tr>
<td>Ethiopian</td>
<td>280</td>
<td>44</td>
</tr>
<tr>
<td>Somali</td>
<td>90</td>
<td>16</td>
</tr>
<tr>
<td><strong>SUB TOTAL</strong></td>
<td><strong>472</strong></td>
<td><strong>69</strong></td>
</tr>
<tr>
<td>South African</td>
<td>343</td>
<td>332</td>
</tr>
</tbody>
</table>

*Source: Commission business survey, 2017*
656. The above seems to suggest that local-owned spaza shops employ more South Africans than foreign-owned spaza shops. Out of all the foreign nationals, Ethiopians employ more South Africans, followed by Somalians and then Bangladeshis.

6.8 PRELIMINARY FINDINGS

657. The Inquiry found that local traders face competition from a growing number of foreign-owned retail shops, in particular these spaza shops that are generally perceived by consumers to be cheaper than most local-owned spaza shops. As a result, foreign-owned spaza shops draw more feet at the expense of locally owned spaza shops. Foreign-owned shops have continued to perform better in comparison to local-owned small businesses despite the broadening footprint of national supermarket chain stores in these areas.

658. There are numerous factors that contribute to the perceived success of foreign owned spaza shops. These factors, among others, include ownership dynamics and vertical integration between their spaza shops and wholesalers; trading hours; stock diversity, product and packaging; procurement of goods; regulations and by-laws; trading in counterfeit goods; and price competition.

659. The Inquiry found that foreign-owned spaza shops employ business strategies which include horizontal (operational ties), vertical (spaza shops in business with wholesalers), cooperative strategies of working with separate but allied retail outlets to share opportunities for bulk purchasing and synergizing deliveries, and businesses of maintaining ‘multiple retail outlets’ under central control. This is contrary to most local-owned spaza shops and small grocery retailers who generally operate on a standalone basis.

660. In relation to trading hours, the evidence before the Inquiry indicated that foreign owned spaza shops generally close later than local-owned spaza shops and are widely perceived to have longer operating hours generally. This provides an advantage because those spaza shops are able to capture and service the demand that exists in these times. In cases where there are prescribed trading hours for business operations, those spaza shops that operate outside of the prescribed trading hours will enjoy an advantage over those that comply with the law. Further, the Inquiry found that there is little or no enforcement of trading hours by the relevant authorities.

661. In relation to stock diversity, product choice and packaging, the Inquiry found that foreign-owned spaza shops offer customers a wider variety of products and volumes whilst local spaza shop owners have admitted that their shops have less stock in comparison.

662. In relation to the sale of counterfeit goods, local spaza shop owners alleged that foreign-owned spaza shops sell counterfeit products. The Inquiry found that some local-owned spaza shops also traded in counterfeit products, though to a lesser extent than foreign-owned spaza shops. The counterfeit study which the Inquiry commissioned found numerous examples of counterfeit products in the grocery retail sector.

663. In assessing the impact of spaza shops on employment, the Inquiry relied on submissions made by stakeholders during the investigation and on the survey conducted on small independent businesses. The evidence collected indicated that local-owned spaza shops generally employ locals and this typically translates to an average of one person per shop. In terms of foreign-owned spaza shops, Ethiopians employ more South Africans, followed by Somalians and Bangladeshis.

6.9 SUBMISSIONS IN RESPONSE TO THE PRELIMINARY FINDINGS AND RECOMMENDATIONS

664. The Inquiry received mixed submissions to its preliminary findings on the dynamics of competition between local- and foreign-
owned spaza shops. The submissions and comments may be categorised between submissions received during the stakeholder workshop held with various government departments and independent non-profit organisations whose comments were generally in agreement with the preliminary findings and recommendations. The other category comprised written submissions from individuals and non-profit organisations that have worked with small and independent businesses which raised some concerns on certain aspects on the preliminary findings of the Inquiry.

Submissions on competition between local owned and foreign owned spaza shops

665. Stakeholders agreed with the findings of the Inquiry in the Preliminary Report with regards to the displacement of local-owned businesses, in particular spaza shops and other informal traders. However, SASTA\(^432\) submitted that the competition assessment of the dynamics of competition between local and foreign-owned spaza shops as conducted by the Inquiry had not established the legal status of the foreign nationals operating these stores. SASTA submitted that the majority of foreign nationals operating the shops that compete with local owned businesses come into the country as refugees and therefore it is illegal for them to operate businesses.

666. SASTA re-emphasised the need to consider the strategy of predatory pricing by foreign-owned spaza shop as a tactic to drive out local spaza shop owners. The alleged tactic of predatory pricing was also confirmed by foreign nationals who operate spaza shops. In Ledig, Rustenburg, Pakistani traders complained about an insurgence of Somalis and Ethiopians who are said to be driving down prices significantly. The alleged practice is said to utilise illegal funds or refugee package lump sum to hedge loses in order to price significantly low to drive out competition.\(^433\) These allegations were also raised by local traders in Free State Bloemfontein (Mangaung), Limpopo Polokwane (Capricorn), Gauteng Pretoria (Mamelodi) as well as Northern Cape (Kimberley).

667. SASTA also submitted that the Inquiry placed more emphasis on the business acumen skill of foreign traders as a reason for their success and overlooked factors such as the alleged predatory pricing strategy.

668. Dr Gastrow submitted a pre-examined thesis which finds that presence of Somali entrepreneurs has “created a diverse set of complex formal businesses, ranging from the sale of textiles, the processing of animal products, to consumer household goods. Through these businesses, these entrepreneurs are said to have created jobs, new economic networks, new products, and extended markets, as well as physical retail and wholesale spaces.” Essentially, Dr Gastrow argued that there is economic value that is derived from the participation of foreign traders in the economy.\(^434\)

669. The Preliminary Report made reference to the prevalence of counterfeit goods in spaza shops. Relevant to this finding, Liquor City submitted that a number of independent foreign owned liquor stores had begun selling counterfeit liquor as a way to compete with national chain liquor stores that often sell liquor below cost.\(^435\)

6.10 INQUIRY’S VIEWS

670. The Inquiry had regard to all submissions received from stakeholders and did not find any of the submissions materially challenged or disagreed with the findings and recommendations set out in the Preliminary Report. The Inquiry noted the submissions by SASTA that suggested that the starting point for the Inquiry’s assessment with regards to foreign nationals should have

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\(^{433}\) The Economic Development Department (EDD) meeting on 18 March 2016.

\(^{434}\) Submission by Dr Vanya Gastrow dated 19 September 2019.

\(^{435}\) Submission to the Inquiry by Liquor City dated 16 September 2019.
been to determine if they are legally allowed to operate spaza shops based on their legal status. The Inquiry notes the above point as raised by SASTA is an issue to be addressed by the Department of Home Affairs and has no bearing on the preliminary findings given that the parties concerned are already active in the informal grocery retail sector.

671. The Inquiry has throughout the process noted, where applicable, the positive contributions made by foreign traders in the grocery retail sector such as legal pro-competitive ways of operating businesses that could also assist local owned businesses to improve their competitiveness.

**6.11 FINAL FINDINGS**

672. As discussed above, the Inquiry had regard to all submissions received from stakeholders and did not find any of the submissions to materially challenge or disagree with the findings and recommendations set out in the Preliminary Report. The Inquiry believes that its preliminary findings and recommendations remain applicable.

673. The Inquiry finds that local-owned spaza shops face competition from a growing number of foreign-owned spaza shops. Consumers generally perceive the foreign-owned spaza shops to be cheaper than most local-owned spaza shops as a result, foreign-owned spaza shops draw more feet at the expense of local-owned spaza shops that are in decline.

674. With both foreign-owned and local-owned spaza shops facing competitive pressure from the broadening footprint of national supermarket chain stores in non-urban areas, the Inquiry has found that foreign-owned spaza shops continue to perform better in comparison to local-owned spaza shops. This contrast is attributed to a number of factors such as procurement practices, co-operative arrangements (both horizontal and vertical), longer trading hours, stock diversity and product packaging, but also greater price competition from trading in counterfeit goods.
THE IMPACT OF REGULATIONS, INCLUDING, AMONGST OTHERS, MUNICIPAL TOWN PLANNING AND BY-LAWS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY

7.1 INTRODUCTION

675. As set out in the SOI, legislation is generally designed to promote and protect important public policy goals. However, in some instances, legislation may inadvertently restrict competition in an industry by: (i) reducing the incentives for new firms to enter a market, and (ii) increasing the barriers for existing competitors to expand and effectively compete in a market.

676. It is widely believed that small businesses can be a key driver in innovation, job creation and economic growth. Therefore, one of the objectives of the Inquiry was to determine whether there are any regulatory features that may distort or impede competition in the grocery sector. In particular, the Inquiry sought to determine whether there exist any regulatory features that may potentially prevent small businesses from competing effectively and successfully contributing to the economy. Most importantly, that if such features exist in the grocery retail sector, they are likely to impede the achievement of the objectives of the Competition Act.\(^{436}\)

677. The Inquiry assessed the impact of legislation on the informal economy, specifically on small and independent retailers in townships, peri-urban and rural areas. The legislation to be assessed was selected on the basis of those laws that stakeholders identified as raising the most concerns which included:

677.1 legislation and by-laws governing street trade and trading hours;\(^{437}\)

677.2 zoning legislation and by-laws;\(^{438}\)

677.3 health and safety legislation and by-laws;\(^{439}\) and

677.4 liquor legislation and by-laws.\(^{440}\)

678. Guided by the OECD toolkit\(^{441}\) and the objectives of the Act, the Inquiry sought to establish whether any of this legislation had any of the following unintended effects on competition in the grocery retail sector:

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\(^{436}\) Section 2 of the Competition Act 89 of 1998.

\(^{437}\) This category of legislation mainly governs the business operations of informal traders and includes regulating the times at which they are permitted to trade as well as the geographic areas where they are allowed to trade from.

\(^{438}\) This category of legislation regulates the location of businesses as set out in the zoning schemes of the different municipalities. These regulations require that grocery retailers wishing to operate in a certain area must obtain the relevant permissions to trade in a specific area or for the specific area to be zoned as a trading/commercial area or having mixed use rights allowing for residential and commercial use.

\(^{439}\) This category of legislation sets specific health and safety standards that grocery retailers are required to adhere to, when operating their businesses, such as, the manner in which food items are prepared, stored and served. This legislation is also intended to regulate the condition of premises within which products for human consumption are prepared.

\(^{440}\) This category of legislation governs the location and trading times which liquor traders are required to adhere to, as well as, the type of sales that certain business types are allowed to make from their businesses namely: wholesale, retail, and special.

\(^{441}\) The OECD toolkit is a manual which provides guidance on how to assess laws, regulations and policies for their competition effects, and how to revise regulations or policies to make them more pro-competitive. OECD (2017), Competition Assessment Toolkit: Volume 3. Operational Manual [Online]. Available at: https://www.oecd.org/competition/toolkit [Last viewed 25 April 2019].
limiting the number and range of small and independent retailers;

limiting the ability of small and independent retailers to compete effectively;

leading to the reduction in incentives of small and independent retailers to compete effectively;

limiting choice and information available to consumers;

creating uncertainty amongst small and independent retailers regarding the requirements they are expected to comply with in order to compete effectively;

being onerous, time consuming and costly to comply with;

being excessively enforced even for insignificant transgressions thereby restricting participation of small and independent retailers in the market; or

being unenforced, poorly enforced or selectively and corruptly enforced thus creating uncertainty and an uneven playing field among small and independent retailers in townships, peri-urban and rural areas.

A detailed discussion of the steps as set out in the OECD toolkit is provided in section 16.1 of Annexure 7.

The Inquiry undertook this assessment with only limited assistance and participation by some organs of State, including municipalities and relevant provincial and national government departments due to the general unavailability of the relevant officials. Hence, the findings of the Inquiry in relation to this objective, are largely reflective of the views of market participants, in particular the traders affected by the applicable legislation.

681. As will be discussed in further detail below, the Inquiry has found that certain laws and their enforcement, have the effect of distorting competition in the grocery retail sector. When the law is unequally enforced, or in cases where law enforcement officials are corrupt, the result is that the playing field between competitors in the sector becomes unequal with some competitors being afforded an advantage over others.

682. In carrying out the analysis for purposes of this objective, the Inquiry gave regard to specific pieces of legislation in line with the OECD toolkit. The Inquiry first provided a general overview on the impact of applicable law based on submissions received from various stakeholders. It then used the OECD toolkit and submissions from retailers and municipalities to assess the four categories of law across the nine Provinces to evaluate the impact of these laws on small and independent businesses.

683. This chapter is structured as follows: section two provides the context of the regulatory system; section three analyses the various categories of applicable legislation; section four presents the Inquiry’s preliminary findings; section five presents a summary of stakeholder submissions in response to the preliminary findings; section six sets out the Inquiry’s views and lastly, section seven sets out the Inquiry’s final findings.

7.2 THE REGULATORY FRAMEWORK

684. The regulatory framework that governs trading, is inherited from the legal architecture of the apartheid State.

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443 Ibid.
444 Ibid.
445 The four categories of regulations relate to: Street Trade, Zoning, Health and Safety and Liquor.
The apartheid government adopted various segregationist laws and policies that effectively resulted in the economic marginalisation of the black majority of the country’s population. These laws and policies which included geographic separation of communities, inferior education and exclusion from the economy, hampered and discouraged the culture and practices of entrepreneurship amongst black communities. It is against this contextual framework that the review of the regulatory landscape in the grocery retail sector is conducted.

685. In assessing the impact of regulations on the competitive dynamics of the grocery retail sector, the Inquiry looked at the legislative and executive competence granted to the three spheres of government by the Constitution of the Republic of South Africa, 1996 (“the Constitution”), namely the national, provincial and local spheres. These spheres are distinct from one another and yet interdependent and interrelated. Each sphere must respect the status, powers and functions of government in other spheres and “not assume any power or function except those conferred on [it] in terms of the Constitution”.449

686. The analysis below briefly sets out the different pieces of legislation under consideration, before taking into account the different studies that have been conducted in the past (available in section 16.2 of Annexure 7), as well as the evidence gathered through, among others, submissions and public hearings on the impact of the different pieces of legislation on small businesses.

**Legislation governing street trade**

687. The applicable national legislation with regard to street trade is the Businesses Act, 71 of 1991 (“Businesses Act”). Its broad purpose is to provide for the licensing and carrying of certain businesses through the designation of municipalities or other bodies appointed by the Premier as licensing authorities. It prohibits any person from conducting a business, among others, that sell or supply perishable foodstuff without a business licence, or, in the case of hawking, a hawkers’ licence issued by the municipality or a body appointed by the Premier as a licensing authority.450

688. Section 6 of the Businesses Act permits the Premier to promulgate provincial legislation setting out the powers, duties and functions of the licensing authorities, the issuing, amendment, suspension, withdrawal and transfer of licences and appeals.

689. Section 6A(1)(a)(i) of the Businesses Act empowers municipalities to pass by-laws that regulate street vendors, markets and firms that sell food to the public in accordance with the Businesses Act.451 For example, the City of Johannesburg Metropolitan Municipality Informal Trading By-Law (2009) states that the purpose of the by-law is to promote social and economic development and a safe and healthy environment through municipal planning and trading regulations in accordance with the Businesses Act.

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447 Specifically, through harsh licensing requirements and strict zoning requirements in townships and rural areas, the formation of special police squads to ensure the prosecution of informal traders and any form of trading in these areas and the Group Areas Act 41 of 1950.

448 The national sphere has plenary legislative and executive authority subject to the concurrent and exclusive powers conferred on the provincial sphere in Part A of Schedules 4 and 5 of the Constitution and both those spheres are subject to the local authority’s exclusive power to administer the matters listed in Part B of Schedule 4 and 5.

449 *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* 2010(6) SA 182 (CC) at para 43.

450 The legislation predates the 1996 Constitution and accordingly, insofar as street trading is concerned, ‘street trading’ is an exclusive municipal competence, only a municipality can issue hawker licences. The street trade by-laws provide for the regulation of street traders/vendors in terms of, among others, hours and areas of operation; health and safety; leasing of stands and offences and penalties.

451 The Businesses Act 71 of 1991, Section 6A (1) (a) (i).
Cachalia (1983) stated the three basic pre-apartheid conditions to which street traders were subjected.  

690.1 hawkers were required by law to be licensed by the City Council;  
690.2 hawkers were required to remain constantly mobile, moving seventy feet every twenty minutes; and  
690.3 hawkers were not allowed to trade from certain times to certain times.

691. These three requirements were imposed on street traders, who were predominantly black, in order to control their movement and restrict competition with established businesses. Interestingly, some of these requirements still form part of the law today, such as the requirement to be licensed in order to trade and the regulation of trading times.

**Zoning and Planning**

692. There are three tiers of legislation governing zoning and planning.


692.2 Provincial legislation dealing with provincial planning which includes frameworks for municipal planning and development.

692.3 Municipal by-laws dealing with zoning and land use.

693. Neither national nor provincial legislation may intrude on the exclusive competence of a municipality to make its own zoning and land use decisions.

694. SPLUMA seeks to ensure that the system of spatial planning and land use management in all spheres of government promotes social and economic inclusion and the sustainable and efficient use of land to redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management. SPLUMA aims to improve access to and the use of land through land use management systems adopted by the different spheres of government.

695. SPLUMA sets out five development principles (of which the principle of spatial justice is one) that all spheres of government concerned with planning and development must follow. It requires each sphere to prepare, develop and implement a spatial development framework and sets out national norms and standards for planning and land use management.

696. The Local Government: Municipal Planning and Performance Management Regulations, 2001 also places obligations on municipalities in respect of spatial planning and development.

697. The provinces have their own legislation dealing with provincial planning and in particular frameworks for municipal spatial development.

698. Municipalities are required to prepare and adopt spatial development frameworks in accordance with the principles and norms and standards set by national and provincial legislation and to implement those frameworks in policies and by-laws.

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454 In the matter between the Johannesburg Metropolitan Municipality and the Gauteng Development Tribunal and Others [2010] ZACC 11, the Constitutional Court held that the “Constitution confers different planning responsibilities on each of the three spheres of government in accordance with what is appropriate to each sphere”. The Court held that: ‘municipal planning’ meant the “control and regulation of the use of land” and, importantly for the purposes of this Report, includes the ‘zoning of land’.
The municipal by-laws regulate land use through the establishment of land use schemes in accordance with national and provincial spatial development frameworks and principles. A land use scheme provides for different categories of land use, their zoning and regulation and a system of authorisations. It should be emphasized, that the decision to determine land use zones and the granting of authorisation or relaxation is a competency exclusive to municipalities. National and provincial legislation merely sets out the framework and principles within which municipalities exercise their powers in relation to land use within their respective jurisdiction.

A municipal land use scheme must set out the zones, together with a zoning map and set out the procedures and conditions relating to the use of rights allocated to each zone. Municipalities are also required to keep a register of all amendments to land use schemes.

Zoning laws designate the specific use of land. Through zoning schemes, municipalities determine the appropriate use of the land within their jurisdiction. The zoning scheme also specifies whether a permit or consent from the municipality is required for the development of the land and sets out the development rules applicable for a particular zone. Often a zoning scheme sets out the primary use rights for the property and there may be secondary use rights which generally require consent from the municipality for use thereof. Zoning by-laws apply in conjunction with other rights, i.e., environmental, heritage and traffic regulations.

Health and Safety

There are two tiers of legislation governing health and safety in respect of food:

1. National legislation such as the Foodstuffs, Cosmetic and Disinfectant Act, which requires that all foodstuffs must be fit for human consumption;

2. Municipal by-laws that control the sale, manufacture, importation of foodstuffs, cosmetics and disinfectants.

The Sale of Liquor

The legislation governing liquor has three tiers.


2. Because the regulation of liquor in South Africa is subject to concurrent jurisdiction between national and provincial government, the authority for licensing of liquor trading activities is conferred upon provincial regulatory bodies, in terms of provincial statutes.

3. Because the 'control of undertakings that sell liquor to the public' is an exclusive municipal competence, municipal by-laws regulate where and when liquor may be sold.

Prior to the passage of the Constitutional dispensation, liquor trade was governed by the Liquor Act, 27 of 1989. This Act did not provide for different competencies across the different spheres of Government.

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455 Act 54 of 1972.
456 Under the national legislature’s plenary power to legislate on any matter not listed in Schedules 4 and 5 such as trade and its power under section 44(2)(b) and (c) of the Constitution of the Republic of South Africa, 1996 to pass legislation in respect of a Schedule 5 provincial competence to maintain economic unity and to maintain essential national standards.
457 The Liquor Act, 59 of 2003 provides that a person may only manufacture or distribute liquor if they are registered in accordance with the Liquor Act, 59 of 2003 and have obtained a license to manufacture or distribute liquor. The Liquor Act 59 of 2003 further provides for the manufacturing and distribution of liquor to be regulated at national level while micro manufacturing and retailing continue to be regulated at a provincial level. For purposes of the Liquor Act, 59 of 2003, distribution refers to selling liquor to another person who intends to on-sell that liquor.
460 See for example the City of Cape Town’s Liquor Trading Days and Hours By-law, 2010.
Provincial liquor authorities were responsible for the regulation of all the value chain categories of the liquor industry. Subsequently, this Act was repealed and replaced with the Liquor Act\(^{461}\) to bring the then liquor regulation regime into alignment with constitutional precepts in respect of the competencies accorded to the various levels of government in the Constitution. At a societal level, the Liquor Act\(^{462}\) sought to reduce the socio-economic and other costs of alcohol abuse through the setting of norms and standards in the industry.

705. In addition, the Liquor Act\(^{463}\) also sought to facilitate new entry, diversification of ownership and, broadly, much more social responsibility by the industry.\(^{464}\)

### 7.3 ANALYSIS OF APPLICABLE CATEGORIES OF REGULATIONS

706. The Inquiry’s analysis is set out according to the following outline: a high-level overview of stakeholder submissions which were received during site visits, revisits and public hearings is set out, followed by an application of the OECD toolkit\(^{465}\) to these regulations. The Inquiry then sets out its preliminary findings, followed by a consideration of the submissions received on its’ preliminary recommendations.

**Insights from the submissions in public hearings and meetings with stakeholders**

707. The stakeholder submissions to the Inquiry consistently pointed to a number of the following concerns, amongst others (found in section 16.3 of Annexure 7) regarding the regulatory regime in the retail sector.

#### 707.1 The majority of the concerns were in relation to the alleged selective and over-enforcement of applicable regulations and by-laws by the municipal authorities.

707.2 The bulk of regulatory concerns relate to perceived differential treatment, between the national supermarket chains, foreign traders and local traders, in respect of trading times, health and safety laws and municipal zoning.

707.3 Other concerns related to the presence of illegal trading by unlicensed traders and the concomitant effect on the competition dynamic, particularly between foreign traders and local traders.

**Application of OECD toolkit on by-laws from selected municipalities**

708. A total of 225 regulations from municipalities across the country were analysed of which 112 regulations dealt with street trading; 67 regulations with zoning; 15 regulations with health and safety; and 31 regulations with liquor trading. Whilst there are approximately 234 municipalities and nine provinces in South Africa, the applicable regulations, per jurisdiction, were significantly similar to one another and to some extent exact copies of one another. There were minor differences observed, reflecting some effort to customize the regulations for the specific province or municipality. To avoid duplication of work, the Inquiry assessed these regulations collectively. Where differences were apparent, this is highlighted.

**Analysis of by-laws governing street trade**

709. In assessing the street trade by-laws, the Inquiry considered whether there was uniformity in the regulations across municipalities and to what extent they possessed features that may prevent, distort

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\(^{461}\) The Liquor Act, 59 of 2003.
\(^{462}\) Ibid.
\(^{463}\) Ibid.
or restrict competition. In particular, given the concerns regarding trading times, the Inquiry assessed the provisions made in the by-laws and how these impacted on small businesses, particularly street traders.

710. The Inquiry found that none of the street trade regulations in municipalities in the Eastern Cape, Limpopo, Gauteng and the Western Cape make specific reference to trading hours. The municipalities in the Northern Cape were the only ones that had uniform trading times for the informal trade sector, namely from 8:00 to 18:00. In Kwa-Zulu Natal, only one municipality set out the trading times, namely from 6:00 to 20:00. In the Free State, only the Mangaung municipality set the trading times from Monday to Friday, 7:00 to 18:00, Saturdays from 7:00 to 15:00 and Sundays and Public Holidays 7:00 to 13:00.

711. As previously indicated, concerns regarding the regulation of trading times were that they are not aligned with the trading model for the informal trade sector. A large proportion of consumers who reside in townships, peri-urban areas and rural areas by residents who work outside of their residential areas, giving rise to what is termed the “commuter population”.

712. Figure 7.1 above graphically illustrates the findings from the consumer survey, which indicated that:

712.1 a large portion of consumers travel out of their residential areas to work before 08:00 and travel back to their residence (ostensibly from work) after 17:00; and

712.2 the majority of consumers surveyed travel to work between 06:00-07:00 and return from work between 17:00-18:00.

713. Figure 7.1 above, when considered in light of the specified trading times, indicates that whilst some of the regulations that have been identified, allow traders to operate their businesses until at the latest 20:00, for the most part they prevent traders from operating their businesses during peak times in the morning.

714. As mentioned in Objective 3 above, the Inquiry’s consumer survey found that whilst local and foreign owned spaza shops generally open around the same time, being 6:00 - the closing times for both local and foreign owned spaza shops differ by approximately one hour. Similar

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466 These hours of trade are also provided for by the Lekwa Teemane Municipality in the North West Province.
467 Ubuntu Municipality
469 Local traders close at 20:00 and Foreign Owned Spaza Shops close at 21:00, according to the Inquiry Consumer Survey.
findings were made by the Inquiry’s Small Business Survey,470 which found that local- and foreign- owned spaza shops generally open around the same time in the mornings (between 6:00 and 7:00), however foreign-owned spaza shops generally close one hour later than locally- owned spaza shops.471

715. The impact of this is that those traders who strictly adhere to the regulatory stipulation of a 7:00 opening time, could be unfairly disadvantaged as early commuters, i.e. school children and workers who generally create the most foot traffic, would have already arrived at schools or work places by the time the business opens.

716. In areas where shops were found to generally close early, for example in Modjadjiskloof and Lusikisiki,472 the reasons attributed to this early closure was a lack of municipal infrastructure such as streetlights and shop owners generally feeling unsafe after dark.

717. The Inquiry also noted other concerns arising from the regulations governing street trade: of particular interest is that regulations in a number of provinces, specifically provide that street trading may not compete with existing businesses.473

718. The Inquiry recognises that the regulatory burden is heavier on spaza shops and independent retailers than it is on street traders and that in order to protect the aesthetics of towns and cities as well as the financial investments of the spaza shops and independent retailers such regulations may be necessary. However, the wording of the provision, specifically “where the goods or services that the street trader sells or provides are of the same nature or similar to the goods being sold or services provided by the other person” and the requirement that if the proposed traders’ goods are similar to that of the existing trader in the same vicinity, the proposed trader may not trade those goods without first obtaining the consent of the existing trader,474 could likely result in anti-competitive effects by limiting the ability of potential street traders to successfully enter the market and by carving out routes to market for some traders (such as spaza shop owners and independent retailers) at the exclusion of others (such as street traders). This is possibly also detrimental to consumers potentially limiting product choice and competitive prices.

719. In line with section 2(f) of the Competition Act,475 the Ethekwini and Newcastle Municipalities in Kwa-Zulu Natal have adopted a practice aimed at promoting and increasing ownership stakes for historically disadvantaged groups. The municipalities take into account the following factors when considering applications for informal trade permits and preference is given to:

719.1 black persons;
719.2 unemployed persons;
719.3 new entrants into the informal sector;
719.4 those persons who do not share a household with already existing permit holders; and
719.5 physically challenged persons.

720. However, due consideration is also given to whether or not the goods which the applicant intends to sell “fits with those sold or supplied by other informal traders in the informal trading area or other traders in the immediate vicinity.” This provision could

470 Inquiry Small Business Survey: All reports under Operating Hours
471 According to the Inquiry Small Business Survey, Local Owned spaza shops generally close between 20:00 and 21:00 whilst Foreign Owned spaza shops generally close between 21:00 and 22:00.
472 Inquiry Small Business Survey Reports: Modjadjiskloof and Lusikisiki
473 Quoted directly from the street trading by-laws that were assessed “No person shall do business as a street trader on a verge contiguous to that part of a building in which business is being carried on by another person, other than the business of a department store, supermarket or wholesaler, where the goods or services that the street trader sells or provides are of the same nature or similar to the goods being sold or services provided by the other person.
474 Umhlatuze Municipality in Kwa-Zulu Natal and Metsimaholo, Nala and Phumelele Municipalities in the Free State, as well as Emalahleni Municipality in Mpumalanga.
475 Act 89 of 1998, as amended.
possibly be limiting to competition with regard to the traders’ incentives as well as limiting consumer choice with regard to a range of products and price.

721. A variety of municipalities, such as those in the Free State, have already developed programs to try to club the businesses together so that the array of the stalls would be determined by the product offerings of the businesses.

722. In the Free State, specifically Metsimaholo and Tswelopelo municipal districts and in Nkomazi, Mpumalanga, the regulations reasonably and specifically prohibit the sale of certain goods such as alcohol, vehicles, drugs, guns and protected ornaments. The provisions also extend to pets, cosmetics, raw meat and fish, which may only be sold with prior written permission from the municipality.

723. Most municipalities do not have the requirement for street traders to obtain written consent from the municipality before engaging in street trading. However, in some provinces municipalities provide specifically that no persons shall be a street trader without the prior written permission of the relevant municipality, unless that person is a South African citizen. Exceptions are made where the person applying to be a street trader has permanent residency or a work permit in South Africa and owns fixed property within the jurisdiction of relevant municipality.

724. During its engagements with stakeholders, the Inquiry found that whilst some stakeholders were aware of the applicable trading times, a number of traders complained that they were unsure about the trading times applicable to them and further that, law enforcement is often inconsistent. Traders also claimed that it is often very costly and time consuming to acquire a trading permit from their local municipalities. In this regard, the applicable street trade regulations are assessed below, in line with the OECD toolkit.

725. In the municipalities in the Eastern Cape, Gauteng and the Western Cape, regulations do not place a requirement on applicants for street trading licences to be a South African citizen or a permanent resident. In the municipalities in Mpumalanga, the requirement to be a South African citizen is not enforced and they are not required to be property owners within the jurisdiction in order to qualify to operate as a street trader. By-laws in Limpopo generally do not require street traders to apply for permission to operate as street traders. However, the Musina municipality makes specific reference to this requirement.

726. In line with the guidelines in the OECD toolkit, the Inquiry’s preliminary view on the enforcement of street trade regulations was that they result in the following concerns for small traders which may have a negative impact on their ability to compete effectively:

726.1 inconsistencies in the regulation of trading times may unfairly disadvantage traders who are compliant;
726.2 high cost and extended duration of acquiring street trading permits;
726.3 lack of enforcement of applicable laws in relation to street traders; and
726.4 disruptive effect on the business of street traders in relation to relocating them.

Analysis of zoning and planning regulations

727. The need to assess the regulations involving zoning and rezoning of property prior to a
business being conducted from that property was informed by the numerous submissions and complaints made by stakeholders to the Inquiry. Stakeholders claim that some of these regulations, including municipal town planning and licensing by-laws, are often costly, carry the risk of being rejected, time consuming and generally involve processes that are not clear.

728. This section of the Final Report, therefore, focuses on land use management, i.e. town planning and zoning regulations as implemented by municipalities within their respective jurisdictions. The Inquiry assessed the regulations that regulate zoning to the extent that the application and the enforcement of these by-laws may affect the business operations of small and independent retailers, or their ability to open businesses. The Inquiry took into account the submissions and the views of market participants when reviewing the applicable zoning and planning by-laws.

729. In selecting the municipalities, the Inquiry was also guided by the issues raised by small business operators from different provinces and municipalities across the country. The Inquiry also reviewed zoning by-laws and zoning schemes submitted by the municipalities to the Inquiry during its evidence gathering phase. During the Inquiry’s engagements with stakeholders through meetings and public hearings, the following issues were raised in relation to zoning by-laws:

729.1 actual and potential entrepreneurs are not well informed about the applicable municipal zoning schemes, zoning plans etc. and the processes necessary to legally operate a business from a selected geographic area;

729.2 zoning regulations and schemes were inflexibly applied;

729.3 rezoning processes are costly and unreasonably time consuming;

729.4 the processes that authorities were required to follow in rezoning a property are not transparent and are not publicly available. The result is that the criteria applied by each authority or by the same authority itself, changes. This leads to uncertainty and no assurance is provided as to when or even if the zoning application will be approved; and

729.5 changing by-laws require business operators to comply with costly and time-consuming requirements.

730. Multiple administrative regulations have been passed by municipalities, adding to the burden of conducting businesses in township areas. The strict enforcement of zoning and land use could stifle potential businesses. Added to the land use rights as allocated by the municipality, the cost of rezoning property, depending on the location of the land, could also have a negative impact on potential entrepreneurs. The process for awarding a business license was found to be costly, unreasonably lengthy and to lack co-ordination within the different departments within the municipality.

731. During some of the engagements between the Inquiry and stakeholders, the possible recommendation of a blanket rezoning application or in competition language, an exemption, was suggested. In particular, a study conducted by the Sustainable Livelihood Foundation (“SLF”) recommended this type of blanket rezoning, which would comprise different land use rights making it easier for potential businesses to be established without having to incur the cost of rezoning land from residential use to use for business purposes. Other recommendations included moving towards facilitations rather

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480 Made up of town planning and zoning regulations.
481 Revisiting the potential socio-economic impact of the Western Cape Liquor Act on unregulated liquor retailers, 23 April 2012, Sustainable Livelihood Foundation.
482 This idea has been implemented by the City of Cape Town, allocating a blanket rezoning or consents comprising of different land use rights.
than purely the control and enforcement of applicable laws and regulations with regard to small business operations and clarity on relevant regulations.

732. It was also recommended to move towards proactive rezoning based on demand by business. For example, where small businesses in an area are not zoned, authorities should proactively rezone such areas instead of viewing such conduct as unlawful and clamping down on it. Such areas are earmarked by entrepreneurs based on the perceived foot traffic, something that municipalities or other authorities might not always be in a position to do. According to the small business survey, there is a growing class of merchant wholesaler outlets which specialise in trade with informal spaza shops. Such businesses occupy municipal town CBDs where regulation of the high street appears to be minimal. This enables businesses to operate with a degree of informality. The recommendation of the blanket rezoning beforehand, will further aid the authorities to ensure that only registered, legitimate businesses operate therefrom, in service to the smaller businesses.

733. The Inquiry notes that once municipalities have engaged in proactive zoning, taking into account consumer movements and demand by business, there is still a need for the establishment of appropriately designed and located infrastructure to support the economic activities of micro-enterprises. The Inquiry considers it important that in establishing the support infrastructure for micro-enterprises, due regard must be given to the location, proper lighting, security and sanitation in order to prevent issues of crime and a lack of formalisation.

734. This concern was also raised in the Inquiry’s site visits and revisits where stakeholders submitted that municipalities have in the past proactively zoned areas to be occupied by micro-enterprises. In addition, to proactive zoning it was submitted that municipalities would also erect infrastructure in these pre-zoned areas to provide hawkers and informal traders with an effective spatial framework from which to carry on their business. However, it was noted that many of these ‘informal trading markets’ in other provinces, were vacant or unused. Hawkers submitted that these ‘markets’ were impractical for their businesses as they were often located too far from economic and transport hubs, which create the foot-traffic that is necessary for the success of these businesses.

735. In this regard, the Inquiry takes note of the Gauteng Revitalization Program which aims to bring about radical economic transformation through infrastructure development for township enterprises. The Gauteng Government is prioritising the development of infrastructure through street-level informal markets for micro-enterprises within the township space. These markets will allow the clustering of township enterprises and allow these businesses to establish cooperative strategies such as, the sharing of business space and services and combating crime.

Review of zoning and planning by-laws from selected municipalities

Northern Cape

736. The Kareeberg municipality rezoning policy involves a requirement that the rights acquired through a rezoning process may lapse in the event that these rights are not used within a period of 2 years from the approval of the rezoning application. This condition was also found to be generic in most municipal town planning regulations. The Inquiry finds this to be concerning as the municipality may in its discretion, decide that the applicant who may be a small independent business must commence with

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483 Inquiry Small Business Survey Reports.
484 This was also seen during the Inquiry's site visit to the North West Province dated 14 and 15 September 2016 and during the Inquiry’s revisit to the Northern Province dated 5 December 2016.
its operation within a year or even a lesser period irrespective of the other regulatory challenges that may be faced by the small business. This is possible as most of the regulatory requirements are not necessarily aligned or coordinated and relevant government offices operate in silos. Further, the rights will also lapse if the municipality has not approved the building plans within the requisite period (2 years or shorter as determined by the municipality) thereby negatively affecting or disadvantaging small businesses.

737. This condition has the possible effect of reducing the number of small businesses that may enter the market.

738. There is no specific zoning for small businesses such as spaza shops. The lack of detail in the zoning scheme can be a barrier to potential business operators as it prevents them from accessing important information which could otherwise encourage them to exercise their rights to operate a small business. The failure to specifically address the trading requirements for small businesses as spaza shops also creates uncertainty for potential traders and creates scope for potential victimization by authorities of traders that operate without permits.

739. The Sol Plaatjes municipality was one of the 12 municipalities that participated in a pilot study which was conducted by DTI, COGTA and SALGA. The municipality highlighted that as part of the recommendations resulting from the pilot study, municipalities are encouraged to host informal trade forums to provide informal traders with a platform to voice their concerns. However, the municipality raised a concern that it is extremely difficult to persuade the informal traders to congregate on a regular basis.

Western Cape

740. The Bergrivier municipality, the City of Cape Town metropolitan municipality, and the Drakenstein municipality’s by-laws were reviewed in the Western Cape.

741. The Bergrivier municipality keeps most of its town planning schemes online in an electronic format, as is the case with most municipalities. The Inquiry is of the view that all municipalities should be required to make all relevant and necessary information as widely available as possible, in order to ensure that none of the stakeholders may be prejudiced in accessing it.

742. By-laws may also create uncertainties due to the manner in which they have been crafted. For example, some of the sections of the Bergrivier municipality’s zoning by-law was found to be too broad. These by-laws state that no building or structure can be erected without the permission of the municipality. The requirement may effectively prohibit a resident from constructing any structure on their property with the purpose of conducting a small retail business such as a spaza shop. The municipality should look into other less restrictive ways of controlling buildings within the municipality such as allowing non-permanent temporary structures (such as a container) to be erected without the permission from the municipality for purposes of operating a small business such as a spaza shop.

743. Further, section 22(2) of the Bergrivier Zoning by-law prohibits the use of the premises that is not reflected as primary premises, without the approval of the municipality. This could mean that if a resident were to operate a spaza shop from their house, they would have to first obtain consent from the municipality. The consent requirement could potentially increase the barrier to entering the grocery retail market at a very small scale.

744. Similar to other municipalities, the town planning by-laws of the City of Cape Town also states that all property within the municipality’s jurisdiction is subject to the zoning scheme and cannot be used for any purpose which is not specified in this zoning scheme. Permission must be obtained from the City Council. The City of Cape Town has
a zoning scheme that allocates a number of rights to properties ensuring that there can be multiple uses for the property by the legal owners, subject to consent from the municipality where required. The various categories in the zoning scheme can be found in 16.4 of Annexure 7.

745. The multiple land use rights zoning scheme adopted by the City of Cape Town is an example of how municipalities can allocate land use rights in a manner that promotes small businesses, especially micro businesses, without imposing onerous and expensive processes that may effectively prevent the entry of potential entrepreneurs.

746. Applications in terms of the municipal planning by-laws are made in terms of the by-law for rezoning and for consent to use the rights in terms of the zoning management scheme. The challenge, as with most of the town planning and zoning schemes, is that the regulations do not set out in detail the process involved in applying for rezoning as well as when consent is required from the municipality to give effect to the additional rights granted on the property. Despite the above criticism, the City of Cape Town’s Planning Laws were found to be more explicit on the different land use rights afforded to the occupants of land within the municipality, thereby reducing some of the barriers that can be created by the compliance required for operating a small business.

Gauteng

747. The City of Tshwane land use management has 28 days to decide and inform an applicant if an application is incomplete for purposes of being reviewed by the council for rezoning. The issue concerning lengthy and expensive zoning application processes was also raised with the Inquiry by a number of small business operators as a barrier to doing business within most municipalities. The by-law itself does not seem to differentiate between small, medium and large businesses on the application for rezoning. Although lengthy for large businesses, it may be more affordable for them which would not be the case for a small and medium-sized enterprises. This may potentially be the case with regard to all rezoning application processes.

748. Ekurhuleni municipality’s Town Planning Scheme has provisions for zoning some of the residential areas with the ability to conduct businesses from residences subject to written consent. The process for obtaining such consent from the municipality is not set out for prospective applicants and the process may potentially be a lengthy one. On the positive side, the by-law makes provision for the primary dominant use of property to be residential but also allows the secondary use of the residence for operating a business.

KwaZulu Natal

749. Matatiele municipality’s land use management system includes the introduction of flexibility and compatible use of land in residential neighbourhoods. The zoning scheme makes provision for use of residentially zoned areas to conduct a home business subject to the consent of the municipality. When applying for rezoning, after lodging the application, the applicant is required to publish a notice in the local newspaper of such intention, to surrounding neighbours, and also to serve a copy of the notice to surrounding landowners as directed by the municipality. The decision by the municipality is granted after the expiry of 28 days from the date of submission of the application. The problem is that the by-law does not set out the application process in detail except for the form that must be completed which creates uncertainty amongst small and independent retailers as to the requirements.

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488 Section 42 of the Bergrivier Municipality zoning by-laws.
489 This means an applicant may only be informed on the 27th day after lodging the application that their application is incomplete and therefore cannot be reviewed, which unnecessarily lengthens the period for the zoning application.
750. Local spaza shop operators submitted to the Inquiry that these zoning by-laws are applied inconsistently between business operators by the municipality in favour of certain ethnic groups, in particular foreign owned businesses.

751. As with most of the zoning and land management by-laws reviewed, the municipality’s zoning regulations were found to lack detail and clarity on processes, the period to be taken for the application and on the exact applicable fees which again has the effect of creating uncertainty amongst small and independent business operators.

Limpopo

752. The Inquiry found the Thulamela local municipality gives applicants a period of five years for the approval to lapse, which provides sufficient time to set up business once rezoning has been approved, in contrast with other municipalities which give two years or less.

753. The Inquiry accessed the municipality’s proposed fees\textsuperscript{490} for rezoning which were R3 562 plus R1 784 for the notice to be placed by the municipality, in addition to the applicant’s cost of placing an advertisement of the application in local newspapers as required by the by-law. The amount payable towards a rezoning application may seem reasonable for a business but for a small survivalist business which is trying to have a property rezoned for business (which may still be rejected), this may be unaffordable as was submitted by the majority of small and independent retailers.

754. In line with the guidelines in the OECD toolkit,\textsuperscript{491} the Inquiry’s preliminary view on the enforcement of zoning regulations indicate the difficulties that street traders face at a municipal level which may have a negative impact on their ability to compete effectively. Specifically:

754.1 the high costs and lengthy processes associated with rezoning of property may minimise the incentive for small business owners to compete, which is compounded by the by-laws themselves which do not differentiate between small, medium and large businesses on rezoning applications. Whilst the process is lengthy for all businesses, it may be the case that it is more affordable for large businesses to bear the costs and time constraints associated with the process, than may be the case for small and medium sized businesses;

754.2 the uncertainties resulting from lack of accessible information regarding the requirements that small business operators need to comply with before they can trade legally;

754.3 the inconsistent application of the by-laws in favour of certain nationalities.

Analysis of health and safety regulations

755. Small and independent grocery retailers across the country have raised concerns around health and safety regulations in the retail sector. Some have submitted that although they are aware of the regulations, they are unaware of the actual content and requirements as prescribed by these regulations. Small and independent grocery retailers that have knowledge of the health and safety requirements further submitted that there exists no enforcement by authorities or inspectors who are appointed to enforce these regulations. Traders also claimed that when the regulations are enforced, the enforcement is unequal between foreign and national traders. According to the local traders, inspectors generally do not require foreign traders to comply with the regulations and sometimes accept bribes from foreign nationals who wish to evade compliance.\textsuperscript{492} As alluded to in Objective 3 above, such lack of enforcement affords foreign traders a competitive advantage over local traders.

\textsuperscript{490} For the period 2017/18.
\textsuperscript{492} These include traders in the following provinces: Limpopo, North West and Free State.
The Foodstuffs, Cosmetic and Disinfectant, 54 of 1972 Act ("FCD Act") provides definitions that are useful for the Inquiry's analysis of health and safety regulations. The following terms are defined under Section 1 and are relevant:

756.1 foodstuffs; 493
756.2 premises; 494
756.3 prohibited article; 495 and
756.4 treated and/or treatment. 496

The FCD Act deals with various prohibitions. The Inquiry identified the prohibitions that are likely to affect traders active in the grocery retail market and these are discussed below.

Sale of mixed, compounded or blended foodstuffs

758. In accordance with the FCD Act, it is prohibited to sell any foodstuffs which contains a mixture of different foodstuffs or a blend consisting of the same foodstuff in different quantities in a package that does not bear a label which complies with the provisions of the regulations and which does not indicate clearly the mixture, compound or blend of the foodstuffs is prohibited. Further, under the Act, that the label must contain specifically the names or, as the case may be, the kinds or grades of the ingredients and the portions or amounts present in the foodstuffs, unless such foodstuff is taken and delivered direct to the purchaser from bulk stock and the container of which such foodstuffs is stored in bears such label. This requirement does not apply with reference to the sale of any foodstuffs which is the subject of a patent. 497

False description of articles

759. Publication of false or misleading advertising of any foodstuffs, cosmetics or disinfectant for purposes of sale is a prohibition under the FCD Act. False or misleading advertising includes false or misleading information on the origin, nature substance, mode and place of manufacture of the products.

760. Under the FCD Act, the prohibition of false and misleading advertising shall not be regarded as prohibition where it is under a geographical name which is generally accepted as a generic term for a particular type or variety of such foodstuff, provided that the foodstuff described by or sold under the name in question is of the type or variety indicated by that name. 498

Prohibition of sale, manufacturing or importation of certain articles

761. The FCD Act prohibits the sale of foodstuffs that contain or have been treated with a prohibited substance or which contains a particular substance in a greater measure than that permitted by regulation or has been treated with a substance containing a particular substance in a greater measure than that permitted by regulation. 499

Inspectors

762. The Act also makes provision for inspectors who may be authorised by the Director-General, who are persons he has deemed fit as inspectors who shall, subject to the control of the Director General, be vested with the powers, duties and functions conferred or imposed on the inspector by the FCD Act. 500

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493 Any articles or substance (except a drug as defined in the Drugs Control Act) ordinarily eaten or drunk by a person or purporting to be suitable, or manufactured or sold for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as part or ingredient of any such article or substance.

494 Means land or any building or other structure and includes any train, boat, ship, aircraft or other vehicle.

495 Means any foodstuffs, cosmetic or disinfectant which may in terms of this Act not be sold or manufactured or imported for sale or which does not comply with the provisions of this Act in all respects.

496 Means coloured, stained, powdered, polished, coated or steamed, or missed, preserved, flavoured, diluted or thickened with any substance, or treated in any other illegal way.

497 Section 3(1).

498 Section 5(1).

499 Section 2(1).

500 Section 10(1).
763. The FCD Act further provides that a member of the South African Police Services above the rank of a sergeant may perform the duties of an inspector.\textsuperscript{501}

764. The inspectors are granted the power to, at all reasonable times, enter upon any premises in which any foodstuff is sold and inspect or search such premises, to further examine or extract the foodstuff and demand information regarding that foodstuff. Inspectors are also given the power to inspect the operation or process carried out in or upon such premises and demand any information from the owner regarding such operations. The inspectors may also seize product which may be in contravention of the FCD Act.\textsuperscript{502}

765. On examination of the regulations and municipal by-laws collected, the Inquiry found that the bulk of regulations deal with health and safety from an external perspective, particularly in relation to external advertising, signs and the regulation thereof. They do not give details as to how the actual products should be kept in a store or the requirements which need to be adhered to in relation to conditions under which products are allowed to be sold by retailers. Regulations and municipal by-laws also do not deal with requirements on the structure of the store and the maintenance of the building to ensure safety of products.

766. Various health and safety regulations mention that failure to maintain sewers, drains, water fittings, water closet fittings and all sanitary facilities is prohibited. Furthermore, it was noted that the trade regulations also place specific health and safety requirements on informal traders, which will be discussed below.

767. Across the provinces, the trade regulations make specific provision with regard to general conduct, cleanliness and obstruction. It is reasonably provided therein that street traders may not pose any kind of risk to the health and safety of other residents and businesses within the jurisdiction or to environmental health and safety, by providing: amongst other things, that street traders are prohibited from building open fires in their areas of business, prohibited from disposing of any fat or grease in drains around their stalls, prohibited from obstructing access to fire hydrants and from storing their goods in storm water drains.

768. Furthermore, street traders are required, at all times, to keep their designated trading areas clean, neat and free of any noxious odours.

\textbf{Stakeholder submissions on health and safety regulations}

769. The Inquiry held a consultation process with hawkers, spaza shop owners and small and independent retailers some of whom were members of buyer groups, in order to determine the issues that these stakeholders face in relation to health and safety. It was conducted through two phases, an initial one with formal meetings with the representatives of the market participants, which included the various municipalities and a second one involving re-visits in the form of public hearings which were open to all the traders and not just the representatives.

\textbf{Limpopo revisit}

770. During consultations in the Limpopo province, the Inquiry found that most health and safety issues raised by traders were linked to the alleged unequal enforcement of the applicable regulations between local traders and foreign traders. Further, traders were generally unsure on which regulations apply to them.

771. Numerous local traders claimed that health and safety regulations are stringently enforced against the local traders but not against foreign nationals. According to the local traders, requirements such as having a window in a building from which one trades,
and lack of ventilation is enforced against local traders whereas foreign traders can be found trading in a building that lacks ventilation. Authorities were further accused of ignoring such violations.  

772. Many of the local traders also alleged that inspections were seldom conducted, while one of the traders who was present at a consultation submitted that when he did have an inspector visit his store, the inspector notified him that he had found a lot of health and safety prohibitions in many of the foreign-owned spaza shops. Further, despite the allegations that foreign nationals do not comply with the required regulations, their stores still operate and are not closed down by authorities or these violations are not addressed.  

773. As indicated in Objective 3, local traders also alleged that foreign nationals do not sell clean food as they sleep in the same building from which they operate their business, and that they relieve themselves in the same room as the store. Consumers face health issues and local traders find it difficult to resolve this matter as they do not know which government entity to go to or which regulator with whom to lodge complaints. The municipalities have been consulted but nothing has been done about the complaints raised by local traders.  

Mpumalanga revisit  

775. Traders in Mpumalanga raised the issue of counterfeit products allegedly being sold by foreign traders who traded in the area. According to the local traders, the foreigners produce their own products under a famous brand, while their own brand is cheaper and is not of the same quality as the original product. Local traders claimed that such counterfeit products affect the health of the consumer and that such issues should be resolved by health and safety inspectors.  

North West revisit  

776. Traders in the North West province submitted that Pakistani, Bangladeshi, Somali and Ethiopian traders sell counterfeit products, which include products such as Zum-buk, razor blades and cigarettes. Like local traders in other provinces, they further alleged that foreign nationals repackage expired goods or that they scratch off the expiry dates on cans which have already passed the expiry date and sell the products at cheaper prices in township and rural areas. Furthermore, where suppliers have products that are soon to expire, they sell them at discounted prices to foreign nationals only, who in turn resell them at extremely cheap prices. It was alleged that municipalities are aware of these issues because they have been

503 Submission by local traders at the Limpopo Re-visit dated 4 November 2017, Transcript p. 46.  
504 Submission by local traders at the Limpopo Re-visit dated 4 November 2017, Transcript p. 64.  
505 Limpopo Re-visit transcript dated 4 November 2017, p. 65. During the Limpopo re-visit, one trader also claimed that there was an incident where 750ml bottles of cooking oil had two plastic labels over the bottle, the label underneath indicated that the cooking oil had expired while the one on top had a new expiry dated printed on it. The original labelling on the cooking bottle had been replaced to conceal the original expiry date. In other words, the packaging was reprinted more than once.  
507 Submission by local traders at the Durban Re-visit dated 21 October 2016, p. 7.  
508 Ibid, p97.
777. The local traders alleged that where inspections are conducted, police officers and health inspectors sometimes request monetary bribes from the traders where they find that traders do not adhere to the regulations.\(^{510}\)

**Northern Cape revisit**

778. Traders in the Northern Cape submitted that inspectors from the Department of Health do conduct inspections on an annual or bi-annual basis. In the event that the inspectors find that the stores are not in accordance with the regulations that are applicable, they issue out fines to the traders and indicate to the traders the measures they need to take in order to comply with the regulations.\(^{511}\)

779. Local traders also submitted concerns relating to the issuing of health and safety certificates, alleging that these were not issued to them by the local municipality. According to the traders, this affects them as they cannot trade without the necessary documentations.\(^{512}\)

780. Some traders indicated that the laws governing trade in the Province do not deal with issues of health and safety and that this has been brought to the attention of the relevant authorities which was confirmed by some of the municipal workers present at the site revisit.

781. In line with the guidelines in the OECD toolkit,\(^{513}\) the Inquiry’s preliminary views on the enforcement of health and safety regulations were that they result in the following concerns for small businesses, which has a negative impact on their ability to effectively trade:

781.1 lack of enforcement or inconsistencies in the enforcement of health and safety regulations; and

781.2 lack of knowledge of regulations that are applicable to traders.

**Liquor legislations**

782. Liquor licensing is a competence which is exclusive to provinces and accordingly, each of the nine provinces have enacted separate provincial liquor laws.

783. These laws prohibit the sale of liquor to consumers without a liquor licence and provide an application process which includes community participation in the approval of liquor licences, and cover:

783.1 liquor licences for bars, pubs, nightclubs, pool clubs, dance halls, and taverns;

783.2 liquor licences for hotels, restaurants, gaming premises, sports grounds, and theatres;

783.3 liquor licences for off-consumption businesses such as supermarkets, general merchandise stores, bottle stores, wholesale liquors, sorghum beer outlets; and

783.4 licences for micro-manufacturing.

784. Trading regulations, the control of undertakings that sell liquor and municipal planning all fall within the exclusive legislative and executive competence of municipalities, each of which impact on the retail of liquor in respect of hours, control and location. Like provincial liquor laws, liquor trading by-laws provide for community participation in decision making.

785. Different municipalities treat special liquor license holders differently. Special liquor licenses are usually issued as once off for an event or for a specified period.

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509 Submission by Leslie Nongawuza at the Rustenburg Re-visit, Transcript p. 50.
510 Submission by local traders at the Limpopo Re-visit dated 4 November 2017, P.33.
511 Submission by local traders at the Kimberley Re-visit dated 5 November 2016, p20.
512 Ibid, p40.
786. Some municipalities such as the George local municipality do not permit the selling of liquor on Sundays and on religious public holidays. However, these restrictions do not appear to raise competition concerns as they apply equally to all liquor traders within the municipal district. However, the provision is not always uniformly applied which could mean that certain traders have a competitive advantage over others in surrounding areas, dependent on where they are located, and which laws apply to them. In the Free State, liquor trading is allowed Monday-Sunday.  

787. With regard to the regulation of trading hours, some municipal regulations expressly state that trading hours apply specifically to premises which are properly zoned for liquor trade. This means that in these municipalities, liquor traders that have not yet obtained zoning certificates will not be able to lawfully operate until such time that a zoning certificate is obtained. As was stated above, under the analysis of zoning regulations, liquor traders would have to incur expenses and lengthy processes in order to obtain zoning certificates with the aim of applying for liquor licences, the granting of which are also not guaranteed.

788. The Inquiry also notes that zoning falls within the exclusive legislative competence of municipalities while liquor licensing resides at provincial level. This division of responsibilities this may have a negative effect on the ability of small firms to compete effectively in the liquor industry as the ability for a potential trader to obtain a trading license does not guarantee their trading legally as they are still required to comply with zoning regulations which is regulated by a different sphere of government. Applications for liquor licensing should be integrated and streamlined with applications for rezoning of premises so that liquor traders do not have to face dual restrictions.

789. In May 2016, the Western Cape Cabinet approved the implementation of Regulatory Impact Assessments (“RIAs”) as a mandatory prerequisite for all significant proposed policies and legislation in the province. In this regard SBP was employed to conduct an RIA on the Western Cape Alcohol-Related Harms Reduction Policy Green Paper. The purpose of RIAs is to ensure that government only regulates when necessary; that adverse impacts are kept to a minimum and that decisions made by government are informed by robust evidence-based policy.

790. In general, the by-laws categorise liquor license holders and set out the trading times which are applicable to each category.

790.1 Retailers who sell liquor for consumption off the licensed premises such as bottle stores and liquor wholesalers. This category of retailers is largely permitted to sell liquor between 08h30 and 20h00 on Sundays, these retailers are allowed to open at 09h00 and close at 13h00 or 15h00.

790.2 Liquor traders that are licensed as micro-manufacturers are generally allowed to trade between 08h00 and 18h00.

790.3 Traders licensed for consumption on the premises such as hotels, casinos and lodges are generally permitted to sell liquor for 24 hours throughout the week. 

790.4 Other categories of liquor traders who sell liquor for consumption on the premises have limited trading hours. Pubs, bars, taverns and sports bars are allowed to sell liquor from 09h00 to 23h00 or 00h00 between Monday and Saturday while they may sell liquor from 11h00 to 23h00 on Sundays.

791. In the Inquiry’s engagement with stakeholders, it received numerous complaints about the unfair application of trading times amongst the different

514 Correspondence with Free State Gambling, Liquor and Tourism Authority, 7 February 2019.
515 These municipalities include the Mbashe Local Municipality, Kouga Local Municipality, Drakenstein Local Municipality, Great Kei Local Municipality.
516 An independent private sector development and research company specialising in the business environment.
categories of liquor traders, specifically that large retail chains are allowed to trade for longer hours and until much later than independent liquor retailers. The Inquiry engaged the various provincial liquor authorities in order to gain their views on this issue:

791.1 According to the Free State Gambling, Liquor and Tourism Authority, all liquor traders in the Free State are treated in the same manner and according to the publication of the Free State Liquor regulation, all license types operate under the specific trading times published for that category of license. Accordingly, large retail chains must comply with the trading hours according to the category of license which they hold. Regular compliance is ensured by compliance inspectors.517

791.2 However, in the Eastern Cape and Western Cape, trading times are determined by the various municipalities and vary from municipality to municipality. An extension of trading hours is only considered by municipalities through their special consent dispensation.518 In the Western Cape, some municipalities do provide for the extension of trading hours for some license types, though this process is limited by the provincial legislation.519

791.3 In Mpumalanga, the same trading hours are applicable to all liquor outlets irrespective of the size, as long as they fall within the same category of license. There are, however, special provisions for liquor license holders to make applications to the board to have the trading times amended, irrespective of the size of the business.520 In the Free State, there is no provision for the extension of trading hours with the exception of a special event license which allows a license holder to trade outside of the regular trading hours but only for a special event.

Stakeholder submissions on liquor regulations

792. A common theme amongst stakeholders has been the allegation of preferential treatment of national supermarket chains over small and independent retailers:

792.1 During the Gauteng public hearings, a chain of independent liquor traders, Liquor City (Pty) Ltd complained that they are experiencing serious difficulty in operations and keeping businesses alive, specifically with regard to the preferential treatment offered to retail chains over small independent retailers.521 According to their submission, since 2003, retail chain stores have been allowed to apply for liquor licences.522 This brought about a trend amongst property developers to remove independent liquor retailers from shopping centres and only allow the operation of large retail chain stores. A concern amongst stakeholders has been that liquor authorities do not consider small independent business in the vicinity of the new proposed liquor license and how the granting thereof will impact the existing small independent business.

792.2 One specific instance to which Liquor City referred related to the shopping centre on Colorado Street in Boksburg. Liquor City had operated there for twenty-two years. However, once large retail chains were allowed to apply for liquor licences, the developer refused to renew Liquor City’s lease as it had agreed to hand the lease over to Checkers Liquor Shop, a new licensee. Liquor City has since vacated the premises and was forced to retrench 15 employees.

517 Submission received from Free State Gambling, Liquor and Tourism Authority, 7 February 2019.
518 Submission received from Eastern Cape Liquor Authority, 12 December 2018.
519 Submission received from Western Cape Liquor Authority, 11 December 2018.
520 Submission received from Mpumalanga Department of Economic Development and Tourism, 28 January 2019.
521 Liquor City is a liquor store brand which operates under a franchise system. Liquor City is the franchisor.
522 Liquor City Submissions at the Gauteng Public Hearings dated 9 June 2017, p.2 - p.46. See also discussion in Objective 2.
792.3 In a similar instance involving another independent liquor retailer, Mapilela Beer Distributors, which took place in Gauteng in 2013, Pick ‘n Pay Retailers brought an application to the North Gauteng High Court to have a decision taken by the Gauteng Provincial Liquor Board (GPLB) set aside. This matter was in response to a decision taken by the GPLB not to grant Pick ‘n Pay a liquor license to operate a liquor store in the Westgate shopping mall. According to the GPLB, the granting of that license would have been contrary to public interest since the possibility existed that it would cause a harmful monopolistic condition to arise.

792.4 The GPLB refused to grant the application in response to an objection which was lodged by Mapilela Beer Distributors, which was already carrying on the business of operating a liquor store in the Westgate shopping mall. According to Mapilela Beer Distributors, it had received a letter from the landlord of the shopping mall which stated, “It is absolutely clear that if the Board approves the Applicant’s (Pick ‘n Pay) application, the Applicant (Pick ‘n Pay) will enjoy total liquor market share within the Westgate shopping centre”.

792.5 In the letter, the Westgate shopping mall leasing manager had confirmed that Pick ‘n Pay had entered into a 15-year lease agreement with the mall, conditional upon Pick ‘n Pay obtaining the liquor license for which it had applied. The letter went on to state that the existing liquor store, Mapilela Beer Distributors, would be provided with one calendar month notice to vacate the mall and will be replaced by Pick ‘n Pay’s liquor store.

792.6 The application to have GPLB’s decision to not grant the liquor license to Pick ‘n Pay set aside, was dismissed with costs.

793. A number of issues were raised by various stakeholders regarding liquor licensing, mostly pertaining to the burdensome and costly process involved in getting an independent liquor business licensed. These issues are highlighted below.

793.1 During the Cape Town public hearings, Dr. Lief Peterson of the Sustainable Livelihoods Foundation highlighted one of the issues that liquor traders in the city of Cape Town are experiencing with regard to the formalization of their businesses. According to his submission, one of the main barriers to expansion of small liquor businesses is that it is nearly impossible for them to formalize their businesses. The process which is extremely difficult and tedious is also very time consuming and costly. The absence of a simplified formalization framework means that the majority of small independent liquor traders will always remain small in order to be able to remain below the radar since they are, in essence, illegal businesses.524

793.2 Also during the Cape Town public hearings, the Provincial Department of Economic Development and Tourism submitted that it is currently busy with a regulatory impact assessment, particularly with regard to liquor regulations as a result of the numerous complaints that it has received regarding the process of application for liquor licences which are said to be too onerous on retailers.525

793.3 Other stakeholders submitted that they experience difficulties in respect of applications for liquor licences. They submitted that their applications are turned down simply because their

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523 Pick ‘n Pay Retailers (Pty) Ltd V Gauteng Provincial Liquor Board and Others (47571/12) [2013] ZA GPHC 138
524 Submission by Sustainable Livelihoods Foundation at the Cape Town Public Hearings dated, 10 May 2017, Transcript pp. 32 - 96.
525 Submission by Provincial Department of Economic Development and Tourism (Cape Town) at the Cape Town Public Hearings dated, 11 May 2017, Transcript pp.2 - 43.
business premises are too close to a school or a church. However, the same consideration is not applied to national supermarket chains.526

793.4 The Western Cape Liquor Authority, submitted that when considering a liquor license application, designated liquor officials must include in their report, the distance of the proposed licensed premises from other existing licensed premises.527 However in Mpumalanga, consideration is only given to the proximity of existing businesses when objections are raised.528 On the other hand, the Eastern Cape Liquor Board does not make provision for the consideration of distance between similar businesses when considering new liquor license applications.529

793.5 With regard to the cost of attaining a liquor license, in the Free State, the application process is said to have been simplified to the extent that applicants are no longer required to make use of the services of a consultant or Attorney to apply for the license,530 which has drastically reduced the costs for applying for a liquor license for the potential trader. The Western Cape liquor authority highlighted that all costs and criteria are the same, irrespective of the size of the business, meaning that a national supermarket chain and a small independent retailer will pay the same fees when applying for a liquor license.531

793.6 In general, provincial liquor authorities argued that liquor license applications can and may be refused due to a number of factors and considerations. The most common relate to public interest considerations such as the distance between the proposed liquor businesses and schools, places of worship, institutions for the frail and aged, as well as, drug and alcohol rehabilitation centres. Consideration is also given to noise pollution with regard to on-consumption liquor retailers and possible public disturbance.532

794. In line with the guidelines in the OECD toolkit,533 the Inquiry’s preliminary view on the enforcement of liquor regulations is that they result in the following concerns for small businesses:

794.1 inconsistency in how the regulations are enforced;

794.2 inconsistency in how the regulations are enforced, specifically with regard to small independent liquor retailers and national retail chains;

794.3 the high costs and extended duration of acquiring liquor licences, where the same criteria and costing applies to small independent liquor retailers and large retail chains.

7.4 PRELIMINARY FINDINGS

795. The submissions made to the Inquiry point toward alleged selective and over enforcement of regulations resulting in differential treatment between foreign national traders, local traders and the national supermarket chains. These submissions were made with particular reference to trading times and health and safety regulations. Other concerns raised indicated that the licensing processes for trading are burdensome for small traders. In line with the guidelines in the OECD

526 Submission by UGU Association of business at KZN public hearing dated, 3 July 2017, Transcript pp. 59 - 60
527 Submission from Western Cape Liquor Authority dated 11 December 2018.
528 Submission from Mpumalanga Department of Economic Development and Tourism, dated 28 January 2019
529 Submission from Eastern Cape Liquor Board dated 12 December 2018.
530 Submission from Free State Gambling, Liquor and Tourism Authority, dated 7 February 2019.
531 Submission from Western Cape Liquor Authority dated 11 December 2018.
532 Licence for the sale of liquor for consumption (drinking) on the premises where the liquor is sold.
533 Submission from Free State Gambling, Liquor and Tourism Authority, dated 7 February 2019.

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toolkit, the Inquiry was of the view that inconsistent enforcement (either over enforcement, lack of enforcement or selective enforcement) and burdensome regulatory processes raised barriers to entry for small retailers and made it difficult for small retailers already in the market to innovate and expand.

796. With regard to trading times, the Inquiry found that trading time regulations are unreasonable and that in most instances there are inconsistencies in the enforcement of those regulations. In line with the guidelines in the OECD toolkit, the Inquiry found that these inconsistencies in the regulation of trading times may unfairly disadvantage traders who are compliant; that the high cost and extended duration of acquiring street trading permits may result in barriers to entry for micro-businesses.

797. With regard to zoning and land use, overly strict enforcement could potentially stifle business and restrict the creation of new businesses. Added to the land use rights as allocated by the municipality, the cost and time constraints associated with the rezoning of property, depending on the location of the land, could also have a negative impact on potential entrepreneurs. In other words, whilst these by-laws seek to manage land use, they seriously interfere with access to land, which is key to most entrepreneurs, especially those from historically disadvantaged backgrounds. In line with the guidelines in the OECD toolkit, the Inquiry’s view was that these by-laws are likely to minimise the incentive of small and independent business owners to enter and compete effectively.

798. With regard to health and safety regulations, the Inquiry found that they, in themselves, do not appear to raise competition concerns. During its engagement with municipalities, the Inquiry found that the general lack of enforcement was largely due to municipalities lacking the human resources necessary to conduct inspections. In line with the guidelines in the OECD toolkit, the Inquiry was of the view that this is likely to result in a lack of knowledge amongst small retailers regarding the regulations with which they are required to comply, making it difficult for them to innovate and expand their businesses.

799. With regard to liquor regulations, the Inquiry found that there is unequal enforcement regarding trading hours between independent liquor retailers on one hand and national supermarket chains on the other hand. The national supermarket chains, unlike independent liquor retailers (who are generally compliant), seem to enjoy an unfair competitive advantage in that the same trading hours are not enforced against them. In line with the guidelines in the OECD toolkit, the Inquiry was of the view that this was likely to result in high barriers to entry and difficulties in innovation and expansion for independent retailers.

7.5 SUBMISSIONS IN RESPONSE TO THE PRELIMINARY FINDINGS AND RECOMMENDATIONS

800. Stakeholders made submissions responding to the preliminary findings and recommendations during a stakeholder workshop held with various government departments and independent non-profit organisations. The submissions affirmed...
the Inquiry’s preliminary findings and recommendations.

801. The Department of Economic Development, Tourism and Environmental Affairs ("KZN: EDTea") submitted that small and independent retailers are faced with high barriers to entry due to the high costs and regulatory barriers for zoning and licensing. The KZN: EDTea further submitted that the issue of zoning should be a key focus area to assist small traders operating in areas not zoned for business.

802. PLAAS submitted that the current regulatory framework for zoning and trading hours creates a burdensome environment for informal traders and SMME’s. It further submitted that the noted hostility and uncertainties created by municipalities and metro governments towards the informal sector, and the continued application of apartheid and colonial laws, should be a source of deep concern. As such, it welcomed the recommendation to review regulations that affect spaza shops and street traders.542

803. Submissions from KZN: EDTea, PLAAS and the DTI also supported the recommendations by the Inquiry on proactive rezoning and the development of infrastructures for informal traders by municipalities. These stakeholders also emphasised that it is essential that municipalities consult closely and directly with informal traders’ associations and similar bodies to ensure that the infrastructure reflects the needs of informal businesses and SMME’s. These stakeholders further submitted that government must examine how to support small informal businesses without the need to ‘formalise’ these entities. The National African Federated Chamber of Commerce and Industry ("NAFCOC") also submitted that when considering ways to intervene and assist these businesses, regard must be given to the fact that informal traders generally prefer to remain as informal operators.

804. In relation to liquor regulation, government stakeholders raised a concern as to whether grocery stores ought to be selling liquor as part of grocery items. Liquor City also raised a similar concern, submitting that supermarkets and independent liquor traders operating in shopping malls should trade alongside each other far away from traditional convenience grocery stores. Liquor City submitted that, locating all liquor traders far away from traditional convenience grocery stores, in similar fashion like food courts, would ensure that purchasing liquor becomes a destination-based purchase and would thus allow for more effective policing and control of access to liquor by underage consumers who may otherwise easily access liquor from grocery retailers who have liquor sections in their stores.543

805. The World Bank submitted that generally shopping centre developments in township areas are not inclusive of small traders within the mall nor do they ensure that there are appropriate structures for informal traders operating in the external areas surrounding the malls.544 It proposed that municipalities could do more to impose conditions on township developments which ensured space for smaller traders within the mall and space for informal traders to operate externally. According to the World Bank, international experience has shown that attaching conditions to a shopping centre development can enable the upliftment of informal businesses by allocating space and buildings to accommodate these small businesses. In line with the findings in the Preliminary Report, the importance of authorities engaging and consulting with informal traders and vendors was also emphasized, to understand their needs prior to implementing initiatives aimed to assist these businesses.545

543 Submission to the Inquiry by Liquor City dated 16 September 2019.
544 Which can be ensured by the end of exclusivity clauses in lease agreements as recommended in the chapter assessing the impact of long-term exclusive agreements.
7.6 INQUIRY’S VIEWS

806. The Inquiry welcomes the submissions provided by stakeholders on these issues as they unanimously affirmed its findings and recommendations in respect of regulatory constraints that impede the operation of SMMEs in the grocery sector in general.

807. Further to the positive submissions, the Inquiry notes that some local municipalities such as the City of Cape Town have adopted a policy guideline which is used to negotiate with developers when applying for land use rights to develop shopping malls. In terms of the policy, large commercial developers are encouraged to consider a mixed package of land use rights to leverage the provision of informal trading space and facilities in private developments and establish a functional and accessible, pedestrian-friendly interface between formal and informal business activities. Although not enforced, these principles are strongly encouraged.

808. The Inquiry notes that in 2018, the City of Johannesburg also adopted a new Land Use Scheme which introduced pro-active zoning. The new Land Use Scheme makes provision for residents, with the written consent and subject to conditions that may be imposed by the municipality, to establish a spaza or house shop without having to go through the process of rezoning the residential area for business. These developments support small businesses and are aligned with the recommendations of the Inquiry as discussed in the Preliminary Report.

7.7 FINAL FINDINGS

809. The submissions received in response to the preliminary findings and recommendations affirmed the Inquiry’s preliminary findings. The Inquiry finds that local authorities still enforce legislation that impose restrictive apartheid-era trading times on small traders and yet permit the national supermarket chains to trade for longer. Further, the Inquiry finds that the regulatory processes for trading are burdensome for small traders, particularly in relation to zoning and land use in terms of the cost and time associated with process of rezoning property for business.

546 City of Cape Town Urban Design Policy, 2013 and the MSDF.
547 Submission by the City of Cape Town dated 19 July 2017.
8.1 INTRODUCTION

810. The Inquiry was tasked with assessing the impact of buyer groups\(^{548}\) on small and independent retailers in townships, peri-urban areas, rural areas, and the informal economy in general.

811. Buyer groups play an integral part in the grocery retail supply chain, in that they allow independent wholesalers and retailers to pool their resources to save costs and to aggregate their volume purchases in order to secure better terms than they would be able to achieve when acting individually.\(^ {549}\)

812. As per the SOI and ToR, the Inquiry aimed to identify buyer groups that operate in the grocery retail sector, to better understand the competitive benefits or harm of the buyer groups, insofar as they affect small and independent retailers in townships, peri-urban areas, rural areas and the informal economy. In particular, the Inquiry was guided by the purpose of the Competition Act as set out in section 2 and focused on the following:

812.1 the efficiencies arising from the impact of buyer groups, and the extent to which these are passed onto consumers, as contemplated by the provisions of section 2(a) of the Competition Act;

812.2 the positive and negative effects of buyer groups on the ability of small and medium sized retailers to compete effectively, by either reducing or increasing the barriers faced by them to enter into and expand in the grocery retail sector, as contemplated by the provisions of section 2(e) and (f) of the Competition Act;

812.3 the positive and negative effects of buyer groups on consumer prices and product choices, in line with the provisions of section 2(b) of the Competition Act; and

812.4 the positive and negative effects of buyer groups on employment, in line with section 2(c) of the Competition Act.

813. As a result of submissions received from industry stakeholders in response to the SOI, the Inquiry also broadly considered buyer power in the FMCG sector.\(^ {550}\)

814. The Inquiry sought to assess the extent to which there is unequal bargaining power between suppliers and the national supermarket chains, and whether such unequal bargaining power had been to the detriment of small and independent retailers or of benefit to consumers. In doing so, the Inquiry was guided by the purpose of the Act as set out in section 2 of the Act and focused on the following:

814.1 Whether the large national supermarket chains have a degree of buyer power over their suppliers, and how this may be used to extract certain rebates from suppliers;

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\(^{548}\) The Inquiry’s terms of reference refer to buyer groups, though, some of the scholarly literature also refers to buying groups. The reader can assume the terms to be used interchangeably.

\(^{549}\) Grocery Retail Market Inquiry Statement of Issues dated 15 July 2016, p. 27, para. 98.

\(^{550}\) Statement of Issues dated 15 July 2016, p. 27, para. 98.
814.2 the effects of the buyer power of national supermarket chains through rebates on the ability of small and medium sized as well as independent retailers and their buyer groups to compete effectively in the sector, as contemplated by the provisions of section 2(e) and (f) of the Competition Act; and

814.3 the efficiencies arising from the impact of the buyer power of large purchasers of FMCG products, and the extent to which these are passed onto consumers, as contemplated by the provisions of section 2(a) of the Competition Act.

815. This chapter is structured as follows: section two provides a brief history of buyer groups while section three sets out a description of the major buyer groups; section four provides a summary of the benefits of buyer groups; section five sets out the stakeholders’ views in response to the Inquiry’s preliminary findings and concludes by providing the Inquiry’s views on how buyer groups can be made more effective.

816. The chapter then considers buyer power of the national supermarket chains: section seven begins with a structural assessment of the grocery retail sector evaluation and its implications for buyer power; section eight assesses the rebates received by supermarket chains and how these rebates differ between the national supermarket chains and buyer groups as well as wholesalers; section nine discusses Inquiry’s preliminary findings; section ten sets out the stakeholders’ views in response to same; section eleven provides the Inquiry’s views on how to promote fair and non-discriminatory trading terms in the grocery sector and section twelve concludes by setting out the Inquiry’s final findings and recommendations.

8.2 MARKET DYNAMICS IN THE TOWNSHIP AND RURAL AREAS BEFORE 1994 AND THE RELATIONSHIP BETWEEN RETAILERS AND SUPPLIERS IN THE GROCERY SECTOR

The development of the township economy before 1994

817. According to Elite Star Trading (“EST”), a major South African buyer group, before the entry of large retailers into the township and rural areas, township dwellers relied on retailers in town for sourcing their grocery needs. Spaza shops and garages were used as convenience stores. The township business model was set up to exclude township businesses from opportunities to grow outside the township itself. EST argues that during apartheid, trading licences were difficult to obtain for spaza and independent retailers, which became a barrier for township retailers to easily trade in the township areas.

818. According to Trade Intelligence, the township markets represented a significant consumer base for the suppliers of FMCG products, but it was a challenge to reach these markets. As a result, the “independent wholesaling” business model was established to serve as a middleman between township traders and suppliers outside townships. The development of the independent wholesaling business model culminated in the establishment of buyer groups to consolidate the purchasing power of the wholesalers.

Route to Market: the retail vs. wholesale and independent retail channel

819. Suppliers of grocery retail products use two main routes to market to distribute their products: the national supermarket chain channel and what we have broadly

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551 Townships were designed not to have trading spaces as laws were designed and police forces were employed, to ensure that no formal economic activity occurred in township areas.
552 Submission by EST at the Gauteng public hearing dated 5 June 2017, Transcript pp.12-13, para 40 – 45.
553 Trade Intelligence (2016) Malls to Markets: An Introduction to South African Food & Grocery Retail, p. 64.
554 Submission by EST at the Gauteng public hearing dated 5 June 2017, Transcript p. 13, para 46.
defined as the wholesale channel. Section 11.1 in Annexure 2 provides a more detailed discussion of the suppliers who sell FMCG products into both channels. The “wholesale and independent retail channel” refers to the distribution of FMCG through the wholesalers, which is largely dominated by the following buyer groups, Unitrade Management Services (“UMS”), Independent Buying Consortium (“IBC”), EST, Shield Buying Consortium (“Shield”), and Independent Cash and Carry (“ICC”); hybrid wholesalers; independent retailers; and the informal retailers. These two channels typically serve different customers. The national supermarket chain channel is generally viewed as the formal channel, while the wholesale channel, because of primarily serving the informal retail sector, is viewed as ‘informal’.

Suppliers submitted that they primarily rely on the national supermarket chains as their primary route to market. According to suppliers, the national supermarket chains play an important role as they are gatekeepers in terms of access to end-consumers. The national supermarket chains are considered to be a key and growing route to market for suppliers, not only in South Africa but also across the continent.

821. The national supermarket chain channel accounts for more than 50% of the suppliers’ revenues. The national supermarket chain channel is typically the most direct channel for suppliers to distribute their products to the end-consumer.

822. There are some differentiating factors in respect of the two routes to market, including: the costs of distribution and risk in servicing the different channels; national supermarket chains have their own distribution centres and tend to have a lower cost of distribution for the supplier (due to the fact that the supplier is able to transport the product to a central location); the wholesale and independent retail channel tends to have lower overhead costs than the national supermarket chains channel; and the national supermarket chains channel has lower administrative costs for the suppliers in that they have centralised systems, for example, they use central accounts which reduce transactional costs.

823. Further to the differences between the two routes to market, there are also limitations for the suppliers in distributing their products through two channels. For example, some suppliers are able to sell their products through both channels while other suppliers, by virtue of the types of products they manufacture or customers that they target, are dependent on selling almost exclusively through the national supermarket chains'
Typically, suppliers of staple food products or KVI products are able to easily sell through both channels.

8.3 BUYER GROUPS IN SOUTH AFRICA

824. The OECD defines buyer power as the “ability of a buyer to influence the terms and conditions on which it purchases goods.” Buyer power can be linked to coordination where buyers may coordinate their negotiations with suppliers by forming buyer groups. Section 17.1 in Annexure 8 provides a literature review regarding the role of buyer groups in general.

825. According to UMS, buyer groups are a mechanism used by independent retailers, lacking the required volumes or buyer power and product variety, to enter the grocery retail market and compete against the incumbent retailers. The purpose of a buyer group is to leverage the combined purchasing power of its members to obtain volume discounts or negotiated discounts and thereby collectively achieve the desired economies of scale and scope on products with the intention of resale to end-consumers.

826. Not all buyer groups exist solely to pool volume orders for its members. Some buyer groups, such as UMS, also provide other value-added services to their members such as skills development, sales support services and credit facilities.

827. The main independent buyer groups that operate in South Africa are UMS, EST and the ICC. The Massmart Group also has a buyer group called Shield. These are discussed briefly below.

Elite Star Trading Africa

828. EST is a national buyer group whose main objective is to increase the buyer power of its members. EST has approximately 80 members (excluding retailers that trade in hardware) composed of wholesalers and independent retailers across the country, and some outside the country.

829. EST offers a range of services, such as buying and negotiating on behalf of their franchised independent retailers, such as the Devland Cash and Carry group, including distributing stock. Although EST offers these services to its members, the buyer group allows for the members to negotiate directly with suppliers should they be able to negotiate better offers than those negotiated between the buyer group and the suppliers. EST members have around 149 stores in South Africa, with bigger stores having their own warehousing facilities.

Unitrade Management Services

830. UMS negotiates with large suppliers on behalf of its members in order to secure better price deals through buying in bulk as large suppliers often do not deal directly...
with small, independent retailers.\(^{570}\) UMS has in excess of 150 members in Southern Africa.\(^{571}\) According to Trade Intelligence, in 2016 UMS provided services to 160 outlets, of which 130 were branded.\(^{572}\) UMS considers itself to be a Voluntary Trading Association (“VTA”) as it provides more services than a standard buyer group would provide.\(^{573}\)

831. UMS buys on behalf of and supports independent stores that belong to one of its three retail brands: Powertrade, Food Town and BestBuy. All the three brands target lower income consumers mainly LSM 2-6, and on-sell to retailers who also target lower income end consumers.\(^{574}\) UMS members can also trade under their own brand as a Trading Partner.

832. UMS has about 100 employees, while their members employ approximately 10 to 15 thousand people.\(^{575}\)

**Independent Cash and Carry**

833. The ICC was established around 2000 – 2001.\(^{576}\) Before 2010, the ICC only catered for big wholesalers\(^{577}\) but following the entry of national supermarket chains in township areas, the ICC commenced to sign up smaller members in the buyer group.\(^{578}\) According to Trade Intelligence, in 2016 the ICC serviced 330 member outlets, with a membership base of approximately 185 independent wholesale and retail grocery members, as well as 67 Lifestyle franchise stores across food, liquor and hardware.\(^{579}\)

834. ICC supports independent retailers under the Lifestyle brand, with stores including Lifestyle Supermarket, Lifestyle Express, Lifestyle Liquor and Lifestyle Hardware & Building Supplies. ICC introduced a Lifestyle franchise which was initiated to assist black independent retailers with services such as financing, training and enhancing their ability to compete effectively in the grocery retail market.\(^{580}\)

835. ICC has a distribution centre that breaks bulk for its members\(^{581}\) and also directly distributes products to its members. With regards to trade agreement negotiations, ICC directly negotiates, usually annually, with suppliers on behalf of its members.\(^{582}\) In addition to negotiating trade terms for its

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\(^{570}\) Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 3, ls. 9 - 10. According to UMS, the buyer group was born out of the frustration of independent retailers due to all the buyer groups at the time being owned by corporates (for example, the Shield Buying Group being owned by Massmart) who were unwilling to invest in growing independent entrepreneurs. Jad Perreira, the CEO of UMS, saw an opportunity to help grow independents under UMS. Minutes of meeting between UMS and Commission, dated 8 July 2016, para 3. Its members typically include wholesalers and retailers who then on-sell to spaza shops, hawkers and smaller supermarkets. Spaza and tuck shop owners are too small to be members of UMS however, they are open to all other independent retailers.


\(^{572}\) Trade Intelligence (2016), Malls to Markets: An Introduction to South African Food & Grocery Retail, p. 94.

\(^{573}\) Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 2, ls. 27-28. UMS's business model is similar to that of a franchise but without the costs associated with a normal franchise such as loyalty fees, and franchise fees. Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 3, ls. 3-5. While UMS enables its members to buy products from suppliers and wholesalers at low prices, UMS also offers skills training and development, credit facilities, sales support services and store development. Submission by UMS at the Gauteng public hearing dated 6 June 2017, Transcript p. 3, ls. 12 - 25.

\(^{574}\) Minutes of meeting between UMS and the Inquiry, dated 08 July 2016, para 3.7.

\(^{575}\) Ibid.

\(^{576}\) Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 2:2.1. The founding members were Big Save Cash and Carry, Overland, Savemoor as well as Numain Cash and Carry. Some of the original members are no longer part of the buyer group. ICC notes that a majority of the members left the buyer group because ICC could not match the same trading terms of competing buyer groups, see Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 2:2.2.

\(^{577}\) According to the ICC during that period, the wholesale and cash and carry trade was declining due to the major entry of national supermarket chains into township and rural areas, which largely affected the competitiveness and market shares of wholesalers in these areas. Minutes of meeting between ICC and the Inquiry, dated 22 June 2016; para 2:2.1.

\(^{578}\) Ibid.

\(^{579}\) Trade Intelligence (2016), Malls to Markets: An Introduction to South African Food & Grocery Retail, p. 100.

\(^{580}\) Ibid.

\(^{581}\) Minutes of the meeting between ICC and the Inquiry, dated 22 June 2016; para 3:3.3.

\(^{582}\) Ibid, para 3:3.5.
members, ICC offers its members marketing support.\footnote{Ibid, para 3:3.12. Within ICC’s trading terms, there is a promotional allowance afforded to each member for marketing and promotional purposes. Each member has promotional broadsheets that are specifically designated for marketing purposes which is financed by suppliers.}

**Shield Buying Group**

836. Shield was founded on 3 March 1973, prior to being acquired by Massmart. The purpose of the buyer group was to provide independent retailers and wholesalers with the ability to compete with formal retail and wholesale groups.\footnote{Minutes of the meeting between Shield and the Inquiry, dated 22 August 2016, p. 1.} The number of members in Shield buyer group has varied but it is now in excess of 500 members, and the majority of whom are independent retailers.\footnote{Ibid, p. 2.}

837. Shield provides members with credit access which allows them to purchase stock to the value of the available credit and Shield guarantees payment to the supplier. The group volume is aggregated over a financial year, which gives Shield the benefit of negotiating reduced prices as it receives the same terms as the Massmart group. In essence, Shield gives its members access to pricing that they as an individual would not be able to negotiate because of volume.\footnote{Ibid. The purchases from suppliers are delivered at the cost that was negotiated. While there is no delivery charge, members are required to place a minimum order on volumes which is based on the suppliers’ minimum volume requirements because the supplier may not want to deliver to a small town for less than a certain value. These requirements are known to everybody and members normally wait until they reach the required level to meet the minimum volume requirements. Members do not order one product but rather base their order on the total value per delivery for all the products that they order through Shield. There are very few deliveries that are refused because of the low volume orders. Shield does not distribute any stock to its members. Shield collects orders and the suppliers distribute directly to the members. Shield members are able to source not only from suppliers but also from accredited Masscash stores using their account. It is the member’s choice where to buy from. Shield does not have a distribution centre of its own. The member does not pay for the delivery. The supplier delivers at the cost price that Shield has negotiated with the supplier which is published to its members. Minutes of meeting between Shield and the Inquiry, dated 22 August 2016, pp. 3-4.}

**Buyer groups amongst foreign owned independent retailers**

838. The Inquiry did not find any evidence of the existence of buyer groups in relation to foreign owned retailers. This is in contrast to the commonly held perception among South African owned independent retailers located in the township areas that foreign owned retailers, particularly Somali retailers, collectively buy goods in bulk, which, it is alleged, contributes to the success of Somali owned retail stores.

839. Despite this common perception, most Somali traders indicated that they do not use the traditional buyer group model and that they coordinate the transportation of their goods to reduce transport costs through jointly renting a vehicle or formally entering into an arrangement with another retailer (a competitor) who owns a vehicle. It is this transport practice that has created a misperception that Somali traders collaborate in buying stock when they are essentially seeking to obtain bulk discounts from wholesalers.\footnote{Minutes of meeting between Somali Community Board and the Inquiry, dated 22 February 2017, para. 2.5.2.}

840. According to Vanya Gastrow’s research on Somali traders, it is difficult to collaborate in bulk buying as each shop has varying stock requirements and each shop is managed and accounted for separately. Joint purchasing would result in confusion over payments and the division of the stock.\footnote{V. Gastrow, ‘Somalinomics: A case study on the economics of Somali informal trade in the Western Cape’, African Centre for Migration and Society Research Report,[Online]. Available at: http://wwwmigration.org.za/wp-content/uploads/2017/08/Somalinomics-A-case-study-of-the-economics-of-Somali-informal-trade-in-the-Western-Cape.pdf. [Last viewed 24 April 2019], p. 23.}

841. The only other exception where collective buying is considered is in instances where there is singular ownership of shops, e.g., one trader owns 3 shops and buys stock for all three shops collectively. In addition to this collaboration, Somali traders have indicated that they have cooperation
among themselves when they discuss prices charged by wholesalers and where it is best to buy stock due to low prices. Further, by frequenting the same shop, they develop relationships with the wholesaler managers and owners allowing them to negotiate prices.589

842. The Inquiry is, therefore, of the view that the collective purchases by foreign owned spaza shops does not fall within the same model adopted by the major South African buyer groups.

Membership in buyer groups

843. The Inquiry assessed membership in buyer groups to determine the ease of entry and exit for members.

Criteria for entry into the buyer group

844. In terms of membership, EST submitted that any independent trader who wants to join the buyer group is free to do so. However, EST noted that the potential member is required to pay a monthly membership fee and a once off joining fee of R25 000.590 According to EST, the requirements to be part of the buyer group will work against the smaller trader if their net revenue is as low as their lowest membership fees.591

845. UMS does not require a membership fee from its members. Potential members are instead offered an agreement with standard general terms.592 The policy for accepting new members into the buyer group is determined by the amount of credit available in the UMS buyer group, which suggests that as long as UMS can supply a credit facility, they are open to sign up a new member.593 594

Member’s ability to deal directly with the suppliers

846. It appears the members of buyer groups are also able to deal directly with suppliers without the involvement of buyer groups. Some of EST’s members negotiate trading terms directly with their suppliers, though infrequently.595 Shield members are also allowed to purchase goods from alternative sources without the involvement of the buyer group.596

Member’s ability to leave the buyer group

847. If a UMS member wishes to leave the buyer group, members are required to give 30 day notice of intention to terminate their membership in buyer groups.

589 Ibid.
590 Minutes of meeting between EST and the Inquiry, dated 2 September 2016; para 4.
591 Ibid, p. 10, para. 4.2. For ICC, the requirements to be met include ensuring that a member is a certified South African citizen with a registered VAT number. Minutes of meeting between ICC and the Inquiry, dated 22 June 2016, para 3:3.6. In terms of the size of the member, the ICC categorizes their members as either “big members” or “small members”. Big members need to have an approximated turnover of about R20 million per month and they pay a membership fee of approximately R65 000 a month and all rebates are passed on to the large members. Small members, on the other hand, pay a lesser membership fee, according to the size of their business, and the ICC retains 1% of the rebates (capped at R 50 000) given by suppliers.
592 Minutes of meeting between UMS and the Inquiry, dated 08 July 2016, p. 10, para. 4.3.
593 Shield’s credit policy determines with whom it does business. For a member to qualify for credit, they need to meet both Shield and its insurer’s criteria for insurable credit. The criteria are as follows: the member needs to 1) be a South African VAT registered company; 2) produce audited financial statements for the last two to three years so that Shield can establish a track record before it gives credit to a new member. If a member is able to provide sufficient guarantees in terms of personal suretyship or cash guarantees or guarantees in other forms (property, etc.), Shield is willing to waive the requirement of three years of audited financial statements. Minutes of meeting between Shield and the Inquiry, 22 August 2016, p. 4.
594 Minutes of meeting between EST and the Inquiry, dated 2 September 2016, page 4. For example, the Inquiry spoke to the manager of Devland Nelspruit, a member of EST, who explained that certain products were difficult to source through a buyer group (for example washing powder, soft drinks, and rice). By way of illustration, he indicated that OMO washing powder does not sell well in Mpumalanga but Surf washing powder does; and Surf does not sell well in Gauteng. Similarly, Squeeza, which is a very popular soft drink in Mpumalanga is unknown in Johannesburg. Devland Nelspruit also has a local producer of rice called Pesto/Festive rice, however Pesto is not popular in Johannesburg. Shaya is a popular local brand of rice in Nelspruit that is made by a local farmer, however Shaya is not popular in Ermelo or Komati. Minutes of the meeting between Devland Nelspruit and the Inquiry, dated 05 September 2016, para 23.
595 Massmart’s submission dated 29 August 2016, p.17, para. 3.4.4.
membership. ICC signs membership agreements with its members, but none of its members are bound to stay in the group in the event that they desire to switch to an alternative buyer group.

Evidentiary insights from buyer group membership criterion

848. In summary, it appears that membership in South African buyer groups is fluid and the requirements to enter a buyer group are not insurmountable for most independent retailers. It is noteworthy that in terms of dual membership, it is not typical for a member to belong to two different buyer groups at the same time.

849. Members are also not locked into belonging to one buyer group and can relatively easily cancel their membership and join another buyer group.

Member’s views of the significance of buyer group

850. The IBC, a buyer group that has partnered with the UMS buyer group, submitted that it procures about 60% of its stock through the buyer group and the rest independently. Save Group submitted that through the buyer group, it is able to negotiate better deals with suppliers.

851. Prior to co-founding the UMS buyer group, Super Save ("SSP") was a member of the Shield buyer group. SSP considers UMS to source the best discounts and offers more innovative products and incentives.

852. Take n Pay submitted that the benefits it realised from joining UMS was the significant countervailing power of the buyer group.

853. Goseame, a member of the UMS buyer group, submitted that some of the benefits of joining the buyer group include: members can buy goods at a lower price than they otherwise would; members are offered numerous discounts which they never had before; members can send back stock and obtain a refund; members are able to negotiate prices; and communication is much better.

854. Devland Cash and Carry Nelspruit ("DCCN"), a member of the EST buyer group, submitted that the advantage of belonging to a buyer group is the ability to procure significant volumes of products, particularly in times of shortages. DCCN also submitted that EST is better suited to negotiate deals for the entire Devland group.

855. Yarona Cash and Carry ("Yarona"), also a member of the EST buyer group, submitted that buyer groups are important for independent retailers as they negotiate better deals on behalf of their members.

856. According to Bibi Cash and Carry ("BCC"), a member of the ICC buyer group, being part of a buyer group offers some protection to the members as they are able to receive better pricing, among other benefits.

857. Big Save submitted that it joined the ICC buyer group because it helped it realise efficiencies that it would not have achieved

597 Ibid.
598 ICC submits that a member who desires to switch or leave the group would only have to file a 30-day notice and there are no penalties charged for leaving the buyer group. See minutes of the meeting between ICC and the Inquiry, dated 22 June 2016, para 4:4.4.
599 Shield’s and ICC’s membership agreement explicitly prohibits members from belonging to another buyer group. Shield submits that its primary condition of a single membership is because it wants to protect its intellectual property. Similarly, the ICC also prohibits dual membership, ICC notes that the risk of allowing a dual membership is that it gives members the ability to share sensitive information with a competitor. See minutes of meeting between ICC and the Inquiry, dated 22 June 2016, para 4:4.4 and 4:4.9.
600 Minutes of meeting between Save Group of Companies and the Inquiry, dated 11 April 2017, p.1.
601 The Save Group acknowledged that it does sometimes negotiate better on its own depending on the supplier and the collective bargaining strength of the buyer group. Ibid, p.3.
602 Minutes of meeting between Super Save and the Inquiry, dated 16 August 2016, p.2, para. 3.1.
603 Minutes of meeting between Take n Pay and the Inquiry, dated 16 August 2016, p.2, para. 3.1.
604 Minutes of meeting between Goseame Limpopo and the Inquiry, dated 22 August 2016, paras 4-5.
605 Minutes of meeting between Devland Cash and Carry Nelspruit and the Inquiry, dated 05 September 2016, p.3, para. 22.
606 Minutes of meeting between Yarona Cash and Carry and the Inquiry, dated 12 July 2016, p.5, para. 6.1.
607 Minutes of meeting between Bibi Cash and Carry and the Inquiry, dated 18 March 2016, p.4, para. 5.4.
on its own. Big Save submitted that the consolidated purchasing power of a buyer group enabled it to negotiate lower prices for its members. As a result, this enables members to be competitive in the market they operate in.

858. Maxmart, a member of the Shield buyer group, submitted that it enjoys discounts and product offerings that Masscash negotiates on its behalf.

859. Super Save Malelane ("SSM"), also a member of the Shield buyer group, submitted that it joined the buyer group in order to benefit from a wider basket of products and favourable prices. In addition, it submitted that the buyer group allows it to keep up with product trends through procurement of new products and participation in trial products.

860. The main reason for Riviera Cash and Carry ("RCC") joining the Shield buyer group was because it was difficult to open up an account with the big suppliers. RCC also submitted that the buyer group negotiates deals and rebates with suppliers which RCC would not be able to do on its own.

861. Limpopo Cash and Carry ("LCC"), another member of the Shield buyer group, submitted that the benefits it enjoys include trade discounts; and marketing services in the form of pamphlets as well as advertising space in the weekly local newspaper.

8.4 PRELIMINARY FINDINGS REGARDING BUYER GROUPS

862. The Inquiry found that:

862.1 the main independent buyer groups that are operating in South Africa are UMS, EST, ICC and Shield service members (generally traditional and hybrid wholesalers as well as independent grocery retailers) who operate in the non-urban areas;

862.2 although it appears that there are no formal foreign owned buyer groups, foreign small traders tend to collaborate in respect of transport arrangements and negotiate their own discounts with wholesalers.

863. In terms of the efficiencies arising from the impact of buyer groups and the extent to which these are passed onto consumers, the Inquiry found that:

863.1 buyer groups enable independent retailers that lack scale to negotiate more favourable trading terms with suppliers to better compete in the grocery retail market; and

863.2 members of buyer groups realise better pricing for their product purchases as a result of consolidated purchasing power which enables the members to price their products cheaper than they would be able to absent the buyer groups, which ultimately benefits the end consumers.

864. On the positive and negative effects of buyer groups on the ability of small and medium sized retailers to compete in the sector, by either reducing or increasing the barriers faced by them to enter into or expand in the grocery retail sector, the Inquiry found that:

864.1 there are positive effects of buyer groups on the ability of small and medium sized retailers to compete effectively in the sector;

864.2 belonging to a buyer group reduces the barriers that the small and medium sized retailers face as they are able to benefit from better trading terms obtained by the buyer group and therefore purchase at more favourable prices;

864.3 some buyer groups also offer credit to their members which assists with cash flow and reducing the financial barriers
that are faced by small and medium sized retailers; and

864.4 membership in buyer groups is fluid and the requirements to enter a buyer group are not insurmountable for most independent retailers, members are not locked into belonging to one buyer group and can relatively easily cancel their membership and join another buyer group which also allows them to take advantage of benefits that they find in other groups.

865. The Inquiry was not able to establish the impact of buyer groups on employment due to the unavailability of data from the buyer groups.

866. In summary, buyer groups are an essential component of the supply chain for small independent retailers as they permit these retailers to benefit from greater scale in purchasing, which ensures better pricing. However, the extent to which such benefits enable effective competition with the national retailers depends on the bargaining power of wholesalers relative to the national supermarket chains which we explore next.

8.5 SUBMISSIONS IN RESPONSE TO THE PRELIMINARY FINDINGS AND RECOMMENDATIONS

867. Regarding the Inquiry’s assessment of buyer groups, stakeholders affirmed the view that buyer groups provide beneficial scale and price outcomes for small and independent retailers as well as wholesalers. However, some suppliers indicated that there are instances where they have to deal with buyer groups and their members separately and that this presented challenges for their operations.

868. As recognised in this Final Report, not all buyer groups provide the same level of service to their members and suppliers. While some buyer groups simply combine the volume orders of their members to negotiate better trading terms, other buyer groups provide value added services such as central warehousing and store deliveries, skills development, sales support and credit facilities.613 Some large suppliers noted a preference for buyer groups that play a more active role in dealing with their members. This is primarily related to the suppliers wanting to avoid negotiating volume-based rebates with buyer groups yet still having to approach individual members to agree on other rebates and promotional activity.614

8.6 INQUIRY’S VIEWS

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

870. Hence, the Inquiry recommended strengthening the linkages between buyer groups, wholesalers and small and independent spaza shops to enhance their competitiveness. The Inquiry noted that steps have already been made to improve these linkages such as, those of Spaza Banner Stores which are affiliated with independent wholesalers operating in the same geographic area.615 Promoting the existing and future Spaza Banner Stores around South Africa via the proposed seed fund is one means of strengthening vertical efficiencies in the wholesale channel. [K] also submitted that certain buyer group
models, such as the voluntary trading association model employed by UMS, are more conducive to providing value to both members of the buyer group and suppliers.\textsuperscript{616}

871. However, as identified in Chapters 4 and 6 of this Report, the Inquiry has identified that these buyer groups rarely reach down to the level of spaza shops due to their size and informal nature. There is, therefore, a need to strengthen such platforms and expand the scope of their operations to include spaza shops. It is for this reason that the Inquiry supports the effective incorporation of spaza shops into buyer groups and larger wholesale operations in order to assist them to realise economies of scale and scope in purchasing. This would include finding effective means to pool the purchasing of numerous spaza shops in the same area such that the distribution costs are also reduced.

875. The ability of national supermarket chains to extract more favourable terms and conditions from suppliers is said to be unfair and to the detriment of smaller competing retailers and those operating through the wholesale channel, including wholesalers, independent retailers and informal retailers, that do not obtain such favourable terms. It is argued that it also gives the national supermarket chains a pricing advantage over the other retailers who could be driven from the market.\textsuperscript{617} It has also been claimed that suppliers are forced to increase the selling price of their product to make up for the rebates, discounts and other incentive schemes that are provided to the large national retail chains. Alternatively, suppliers have to provide unfavourable trading terms to their smaller retailers to make up revenues, which makes it difficult for the smaller retailers to compete against the national supermarket chains – the so-called waterbed effect.\textsuperscript{618} The Inquiry also received allegations that some buyer groups also receive more favourable trading terms than others.\textsuperscript{619} However, following an initial investigation by the Commission, the matter was non-referred.

876. Some submissions\textsuperscript{620} alleged differential treatment in respect of the rebates paid to the national retail chains and buyer

\textsuperscript{616} Minutes of the meeting between \([\text{X}]\) and the Commission, dated 8 August 2019, p. 4, ls. 15 - 20.
\textsuperscript{617} \([\text{X}]\) submission dated 29 November 2016, p.2, para. 1 – 6; Minutes of meeting between \([\text{X}]\) and the Inquiry dated 02 September 2016, pp. 7 – 8, para. 28 – 30 and submission by EST at the Pretoria (Gauteng) public hearing dated 5 June 2017, Transcript pp. 30 - 36. See also R. das Nair, S. Chisoro and F. Ziba, The implications for suppliers of the spread of supermarkets in Southern Africa, Development Southern Africa, vol.35, no. 3, 2018, pp. 4 &15.
\textsuperscript{618} Submission by EST at the Pretoria (Gauteng) public hearing dated 5 June 2017, Transcript pp. 30 – 36.
\textsuperscript{619} \([\text{X}].\)
\textsuperscript{620} Minutes of meeting between \([\text{X}]\) and the Inquiry, dated 26 September 2017.
groups. The Commission has previously dealt with loyalty rebates in the matter against SAA and it also previously examined the role of rebates and buyer power in the Supermarkets Investigation.


Ibid.


ICN Merger Guidelines, April 2006, p.42.


881. According to Dobson et al. (2000) buyer power may exist in isolation, where the selling power of retailers is limited by intense retailer competition. This might be the case, for example, where retailing is highly fragmented on the selling side but coordinated (through buyer groups) on the buying side. But often it might be that the buyer power of retailers is linked with their selling power, where one power reinforces the other, and thus the effects of one on the other and their combined influence on economic welfare take on some importance.

882. Doyle and Inderst (2007) stated that in settings where relatively few suppliers and buyers interact, buyer power should not be seen as the strategic withholding of demand so as to reduce a uniform wholesale price, but rather the exercise of buyer power should be seen as leading primarily to the realisation of individual discounts.

883. Dobson et al. (2000) found that apart from the ability to extract discounts on transactions from suppliers, buyer power may manifest itself in the contractual obligations (as vertical restraints) which retailers may be able to place on suppliers. These could take a number of forms such as listing charges (where buyers require payment of a fee before goods are purchased from the listed supplier); slotting allowances (where fees are charged for store shelf-space allocation); retroactive discounts on goods already sold; buyer forced application of
most favoured nation ("MFN") clauses (with contractual obligations for the supplier not to sell to another retailer at a lower price); unjustified high contribution to retailer promotional expenses; and insistence on exclusive supply.628

884. The most important fact to note in relation to these definitions is that the balance of negotiating power between a buyer and seller is premised on the outside options available to each party. Competitive discipline on the upstream suppliers arises through the buyers having options to purchase from alternative sources. Buyer power is further enhanced if the supplier does not have alternative sources of demand.

885. Buyer power can be used to drive down the price of products purchased from suppliers,629 though, the extent to which the gains realised from such price reductions are passed onto customers is uncertain. Dobson and Chakraborty (2008) argued that even if retailers possess very significant buyer power, it does not automatically follow that this would be detrimental to economic welfare. In particular, the exercise of buyer power may allow a retailer to obtain discounts, but competition at the retail level could then oblige it to put these benefits back into the market through lower prices or an improved retail offer (such as better retail service or improved store amenities). Furthermore, this might benefit more than the retailer’s own customers, since the competitive response by retail rivals might then be to lower their prices and otherwise improve their retail offer.630

886. Similar to Dobson and Chakraborty (2008), Doyle and Inderst (2007) found that in an industry characterised by successive mark-ups, the exercise of buyer power can decrease the mark-ups commanded by the next level in the supply chain. As a result, this generally reduces the marginal purchasing price of goods and services and not the final retail price. However, the authors argue that in the presence of vigorous competition at the retail level of the value chain, a discount to one buyer may force all retailers to lower their selling prices and thus give rise to consumer-welfare enhancing outcomes.631

887. This benign view of buyer power is said to be most applicable when suppliers can afford to give these discounts without negatively impacting their own welfare to such a degree that it undermines their own competitiveness, efficiency or incentives to invest and innovate; i.e., lower consumer prices at no real economic cost.632

888. Notwithstanding the potential benefits of buyer power, there are instances in which retailers’ buyer power may adversely affect competition and eventually harm end consumers. According to Dobson and Chakraborty (2008), there are three particular ways in which retailers may exploit their buyer power. First,633 retailers may withhold their demand as to reduce the purchase price and generate a better margin on the sale of these products. If the retailers also have selling power vis-à-vis the final consumers they serve, they can sell the reduced quantity purchase at higher prices, in which case consumers pay higher prices and purchase a lesser volume of such

628 Ibid.
629 Ibid, p. 10.
630 In other words, buyer power can potentially act as a benign countervailing force spurring on supplier competition and encouraging greater supplier efficiency, with the retailers’ buying muscle used to negotiate discounts from suppliers which are then (partially if not fully) passed on to improve consumer welfare. See P. Dobson and R. Chakraborty, ‘Buyer power in the U.K. groceries market’, The Antitrust Bulletin, vol. 53, no. 2, 2008, p. 343.
633 This is applicable in a “market framework” where there are numerous suppliers, but all retailers pay their suppliers a single “market price”.
goods. Second, buyer power may suppress investment by suppliers in process and product innovation as well as maintenance if it reduces the suppliers’ expected returns from such investment. Third, if the terms of trade to retailers with less buyer power worsen when retailers with strong buyer power obtain better terms (referred to as the waterbed effect), then the offer to final consumers by retailers with less buyer power may also worsen.

889. Dobson et al. (2000) proposed that the economic welfare effects arising from the exploitation of buyer power are less certain as suppliers (producers) will generally suffer if the prices they obtain for their goods are reduced, while consumers might gain if lower intermediate (transfer) prices result in retailers setting lower final (retail) prices, so the net economic effect is not clear a priori.

The economic test for buyer power

890. A traditional method of assessing buyer power is where the size of the buyer is assumed to be a good measure of buyer power. However, a comparison of the fraction of a party’s total business for which the other side accounts will not adequately reflect its bargaining strength. Generally what constitutes buyer power is not so much the percentage of current business that a buyer or seller would lose, but whether the respective party can find equally attractive opportunities to buy or sell to replace that which has been lost. This means that the ability of a buyer to acquire more favourable terms of trade depends on its relative bargaining strength compared to suppliers and competing buyers. If a buyer can easily switch to another supplier or market, then it may be in a better position to demand discounts. A buyer can do so if its total size on the market is relatively large, or if it acts as a gatekeeper to a substantial part of the supplier’s potential market and thus can thus not easily be side stepped.

891. Another indication of buyer power may be when the outcomes of trading negotiations between a supplier and a retailer result in significantly less favourable trading terms for the supplier compared with the trading term outcomes of the same supplier with other retailers.

892. In grocery retailing, all but a few multinational brand manufacturers may account for only a very small fraction of a large retailer’s business. But this does not necessarily indicate that the retailer has more power vis-à-vis these suppliers than vice versa; if a retailer delists a strong brand, shoppers may either switch products or purchase that good elsewhere. Whether the retailer stocks only a few or a plethora of different products should then only be important to the extent to which it influences total store traffic, consumers’ inclination to switch stores rather than products, and the retailer’s overall loss in margins if it loses some customers. This illustrates that in assessing buyer power one cannot merely rely on using percentage measures based on a supplier’s or retailer’s overall business or profits.

893. When a retail market is concentrated, suppliers tend to depend largely on the retailers as the small number of retailers become the gatekeepers without whom no supplier can operate. Suppliers will also tend to depend largely on retailers

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634 This may arise in a “market framework” where there are numerous suppliers but all retailers pay their suppliers a single “market price”, as well as in a “bargaining framework”, which refers to a situation where suppliers are relatively concentrated and prices and other terms are negotiated bilaterally.

635 This is applicable in in a “bargaining framework”, which refers to a situation where suppliers are relatively concentrated and prices and other terms are negotiated bilaterally.


639 Ibid.

when there are high barriers to entry and expansion in the retail market, as it becomes difficult for the suppliers to find alternatives (outside options) by way of integrating into the downstream market or even sponsoring new entry.

894. Buyer power exists where the buyer has the ability and incentive to:

894.1 demand the trading terms and discounts it requires from the supplier given its outside options (which may include other suppliers that can supply the product, and or the retailer can produce the product itself);

894.2 delist a supplier’s brand without its customers switching to other retailers;

894.3 delist a supplier’s brand without losing traffic in the retailer’s store due to the unavailability of that specific supplier’s brand;

894.4 transfer risks that are associated with conducting its business to the supplier; and

894.5 reduce or credibly threaten to reduce purchases from the supplier.

895. The use of buyer power is largely dependent on the buyer knowing that: (i) it is the gatekeeper to the market and an important customer to the suppliers; (ii) the supplier cannot afford to lose its business; (iii) the buyer has alternative options other than the seller; and (iv) the buyer can enter or sponsor entry in the upstream market where the suppliers are active.

896. Given the market structure of the grocery retail sector, which is characterised by the presence of a few large national supermarket chains, the focus of this analysis will be on the bargaining power dynamics between suppliers of FMCG and these retailers. Further, the Inquiry will consider whether there exists differential treatment in respect of trading terms between the national supermarket chains and the wholesale channel broadly defined.

8.8 THE ASSESSMENT OF BUYER POWER

897. The assessment of buyer power presented below is two-fold. First, the Inquiry considered the existence and exercise of buyer power at an aggregate level, taking into account the dynamics between the national supermarket chains and the sizes and types of suppliers. Second, the Inquiry considered a more disaggregated, product-specific assessment of buyer power, particularly considering those products that were to be amongst the highest selling product lines in spaza shops.

898. The Inquiry considered the importance of the national supermarket chains to suppliers by assessing (i) the strategic importance of the formal retail channel in the distribution of FMCG products and (ii) the revenue contributions of the national supermarket chains to suppliers as a proportion of the suppliers’ overall business. Given that the negotiations of trading terms between suppliers and the national supermarket chains are primarily based on setting rebates applicable to products for a particular period, the Inquiry focussed its analysis on rebates. It sought to determine whether (i) national supermarket chains are able to extract more favourable trading terms from suppliers; and (ii) there is differential treatment between the national supermarket chains and buyer groups.

899. The Inquiry also considered the submissions made by market participants which largely reflected the views of suppliers about rebates and the related negotiation process. The Inquiry understood that the national supermarket chains consider these rebates to be an essential part of their operations. Lastly, the Inquiry sought to demonstrate the impact of rebates on the final price of goods sold by the national supermarket chains by using illustrative examples submitted by market participants.

900. We now turn to consider each of these factors.
Market structure, concentration and barriers to entry

901. As indicated in the background section, the grocery retail sector is characterised by a significant number of suppliers of FMCG products and a few national supermarket chains in the formal retail channel as well as a number of firms active in the broader wholesale and independent retail channel.

902. The national supermarket chains are vertically integrated in that they act as both distributor and retailer of groceries. This vertical integration appears to confer some competitive advantage as there is recognition that such strategies yield efficiencies in the distribution system and savings for suppliers.\textsuperscript{641} The national supermarket chains enjoy compensation for this vertical integration in the form of rebates and services they require from the suppliers. The Inquiry noted that this vertical integration is not unique to the national supermarket chains as it appears that there are some buyer groups that have also adopted this strategy and established their own central distribution centres, for example, some of the buyer groups have members who also own distribution centres.\textsuperscript{642}

903. The available evidence indicates that the formal grocery retail sector is concentrated with Shoprite, Spar, Pick n Pay and Woolworths accounting for a significant portion of the market.

904. The grocery retail sector is characterised by high barriers to entry, particularly in the national supermarket chain channel. The Inquiry is of the view that such a market structure alters the bargaining framework between the national supermarket chains and the independent retailers to the disadvantage of the latter as suppliers of FMCG appear to have limited outside options for the distribution of their products.

Contribution to suppliers’ turnover

905. As discussed above, the percentage of the suppliers’ current business that a retailer accounts for is not enough to conclusively indicate buyer power (or lack thereof), but it is important in that the bargaining strength of a retailer is reinforced by its size relative to its competitors (or even the supplier).

906. In section 8.2 above, the Inquiry established that the national supermarkets chain channel is the primary route to market in the South African grocery retail sector, reinforcing the view that this channel is of strategic importance for suppliers who wish to sell their products to consumers. This is also borne by the revenue contributions of the national supermarket chains to the business of FMCG suppliers. Submissions by market participants indicated that this channel contributes more than 50% of the suppliers’ total revenues.

907. In addition, suppliers such as [\textasteriskcentered], whose business largely derives the bulk of its sales from the wholesale channel,\textsuperscript{643} still consider the national supermarket chain channel to be important because of the large national footprint they possess. [\textasteriskcentered] also noted that the national supermarket chains have a centralised business model\textsuperscript{644} and that even “decentralised” groups such as [\textasteriskcentered] can instruct their stores to stock a supplier’s product.\textsuperscript{645}

908. The Inquiry solicited the views of the suppliers as to the implications of losing one of their top retail customers. [\textasteriskcentered] submitted that the risk of losing its largest customer (Shoprite) would be more material than losing a wholesale customer.\textsuperscript{646} While some suppliers submitted that they have

\textsuperscript{641} These savings are seen through the distribution centre rebate suppliers offer to the national supermarket chains for these savings.

\textsuperscript{642} For example, IBC and ICC Buyer Groups - Trade Intelligence (2016) Malls to Markets: An Introduction to South African Food & Grocery Retail, p. 94 and Minutes of meeting between ICC and the Inquiry, dated 22 June 2016, para 3.3.

\textsuperscript{643} [\textasteriskcentered] submission dated 14 May 2018, p. 4, para. 4.2.1.

\textsuperscript{644} The supplier noted that Spar was different in this regard.

\textsuperscript{645} Minutes of the meeting between [\textasteriskcentered] and the Inquiry, dated 15 May 2018, p. 2, para 15.

\textsuperscript{646} Submission by [\textasteriskcentered] at interrogations dated 15 February 2018, Transcript p. 97 ls.21 – p.98, l. 5.
tried to diversify and sell more products into the wholesale channel\(^{647}\) to avoid over-dependence on the national supermarket chains, they still rely on the retail channel in order to remain profitable. [\(\star\)] observed that while it has been trying to diversify its customer base and reduce the risk of heavily relying on the retail channel, this has been difficult given the national presence of the retailers.\(^{648}\) Another medium-sized supplier, [\(\star\)], explained that the retail route to market is essential given the sales volumes that are achieved via their national supermarket chains channel customers.

909. This evidence confirms that the national supermarket chains form an integral part of the supplier’s business, as evidenced by the significant levels of revenue contribution derived from them. Indeed, the strategic importance of the national supermarket chains as a primary route to market also serves to further strengthen their indispensability to suppliers of FMCG placing the national supermarket chains in a relatively stronger bargaining position as opposed to the suppliers of FMCG, but also relative to the wholesale channel overall.

910. We now turn to consider the bargaining dynamics between suppliers of FMCG and their customers. As previously indicated, these bargaining dynamics primarily manifest themselves in the context of negotiations on trading terms, particularly the rebates that customers (i.e. national supermarket chains and buyer groups) require from suppliers. Before considering this assessment, we set out the context of the different types of margins that are at play in this sector.

### The role of front and back margins (rebates) in determining the price of products

911. Prior to the purchasing of any product from a supplier, retailers will enter into a trading term agreement which includes, among others, the agreed rebates, allowances and other incentive schemes in respect of the products sold. These are collectively referred to as the back-end margin that a retailer will enjoy as a result of its dealings with a supplier.\(^{649}\) It is important to note, however, that retailers also derive an additional margin based on the differential between the invoice price (including any on-invoice discounts) paid to a supplier for the acquisition of a product and the retailer’s selling price.\(^{650}\) Cumulatively, the combination of a back-end and front-end margin yields what is referred to as the net margin realised by retailers in respect of products sold.\(^{651}\)

912. It is also noteworthy that discounts are different from the rebates in that they are on the invoice so that the customer can see the value of the discount. Further, unlike the other trading terms, discounts are negotiated frequently, depending on the product in question.

913. Stakeholders submitted that in setting their selling prices they need to understand what are their back-end and front-end margins.\(^{652}\) The rebates form part of the national supermarket chains’ back-end margin, which they use to cover their operational costs.\(^{653}\)

### The negotiation process and types of trading terms

914. The trading terms are applied to all purchases irrespective of the actual cost

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\(^{647}\) [\(\star\)], [\(\star\)], [\(\star\)], [\(\star\)].

\(^{648}\) Minutes of the meeting between [\(\star\)] and the Inquiry, dated 04 May 2018, para 14.

\(^{649}\) Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 38, ls. 9 - 16; See also the submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, Transcript p. 12, ls. 25 - 28; See also the submission by \([\star]\) at interrogations dated 15 February 2018, Transcript pp. 60 - 61.

\(^{650}\) See submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 38, ls. 13 - 16.

\(^{651}\) See submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, Transcript p. 12, ls. 25 to 27.

\(^{652}\) Ibid, Transcript p. 15, ls. 1-5.

\(^{653}\) Submission by [\(\star\)] at the interrogation dated 24 January 2018, Transcript para 84. See also submission by Massmart at the Gauteng public hearing (open session) dated 30 October 2017, p. 27, ls. 27-31.
price of products negotiated by the relevant divisions. While trading terms broadly are applied by all suppliers, the degree of how favourable the trading terms are and whether specific ones are given at all will differ per supplier/retailer based on their bargaining strength and importance.

915. The trading terms, meaning rebates, allowances and incentives that are demanded by the national retailers, may be classified in terms of guaranteed rebates and growth linked rebates. The guaranteed rebates are those rebates that the retailers require and receive from the supplier with no reciprocal activity. The growth rebates, on the other hand, are the rebates that are given to retailers once they achieve a certain amount of growth in sales for the specific suppliers’ products.

916. [X] submitted that an important aspect of trading term negotiation relates to the proportion of guaranteed rebates versus growth rebates that a retailer receives. According to [X], the construct of the national supermarket retailers’ rebate structure is guaranteed and higher in quantum as compared to [X]’s structure which is variable in nature, depending on its sales performance. 654

917. Suppliers are generally responsible for all activities related to their products until sale to end consumers, including the costs of the retailers’ private standards and requirements.

918. Suppliers interact with the retailers on a frequent and ongoing basis. Depending on the type of product sold by the supplier, negotiations around the price of the product can occur on a monthly or bi-monthly basis and are usually provided on a deal sheet. Retailers and suppliers may also approach each other on an ad-hoc basis to discuss special promotional campaigns.

919. In the sections below, the Inquiry describes and discusses some of the rebates that form part of the trading terms between the suppliers and the retailers. A more detailed discussion of the rebates can be found in sections 17.2 and 17.3 in Annexure 8 contained in a table which provides the suppliers own explanation of certain rebates.

**Basic rebate**

920. In order for suppliers to do business with the national supermarket chains, suppliers are required to pay the national supermarket a basic rebate. The Inquiry understands that the basic rebate is for the ability to do business with the national supermarkets: “something that allows you a seat at the table to negotiate with retailers, to do business through retailers and allow your products on shelves.” 655

921. Shoprite submitted that a basic rebate is for the cost of doing business. 656 [X] submitted that the basic rebate is that portion of margin that is guaranteed. 657 According to one of the suppliers, 658 a basic rebate is a historic green fee. Suppliers do not receive any reciprocal benefits in return for paying the base rebate. Another supplier submitted that the basic rebate is for getting their products into the retailers’ store. 659

**Listing fees**

922. Listing fees are allegedly used to manage the costs of adding new products onto the shelves of supermarket stores. 660 Previously, listing fees were charged in the grocery retail industry in order to afford a supplier an opportunity of having a product on shelf. However, the term “listing fees” has evolved over the years and is now apparently related to work that has been done in managing

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654 Minutes of meeting between [X] and the Inquiry, dated 26 September 2017, p.6, para. 33 – 34.
656 Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 5, ls. 29 – 30.
658 Submission by [X] at interrogations dated 15 February 2018, Transcript p. 12, ls. 3 - 5.
660 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript p. 20, para. 73.
space profiles. Not all suppliers pay a listing fee as some prefer to promote their products differently. For example, [X] prefers to do its own launch support. Similarly, not all retailers charge listing fees.

Advertising allowance

923. The purpose of an advertising allowance/fee is apparently for the supplier to contribute towards the retailer's costs for promoting or advertising the products of that specific supplier. This allegedly enables retailers to plan for their advertising and marketing campaigns in advance. The advertising allowance is captured as a guaranteed minimum amount in order to ensure that the advertising spend is covered.

Settlement discount

924. A settlement discount is provided to retailers to incentivise earlier settlement of their accounts. Certain suppliers submitted that they are not obligated to pay settlement discounts, and do not have any settlement discounts with the retailers.

Distribution centre / warehousing allowance

925. The distribution centre or warehousing allowance is the payment made by suppliers to the retailers for re-distributing products from their warehouses/distribution centres to their respective stores. Practically, suppliers deliver to the retailer's central distribution centre (as opposed to the retailer's individual stores) and the retailer assumes the responsibility for delivery to its respective stores. Suppliers submitted that there are productive efficiencies realised when products are delivered to a central distribution centre as opposed to delivering to all the individual stores of a retailer across the country.

Category management and data sharing agreements

926. Category management ranges from suppliers buying access to the national supermarket chain's sales data for its products, to a holistic discussion between the suppliers and retailers regarding the specific categories that suppliers operate...
Category management is considered by the larger suppliers as a good methodology for ensuring healthy collaboration between manufacturers and retailers. However, smaller suppliers do not necessarily share this view, believing that it may be used by larger suppliers to control the category to the detriment of smaller suppliers.

Merchandising services allowance

The Inquiry found that suppliers generally employ teams of merchandisers to stock their products on the national supermarket chains' shelves. However, national supermarket chains prefer to use their own merchandisers or use a third-party merchandiser to stock the shelves.

Volume or growth rebate

The growth rebate is a performance-based rebate and may be expressed in terms of a percentage or monetary value based on the national supermarket chain achieving specified volume growth targets.

Store opening promotional allowance

Store opening allowances are rebates that suppliers are required to pay to the national supermarket chains in the advent of new store openings or refurbishments in existing stores.

Swell allowance

The swell allowance is considered a contribution by suppliers towards damaged products in the store.

Category management also includes a research component that indicates and informs the best way to layout a store, the best promotions to have, or the best ranges to stock that are ultimately beneficial to the shopper. The inquiry submitted that store opening allowances are categorised as guaranteed payments, which are termed compulsory.

Merchandising services are mostly in relation to packing, shelf health, and removing expired products. According to Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript p. 14, para 42.

Category management is said to be mainly in an advisory capacity in that the supplier gives suggestions on how best to run the retailers' categories. This was a submission by [X] at the interrogation dated 15 February 2018, Transcript pp. 1-4, p. 8, ls. 19-24 and p. 9. See also submission by [X] at the interrogation dated 02 February 2018, Transcript p. 54; [X] submitted that the data obtained directly from retailers is immediate and more frequent than data bought from data companies, see submission by [X] at the interrogation dated 24 January 2018, pp. 22-23, para 120.

Category management is considered by the larger suppliers as a good methodology for ensuring healthy collaboration between manufacturers and retailers. [X] indicated that all retailers get the same percentage for category management. However, it does not pay category management rebates to buyer groups, as Cash and Carries as they tend to service traders and not the end consumer. For [X] it is more about how the Cash and Carries are looking for shelf efficiency effectively because of high stocked products. See Ibid; Lines 13-24, p. 25. Further, it was submitted that the wholesale channel does not receive category management rebates due to its perceived inability to provide reliable data on customer purchases.

See submission by [X] at the interrogation dated 02 February 2018, p. 51, ls. 16-24, for more details.

Some suppliers claimed that although they provide volume-based rebates, they have steered away from them. Some of the listed reasons for this were that the suppliers' products are experiencing growth on their own and that the retailers prefer to have guaranteed rebates for accounting reasons. Minutes of the meeting between [X] and the Inquiry, dated 09 May 2018, para 13.

[X] submitted that store opening allowances are categorised as guaranteed payments, which are termed compulsory. [X] also submitted that they are required to contribute towards the opening of new stores as well as refurbishments done in the national supermarket chain stores. [X] is of the view that the store opening allowances are required by the retailers as an incentive for them to upgrade the store and make the shopping experience more pleasant in order to attract more consumers. The representative of [X] was however not sure of the rationale behind the allowance. See the submission by [X] at the interrogation dated 02 February 2018, p. 15, ls 13-15 and p.16, ls 2-10 for more detail. According to Shoprite, the supplier benefits from the excitement of consumers for the new store and the suppliers are then given a platform to promote their products in the new store. Shoprite submitted that it receives refurbishments or store opening contributions from its suppliers as part of promotional support. Shoprite believes that the supplier also benefits when a new store opens, or when it is refurbished. Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 11, ls. 11 – 17.
and returned products that are centrally distributed.\textsuperscript{677} Some suppliers submitted that the value of a swell allowance is that rather than having to dispute every damage, suppliers pay a percentage as an allowance upfront.

\textbf{Other rebates}

931. The Inquiry also found that there are other rebates that are not common across all suppliers and retailers. A discussion of these rebates may be found in section 17.2 of Annexure 8.

\textbf{Aggregate rebate analysis – differential treatment between retailers and buyer groups}

932. This section considers whether there is differential treatment on rebates between the national supermarket chains channel and the wholesale channel (broadly comprising wholesalers, buyer groups, and independent retailers). The Inquiry also sought to determine whether such differential treatment, in the absence of objective justification, could be ascribed to the exercise of buyer power. The assessment conducted compares the rebates paid by suppliers to firms active in the two different channels and evaluates whether or not there are differences in the rebates, as alleged by some buyer groups.\textsuperscript{678}

933. The Inquiry requested suppliers to submit their rebate data for the top ten retail customers and the top five products sold for each of the years 2013 to 2017.\textsuperscript{679}

934. [\text{\textbullet}].

935. Table 8.1 indicates that [\text{\textbullet}] and [\text{\textbullet}] receive above average rebates from most of the suppliers. Interestingly, although generally [\text{\textbullet}] contributed the most revenue to the suppliers, the rebate data indicate that three suppliers offer [\text{\textbullet}] larger rebates, even though [\text{\textbullet}] is only the second largest retailer. [\text{\textbullet}] provides a higher rebate to [\text{\textbullet}].

\textsuperscript{677} According to [\text{\textbullet}] swell allowance covers everything that is damaged between receipt and shelf but excludes expired stock and factory faults, see submission by [\text{\textbullet}] at the interrogation dated 15 February 2018, transcript p.73 Is 15 - p.74 l 22; See also [\text{\textbullet}]’s submission dated 03 July 2017, p. 53, para. 153.5; Shoprite explained that it makes provisions within its business to cater for costs associated with any damages that might occur on the stock procured. Shoprite takes into account various other factors, apart from damages, and these factors include returns, wastages as well as the safe disposal of the supplier’s product, for which this fee is charged to the supplier, see the submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 7, para 20.

\textsuperscript{678} Minutes of the meeting between [\text{\textbullet}] and the Inquiry, dated 26 September 2017.

\textsuperscript{679} It is important to note that not all suppliers were able to submit the data precisely as the Inquiry had requested. For example, [\text{\textbullet}] and [\text{\textbullet}] could only provide rebate data that is aggregated and applies to all of their products and not for separate products. Mid-sized suppliers, such as [\text{\textbullet}] and [\text{\textbullet}], requested that the Inquiry limits the request to their top 5 customers. Not all suppliers could provide data for the requested period and thus the analysis below has been limited to 2017. [\text{\textbullet}], [\text{\textbullet}] and [\text{\textbullet}] provided aggregated rebate data for all of their customers. In cases where suppliers provided disaggregated data for their top 5 retailers, the Inquiry selected the supplier’s highest revenue product. [\text{\textbullet}].
Also tends to receive above average rebates, which is possibly due to its affiliation with \([X]\). The data also suggest that \([X]\) obtains rebates which tend to be lower than those earned by the other major national supermarkets earn.

936. Regarding buyer groups, the data indicate that although there are some instances where the buyer groups have received above average rebates, for the majority of the time this is not the case. It is also noteworthy that for the qualifying emerging challenger retailers the trend is that they receive lower than average rebates.

937. As the sample of suppliers are typically larger, including many multinationals, the results may also reflect some countervailing power from larger suppliers. In this regard it is interesting to note that a smaller supplier such as \([X]\) has a much bigger disparity in rebates to national retailers in comparison to wholesalers, which may reflect its relatively more limited countervailing power.

Disaggregated, product-specific rebate analysis – differential treatment between retailers and buyer groups

938. In an attempt to provide a like-for-like assessment, the Inquiry undertook a narrower assessment of buyer power by considering the relationship between suppliers of specific products and their customers. The Inquiry considered, the contribution in terms of volumes and revenue of a customer to a supplier’s business and the rebates offered to customers for selected products.

939. The selected products (milk; soft drinks; cooking oil; and washing powder) were a mix of both basic and non-essential goods. These products were randomly selected based on the results of the small business survey which showed, among other things, the top selling products for spaza shops. In this way the Inquiry could establish if differential rebates were also likely to disadvantage smaller retailers dependent on the wholesale channel.

940. The Inquiry requested suppliers of milk, cooking oil, soft drinks and hand washing powder to provide annual revenue and volume data of the different brands that they manufactured for the period 2015 to 2017. This was to assist the Inquiry in determining the brand and pack size that consumers purchase the most from each supplier. Upon establishing the most purchased brand and pack size from the different suppliers of the four products, the Inquiry obtained rebate data offered by the suppliers to their top 80% revenue contributing customers. This data was disaggregated by customer in order to determine whether or not there was correlation between the size of the customer and rebates given to each customer.

941. We discuss the Inquiry’s findings in respect of each of the selected products below. Due to the confidential nature of the disaggregated information used, the Inquiry presents a summarised version of its findings. The more detailed confidential analysis is found in sections 17.4 through to 17.7 of Annexure 8.

Milk (fresh and long life) products

942. The Inquiry identified milk, as opposed to other dairy products such as cheese and yogurt, as it is considered to be a staple food and an essential source of protein. Milk is broadly divided into fresh milk and long-life milk. Based on the information provided by the milk processors, the small business survey and site visits to numerous township and rural areas across South Africa, the Inquiry determined that both fresh and long-life milk products are sold in supermarkets while spaza shops typically sell long life milk because of its longer shelf-life, without need for refrigeration.

943. The Inquiry received submissions from four milk product manufacturers. These are collectively referred to as the milk processors. The milk processors are multi-product firms, selling various types and sizes of dairy products. Some milk processors sell both fresh milk and long-life milk, while others only sell either long life or fresh milk.
944. The data suggests that long life milk is the more preferred option in South Africa.\textsuperscript{681} The Inquiry decided to analyse both fresh and long life milk, because even though long life is the most sold product, fresh milk is considered an important product in supermarkets.\textsuperscript{682} The most popular bottle size for fresh milk is the 2 litre bottle.\textsuperscript{683} Long life milk is typically sold in the 1 litre format.\textsuperscript{684} Accordingly, the Inquiry focussed its analysis on the 2 litre fresh milk and 1 litre long life products.\textsuperscript{685}

945. The Inquiry requested each milk processor to provide the revenue and volumes sold to customers making up 80\% of the milk processors business to identify the major customers as well as any other customer making a significant contribution to the milk processor’s business.

\textit{Evidentiary insights from rebates paid by milk producers}

946. The premise of the Inquiry’s approach was that the customers that contribute the highest volumes and revenue would be considered important customers to the suppliers of FMCG. By virtue of their size, these customers would be expected to possess more significant negotiating power. Accordingly, the more significant negotiating power possessed by these customers would manifest itself in the form of better trading terms from their suppliers. The Inquiry found that the national supermarket chains are primarily the largest and most important individual customers of all the milk processors, and this is reflected in the largest individual rebates provided.

947. The Inquiry found that there were instances in which some customers who purchased and contributed more revenue (than others) were not able to extract favourable trading terms from their suppliers. As can be seen from Figure 8.1 and Figure 8.2, buyer groups are higher volume customers for long life milk products sold by [\textit{X}], but they do not receive more favourable rebates than the national supermarket chains for these products.

948. The Inquiry found that the national supermarket chains receive much higher rebates compared to the buyer groups. Even in instances where the rebates related to costs that are incurred by all firms active in these channels, such as the distribution rebate for example, there was still significant differential treatment. It was noteworthy that the buyer groups only receive favourable treatment in terms of growth rebates, although this type of rebate was comparatively smaller than others.

\textit{Sparkling soft drink products}\textsuperscript{686}

949. The Inquiry determined that sparkling soft drink products were popular products purchased by end-consumers, in supermarkets and spaza shops. The Inquiry received submissions from two soft drink manufacturers that are multi-product firms, selling various flavours of sparkling soft drink products.

\begin{itemize}
\item To further illustrate this point, on average [\textit{X}] of volumes sold by [\textit{X}] has come from [\textit{X}] milk while [\textit{X}] of sales volumes came from fresh milk. [\textit{X}] started producing [\textit{X}] milk in 2016, and sales volumes quickly moved from [\textit{X}] in 2016 to [\textit{X}] in 2017. [\textit{X}] does not even sell fresh milk, selling only [\textit{X}] milk or [\textit{X}] milk, the latter comprising [\textit{X}] of its sales volumes on average. As mentioned above, [\textit{X}] does not sell [\textit{X}] milk products.

\item Fresh milk’s short shelf life also makes it a product that needs to be sold quickly and may give the supermarkets more leverage when negotiating trading terms because the milk processors cannot afford to let their product expire before negotiating favourable trading terms.

\item On average [\textit{X}] of the fresh milk volumes sold by [\textit{X}] is in the [\textit{X}] format. For [\textit{X}], [\textit{X}] of its revenue is derived from [\textit{X}] bottle sales. Similarly, [\textit{X}] of [\textit{X}']s sales came from [\textit{X}] format, although this has been gradually decreasing over time.

\item For [\textit{X}], the [\textit{X}] pack size accounted for approximately [\textit{X}] of its [\textit{X}] milk sales. Similarly, [\textit{X}] of [\textit{X}']s [\textit{X}] and [\textit{X}] milk products were sold in the [\textit{X}] format whilst [\textit{X}']s total only sells [\textit{X}] milk sales were also in the [\textit{X}] format.

\item For ease of analysis, the Inquiry did not distinguish between the different levels of fat content (i.e. full cream, low fat and fat free) contained in these milk products. Having determined the relevant products for analysis, the Inquiry also considered the relative importance of the different customers served by the milk processors (using revenue contributions as a guide) and the associated rebates paid to each of these customers.

\item Section 17.5 of Annexure 8 provides a more detailed analysis of sparkling soft drink product based on the confidential submissions of the suppliers.
\end{itemize}
Evidentiary insights from rebates paid by soft drink manufacturers

950. The soft drink manufacturers tend to have a larger pool of customers for their products as compared to the dairy processors. For example, while one manufacturer’s largest customers were the national supermarkets, the company still derived a significant proportion of its business from wholesale and smaller businesses. The other soft drink manufacturer was primarily focused on selling to wholesale customers.

951. Buyer groups do not appear to play a significant role in purchasing soft drinks for their members. Rather, it appears that the members themselves make direct purchases from the suppliers. Only one buyer group was identified as a large customer of soft drink manufacturer. The buyer group obtains rebates which are slightly higher than some of the soft drink processors largest customers.

952. Both soft drink manufacturers appear to provide more favourable rebates to the national supermarket chains. It is noteworthy that even for the manufacturer that primarily distributes its products through the wholesale channel, it still pays the highest rebates to the national supermarket chains. As can be seen in Figure 8.3 below, [X]'s independent wholesale customers receive comparatively lower rebates than the retail channel customers even though these are [X]'s highest volume customers.

953. It also appears that the non-integrated nature of independent retailers is a significant disadvantage as they do not qualify for the types of rebates that the supermarket
retailers benefit from as a result of servicing directly to the end consumer. Wholesalers were effectively excluded from certain rebates focused on supermarket costs or benefits or received lower rebates because they are not vertically integrated. Given that the independent retailers that depend on the wholesalers also incur many of these costs and yet do not enjoy rebates related to them, such retailers likely face a competitive disadvantage.

**Washing powder products**

954. Washing powder products were selected on the basis of their popularity with consumers, particularly those that purchase from spaza shops. According to a market study conducted by [X], there were four main brands in the hand washing powder market in South Africa in 2016: Sunlight, Ariel, Omo and Maq. [X].

955. The Inquiry requested the three hand washing powder manufacturers, [X], [X] and [X] to provide annual revenue and volume data for their different hand washing powder brands for the period 2015 to 2017.690

956. The Inquiry found that the most purchased hand washing powder pack size is the 2kg. This is for all three suppliers. [X]'s most purchased brand is [X]. [X] and [X] only manufacture one brand each, [X] and [X], respectively.

957. The Inquiry considered how the washing powder suppliers offer rebates to their different customers in light of the volumes and the revenue contributed by these customers.

**Evidentiary insights from rebates paid by handwashing powder suppliers**

958. As set out in section 17.6 of Annexure 8, the premise of the Inquiry’s approach was that the customers who contribute the highest volumes and revenue would be...
959. The Inquiry found that the national supermarket chains were the largest and most important customers (based on volume and revenue contributions) for most suppliers of handwashing powder, with the exception of one supplier\(^ {692} \) whose business is largely conducted through the wholesale channel. By way of example, Figure 8.4 above depicts the volumes and revenue of \([X]\) top ten customers of the \([X]\) handwashing powder for period 2017. Figure 8.5 above depicts the aggregated, as well as some individual category rebates that \([X]\) offered to the same top ten customers in 2017.

960. The Inquiry found that there were instances in which the largest and most important customers (in most instances, the national supermarket chains) were able to extract favourable trading terms from their suppliers. However, the Inquiry also found instances where the largest customers did not enjoy the benefits of favourable trading terms relative to the national supermarket chains. These customers were largely the buyer groups that operate in the wholesale channel. For example, \([X]\) was the largest customer in terms of volumes and revenue contributions and yet received among the
lowest aggregate rebates, while national supermarket chains such as [X], [X], [X], [X], [X] and [X] who purchase far less by volume and contribute lower revenue, obtained significantly better rebates.

961. The Inquiry noted that in those instances where national supermarket chains appeared to be able to extract more favourable trading terms, notwithstanding the fact that they were not the largest and most important customers, it is difficult for the Inquiry to divorce such behaviour from the exercise of buyer power.

962. The Inquiry also found that even in instances where it considers the individual rebate categories and the rationale behind such rebates there still exist differential treatments in the way that the rebates are offered. The differential treatment is in terms of, firstly, obtaining the rebate (for example [X]) and secondly, the quantum that is obtained. For example with the basic rebate, (as can also be seen to the right of Figure 8.5 above), the Inquiry found that even though all customers of the three washing powder suppliers that were considered in the analysis received the basic rebate, the quantum differed significantly between the customers and as well as between the suppliers themselves.

963. The expectation would be that, given that all these suppliers sell a product that falls within the same category,\(^{693}\) then the rebate quantum given by these suppliers would not be significantly different. The Inquiry found that this is not the case. The rebate quantum offered by these suppliers are significantly different from one supplier to the next which may also be indicative of the bargaining dynamics at play between the different size suppliers of the same product categories and their customers. It may also be that as a result of a supplier’s relative size, brand recognition, and the basket of products manufactured, a supplier is placed in a better negotiating position. For some suppliers it may reflect the need to achieve brand recognition and acceptance from the supermarkets in order to build market share. The importance of national supermarket chains for brand development, therefore, is what gives them additional bargaining power.

964. When considering other rebates such as the DC allowance rebate and the swell allowance rebate there are instances where not all customers receive the rebate even though on the face of it, they qualify for such a rebate. The second issue is that even between the customers that do receive these rebates the quantum is not the same. The wholesale channel customers are generally the ones that do not receive the majority of these rebates and even in instances where they receive them, they receive a much smaller quantum compared to the national supermarket chains.

965. The DC allowance is said to be given for the savings obtained when a supplier delivers goods to a central distribution centre or warehouse, as opposed to having to deliver to the individual stores. Some suppliers do not give a distribution allowance to buyer groups (wholesale channel customers) even when they do have warehouses/distribution centres to which suppliers deliver, which means that the suppliers realise the savings.\(^{694}\)

966. The Inquiry is thus of the view that the rebates that are mostly offered to the national supermarket chains reduce their costs of placing the products on shelf. The buyer groups and wholesalers primarily do not receive these rebates that are associated with the costs of moving the products from the warehouse to the shelf, because they are not vertically integrated with the retailers. What this means is that, while the costs of the national supermarket chains

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\(^{693}\) Which is most likely handled, stored and packaged in the same way.

\(^{694}\) For example, [X] submitted that it employs a criteria to determine whether or not a customer is eligible for a distribution allowance. The criteria includes that the distribution centre [X] and that [X] can track the flow of goods from the DC to the store. For more details see the Submission by [X] at the interrogation dated 15 February 2018, transcript p.67 ls. 1 – p.72 l. 8.
are reduced, those of the independent retailers (and wholesale channel retailers) are not reduced to the same extent and this ultimately impedes their ability to compete and grow relative to their counterparts the national supermarket chains.

**Sunflower oil products**

967. The Inquiry also considered cooking oil as one of the products in conducting its assessment of buyer power. Cooking oil generally forms part of the monthly food products that are purchased by consumers from national supermarket chains, wholesalers, and all the way to being purchased from informal spaza shops.\(^{696}\)

968. The Inquiry obtained information on rebates and other trading terms from the following cooking oil producers, namely, [\(\times\)], [\(\times\)] and from [\(\times\)].\(^{697}\)

969. The Inquiry found that the most popular cooking oil pack size is the 2L, which is for all three suppliers. [\(\times\)]’s most purchased 2L brand is the [\(\times\)] cooking oil, while [\(\times\)]’s is the [\(\times\)] and lastly, [\(\times\)]’s is the [\(\times\)] brand.

970. The Inquiry discusses below its findings on the cooking oil suppliers’ rebates analysis.

**Evidentiary insights from rebates paid by cooking oil suppliers**

971. Customers purchasing the highest volumes of cooking oil would be expected to contribute the highest revenue. Such customers would be considered important customers to their suppliers by virtue of their size, and hence those customers are likely to have better negotiating power and better trading terms relative to customers contributing less.

972. The Inquiry found that the national supermarket chains were the largest and most important customers for some of the cooking oil suppliers,\(^{698}\) on the basis of both volume and revenue contributions. However, for other suppliers\(^{699}\) the wholesale channel made up a larger proportion of their business. As indicated in Figure 8.6 below which shows the volumes and the revenue contributed by [\(\times\)]’s top ten customers for the [\(\times\)] 2L cooking oil in

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**Figure 8.6: [\(\times\)] 2L cooking oil volumes (in litres) and revenue (in Rands) for 2017**

![Figure 8.6: [\(\times\)] 2L cooking oil volumes (in litres) and revenue (in Rands) for 2017](source: Inquiry’s calculations based on data submitted by [\(\times\)]

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\(^{695}\) Section 17.7 of Annexure 8 provides a more detailed rebate analysis of the Sunflower/Cooking Oil products based on the confidential submissions of the suppliers.

\(^{696}\) See section 3.2 of the Value Chains analysis where there is a discussion on the oil seeds to cooking oil value chain.

\(^{697}\) As stated previously, the Inquiry requested data from the three cooking oil manufactures for their different cooking oil brands for the period 2015 to 2017. This was to assist the inquiry in determining the brand and pack size that customers and consumers purchase the most. Upon establishing the most purchased brand and pack size of hand washing powder, the Inquiry obtained rebate data offered by these suppliers to their top 80% revenue contributing customers.

\(^{698}\) For example, [\(\times\)].

\(^{699}\) Such as [\(\times\)] and [\(\times\)].
2017, with the exception of \([\times]\) and \([\times]\), the independent wholesalers and buyer groups make up majority of \([\times]\)’s top ten customers and are the most important customers.

973. Figure 8.7 above depicts the aggregated, as well as some individual category rebates that \([\times]\) granted to its top ten customers in 2017.

974. Although the wholesale channel customers are the most important customers, the national supermarket chains invariably received the highest rebates even where they were not the largest customers (\([\times]\)). This was also the case with other smaller retail chains which contributed greater volumes than the larger national chains.

975. The Inquiry also found instances where not all customers are granted rebates, even rebates such as swell allowances which are designed for reimbursing customers for damaged and returned products (\([\times]\)). Similar to the washing powder analysis, the wholesale channel customers are generally the customers not receiving most rebate categories, and even in instances where they receive specific rebates, it is normally a much lower quantum compared to the national supermarket chains receive which is reflective of their buyer power.

976. The Inquiry also finds that because of the better rebates that the national supermarket chains are able to obtain, their costs of placing products on the shelf are much lower and thus they are at a competitive advantage. The independent retailers, on the other hand are worse off, as they must incur these costs with no rebates, even in instances where they qualify for such rebates.

**Stakeholder views on rebates**

977. The Inquiry received submissions from market participants expressing their views on the efficacy of rebates in the grocery retail sector in South Africa. Broadly, these submissions focussed on four themes:

977.1 The responsiveness of the national supermarket chains to changing dynamics in the market. This was specifically referred to in the context of the alleged lack of changes in the composition or reductions in the quantum of rebate packages required by the national supermarket chains;

977.2 The perceived inability of FMCG suppliers to walk away from negotiations even in instances where these are unjustifiably unfavourable to the suppliers. This, it was argued was due

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\([\times]\) differentiates its rebates only in terms of the category of product and not brands and sizes within the categories, so there may be different rebates between \([\times]\), \([\times]\) and \([\times]\). However, the rebates within each product category are the same. See \([\times]\) submission, dated 5 December 2018.
to the fact that the national supermarket chains are a must-have channel for effective participation and competition in the market;

977.3 The value (or lack thereof) derived from some of the components of the rebate packages required by the national supermarket chains;

977.4 The perceived lack of transparency regarding the trickle-down effects of rebates, particularly insofar as they relate to price reductions for final consumers or profitability of the national supermarket chains.

Responsiveness to changes in rebate packages

978. Regarding the responsiveness of the national supermarket chains to changing dynamics, some suppliers argued that the national supermarket chains do not adjust the rebate packages that they require from suppliers in response to developments in the market. By way of example, [X] claimed that once a national supermarket chain has decided on a rebate package, the components and terms of that package are unlikely to be changed or be reduced in terms of the quantum.701 [X], a medium supplier, also claimed that in its experience there had never been an occasion when it was able to reduce or change an existing trading term.702 [X] submitted that once a type of rebate is paid to a retailer it becomes entrenched in the trading terms.703 For example, [X] submitted that the basic rebate and the settlement discount tend to stay the same for each year.

979. The submissions made implied that the composition and quantum of rebate packages (particularly in relation to reductions where it may be warranted) does not change, even in instances where such changes may be warranted. These suppliers claimed that the lack of responsiveness is due to the historic nature of these rebates and to how business is conducted in the grocery retail sector.

980. The Inquiry found that there were some suppliers who had a contrary experience in that they could adjust their trading terms with national supermarket chains. [X] submitted that it was always able to renegotiate trading terms if it no longer derived benefits from such trading terms.704 [X] also submitted that it has renegotiated (reduced) the overall rebates that [X] was receiving as they were resulting in the prices of [X] products being more expensive at [X] than in the other retailers’ stores. [X] did this in order to harmonise the prices of its product in the market.705

Value derived from rebates

981. Some suppliers submitted that given the critical role that the national supermarket chains play in the distribution of their products, there are difficulties for these suppliers not to pay certain rebates, particularly when they no longer derive benefit for their businesses. It was also alleged that given the sticky nature of the components, it becomes difficult to remove certain rebates if the suppliers have paid them in the past.

982. [X] submitted that a key guiding principle in its negotiations with the national supermarket chains is the “value given for value received”706 which implied that it was able to adjust its rebate packages if it no longer derived value. However, this was in contrast to its earlier submissions in which it indicated that once rebate packages are determined, they do not generally change. [X], a mid-sized supplier claimed that it has to pay for some rebates, such as the advertising allowance, irrespective of whether it realises value from such rebates.

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702 Minutes of meeting between [X] and the Inquiry, dated 16 May 2018, para 5.
703 Minutes of meeting between [X] and the Inquiry, dated 15 May 2018, para 6.
704 Minutes of meeting between [X] and the Inquiry, dated 09 May 2018, para 10.
[K] submitted that the rebates system can place a burden on it as a supplier as these rebates become additional costs that it incurs in order to distribute its products through a particular store. For example, when [K] is obliged to provide services (at its own cost, in addition to rebates) such as managing shelf space and the supply of marketing material such as gondola’s and front end displays, and when these costs become inflated and are higher than those of its competitor suppliers, it impedes [K]’s ability to compete.

Suppliers submitted to the Inquiry that they factor in the cost of rebates in the invoice prices charged to the national supermarket chains which ultimately means that even if the supermarket chains pass on the rebates to customers, the customers are not necessarily better off as lower rebates may also result in lower prices from suppliers.

Ability to walk away from negotiations

Given the importance of the national supermarket chain channel as a route to market, some FMCG suppliers submitted that they are unable to walk away from negotiations with these customers as they do not have an effective alternative route to market. [K] is an example of such suppliers, stating that in order to have a presence in national supermarkets’ stores, and thereby grow its brand, it is required to participate in incentives schemes. [K] further submitted that as a result of the countervailing power that national supermarket chains have, it merely accepts whatever prices and terms are laid down by these customers, which often results in the cost of trading becoming significantly higher for [K].

However, there were also submissions which indicated that there have been some FMCG suppliers who were able to walk away from negotiations with the national supermarket chains. [K], a mid-size supplier, submitted that it was able to walk away from negotiations with a national supermarket chain when it no longer saw value in a promotion rebate paid. Similarly, [K] submitted that when national supermarket retailers ask for rebates that it cannot afford, it simply walks away from the negotiations and doing business with those specific customers. [K] gave an example of when it parted ways with [K] in [K] because of disagreements on the trading terms.

The Inquiry received a submission where the supplier did not walk away from the negotiations but rather avoided them altogether. [K] made a strategic decision not to do business with the national supermarket chains as they require rebates that [K] cannot afford to contribute given the small size of its business. It submitted that it is also not willing to accept unnecessary returns of products due to consumer error and damage as it does not have mark ups that are high enough to accommodate these factors that form part of the trading terms with national supermarkets. The Inquiry notes that there is an opportunity cost for choosing this strategy, such as not growing the suppliers brand and sales volumes.

The strategy by a supplier to walk away or to avoid the supermarket chain channel altogether has given rise to the concerns identified in the Inquiry, where rebates can impede the ability of a small independent supplier to grow or expand.

Transparency in relation to rebates

An additional issue that was raised related to the lack of transparency in respect of the rebates paid to the national supermarket chains. While the rebates that are provided
to the retailers are well known, the amount is confidential, only known by the suppliers and retailer. Suppliers prefer not to keep a record of the rebates on the invoice of a transaction for different reasons. One large supplier informed the Inquiry that it prefers rebates that are off-invoice because the supplier’s other customers will not receive the information on how much rebates the other retailers receive. It also prevents copies of such invoices being sent to other retailers.715

989. [X] stated that it refuses to agree to rebates when retailers make requests that are not in accordance with their guidelines of returns on investments. [X] submitted that it refuses even Shoprite, its biggest customer.716

The effect of rebates on the final price paid by consumers

990. Having considered the bargaining dynamics between FMCG suppliers and the national supermarket chains, in particular, the Inquiry sought to determine whether the receipt of rebates by retailers could potentially have an impact on consumers. The Inquiry received submissions from [X] and [X] who sought to demonstrate how the rebates obtained from FMCG suppliers are passed onto consumers in the form of lower prices.

991. Some of the national supermarket chains submitted that a large portion of the rebates they require from the suppliers are used towards lowering the prices of the products to the end-consumer. For example, Spar claimed that approximately 95% of deductions from suppliers go into reducing the cost of goods to the consumer or to the retail outlet.717 It submitted an illustrative example to confirm its assertions. This is set out in Table 8.2 below.

992. Table 8.2 below shows that a product which is listed by the supplier at R100. Various discounts and allowances totalling 12% (R12) result in a net cost of the product being R88. Spar would then add a mark-up of 10% resulting in a selling price to the consumer of R96.80.

993. The discounts and allowances that Spar appears to use in order to reduce the final cost of the product are largely efficiency-based in that they include the warehouse,

Table 8.2: Example of how rebates contribute the selling price of a product 718

<table>
<thead>
<tr>
<th>List Price</th>
<th>R100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deal discount 1%</td>
<td>(R1)</td>
</tr>
<tr>
<td>Warehouse allowances 4%</td>
<td>(R4)</td>
</tr>
<tr>
<td>Distribution allowance 2%</td>
<td>(R2)</td>
</tr>
<tr>
<td>Logistics allowance 2.5%</td>
<td>(R2.50)</td>
</tr>
<tr>
<td>Rebate guaranteed 1%</td>
<td>(R1)</td>
</tr>
<tr>
<td>Settlement discount 1.5%</td>
<td>(R1.50)</td>
</tr>
<tr>
<td>Net Cost</td>
<td>R88</td>
</tr>
<tr>
<td>Add mark-up 10%</td>
<td>R8.80</td>
</tr>
<tr>
<td>Selling price</td>
<td>R96.80</td>
</tr>
</tbody>
</table>

Source: Spar Public Hearings Submission


716 [X] believes that a reasonable request by retailers is one that is commercially mutually beneficial, while also benefiting the consumers and/or drives efficiency, cost saving, cost sharing, and giving a better offering to the consumers. The one-sided requests are the unreasonable ones. See the submission provided by [X] at interrogation dated 15 February 2018, Transcript pp. 60 -61 & p.90.

717 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript p.26, para 91.

718 Ibid.
distribution and logistics rebates.\textsuperscript{719} Spar also noted that not all deductions are used to reduce the final price of a product. The type of rebates that fall into this category include the swell or damage allowances, advertising allowances, category management allowances and house brand allowances.\textsuperscript{720}

\section{994} [\textasteriskcentered] also provided a more tangible example of how it used rebates to lower the price of a 2 litre [\textasteriskcentered]. This is set out in Table 8.3 below.

\section{995} According to [\textasteriskcentered], it takes into account the total cost of a product and the required margin to cover expenses whilst maintaining overall profitability when determining the selling price.\textsuperscript{721} The total cost of the product is the sum of two separate negotiations: a negotiation regarding the invoice price and the rebate negotiation that is part of the supplier's trading terms with [\textasteriskcentered].\textsuperscript{722}

\section{996} Table 8.3 suggests that the invoice price for [\textasteriskcentered] sunflower oil was $R[\textasteriskcentered]$ per unit. [\textasteriskcentered] received deductions of [\textasteriskcentered]\% in rebates, leading to a cost price of $R[\textasteriskcentered]$. It then added a mark-up of [\textasteriskcentered]\% to sell the product at a retail price of $R[\textasteriskcentered]$.

\section{997} It is important to note, that the Inquiry also received [\textasteriskcentered]'s [\textasteriskcentered] trading terms from the supplier.\textsuperscript{723} The trading terms indicate that [\textasteriskcentered] received an additional [\textasteriskcentered]\% as a distribution centre allowance. When added to the [\textasteriskcentered]\% rebate reduction reflected in [\textasteriskcentered]'s example, the total rebate reductions received by [\textasteriskcentered] were ultimately in the order of [\textasteriskcentered]\% which meant that the actual margin percentage realised by [\textasteriskcentered] on [\textasteriskcentered] sunflower oil was approximately [\textasteriskcentered]\%.

\section{998} From the above, it is apparent that:

\subsection{998.1} portions of the rebate are allocated in different ways which may directly or indirectly lead to a lower price to the consumer;\textsuperscript{724}

\subsection{998.2} national supermarket chains have different ways of allocating their rebates across their business and choose what proportion of the rebates, discounts and other incentive schemes are transferred to the consumer;\textsuperscript{725}

\subsection{998.3} national supermarket chains do keep some of the rebates for themselves, as

\begin{table}[h]
\centering
\begin{tabular}{|l|c|}
\hline
Invoice Price & $R[\textasteriskcentered]$ \\
Basic Rebate & -$R[\textasteriskcentered]$ ([\textasteriskcentered]\%) \\
Data Sharing & $R[\textasteriskcentered]$ \\
Settlement Discount & $R[\textasteriskcentered]$ \\
Advertising Rebate & -$R[\textasteriskcentered]$ ([\textasteriskcentered]\%) \\
Quality Assurance & $R[\textasteriskcentered]$ \\
Total Cost & $R[\textasteriskcentered]$ ([\textasteriskcentered]\% reduction) \\
Selling Price & $R[\textasteriskcentered]$ ([\textasteriskcentered]\% MARK-UP) \\
Margin Percentage & [\textasteriskcentered]\% \\
\hline
\end{tabular}
\caption{[\textasteriskcentered]'s breakdown of the cost and selling price for sunflower oil}
\end{table}

Source: [\textasteriskcentered] submission, Annexure A
part of their revenue which is commonly referred to as “banking the rebate”.726

999. This finding is consistent with the submissions by the FMCG suppliers to the Inquiry. Broadly, these suppliers submitted that it is not clear how the rebates that they pay to the national supermarket chains are allocated towards the reduction of the final price paid by end-consumers. [K] submitted that it is not able to determine how the national supermarket chains allocate the rebates it pays to offset the operational costs which they incur.727 [K] also confirmed that it is not certain as to how the rebates that it pays are transferred into the prices charged to consumers.728

1000. Other suppliers such as [K] appeared to be ambivalent to how the national supermarket chains allocate the rebates that it pays.729 [K] stated that many national supermarket chains use the rebates and incentives to reduce their front-end margin and rely on the back-end margin to fund the cost of their operations.730 [K] further suggested that a proportion of the rebates may be put into the retailers’ profits, however, the effect to the end consumer is unlikely to be significant. Similarly, [K] submitted that retail pricing for its products is at the discretion of the retailer and that it does not consider whether or not the national supermarket chains use the rebate paid to lower the prices charged to consumers731. [K] submitted that it believes that the buyer power of the different national supermarket chains is proportionate to their size and that there is strong competition in the retail sector, which ultimately leads to lower prices for consumers.732

1001. Some suppliers such as [K] submitted that they add the rebates that are required by the national supermarket chains to the invoice price at which they sell their products.733 [K] also submitted that in instances where a national supermarket chain requires relatively high rebates, [K] factors the rebate percentage into its invoice price.734 [K] submitted that due to the high invoice price it charges a national supermarket chain, the final price paid by consumers is also likely to increase. By way of example, [K] recounted an instance where as a result of the high rebates that [K] required, the price of [K] hand washing powder at the [K] stores were higher than those in other retail stores, suggesting that the rebates were not passed on.735

1002. Similarly, [K] and [K] also confirmed that they factor the cost of rebates into the price charged to the national supermarket chains for their products.736 [K] submitted that once its margins are squeezed, it will first attempt to improve its efficiencies as much as possible in order for it to remain competitive. However, once it has maximised efficiencies, the remaining rebate costs have to be transferred to

726 Ibid, Transcript p. 93, l. 7.
727 Minutes of meeting between [K] and the Inquiry, dated 4 May 2018, para 5.
728 Minutes of meeting between [K] and the Inquiry, dated 9 May 2018, para 16.
731 [K]’s submission dated 23 November 2018, titled [K].
733 [K] for example, submitted that it works from a net cost and then grosses up the trading terms, so they include the rebates that the retailers charge them in the price that they charge the retailers for the goods. Minutes of meeting between [K] and the Inquiry, dated 15 May 2018, para 5; [K] has also submitted that it adds the rebates given to [K] back onto the selling price it charges them, see [K]’s submission, dated 22 February 2019, para 3 - 9; [K] has also submitted that the rebates eventually lead to it increasing its selling price, Refer to Minutes of meeting between the Inquiry and [K], dated 04 May 2018, para 16.
734 See the submission by [K] at the interrogation dated 23 November 2018, Transcript p.30, ls. 298 – p.32 l. 318.
735 This however led [K] to renegotiating its trading terms with [K] in order for them to be in line with the other retailers and thus maintain uniformity in the prices of their product. This is in line with [K] strategy of harmonising prices of their product and giving their consumers consistency. See the submission by [K] at the interrogation dated 23 November 2018, Transcript p.13, ls.139 – p. 15, 1.153.
736 Minutes of the meeting between [K] and the Inquiry, dated 9 May 2018, para 16; See also [K] submission at the interrogation dated 2 February 2018, p. 60.
the consumer to make up for the lost margin.\textsuperscript{737}

1003. [\textit{\textbf{X}}] submitted that in order for its sales to remain profitable, it adds the cost of the rebate to be paid to the selling price to the [\textit{\textbf{X}}] Group specifically.\textsuperscript{738}

\textit{Evidentiary insights on the effects of rebates on consumer prices}

1004. It appeared that there are instances in which the national supermarket chains utilise the rebates which they require from FMCG suppliers to reduce the final price paid by end-consumers. In addition, it appeared that not all rebates paid by FMCG suppliers are used to offset and reduce the prices paid by end-consumers and that these rebates are either (i) allocated to the operational costs of the national supermarket chains, or (ii) factored into the margins realised by the national supermarket chains, the so-called banking of the margin. There is a lack of transparency as to which rebates go to reducing the cost of the product on the shelf and which do not.

1005. Further, and more concerning, were the submissions that seemed to indicate that in order to satisfy the requirements of the national supermarket chains, some suppliers resort to factoring these rebates into the cost price paid for the products, implying that, but for the rebates, it would be possible to reduce the cost price at which the national supermarket chains purchase these. This is of particular concern if the rebates are not passed onto consumers, as this will result in higher shelf prices.

\textbf{Large suppliers' views on the water-bed effect}

1006. The waterbed effect predicts that in instances where a retailer is able to extract higher discounts from suppliers, this may lead to a decline in the size of discounts offered to rival buyers.\textsuperscript{739} As a result, rivals may find it increasingly difficult to compete with the large buyer in the downstream market. The waterbed effect, however, may not necessarily lead to end-consumers suffering.\textsuperscript{740} For the waterbed effect to occur, it requires that the decline in demand from rival sales channels most allow the supplier to charge a higher price to those channels.\textsuperscript{741}

1007. The Inquiry sought to establish, from suppliers of both the national supermarket chain channel and the wholesale channel, whether they have been forced to offer the wholesale channel less favourable trading terms as a result of the more favourable terms that are demanded by the national supermarket chains. The Inquiry did not receive sufficient information from stakeholders to conclude definitively on the waterbed effect. However, the analysis of the evidence discussed in Sections 8.6 and 8.8, relating to the differential treatment of national supermarket chains and independent wholesalers, does raise concerns that the waterbed effect may occur in the grocery retail sector.

\textit{Previous investigations by the Competition Commission}

1008. The Inquiry had regard to the previous investigations by the Commission that have considered the issues of rebates to highlight that this is an on-going problem and that there is a degree of tension regarding the overall effect that rebates, and other trading term conditions, have on competition at both the retail level and the supplier level.

\textsuperscript{737} Minutes of the meeting between [\textit{\textbf{X}}] and the Inquiry, dated 4 May 2018, para 8.

\textsuperscript{738} [\textit{\textbf{X}}] submission dated 22 February 2019, paras 3 – 9.


\textsuperscript{741} Ibid, para 6.30.
1009. In the British American Tobacco South Africa ("BATSA") case, the Tribunal determined whether BATSA engaged in exclusionary conduct which may have violated sections 5(1), 8(c), and 8d(i) of the Act. The concern was primarily around the practice of category management, characterised as the selling of preferential space by retailers to BATSA. The Tribunal was sceptical of BATSA's claim that category management was a way for suppliers and retailers to promote particular product categories. However, the Tribunal did not find there to be harm to competition as a result of BATSA's involvement in category management, because the foreclosure concerns and resulting harm to competitors was minimal. The Tribunal did, however, recognise that the retailers had substantial countervailing power and could be described as “bullying tyrants”. From the Inquiry's perspective, the countervailing power observed by the Tribunal could potentially be ascribed to the exercise and abuse of buyer power.

1010. The Commission had also investigated a complaint by a wholesaler against a FMCG supplier in the past. The alleged conduct specifically related to the preferential treatment in terms of pricing and rebates offered by the supplier to wholesalers belonging to the Massmart Group - Jumbo and Makro. The Commission investigated the case under sections 5(1), 8(c), and 9(1). The case was non-referred by the Commission because the alleged price discrimination by the supplier was deemed not significant enough to result in a substantial lessening of competition. The Commission also found that the trade agreements entered into between the supplier and Massmart did not limit Massmart from buying from other FMCG suppliers or reselling FMCGs to other wholesalers or retailers in the downstream market.

1011. The Commission also investigated a complaint by a supplier of a washing powder, CCBS, against two other competing suppliers, Unilever and P&G, in which it was alleged that the respondents invoice their products at full price to their clients and, in turn, grant those clients confidential discounts in the form of promotional discounts and advertising rebates in order to prevent the low prices from being reflected on their invoices. The Commission ultimately non-referred the case because it found that the rebates paid by Unilever did not pass the legal definition of an exclusionary conduct as the effects arising in the market for hand wash powder are likely to be a result of retailers conduct and not the conduct of Unilever.

1012. It is evident from the discussion above that while the Commission and the Tribunal have not been able to establish definitively the anti-competitive effects arising from the rebates, the conduct still continues to be of concern at both the supplier and the retail level. In light of the fact that rebates appear to be a persistent feature in South Africa and internationally, there is a need to find potential solutions to the negative impact on competition presented by this practice.

8.9 PRELIMINARY FINDINGS ON BUYER POWER

The extent to which national supermarket chains have buyer power:

1013. The Inquiry found that the structure of the South African grocery retail sector is characterised by a significant number of
suppliers of FMCG products and smaller number of national supermarket chains. Similarly, the Inquiry observed that the number of retailers active in the wholesale channel, which includes buyer groups and other independent retailers is significant.

1014. The Inquiry also noted that the national supermarkets chain channel is characterised by high levels of concentration, as well as high levels of barriers to entry. These factors combined serve to limit the available alternative outside options for the suppliers. These factors indicate a market that may be conducive to unequal bargaining power.

1015. The conduciveness of the grocery retail structure to the exercise of buyer power is further augmented by the fact that the national supermarket chain channel is a critical component of the supplier’s route to market. The Inquiry found that in general, the national supermarket chains channel contributes more than \( \% \) of the business of the FMCG suppliers.

1016. The Inquiry considered the bargaining dynamics between the suppliers and the national supermarket chains and between the suppliers and the wholesale channel customers. The Inquiry found that the national supermarket chains are able to extract more favourable terms from the suppliers when compared to the other players active in the wholesale channel, regardless of whether the national chains were the largest customers. Suppliers considered the provision of these rebates to be part and parcel of conducting business in the grocery retail sector.

1017. These factors reveal that the national supermarket chains have buyer power when engaging with suppliers, and also relative to the wholesale channel where there is not the same bargaining power (aside from \( \% \)).

The effects of the buyer power on the ability of small and medium sized as well as independent retailers and their buyer groups to compete effectively in the sector:

1018. An analysis of the rebates provided by suppliers demonstrates that national supermarket chains are able to extract higher rebates in general relative to all other customers of the suppliers. This is partly a function of extracting a higher percentage rebate in instances where the rebate is also provided to these customers, such as a basic rebate. This is reflective of buyer power, but also often reflective of the larger individual volumes purchased by the national chains relative to the smaller and less concentrated buyer groups.

1019. The difference is also because the national supermarket chains demand rebates to cover some of the costs they incur in putting the product on the shelf, i.e. their retail function. This includes the distribution centre rebate which entails moving products from a warehouse to the supermarkets, and merchandising allowances for placing products on the shelf. Through linking the rebate to these costs and activities, it effectively results in the wholesale channel (specifically Buyer Groups and wholesalers) being denied such rebates as they do not perform these functions. However, their customers, the small and independent retailers, and in particular spaza shops, do incur these costs and also do not benefit because there is no direct relationship with the suppliers or only a limited relationship. The net result is that these smaller stores are placed at a disadvantage relative to the national retail chains whose relative costs are reduced through additional rebates.

1020. In the context where suppliers believe that they have little choice but to offer the rebates demanded by the national supermarket chains, they are likely to use the lack of bargaining power of the wholesalers to recoup some profits lost through offering smaller rebates. This may be described as a waterbed effect or alternatively thought of as differences in rebates emerging from bargaining power differences. Either way, once the bargaining power is secured by the national supermarket chains, it sets in motion a dynamic that perpetuates that power and market position through
being able to negotiate improved rebates relative to competitors.

1021. The Inquiry found that this issue of discriminatory rebates between the national supermarket chains and other customers of the suppliers, is a significant problem and serves to entrench further the national supermarket chains’ position in the market.

**The impact of buyer power on efficiencies and prices to the final consumer:**

1022. The Inquiry found that in the trading terms that the national supermarket chains negotiate with the suppliers, there are instances where components or characteristics of the trading terms are notionally linked to value provided or productive efficiencies. For example, distribution allowances are said to be more efficient than store deliveries by the supplier. However, in relation to other rebates suppliers were unable to determine if there was any exact relationship to the value provided. For instance, some suppliers paid advertising rebates and yet did not benefit from advertising. The Inquiry also found that there are some trading terms that do not appear to be based on any value provided or productive efficiencies but are understood to be part of how the national supermarket chains operate in South Africa. This would be the case in relation to basic rebates.

1023. The Inquiry found that there are instances wherein the national supermarket chains utilise the rebates that they obtain from FMCG suppliers to reduce the final price end-consumers pay. The Inquiry also found that not all rebates paid by FMCG suppliers are used to offset and reduce the prices paid by end-consumers and that these rebates are (i) allocated to the operational costs of the national supermarket chains or (ii) factored into the margins realised by the national supermarket chains, the so-called banking of the margin.

1024. However, most suppliers indicated that they are unable to determine if the rebates they offer are used to reduce retail prices or not, as there is no transparency as to how these rebates are used. This is consistent with the other finding that suppliers are not necessarily aware of whether the alleged value provision that a rebate covers actually goes to generating that value. There is, therefore, a lack of transparency as to how rebates translate into lower consumer pricing.

1025. The Inquiry also received submissions from some suppliers that seemed to indicate that in order to satisfy the requirements of the national supermarket chains, they resort to factoring in these rebates to the cost price paid for the products. This effectively implies that the rebates may be neutral, insofar as even if they are passed on, the final consumer prices are no lower than they would be absent the rebates. This is because the supplier prices would be lower too absent the rebates. Alternatively, the rebate system may be detrimental to consumers in the case where the national supermarket chains do not pass on the rebates. This is because the higher supplier prices in the context of having to offer large rebates is simply passed onto the consumer and the rebates pocketed by the retailer. The Inquiry is aware of at least one instance where this was the case.

**The effects of buyer power on employment:**

1026. The Inquiry was not able to conduct an analysis due to the unavailability of information.

8.10 **SUBMISSIONS IN RESPONSE TO THE PRELIMINARY FINDINGS**

1027. Following the publication of the Inquiry’s preliminary findings and recommendations, stakeholders provided their submissions in relation to the Inquiry’s assessment of buyer power, rebates, and discounts. The stakeholders that made submissions in this regard included buyer groups, national supermarket chains, suppliers and research organisations.
1028. There was general agreement amongst stakeholders\(^\text{749}\) regarding the Inquiry’s finding that differential treatment of the national supermarket chains, wholesalers and independent retailers exists in the grocery retail sector. However, there were divergent views in respect of the justifications for such differential treatment and whether it warrants concern and intervention by the Inquiry.

1029. From the national supermarket chains’ perspective, the key reasons for the differential treatment include: (i) the relatively larger volume of stock purchased by the national supermarket chains;\(^\text{750}\) (ii) the different business models adopted by retailers in different channels which result in the suppliers offering different incentives to their customers;\(^\text{751}\) and (iii) the range of services offered by national supermarket chains which are typically not offered by wholesale customers.\(^\text{752}\)

1030. Some of the suppliers echoed the view of the need to distinguish between different business models and the impact on the cost of doing business with different customers.\(^\text{753}\) \([\text{X}]\) submitted that some players in the wholesale and independent retail channel are at different levels of development in their business model and do not require very sophisticated trading terms when dealing with suppliers.\(^\text{754}\) Stakeholders argued that, for some small and independent retailers, it is a competitive advantage to run a low cost business model as compared to the national supermarket chains with their larger and more intricate supply chains. Thus, the independent retailer may not require or even want higher rebates from the supplier but would prefer low base prices.\(^\text{755}\) Some suppliers and retailers submitted that the Inquiry must also consider the net unit cost of doing business with different customers.\(^\text{756}\) According to \([\text{X}1]\) and \([\text{X}2]\), when the costs of doing business are considered, it is likely that were all customers to be offered a net-price, they would be able to compete effectively in their respective markets.\(^\text{757}\)

1031. Suppliers also argued that the quality of certain services provided by small and independent retailers, such as data provision and promotional activity, is in many cases of a lower standard and less reliable and thus of less value to the supplier, resulting in lower or no rebates offered to these customers.\(^\text{758}\)

1032. Some of the larger suppliers claimed that they are able to monitor and determine the value derived from the rebates paid to the national supermarket chains.\(^\text{759}\) They acknowledged, however, that the complexity of the rebate system as it currently exists is likely to be too onerous for smaller suppliers and independent retailers to manage effectively and this may need to be rectified in order to enable these retailers to qualify for rebates.\(^\text{760}\)

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\(^{749}\) Stakeholders comprising buyer groups, national supermarket chains and suppliers.

\(^{750}\) [\text{X}].

\(^{751}\) [\text{X}].

\(^{752}\) Submission by [\text{X}], dated 28 June 2019, p. 70, para. 191.

\(^{753}\) Minutes of the meeting between [\text{X}] and the Commission, dated 12 August 2019, p. 2, ls. 10 – 20.

\(^{754}\) Minutes of the teleconference between [\text{X}] and the Commission, dated 15 August 2019, p. 2, ls. 16 – 24.


\(^{756}\) Submission by [\text{X}] dated 28 June 2019, p. 9, para. 4.3. See also the minutes of the meeting between [\text{X}] and the Commission, dated 12 August 2019, p. 2, ls. 10 - 14.

\(^{757}\) Minutes of the teleconference between [\text{X}] and the Commission, dated 15 August 2019, p. 2, ls. 19 – 21. See also the minutes of meeting between [\text{X}] and the Commission, dated 12 August 2019, p. 2, ls. 16 – 19.

\(^{758}\) Minutes of the meeting between [\text{X}] and the Commission, dated 15 August 2019, p. 2, ls. 20 - 25. See also minutes of the meeting between [\text{X}] and the Commission, dated 8 August 2019, p. 3, ls. 17 – 26.

\(^{759}\) Minutes of the meeting between [\text{X}] and the Commission, dated 8 August 2019, p. 2- 3. See also minutes of meeting between [\text{X}] and the Commission, dated 15 August 2019, p. 2 - 3. Minutes of the meeting between [\text{X}] and the Commission, dated 15 August 2019, pp. 2 - 3. Minutes of the meeting between [\text{X}] and Commission, dated 12 August 2019, p. 2 - 3, and minutes of teleconference between [\text{X}] and the Commission, dated 15 August 2019, p. 2, ls. 6 - 11.

\(^{760}\) Minutes of the meeting between [\text{X}] and the Commission, dated 31 July 2019, p. 2, footnote 1 and p. 2, ls. 5 - 10.
There was consensus between the suppliers and other stakeholders that fairness in the dealings between FMCG suppliers and customers in the grocery retail sector needs to be introduced. There was also unanimity regarding the need to reduce the complexity in valuing and determining rebates. In order to deal with unreasonable and unjustified differential treatment, the Inquiry proposed a Code of Conduct to encapsulate the principles of fairness and transparency in the engagements between FMCG suppliers and their different customer segments. The Inquiry found that in the main, suppliers supported the underlying principles of fairness and transparency to ensure that there is balanced treatment of SMMEs and HDP retailers in the grocery retail sector.

The discussion below summarises their views.

Principles for achieving fairness in negotiations and compliance with the Act

According to [X], the benefits of a Code of Conduct need to be targeted directly at the consumer rather than through a trader to ensure that the consumer receives the price benefits which suppliers are willing to offer. The application of the various types of trading terms to the different classes of customers and channels should be based on whether it is applicable to the customer or not and be applied equally to the formal and informal trade and should be behavioural, performance and efficiency based.

According to [X], the guiding principles of the Code of Conduct should be based on the right to free trade, guided by the principles of supply and demand. The code should also recognise: (i) size of the customer; (ii) uniqueness of distribution channel; and (iii) access to the consumer base which influences differentiation in pricing and remuneration.

Proposal for reduction in the level of complexity

To reduce the level of complexity around the negotiation of rebates, it was proposed that the Code of Conduct should define the various categories of trading terms and the different classes of customers to ensure a common understanding among

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762 Submission by [X] dated 2 September 2019, p. 3.
763 Submission by [X] dated 3 September 2019, p.1, para. 1c.
764 Ibid, p.2, paras. 1d and 1e.
766 Ibid.
Suppliers proposed that every element of remuneration or cost to serve must have an impact on pricing and customer profitability. It was also proposed that suppliers be encouraged to limit the provision of trading terms to those categories that are objectively justifiable through the achievement of clear vertical efficiencies. It was also suggested that the Code of Conduct could set thresholds below which certain suppliers and retailers are not required to comply.

1039. [X] submitted that in order to ensure that suppliers are able to adapt trading terms that achieve their intended vertical efficiencies, the Code of Conduct will need to allow for the introduction or altering of the trading terms when those changes result from a change in market conditions or changes to suppliers’ business strategies.

1040. It was suggested that suppliers should not be obliged to deal directly with every small business as the supplier would need to increase its workforce to manage such a task which would increase costs and ultimately increase the price to end-customers. In other words, consideration also needs to be given to the creation of a platform for a broader scope of negotiations with informal traders.

1041. According to [X], another method to reduce complexity is by creating a generic list of common trading terms, which should keep negotiations simple and focused. The actual percentages offered, and any additional trading terms should be negotiated between the parties outside of the code so as to enable the parties to maintain their competitive advantage. Any broad range of potentially simplified trading terms should endeavour to accommodate and reward performance.

1042. In light of the above discussions, the Inquiry compiled a Code of Conduct, set out in Annexure 4, to ensure fair and non-discriminatory trading terms with small, medium and micro enterprise grocery retailers (SMME retailers) and those retailers owned or controlled by historically disadvantaged persons (HDP retailers). The purpose of the Code of Conduct is to remove impediments to increased participation of SMMEs and HDP retailers in the grocery retail sector and ensure compliance with the new price discrimination provisions in respect of SMMEs and HDP firms, both in law and in spirit.

**Improving the competitiveness of independent traders**

1043. It was widely acknowledged that there is a need to support small and independent retailers who operate in the wholesale channel and informal retail. Most of the suppliers spoken to already have initiatives in place to assist retailers in the wholesale channel to improve their service delivery or enhance their business operations. Such initiatives include providing fridges, racking, painting of stores and promotions outside the store. Other suppliers have also assisted independent wholesalers to improve their IT systems so as to gain better quality data that can give better business insights to both the retailer and the supplier. The reason is partly to enable the independent retailers to...

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769 Submission by [X] dated 2 September 2019, p. 5.
772 Submission by [X] dated 3 September 2019, p.2, paras. 2d.
773 Ibid at p.2, para. 2c.
774 Ibid at p.2, para. 2e.
776 Minutes of the meeting between [X] and the Commission, dated 12 August 2019, p. 1, ls. 3 – 9. See also minutes of the teleconference between [X] and the Commission, dated 15 August 2019, p. 2, ls. 3 – 4, and minutes of meeting between [X] and the Commission, dated 31 July 2019, p. 2, footnote 1 and p.4, ls. 3 – 6.
777 Minutes of the meeting between [X] and the Commission, dated 8 August 2019, p. 2 - 3.
provide similar services to the national supermarket chains with the aim of growing the suppliers’ customer base.778

1044. The sharing of robust and verifiable data by independent traders with suppliers may assist the traders in getting better advice and support from suppliers and improve the competitiveness of small and independent retail traders.779

1045. [X] argued that it is difficult and costly for suppliers to monitor the small and independent retailers’ adherence to the conditions of trading terms, especially given the large number of these retailers located throughout South Africa, often in rural areas, many of which do not deal directly with FMCG suppliers. Accordingly, [X] submitted that initiatives that allow suppliers to better monitor and enforce such conditions is likely to increase the provisions of such trading terms to small and independent retailers, thereby improving competitiveness. One potential option, in [X]’s view, is to establish a sector wide body to monitor independent retailers’ adherence to the conditions of the trading terms.780

1046. [X] submitted that financial support and credit facilities appear to be a major stumbling block for many small and independent traders. Government intervention through development support or financial aid may be required.781

1047. [X] and [Y] also submitted that transport logistics have played a role in making small and independent traders uncompetitive. Small and independent retailers need to pool their resources in respect of transport costs and the development of centralised distribution centres situated close to rural areas will assist in achieving cost efficiencies.782

1048. [X] also submitted that suppliers should be provided with incentives to invest in entrepreneurs and in distribution infrastructure that serves the independent retailers. For example, Broad-Based Black Economic Empowerment (B-BBEE) Supplier and Enterprise Development Funds could be used as a source of funding and suppliers could be incentivised to make such distribution infrastructure investments through the allocation of bonus points.783

1049. Scale benefits are a challenge to overcome and, therefore, small and independent traders need to offer services, which differentiate them from modern retailers - e.g., convenience of location, trading hours, and regulatory hurdles - should be removed. The development of buying groups that provide key accounts and which directly service their members will also improve the competitiveness of small and independent retailers.784

1050. The provision of forecasts by small and independent traders may assist in ensuring timeous, efficient and continuous supply of goods by suppliers.785

1051. The Inquiry agrees with these submissions and has made specific recommendations as to how the competitiveness of small and independent retailers such as spaza shops can be enhanced which, in turn, will support the initiatives around access to rebates from larger suppliers.

8.11 INQUIRY’S VIEWS

1052. There has been no outright disagreement regarding the national supermarket chains possession of buyer power over suppliers in the grocery retail sector. While in some instances there are justifications around

778 Minutes of the meeting between [X] and the Commission, dated 15 August 2019, p. 1 - 2 and p.3, ls. 5 – 7.
780 Submission by [X] dated 3 September 2019, p.3.
781 Submission by [X] dated 3 September 2019, p.3. See also submission by [X], dated 2 September 2019, pp. 7 – 8.
782 Submission by [X] dated 3 September 2019, p.3.
784 Submission by [X] dated 3 September 2019, p.3.
the differential treatment of customers, there is a recognition of the need for a more balanced treatment of different customer segments in the instances where differential treatment cannot be justified.

1053. The Inquiry believes that these rebates are more favourably offered to the national supermarket chains, which reduce their costs of offering FMCGs and thereby maintain their market positions and providing an unfair competitive advantage over the independent retailers. The costs of the independent retailers, owing to their lack of vertical integration with wholesalers, are not reduced to the same extent. The independent retailers incur all these costs with no rebates, even in instances where they otherwise qualify for the rebates by virtue of conducting the activities to place products on the shelf like the national supermarket chains. This ultimately impedes these independent retailers’ ability to compete and grow.

1054. Furthermore, whilst some of the rebates paid by FMCG suppliers appeared to be underpinned by productive efficiencies (such as in the case of distribution allowances, for example), there were others which did not appear to have any efficiency or beneficial justification other than simply being a reflection of buyer power by the national chains. In this context, the Inquiry found mixed evidence about the pass-through of rebates to the final prices paid by end-consumers. This is particularly concerning given that some suppliers factor in the cost of these rebates to the price paid by the national supermarket chains for the products. This could potentially have a price-raising effect on the cost of products to the detriment of consumer welfare where such rebates are not passed through. Further, there is a lack of transparency regarding back-end margins.

1055. The Inquiry is of the view that cumulatively, the South African grocery retail sector possesses features and characteristics that are conducive to the exercise of buyer power and the indicative evidence obtained through the rebate analysis attests to the exercise of such power to the detriment of small and independent retailers, and potentially to end-consumers too.

**The impact of retail concentration on the South African grocery value chain**

1056. The Institute for Poverty, Land and Agrarian Studies ("PLAAS") made submissions regarding the impact of the observed high levels of concentration in the grocery retail sector on the food value chain and the implications for employment and the livelihood creation potential of agriculture. The thrust of PLAAS’ submission was that the dominance of the national supermarket chains has created a disadvantage for smaller suppliers (emergent, black and smallholder producers) and effectively acts to exclude emergent, black and smallholder producers from agro-food value chains. According to PLAAS, the development of buyer driven value chains governed by national supermarket chains has encouraged a wider trend towards concentration in the production components of food value chains, not only in fresh produce but also in livestock, dairy and field crops. PLAAS stated that national supermarket chains have been able to use their position in these buyer-driven chains to set prices, and also to use rebates and other techniques of chain governance to externalise risks and pass them up the chain towards farmers and producers.

1057. PLAAS submitted that the regulatory interventions to support the development of the spaza shops and the SMME sector in the township economy can be significantly strengthened, particularly by paying attention to supporting the synergies with smallholder agricultural development.

1058. The Inquiry also received evidence which indicated that the buyer power of the national supermarket chains, exercised in the context of rebates, limited the ability of smaller suppliers to access shelf
space in the formal retail segment. Small suppliers argued that the national supermarket chains are an important route to market but that the rebates required in order to place a suppliers' product on the shelf make it difficult for these suppliers to access such shelf space. Other small suppliers, such as Soweto Brands, submitted that it is not able to distribute its products through the national supermarket chains due to the rebates required, which it cannot afford. Other small suppliers, such as Soweto Brands, submitted that access into the formal retail channel can be promoted via supplier development funds. The Inquiry was also made aware of the difficulties faced by small suppliers in terms of qualifying for these development programmes and also substantively benefiting from them.

Terms and conditions of supply

1059. The concern over unfair trading conditions in the food value chain, amongst other sectors, as well as the impact on prices paid to smaller and historically disadvantaged suppliers has culminated in an amendment to the Act in the form of (a new) section 8(4) directed specifically at the abuse of buyer power by dominant firms in designated sectors. Section 8(4) reads as follows:

8(4) (a) It is prohibited for a dominant firm in a sector designated by the Minister in terms of paragraph (d) to directly or indirectly, require from or impose on a supplier that is a small and medium business or a firm controlled or owned by historically disadvantaged persons, unfair—
(i) prices; or
(ii) other trading conditions.

1060. This provision only applies to sectors designated by the Minister in terms of section 8(4)(d)(i), and both agro-processing and grocery wholesale/retail have been included in the draft regulations published by the Minister. In addition, the Commission has published draft enforcement guidelines which set out in detail how unfair pricing and unfair trading conditions will be assessed. These guidelines include a specific set of trading conditions which the Commission found to exist or to be prevalent in the food value chain and which the Commission will consider as unfair where they unreasonably transfer risk or costs onto suppliers, where they are found to be unrelated to the object of the supply contract or unduly onerous and not proportionate to the objectives of the contract. These are set out below for convenience. It must, however, be noted that they will still be subject to public comment and, are therefore, not final guidelines.

“The following trading practices are considered unfair:

a. the buyer pays the supplier later than 30 days from delivery for perishable products and later than 60 days from delivery for other products.

b. the buyer cancels orders of perishable products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products.

c. the buyer unilaterally changes the terms of a supply agreement that concern the terms of delivery (frequency, method, place, timing), volume of supply, quality standards, terms of payment, prices and provision of services.

786 Submission by [K] dated 11 February 2019, para 4; see also the submission by [K] at the KwaZulu Natal public hearing (closed session) dated 6 July 2017, Transcript paras 518-519 and 522.

787 Ibid, at para 492.

788 Submission by Golden Fry dated 22 February 2019, para 10.

789 Submission by Soweto Brands at the Johannesburg (Gauteng) public hearing dated 8 June 2017, Transcript p. 10, ls. 28 - 30.

790 Submission by Inqola Trading at the KwaZulu Natal public hearing (open session) dated 6 July 2017, Transcript para 62 and submission by Soweto Brands at the Johannesburg (Gauteng) public hearing dated 8 June 2017, Transcript p. 8, ls. 27 - 30.

791 Gazette vol 652, no. 42760 (10 October 2019).
d. the buyer requires payments from the supplier that are not related to the sale of the products of the supplier.

e. the buyer requires the supplier to pay for the deterioration or loss, or both, of products that occurs on the buyer’s premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier.

f. the buyer refuses to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation.

g. the buyer unlawfully acquires, uses or discloses the trade secrets of the supplier.

h. the buyer threatens to carry out, or carries out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation.

i. the buyer requires compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier’s products despite the absence of negligence or fault on the part of the supplier.

The following trading practices are considered unfair unless they have been previously agreed in clear and unambiguous terms in the supply agreement and, where applicable, the costs thereof are quantified by the buyer and payments bear a reasonable relationship to these costs:

a. the buyer returns unsold products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both;

b. the supplier is charged payment as a condition for stocking, displaying or listing its products, or of making such products available on the market;

c. the buyer requires the supplier to bear all or part of the cost of any discounts on its products that are sold by the buyer as part of a promotion;

d. the buyer requires the supplier to pay for the advertising by the buyer of its products;

e. the buyer requires the supplier to pay for the marketing by the buyer of its products; and

f. the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier’s products.

Supplier Development Initiatives

1061. It appears to the Inquiry that the national supermarket chains also recognise the need to ensure and increase access to shelf space by smaller suppliers in the formal retail segment. For example, according to Pick n Pay, “Big business has a major role and responsibility to play in building and developing the economy across all levels. Transforming the supply chain, from soil to shelf, is a fundamental part of growing this country. By creating opportunities for small scale suppliers, farmers and entrepreneurs, we help them to get into a position where they can service the formal retail sector – or even go out on their own, in their process, they create jobs and develop skills.” This view was also echoed by Massmart. Woolworths notes that its supplier and enterprise development programme is not only a contribution to the broader country vision of inclusive economic growth but

792 For more information see Pick n Pay ‘Enterprise and Supplier Development, available at https://www.pnp.co.za/peoplenplanet/small-business.

also a commercial imperative of building a diverse supplier base.  

1062. In light of this, the national supermarket chains have established supplier development initiatives. For example, Massmart’s Supplier Development Fund is the best known programme which was established as part of the conditions in the Walmart/Massmart merger. The other national supermarket chains also have their own supplier development funds. Pick n Pay has an Enterprise and Supplier Development Programme (“ESD”) which assists “selected businesses to enter the retail market by putting their products in front of our customers”. These supplier development initiatives by the national supermarket chains are discussed in greater detail below.

Pick n Pay

1063. Pick n Pay has an ESD which assists the selected businesses to enter the retail market by providing access to shelf space in Pick n Pay’s stores. The ESD provides mentorship, guidance and business development support to entrepreneurs, small and emerging businesses who would like to supply Pick n Pay with product or services. In its 2019 annual report, Pick n Pay reported that it has committed considerable investment to this sourcing programme and spent over half a billion Rand with small black-owned businesses, with more than R180 million of this on small, black women-owned businesses.

1064. According to Pick n Pay, under its ESD, it supports over 150 small businesses at any given time and support is provided through the following:

1064.1 Small Business support: under this area of the ESD, Pick n Pay works together with entrepreneurs to build and develop their start-up ideas for new businesses. The support focuses on coaching, mentoring and training, with access to several tools to help establish their businesses.

1064.2 Enterprise Development Academy: This area focuses on medium-sized enterprises (annual sales of <R10m) that are not currently suppliers to Pick n Pay. Pick n Pay provides them with business development support through workshops, training and mentoring. Currently, there are 63 enterprises within this programme, all with the potential of becoming suppliers to Pick n Pay.

1064.3 Supplier Development: Pick n Pay aims to nurture companies which could eventually become its suppliers. Currently, there are 119 small suppliers as part of the Supplier Development Programme. Suppliers benefit from preferential terms including shorter payment periods, lower marketing fees, dedicated shelf space and a letter of support. They receive preferential trading terms until their turnover with Pick n Pay reaches R5m per year, after which Pick n Pay’s standard trading terms will apply.

Woolworths

1065. The Woolworths ESD programme seeks to remove barriers for emerging black and black women owned businesses to enter Woolworths’ supplier base. At the heart of the programme is the unlocking of market opportunities for small and medium

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795 Massmart informed the Inquiry of a noodle factory which was part of its programme, whose business improved from a turnover of R225 000 to R720 000 in a year. Submission by Massmart at the Pretoria (Gauteng) public hearing dated 30 October 2017, Transcript p. 7, ls. 19 – 31.
796 Submission by Spar at the Pretoria (Gauteng) public hearing dated 15 December 2017, Transcript p. 10, para 31.
797 For more information see Pick n Pay’ Enterprise and Supplier Development. Available at https://www.pnp.co.za/doing-good/small-business.
798 Ibid.
sized black and black women owned enterprises and the provision of capital and relevant capacity building to deliver to supplier expectations. In the 2019 financial year, Woolworths reported that the 46 beneficiaries of its ESD programme have grown from a total revenue of R246 million at the beginning of the period to R293 million. It reports that it has contributed over R2 billion towards revenues of small and medium enterprises participating in its supplier base.800

Shoprite

1066. The Shoprite Group is one of the largest buyers and distributors of fresh fruit and vegetables in Africa, with about 450 South African growers and 345 growers in the rest of the continent. Shoprite’s focus is on opening access to markets for SMEs throughout its supplier network and to contributing to B-BBEE in South Africa.801

1067. Shoprite provides opportunities and support for SME suppliers (those generating less than R1 million in turnover a year) and this includes long-term growth capital without a predefined exit horizon; business development support and access to market; and assistance with compliance, corporate governance as well as financial management. In 2019, Shoprite provided business support and helped 2 366 small suppliers to access markets and purchased products to the value of more than R12 million from 93 small-scale suppliers. Further, Shoprite invested R85 million into a new supplier development investment fund.802

Massmart

1068. Massmart established a R200 million supplier development fund in 2012 which was implemented over five years (2012 to 2017). The fund is considered to have achieved great success as it increased from the initial R200 million to over R1 billion spent on small, local suppliers. The fund was established to assist small, local suppliers with building manufacturing capacity, and developing retail and business management expertise, meeting regulatory standards, and improving price competitiveness. In 2019, the fund was reported to have a portfolio of 23 small businesses manufacturing various products, such as chefwear, fuel cooking gel, instant noodles, charcoal, cooler-boxes, doors and paint. Nine of these suppliers were reportedly exporting their products to Australia, Belgium, Botswana, Chile, France, Mozambique, New Zealand, Switzerland, the UK and Zambia.803

SPAR

1069. In South Africa, SPAR’s approach to supplier development is to source mainly from local suppliers for SPAR branded products.804 SPAR’s emerging farmer development programme aims to establish sustainable, commercial rural food hubs. According to this model, each hub consists of a packhouse that works much like a mini distribution centre, to which local farmers bring their produce. The produce is then distributed to stores within a 200km radius. SPAR committed to funding the capital and operational expenditure, as well as the associated logistics infrastructure required for the development of the three

804 See article by Spar [Online]. Available at: https://investor-relations.spar.co.za/ir2018/our-material-relationships/our-relationship-with/#food.
There are currently two operational hubs in South Africa, Mopani and Ikhwezi. The programme provides technical services and lends comprehensive, on-the-ground support to the smallholder farmers. Moreover, a commercial farmer mentor was appointed, thereby providing a critical link between the rural and commercial supply chains. All hub farmers are trained in economics; land preparation; planting; law; pest and disease control; fertilization; irrigation; and harvesting.

Further, in 2016 SPAR launched the RASET alignment project: a collaboration with the KwaZulu-Natal Provincial Government to build an effective and secure agro-food system for the province. The aim of the project is to ensure meaningful participation by previously disadvantaged farmers in the food value chain and improve the distribution of fresh produce in KwaZulu-Natal. Potential sites were identified, and discussions are underway with donors and financial institutions to generate funding for additional hubs and to create a fund for entrepreneurial development.

8.12 FINAL FINDINGS

The Inquiry finds that the structure of the South African grocery retail sector is conducive to the exercise of buyer power. The assessment of rebates provides compelling evidence that national supermarket chains are able to and do exercise such power to the detriment of small and independent retailers, and potentially to end-consumers too.

Based on all the evidence discussed in this chapter on the use and abuse of buyer power by the national supermarket chains, the Inquiry finds the entry and diversification of Shoprite under its “Usave e-Kasi” brand into the spaza shop segment even more concerning. Given the asymmetric competition that exists between Shoprite and spaza shops, as well as its massive buyer power in comparison with the ordinary spaza shops, such an entry and diversification, if allowed, can only have the effect of obliterating ordinary spaza shops. This conduct warrants action by government.

In addition, the Inquiry believes that concentration at the formal retail level of the value chain does result in greater concentration upstream given the emphasis on national supply contracts at scale, and the trading terms which can undermine fair access to shelf space in the large national supermarket chains. It would seem that the retailers themselves have identified their importance in the supply chain in terms of promoting small and historically disadvantaged firms up the supply chain, and that such promotion can also be beneficial to their commercial business and not just a social imperative.

805 Ibid.
806 Ibid.
1075. Broadly, the Inquiry finds that there is a combination of features in the South African grocery retail sector may prevent, distort or restrict competition. In particular, there are three principal areas of concern that warrant remedial action, namely long-term exclusive lease agreements and buyer power; the competitiveness of small and independent retailers; and the regulatory landscape.

**Market structure and the Inquiry’s scope of analysis**

1076. The Inquiry considered the market structure of the grocery retail sector and found that it is characterised by a significant number of suppliers of FMCG products and a few national supermarket chains in the formal retail channel as well as a number of firms active in the broader wholesale and independent retail channel. The national supermarket chains are vertically integrated in that they act as both distributor and retailer of groceries.

1077. In conducting its analysis, the Inquiry adopted a broad approach to its scope of analysis. The Inquiry is of the view that both local and national competition is important in the grocery retail sector, and while many aspects of grocery retailing markets may be localised, the nature of the issues under consideration (such as exclusive leases and buyer power) are replicated across the country and thus create a national phenomenon. As such, this, among others, provides justification for the Inquiry’s assessment conducted on the basis of the broader retailing of grocery products in South Africa, taking into account the possible narrower markets that may exist. This enabled the Inquiry to appropriately assess the multifaceted nature of the competition dynamics that underscore the issues raised in the ToRs.

1078. There is very limited information regarding the levels of concentration in the broader South African grocery retail sector. However, what is clear is that the supplier level of the value chain is characterised by the presence of a large number of players active in the various sub-sectors with a few large multi-product firms. The Inquiry finds that there are high levels of concentration in the formal retail channel, with the national supermarket chains collectively accounting for 64% of this segment.

1079. The levels of concentration in the formal retail channel, are also reinforced by the high levels of barriers to entry that seem to exist at this level of the value chain. It is common cause that entry at this level requires the acquisition of land and buildings which necessitates significant capital expenditure in order to make entry, the realisation of significant economies of scale and scope, the establishment of an extensive distribution network in order to be competitive, and compliance with stringent regulatory requirements in order to remain operational. The Inquiry found that the formal segment is characterised by high barriers to entry and expansion at the supplier level of the value chain.

1080. We now turn to the findings of the Inquiry in light of its objectives.
Long-term exclusive lease agreements, buyer power and their distortions on competition between grocery retailers

1081. First, when viewed within a bargaining framework, there appears to be a sustained pattern of behaviour by the national supermarket chains and their counterparts (whether property developers or suppliers of FMCG products) that:

1081.1 enables or results in the exercise of market power by the national supermarket chains to the exclusion of smaller, independent stores as well as emerging challenger retailers such as OBC, Choppies, Fruit and Veg and Food Lovers Market; and

1081.2 creates a conducive environment for the exercise of buyer power, with its concomitant distortion of competition between the national supermarket chains, wholesalers and independent retailers.

1082. This pattern manifests itself in respect of long-term exclusive leases in shopping centres and the payment of rebates by suppliers to the national supermarket chains, both of which have the effect of:

1082.1 reinforcing the levels of concentration in the formal retail segment;

1082.2 entrenching incumbency by the national supermarket chains; and

1082.3 raising barriers to entry for small and independent retailers and thus removing a crucial element for competition in the retail ecosystem i.e. emerging challenger retailers.

1083. Cumulatively, the distortions to competition arising from this pattern have resulted in restricted consumer choice.

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

1084. The Inquiry remains of the view that the practice of long-term exclusive lease agreements is widely prevalent and that the foreclosure of competing retailers, particularly small and independent retailers as well as emerging challenger retailers is sustained over significantly long periods. This gives rise to customer harm as it limits consumer choice within shopping centres. The implications of the continued presence of such long-term exclusive lease agreements are the perpetuation of the observed concentration levels and the existing incumbency patterns, thus depriving the consumers of dynamism and innovation in the South African grocery retail sector. Accordingly, this feature of the market i.e. long-term exclusive lease agreements, leads to a distortion of competition. There are no compelling justifications to substantiate the continued unfettered presence of such lease agreements.

1085. The Inquiry established that the vast majority of Shoprite and Spar leases, and a majority of Pick n Pay leases, contain exclusivity provisions. Woolworths leases do not contain explicit exclusivity provisions but have provisions which impact on letting and usage. The Inquiry finds that clauses which simply provide a limited exclusion on the zone area around the tenant in respect of certain businesses which pose a risk of undermining the maintenance of health and safety standards or brand positioning of a tenant are not objectionable. This is because these clauses do not restrict the entry of competing rivals in shopping centres nor do they dictate where in the shopping centre a rival tenant can operate their business. However, the Inquiry is of the view that these clauses must have an objective justification and must be reasonably related to such justifications.

1086. With regard to differential treatment in respect of rental rates, the Inquiry finds that the conduct is generally widely practiced as part of the business model in the retail property leasing environment. The practice is premised on a number of compelling justifications which include, market forces; size and position of the unit to be let; visibility of the unit to be let;
footfall likely to be created by the tenant; depth of the store; cost of installing the tenant and trading densities. Nevertheless, the Inquiry notes that the bargaining dynamics between landlords and the national supermarket chains do appear to have an influence on the differential treatment accorded different customer groupings. The Inquiry finds that this is akin to the waterbed effect.

1087. The Inquiry acknowledges the complexity associated with the determination of applicable rental rates to different types of customers. It is for this reason that the Inquiry does not make recommendations in this regard. However, the Inquiry is cognizant of the need to ensure that there is balanced treatment of tenants, premised on the principles of fairness and transparency.

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

1088. The Inquiry finds that the presence of buyer groups in the South African grocery retail sector has beneficial competition outcomes for members (generally traditional and hybrid wholesalers as well as independent grocery retailers), who largely operate in the informal retail trade segment. In particular, buyer groups enable wholesalers and independent retailers that lack scale economies to be able to combine their purchasing power in bargaining with suppliers of FMCG. The Inquiry established that buyer groups play a pivotal role in improving the competitiveness of wholesalers and independent retailers.

1089. It is against this finding that the Inquiry assessed the bargaining dynamics between the suppliers of FMCG and the national supermarket chains as well as the buyer groups. The Inquiry sought to determine whether the exercise of buyer power by the national supermarket relative to that of buyer groups and wholesalers serving smaller retailers had an effect on competition at the grocery retail level of the value chain.

1090. The Inquiry finds that the structure of the South African grocery retail sector is conducive to the exercise of buyer power. The assessment of rebates provides compelling evidence that national supermarket chains are able to, and do, exercise such power to the detriment of independent retailers and smaller retail chains, and potentially consumers too.

1091. In addition, the Inquiry is of the view that concentration at the formal retail level of the value chain results in greater concentration upstream given the emphasis on national supply contracts at scale, and the trading terms which can undermine fair access to shelf space in the large national supermarket chains. The national supermarket chains have identified their importance in the supply chain in terms of promoting small and historically disadvantaged firms up the supply chain.

Shifts in the competitive landscape and the impact on small and independent retailers

1092. The Inquiry noted that spaza shops and independent retailers in peri-urban areas developed at a point in time where, as a result of the apartheid regime’s spatial policies and construction of the economic landscape, there was no closer competition to contend with both from national supermarket chains nor foreign nationals in the immediate vicinity. Since 1994, the economic landscape has been slowly changing in these areas.

1093. In particular, the Inquiry finds that the entry of the national supermarket chains into township areas has shifted the competitive landscape in those areas such that the observed decline or exit of spaza shops and independent retailers can partly be attributed to this phenomenon. The competitive pressure faced by small and independent retailers from the national supermarket chains, particularly spaza shops has been intensified with the recent roll out of spaza shops conveniently located within residential areas in the townships. There is no denying that these corporate
owned spaza shops intend to capture the same market that independently owned spaza shops hope to capture. With the buyer power that supermarket chains have, it is very unlikely that independently owned spaza shops (both local and foreign owned) would be price competitive in relation to corporate owned spaza shops.

1094. The Inquiry also found that as spaza shops and independent retailers were grappling with this changing competitive dynamic, there was, simultaneously, increasing competitive pressure from foreign-owned spaza shops that have displaced locals in some cases.

1095. The Inquiry finds that there are numerous factors that are perceived to contribute to the success of foreign owned spaza shops, based on consumer surveys, targeted engagements and public forum discussions. These factors, amongst others, included efficiencies in the procurement of goods from co-operative arrangements (both horizontal and vertical), greater convenience through longer trading hours, stock diversity and product packaging, but also greater price competition from trading in counterfeit goods.

1096. The Inquiry finds that trade in counterfeit goods confers some form of price advantage to those that engage in the sale of such goods as opposed to those competitors that do not. Further to the unfair competitive advantage, there are broader negative ramifications for the fiscus in terms of lost tax revenue and the increased burden that is likely to be placed on the public healthcare sector. The Inquiry finds that while local-owned spaza shops also traded in counterfeit products, the sale of such goods appeared to be more prevalent in foreign-owned spaza shops. This unfair competitive advantage was also confirmed by the observed trends in consumer preferences as they appear to prefer foreign-owned spaza shops due to, amongst others, lower prices.

1097. In addition to the challenges above, the Inquiry finds that the regulatory environment is not conducive to supporting the sustainable competitiveness of these micro-enterprises in competition to supermarket-entprises in competition to supermarket chains, and in many cases actively undermines their ability to respond to the changing competitive environment.

**Recommended remedial action**

1098. Having regard to the foregoing, the Inquiry recommends a number of remedial actions that may rectify the circumstances identified above that have the effect of preventing and distorting competition in the grocery retail sector and inhibiting the effective participation of spaza shops and independent retailers in this sector.

1099. Broadly, the required remedial actions comprise a suite of interventions ranging from (i) changes in firm behaviour in order to ameliorate the distortions in competition in relation to long-term exclusive lease agreements and buyer power; (ii) support mechanisms to bolster the sustainable competitiveness of small and independent retailers; and (iii) modernisation of the regulatory landscape in order to create a conducive environment for the optimal functioning of competition.

1100. The Inquiry recommends that as of the date of publication of this Final Report:

**Long-term exclusive lease agreements**

1100.1 National supermarket chains must, with immediate effect, cease from enforcing exclusivity provisions, or provisions that have a substantially similar effect, in their lease agreements against:

1100.1.1 SMME’s;

1100.1.2 speciality stores; and

1100.1.3 other grocery retailers (including the emerging challenger retailers) in shopping centres located in non-urban areas.

1100.2 No new leases or extensions to leases by grocery retailers may incorporate exclusivity clauses (or clauses that have
substantially the same effect) or clauses that may serve to restrict the product lines, store size and location of other stores selling grocery items within the shopping centre.

1100.3 Subject to 1100.1 above, the enforcement of exclusivity by the national supermarket chains as against other grocery retailers must be phased out by the next extension of the lease or within five years from the date of the publication of this Final Report, whichever is earlier.

1100.4 In order to continue the work of the Inquiry, the Commission must seek to secure voluntary compliance by the national supermarket chains within six months from the date of publication of this Final Report. If the national supermarket chains do not undertake to give effect to these recommendations, the Government should introduce legislation, in the form of a statute, or regulations, or Code of Practice to give effect to these recommendations.

1100.5 Lastly, the above recommendations do not preclude the Commission from pursuing litigation in respect of the existing complaints and evidence gathered in this Inquiry. A final decision on a referral to the Tribunal should have regard to the response of each of the national supermarket chains to the efforts of the Commission in relation to the procurement of voluntary compliance with the above recommendations. The Inquiry is of the view that the evidence gathered in these proceedings may establish a prima facie case for a referral to the Tribunal. However, the Inquiry also accepts that litigation is a protracted process and the interests of consumers may be best served by an immediate and voluntary compliance by the national supermarket chains.

**Rental rates**

1100.6 Property owners and managers of shopping centres must:

1100.6.1 use fair, transparent and commercially justifiable criteria in determining differences in rental rates across tenants;

1100.6.2 ensure that escalation rates across tenants are uniform unless there are fair, transparent and commercially justifiable reasons for them to differ; and

1100.6.3 ensure that lease deposits and shop fitting allowances are based on fair, transparent and commercially justifiable criteria.

**Buyer power**

1100.8 Suppliers of fast-moving consumer goods must ensure:

1100.8.1 that trade terms are uniformly available to all retailers, wholesalers and buyer groups;

1100.8.2 that trade terms offered have an objective justification based on cost savings, supply chain efficiencies, efficient risk-sharing or sales promotion; the supplier must clearly stipulate and communicate the link between the trade terms offered and the efficiencies to all retailers, wholesalers and buyer groups;
1100.8.3 that the available trade terms and the conditions required to qualify for those terms are clearly communicated to all retailers, wholesalers and buyer groups and applied in a fair and uniform manner;

1100.8.4 that the percentage value provided under each trade term to different customers is reasonably related to qualifying criteria and value provided in respect of the objective justification for the trade term; and

1100.8.5 that the volume purchased may not form the basis for qualification or relative percentage value offered for any trade term to the designated class of retailers or wholesalers.

1100.9 In order to address the challenge faced by small suppliers in accessing shelf space of the national supermarket chains and taking into account the recent amendments and retailer initiatives noted above, the Inquiry makes the following recommends:

1100.9.1 First, that the current draft regulations designating agro-processing and grocery wholesale/retail, as well as the draft enforcement guidelines detailing specific practices as unfair be confirmed in the final regulations and guidelines. These should be widely publicised in order to empower small and historically disadvantaged suppliers in negotiations with the large national retail chains. In addition, the Inquiry recommends that once the regulations and guidelines are finalised, that the Commission engage the large national retail chains on their procurement practices to ensure that their procurement practices are aligned with the final enforcement guidelines, failing which, consideration should be given to initiating an investigation into these firms’ trading practices.

1100.9.2 Second, the enterprise development programmes of the national retail chains should be formalised and strengthened. Accordingly, the Inquiry recommends that the national supermarket chains make industry commitments to a formal ongoing programme to develop small and historically disadvantaged suppliers. Furthermore, such a programme should establish binding industry targets for a proportion of turnover to be supplied by SMMEs and historically disadvantaged suppliers, as well as a proportion of turnover to be spent on the development of new SMME and historically disadvantaged suppliers. These may initially be set in line with current enterprise development spend in order to formally bind such programmes. However, the formal commitments should also entail a gradual escalation of these binding commitments over time. This escalation should take into account what is realistic and achievable but should also be ambitious in its efforts to address concentration in the supply chain. Given that it is also the government department that oversees the B-BEEE codes of practice which incorporate an enterprise development component, this industry commitment may be facilitated by the DTIC.

1100.10 In order to continue the work undertaken by the Inquiry, the Minister should appoint a facilitator to seek to secure voluntary compliance by suppliers of fast-moving consumer goods. If the facilitator is unable to secure voluntary compliance within six months from the date of publication of this Final Report, the Government should introduce a
legislative framework to give effect to these recommendations in the form of a code of good practice and the establishment of an industry Ombudsman.

**Competitiveness support for spaza shops and small independent retailers**

1100.11 Government should facilitate the establishment of distribution centres to be located in peri- and non-urban areas to service small and independent retailers and wholesalers.

1100.12 Government should establish an incentive programme that will provide seed finance for innovative commercial models of private businesses that aim to offer the following support for small informal spaza shops:

1100.12.1 the effective incorporation of spaza shops into buyer groups and larger wholesale operations in order to assist them to realise economies of scale and scope in purchasing;

1100.12.2 the generation of key information on individual spaza shop operations such that the risks of extending credit finance to these shops can be more accurately assessed in order to facilitate credit access for the purchase of stock; and

1100.12.3 the development of consumer and business information to assist in the improvement of such businesses, including business and financial management training.

**Removal of regulatory obstacles to meeting competitive challenges**

1100.13 All three spheres of government involved in the regulation of planning and trade should cooperate with one another to coordinate their activities and legislation in accordance with section 41(h)(iv) of the Constitution and coordinate their actions in terms of section 35 of the Intergovernmental Relations Framework Act, 13 of 2005 to give effect to the following recommendations:

1100.13.1 organised local government must seek to develop a common approach for local government in terms of section 3(3)(a) of the Local Government: Municipal Systems Act, 32 of 2000 to develop uniform guidelines for by-laws and regulations to give effect to these recommendations;

1100.13.2 municipalities must review the trading times in by-laws and regulations in relation to spaza shops and street traders, with the view to amending or abolishing those by-laws and regulations in accordance with the uniform guidelines;

1100.13.3 municipalities must fast-track the processing of existing re-zoning requests for spaza shops in township areas;

1100.13.4 municipalities must proactively rezone areas to enable them to carry on business in a more effective and formalised manner and in accordance with the uniform guidelines;

1100.13.5 provinces and municipalities must coordinate and streamline applications for liquor licences and for rezoning;

1100.13.6 municipalities must develop and implement preferred zoning processes and practices that facilitate ease of entry for SMMEs in non-urban areas including imposing conditions to the approval of shopping centre developments to secure the inclusion of SMME businesses in and around shopping centres; and
1100.13.7 municipalities must develop and implement a simplified framework for the registration of informal businesses, particularly spaza shops.

1100.14 In so far as counterfeit goods are concerned, it is recommended that-

1100.14.1 law enforcement officers appointed by municipalities are given powers to enforce the Counterfeit Goods Act, 37 of 1997 either under section 22 of that Act or by way of declaration in terms of section 334(1) of the Criminal Procedure Act, 51 of 1977; and

1100.14.2 there must be increased coordination between the South African Revenue Services, South African Police Services and municipalities to facilitate proactive policing of counterfeit goods.

1101. Given the multiplicity of issues that appear to distort and impede competition in the grocery retail sector, the Inquiry recommends that government should develop a legislative framework with a statutory industry body for the regulation of the retail sector, taking into account, among others, the findings and recommendations of this Inquiry.
10.1 GROCERY MARKET INQUIRY PHASES

PHASE 1

1. During Phase 1, the Inquiry undertook the following activities: (i) the publication of the draft and final ToR; (ii) an overview of the initial consultations; and (iii) the publication of the draft and final SOI, Guidelines for Participation, Administrative Guidelines, as well as an overview of stakeholder comments on these documents.

Publication of the Inquiry’s draft and final ToR

2. The Inquiry’s draft ToR were published in the Government Gazette in July 2015, giving stakeholders 15 business days to comment on the contents. The Inquiry received a total of 20 submissions, from 8 research institutions, private researchers, students, and other interested individuals, 5 small businesses and business associations, 4 national retail chains, as well as from Cosatu, the South African Property Owners’ Association (“SAPOA”) and Section 27, a public interest law centre.

3. The comments received on the draft ToR were carefully considered. Where deemed appropriate, the comments were incorporated in the Final ToR, published in the Government Gazette on 30 October 2015.

Initial consultations

4. After the initiation of the Inquiry and before the Inquiry panel was finalised and appointed, the Inquiry commenced with initial consultations with various stakeholders and reviews of existing literature in relation to the objectives of the Inquiry. The purpose of such consultations and research was to obtain an initial overview of the competition and public interest issues prevalent in the sector that may have relevance to, or a bearing on, the Inquiry.

5. After the finalisation and appointment of the Inquiry panel in February 2016, the results of its initial consultations and literature review were presented to the Inquiry panel, where after both the Inquiry panel and the Inquiry (hereinafter referred to collectively as “the Inquiry”) addressed the proper scoping of the Inquiry.

Draft SOI, Guidelines for Participation and Administrative Timelines

6. The draft SOI contained the Inquiry’s envisaged framework to assist the participants in the Inquiry to focus on issues the Inquiry envisaged to be the most
relevant in answering questions arising from the ToR. In line with the scope of the Inquiry and as set out in the ToR, the SOI proposed to assess competition in the grocery retail sector according to the following objectives:

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

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

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

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

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

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

7. The draft Guidelines for Participation provided guidance as to how stakeholders who wished to participate in the proceedings of the Inquiry were to submit their responses. This document was designed to ensure a fair and transparent process for all stakeholders.

8. The draft Administrative Timelines were drawn up to provide structure and guidance to stakeholders in respect of the Inquiry’s milestones and timelines, and to indicate when they would be expected to make submissions to and participate in the Inquiry.

9. On 17 May 2016, the Inquiry published the draft SOI, guidelines for participation and administrative timelines for comment by the public. Stakeholders were given a period of one month to comment on the draft documents, with submissions due on 15 June 2016.

10. The Inquiry received formal written submissions from 7 stakeholders and oral submissions from two stakeholders. In accordance with the draft Guidelines for Participation, Administrative Timelines and in the interest of the Inquiry’s principles of transparency, the submissions were published on the Commission’s website during the week of 11 July 2016.

11. The comments and submissions received in relation to the draft SOI were primarily

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

812 This was followed by a media briefing by the Panel on the status of the Inquiry. The draft documents were submitted to the Commission Meeting for noting approximately a week before the publication thereof.

813 All stakeholder comments on the draft SOI, guidelines for participation and administrative timelines are available at: http://www.compcom.co.za/retail-market-inquiry/.

814 Pick ‘n Pay; the SPAR group; woolworths; Untrade Management System (“UMS”) buyer group; Agri SA, a non-profit organisation focused on developing agriculture in South Africa; the South African National Consumer Union (“SANCU”), and Ms Reena das Nair, an independent academic researcher.

815 These included a retired owner of an independent wholesaler in the Western Cape area; and from the managing director of the Elite Star Trading (“EST”) buyer group. Two stakeholders, namely the Department of Trade and Industry (“DTI”) and University of Fort Hare formally noted that they did not have any comments on the documents at that stage.

816 None of the submissions contained confidential information.
around the issue of the buyer power of national supermarket chains relative to their suppliers, and the indirect effects of this power on small independent retailers and independent buyer groups. In addition to this, the issue of rebates, in particular rebates demanded by the national supermarket chains from suppliers, allegedly to the detriment of small independent retailers and buyer groups, came up as one of the issues of concern that were not necessarily explicitly referred to in the ToR and the draft SOI.  

**Publication of the final SOI, Guidelines for Participation, Administrative Timelines and Guidelines for Data and Technical Analysis**

12. After considering the submissions from stakeholders, the Inquiry subsequently amended objective 5 of the SOI to include the consideration of the impact of buyer power of large purchasers of Fast-Moving Consumer Goods (“FMCG”) on small and independent retailers in townships, peri-urban and rural areas. Objective 5 of the SOI initially only included the consideration of the impact of buyer groups in these areas.  

13. On 15 July 2015, the amended and final versions of the SOI, Administrative Timelines and Guidelines for Participation were subsequently published on the Commission’s website, together with an invitation to market participants to make full submissions on the subject matters raised in the SOI. All non-confidential stakeholder comments on the subject matter of the Inquiry are available at: http://www.compcom.co.za/retail-market-inquiry/.  

14. The Inquiry received formal written submissions on the subject matter raised in the SOI from 18 stakeholders.  

15. Non-confidential versions of the written submissions received in respect of the subject matters raised in the SOI were published on the Commission’s website in September 2016. Stakeholders were also given the opportunity to comment on the non-confidential versions of each other’s submissions. Six such submissions were received from Massmart; Pick n Pay; Spar; Woolworths; UMS and SANCU. Non-confidential copies of these submissions were also published on the Commission’s website.  

**PHASE 2**

16. Phase 2 constituted the information gathering phase of the Inquiry. The Inquiry’s main activities during this phase included:  

16.1 site visits and re-visits;  
16.2 targeted stakeholder consultations and information requests;  
16.3 conducting surveys; and  
16.4 public hearings.  

17. The Inquiry’s activities in respect of each of these are set out below.
Site visits

18. Most of the Inquiry's objectives focus on the business operations of small and independent retailers within townships, peri-urban and rural areas and the informal economy. However, limited information was gathered from the research reviewed in phase one. On this basis, the Inquiry identified the need to consult directly and widely through site visits in order to interact directly with, and obtain the views of, small and independent retailers (both formal and informal), regarding the barriers they experienced in entering into and expanding their businesses.

19. The site visits were subsequently set up to focus on meetings with small and independent retailers (either formal or informal), provincial government departments and municipalities, buyer groups and wholesalers, as discussed below.

Meetings with small and independent retailers

20. The Inquiry's site visits with small and independent retailers (either formal or informal) included meetings with spaza shop owners and hawker forums, other independent retailers and general dealers in townships, peri-urban and rural areas throughout the country.

21. The Inquiry's consultations with such forums provided it with the opportunity to interact with spaza shop owners directly to (i) explain the work of the Commission and the purpose of the Inquiry; (ii) discuss the challenges they face in opening, operating and expanding their spaza shops or businesses; (iii) give them the Inquiry's survey-type questionnaire to complete and to also share these questionnaires with other spaza shop owners in their areas. The results of the questionnaires were used to inform discussions during the subsequent site re-visits conducted by the Inquiry.

Provincial departments of economic development and municipalities

22. The meetings with the provincial departments and municipalities during the course of the Inquiry's first round of site visits played a key role in connecting the Inquiry with spaza shop and hawker forums in their respective jurisdictions. This proved to be useful in setting up meetings with locally operated spaza shops and with hawkers who are generally extremely difficult to contact.

23. Government departments and municipalities were also able to provide the Inquiry with research relating to the various objectives of the Inquiry that they had already conducted or commissioned. In addition, they were able to provide the Inquiry with the latest versions of their regulations, provide insights as regards the enforcement thereof and the challenges that they, as regulators, experience. Lastly, they were able and willing to facilitate the Inquiry's site re-visits in their respective provinces.

Buyer groups and cash and carries

24. A large proportion of the customers of wholesalers (who are often members of buyer groups) consists of both foreign and local-operated small and independent retailers in townships, peri-urban and rural areas. Buyer groups and wholesalers have often provided useful information to the Inquiry on the buying patterns and challenges faced by these players, as well as the dynamics of competition between foreign and local operated spaza shops.

Site visit schedule

25. The Inquiry's site visits commenced in June 2016, and were completed by the end of September 2016, as set out in section 37 of

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823 During its Phase one consultations and literature review, the Inquiry was only able to find and gather information and data in respect of the operations of small and independent retailers within townships and peri-urban areas in the Gauteng and Western Cape provinces. However, the Inquiry’s Phase one consultations and literature review revealed very limited information and data in respect of the businesses operations of small and independent retailers within townships, peri-urban and rural areas within the remaining 7 provinces.

824 During the initial site visit stage, the Inquiry did not prioritise Cape Town, as some information and data was already available in respect of the challenges faced by small and independent retailers in the city.
Annexure 1. During the Inquiry’s initial site visits, it became apparent that it would be necessary to conduct re-visits to the spaza shop owners and hawkers visited during the initial site visits.825

26. In July 2016 a risk was identified that the Inquiry’s public hearings, which were to take place in 2017, would not make sufficient provision to engage all stakeholders properly on a regional basis, due to time constraints. A decision was, therefore, made to convert the planned re-visits to the various provinces visited into mini-public hearings, to allow for sufficient and inclusive consultation with small and independent retailers on a regional basis.826 The site re-visits commenced during the second week of October 2016 and were completed by the end of November 2016. Section 37 of Annexure 1 sets out the Inquiry’s site re-visit schedule.

Targeted consultations and information requests

27. In addition to the site visits and re-visits set out above, the Inquiry also conducted targeted consultations with specific identified stakeholders who were not included in the site visits. Stakeholders engaged included a range of national and provincial Government departments, industry associations, buyer groups, wholesalers, large and small retailers, property developers and suppliers. The full list is contained in section 10.3 of Annexure 1.

Surveys

28. The Inquiry identified the need to supplement the information gathered during its site visits and site re-visits with representative survey data for: (i) small and independent retailers in townships, peri-urban and rural areas (“the small business survey”); and (ii) consumers in township, peri-urban and rural areas (“the consumer survey”).827

29. The Inquiry also commissioned a study which looked at the potential existence of counterfeit goods in the informal grocery sector. Further to the outsourced study and surveys, the Commission compiled its own internal questionnaire which was filled out by traders in the numerous provinces in which the Inquiry conducted its site-visits.

Consumer survey

30. The purpose of the consumer behavior survey was to assess the general shopping behavior and preferences of consumers in the grocery retail sector. This survey was conducted over the following 10 areas with 1 558 respondents: Mthatha (Eastern Cape), Thabong (Free State), Ivory Park and Winterveldt (Gauteng), KwaMashu (KwaZulu Natal), Giyani (Limpopo), Secunda and Embalenhle (Mpumalanga), Mmabatho (North West), Kimberly and Galeshewe (Northern Cape), Vrygrond and Cape Town (Western Cape).
31. The purpose of this survey was to understand the changing socio-economic, political and informal dimensions within which the spaza market operates in townships in each of the nine provinces. The survey involved locating and interviewing spaza shops trading within township, rural, peri-urban and urban communities. The small business survey assessed competitiveness in the informal retail grocery segment which also included the dynamics between foreign-owned and local-owned spaza shops. The research process generated findings from 1,181 informal grocery outlets located in the following nine townships: namely Vrygrond (Western Cape), De Aar (Northern Cape), Thabong (Free State), Ivory Park (Gauteng), Phokeng (North West), Modjadjiiskloof (Limpopo), Nkomazi (Mpumalang), KwaMahsu (KwaZulu Natal), and Lusikisiki (Eastern Cape).

A study of potential counterfeit goods in the informal grocery sector

32. The study on the potential existence of counterfeit goods in the informal grocery retail segment was prompted by submissions received during the site-visits, re-visits and public hearings. Further, the study was also influenced by an earlier piece of research conducted by the Sustainable Livelihood Foundation (“SLF”), on the nature of competition in the informal grocery retail segment. The SLF research was based on a random sample of 50 informal grocery retail outlets in four township settlements, namely Vrygrond (Western Cape), Ivory Park (Gauteng), Lusikisiki (Eastern Cape), and KwaMashu (KwaZulu Natal). The SLF research made the following findings:

32.1 the majority of the spaza shops which were interviewed were foreign owned (72%) with representatives commonly from Ethiopia, Bangladesh and Somalia;

32.2 South African spaza shop ownership was in decline;

32.3 the foreign owned shops were strongly linked into supply chains, with business ties between individual retail outlets and wholesalers;

32.4 non-normative employment models appeared to be a feature of foreign nationals’ outlets, including working terms and contracts that could be best seen as legally problematic, and in the worst cases exploitative;

32.5 foreign-owned shops were more commonly involved in the retailing of contraband (untaxed) cigarettes, which play an important role in bolstering business profitability; and

32.6 the majority of counterfeit grocery items are likely to be sold within the spaza shops.

33. Building on the previous research, this study sought to establish the range, amount and extent of likely counterfeit items and to discover the prevalence of such products in the informal grocery retail segment.

Inquiry’s questionnaire

34. During the site visits, the Inquiry also compiled an internal questionnaire which was translated into various languages spoken in South Africa as well as languages spoken by foreign nationals such as Swahili, Amharic and Bengali. Some of the issues which the questionnaire sought to answer related to the difference in trading times between foreign and local owned spaza shops, the difference in ownership structures and how spaza shops procure their products.

Public hearings

35. The Inquiry conducted four sets of public hearings that were held in Cape Town from 8 – 12 May 2017; Johannesburg from 8 – 9 June 2017; Durban from 3 – 7 July 2017; and Pretoria from 5 – 7 June 2017 and 30 October – 6 November 2017. During these public hearings, the Inquiry heard very useful submissions from more than 50
individual stakeholders and stakeholder groups. A list of all stakeholders that presented at each of the public hearings, together with the specific topics presented on is set out in sections 10.5 to 10.8 of Annexure 1.

PHASES 3 AND 4

36. During Phase 3 and Phase 4, the Inquiry analysed all the information that had been collected during Phases 1 and 2 and drafted the Preliminary Report, documenting the preliminary findings of the investigation and the proposed recommendations. In addition, there were follow up meetings and information requests with certain stakeholders in order to fill the gaps that had been identified after the Inquiry had begun compiling the Preliminary Report.

37. Pursuant to the publication of the Preliminary Report, the Inquiry received numerous submissions. The combination of the evidence and submissions received informed the drafting of the Final Report.

10.2 SITE VISITS AND RE-VISIT SCHEDULES

38. Table 10.1 and Table 10.2 below provide a list of the site visits and revisits conducted during the course of the Inquiry.

10.3 TARGETED CONSULTATIONS

39. The Inquiry also sent targeted information requests to the following stakeholders:

39.1 retailers, including Spar, Pick n Pay, Shoprite, Massmart, Woolworths, Choppies, Fruit & Veg, The Save Group and The Check-out Group.

39.2 financiers, including the Banking Association of South Africa, Nedbank, FNB, Standard Bank, Barclays, Investec and Grindrod Bank.

Table 10.1: Site Visit Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Province</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 May 2016 to 02 September 2016</td>
<td>Gauteng</td>
<td>Pretoria and Johannesburg</td>
</tr>
<tr>
<td>20, 21 July 2016</td>
<td>Free State</td>
<td>Bloemfontein</td>
</tr>
<tr>
<td>16, 17 August 2016</td>
<td>KwaZulu-Natal</td>
<td>eThekwini, KwaDukuz, and Pietermaritzburg</td>
</tr>
<tr>
<td>22, 23 August 2016</td>
<td>Limpopo</td>
<td>Polokwane</td>
</tr>
<tr>
<td>5, 6 September 2016</td>
<td>Mpumalanga</td>
<td>Mbombela</td>
</tr>
<tr>
<td>14, 15 September 2016</td>
<td>North West</td>
<td>Rustenburg, Mahikeng</td>
</tr>
<tr>
<td>26, 28, 29 September 2016</td>
<td>Eastern Cape</td>
<td>Mthatha, East London, and King Williams Town</td>
</tr>
</tbody>
</table>

829 These included a number of small and independent grocery retailers and liquor traders, owners of small and independent speciality shops such as butcheries and bakeries, a number of associations representing a significant number of small and independent retailers; research institutions; three provincial Government departments; two municipalities; two buyer groups, small and independent manufacturers/suppliers of grocery products; a limited number of small and independent shopping centre owners, large national retailers, property developers and financiers of shopping centre developments.

830 The Inquiry was unable to conduct a site visit to the Northern Cape. However, the Northern Cape was included in the Inquiry Team’s re-visits.

831 Partial responses to the information requests have been received from Spar, Pick n Pay, Shoprite and Massmart, with the balance of the information expected within the next 4 weeks. Full responses to the information requests were received from Choppies and Fruit & Veg.

832 The information requests were sent to these financiers in the form of discussion points when requesting meetings with them. Responses to such discussion points were either received verbally at the meeting (FNB, Grindrod), or in writing (in the case of Nedbank). No responses were received from the Banking Association, Standard Bank and Barclays, although Standard Bank has since indicated its availability to make submissions at the upcoming public hearings (see section 3.3.5 below).
39.3 property developers, including SAPOA, Old Mutual, Hyprop, SACS property solutions, Investpro properties, GBCSA properties, Liberty Life, Growth Point, Resilient properties, Redefine properties, Atterbury properties, Annenburg properties, Abland property developers and Amdec property developers.\footnote{In some instances, the information requests were sent to these developers in the form of discussion points when requesting meetings with them. Responses to such questions/discussion points were either received verbally at the meeting (Investpro, Resilient), or in writing (SAPOA, Old Mutual, Redefine). No responses were received from Hyprop, SACS, GBCSA, Abland, Amdec, Liberty Life, Growth Point, Atterbury and Annenburg.}

39.4 manufacturers and suppliers of fast-moving consumer goods, including I&J, Premier Foods, Tiger Brands, Oceana, Unilever, Pioneer Foods, [K] and Soweto Brands.\footnote{Note that the information requests were sent to these suppliers in the form of discussion points when requesting meetings with them. Responses to such discussion points were either received verbally at the meeting (Tiger Brands, Oceana, Unilever, Pioneer Foods), or in writing (in the case of I&J), or both (Premier Foods, [K], Soweto Brands).}

39.5 a selection of metropolitan, district and local municipalities, including the Sedibeng local municipality, Ethekwini metropolitan municipality, Stellenbosch local municipality, KwaDukuza local municipality, Overberg district municipality, Mbombela local municipality, Umsunduzi local municipality, City of Cape Town metropolitan municipality, City of Tshwane municipality, Drakenstein local municipality and Rustenburg local municipality.\footnote{These information requests were sent to these municipalities in the form of discussion points when requesting direct meetings with them as well as their participation in the public hearings.}

<table>
<thead>
<tr>
<th>Date</th>
<th>Province</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 October 2016</td>
<td>KZN</td>
<td>eThekwini</td>
</tr>
<tr>
<td>04 November 2016</td>
<td>Limpopo</td>
<td>Polokwane</td>
</tr>
<tr>
<td>09 November 2016</td>
<td>Mpumalanga</td>
<td>Nelspruit</td>
</tr>
<tr>
<td>05 December 2016</td>
<td>Northern Cape</td>
<td>Kimberley</td>
</tr>
<tr>
<td>08 November 2016</td>
<td>Eastern Cape</td>
<td>Mthatha</td>
</tr>
<tr>
<td>14 November 2016</td>
<td>North West</td>
<td>Rustenburg</td>
</tr>
</tbody>
</table>
### 10.4 OVERVIEW OF CONSULTATIONS PHASES 1 AND 2

<table>
<thead>
<tr>
<th>NAME OF FIRM OR INSTITUTION</th>
<th>DESCRIPTION OF FIRM OR INSTITUTION</th>
<th>PHASE 1 OR PHASE 2 CONSULTATION</th>
<th>SITE VISIT OR DIRECT CONSULTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somali Community Board</td>
<td>Association of Somali operated retailers</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Black Business Council</td>
<td>Association local operated spaza shops</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>The African Council of Hawkers and Informal Businesses</td>
<td>Association of hawkers and informal businesses</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>National African Federated Chamber of Commerce (&quot;NAFCOC&quot;)</td>
<td>Association</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Milk Producers' Organisation (&quot;MPO&quot;)</td>
<td>Association of milk suppliers</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Somali Community Board (Cape Town)</td>
<td>Association of Somali operated retailers</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Mpumalanga Youth Chamber of Commerce</td>
<td>Association</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>Ncgobo Small Business Chamber</td>
<td>Association</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>Bloemfontein informal forum</td>
<td>Association of informal businesses in Bloemfontein</td>
<td>Phase 2</td>
<td>Free State site visit</td>
</tr>
<tr>
<td>My Spaza</td>
<td>Association of locally operated spaza shop owners located in Mamelodi. The forum seeks to support its members, with plans to open their own buyer group within a period of 3 years</td>
<td>Phase 2</td>
<td>Gauteng site visit</td>
</tr>
<tr>
<td>Minara Chamber of Commerce</td>
<td>Association representing medium/large independent retailers</td>
<td>Phase 2</td>
<td>KZN site visit</td>
</tr>
<tr>
<td>Lepelle Nkumpi Local Municipality Hawkers Forum</td>
<td>Association of hawkers operating in the Lebowakgomo township</td>
<td>Phase 2</td>
<td>Limpopo site visit</td>
</tr>
<tr>
<td>South African Bulk Entrepreneurs Primary Co-Operative (&quot;SABEPCO&quot;)</td>
<td>Association of spaza shops wishing to form a buyer group in the Limpopo province</td>
<td>Phase 2</td>
<td>Limpopo site visit</td>
</tr>
<tr>
<td>Elizabeth Litswithi</td>
<td>Hawker’s Association</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>Ncgobo small business chamber</td>
<td>Association of small business owners</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>NAME OF FIRM OR INSTITUTION</td>
<td>DESCRIPTION OF FIRM OR INSTITUTION</td>
<td>PHASE 1 OR PHASE 2 CONSULTATION</td>
<td>SITE VISIT OR DIRECT CONSULTATION</td>
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<tr>
<td><strong>BUYER GROUPS AND CASH &amp; Carries</strong></td>
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<td>Bibi Cash &amp; Carry</td>
<td>Cash &amp; Carry</td>
<td>Phase 1</td>
<td>Direct consultation</td>
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<tr>
<td>EST</td>
<td>Buyer group</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
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<td>Tayo Cash &amp; Carry</td>
<td>Foreign owned cash &amp; carry</td>
<td>Phase 2</td>
<td>Gauteng site visit</td>
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<tr>
<td>ICC buying group</td>
<td>Buyer group</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Yarona Cash &amp; Carry</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<tr>
<td>Big Save (KZN)</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>KZN site visit</td>
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<tr>
<td>Big Save (Gauteng)</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>Gauteng site visit</td>
</tr>
<tr>
<td>Unitrade Management Services (“UMS”)</td>
<td>Buyer group</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Devland Cash &amp; Carry (Jhb)</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<td>Devland Cash &amp; Carry (Mpumalanga)</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
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<tr>
<td>Shield buyer group</td>
<td>Buyer group</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<tr>
<td>Riviera Cash &amp; Carry</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>Kit Kat</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Limpopo Cash &amp; Carry</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>Limpopo site visit</td>
</tr>
<tr>
<td><strong>NATIONAL, PROVINCIAL, LOCAL GOVERNMENT DEPARTMENTS AND OTHER GOVERNMENT BODIES</strong></td>
<td></td>
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<td>Statistics South Africa</td>
<td>National Government Department</td>
<td>Phase 1</td>
<td>Direct consultation</td>
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<tr>
<td>Department of Small Business Development (“DSBD”)</td>
<td>National Government Department</td>
<td>Phase 1</td>
<td>Direct consultation</td>
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<tr>
<td>Western Cape Provincial Government</td>
<td>Provincial Government</td>
<td>Phase 1</td>
<td>Direct consultation</td>
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<tr>
<td>National Agricultural Marketing Council (“NAMC”)</td>
<td>Government</td>
<td>Phase 1</td>
<td>Direct consultation</td>
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<td>Economic Development Department</td>
<td>National Government Department</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Tshwane Municipality</td>
<td>Local Government</td>
<td>Phase 1</td>
<td>Direct consultation</td>
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<td>South African Local Government Association</td>
<td>Local Government Association</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>South African Revenue Service (“SARS”)</td>
<td>National Government Department</td>
<td>Phase 2</td>
<td>Direct consultation</td>
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<tr>
<td>BESD</td>
<td>Training Seta</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>National Department for Small Business Development</td>
<td>National Government Department</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>NAME OF FIRM OR INSTITUTION</td>
<td>DESCRIPTION OF FIRM OR INSTITUTION</td>
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</tr>
<tr>
<td>Mbombela municipality</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>Mpumalanga Provincial Department for Economic Development</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>Sol Plaatjie Municipality</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Northern Cape Provincial Government</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>DTI</td>
<td>National Government Department</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Gauteng Department of Economic Development</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Free State Provincial Department (“DESTEA”)</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>Free State site visit</td>
</tr>
<tr>
<td>Free State Provincial Department for Small Business Development</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>Free State site visit</td>
</tr>
<tr>
<td>eThekwini municipality</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>KZN site visit</td>
</tr>
<tr>
<td>KwaDukuza local municipality</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>KZN site visit</td>
</tr>
<tr>
<td>Provincial Department for Economic Development, Tourism and Environmental Affairs</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>KZN site visit</td>
</tr>
<tr>
<td>Limpopo Provincial Department for Economic Development, Tourism and Environmental Affairs</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>Limpopo site visit</td>
</tr>
<tr>
<td>Capricorn District Municipality and spaza shop forums</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>Limpopo site visit</td>
</tr>
<tr>
<td>Sekhukhune District Municipality LEDET</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>Limpopo site visit</td>
</tr>
<tr>
<td>North West Provincial Government Department for Economic Development, Tourism and Environmental Affairs, and other district and local municipalities</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>Tag Cash &amp; Carry</td>
<td>Cash &amp; Carry</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>Rustenburg local municipality town planning unit</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>King Sabata Dalindyebo Municipality</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>NAME OF FIRM OR INSTITUTION</td>
<td>DESCRIPTION OF FIRM OR INSTITUTION</td>
<td>PHASE 1 OR PHASE 2 CONSULTATION</td>
<td>SITE VISIT OR DIRECT CONSULTATION</td>
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<td>------------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Buffalo City Municipality and Mdantsane informal traders association</td>
<td>Municipality</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>EC Economic Development, Environmental Affairs and Tourism</td>
<td>Provincial Government</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>Rhino Cash and Carry</td>
<td>Affiliated with the Massmart group with a primary focus on retail trade to the end-customer.</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>Eastern Cape Liquor Board</td>
<td>Liquor and liquor trading regulation authority</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td><strong>PROPERTY DEVELOPERS &amp; FINANCIERS</strong></td>
<td></td>
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</tr>
<tr>
<td>First National Bank</td>
<td>Financier of shopping centres</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Investpro properties</td>
<td>Financier of shopping centres</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>Grindrod Bank</td>
<td>Financier of shopping centres</td>
<td>Phase 2</td>
<td>KZN site visit</td>
</tr>
<tr>
<td>Masingita Group of Companies</td>
<td>Black owned property developer with properties in townships and rural areas</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>SAPOA</td>
<td>Property owners’ association</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td><strong>RESEARCH INSTITUTIONS, UNIVERSITIES, CONSULTANCIES &amp; OTHER</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Sustainable Livelihood Foundation</td>
<td>Consultancy firm</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>University of Cape Town (“UCT”)</td>
<td>University</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Bureau of market research, Unisa</td>
<td>University</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Demacon</td>
<td>Consultancy firm</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Urban Landmark</td>
<td>Research institution</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Urban Econ</td>
<td>Consultancy firm</td>
<td>Phase 1</td>
<td>Direct consultation</td>
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<tr>
<td>Saldru</td>
<td>Research institution</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Grass Consumer Action (“GCA”)</td>
<td>Research institution</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Gauteng City-Region Observatory (“GCRO”)</td>
<td>Research institution</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Nielsen South Africa</td>
<td>Consultancy firm</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Institute of Poverty, Land and Agrarian Studies (“PLAAS”)</td>
<td>Research institution</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>NAME OF FIRM OR INSTITUTION</td>
<td>DESCRIPTION OF FIRM OR INSTITUTION</td>
<td>PHASE 1 OR PHASE 2 CONSULTATION</td>
<td>SITE VISIT OR DIRECT CONSULTATION</td>
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<tr>
<td>Master’s student</td>
<td>Master’s student</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>South African Cities Network</td>
<td>Research institution</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Free Market Foundation, Nafcoc</td>
<td>Research institution</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Exact Africa</td>
<td>Firm that negotiates lease agreements on behalf of small retailers</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Who Owns Whom</td>
<td>Research institution</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
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<tr>
<td><strong>SUPERMARKETS</strong></td>
<td></td>
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</tr>
<tr>
<td>Choppies</td>
<td>Supermarket chain (new entrant)</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Choppies</td>
<td>Supermarket chain (meeting at Northwest stores)</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>Overland Liquors</td>
<td>Liquor store franchise</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Spar buyer group</td>
<td>Buyer group/national retail chain</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Supa save</td>
<td>Small supermarket</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>Superspar Westend</td>
<td>Independent Spar Retailer</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>Max Mart supermarket</td>
<td>Small supermarket</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>OB Supermarket</td>
<td>Small supermarket</td>
<td>Phase 2</td>
<td>Mpumalanga site visit</td>
</tr>
<tr>
<td>Deon van der Vyfer</td>
<td>Small retailer</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Mbulelo Qotoyi</td>
<td>Private individual - previous owner of a grocery store</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>Woolworths</td>
<td>Large retailer</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Jwayelani</td>
<td>Suppliers of meat, recently acquired by Choppies</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>The Pastry Works</td>
<td>Speciality bakery</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Take &amp; Pay Supermarket</td>
<td>Small retailer (member of UMS buying group)</td>
<td>Phase 2</td>
<td>KZN site visit</td>
</tr>
<tr>
<td>Super Save</td>
<td>Small retailer (member of UMS buying group)</td>
<td>Phase 2</td>
<td>KZN site visit</td>
</tr>
<tr>
<td>Goseame Open Market</td>
<td>Hybrid store which specializes on the sale of fresh produce and meat. A member of UMS buyer group</td>
<td>Phase 2</td>
<td>Limpopo site visit</td>
</tr>
<tr>
<td>Moses Lehadi</td>
<td>Former supermarket owner in Mafikeng who rented out his supermarket to foreign nationals</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>NAME OF FIRM OR INSTITUTION</td>
<td>DESCRIPTION OF FIRM OR INSTITUTION</td>
<td>PHASE 1 OR PHASE 2 CONSULTATION</td>
<td>SITE VISIT OR DIRECT CONSULTATION</td>
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</tr>
<tr>
<td>Tsholofelo Molefi</td>
<td>Small retailer</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>Ms Mantwa</td>
<td>Former supermarket owner in Ledig who rented out his supermarket to foreign nationals</td>
<td>Phase 2</td>
<td>North West site visit</td>
</tr>
<tr>
<td>Ndu’s Spar</td>
<td>Member of Spar group that is currently running a Country Spar outlet catering the rural community surrounding Ngcobo;</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
<tr>
<td>Sparg’s Spar</td>
<td>Member of Spar group that was formerly an independent retailer;</td>
<td>Phase 2</td>
<td>Eastern Cape site visit</td>
</tr>
</tbody>
</table>

**SUPPLIERS AND MANUFACTURERS OF GROCERY PRODUCTS AND LIQUOR**

<table>
<thead>
<tr>
<th>Supplier Name</th>
<th>Description of Supplier</th>
<th>Phase or Site Visit</th>
<th>Method of Consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Van Loveren Family Vineyards</td>
<td>Small winemaker</td>
<td>Phase 1</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Oceana</td>
<td>Large supplier of groceries</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>[ ]</td>
<td>Small supplier of certain grocery products</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Tiger Brands</td>
<td>Large supplier of groceries</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Unilever</td>
<td>Large supplier of groceries</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Pioneer Foods</td>
<td>Large supplier of groceries</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Premier Foods</td>
<td>Large supplier of groceries</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
<tr>
<td>Soweto Brands</td>
<td>Small supplier of certain grocery products</td>
<td>Phase 2</td>
<td>Direct consultation</td>
</tr>
</tbody>
</table>

10.5 **OVERVIEW OF STAKEHOLDER REPRESENTATIONS AT THE CAPE TOWN HEARINGS**

<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>MJ Group</td>
<td>Small grocery retailer in Gugulethu</td>
<td></td>
</tr>
</tbody>
</table>
|                  | • Inability to obtain a lease from a shopping centre in Gugulethu as a result of an exclusive lease agreement between the anchor tenant and landlord and the importance of locating its retail business in a shopping centre for, among others, security reasons.  
<p>|                  | • Concerns regarding the buyer power of large retailers. |</p>
<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
</table>
| Gugulethu Liquor Traders Association   | An association of 45 licensed liquor traders in Gugulethu                             | • Concerns and impact of liquor by-laws.  
• Impact of the entry of large retailers and their liquor stores in the Gugulethu area on the traders’ businesses.  
• Discriminatory enforcement by liquor boards and municipalities, as well as lack of cooperation between these bodies and township liquor traders |
| Siyanda Mnothoza of Gugulethu          | Owner of a small informal shop selling basic groceries in Gugulethu                    | • Inability to compete with foreign operated traders.  
• Negative impact of the entry of shopping centres on his business.  
• Concerns regarding municipal regulations and the enforcement thereof on his business. |
| Thandiswa Kama (Skoma Butchery)       | Owner of an independent butchery in Gugulethu                                         | • Skoma Butchery was removed to make way for the construction of a new shopping centre and was unable to obtain a suitable lease in the shopping centre |
| Malcolm Green of Winepreneur           | Representative of an association of black owned wine makers                           | • Difficulties of black owned wine makers to list their brands at the major retailers, even though the brands are of export quality. |
| Drakenstein Municipality               | A small municipality in the Western Cape                                             | • Overview of the structure of the municipality and its trading and land use regulations.  
• Overview of the retail sector in the municipality’s jurisdiction, the entry of shopping centres and large retailers in certain areas and the impact of this on the municipality’s retail sector landscape.  
• Showed an impressive cooperation between it and informal traders within its jurisdictions on a number of topics of the Inquiry pertaining to informal traders. |
| University of the Western Cape (“UWC”), Institute for Poverty, Land and Agrarian Studies (“PLAAS”); National Research Foundation (“NRF”) and SLF | Joint presentation of research institutions                                           | • Results of independent studies conducted in the Western Cape Province insofar as it relates to competition between local and foreign operated retailers, food security and supply chains and the impact on the entry of shopping centres into township and peri-urban areas on the competitive landscape of the retail sector in these areas.  
• Some ideas in changing approaches to informal trading in general |
| Western Cape Department of Economic Development and Tourism’s Red Tape Reduction Unit | Provincial Government                                                                | • Overview of the activities of the Red Tape Reduction Unit.  
• Discussions of the Unit’s regulatory reviews and instances where the unit has assisted in removing regulatory barriers.  
• Views on the regulatory barriers faced by informal traders in the Western Cape. |
### 10.6 OVERVIEW OF STAKEHOLDER REPRESENTATIONS AT THE PRETORIA/JOHANNESBURG HEARINGS

<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>EST (Louis Greef)</td>
<td>Buyer group with operations nationally</td>
<td>• Discussion and evidence relating to the buyer power of large retailers, and how such power is abused to the detriment of buyer groups, independent wholesalers and cash &amp; carries that supply small and independent retail businesses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Evidence in rebuttal of some of the arguments made by large retailers in relation to the impact of their entry on small and independent retailers in townships, peri-urban and rural areas.</td>
</tr>
<tr>
<td>Glo Bake (by Noah Msibi)</td>
<td>Small retail bakery in Attridgeville</td>
<td>• Impact of the entry of large retailers and Pakistani operated spaza shops into Attridgeville on the Glo Bake business and independently owned bakery (KB Bakery) in Attridgeville.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Concerns raised regarding the Glo Bake business’ inability to compete with the buyer power of large retailers and Pakistani operated spaza shops.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Noted significant drop in the Glo Bake business’ turnover, necessitating retrenchments.</td>
</tr>
<tr>
<td>UMS</td>
<td>Buyer group with operations nationally</td>
<td>• Discussion of the buyer power of large retailers, and how such power is abused to the detriment of buyer groups and other independent wholesalers and cash &amp; carries that supply small and independent retail businesses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Also made an input on recommendations to address some of the concerns experienced.</td>
</tr>
<tr>
<td>OBC Garankuwa Butchery (Bobo Sepeng)</td>
<td>Small butchery in Garankuwa and owner of a shopping centre in Garankuwa</td>
<td>• Discussion of concerns that wholesalers in the area are selling directly to consumers, negatively affecting smaller retail businesses in the area.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Impact of businesses owned by foreign nationals and the poor quality of goods sold by these businesses on businesses owned by locals.</td>
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<tr>
<td></td>
<td></td>
<td>• Overview of considerations on exclusive leases and by landlords in determining the appropriate tenant mix in a shopping centre.</td>
</tr>
<tr>
<td>Masha Logistics (Tisetso Masha)</td>
<td>Liquor traders in Mamelodi (previously grocery retailers)</td>
<td>• Discussion of factors that lead to the need of Masha Logistics to transform its grocery retail business into liquor trading.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Concerns regarding overly restrictive regulation of liquor trading.</td>
</tr>
<tr>
<td>Khazimla IT Solutions (Simphiwe Nkula)</td>
<td>IT solutions</td>
<td>• Overview of an app developed by Khazimla IT solutions to assist traders in purchasing stock at the lowest available price intended to cut the long list of middlemen which lead to traders’ selling prices being higher.</td>
</tr>
<tr>
<td>STAKEHOLDER NAME</td>
<td>STAKEHOLDER PROFILE</td>
<td>TOPIC(S) OF PRESENTATION</td>
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</tbody>
</table>
| South African Bulk Entrepreneurs Primary Cooperative Organisation (“SABEPCO”) | Spaza shop owners from Limpopo seeking to form a buyer group | • Discussion of challenges faced by general dealers in Limpopo.  
• Discussion of factors leading to the formation of the SABEPCO buyer group and challenges faced by the buyer group with some suppliers unwilling to supply them and general treatment by these suppliers.  
• Challenges of competing with a wholesaler that is also a retailer. Example, Makro.  
• Lack of monitoring of businesses and enforcement of by-laws relating to permits and health and safety. |
| First Wealth Coin Group                                | Group wishing to start a bank to fund spaza shop operations | • Discussion of the firm’s initiative to start a bank to fund the operations of spaza shops in township, peri-urban and rural areas. |
| Rori’s Cake and Bakery                                 | Small bakery in Mabopane                                | • Impact of the entry of large supermarkets in Mabopane on Rori’s Cake and Bakery business - noting a significant drop in turnover and subsequent retrenchment of staff.  
• Lack of support by government in building capacity of traders like this one by enabling them to participate in tenders to institutions such as hospitals and prisons, despite them selling high quality goods and having good support from their communities.  
• Evidence of the nature of competition between these traders and stores owned by the large retailers and how some are able to compete on quality but, due to lack of scale, are unable to compete on price. The manner in which this price competition occurs was clearly spelt out in this submission.  
• Notes that Rori’s Cake and Bakery does not wish to trade in a shopping centre due to the high rentals charged for space in shopping centres. |
| Walter Hlope                                           | Liquor City franchisee                                  | • Mr Hlope is an approved Liquor City franchisee, but has been unable to open a liquor store as he has not been able to obtain trading space in any of the shopping centres in his surrounding area due to exclusive lease agreements entered into between the shopping mall and anchor tenant (large retailers).  
• The submission gives a detail list of the trials and tribulations of knocking on closed doors of the malls and the practical impact of exclusive leases as practiced by most of the large retailers, including Game.  
• Mall is his chosen area of operation for security reasons. |
<p>| Majomogopo Merchant and Enterprise (“Majomogopo”)      | Firm wishing to open a shopping centre in rural Limpopo  | • Discussion of barriers faced in opening a mall in rural Limpopo.                                            |</p>
<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
</table>
| SAPOA                  | Property Owners’ Association                             | • Overview of SAPOA complaint lodged with the Commission.  
                                |                                                          | • In spite of probing by the Panel, SAPOA was unable to speak in detail about the operations of their members.  
                                |                                                          | • This has made it necessary for any future engagements to consider having direct dealings with the property developers themselves and not SAPOA - hence the information requests were sent to the property developers. |
| Soweto Brands          | Soweto based manufacturer of certain grocery items       | • Discussion of serious challenges in listing goods on the shelves of major retailers.  
                                |                                                          | • The conglomerate effects of most of the large retailers.                                         |
| Soweto Business Access  | Association of Soweto based spaza shops                  | • Discussion of the general negative impact of the entry of large retailers and foreign operated spaza shops on the operations of local operated spaza shops in Soweto. |
| Sefate Molifi Imports   | Grocery Sales, Marketing & Merchandiser                  | • Discussion of the unwillingness of suppliers to engage the firm in supply negotiations, and other related concerns, such as favourable trading terms afforded to large retailers as a result of their buyer power.  
                                |                                                          | • Allegations made on the nature of trading agreements concluded between FMCG suppliers and the large retailers.  
                                |                                                          | • Lack of business of opportunities for small and independent sales, marketing & merchandising businesses.  
                                |                                                          | • Discussion of serious concerns relating to the sugar supply and value chain.                      |
| Moagi’s Meat Supply     | Small butchery in Sebokeng                               | • Impact of the entry of large retailers into the Sebokeng area on Moagi’s Meat Supply - a significant drop in turnover and subsequent retrenchment of employees.  
                                |                                                          | • Discussion of challenges in expanding the business of Moagi’s Meat Supply as a result of space constraints, as well as delays and frustrations in dealing with the relevant municipality to assist with such space constraints.  
<pre><code>                            |                                                          | • This submission also showed a glaring number of malls in existence and which continue to be built in areas with rather a small population. Hence the challenges faced by this butchery will continue to be faced and will be felt by many others given the malls that currently exist and that seem to be popping up in the area. |
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<table>
<thead>
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</thead>
</table>
| Liquor City franchisor (Mr Atouguia) | Franchisor of Liquor City outlets across South Africa | • An extensive discussion of the impact of exclusive lease agreements entered into between shopping mall landlords and anchor tenants (large retailers) that favour the liquor stores owned by the large retailers over Liquor City franchisees.  
• Discussion of large retailers not adhering to liquor laws.  
• Discussion of Liquor City’s inability to compete with liquor stores owned by large retailers, with large retailers achieving economies of scale in using the same employees and systems to operate both the grocery retail store and the liquor store.  
• Overview of concerns regarding the lack of transformation in the sector. |
| Gross Corner Supermarket        | Independent supermarket in Sebokeng                   | • Discussion of the negative impact of the entry of large retailers and foreign operated retailers into Sebokeng on Gross Corner Supermarket’s operations, with a particular focus on the ability of large retailers and foreign operated spaza shops to buy in bulk.  
• Significant drop in sales and subsequent need to retrench Gross Corner Supermarket’s employees |
| AJ Trading Enterprise           | Owner of 2 small butcheries in Tembisa                | • Discussion of unfair shopping centre lease terms as compared to those applicable to anchor tenants.  
• Inability to obtain leasing space in shopping centres as a result of the overlap between the product offerings of AJ Trading Enterprise and those of the anchor tenants of the shopping centre (large retailers).  
• Point made about the big differential in rentals payable in shopping malls or centres in Tembisa and those in Kyalami, the latter being far cheaper. Alluding to one competitor increasing operational costs of another competitor.  
• Discussion of inefficiencies and difficulties encountered in attempting to engage the local municipality. |
| MEC: Gauteng Provincial Department of Economic Development | Provincial Government | • Discussion of the Department’s township revitalisation programme, and various initiatives to develop and assist small businesses (across all sectors) in township, peri-urban and rural areas of the Gauteng Province.  
• Discussion of data gathered by the Department on small and informal businesses, and challenges faced by such businesses.  
• Overview of the Department’s MOU with Pick n Pay to supply and assist selected spaza shops in the Gauteng Province.  
• Overview of the Department’s recommendations to the Inquiry regarding the transformation and development of the grocery retail sector.  
• Some of these recommendations were subsequently mentioned by the MEC mid-June 2017 in his budget vote speech at the Gauteng legislature for consideration and possible implementation. |
<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jaybeez Bakery</td>
<td>Small bakery in Kagiso</td>
<td>• The stakeholder requested financial and professional assistance and did not present on any of the objectives of the Inquiry.</td>
</tr>
</tbody>
</table>
| Buy Black South Africa (Zama Qampi) | Business association | • Discussion of the lack of transformation in the grocery retail sector.  
• Discussion of the association’s initiatives to set up hawker distribution centres in Gauteng.  
• Presentation of the association’s recommendations to the Inquiry. |

### 10.7 OVERVIEW OF STAKEHOLDER REPRESENTATIONS AT THE DURBAN HEARINGS

<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
</table>
| KZN Youth Chamber of Commerce | Chamber of commerce | • Impact of the entry of foreign-owned spaza shops and large retailers into township, peri-urban and rural areas on the operations of local-operated small retailers in these areas.  
• Specific issues highlighted included (i) buyer power of large retailers and foreign-owned spaza shops (ii) the ease with which large retailers are able to overcome regulatory challenges compared to small retailers; (iii) concerns with large retailers expanding operations into other products and markets, such as pharmaceuticals; (iv) concerns with exclusive lease agreements entered into between landlords and anchor tenants (large retailers).  
• The Chamber also presented certain recommendations to address their concerns.  
• Offered to provide a formal and well considered submission after the hearing. |
| UGU Association of Business (Thanda Ncane and others) | Association of associations (an umbrella body to 58 other associations) | • Impact of the entry of foreign-owned spaza shops and large retailers into township, peri-urban and rural areas on the operations of locally operated small retailers in these areas.  
• Specific issues highlighted included (i) lack of skills of small local operated retailers; (ii) lack of access to funding; (iii) alleged price discrimination by foreign-owned wholesalers as between local and foreign operated retailers; (iv) buyer power of large retailers; (v) unfavourable lease terms in shopping centres; (vi) impact of exclusive lease agreements entered into between shopping centre landlords and anchor tenants (large retailers); (vii) the fact that formal supermarkets in shopping centres have the facilities to provide SASSA grant pay-outs to consumers, whereas spaza shops do not; (viii) concerns regarding overly restrictive regulation of liquor trading; (ix) lack of regulation by government of businesses owned by foreign nationals; and (x) expired goods being sold in rural areas and the impact on health in these communities and the effect of the cheapness of these goods on other traders.  
• Unfair business practices by three large operators in Port Shepstone (implied market division situation). |
<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
</table>
| Khayelitsha Community Trust (Tembisa Jimsana) | Trust wishing to expand its shopping centre operations in Khayelitsha | • Discussion of regulatory difficulties and bottlenecks to expand the Trust’s shopping centre operations in Khayelitsha due to exclusive leases entered into with current anchor tenants.  
• Discussion of concerns with the Trust’s exclusive lease agreements with anchor tenants (large retailers), and how such anchor tenants have refused speciality stores and stalls access to the Trust’s existing shopping centre.  
• This is despite a study being conducted among the Khayelitsha residents and the outcome of the study indicating that the residents would prefer a variety to the existing retail brands to purchase from. Lack of choice forces them to travel as far as Mitchells Plain and Somerset West for alternative brands. |
| KZN Department of Economic Development and Tourism: Consumer complaints division | Provincial Department | • Overview of the prevalence of the sale of expired and counterfeit consumer goods in the province.  
• Discussion of the systems put in place by the Department to monitor and enforce public health and safety regulations, specifically as regards the sale of expired and counterfeit goods.  
• The best submission on paper or as a work plan by far by a government department in addressing the challenges at the heart of this Inquiry and faced by informal traders, small and independent retailers located in townships, peri-urban and rural areas.  
• Were told that their counterparts in Gauteng are in consultation with this Department on this work that it is doing with the intention of implementing same in Gauteng. |
| KZN Department of Economic Development and Tourism: Regulatory services for formal/informal businesses (Tsepiso Selepe) | Provincial Department | • Overview of the state of and challenges facing informal businesses in the KZN province.  
• Overview of various regulations applicable to informal businesses, and the department’s initiatives to assist such business to comply.  
• Of importance is their role in regulating the sale of expired and not consumable FMCGs across industry players (large and small).  
• Expired goods bought from big retail stores at discounted prices and sold in rural areas (with expiry dates removed). |
| Inqola Trading (Thabo Givinda) | Manufacturer of soups and spices | • Complaints regarding Massmart’s Supplier Development Programme. |
| Food and Beverages InNeed Wholesalers (“FBI”) Foundation (Sanjay Lutchman) | NGO and supplier of bottled water | • Discussion of unfavourable trading terms between large retailers and small suppliers.  
• Allegations of excessive margins achieved by larger retailers. |

836 While the Khayelitsha Community Trust is based in the Western Cape, the Inquiry engaged with the stakeholder at the Durban public hearings.
The most extensive complaint regarding (i) unfavourable shopping centre lease agreement terms as compared to anchor tenants (large retailers); and (ii) the inability of existing tenants to expand their product offerings to include some of the products offered by the anchor tenant as a result of the exclusivity in the lease agreements entered into between the landlord and anchor tenant.

Discussion of Spar’s buyer group model, in particular to show the independence of their independent retailers from the Spar Group as an entity.

Overview of Spar’s justification for exclusive lease agreements.

Discussion of Spar’s procurement practices.

Presentation by 2 independent Spar retailers of the competitive landscape in which they operate. Allegations regarding unfair business practices of foreign-operated spaza shops were also made.

Overview of the structure of the municipality and its trading and land use regulations.

Overview of the retail sector in the municipality's jurisdiction, the entry of shopping centres and large retailers in certain areas and the impact of this on the municipality's retail sector landscape.

The submission acknowledged some of the informal business issues probed by the Inquiry but does not seem to have done much to address them.

10.8 OVERVIEW OF STAKEHOLDER REPRESENTATIONS AT THE PRETORIA HEARINGS

<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Massmart</td>
<td>Retailer</td>
<td>Exclusive lease agreements</td>
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<tr>
<td></td>
<td></td>
<td>Buyer power and supply terms</td>
</tr>
<tr>
<td>Food Lover’s Market</td>
<td>Retailer</td>
<td>Exclusive lease agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Buyer power and supply terms</td>
</tr>
<tr>
<td>Pick ‘n Pay</td>
<td>Retailer</td>
<td>Exclusive lease agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Buyer power and supply terms</td>
</tr>
<tr>
<td>Shoprite Group</td>
<td>Retailer</td>
<td>Exclusive lease agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Buyer power and supply terms</td>
</tr>
<tr>
<td>Spar Group</td>
<td>Retailer</td>
<td>Exclusive lease agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Buyer power and supply terms</td>
</tr>
<tr>
<td>Choppies</td>
<td>Retailer</td>
<td>Exclusive lease agreements</td>
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<tr>
<td></td>
<td></td>
<td>Buyer power and supply terms</td>
</tr>
<tr>
<td>Woolworths</td>
<td>Retailer</td>
<td>Exclusive lease agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Buyer power and supply terms</td>
</tr>
</tbody>
</table>
### 10.9 MARKET DEFINITION

**South African approach**

40. This section summarises the submissions of stakeholders regarding the case precedent on market definition.

41. The Inquiry notes that the Tribunal has generally determined the relevant market in grocery retailing as that for the retail of groceries and food products.\(^{837}\) The Tribunal has previously accepted the Commission’s delineation of the retailing of grocery products in terms of convenience and supermarket retail stores.\(^{838}\) From a geographical perspective, the Tribunal has generally accepted localised markets as ranging from a 1.5 to 2 kilometre radius.\(^{839}\)

42. [\(\times\)] submits that in any competition law inquiry, the critical point of departure is to engage in an analysis of market definition and that economic theory indicates that market definition is instrumental to the assessment of market power. [\(\times\)] further states that in order to determine the question of whether a firm is dominant in terms of Section 7 of the Act, it is firstly important to identify the market/s in which the firm participates. In support of its submission, [\(\times\)] cites the CAC in the Trudon (Pty) Ltd v Directory Solutions CC and Another matter where the CAC noted that:

“The inquiry into whether an entity is a dominant firm includes identification of the relevant market in which it is involved; its market share within that market and whether it possesses the relevant market power.”\(^{840}\)

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<table>
<thead>
<tr>
<th>STAKEHOLDER NAME</th>
<th>STAKEHOLDER PROFILE</th>
<th>TOPIC(S) OF PRESENTATION</th>
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</thead>
<tbody>
<tr>
<td>Redefine Properties</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Resilient Properties</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Masingita Group</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Emira Property Fund</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Liberty Group</td>
<td>Property developer</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Nedbank</td>
<td>Financier</td>
<td>• Exclusive lease agreements</td>
</tr>
<tr>
<td>Standard Bank</td>
<td>Financier</td>
<td>• Exclusive lease agreements</td>
</tr>
</tbody>
</table>

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837 The SPAR Group Ltd and Kwankcenke Trading CC (LM006Apr15), The SPAR Group Ltd and Florida Fooliner (Pty) Ltd (LM221Mar15), Shoprite Checkers (Pty) Ltd and Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd (LM022Jun05); Shoprite Checkers (Pty) Ltd and Metcash Seven Eleven (Pty) Ltd and portion of Friendly Distribution Division (LM009Apr11); Shoprite Checkers (Pty) Ltd and Gaterite Hypermarket, the business of Nafawa Trading CC (LM166Dec13); and Massmart Holdings Limited and Thabile 22 (Pty) Ltd and 2 others.

838 Shoprite Checkers (Pty) Ltd and Metcash Seven Eleven (Pty) Ltd & a portion of the Friendly Distribution Division of Metcash Trading Africa (Pty) Ltd [2011] (Tribunal Case No:30/LM/Apr11; Fluxrab Investments no.58 (Pty) Ltd and Seven Eleven Africa (Pty) Ltd [2003]/ Tribunal Case No LM030Aug03); and the UK Supermarkets Enquiry (2000).

839 See Pick n Pay Retailers (Pty) Ltd and Trio Belville (Pty) Ltd [2015] (Tribunal Case No:LM242Mar15) where the Tribunal concurred with Commission on a market for grocery retail within a three kilometre radius from target store; The Spar Group Ltd and Florida Foodliner (Pty) Ltd [2015] (Tribunal Case No:020925) where the Tribunal also concurred with the Commission in a market for retail groceries within 1.5 kilometre radius of the Target firms. The SPAR Group Ltd and Kwankcenke Trading CC, in respect of the business known as Engcobo Superspar and Ndu’s SPAR CC, in respect of the business known as Ndu’s SPAR [2015] (Tribunal Case No: LM006Apr15), in this case the Tribunal accepted the relevant market as being the market of retail groceries within 1.5 kilometres of target firm; Shoprite Checkers (Pty) Ltd and Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd [2005] (Tribunal Case No:47/ LM/Jun05) where the Tribunal held that the geographic market is likely local, although they did not find it necessary to conclude; and Pick n Pay Retailers (Pty) Ltd and Boxer [2002] (Tribunal Case: 52/LM/Jul02) where the Tribunal held that the retail market for FMCGs is local.

840 See [\(\times\)].
43. Both [X] and [Y] submitted that in Shoprite Checkers Proprietary Limited and Others v Massmart Holdings Limited (the “Massmart case”), the Tribunal stated that an essential part of determining whether or not an exclusivity clause results in foreclosure is a proper definition of the market in which a retailer operates. According to [X] in the Massmart case, the applicants took exception to the fact that Massmart had failed to define the relevant markets in its pleadings. Both these retailers cite the Tribunal in stating the following:

“Rule 15 requires the pleader not just to set out its grounds of complaint, but the material facts on which it relies. This means more than asserting that X is the relevant product and Y the relevant geographic market. In relation to market definition, a material fact is not simply what the market definition is, but also why it is so. This does not mean burdening the referral with reams of econometric data as evidence for the trial, but it does require allegations of fact to suggest why the market definition contended for has been arrived at. These facts would rarely be self-evident ....”[To give examples of where the referral needs amplification: for Massmart...access to shopping malls is considered crucial. If so, it should explain why. Expressed differently, if these are outlets for its sales from which it says it is excluded, why can it not go anywhere? More detail would be required as to the nature of the foreclosure alleged in the leases. Why could Massmart not be able to enter the market other than through these foreclosed malls? What is the nature of the exclusivities - what products do they cover; how long are they; are all objectionable or only those which exceed a particular period?”[841]

44. [X] further quotes the Tribunal in the Massmart case stating that “the requirement to plead a clear market definition has not been met in respect of the alternative candidate market. In respect of the two primary markets the locally defined mall market and the national market for retail of fresh food in malls, no allegations as to why these constitute the boundaries of the relevant market have been adequately made out…”[842]

45. [X] also submitted the following cases below which the Tribunal has dealt with relating to supermarkets and market definition, and which, according to [X], considered that retail stores generally service local catchment areas. These cases include: Shoprite Checkers (Pty) Ltd v Foodworld Group Investment Holdings (Pty) Ltd v Foodworld Stores Holdings (Pty) Ltd[843], Pick n Pay Retailers (Pty) Ltd v Boxer Holdings (Pty) Ltd[844], HCI 111 Commissioner (Pty) Ltd v Redefine Properties Limited[845], Vestfund (Pty) Ltd v Diverscity Urban Renewal Fund (Pty) Ltd and others[846], Cubisol Investments 2 (Pty) Ltd v Bel Air Shopping Centre[847], K20121550042 (South Africa) (Pty) Ltd v Win Twice Properties

841 See [X].
842 See [Y].
843 [X] states that the Tribunal noted that: “We have previously held in similar mergers involving retail FMCGs that the geographic market is local. We also note that the record contains a series of studies conducted by Douglas Parker & Associates, commissioned by Shoprite, highlighting opportunities for new store development in several localities. A separate report and study is conducted for each of the six locations in the Western Cape. This in itself tends to suggest that Shoprite itself contemplated a series of local markets”. See [X].
844 [X] submits that the Tribunal also found that it “also agree[d] with the Commission that the geographic market is local. The relevant market accordingly is the retail grocery market, serving consumers in the LSM 1-5 categories, within a local geographic market, being the area immediately surrounding the stores of the parties.” See [X].
845 [X] submits that the Tribunal found that “In respect of the market for rentable retail property classified as convenience centres, the Commission found that the merged entity will have a market share of less than 5% within a 10km radius of the target property...” See [X].
846 [X] submits that the Tribunal noted that it had “no reason to disagree with the Commission’s conclusion” which had found that “the merging parties will have a combined market share of less than 20% in the market for the provision of rentable retail space in comparative centres in the Bedfordview/Wyneber/Marlboro and surrounding area, i.e. within a 15km radius of the to be acquired target shopping centre...”. See [X].
847 [X] states that the Tribunal noted that “The Commission considered the activities of the merging parties and found the existence of a horizontal overlap in the market for the provision of rentable retail space in convenience centres within a 10 kilometre (“km”) radius...”. See [X].
Approaches adopted in other jurisdictions

46. The Inquiry notes that the UK Competition Commission identified three localised markets (based on store size and travel distance) using comprehensive econometric analysis. These markets were:

46.1 a local market for larger grocery stores located within a 10 to 15-minute drive-time;

46.2 a local market for mid-sized grocery stores located within a 5 to 10-minute drive-time (also including larger grocery stores within that radius); and

46.3 convenience stores within a 5-minute drive time (also including larger grocery stores within a 10 to 15-minute drive time as well as mid-sized grocery stores within a 5 to 10-minute drive time).

47. In Bulgaria, cash and carry stores were considered to be a type of a hypermarket store and included in retail.

48. The Australian authorities acknowledged that the fact that retail chains may be vertically integrated would occasionally make it difficult to define retail grocery, as a result taking a broader view of market definition considering both wholesale and retail activity to be in the same market to the extent that they constrain each other.

49. The United States (US) has commented on recent developments in grocery retail (i.e. considering Amazon entering into grocery retailing) suggesting that the criteria traditionally used by competition authorities to define markets may be about to change, which may result in shifting the major market segmentations in the sector.

50. The Nordic Competition commissioned a sector inquiry into the grocery retail sector, and found that the retail sector may be national, regional or local. The authority found that when consumers do most of their shopping near to home or near to work, this indicates local or regional markets. However, the marketing chains, which for a large part are nationwide, set maximum prices, decide profile, strategy and to a large degree the assortment available to the shops. This was found to be indicative of national markets.

51. In 2007, the Austrian CA conducted a sector study into buyer power in the grocery retail sector. It defined nine product markets. The Austrian CA found that for most of the grocery product groups it is not easy to assume that all sales channels (retailers, restaurants, etc.) can be substituted, but that strong indications exist for separate markets.

52. According to the Belgian competition authority, the relevant geographic market for frequently purchased products such as food products corresponds to a specific area around a point of sale: the customer zone. For example, the competitive pressure exerted at the point of sale of a distributor comes from other points of sale located in the same customer zone.

53. [X] submitted that the market definition approach taken by the Inquiry differs fundamentally from international best practice in market inquiries. It submitted that in previous international market inquiries competition authorities have approached the question of market definition in grocery retailing by defining local markets, based...
mainly on demand side factors.\textsuperscript{851} [\textsuperscript{851}] provided an example of the UK market inquiry into the grocery retail sector where the UK Competition Commission identified various local markets. [\textsuperscript{K} \textsuperscript{K}] submitted that the UK Competition Commission identified three different types of local markets based on the size of the store and a threshold based on drive-time, as already discussed above.\textsuperscript{852}

54. As previously indicated, the Inquiry notes the criticism levelled against it regarding its deviation from case precedence. The Inquiry reiterates that it is a well-established practice in competition enforcement that matters are dealt with on a case-by-case basis, considering the factual circumstances, evidence, market dynamics and specific issues prevalent in each case. Thus, the Inquiry is of the view that any reliance on local and international case precedence is persuasive and not binding.

\textsuperscript{851} [\textsuperscript{K} \textsuperscript{K}] gives an example, where in the Australian grocery retail market Inquiry the ACCC found that “[t]he origin of competition in grocery retailing is in the retailers’ efforts to make their retail offer more attractive than those of the other retailers in the same local area”. The ACCC went on to note that: “almost 90 per cent of consumers living in metropolitan regions normally travel less than 5 km to shop at their regular supermarket. In regional areas, consumers tend to travel further to do their supermarket shopping, with 23 per cent travelling more than 10 km.” and “More than 32 per cent of consumers in metropolitan areas would be willing to travel up to between 3 km and 5 km to another supermarket. More than 30 per cent of regional customers are prepared to travel more than 10 kilometres.” See [\textsuperscript{K} \textsuperscript{K}] submission dated 28 June 2019, para 70 - 72.

\textsuperscript{852} The first was the larger grocery stores which are generally constrained by other larger grocery stores within a 10 to 15 minute drive time. The second type is the Mid-sized grocery stores which are generally constrained by other mid-sized stores within a 5 to 10 minute drive time and by larger grocery stores within a 10 to 15 minute drive time. Lastly the Convenience stores which are generally constrained by other convenience stores within a 5 minute drive time, by mid-sized stores within a 5 to 10 minute drive time and by larger grocery stores within a 10 to 15 minute drive time. See [\textsuperscript{K} \textsuperscript{K}] submission dated 28 June 2019, para 73.
### 11.1 List of Suppliers Active in the Different FMCG Sub-Sectors in South Africa

<table>
<thead>
<tr>
<th>Industry</th>
<th>Description of the Industry</th>
<th>Players in the Industry</th>
<th>Size of the Industry</th>
</tr>
</thead>
</table>
| Dairy Products Industry | The dairy industry consists of a primary and a secondary industry. The primary industry consists of milk producers who own and operate dairy farms which primarily produce and purchase raw milk, which is pasteurised, homogenised, packaged and sold through retail outlets. The secondary industry consists of processors who produce the six types of dairy products, Milk and Cream, Concentrated Milk, Buttermilk and Yoghurt, Whey, Butter and Oils, and Cheese. Secondary processing also includes the production of ice cream and the supply of inputs into other products, such as chocolate and baby foods. Milk is generally processed by large dairy converters such as Clover and Parmalat or medium-sized converters such as Fairfield and Orange Grove which produce homogenised and pasteurised fresh milk and other dairy products such as yoghurts, creams and cheeses. There are also a number of small-scale processors who produce fresh milk and value-added products, such as speciality cheeses for local and niche markets. | Bandini Cheese (Pty) Ltd  
Caledon Suiwel (Pty) Ltd  
Clover Industries Ltd  
Clover Milkyway (Pty) Ltd  
Clover SA (Pty) Ltd  
Coega Dairy (Pty) Ltd  
Dairy Day (Pty) Ltd  
DairyBelle (Pty) Ltd  
Danone Southern Africa (Pty) Ltd  
Darling Romery (Pty) Ltd  
De Villiers Chocolate (Pty) Ltd  
Denmar Estates (Pty) Ltd  
Dewfresh (Pty) Ltd  
Douglasdale Dairy (Pty) Ltd  
DWR Hertzog  
Fair Cape Dairies (Pty) Ltd  
Fairfield Dairy (Pty) Ltd  
Far End Dairy (Pty) Ltd  
Farmgate Dairy (Pty) Ltd  
Froneri South Africa (Pty) Ltd  
Gattis Ice Cream (Pty) Ltd  
Homsek (Pty) Ltd  
Honeydew Dairies (Pty) Ltd  
La Montanara Melkery (Pty) Ltd  
Lactolab (Pty) Ltd  
Ladismith Cheese Company (Pty) Ltd  
Laitco Dairies (Pty) Ltd  
Lancewood Holdings (Pty) Ltd  
Libstar Holdings Ltd  
Libstar Operations (Pty) Ltd  
Mooivallei Suiwel (Pty) Ltd  
Mountainview Dairy CC  
Nestle (South Africa) (Pty) Ltd  
Orange Grove Dairy (Pty) Ltd  
Orange Grove Farms (Pty) Ltd  
Parmalat South Africa (Pty) Ltd  
Polar Ice Cream Company (Pty) Ltd  
Rhodes Food Group (Pty) Ltd | The annual market for dairy-based products is approximately R40bn |
## Dairy Products Industry

The industry is highly concentrated and controlled by a handful of farmers, silo owners and manufacturers. The four biggest millers, Pioneer Foods (Sasko Milling), Tiger Milling, Premier Foods and Ruto Mills, a division of Foodcorp, dominate the wheat milling market with 97% market share and are vertically integrated in baking and production of other foods such as pasta and cereals.

<table>
<thead>
<tr>
<th>PLAYERS IN THE INDUSTRY</th>
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<tbody>
<tr>
<td>Rhodes Food Group Holdings Ltd</td>
</tr>
<tr>
<td>Sonnendal Dairies (Pty) Ltd</td>
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<tr>
<td>Sundale Free Range Dairy (Pty) Ltd</td>
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<td>Trademodel Seven (Pty) Ltd</td>
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<td>Transem (Pty) Ltd</td>
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<tr>
<td>Ububele Holdings Ltd</td>
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<tr>
<td>Unilever South Africa (Pty) Ltd</td>
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<td>Unique Dairy Products (Pty) Ltd</td>
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<td>Wesmelk Melkery (Pty) Ltd</td>
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<td>WJ Khourie</td>
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<tr>
<td>Woodlands Dairy (Pty) Ltd</td>
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<tr>
<td>Wynn-With Milk Farm (Pty) Ltd</td>
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<tr>
<td>York Cheese Factory (Pty)</td>
</tr>
</tbody>
</table>

## Flour and Grain Mill Products Industry

The industry is highly concentrated and controlled by a handful of farmers, silo owners and manufacturers. The four biggest millers, Pioneer Foods (Sasko Milling), Tiger Milling, Premier Foods and Ruto Mills, a division of Foodcorp, dominate the wheat milling market with 97% market share and are vertically integrated in baking and production of other foods such as pasta and cereals.

<table>
<thead>
<tr>
<th>PLAYERS IN THE INDUSTRY</th>
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<tbody>
<tr>
<td>A M Alberts (Pty) Ltd</td>
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<tr>
<td>AFGRI Operations (Pty) Ltd</td>
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<tr>
<td>African Star Grain &amp; Milling (Pty) Ltd</td>
</tr>
<tr>
<td>Algoa Roller Mills CC</td>
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<tr>
<td>Bakhresa SA (Pty) Ltd</td>
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<tr>
<td>Blinkwater Meule (Pty) Ltd</td>
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<td>Brenner Brands (Pty) Ltd</td>
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<tr>
<td>Carolina Roller Meule (Pty) Ltd</td>
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<tr>
<td>Epic Foods (Pty) Ltd</td>
</tr>
<tr>
<td>Gideon Milling (Pty) Ltd</td>
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<tr>
<td>Godrich Flour Mills (Pty) Ltd</td>
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<tr>
<td>I L Molino CC</td>
</tr>
<tr>
<td>Lethabo Milling (Pty) Ltd</td>
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<tr>
<td>Pioneer Voedsel (Pty) Ltd</td>
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<tr>
<td>Premier FMCG (Pty) Ltd</td>
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<tr>
<td>Pride Milling Company (Pty) Ltd</td>
</tr>
<tr>
<td>RCL Foods Ltd</td>
</tr>
<tr>
<td>S A Rice Mills (Pty) Ltd</td>
</tr>
<tr>
<td>Tiger Brands Ltd</td>
</tr>
<tr>
<td>Tongaat Hulett Starch (Pty) Ltd</td>
</tr>
<tr>
<td>Vaal Milling Company (Pty) Ltd</td>
</tr>
<tr>
<td>VKB Flour Mills (Pty) Ltd</td>
</tr>
</tbody>
</table>

South Africa’s average milling capacity utilisation is 3.7 million tons or 79.5% of the available capacity and according to the Department of Agriculture, Forestry and Fisheries (DAFF) the potential capacity is approximately 5 million tons. 25 companies generate 75% of all maize milled within South Africa and the leading four players, Pioneer, Premier Foods, Pride Milling and Tiger Brands, together mill approximately 75% of the maize meal that is produced in the country.
<table>
<thead>
<tr>
<th>INDUSTRY</th>
<th>DESCRIPTION OF THE INDUSTRY</th>
<th>PLAYERS IN THE INDUSTRY</th>
<th>SIZE OF THE INDUSTRY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pasta Manufacturing Industry</td>
<td>The South African pasta manufacturing industry remains a relatively small sector in terms of industry players, in comparison to other food segments and in terms of employees. A limited number of local millers which produce bread flour, including the major manufacturers, produce semolina flour and durum flour for supply to pasta and noodle manufacturers and value-added manufacturers. Dry pasta manufacturers include the two large pasta manufacturers, Tiger Brands and Pioneer Foods, as well as Pasta Nova which specialises in Soup pasta. A new market entrant is the co-operative Griekwaland Wes Korporatief BPK (GWK). Noodle manufacturers are Nestle with its Maggi brand and Noodlemaster which manufactures a variety of private label in-house noodle brands and its own brand. There are a number of value-added pasta manufacturers, most of these manufacturers only use imported wheat products and produce dry pasta as well as ready-made pasta meals with accompaniments. The products are branded under own brand or a private label brand and available through a variety of channels. Some have factory shops which sell directly to the public. Included are FG La Pasta, MG Pasta, Rhodes Food Group, Pasta Factory, La Pasta Delizia, Pasta Gallo and Pasta Regalo.</td>
<td>Choice Wise Trading (Pty) Ltd, F G La Pasta (Pty) Ltd, Griekwaland Wes Korporatief Ltd, Libstar Operations (Pty) Ltd, M G Pasta CC, Nestle (South Africa) (Pty) Ltd, Pioneer Voedsel (Pty) Ltd, Tiger Brands Ltd, Unilever South Africa (Pty) Ltd</td>
<td>The industry is very small and there is a reticence to share any information gained over many years of operation which is deemed to be of competitive advantage. The two listed pasta manufacturers and the listed noodle manufacturers do not publish separate results for these operations. The only available industry market research was conducted and compiled by the International Trade Administration Commission of South Africa (ITAC) in 2014 based on information up to 2013 supplied by the DTI. Only the major players, Tiger Brands and Pioneer Foods responded to the request and submitted information. The conclusion reached by ITAC, based on DTI figures not published as part of the report, was that the two major players control about 55% per cent of the local pasta market and are responsible for more than half of South Africa's total exports of pasta.</td>
</tr>
<tr>
<td>INDUSTRY</td>
<td>DESCRIPTION OF THE INDUSTRY</td>
<td>PLAYERS IN THE INDUSTRY</td>
<td>SIZE OF THE INDUSTRY</td>
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</tr>
<tr>
<td>Vegetable and Animal Oils and Fat Manufacturing Industry</td>
<td>The manufacture of oils and fats from vegetables and animals is part of South Africa’s agro-processing sector. Agro-processing has enjoyed an average growth rate of over 2% since 2013. Oils and oil products are manufactured mainly from sunflower seeds and soybeans with a smaller market for canola. A niche market for groundnut oils exists but the primary nut derivation is peanut butter. Coconut oil, palm oil and other exotic oils are imported, as the growing of such products is suited to tropical climates. The primary stakeholders in the value chain are: suppliers of agricultural inputs such as seeds, fertilisers and pesticides; agricultural producers and farmers; traders and agricultural produce agents; processors, who carry out the combined operation of crushing, extraction and refining of oils; wholesalers, retailers, and distributors; manufacturers of food products, including soya flours and milks and industrial products; and end users including retail consumers. Vertical integration is present, particularly at the levels of traders who also supply storage facilities and processors who also carry out manufacturing. Grain and seed traders such as Senwes, Afrgrí and NWK, also offer bulk storage, including silos, to potential purchasers.</td>
<td>Africa Sun Oil Refineries (Pty) Ltd D H Brothers Industries (Pty) Ltd (Willowton) Elangeni Soaps (Pty) Ltd Epic Foods (Pty) Ltd Epko Oil Seed Crushing (Pty) Ltd Free State Oil (Pty) Ltd Majesty Oil Mills (Pty) Ltd PhilAfrica Foods (Pty) Ltd Sea Lake Investments (Pty) Ltd Sime Darby Hudson and Knight (Pty) Ltd Southern Oil (Pty) Ltd Standerton Oil Mills (Pty) Ltd Sunola Oil Mills (Pty) Ltd Unilever South Africa (Pty) Ltd</td>
<td>Revenue accruing from the sales of processed oils and fats totalled R11.6bn in 2015. However, the production of the South African edible oils and fats industry is insufficient to meet local demand. In 2015, the production of oilseed and oilseed products stood at 1.86 million tons while total demand for oilseed products totalled 2.13 million tons.</td>
</tr>
<tr>
<td>INDUSTRY</td>
<td>DESCRIPTION OF THE INDUSTRY</td>
<td>PLAYERS IN THE INDUSTRY</td>
<td>SIZE OF THE INDUSTRY</td>
</tr>
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</tr>
</tbody>
</table>
| Fruit and Vegetable Processing Industry | The fruit and vegetable processing industry forms a part of the agro-processing sector. The fruit processing industry generally adds value to fresh produce either by extending the useful life of the fruit, through canning and drying, or by processing the fresh fruit into a new product or ingredient such as pulp, concentrate or juice. The South African industry’s major fruit products include canned fruit, pulps, purées, dried fruit, jams and fruit juice. Canned vegetables and various sauces are the major products of vegetable processing. There are a number of companies involved in the production of the processed goods mentioned above but the South African industry is dominated by three key players: Tiger Brands; the Rhodes Food Group; and Ceres Fruit Juice, a part of Pioneer Foods. More specifically, Langeberg & Ashton, part of Tiger Brands, and the Rhodes Food Group are the largest processors and canners of deciduous fruit. Tiger Brands and the Rhodes Food Group are likewise the largest players in the processing of vegetables and tomatoes. Ceres dominates the fruit juice processing industry. Summerpride plays a notable role in operating the sole pineapple processing plant in South Africa although it competes with Swaziland-based Swazican, part of Rhodes. In addition to these dominant firms there exist a number of smaller purée and concentrate processors including Breede Valley Fruit Processors, Ashton Extracts and Boland Pulp, which was acquired by the Rhodes Food Group in 2015. | Appletiser South Africa (Pty) Ltd  
Associated Fruit Processors (Pty) Ltd  
Breede Valley Fruit Processors (Pty) Ltd  
Clover SA (Pty) Ltd  
Denny Mushrooms (Pty) Ltd  
Eastern Trading Co (Pty) Ltd  
Giants Canning CC  
Granor Passi (Langkloof) (Pty) Ltd  
Granor Passi (Pty) Ltd  
Granor Passi Letsitele (Pty) Ltd  
Libstar Operations (Pty) Ltd  
Magaliesberg Citrus Maatskappy (Pty) Ltd  
McCain Foods (South Africa) (Pty) Ltd  
Pioneer Foods Groceries (Pty) Ltd  
Rhodes Food Group (Pty) Ltd  
Southern Canned Products (Pty) Ltd  
Summerpride Foods (Pty) Ltd  
Tiger Consumer Brands Ltd | Some 1.25 million tons of fresh fruit, excluding grapes and berries, was purchased for processing in 2015/2016. According to the latest disaggregated statistics for the manufacturing sector released by Statistics South Africa (StatsSA) in 2016, income among processors of fruit and vegetables was R14.6bn while the total value of sales, including exports, of all processed and preserved fruit and vegetable products stood at R24bn. |
<table>
<thead>
<tr>
<th>INDUSTRY</th>
<th>DESCRIPTION OF THE INDUSTRY</th>
<th>PLAYERS IN THE INDUSTRY</th>
<th>SIZE OF THE INDUSTRY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soap and Cleaning Products, Wax and Polishes Manufacturing Industry</td>
<td>Cleaning and sanitation products, soap, polishes, wax and lubricating agents are classified as consumer chemicals and therefore constitute a sub-sector of the chemical sector. Manufacturers operating in the industry produce a wide spectrum of Fast-Moving Consumer Goods (FMCG), which are customised for personal, household, institutional, industrial and commercial applications. The Home Care segment includes laundry care products, surface active detergents, also known as surfactants, bleach and other sanitising agents, dishwashing liquids, wax and polishes. Products categorised in this segment are not produced exclusively for the household environment and there are numerous cleaning applications that have been developed for commercial, institutional and/or industrial use. Cleaning and sanitation products that are produced for the Personal Care segment include various forms of bath and hand washing soaps, facial cleansers and shower gels. The South African market for soap, cleaning and sanitation products, wax and polishes continues to be dominated by large multinational FMCG players, notably Unilever, Reckitt Benckiser, Procter &amp; Gamble, Colgate-Palmolive and Johnson &amp; Johnson. Notable South African companies operating in the sector include Bliss Brands and Tiger Consumer Brands. Local small, medium and micro enterprises (SMMEs) operating in the industry generally manufacture non-branded cleaning agents that are supplied to independent wholesalers and/or to the informal sector.</td>
<td>Avon Justine (Pty) Ltd Beiersdorf Consumer Products (Pty) Ltd Beige Holdings Ltd Bliss Brands (Pty) Ltd CANSA (Pty) Ltd CAVI Brands (Pty) Ltd Chemetall (Pty) Ltd Colgate-Palmolive (Pty) Ltd Dynachem (Pty) Ltd Ebinter Trading and Projects (Pty) Ltd Ecolab (Pty) Ltd Ecozyme Enzymes CC Elegant Line Trading 237 (Pty) Ltd Elizabeth Arden (South Africa) (Pty) Ltd Estee Lauder Companies (Pty) Ltd Headboy Industries (Pty) Ltd Henkel South Africa (Pty) Ltd Hychem (Pty) Ltd Improchem (Pty) Ltd Johnson and Johnson (Pty) Ltd Kemklean (Pty) Ltd Kimberly-Clark South Africa (Pty) Ltd KT Wash (Pty) Ltd L’Oreal South Africa (Pty) Ltd LBN Trading Enterprise (Pty) Ltd Le-Sel Research (RF) (Pty) Ltd Libstar Operations (Pty) Ltd Medichem (Pty) Ltd Nilfisk (Pty) Ltd Prime Cleaning Suppliers CC Prime Product Manufacturing (Pty) Ltd Reckitt Benckiser South Africa (Pty) Ltd Reinol-Janek Chemicals (Pty) Ltd Revlon South Africa (Pty) Ltd Ritch Chem CC S A F I C (Pty) Ltd S C Johnson and Son of South Africa (Pty) Ltd Sasol South Africa (Pty) Ltd Scent Pac (Pty) Ltd Sealed Air Africa (Pty) Ltd Shield Chemicals (Pty) Ltd Soap Factory CC (The) Tiger Consumer Brands Ltd Unilever South Africa (Pty) Ltd</td>
<td>A J North (Pty) Ltd Acorn Pharmaceuticals (Pty) Ltd Amka Products (Pty) Ltd The South African market for soap and other cleaning agents, wax and polishes is a multi-billion rand industry that is estimated to generate employment for more than 16,000 people. According to the findings of a recent study undertaken by the Centre for Competition Regulation and Economic Development at the University of Johannesburg and the Zambia Institute for Policy Analysis and Research, South Africa’s cosmetics, soaps and detergents industries collectively generated in excess of US$4.6bn (approximately R60bn) in sales revenue in the year 2015, with the soaps and detergents component accounting for US$1.3bn (almost R17bn) of this amount.</td>
</tr>
<tr>
<td>INDUSTRY</td>
<td>DESCRIPTION OF THE INDUSTRY</td>
<td>PLAYERS IN THE INDUSTRY</td>
<td>SIZE OF THE INDUSTRY</td>
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<td>----------------------</td>
</tr>
<tr>
<td>Soap and Cleaning Products, Wax and Polishes Manufacturing Industry (Continued)</td>
<td>Numerous manufacturers and suppliers of cleaning and sanitation products specialise in specific niche markets, such as the hospitality or food and beverages industries. Blendwell produces cleaning agents specifically for use in the food industry, while household appliance manufacturer, Miele, produces its own range of washing powders and dishwashing detergents under the Miele Care Collection label. The industry also includes third party manufacturers that produce customised products under contract for major South African retailers such as Pick ’n Pay, Shoprite, Woolworths, Checkers, the Spar Group, Dischem and the Clicks Group. Cleaning agents produced under contract are generally sold as retailer-branded products, or house brands. South Africa’s major contract manufacturers include Le-Sel Research, Beige Holdings and Prime Product Manufacturing.</td>
<td>Based on sales value, the laundry care segment is estimated to account for more than 65% of revenue generated in the home care sub-sector. Locally the home and personal care markets continue to be dominated by major international companies. There are currently around 250 players that operate in the formal sector. Statistics for manufacturers active in the country’s informal sector are not currently available.</td>
<td></td>
</tr>
<tr>
<td>The Manufacture and Wholesale of Non-Alcoholic Beverages</td>
<td>Non-Alcoholic Beverages are known as soft drinks to distinguish them from alcoholic drinks. Soft drinks, as defined in terms of section 15 (1) of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, include sweetened and unsweetened drinks, namely: Fruit or vegetable drinks; soda water; Indian or quinine tonic water; natural spring water and any sweetened artificially carbonated water, whether flavoured or unflavoured; ginger beer; and herbal or botanical beverages.</td>
<td>Adcock Ingram Holdings Ltd Big Save Distribution Centre (Pty) Ltd Big Save Liquor Waltloo (Pty) Ltd BOS Brands (Pty) Ltd Breva Enterprises (Pty) Ltd Chill Beverages International (Pty) Ltd Clover SA (Pty) Ltd Coca-Cola Peninsula Beverages (Pty) Ltd Coca-Cola Sabco (Pty) Ltd Coca-Cola Shanduka Beverages South Africa (Pty) Ltd Ekhamanzi Springs (Pty) Ltd Enebev (Pty) Ltd Kingsley Beverage (Pty) Ltd Lentas International (Pty) Ltd Little Green Beverages (Pty) Ltd MoFaya Beverage Company (Pty) Ltd Nestle (South Africa) (Pty) Ltd P V M Nutritional Sciences (Pty) Ltd</td>
<td>The total volumes of soft drinks sold in 2015 stood at 889 million litres in on-trade, and 4,813 million litres in off-trade.</td>
</tr>
</tbody>
</table>
There are a number of smaller companies that manufacture carbonated soft drinks such as SoftBev, Little Green Beverages, Kingsley Beverages and Twizza. As a result of their lower price they have taken significant market share from Coca-Cola, the dominant firm in this market.

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>The Manufacture and Wholesale of Non- Alcoholic Beverages (Continued)</td>
<td>There are a number of smaller companies that manufacture carbonated soft drinks such as SoftBev, Little Green Beverages, Kingsley Beverages and Twizza. As a result of their lower price they have taken significant market share from Coca-Cola, the dominant firm in this market.</td>
<td>Parmalat South Africa (Pty) Ltd Pioneer Foods Groceries (Pty) Ltd Red Bull South Africa (Pty) Ltd Soda King Franchising CC SoftBev (Pty) Ltd South African Breweries (Pty) Ltd (The) Suntory Beverage and Food South Africa Ltd Tiger Consumer Brands Ltd Twizza (Pty) Ltd Ultimate Sports Nutrition (Pty) Ltd</td>
<td></td>
</tr>
</tbody>
</table>

11.2 DISTRIBUTION OF SUPERMARKETS ACROSS SOUTH AFRICA

55. This appendix examines the various store formats of the national supermarket chains will be discussed.

Shoprite

56. Shoprite had 1012 supermarket stores on 30 September 2017. Shoprite has diversified its store formats to cater to customers’ demands in different markets. The distribution of these supermarkets are shown in Figure 11.1 below.

57. Shoprite is the main brand of the Shoprite group. Shoprite supermarkets have service

Figure 11.1: Shoprite stores across South Africa

Source: Submissions by Shoprite, 2017/18
departments in their stores including bakeries, delis, fish shops, and butcheries. Selected stores also offer a pharmacy under the MediRite brand.

58. USave is a supermarket chain owned by the Shoprite Group and focuses on the needs of lower income consumers. USave supermarkets follows a smaller format than Shoprite stores and there are no service departments in USave stores.

59. Checkers caters for consumers in the upper-income groups and focuses strongly on fresh produce. There are also service departments such as a bakery, butchery, deli, cheese deli and wine shop available in Checkers stores.

60. Checkers Hyper is a larger format than Checkers supermarkets with a wider product range.853

Pick n Pay

61. Pick n Pay had 853 grocery stores on 4 May 2018. It has both corporate owned stores and franchises under the Pick n Pay brand and also owns Boxer supermarkets. Pick n Pay stores target middle-income South African consumers while Boxer stores target middle to lower income customers.854 The distribution of these stores is shown in Figure 11.2.855

62. Pick n Pay supermarkets offer a wide variety of grocery products for weekly or monthly shopping as well as top-up shopping, including fresh produce, butchery, bakery, deli and hot food counters. There are both franchised (branded as Pick n Pay Minimarket) and corporate owned Pick n Pay supermarket stores.

63. Pick n Pay hypermarkets are Pick n Pay’s largest format store, and include the offerings

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853 Shoprite brands and store formats, available online at https://www.shopriteholdings.co.za/group/brands.html
855 This does not include Pick n Pay or Boxer liquor stores.
of a supermarket as well as appliances, kitchenware, home improvement, garden and pool accessories, toys and an expanded health and beauty range.

64. Pick n Pay Local stores have a smaller range of products than supermarkets. These stores are aimed at convenience shopping and fresh produce rather than monthly grocery shopping.

65. Pick n Pay Express stores provide 24-hour convenience shopping located in the forecourts of BP petrol stations. The range in these stores is limited and focused on daily needs. In addition, Pick n Pay has recently entered into a partnership with the GDED under which they will convert spaza shops in townships, peri-urban and rural areas into franchise convenience stores.

66. Boxer supermarkets are the equivalent of Pick n Pay supermarkets aimed at middle to lower-income customers. Boxer stores offer grocery items including a butchery, bakery, fresh produce and hot foods counter. All Boxer supermarket stores are located close to public transport hubs.

67. Boxer Punch stores have a lower-cost operating model, allowing the stores to further reduce the selling prices of products. Boxer Punch stores offer a narrow range of products including basic commodities, pre-packed frozen and fresh meat, and a limited range of breads and confectionery.

Spar

68. As at December 2017, Spar had approximately 907 stores across the country. The Spar brand includes corporate owned stores as well as ‘independent’ stores owned by members of the Spar voluntary trading association. Both these formats are supplied mainly, but not exclusively by the

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Figure 11.3: Spar stores across South Africa

Source: Submission by Spar, 2017

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856 Pick n Pay store formats and footprint, available online at http://www.picknpay-ir.co.za/store-footprint-format.php
857 Boxer store formats and footprint, available online at http://www.picknpay-ir.co.za/store-footprint-format.php
six Spar distribution centres located across South Africa.

69. Figure 11.3 show 3 of Spar’s different store formats. It is important to note that Spar Express, located in Shell petrol station forecourts, Savemor, Spar Tops and Spar Pharmacy stores are not included.

70. Superspar is the largest of Spar’s store formats, with each store having a floor space of 1 300m² or more. Superspar stores stock a full line of groceries and general merchandise and have in-store butcheries, bakeries, delis, fresh produce and hot food counters.

71. Spar stores have a floor space of at least 700m². Spar stores cater to customers as a neighbourhood grocery store for both convenience and weekly or monthly shopping. Service departments such as butcheries, bakeries, delis, fresh produce and hot food counters are also present in Spar stores.

72. The smallest store format is Kwikspar, which caters for neighbourhoods and rural areas. These stores are between 300 to 700m² in size and do not offer a bakery, deli or butchery.\(^\text{858}\)

Woolworths

73. Woolworths has Woolworths Food stores located within their Woolworths department stores as well as stand-alone food stores. Woolworths has also diversified by locating stores at Engen petrol station forecourts. Figure 11.4 shows the locations of these stores.

74. Within the grocery retailer sector, Massmart owns Makro, Game FoodCo and Cambridge

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858 Spar store formats, available online at http://investor-relations.spar.co.za/ir2017/who-we-are/our-brands-and-store-formats/
Food stores. The location of these stores is indicated in Figure 11.5 below.

**Makro**

75. Makro is a hybrid wholesaler retailer that sells food, liquor and general merchandise to consumers and trading customers for on-sell purposes.

**Game**

76. Game is a retailer of general merchandise, groceries and liquor that has recently entered the fresh food market through Game FoodCo.

**Cambridge Foods**

77. Cambridge Foods is a supermarket targeted at lower LSM groups.\(^{859}\)

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

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859 Massmart overview, available online at http://www.massmart.co.za/our-business/overview/

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**Food Lover’s Market**

78. As a newer entrant into the grocery retail sector, Food Lover’s market started out as a fresh fruit and vegetable store known as Fruit and Veg City. They have since started to convert these stores and open new stores under the Food Lover’s Market brand and have widened their product offering to include various grocery items.

79. Figure 11.6 below shows the distribution of these two store formats across South Africa.

80. Food Lover’s Market has also diversified into convenience shopping by having their “Freshstop” stores located at Caltex petrol station forecourts. There are more than 200 “Freshstop” stores across South Africa. Food Lover’s Market has also introduced
Market Liquors, a liquor store located next to selected Food Lover’s Market stores.860

**Choppies**

81. Choppies, a well-known grocery retailer in Botswana, entered the South African market in 2010. They have since acquired Jwayelani butcheries stores and have expanded into hybrid wholesaler retailers. The location of the Choppies stores in South Africa are indicated in Figure 11.7 below.861

82. For convenience, Figure 11.8 below breaks down the distribution of the formal grocery retailers across South Africa. Notice the concentration of retailers in the Gauteng province as well as in the Cape Town and Durban metropolitan areas.

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

![Map of Food Lover’s Market stores across South Africa](image)

Source: Submission by Food Lover’s Market, 2017

860 Food Lover’s Market store formats, available online at https://foodloversmarket.co.za/our-story/
861 Choppies did not provide the location of Jwayelani stores to the Inquiry.
Figure 11.8: The South African Retail Sector
ANNEXURE 3:
OBJECTIVE SIX: VALUE CHAINS ANALYSIS AND THE COMPETITIVE PLACEMENT OF SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY

Table 12.1: Difference testing by distance between price levels of spazas

<table>
<thead>
<tr>
<th>Product</th>
<th>Hypothesis</th>
<th>t-statistic</th>
<th>Critical t-value</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bread</td>
<td>Significant price difference between stores less than 1km away from SM and</td>
<td>0.15</td>
<td>1.65</td>
<td>No significant difference</td>
</tr>
<tr>
<td></td>
<td>between 1 and 2km away from SM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Significant price difference between stores less than between 1 and 2km</td>
<td>3.39</td>
<td>1.65</td>
<td>Significant difference</td>
</tr>
<tr>
<td></td>
<td>away from SM and stores more than 2km away from SM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maize Meal</td>
<td>Significant price difference between stores less than 1km away from SM and</td>
<td>0.4</td>
<td>1.65</td>
<td>No significant difference</td>
</tr>
<tr>
<td></td>
<td>between 1 and 2km away from SM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Significant price difference between stores less than 1 and 2km away from</td>
<td>1.82</td>
<td>1.65</td>
<td>Significant difference</td>
</tr>
<tr>
<td></td>
<td>SM and stores more than 2km away from SM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milk</td>
<td>Significant price difference between stores less than 1km away from SM and</td>
<td>1.02</td>
<td>1.65</td>
<td>No significant difference</td>
</tr>
<tr>
<td></td>
<td>between 1 and 2km away from SM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Significant price difference between stores less than between 1 and 2km</td>
<td>1.92</td>
<td>1.65</td>
<td>Significant difference</td>
</tr>
<tr>
<td></td>
<td>away from SM and stores more than 2km away from SM</td>
<td></td>
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</table>
12.1 PROBIT MODEL FOR CHOICE OF RETAIL OUTLET

83. Of specific interest is whether the different explanatory variables are significant. If it is found to be statistically significant, it could be interpreted as supporting evidence that the market for a specific product is segmented. Table 12.2 shows the coding associated with the variables under consideration.

Table 12.2: Variable and Coding Description of Probit Model

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
<th>Coding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent</td>
<td>Choice of Retail Outlet</td>
<td>1=Spaza 0=Supermarket</td>
</tr>
<tr>
<td>Explanatory</td>
<td>Gender</td>
<td>0=Male 1=Female</td>
</tr>
<tr>
<td></td>
<td>Age</td>
<td>1=18-24 2=25-40 3=40-65 4=Older than 65</td>
</tr>
<tr>
<td></td>
<td>Employment Status</td>
<td>0=Employed 1=Unemployed</td>
</tr>
<tr>
<td></td>
<td>Income Level</td>
<td>1=Less than R1500 2= Between R1501 and R3000; 3= Between R3001 and R5000; 4=Between R5001 and R10 000; 5=More than R10 000</td>
</tr>
</tbody>
</table>

84. The following probit model was subsequently developed:

\[ Y = \delta(X\beta + \epsilon) \]

\[ \delta^{-1}(Y) = XB + \epsilon \]

Where \( Y = \) Choice of predominant retail outlet

\( \delta = \) Cumulative distribution function of the standard normal distribution

\( \beta = \) Parameters to be estimated

\( \epsilon = \) Error Term

\( X = \) Vector of independent variables with:

1 = Gender
2 = Age
X3 = Employment Status
X4 = Income Level
12.2 A FINAL NOTE ON THE BARRIERS TO COMPETITION OF EMPLOYMENT

85. In order to do an analysis of the value chain features affecting employment growth related to the informal sector would require substantial time and resources, which were both constraining factors in this project. In addition, informal discussions with some of the entities within the value chain revealed a reluctance by respondents to share information related to contracting and costs which are essential in quantifying barriers to entry (as will be seen from the discussion below) and would have to be obtained through legal channels if a comprehensive quantitative analysis is required. As a result, the approach followed here, to shed some light on the barriers to competition to employment at various nodes of the value chain, is to rely on literature and institutional economic theory. Although this will not conclusively show the extent to which these factors are impeding job creation, it does provide context and points to the inherent features of food value chains that are mirroring the features of a dual economy. This is done by considering supply chains generically within three sections namely, food production, food manufacturing and distribution and retailing.

Food production

86. At the heart of agricultural production as a means to livelihood or self-employment is asset endowments (Carter, 1999). The most apparent endowment requirement is land, which has numerous implicit constraining issues. These are land access, land ownership and geography. Land access is probably the most explicit constraint and is largely self-explanatory. Ownership issues relate to tenure where the constraining issues actually lie in the fact that the producer cannot use a title deed as collateral for production finance. Geography, in turn, speaks to the location of numerous small-scale producers and this is particularly prevalent in the grain (maize) sector where a lot of the small-scale production occurs in the former homeland areas, especially in the Eastern Cape. Since most of these producers are in the traditional homeland areas of South Africa, their geography makes them uncompetitive in relation to grain farmers located close(r) to exporting or processing facilities. Based on discussions with industry experts, farmers in these more remote areas therefore often produce for own consumption or sell surplus production in close proximity in the informal sector and receive as much as 80% of the price of maize on the SAFEX.

87. Other notable constraints mentioned in literature that relate to the success of small-scale farming as a means to produce and trade your way out of poverty are:

Table 12.3: Frequencies of Independent Variables in Model

<table>
<thead>
<tr>
<th>Description</th>
<th>Coding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>Male=38%</td>
</tr>
<tr>
<td></td>
<td>Female=62%</td>
</tr>
<tr>
<td>Age</td>
<td>18-24=15%</td>
</tr>
<tr>
<td></td>
<td>25-40=55%</td>
</tr>
<tr>
<td></td>
<td>40-65=29%</td>
</tr>
<tr>
<td></td>
<td>Older than 65=2%</td>
</tr>
<tr>
<td>Employment Status</td>
<td>Employed=71%</td>
</tr>
<tr>
<td></td>
<td>Unemployed=29%</td>
</tr>
<tr>
<td></td>
<td>Less than R1500=8%</td>
</tr>
<tr>
<td></td>
<td>Between R1501 and R3000=19%</td>
</tr>
<tr>
<td></td>
<td>Between R3001 and R5000=30%</td>
</tr>
<tr>
<td></td>
<td>Between R5001 and R10 000=27%</td>
</tr>
<tr>
<td></td>
<td>More than R10 000=15%</td>
</tr>
</tbody>
</table>
87.1 managerial and technical expertise (see, among others, Zimmerman (2000) and Kirsten et al. (2010));
87.2 access to finance (Fan et al. (2013)); and
87.3 access to inputs and technology (see, among others, Ortman and King (2007), Odhiambo et al. (2008) and Barrett (2008).

88. In terms of enterprise growth and subsequent (second-round) employment generation, primary agriculture is not an attractive option. To a large extent farming enterprises function at two ends of a spectrum. This is supported by recent research by the Bureau for Food and Agricultural Policy which points to a primary agricultural industry that also reflects the dual nature of the rest of the South African economy (see BFAP (2016) related to poultry and BFAP (2017) related to maize). At the one end of the production spectrum, we see formalised commercial production systems characterised by small margins and high volumes. At the other end, is an informal producer often characterised by sales directly to consumers in the informal market. Organic growth, of these enterprises, from small- to large scale, seems unlikely due to the unattractiveness associated with specific production sizes. This is driven by opportunity cost and high (production and price) risk associated with agricultural production, which can be explained using an example from the BFAP Baseline (2017), presented below:

**How big is big enough?**

Most smallholder farmers plant maize more out of necessity than commercial intent, and it is rational for these resource-poor farmers to utilise their households’ land and labour to produce green mealies; enough to provide for themselves and possibly sell a couple of bags, but not too much to require expensive inputs or place strain on the often elderly and female labour force. Nevertheless, for emerging farmers who have earmarked maize production as their main income generating activity, the potential of maize farming to actually generate income is important - and this is where the weather

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

![Figure 12.1: Maize hectares required to equal 6 months income equivalent of alternative employment](image)

- **A - Farmers using traditional maize production methods**
- **B - Farmers using improved methods but with limited success**
- **C - Farmers using improved methods and receiving support**

- [Farm worker (minimum wage)]
- [Hospitality sector (minimum wage)]
- [Taxi driver (minimum wage)]
- [Entry level mine worker]

*Source: Submission by Choppies, 2017*
comes in as the most important factor. In the 2015/16 production year, for example, few dryland farmers outside of Mpumalanga (whether commercial or emerging) made money from maize production despite the high producer price. Furthermore, the good weather that was experienced means that, even though 2016/17’s average national maize yield will be close to 6 t/ha, and maize farmers will in all likelihood produce the largest maize crop in the country’s history, many maize farmers will be worse off than in 2015/16, unable to cover input costs at the low maize price. Given these very real weather risks and the concomitant low margins, scale and therefore land size becomes the inherent limiting factor. In order to shed light on the income generating potential of maize farming, consider the 2014/15 season and the number of hectares necessary to earn an income comparable to that of other industries.

89. It is clear that even a moderately successful farmer in a season with reasonably good rainfall requires 11 hectares of maize to earn the same as an entry-level mine worker for the six-month period of the maize production season. For a year’s gross margin, a farmer would thus need 22 hectares in a ‘normal’ production year. If we average this over the past three years, a farmer would require more than 66 hectares to ‘earn’ an amount equivalent to a mine worker given that the past two years would have rendered little income. Following this same line of thought, a successful farmer would require 27 hectares to earn the same as the agricultural minimum wage for a level farm worker, while an improved input using but struggling farmer, with a yield of 2.5 t/ha, would require 52 hectares.

90. In this instance, the less risky option, which is a formal income opportunity (with a more constant and frequent income stream), will be preferred to that of agricultural production. The critical barrier to entry into the formal commercial chain is therefore related to size. Small scale production with the objective of producing food or generating additional income is a reality but moving into medium sizes with incomes equivalent to more stable income opportunities creates a trade-off. Due to production and price risk and infrequent income streams associated with numerous agricultural products, this is often a less favoured option and is a significant constraint to employment generation. It is, therefore, the inherent nature of agriculture, that will not allow for employment generation beyond that of the farmer and his immediate household.

Food manufacturing and retailing

91. Opportunities for self-employment and subsequent employment in small and micro-enterprises are, only feasible at the two end nodes of the value chain, namely farming and retailing. This is underpinned by institutional economic theory, which, in broad terms, acknowledges that high asset specificity, transaction uncertainty (related to prices, quality and volumes) and high transaction frequency causes firms to vertically co-ordinate (contract) or integrate within a value chain (Williamson, 2002). The three factors listed above are all present in food manufacturing and distribution, and, as a result, the level of vertical integration seems to serve as a barrier for entrepreneurs and subsequent employment opportunities within the chain, related to manufacturing and distribution.

92. However, this description only tells one side of the story. Fast Moving Consumer Goods are typically goods that move through the chain with low margins and in high volumes. Substantial investment costs (in manufacturing or distribution assets) are feasible in an environment of adequate returns. Adequate returns, in turn, can be achieved by large margins with limited volumes or low margins and high volumes. The competitive environment in the FMCG milieu typically creates an environment of low margins, which necessitates the scale requirements associated with high volumes. With increased volumes, however, comes increased risk and uncertainty and higher transaction frequency. This again provides a conducive environment for contracting and in extreme cases vertical integration.
93. Combined with the investment issues raised above, the average South African consumer has limited financial capacity for FMCG purchases of which food is a sub-category. StatsSA (2014) note that around 34% of the expenditure of poor households are devoted to food purchases. This environment creates a definite demand side ceiling in terms of prices, which further supports an environment of low margins. The only way, within this context, to increase profitability within FMCG supply chains, is to improve efficiencies, which would imply decreasing variable cost or cost per unit. This, however, often requires substantial investments in sophisticated and highly specific manufacturing and/or distribution technologies, which returns to the investment discussion, related to low margins and high volumes, at the beginning of this section.

94. Based on the inherent characteristics of food manufacturing and distribution, discussed above, supply chains have evolved in such a way that scale requirements present the biggest barrier to entry for entrepreneurs and subsequent employment opportunities. In our view, contracting arrangements and integration are merely a by-product to manage risks and transaction costs in the chain.

Food retailing

95. The constraints to self-employment and employment growth related to informal food retailing include crime and competition from other informal and formal retail outlets are the main issues that are constraining growth. Since the surveyed sample of spaza respondents was not representative, this was supplemented by a broader literature study.

96. Competitive barriers to informal retail employment as a means to a livelihood are similar to those found in primary agricultural production i.e. asset endowment. A comprehensive study by Skinner (2005), of informal traders in the Durban area, showed that asset endowments related to start-up funds, transport and business space were highly constraining. In the most cases, respondents indicated that they obtained start-up funds from their own savings or from relatives or friends. In addition, only 10 out of 507 respondents were able to secure credit from sources other than friends, relatives or government, highlighting access to credit as a major constraint, flowing from the lack of asset endowment. In contrast to our study, Skinner (2005) found that respondents did not regard crime as a highly constraining factor, but competition was highlighted as a key limiting factor. Woodward et al. (2007) showed that the median income for 764 randomly surveyed spaza shops falls under the national minimum wage. In addition, three key variables were identified as factors determining the viability of informal enterprises, namely start-up capital, urban context and gender, re-enforcing results from Skinner that start-up capital is a constraining factor to informal sector entrepreneurship. Moloi (2014) found the key limiting issues to start-up and growth of spazas in Atteridgeville as financial support, lack of business management skills, expensive transportation, limited trading space, crime, negative competition among spaza shop owners, and lack of cooperatives among spaza shop owners. Other studies similarly found start-up capital to be the first and most prominent constraint (see, among others, Cichello et al. 2011 and Clover et al. 2005). Once these enterprises are operational issues that directly speak to their viability are noted in the economic literature, namely, access to credit (see Skinner, 2006), competition (see Crush et al. (2011) Charman et. al. (2012)), managerial expertise (Perks, 2010 and van Scheers, 2010) and crime (see Gough et. al, 2003 and Lichthelm, 2005).

97. In terms of the integration of informal food retailers into the rest of the value commercial value chain, research is sparse. Research and innovation suggest that commercial food companies are conceptualising and testing ways to service these producers. Examples include delivery services for certain food products (from wholesalers and suppliers directly) and innovations in ordering and payment functionalities for this industry (see among others 5M2T distribution network to spazas, Spazapp development).
This appendix deals with the mapping and description of the value chains in question. It provides background information which can be used to contextualise the relationship between formal and informal retailing. Maps will be supplemented by a consideration of the structures that govern the relationships/transactions in the value chains. Primary data will be used to describe how spaza shops form part of established value chains.

### 12.3 WASHING POWDER VALUE CHAIN

The manufacture of soap and cleaning products, wax and polishes is a multi-billion Rand industry that has proved to be an effective enabler of empowerment and small business development.

The market for soap and other cleaning agents is a multi-billion-Rand industry that is estimated to generate employment for more than 16 000 people. According to Who owns Whom,862 which references a study undertaken by the Centre of Competition Regulation and Economic Development at the University for Johannesburg and the Zambia Institute for Policy Analysis and Research,863 South Africa’s cosmetic, soaps and detergents industries collectively generated in excess of US$4.6 billion (approximately R60 billion) in sales revenue in 2015, with the soaps and detergents component accounting for US$1.3 billion (almost R17 billion). Based on sales value, the laundry care segment is estimated to account for more than 65% of revenue generated in the home care sub-sector.

These figures and an indication by the Business Survey864 that washing powder is one of that products sold the most by some retailers in the informal market, has led the Inquiry to evaluate this value chain.

Various types of soap products

It is important to give a clear explanation of the various forms of soap prior to the analysis of the washing powder value chain.

Soaps and detergent found in households can be grouped into four general categories. Within each category are different product types formulated with ingredients selected to perform a broad cleaning function as well as to deliver properties specific to that products. Below is a summary of the four categories:

1. **Personal cleaning products**
   - Formulated for cleaning hands, the face and the body. They are available in the following formats: bars, gels, liquid soaps, powders and pastes.

2. **Laundry detergents and laundry aids**
   - Formulated to meet a variety of soil and stain removal, bleaching, fabric softening and conditioning and disinfectant needs under varying aids and are available as liquids, powders, gels, sticks, spray, pumps, sheets and bars. Laundry detergents are either for general purpose or light duty. General purpose detergents are suitable for all washable fabrics and come in wither liquids or powders. Liquids work best on oily soils and for penetrating solid and stains. Powders are especially effective in lifting out clay and group-in dirt. Light duty detergents are used for hand or machine washing lightly soiled items and delicate fabrics. Laundry aids contribute to the effectiveness

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864 Results from Small Business Survey conducted by Sustainable Livelihood at the request of the Inquiry.
of laundry detergents and provide special functions. Laundry aids include the following: bleaches, enzymes, fabric softeners, and pre-wash soil and stain removers, fabric finishes water softeners, etc.

103.3 Dishwashing products

103.3.1 Dishwashing products include detergents for hand and machine dishwashing as well as some speciality products. They are available as liquids, gels, powders, capsules and bars.

103.4 Household cleaning products

103.4.1 Household cleaners are available as liquids, gel, powders, solids, sheets, and pads.

Value chain assessment

104. The washing powder market, like most products in the larger industry, is characterised by downstream and upstream linkages to various sectors. There is relatively a high-level vertical integration and most of the industry's established companies are turnkey manufacturers that are directly involved in the formulation, blending, packaging and distribution of their products. However, it is not unusual for the larger players to outsource production to third-party manufacturers.

105. Raw material used in the manufacture of soap and cleaning products are sourced largely from the chemical and agriculture sectors, both locally and abroad. They include surfactants, solvents, pigments, preservatives, natural extracts, vitamins, essential oils, fragrances, alcohols, fillers, glycerines, emulsifiers, waxes and lanolin. The global supply chain is complex and it is not always easy to determine the source of certain raw materials. In recent years, stakeholders have become increasingly sensitive to environmental pressures with regard to sourcing of palm oil and growing numbers of manufacturers and retailers have pledged to become Chain of Custody certified by obtaining their oil from suppliers who sell certified sustainable palm oil. Other key players in the industry value chain include companies that specialise in the manufacture of fragrances, equipment manufacturers and distributors, as well as manufacturers and suppliers of packaging and refill packets. Packaging has an aesthetic value in that it influences the consumer's perception of quality of the product. It also has an important functionality value and is required to conform to specific criteria to avoid the degradation of the product. In keeping with the drive for the industry to improve its environmental footprint, there is growing demand for packaging that is biodegradable and/or recyclable.

106. Given the importance of effective marketing and the fact that consumers in this market tend to be brand loyal, branding consultants and strategies also play a key role in the industry. Brand identities are commonly reflected in the packaging of the products.

107. Supermarkets are generally the most popular distribution channel for washing powder. Others smaller avenues in which products can be distributed is online, through mass merchandisers, non-grocery retailers and/or specified stockists.

Illustration of the various segments of the value chain

108. Figure 12.2 below depicts the basic structure of the washing powder value chain, followed by a description of the activities that take place under each branch of the value chain.

109. Raw Material Suppliers

109.1 Raw materials are chosen according to a set criterion, including their human and environmental safety, cost, compatibility with other ingredients and the form and performance characteristics of the finished products. In recent years, heightened awareness regarding product safety and sustainability concerns has prompted growing

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numbers of consumers to shun products containing harsh chemicals. In response, manufacturers have adopted the production of goods that are environmentally friendly.

110. Manufacturing of powder detergents

110.1 Each manufacturer adopts its own special production process which differs from the next manufacturer. There are, however, basic steps which are common to all products of a similar form such as washing powder. The raw materials are treated with chemicals and equipment which process the raw materials and transforms them into semi-finished soap. The semi-finished soap is processed to finished soap and further developed into soap products such as soap noodles, detergent powder, dish wash bars, and bath soap, etc.

110.2 Powder detergents (washing powders) are produced by spray drying, agglomeration or dry mixing. Figure 12.3 below illustrates the spray drying process.
110.3 During the spray drying process, dry and liquid ingredients are initially combined into a slurry, or thick suspension, in a tank called a crutcher, this is indicated by part 1 of Figure 12.3 above.

110.4 The slurry is heated and then pumped to the top of a tower where it is sprayed through nozzles under high pressure to produce small droplets. The droplets fall through a current of hot air, forming hollow granules as they dry, this is indicated by part 2 of Figure 12.3 above. The dried granules are collected from the bottom of the spray tower where they are screened to achieve a relatively uniform size, this is indicated by part 3 of Figure 12.3 above.

110.5 After the granules have been cooled, heat sensitive ingredients that are not compatible with the spray drying temperatures (such as bleach, enzymes and fragrance) are added, this is indicated by part 4 of Figure 12.3. Traditional spray drying produces relatively low-density powders.

110.6 Figure 12.4 below illustrates the manufacturing of washing powder detergents using agglomeration and dry mixing methods.

110.7 The manufacture of washing powder detergent through agglomeration produces higher density powders compared to the spray drying mechanism. Through agglomeration, manufactures either use a liquid binder, rolling or shear mixing to cause the ingredients to collide and adhere to each other in order to form larger particles.

110.8 Dry mixing is used to blend dry raw materials using small quantities of liquids.

111. Packaging

111.1 The final step in the manufacture process of soaps and detergents is packaging. Detergents are either packaged in cartons, bottles, pouches, bags or cans. The selection of packaging materials takes into consideration the nature of the product and its compatibility with the selected material, cost, package safety, shelf appeal and ease of use. For the purposes of this analysis the interest lies with powder detergents which are packaged in bags.

112. Following the packaging segment of the value chain is the distribution of the washing powder. The largest distribution avenue for
washing powder is the retail and wholesale channels, which include major players such as Makro, Pick n Pay, the Shoprite Checkers Group, Spar and Choppies.

Market participants and competition in the market

113. The market for the manufacturing of washing powder continues to be dominated by large multinationals, particularly Unilever, Procter & Gamble, and MAQ. Notable South African companies operating in the sector include Bliss Brands.

114. Local SMMEs operating in the industry generally manufacture non-branded products which are supplied to independent wholesalers and/or to the informal sector.

115. The industry also includes third party manufacturers who produce non-branded washing powders. Many of these non-branded products, which are also referred to as house-brands are customised for retailers such as Pick n Pay, Woolworths, Checkers, the Spar Group, Dischem and the Clicks Group, who brand these products according to their store brand. South Africa’s major manufacturers include Le-Sel Research.

116. These value-for-money house brands are becoming increasingly popular and the quality of some retail brands compares favourably with that of branded products. Market research indicates that consumers regard house branding as an endorsement of the product by the retailer.

117. While a culture of brand loyalty has long been a key feature of the retail environment, private label growth in the South African home care segment (which includes washing powder) is outpacing branded product growth. Private home care products recorded real sales growth of 9.2% year-on-year in 2015, while branded product sales posted real year-on-year sales growth of only 2.7%. Market research suggests that local customers are increasingly trading down to cheaper products or taking advantage of price promotion. House brands may therefore be considered possible competitors to the multinationals.

118. Historically, the detergents market was dominated by Unilever in both the hand wash and auto wash segments. [Χ]. MAQ launched into the hand wash market in late 2003 and within a couple of years became a key player in the market. Ariel later entered the market which saw Unilever losing market shares in both the hand wash and auto wash markets.

119. Notwithstanding the entry of MAQ and Procter & Gamble, Unilever South Africa continues to dominate the washing powder market in the various segments. The Company’s product portfolio includes the best-selling brands, which include Omo, Sunlight, Comfort and Skip. Laundry care categories in which Unilever is the market leader include standard washing powder detergents, standard liquid detergents, bar detergents and hand wash detergents. The largest competitors to Unilever, who are multinational players or new entrants and hold the highest remaining market shares in the market, are Procter & Gamble, MAQ and Bliss Brands.

Recent entry into the market

120. Below is a discussion of the washing powder brands that have recently entered and exited the market as well as the performance of those that entered the market.

121. Hand washing remains dominant as the penetration rate of washing machines remains relatively low in South Africa. For this reason, this section will focus most on hand wash powder. Unilever continues to lead sales with slightly more than half of the entire retail value share within laundry care, and Procter & Gamble in second place.

122. MAQ (Bliss Brands) entered a market that was already monopolised and managed to grow its market share [Χ].

123. When [Χ] entered the market, its strategy to gain market share was to gain [Χ].

866  [Χ].
867  [Χ].
124. In response to the growth of [X], [X] focused on increasing distribution of its [X] brand in the major retail channels. [X].

125. [X].

126. Another washing powder brand which entered the market recently was Ariel, owned by Procter & Gamble. Ariel had an outstanding start in South Africa, reaching [X] market share within [X] months of its entry. [X]. Following the entry of Ariel into the overall washing powder market, [X] lost [X] market share for its [X].

127. Colgate International (“Colgate”) was an active player in the washing powder market but exited in 2004. [X]. Colgate manufactured, marketed and distributed Punch and Bingo which were both local brands as well as Dynamo which was a global brand. All brands could be used for both hand and auto wash. Colgate exited the washing powder business as a result of a change in global corporate focus strategy and not as a result of the competitive dynamics of the market. As a consequence of this decision, all affected subsidiaries exited the laundry detergent business.

Channels for sales and distribution

128. The finished products reach the ultimate consumer through a range of distributors (i.e. distribution centres, wholesalers, retailers, and informal traders) who compete based on product brand, availability and pricing.

129. Below is an example of how essential the retail channel is for the distribution of washing powder products. The table below illustrates the market share attributed to each customer of [X], most of which are retail store groups.

Market shares and market concentration

130. The washing powder market consists of very few players who hold more that 5% market shares namely, Unilever; Bliss Brands; and Procter & Gamble. In addition to the washing powder brands manufactured by these firms, national retail stores also sell their own house brands.

131. Table 12.5 below illustrates the market shares of players in this industry for the years 2012 to 2015.

132. Table 12.6 below illustrates the market shares of washing powder brands in this industry for the years 2012 to 2015.

Barriers to entry

133. Barriers to entry for this market range from low to very high. Acquiring start-up capital, training, machinery and the raw material required to produce soap and detergents

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**Table 12.4: [X] market shares per customer**

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<th>[X]</th>
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*Source: [X]'s submission dated 29 January 2016*

**Table 12.5: Market shares for the years 2012 -2015**

<table>
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<tr>
<th>[X]</th>
</tr>
</thead>
</table>

*Source: Screening Memo: Case number: 2015MAR0134*
on a small-scale does not appear to be the problem. The real barrier for a potential competitor appears to be in relation to the distribution channels for the product and getting the product into retail outlets. Therefore, despite the relative ease of entry into manufacturing, it is considerably more difficult for a new manufacturer to break into the mainstream market, where brand loyalty generally presents a substantial barrier to entry. Start-up costs would be high if one wishes to manufacture on a large scale to reach the various distribution channels that are available. A minimum capital or credit line of at least 10 to 15 million will be required.

134. Product innovation, packaging, distribution, merchandising, marketing and advertising are also barriers that confront new entrants. The sustainability of a new player in this industry is further hampered by the capacity of the established players to market and distribute their brands nationwide. Despite all these challenges it is evident that the washing powder market is not saturated and that there is room for new innovative players.

Opportunities for SMME’s

135. According to Who owns Whom, having considered a research study commissioned by the Institute for Economic Research (ERI), the manufacturing industry offers great scope for SMME's for the following reasons:

135.1 the manufacture of products on a small-scale is a relatively simple process; and
135.2 the manufacture of soap and detergent manufacturing potentially is a high profitable model as operating costs are relatively low and profit margins are high.

Conclusion

136. The washing powder market is clearly dominated by a few players in manufacturing, who utilise strong distribution channels, such as retail, to distribute their products. It appears that there are no high barriers to entry into the washing powder market. However, the greatest hurdle which new entrants must overcome is finding a strong distribution channel for their products. It appears that there is still room for many more competitors to enter the market and that customers are open to switching provided that a new entrant has innovative ways of product marketing, identifies specific customers it wishes to service and finds an effective distribution channel. A successful example is the entry of the MAQ brand which managed to increase its market share shortly after its entry.

12.4 THE WHEAT-TO-BREAD VALUE CHAIN

Introduction

137. Wheat is the second most important grain crop produced in South Africa and a
significant portion of the consumer basket, in particular, the baskets of poorer consumers, see Figure 12.9 further below. South Africa is a net importer of wheat, producing around 57% of what is consumed annually, see Figure 12.5. Prices for wheat, and ultimately bread, are driven by international prices and exchange rate movements leaving vulnerable consumers exposed to adverse price fluctuations related to global and macroeconomic shocks.

138. Most of the wheat produced in South Africa is destined for human consumption of wheat products of which bread forms the biggest share. Almost half of the wheat milled in

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**Figure 12.5: Volume of South African wheat production, imports, consumption, and exports (1998/99 - 2014/15)**

![Graph showing the volume of South African wheat production, imports, consumption, and exports from 1998/99 to 2014/15.](source)

**Figure 12.6: South African wheat value chain**

![Diagram illustrating the South African wheat value chain, including input suppliers, wheat producers, storage, imported wheat, milling, imported flour, baker, wheat-based goods manufacturer, animal feed manufacturer, wholesaler, retailer, and consumer.](source)
South Africa is imported, which makes the use of imported wheat a critical feature in the wheat value chain, specifically at the storage and milling nodes. The generic wheat product supply chain is depicted.

**Wheat to bread value chain**

139. Figure 12.6 sets out the South Africa wheat value chain.

**Input Suppliers**

140. Input suppliers in the wheat chain largely correspond to those in the maize chain.

**Primary Production**

141. Although wheat production is spread across the country, it is concentrated in the Western and the Northern Cape, and the Free State provinces, see Figure 12.7.

142. The number of wheat producers is estimated to range between 3,800 and 4,000. The bulk of wheat produced in South Africa is bread wheat with small quantities of durum wheat for the manufacturing of pasta. Overall, the production of wheat has declined by 9% between 2009 and 2014. This trend is due to farmers finding it challenging to produce wheat profitably and so gradually switching to growing more profitable crops such as canola, oats, maize, and soybeans. Over the next decade, wheat production is expected to increase by less than 1%, which is insufficient to supply the expected 1.4% growth in demand driven by the continued growth in the population (BFAP, 2017; DAFF, 2016c).
Trade

143. As a result of the expected declining production and increased consumption, imports are expected to increase over the next decade, as well as to exceed domestic production from 2018 onwards (BFAP, 2017).

144. South Africa mainly imports wheat from Australia (19.8%), Canada (19.5%), Russia (17.5%), Germany (16.3%), Argentina (10.5%), and Ukraine (8.9%). Wheat is also exported from South Africa, mainly to Zimbabwe (45.9%), Botswana (25%), Zambia (8.1%), Namibia (6.4%) and Lesotho (5.1%) (DAFF, 2016c).

Storage

145. In much the same way as maize, the wheat producer can use on-farm silos or silo bags, or immediately after harvest, deliver the crop to the miller or processor, or make use of any one of off-farm commercial silos owned and operated by AFGRI, Senwes, NWK, Suidwes Landbou, OVK, VKB, GWK, NTK, MKB, and TWK, see Figure 12.12.

Wheat milling

146. Wheat in South Africa is mainly milled into wheat flour, meal and bran to use in the manufacturing processes. Wheat flour is used in the baking industry to manufacture bread and bread products, pasta, biscuits, and other confectionary products. Meal and bran, in turn, are used for the manufacturing of breakfast cereal products but is also used in the animal feed industry (Figure 12.8). (DAFF, 2016c).

147. The four big role players in the wheat to bread value chain are Tiger Brands, Premier Foods, Pioneer Foods and Food Corp. These four millers accounted for approximately 80% of the total wheat milled in 2015 (Louw et al., 2017). In 2016, there were 80 wheat milling operations in South Africa, which decreased from around 100 milling firms in 2008 (Louw et al., 2017). Discussions with industry experts revealed that this is due to firm consolidation and not as a result of firms going out of business (Louw et al., 2017).

Baking

148. The bread market is divided into sub-regions with large plant bakeries servicing them. The four wheat milling companies are all vertically integrated with downstream plant bakeries. The bread brands associated with

Figure 12.8: The wheat milling process
each company are: Pioneer Foods - Sasko, Tiger Brands - Albany, Premier Foods - Blue Ribbon and Foodcorp - Sunbake (DAFF, 2016c). These bakeries have a market share of between 50% and 60% of the domestic bread market (Berkowitz, 2013). The remainder of the market is serviced by independent and in-store bakeries (Berkowitz, 2013). The number of plant bakeries is estimated between 60 and 70 and in-store and franchise bakeries around 600 and 250, respectively (Berkowitz, 2013).

149. Most of the formal retailers, especially large and hyper stores, have in-store bakeries that bake and sell bread and other confectionary products. One of the benefits of an in-store bakery is that it allows the retailer to supply bread at slightly lower prices compared to the bread supplied by large plant bakeries, due to savings on the variable cost (packaging and distribution costs) of in-store produced bread. Unfortunately, having an in-store bakery require substantial investments with a significant associated variable cost. The quality of the ingredients and, therefore, the final product is often inconsistent when compared to that of the larger plant bakeries (DAFF, 2016c; Maister and Durham, 2011).

Consumption

150. Bread is a staple food for many households, particularly low-income households (LSM 1-4), and is the second biggest supplier of energy in the national diet after maize meal (Figure 12.9.). According to data from the StatsSA Income and Expenditure (2010/2011) report, brown bread and white bread represent approximately 20% and 10.5% of these consumers’ expenditure on starchy foods respectively.

151. There has been a steady upward trend in wheat consumption in South Africa between 1998 and 2015. Recent issues, such as load shedding and the higher price of electricity, along with urbanisation, have also exasperated the trend in bread demand in order to substitute staples with long cooking times, such as maize meal and rice (BFAP, 2017).

152. Consumption of bread is around 62 loaves of bread per person per annum roughly 3 slices per day. There are also considerable regional differences in preferences and consumption. In the Western Cape, for example, 76% of the bread consumed is white bread, while in Limpopo, 75% of the bread consumed is brown bread. In terms of consumption, Gauteng consumers consume about 86 loaves of bread per annum while Limpopo consumers consume about 44 loaves of bread (DAFF, 2016c). Sasko (29%), Albany (25%), Sunbake (15%), and Blue Ribbon (12%) are the four most popular brands among consumers in the lower LSM categories (AMPS, 2015), with customers also exhibiting strong brand loyalty.

12.5 THE MAIZE-TO-MAIZE MEAL VALUE CHAIN

153. The maize industry is of strategic importance, both in terms of production and consumption. South Africa produces 57% white maize, which is mainly used for human consumption in the form of maize meal, and 43% yellow maize mainly used for animal feed. The maize industry is an essential contributor to the economy as both an employer and earner of foreign currency. In terms of consumption, maize plays a central role since a significant number of low-income households rely on maize for calorie intake (DAFF, 2016a). The StatsSA Income and Expenditure (2010/2011) report indicates that expenditure on maize for lower-income households forms a substantial part of staple consumption (around 35%)

The maize-to-maize meal value chain

154. Maize and maize products typically flow from farm to silo, silo to mill and ultimately from the mill to the retail point (see Figure 12.10).

Input Suppliers

155. The maize value chain shows significant concentration of input suppliers. Key companies in the input supply sector engage in seed, fertilizer, crop protection, and machinery sales or a combination thereof. According to StatsSA (2010), the five largest fertiliser companies are responsible for approximately 87% of total market revenue related to fertiliser.871 The two largest fertiliser companies are Sasol and Omnia with a combined market share of 67%. South Africa remains a net importer of fertiliser with maize consuming about 41% of the total available fertiliser (DAFF, 2015). The fertilizer market, however, underwent significant changes in terms of concentration following the Commission’s investigation into Sasol (GrainSA, 2011).

Monsanto recently purchased shares in Sensake and Carnia and is currently the largest seed company in South Africa. Other large seed suppliers include Pannar and Pioneer Hybrid International (DAFF, 2016b).

Primary Producers

156. According to DAFF (2016b), the number of commercial maize farmers in South Africa is estimated at 9 000 and they cultivate close to 3.4 million hectares. They also employ approximately 150 000 farm workers. Deregulation in the agricultural sector brought about shifts in the production regions of yellow and white maize production, specifically the increase in maize production in the Northern Cape in response to higher maize prices. Another noteworthy change is the shift of maize production from the western to the eastern parts of the country. Figure 12.11 clearly shows the Free State, the North West and Mpumalanga provinces as the primary production regions for maize in South Africa.

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Figure 12.10: The Maize-to-Maize Meal Value Chain

Source: Adapted from DAFF, 2016b

Figure 12.11: Maize Production in South Africa

Source: Climate signals, 2017a
Handling and Storage

157. Maize producers have four main options for storing maize post-harvest; the farmer can either deliver maize directly to a miller, store it on-farm in silo bags or in self-erected silos (172 on-farm silos countrywide) or store the maize in commercial off-farm silos (260 silos). According to Coleman (2014), private companies (previously agricultural cooperatives) own 85% of these commercial silos, which amounts to 16.3 million tons of maize. The commercial silos account for 94% of the available silo capacity (Coleman, 2014). Figure 12.12 illustrates the silos that service the country’s major maize production provinces. The silo owners include; AFGRI, Senwes, NWK, Suidwes Landbou, OVK, VKB, GWK, NTK, MKB, and TWK. Currently, AFGRI, NWK and the SENWES group, situated in the northern parts of South Africa, are the principal silo owners and own 73% of the total storage capacity.

Transport

158. There has been a large reduction of maize transport by rail from 80% to 50% of total volumes transported, mainly due to Spoornet’s failed adaption to the market’s increased service requirements, and their failure to maintain their fleet. The increase in road transport, on the other hand, resulted in challenges with offloading as silos were initially constructed to dispatch grain primarily by rail. The most prominent players in the road transport sector include Unitrans, Imperial Logistics and Bidfreight (NAMC, 2004; DAFF, 2016b, 2014a).

Trade

159. The maize sector is an important earner of foreign currency through the export of maize and maize products. During 2015 and 2016 yellow and white maize showed significant increases in import volumes and reductions in export volumes because of the prevailing drought conditions that placed the domestic maize production under pressure. South African maize prices traded at import parity levels, and contrary to global trends, domestic prices reached record highs. However, the improvement in weather conditions in maize producing areas led to above average maize yields.

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872 Major import markets for maize is Argentina, Mexico, Brazil, the USA, Zambia and Malawi (DAFF, 2016).
873 Major export markets for maize is Botswana, Zimbabwe, Lesotho, Swaziland, Namibia, Philippines, Mozambique, Congo, Zambia and Madagascar (DAFF, 2016b).
and subsequently, lower prices, allowing domestic prices to align with below average global prices. These lower 2017/2018 prices were expected to lead to a reduction in commercial maize production in 2017 (BFAP, 2017).

160. Price determination for maize occurs on the South African Futures Exchange ("SAFEX") and allows all fundamental factors to be discounted into prices. The trading of maize in South Africa is dominated by six large traders; Rand Merchant Bank, Senwes, Afgri, Cargill, Louis Dreyfus and Verus Farms. Some of the smaller traders include Brisen, Bester Feed Exchanges, CTH Trading, Farmwise, Unigrain and Free State Maize (DAFF, 2016b).

161. Three types of agents (or traders) are involved in trading maize on SAFEX; (i) hedgers who protect an existing portfolio against adverse movements in maize prices by means of options and futures, (ii) arbitrageurs who makes a profit from price differentials of maize in different markets, and (iii) speculators who attempt to make profits from short-term price movements. Hedging agents will typically be primary producers or millers that are taking a position on the exchange to mitigate their price risk. The other two agents (arbitrageurs and speculators) ensure a requirement for a market to function efficiently (Geyser, 2013).

Maize milling

162. The maize milling industry consists of both wet and dry milling processes, see Figure 12.13. For the purpose of this study, the focus is on the dry milling process, specifically the production of maize meal. The dry milling process transforms white maize into maize meal by refining the kernels. The products derived from this process are; samp, maize grits, and maize rice, unsifted, sifted, coarse, super (40% of sales) and special (30% of sales) maize meal, with an increasing percentage of super maize meal sold in the market (NAMC, 2004a).

163. Business forms within the milling industry include private and public companies. According to Louw et al. (2017), the five biggest milling companies were responsible...
for milling 45% of the total maize in South Africa in 2016, and the total number of milling firms amounted to 344. Over the past two decades, this number has varied between 333 and 468 which points to the relative ease of entry and exit, for smaller millers. The entry and exit are based on the returns associated with the final product. The national milling capacity is estimated at 5 million tons of which only approximately 3.7 million tons are currently utilized.

Consumption

Maize meal is a key staple in low(er) income segments. From 2013 to 2014 the per capita consumption of maize, however, decreased from 83.03kg to 82.13kg (DAFF, 2016b) primarily driven by consumer income growth (BFAP, 2017). Wealthier and urbanised consumers tend to move away from maize meal as a staple to other forms of staple foods such as bread and potatoes (BFAP, 2017). White Star (32%), Ace (23%) and Iwisa (12%) are the three most popular brands among consumers in the lower LSM categories (AMPS, 2015), with strong brand loyalty prevalent amongst consumers.

12.6 SUNFLOWER SEED-TO-COOKING OIL VALUE CHAIN

There is a wide variety of oils produced from vegetables and animals available for human consumption. The market is dominated by vegetable oils and fat which are considered healthier for human consumption. The manufacturing of oils and fats from vegetables is part of the agro-processing sector. The oilseed value chain is an important part of the agricultural sector and oilseeds are regarded as one of the most important crops produced in South Africa. They represent an important sub-sector within agriculture, from a production, value addition, and consumption perspective. Oilseeds are a growing sub-sector, both in terms of primary production and processing capacity. From a production perspective, soybeans and sunflower are popular alternatives to produce in rotation with maize, whilst canola is produced in the winter rainfall regions in rotation with wheat Table 12.7 below presents the average contribution of different oilseeds to the gross value of agricultural production between 2013 and 2015 and indicates that soybeans and sunflower are the largest oilseed sectors in South Africa.

Limited volumes are consumed in unprocessed form, providing an opportunity for value addition. Oilseed processing yields vegetable oil, predominantly for human consumption, as well as protein meal, a raw material to the animal feed sector. Hence, oilseed production and processing also contribute to the competitiveness of livestock production. Sunflower seed is the third largest grain crop in South Africa after maize and wheat. Sunflower seed

Table 12.7 Contribution of oil seeds to the gross value of agriculture in South Africa

<table>
<thead>
<tr>
<th>Oilseed</th>
<th>Contribution to gross value of agricultural output</th>
<th>Share in gross value of field crop production</th>
<th>Share in gross value of agricultural production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soybeans</td>
<td>R4.67 billion</td>
<td>8.4%</td>
<td>2.3%</td>
</tr>
<tr>
<td>Sunflower seed</td>
<td>R3.26 billion</td>
<td>5.9%</td>
<td>1.6%</td>
</tr>
<tr>
<td>Groundnuts</td>
<td>R548.7 million</td>
<td>1.0%</td>
<td>0.3%</td>
</tr>
<tr>
<td>Canola</td>
<td>R490.6 million</td>
<td>0.9%</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

Source: DAFF, 2016d


can be consumed or can be used for the manufacture of sunflower oil and oilcake. It is used for cooking oil, margarine and other foodstuff as well as in fuel for diesel engines as bio-fuel, while oilcake is primarily used in animal feed. In the past ten years, the gross value of the sunflower seed produced in South Africa has been relatively volatile. Sunflower seeds are produced in eight out of the nine provinces in South Africa, with the North West and the Free State provinces as the largest producers of sunflower seeds.

167. Vegetable oil consumption in South Africa has expanded rapidly over the past 15 years. This value chain assessment is focused on oil used predominantly for cooking purposes, of which palm oil has the largest share, followed by sunflower oil and soybean oil, see Figure 12.14 above. Palm oil is generally imported and when used as cooking oil, it is predominantly in the fast food industry. Sunflower seed is primarily used to manufacture sunflower oil, commonly referred to as cooking oil and oil cake used for animal feed. Within the soybean and sunflower oil sectors, approximately 50% and 80% respectively of domestic oil consumption has been produced in South Africa over the past 5 years.

The oilseed to vegetable oil value chain

168. Figure 12.15 represents a generic perspective on the oilseed to vegetable oil value chain. While the broad structure is similar, differences are evident between the different oilseeds. Such differences include the primary purpose of production, with oilseeds such as sunflower and canola produced predominantly for their high oil yield, whereas soybean processing yields a higher protein meal content for use in animal feed.

169. Oilseeds and its products typically flow from farm to silo, silo to crusher, crusher to either animal feed mill (protein meal and full fat) or refinery (oil) and refinery to wholesale and/or retail. Trade is considered at different levels of the value chain, as it represents an important consideration both in primary oilseed markets and oilseed products. Owing to the focus on cooking oil, the discussions that follow are focussed on oil production for human consumption and does not provide further detail on processing to animal feed.

170. The primary stakeholders in the value chains are:

170.1 suppliers of agricultural inputs such as seeds, fertilisers and pesticides;
170.2 agricultural producers and farmers;
170.3 traders and agricultural produce agents;

876 Department of Agriculture, Forestry and Fisheries, (2017), Sunflower Seed Market Value Chain Profile.
170.4 bulk storage and silo operators;
170.5 processors, often carry out combined operations of crushing, extraction and refining oils;
170.6 wholesalers, retailers and distributors;
170.7 manufacturers of food using oil; and
170.8 end users.

**Input Suppliers**

171. The input suppliers relevant to the oilseed value chain are very similar to those reflected in the discussed in the case of maize. Seed, chemicals, and fertilisers are generally supplied by the same companies for most field crops. Within the soybean sector, however, a larger share of producers rely on farm-saved seed which reduces the cost of seed for the producer but is detrimental to investment into new variety development by seed companies. The endpoint royalty system that is expected to be introduced on soybean seed will allow the release of new, improved varieties to domestic producers in the future.

**Primary Producers**

172. The area planted to oilseeds has expanded rapidly over the past decade. Amongst the summer crops, growth in area cultivated to oilseeds has been mainly at the expense of white maize (Figure 12.16). Consumed mainly as a basic food staple, the demand for white maize has stagnated in recent
Figure 12.16: Area planted to selected summer crops in South Africa

Source: BFAP, 2017

Figure 12.17 Area planted to selected winter crops in South Africa

Source: BFAP, 2017
years; hence yield gains have been sufficient to supply domestic demand, despite a decline in the cultivated area. Conversely, crops produced predominantly for the growing animal feed market have expanded much faster. In addition to strong demand and favourable margins, oilseed production holds many advantages for producers. The nitrogen fixation properties of soybeans, for instance, make it highly desirable in a rotation system with maize, whereas sunflower production is considered a lower risk option due to its resilience through periods of water deficiency.

173. Amongst the winter crops, the benefits of canola cultivated in rotation with wheat and barley have also supported rapid area expansion in recent years (Figure 12.17). Whilst expansion is slowing relative to the past decade, BFAP (2017) expects continuous increases in the area planted to both soybeans and canola over the coming decade. Conversely, the area planted to sunflower is expected to stabilise, as it does not have the same excess crushing capacity evident in the soybean market.

174. Although South Africa’s Industrial Policy Action Plan (“IPAP”) 2011-2017 and Agricultural Policy Action Plan (“APAP”) 2014 - 2019 has no specific strategy for oilseeds and edible oils, the government has identified primary agriculture and agro-processing as key potential areas for growth. There are proposals in IPAP which would benefit the development of the edible oils sub-sector including financial assistance for productivity-enhancing investments, development of competitive clusters and investments in infrastructure. There are also developmental projects, co-operatives and initiatives aimed at encouraging agricultural enterprises, including encouraging and lowering the risks to new entrants such as disaster relief for fire and flooding.

175. There are opportunities for SMMEs to enter at the primary level of the oil chain with support of the available developmental projects supported by government.

176. Table 12.8 presents the provincial distribution of oilseeds. The bulk of soybeans are produced Mpumalanga and the Free State, whereas sunflower production is concentrated in the Free State and the North West. All current canola production occurs in the winter rainfall region in the Western Cape.

Table 12.8: Provincial Production of Oilseeds - Average 2015-2017

<table>
<thead>
<tr>
<th></th>
<th>Soybeans</th>
<th>Sunflower</th>
<th>Canola</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Thousand tons</td>
<td>Share in national</td>
<td>Thousand tons</td>
</tr>
<tr>
<td>Western Cape</td>
<td>1.28</td>
<td>0.12%</td>
<td>0.00</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>12.70</td>
<td>1.22%</td>
<td>0.49</td>
</tr>
<tr>
<td>Free State</td>
<td>339.33</td>
<td>32.54%</td>
<td>429.67</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>2.33</td>
<td>0.22%</td>
<td>0.00</td>
</tr>
<tr>
<td>Kwazulu-Natal</td>
<td>86.29</td>
<td>8.28%</td>
<td>0.10</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>450.73</td>
<td>43.22%</td>
<td>3.37</td>
</tr>
<tr>
<td>Limpopo</td>
<td>46.72</td>
<td>4.48%</td>
<td>65.25</td>
</tr>
<tr>
<td>Gauteng</td>
<td>63.57</td>
<td>6.10%</td>
<td>4.73</td>
</tr>
<tr>
<td>North West</td>
<td>39.83</td>
<td>3.82%</td>
<td>260.58</td>
</tr>
</tbody>
</table>

Source: CEC, 2017

877 Bureau for Food and Agricultural Policy (BFAP), 2011. The contribution of the agro-industrial complex to employment in South Africa
Handling, Storing and Transport

177. Within the soya and sunflower value chain, handling, storage, and transport are very similar to the maize value chain. Producers can use on-farm silos or silo bags, deliver directly to processors after harvest or utilise any one of off-farm commercial silos owned and operated by AFGRI, Senwes, NWK, Suidwes Landbou, OVK, VKB, GWK, NTK, MKB, and TWK. Transportation systems are also very much the same as for maize and wheat.

178. Within the canola sector, producers have the option of delivering to the SSK silos in the Western Cape, or alternatively directly to Southern Oil (Pty) Ltd. ("SOILL"), the single largest off-taker of canola in South Africa. SSK also owns a majority interest in SOILL. The bulk of production tends to be contracted, resulting in producers delivering directly to the processor.

Oilseed Processing

179. While the bulk of oilseed production is processed prior to consumption, a small share of sunflower seed is consumed directly in the bird feed, or health and confectionary markets. This share is minimal in the total market. Van Zyl (2010) notes that 95% of all marketable sunflower seed in South Africa is ultimately processed into oil and cake.

180. Oilseed processing, specifically to cooking oil, consists of crushing (to extract crude oil and protein meal or oilcake) as well as a refining process for the crude oil. For illustrative purposes, the crushing process for sunflower seed is presented in Figure 12.18, as sunflower is the biggest component of the domestically produced cooking oil industry.

181. The main crushers of sunflower seed are Nola Industries, Epic and Epko. There are also pressing plants with smaller pressing capacity operated by Sealake Industries, Elangeni Oil & Cake Mills and Capitol Oil Mills.

182. Table 12.9 presents the processing capacity, and the major role players are in soya and sunflower processing. It indicates that South Africa has a dedicated crush capacity of approximately 1.8 million tons per annum each for sunflower and soybeans. Considering that some of the plants have a dual crushing ability and can switch between soybean and sunflower, approximately 600

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**Figure 12.18: Sunflower processing process**

Source: Van Zyl, 2010
thousand tons of additional sunflower, or 800 thousand tons of additional soybeans can be crushed if all dual capacity is shifted into a single product (in a dual capacity plant, sunflower crush volumes are typically approximately 80% of soybeans). SOILL in the Western Cape is currently the only canola crushing plant in the country and also includes an oil refinery.

183. When crushed, the extraction rates of both oil and oilcake differ across oilseed types, as indicated in Table 12.10 shows the crushing yields of various oilseeds. High oil-yielding seeds such as sunflower and canola are produced predominantly for oil production, whereas soybeans, with high oilcake yields, is mainly targeted at protein meal production for the animal feed market. A significant share of soybean oil is also sold in crude form for use in animal feed.

184. The production of cooking oil requires further refinement of the crude oil. After
refinement, oil is packaged and distributed to wholesale or retail level. The crushing plant often also handles refinement and Table 12.9 indicates which of the crushing plants also have refinement facilities. Independent refiners are also prevalent in the value chain. These refineries procure crude oil from domestic crushing plants, as well as imported sources.

**Retailing**

185. The formal retail market is dominated by five major players; Pick ’n Pay, Shoprite/Checkers, Spar, Mass Mart and Woolworths selling oil products, amongst many others, to final consumers. These are supplemented by independent sales, which are typically small, sometimes informal convenience stores.

186. To determine whether the refiners of crude oil into cooking oil treat both independent and the major retail chains the same as distributors of their products, the Inquiry considered rebates and other trading terms that are offered to the retailers of cooking oil. The following cooking oil producers submitted data to the Inquiry: Calthorpe of DH Brothers Industries (Pty) Ltd t/a The Willowton Group (“Willowton”), Golden Fry Oil South Africa (Pty) Ltd (“Golden Fry”) and Wilmar South Africa (Pty) Ltd (“Wilmar”).

187. Depending on the quantities being purchased, cooking oil producers supplies both independent and retail chains with cooking oil for resale. Similar to rebates in other grocery products, the major retail chains demand that cooking oil suppliers provide rebates for categories of the retail products. There are producers that focuses directly on supplying independent wholesalers and spaza shops with good quality products at competitive prices because they do not demand rebates. Suppliers that offer rebates to retailers have generally been found to offer higher rebates to major retail chains than to independent retailers. However, irrespective of the rebates being offered, independents still manage to sell their cooking oil more cheaply than the major retail chains.

**Consumption**

188. Supported by rising income levels and continued population growth, vegetable oil consumption has expanded rapidly over the past 15 years (BFAP, 2017). According to BFAP (2017), the combined consumption of sunflower, soybean, canola and palm oil has increased by an annual average of 2.9% per year, since 2001. The fastest growth was observed in canola consumption (11.8% p.a.), though from a very small base. This was followed by soybean oil (5.7% p.a.).

189. Figure 12.19 indicates that the greatest share of national expenditure on edible oils is attributed to middle-class consumers. Expenditure decile 5 to 8 combined accounts for almost half of the total national expenditure. Expenditure decile 1, (the 10% of the population with the lowest income) only accounts for 4.5% of total expenditure.

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Table 12.10: Average Oilseed Crushing Yields

<table>
<thead>
<tr>
<th>Oilseed</th>
<th>Oilcake content</th>
<th>Oil content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soybean</td>
<td>79.1%</td>
<td>18.0%</td>
</tr>
<tr>
<td>Sunflower Seed</td>
<td>45.7%</td>
<td>39.8%</td>
</tr>
<tr>
<td>Canola</td>
<td>60.7%</td>
<td>36.9%</td>
</tr>
<tr>
<td>Groundnuts</td>
<td>R548.7 million</td>
<td>0.3%</td>
</tr>
<tr>
<td>Canola</td>
<td>R490.6 million</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

Source: DAFF, 2016d

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878 See the assessment of rebates for cooking oil in Chapter 5.
whereas expenditure decile 10 (the 10% of the population with the highest income) accounts for 7% of total expenditure.

**Trade**

190. Oilseeds and their products are traded at different levels of the value chain - as raw seeds, as oilcake or protein meal and as crude or refined oil. After many years of consecutive net exports of soybean seed, a substantial expansion of domestic crushing capacity necessitated net imports from 2014 onwards, which were further exacerbated by the drought in 2015 and 2016. South Africa is typically a small net importer of sunflower seed, with canola trading almost at self-sufficiency.

191. South Africa remains a net importer of vegetable oil, but the share of imported products in total consumption differs significantly across different oil types. South Africa imports all of its palm oil requirement, mainly from Indonesia and Malaysia. Small quantities are re-exported to the rest of the Southern African region. Conversely, net imports only accounted for approximately 17.5% of total sunflower oil consumption over the past 5 years, with small net exports in 2016. Imports are typically from the European Union and Argentina, with some exports to the rest of the Southern African region. In the soybean oil market, net imports accounted for an average of 45% of domestic consumption over the past 5 years. Imports typically originate from the Netherlands, Spain and Argentina, with exports directed at the rest of the Southern and Central African region. The share of net imports in the still small canola oil market fluctuates significantly from year to year but has averaged at 22% between 2012 and 2016. The bulk of imports originate from the European Union, with exports also distributed to the rest of the Southern and Eastern African region.

192. Sunflower oil is typically imported as crude oil, as domestic sunflower oil production fluctuates in line with the domestic crop. Van Zyl (2010) notes that, in the event of a domestic shortage, processors prefer to import crude oil for domestic refinement, as crude oil imports are generally more cost-effective than sunflower seed imports for domestic crushing. Within the soybean

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**Figure 12.19: Expenditure on vegetable oil disaggregated by expenditure decile**

![Expenditure on vegetable oil disaggregated by expenditure decile](source: Stats SA, 2012)
oil market, the share of crude oil in total soybean oil imports has declined to an average of 25% in the past 5 years from 90% in the early 2000s (ITC, 2017). Data from the ITC (2017) indicates that almost no palm and canola oil is imported in crude form.

**Sunflower oil**

193. The Inquiry has focussed on sunflower oilseed as sunflower cooking is the biggest component of the domestically produced cooking oil industry. Sunflower cooking oil “herein referred to as cooking oil”) also forms part of the National Agricultural Marketing Council’s (“NAMC”) food basket. 879 As also discussed in Chapter 3, cooking oil was indicated as one of the must have product in a spaza shop.

194. Cooking oil generally forms part of the monthly food hampers purchased by customers from wholesalers, retail chain stores and from informal spaza shops. Figure 12.20 represents the sunflower seed market value chain.

195. In terms of the market structure, the processing of sunflower seed is highly capital intensive and requires high technology and specialized knowledge. Generally, the processing of sunflower seeds is mainly for human consumption and South Africa is not a major exporter of sunflower seed. The low figures in the export of sunflower seeds also suggests that South Africa only has capacity to meet the domestic demand. 880 Generally, the market for seeds in South Africa is highly concentrated with two main players; Monsanto and Pioneer Hi-Bred International.

196. Oilseeds and their products typically flow from farm to silo, silo to crusher, crusher to either animal feed mill (protein meal and full

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**Figure 12.20: The sunflower seed market value chain**

![Sunflower seed market value chain diagram](source: DAFF)

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879 NAMC Markets and Economic Research, Food Basket Price Monthly Issue 26- Feb/2018
880 Department of Agriculture, Forestry and Fisheries, (2017), Sunflower Seed Market Value Chain Profile.
fat) or refinery (oil) and refinery to wholesale and/or retail. Trade is considered at different levels of the value chain, as it represents an important consideration both in primary oilseed markets and oilseed products. Owing to the focus on cooking oil, we do not provide further detail on processing to animal feed.

197. Sunflowers grow well under drought conditions, and are mainly planted in the Free State, the North West, the Mpumalanga Highveld and Limpopo province. The sunflower seed is one of the commodities traded on SAFEX. The SAFEX price serves as an indicator for producers as to what they can charge for their produce in the market. The international oil prices act as a guideline for domestic seed and oil prices as South Africa is regarded as a price taker in the global oilseed market.

198. The refining of sunflower seed into oil is highly capital intensive and requires advanced technology and specialized knowledge. The majority of large refineries are located in Gauteng and Kwa-Zulu Natal. To reduce transport costs, the location of refineries and agro-production facilities should be close to either crude oil facilities (crushing plants) or harbours for imports of crude sunflower oil. In South Africa, refineries can import oil at a lower price than can be supplied by local crushers, which is why many sunflower oil refineries are located close to Durban port.

Recent pricing trends

199. Table 12.11 shows the average price for sunflower oil as well as the year-on-year percentage change from December 2012 to December 2017.

200. Figure 12.12 below compares the average cost of producing 2L of cooking oil to the average price of sunflower oil and shows the margin between the cost of production and retail price.

Market Shares and Concentration

201. The following market shares for the market of refining and supplying of refined sunflower oil are taken from the merger investigation of Wilmar Continental and Unity Foods. The merger was prohibited.

12.7 THE DAIRY VALUE CHAIN

Background to the Dairy industry

202. The primary dairy industry consists of milk producers or farmers who own and operate dairy farms. In essence, these farms produce and purchase raw milk which is pasteurised, homogenised, packaged and sold through retail outlets as fresh milk or non-perishable

| Table 12.11: Average retail price of sunflower oil (December 2012 to December 2017) |
|---------------------------------|---------------------------------|------------------|
| December 2012                   | R34.80                          | -                |
| December 2013                   | R34.34                          | -1.3%            |
| December 2014                   | R31.18                          | -9.2%            |
| December 2015                   | R39.12                          | 25.5%            |
| December 2016                   | R44.51                          | 13.9%            |
| December 2017                   | R39.78                          | -10.6%           |

Source: StatsSA

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881 Department of Agriculture, Forestry and Fisheries, (2017), Sunflower Seed Market Value Chain Profile.
883 The PPI data for cooking oil was reported in 4x5L packages. This has been converted to 2L for comparison purposes.
884 Commission case no. 2016Jul0357
milk products such as UHT\textsuperscript{885} (Long Life) milk and milk powder, for both human and animal consumption.\textsuperscript{886} The primary industry is represented by the Milk Producers Organisation (MPO).\textsuperscript{887}  

203. According to the MPO, the dairy industry is the fifth-largest agricultural industry in South Africa, providing a sustainable living for thousands of small- and large-scale producers across the country.

\textsuperscript{885} UHT is a method of processing and sterilization which utilizes ultra-high temperatures.  
\textsuperscript{886} Primary processing of milk also includes the separation of whey and cream.  
\textsuperscript{887} Who Owns Who: Manufacture of Dairy Products (March 2016, p. 1).
204. The secondary dairy industry consists of dairy processors who produce the six types of products, Milk and Cream, Concentrated Milk, Buttermilk and Yoghurt, Whey, Butter and Oils, and Cheese.\(^{888}\) Processors include a few larger processors of dairy products who operate nationally, a larger number of smaller processors who operate in specific areas, and a number of producer distributors (“PDs”) who sell their own produce directly to retailers and consumers.\(^{889}\)

205. Milk is generally processed by large dairy converters such as \(\mathbb{X}\) or medium-sized converters such as \(\mathbb{X}\) which produce homogenised and pasteurised fresh milk and other dairy products such as yoghurts, creams and cheeses. There are also a number of small-scale processors who produce fresh milk and value-added products, such as speciality cheeses for local and niche markets.\(^{890}\)

206. According to Who Owns Whom, the dairy industry is involved in numerous international trade agreements, is exposed to relatively low import tariffs, has no quota system and receives no government subsidies. It is represented by industry associations including:

206.1 Milk South Africa (Milk SA);
206.2 The Milk Producers Organisation (MPO);
206.3 The South African Milk Processors Organisation (SAMPRO);
206.4 The South African Society of Dairy Technology (SASDT); and
206.5 The Dairy Standard Agency (DSA).

### Regulatory environment

207. Dissimilar to other countries in the World, South Africa’s dairy industry operates in a completely deregulated environment. The Dairy Standard Agency (DSA) has as its’ primary objective to promote the compliance of milk and other dairy products with product composition, food safety and metrology standards.\(^{891}\)

208. The following Acts, Regulations and guidelines have a direct impact on the dairy industry:

208.1 The Marketing of Agricultural Products Act;\(^{892}\)
208.2 The Foodstuffs, Cosmetics, and Disinfectants Act;\(^{893}\)
208.3 The Livestock Improvement Act;\(^{894}\)
208.4 The Fertilisers and Farm Feeds Agricultural Act;\(^{895}\)
209. The Medicines and related Substances Control Act;\(^{896}\)
209.1 The Animal Disease Act;\(^{897}\)
209.2 The Consumer Protection Act;\(^{898}\)
209.3 The Agricultural Products Standards Act;\(^{899}\)
209.4 The National Regulations for Compulsory Specifications Act;\(^{900}\)
209.5 The Legal Metrology Act;\(^{901}\)

210. A relevant government authority with regard to the regulation of the dairy industry is the

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888 Secondary processing also includes the production of ice cream and the supply of inputs into other products, such as chocolate and baby foods.
892 Act 47 of 1996
893 Act 54 of 1972
894 Act 60 of 1997.
896 Act 101 of 1965.
899 Act 119 of 1990.
900 Act 5 of 2008.
901 Act 9 of 2014.
Department of Agriculture, Forestry and Fisheries (DAFF). In 2015, DAFF passed Regulation R260 which introduces new dairy product classifications, including drinking yoghurt and custard. The fat content of dairy and imitation dairy products also changed. The new regulation required that, for a dairy product to qualify as “low fat,” the labelling must indicate the fat content to be less than 1.5% and created a new, “medium fat” category. These amendments were intended to align local regulations with international standards as per Codex Alimentarius. Reg R260 further defines more stringent marking requirements for dairy and imitation dairy products as prescribed in the Labelling and Advertising Regulations under the Foodstuffs, Cosmetics, and Disinfectants Act.

Producers are required to adhere to various standards, including but not limited to:

- HACCP: Hazard Analysis and critical control point systems;
- Global GAP;
- ISO 9001: 2008 – Quality Management Systems Certification; and

Overview of the Value Chain

Whilst the dairy value chain produces an array of products which are intended for human consumption, including raw, pasteurised and UHT milk, fermented milk, cream (fresh and long life), yoghurt, cheese, condensed milk, milk powder, whey powder, butter, and ghee, the primary focus of this analysis is fresh and UHT milk.

The value chain of the dairy industry can be divided into four levels: (1) the farming or production of raw milk; (2) the procurement of raw milk by processors such as Clover and Parmalat who procure the raw milk from specific regions within the country; (3) the processing of raw milk into dairy products...
such as UHT milk, yoghurt, milk powders, butter, cheese, butter milk, milk powders, and whey power; and (4) the on-sale of the dairy products either to retailers or in bulk to caterers and other end-users. Below is a diagrammatic representation of the dairy industry value chain, in Figure 12.22.906

214. There are two main sources of raw milk from producers, namely commercial producers and small to medium producers. Milk from commercial dairy farms usually goes straight into bulk collection for dairy processors who then produce dairy products such as cheese, butter and yoghurt. Small and medium dairy farms either supply consumers (PDs) or contribute to the bulk collection of milk. Dairy processors can also import raw milk to use in their production processes.907

215. The bulk of South Africa’s raw milk is produced in the coastal provinces, with the Western Cape, the Eastern Cape and Kwazulu-Natal accounting for about 61%908 of raw milk produced in 2014/2015.909 This is because mild temperatures and good rainfall help to ensure the best quality pasture and the most favourable environment for milk production, being essential pre-requisites for lower milk production costs and higher yields.910

Nature of competition along the value chain

216. Over the last decade or so, the number of milk farmers has declined by more than 50% from just over 4 100 in 2006 to less than 2 000 in January 2017. This decline has been attributed to a number of factors such as the lengthy drought, acquisitions by larger producers, liquidations, lack of family successors, diversification into more profitable forms of farming, farm sizes being too small for new technology to be cost effective, and isolated farm locations which make milk collection unattractive to milk buyers.911 It could also be attributed to the unstable prices of one of the largest cost drivers for milk producers: animal feed.912 With the rough climatic conditions experienced over the past few years, feed prices were higher than usual, and profit margins in the dairy value chain were severely squeezed.913

217. Table 12.13 below sets out the distribution of raw milk producers/farmers, per province from January 2009 to January 2017 and provides an overall total of milk producers/farmers in South Africa over the same period.

218. Although the number of milk farmers has consistently declined, this has not translated into a decline in milk production.914 On the contrary, milk production has grown consistently with an average annual growth rate of just over 2% from 1960 million litres in 2000 to 2780 litres in 2014 which is indicative of a drift towards fewer farms, exhibiting greater economies of scale in the form of larger herds and increased production capacity.

219. The volume of milk produced is also intensely dependent on the milk: maize price ratio which directly affects the animal feeds industry. The animal feeds industry is vulnerable to high commodity prices, often driven by climatic conditions and exchange rate fluctuations. An increase in the milk: maize price ratio means that when the milk price in relation to maize price increases, there is an increase in raw milk production.

220. Table 12.14 below, depicts the milk production output for the period 2000-

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908 This is an average calculated over the period.
910 Ibid (October 2017, p. 3).
911 Ibid (March 2016, p. 4).
912 Value Chain Analysis, p. 43
913 Ibid, p. 43
914 Teboho Bosiu et.al., op.cit. fn 910, p. 60, para. 7.4.1, p. 60, para. 7.4.1.
Further down the value chain, the number of processor/distributors dropped from 178 in September 2008 to 115 in April 2016 while the number of milk buyers also dropped from 163 to about 150. This concentration in the sector particularly amongst the milk procurers has resulted in substantial bargaining power being held by a small number of procurers. Possibly as a result, the South African Milk Co-operative ("SAMILCO") which is made up of dairy farmers, applied for an exemption from the Competition Commission in August 2014, as well as, the decline the number of milk farmers over the same period.

Table 12.13: Distribution of raw milk producers / farmers, per province from January 2009 to January 2017

<table>
<thead>
<tr>
<th>Province</th>
<th>Jan '09</th>
<th>Jan '11</th>
<th>Jan '12</th>
<th>Jan '14</th>
<th>Jan '15</th>
<th>Jan '16</th>
<th>Jan '17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Cape</td>
<td>795</td>
<td>683</td>
<td>647</td>
<td>529</td>
<td>533</td>
<td>502</td>
<td>481</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>387</td>
<td>314</td>
<td>283</td>
<td>264</td>
<td>262</td>
<td>251</td>
<td>244</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>37</td>
<td>28</td>
<td>21</td>
<td>25</td>
<td>14</td>
<td>14</td>
<td>7</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>373</td>
<td>323</td>
<td>322</td>
<td>281</td>
<td>267</td>
<td>253</td>
<td>247</td>
</tr>
<tr>
<td>Free State Natal</td>
<td>8844</td>
<td>601</td>
<td>535</td>
<td>389</td>
<td>328</td>
<td>280</td>
<td>249</td>
</tr>
<tr>
<td>North West</td>
<td>540</td>
<td>386</td>
<td>352</td>
<td>233</td>
<td>222</td>
<td>181</td>
<td>165</td>
</tr>
<tr>
<td>Gauteng</td>
<td>217</td>
<td>127</td>
<td>126</td>
<td>109</td>
<td>100</td>
<td>97</td>
<td>98</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>286</td>
<td>201</td>
<td>164</td>
<td>117</td>
<td>94</td>
<td>93</td>
<td>87</td>
</tr>
<tr>
<td>Limpopo</td>
<td>32</td>
<td>23</td>
<td>24</td>
<td>14</td>
<td>14</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>3 551</strong></td>
<td><strong>2 686</strong></td>
<td><strong>2 474</strong></td>
<td><strong>1 961</strong></td>
<td><strong>1 834</strong></td>
<td><strong>1 683</strong></td>
<td><strong>1 593</strong></td>
</tr>
</tbody>
</table>

Source: MPO

Table 12.14: South African milk production output for the period 2000 - 2014

![Graph showing milk production output from 2000 to 2014](image)

Source: MPO

221. Further down the value chain, the number of processor/distributors dropped from 178 in September 2008 to 115 in April 2016 while the number of milk buyers also dropped from 163 to about 150. This concentration in the sector particularly amongst the milk procurers has resulted in substantial bargaining power being held by a small number of procurers. Possibly as a result, the South African Milk Co-operative ("SAMILCO") which is made up of dairy farmers, applied for an exemption from the Competition Commission in August 2014, as well as, the decline the number of milk farmers over the same period.

915 Teboho Bosiu; Reena Das Nair and Anthea Paelo, the Global Food Value Chain and Competition Law and Policy in BRICS Countries: Insights from Selected Value Chains in South Africa (November 1, 2017). CCRED Working Paper No. 21, pg. 60, para. 7.4.1.
2013, to enable its’ members to participate in collective price negotiations with milk processors.

Market shares and concentration

222. While there are currently about 150 milk buyers in the country, the four largest milk buyers are also the main processors, [X]. They purchase in the region of 70% of the total milk production in South Africa.

223. Market share information with regard to the large milk processors is not readily available. Nevertheless, the Inquiry sets out below a comparative analysis of the regional market shares of milk processors between 2008 and 2014, [X].

224. Generally, market shares are calculated regionally because the geographic scope for the procurement of raw milk has been defined in competition assessments as regional/provincial markets since raw milk is procured within a geographic locale. This is largely due to transport costs and the limited shelf life of raw milk, as well as the location of the majority of milk producers.

225. In 2008, the regional markets for the processing of raw milk was highly concentrated. The market share figures for that period are set out in the table below.

226. From Table 12.15, it appears that in 2008 [X] enjoyed a significant market share in Mpumalanga but had no presence in the Free State, whilst [X] enjoyed a significant portion of the Free State market. It also appears that whilst [X] was not present in any of the other regions, it had a strong competitive presence in the Eastern Cape.

227. [X].

228. In Table 12.16, whilst [X] lost market significant share in Mpumalanga, in 2014 it had a very strong presence in Gauteng, the North West and the Free State, where it was not present in 2008. From the figures, one might conclude that [X] has downscaled its Mpumalanga operations in order to upscale its operations in the other regions.

229. Whilst the Inquiry endeavoured to ascertain the growth or decline of small businesses in this area of the value chain, it was a challenging task due to the unavailability of the market share information. However, judging from [X] entry into regions where it was not previously present and its ability to maintain a significant market share in the regions in which it was present, it is clear that small businesses are not able to place sufficient competitive constraints on the larger processors.

Table 12.15: Market shares of milk processors, per region, according to the BFAP report

<table>
<thead>
<tr>
<th>Region</th>
<th>2008 Market Share</th>
<th>2014 Market Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mpumalanga</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Free State</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>North West</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Gauteng</td>
<td>[X]</td>
<td>[X]</td>
</tr>
</tbody>
</table>

Source: Adapted from Value Chain Analysis, Robberts et. al

916 The reason that market shares are calculated regionally is because the geographic scope for the procurement of raw milk has been defined along regional/provincial markets since raw milk is procured within a geographic locale. This is because of transport costs and the limited shelf life of raw milk, as well as the location of the majority of milk producers.
230. The Inquiry held a teleconference call with [X]$^{19}$, a small dairy processor, in order to understand what challenges small dairy processors experience. [X] is a manufacturer of amasi, yoghurt and nectar juices and does not manufacture fresh or UHT milk. Whilst it can easily enter into the milk production market in terms of equipment and infrastructure, it does not see this as a lucrative option since supermarket chains do not afford small processors a route to market as they are of the belief that small processors do not produce the same quality of products as the large processors.

231. [X] also informed the Inquiry of [X] which recently exited the milk processing market after being in operation for 30 years. According to [X], [X] used to supply retail businesses in the Lowveld with 2L fresh milk at R18 per unit, then [X] entered that area and began selling 2L fresh milk at R14 per unit which forced [X] out of the market. The Inquiry was unable to contact [X] to ascertain the accuracy of this claim.

232. One of the major barriers to entry in the industry is the importance of logistics. Entrants must be able to transport the highly perishable raw milk to the processing plant which is especially costly since raw milk is low in value relative to its volume.$^{920}$

233. Additionally, the milk output is not a perfect science and fluctuates daily. The risk associated with this fluctuation is that tanker routes must be planned daily in order to ensure that the largest volume of milk is collected over the shortest possible distance to enable efficiency. The fact that there is no return load further increases the price. Further down the value chain during the transport of finished products from the processing plants to distribution centres and retail stores, there are the same logistical challenges. Managing these logistical processes efficiently often prove to be significant challenge for small and new entrants.$^{921}$

234. The lack of capital is also a significant barrier to entry, more so when considering the costs required to see a product through all stages

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917 [X].
918 [X].
919 [X].
920 Teboho Bosiu; Reena Das Nair and Anthea Paelo, the Global Food Value Chain and Competition Law and Policy in BRICS Countries: Insights from Selected Value Chains in South Africa (November 1, 2017). CCRED Working Paper No. 21, pg. 60, para. 7.4.3
921 Teboho Bosiu et.al. op.cit. fn 910.
of the value chain. For instance, with regard to milk, from the raw form (production and/or procurement costs), then to processing, packaging and finally distribution.

**Raw Milk Producers**

235. According to a report by Who Owns Whom, emerging farmers experience the following barriers to entry into the formal dairy farming industry:922

235.4.1 dairy skills are developed over many years and inadequate knowledge and skills are limiting factors in sector development;

235.4.2 since dairy farmers are price-takers there is low profitability associated with milk production;

235.4.3 market volatility and the effect of imports in depressing producer prices;

235.4.4 the facilities require investment which is not sustainable on the volumes produced by emerging farmers and access to start-up capital is limited;

235.4.5 the market is dominated by three major processors making it difficult for smaller processors as they lack bargaining power, especially during periods of surpluses when the larger processors dump their products in the retail sector at very low prices; and

235.4.6 quantity requirements and regulations to ensure quality are major deterrents for small farmers to supply processors.

**Processors**

236. The production of certain of the milk products, especially powdered products, requires the use of expensive equipment such as spray towers, homogenisers, pasteurisers, mixing tanks, silos and steam plants requiring relatively high capital expenditure which creates high barriers to entry. It was said in the merger between Clover and Fonterra923 that the technology is largely generic although the market is capital intensive, new entrants can easily access second-hand powder driers for powdered products, which can be purchased in various locations around the world. This capital expenditure can amount to approximately R180 million. It would take about six months to enter this market once equipment has been purchased. Second-hand plants could be found in Germany, Argentina and Uruguay at more reasonable prices.

237. It was the Commission's view that although second-hand equipment can be obtained, the commercial constraints for South African firms which manufacture these products locally is prohibitively high due to the high import duties, indicates that South African firms cannot compete effectively with the rest of the world in these markets. However, entry into these markets could be established by way of importing these products and selling them in the local market. Accordingly, the Commission established that relatively low capital is required to enter into the market in this way.

238. However, the Commission has in other dairy related investigations engaged with competitors in the market for the manufacture and supply of dairy products to ascertain whether there are barriers to entry in the market and whether these are significant. The Commission had found in previous investigations that the barriers to entry in the milk market are high and include capital investments and branding. Other barriers to entry include economies of scale, capital expenditure, shelf space at retail outlets and consistency of milk supply. [X].924

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923  Case Number 92/LM/Nov04.
924  [X].
Retailing

239. Based on discussions with industry experts, the three largest retailers are responsible for the distribution of approximately 86% of total dairy sales. The supply terms of retail chains of processed dairy products also include conditions of stocking the products. The NAMC (2004) cited some of the conditions under which retail chains agree to sell processed milk products from processors, which include: a payment of 3 percent of the gross price to retail chains for shelf space, 8 percent rebate on gross in-store sales and 8 percent to promote in-store promotional campaigns. In order to validate whether these conditions are still prevalent in the industry, informal discussions were selected processors which confirmed that these were still the common terms under which dairy products were sold through retailers. An important consequence of the buying terms of the retailers is declining profit of many processors as the total ex-factory costs are higher than the net price received from the retailer.

Consumption

240. According to the South African Milk Producer’s Organisation (2017), the liquid dairy products in highest demand are UHT and sterilised milk, and pasteurised milk, and the concentrated dairy products in highest demand are cheese and butter (see Figure 12.23).

Recent pricing trends

241. Average prices for dairy products in South Africa have been consistently increased

Table 12.17: Average retail prices of fresh and long life milk (1L), period 2011 - 2016

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Fresh Full Cream Milk</td>
<td>1 Litre</td>
<td>8.53</td>
<td>9.38</td>
<td>10.09</td>
<td>11.35</td>
<td>12.13</td>
<td>12.96</td>
</tr>
<tr>
<td>Fresh Low Fat Milk</td>
<td>1 Litre</td>
<td>8.74</td>
<td>9.79</td>
<td>10.78</td>
<td>12.48</td>
<td>13.38</td>
<td>14.36</td>
</tr>
<tr>
<td>Long Life Full Cream Milk</td>
<td>1 Litre</td>
<td>9.55</td>
<td>10.22</td>
<td>10.87</td>
<td>11.98</td>
<td>12.77</td>
<td>13.43</td>
</tr>
<tr>
<td>Long Life Low Fat Milk</td>
<td>1 Litre</td>
<td>9.61</td>
<td>10.41</td>
<td>11.00</td>
<td>12.06</td>
<td>12.68</td>
<td>13.30</td>
</tr>
</tbody>
</table>

Source: Extracted from StatsSA
between 2011 and 2016, specifically with regard to fresh and long-life milk. The tables below indicate the average retail prices charged for fresh milk (full cream and low fat) and long-life milk (full cream and low fat) in both 1 litre and 2 litre units, respectively. On average, fresh milk prices increased by 9% for full cream and 10% for low fat during the 2011 - 2016 period.

244. According to the PPI for all dairy products for the period 2012 to 2018, the average producer price for milk has been steadily increasing save for a short period between the latter end of 2015 and the beginning of 2016, when the prices for both dairy products and raw milk significantly decreased (See Figure 12.24) The reasons for this significant drop in prices is currently unclear and that information still needs to be sought.

245. Despite the significant decrease in the raw milk PPI, there has not been such a significant decrease in the CPI of milk for the same period even though raw milk is a key input. However, it should be noted that the CPI for milk includes eggs and cheese.

Conclusion on dairy value chain

246. It is evident that the dairy industry at both the processing and the production level are characterized by a few large players. At the production level, the significant decrease in

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### Table 12.18: Average retail prices of fresh milk (2L), period 2011 - 2016

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Fresh Full Cream Milk</td>
<td>2 Litre</td>
<td>16.40</td>
<td>18.16</td>
<td>19.68</td>
<td>xx</td>
<td>xx</td>
<td>xx</td>
</tr>
<tr>
<td>Fresh Low Fat Milk</td>
<td>2 Litre</td>
<td>16.36</td>
<td>17.87</td>
<td>21.68</td>
<td>xx</td>
<td>xx</td>
<td>xx</td>
</tr>
</tbody>
</table>

Source: Extracted from StatsSA

### Figure 12.24: PPI indicates of raw milk and dairy products and CPI of milk, cheese and eggs, Jan 2012 - Feb 2018

![Graph](source: Dairy Digits, DAFF and Stats SA)
the numbers of dairy farmers indicates both exit from and consolidation in the market. This indicates that the market has over time become non-conducive to operating small businesses and that economies of scale are required in order keep a business alive. The same can be said for processors since the processing level of the value chain is characterized by a small number of players who each share a significant market share.

247. The major supermarket groups exercise a large measure of influence over the dairy industry and the price of milk, as more than 50% of all dairy products pass through supermarkets. The second-most powerful group is the dairy processors [X]. Their power stems from resources and the ability to process milk into other long-life dairy products which can be stored for long periods during the season of oversupply in summer. Farmers are the least powerful group. The seasonality of milk production combined with an oligopolistic market, means that farmers are generally price-takers for produce and experience difficulties in negotiating a good price for their product.925

248. The role of the retail level of the value chain for the development of food markets cannot be underestimated. Large retail chains with significant market power influence the participation and development of suppliers. Effective competition at this level is important to reduce possible effects of abuse of buyer power on suppliers. It is, therefore, important to foster a competitive environment for a diversity of retail models and to keep retail spaces open to entrants.926

926 Teboho Bosiu et.al., op.cit., fn 910.
13.1 STAKEHOLDER SUBMISSIONS ON THE IMPACT OF SUPERMARKET CHAINS IN NON-URBAN AREAS

Gauteng

249. In Gauteng, the submissions were received from associations, wholesalers, government entities, research hubs, and independent business operators.

250. The Inquiry received submissions at the public hearings that alleged that the township and rural economy faced constraints from the entry of national supermarket chains and that there has been a decline in the number of small independent businesses in those areas. EST submitted that township retail traders are generally not price competitive and, therefore, cannot compete with the large retailers on price. In an attempt to respond to this competitive strain, small and independent retailers may try to reduce their prices, placing more strain on their margins eventually leading to business closure. EST submitted that the closing down of the independent stores is often an unavoidable eventuality as they have very little leverage when facing competition from large supermarket chains on their doorsteps. It was further submitted that large supermarket chains have a huge buying power and are able to negotiate favourable terms with suppliers which enables them to be price competitive. The submission by EST corresponded with submissions made by small traders, in particular spaza shop operators from Polokwane, during a meeting with the Inquiry who submitted they could not compete with the large retailers on pricing because of the latter’s ability to negotiate favorable pricing with the manufacturers and suppliers.

251. The Free Market Foundation stated that the entry of large retailers into the township economy is accompanied by commercial security in the form of title deeds and financing, which is often limited to the formal market. The Free Market Foundation notes that the lack of access by informal businesses to capital and title deeds often works to their disadvantage. The African Council of Hawkers and Informal Businesses (“ACHIB”) mentioned an incident in the Bruma flea market which was liquidated and a Chinese consortium acquired the property. ACHIB elaborated that small informal traders were presented with an opportunity to occupy the stalls on condition that they provide a R50 000 deposit which they could not raise leading to approximately 600 small businesses closed down.

252. Glo Bake, a small independent bakery, submitted that prior to the entry of national supermarket chains in township and rural areas, their business was doing fairly well. However, after the entry of the national supermarket chains, they experienced a decline in margins, similar to a submission made by Moagi’s Meat supply. Glo Bake submitted they cannot compete with a large retailer that is selling its in-house bread at a very low price. As a result, the business has

927 Submission by EST at the Gauteng public hearing dated 5 June 2017, Transcript p. 19, para 72.
928 Submission by Glo Bake at the Gauteng public hearing dated 5 June 2017, Transcript p. 69, para 269.
had to reduce the number of its employees to cut costs.

**Limpopo**

253. Similar to the submissions of some of the independent retailers in Gauteng, Goseame submitted that following the entry of national supermarket chains near their area of operation, they lost a large count of foot traffic to the supermarket chains. Goseame mainly specializes in fresh fruits and vegetables, which in their view, enabled them to remain competitive in the market. Dry groceries were also offered by Goseame but they submitted that they lost a large portion of their margins in dry groceries after the entry of national supermarket chains.

254. During a consultation with the Polokwane Capricorn Municipality (“the municipality”), the authority indicated that when the shopping centre was constructed, the small business owners in the townships were overlooked given their perceived informal trader status. According to the municipality, national supermarket chains also provide a variety of product offerings, which are draw cards to the developments. In the municipality’s view, the property developers should have considered the negative impact that the shopping centres would have on the small business owners. At the same time, the municipality acknowledged the job creation aspect of the entry of national supermarket chains.

**North West**

255. Choppies, a supermarket chain that has recently entered the South African market, submitted that the extent of the impact of the entry of national supermarket chains varies by area. According to Choppies, in areas such as Odendaalrus, in the Free State, the entry brought about competitive prices to the benefit of customers.

**Western Cape**

256. The Gugulethu Liquor Association (“Gugulethu Association”) submitted to the Inquiry during the Cape Town public hearings that, in their view, the entry of the supermarket chains resulted in the decline in the number of local traders who were forced to exit the market once they become uncompetitive.

257. Representing liquor traders, the Gugulethu Association made submissions regarding the national supermarket chains opening grocery shops in non-urban areas and also trading in liquor either in a standalone or in-house liquor stores. The Gugulethu Association stated that these national chains often trade for extended hours, i.e. trading from 8:00-20:00, which independent liquor stores such as members of the Gugulethu Association are prohibited from doing in terms of the applicable by-laws. The Gugulethu Association further submitted that in addition to the extended trading hours, the retail chains’ liquor stores are able to charge lower prices due to their buying power. As a result, Gugulethu Association’s members who are independent liquor traders, have been negatively affected.

**Kwa Zulu Natal**

258. In Kwa Zulu Natal, the Kwa Zulu Natal Youth Chamber of Commerce (“KZN youth chamber”) submitted that there are positive and negative impacts resulting from the entry of national supermarket chains into townships, non-urban and rural areas. On the one hand, national supermarket chains are able to negotiate better trade deals which affords them the tools to sell at relatively lower prices, which benefit the consumer, whereas, small local traders procure in lower volumes which impedes their ability to be more price competitive. The UGU Business Association (“the association”) also highlighted that hawkers are impacted by the entry of supermarket chains into the non-urban areas as they are often removed from the premises where the shopping centres are established. In some instances, the hawkers are often set up behind the shopping centre, where there is minimal foot traffic, which also affects

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929 See the detailed analysis on buyer power in chapter 8.
the hawker’s competitiveness. Msunduzi Municipality highlighted that in their experience, the primary disadvantage of the entry is that the monetary benefits derived from the trade that takes place in the rural and township areas does not directly benefit the surrounding areas themselves.

The South African Traders Association Chatsworth Centre (“SATA”) also submitted that there has been a visible decline in the number of independent retailers that continues to trade in the Chatsworth centre. SATA submitted that there were 170 tenants, most of which independent businesses, that have over time being replaced by national chain stores including supermarket chains. This has also resulted from the increase in rental of between 8-10% which could not be afforded by small independent stores, leading to those trading spaces taken up by national chain stores.930

Small business survey

To address the ambiguity of the survey results, the responses regarding the proximity of the spaza shop and the supermarket chain was explored further by clustering the sample based on the reported distance to the nearest supermarket.931

The statement which considers the perception of supermarket proximity impeding growth, by cluster, is presented in Figure 13.3 and Figure 13.4. We found that distance to nearest supermarket affects how spazas perceive benefits. shows that a higher % of respondents closer to large retailer disagreed with the statement, compared to the cluster that reported their distance in excess of 2km from the closest supermarket. It again seems to support the notion that spaza shop owners perceive proximity to supermarkets negatively. The level of disagreement seems to be inversely related to distance since the highest level of disagreement is associated with the group less than 1km away from the nearest retailer (combined fully disagree and disagreement of 63%). This decreases somewhat, to 59%, for respondents located between 1km and 2km away. Of the respondents located more than 2km away, 44% disagreed with the statement.

13.2 SMALL BUSINESS SURVEY

930 Submissions by SATA at the KZN public hearings on 06 July 2017, Transcript p.42, para 290.
931 Three distance clusters were considered namely “less than one km away from the nearest supermarket”, “between 1 and 2 km away from the nearest supermarket” and “more than 2 km away from the nearest supermarket.”
Figure 13.2: Percentage of Sample’s Level of Agreement with “There is space for spazas and supermarkets in townships”

Figure 13.3: Percentage of Sample’s Level of Agreement with “The presence of a large retailer makes it difficult for my business to grow”

Figure 13.4: Percentage of Sample’s Level of Agreement with “My business benefits from being close to a large grocery retailer”
Figure 13.5: Percentage of Cluster’s Level of Agreement with “My Business Benefits from Being Close to a Large Grocery Retailer”


Figure 13.6: Total average proportion of total household consumption expenditure attributed to Food and non-alcoholic beverages by race

13.3 LITERATURE REVIEW

262. Several authors\textsuperscript{932} have documented the impact of national supermarkets on the performance and subsistence of small independent retailers. Some of these studies, mostly local, do not focus specifically on national supermarkets, but rather on malls. Since malls are a vehicle for large national supermarkets to access non-urban areas, they can be treated as an appropriate proxy to understanding the impact of large national supermarkets on small retailers and consumers.

International literature

263. In a study by Donaldson and Strangways (1973), the focus was on small independent stores located in Atlanta, Georgia, in the United States. The findings revealed that well-located small independent stores tend to generate higher sales volumes even in the presence of large national supermarkets. These stores offered a convenience service for customers in their surrounding area. Additionally, it was found that small independent stores that were part of a cooperative benefited from cooperative warehouses and procurement, allowing them to purchase stock at more favourable prices and thus price in line with large national supermarkets\textsuperscript{933}.

264. In a further study, Sexton (1974) documented the importance of product mix on small independent stores' profitability. The results showed that the gross margins of small independent stores depended relatively less on frozen foods and relatively more on canned goods. Conversely, national supermarkets in high-income areas received relatively more of their gross margins from convenience products such as frozen foods and disparately less from items such as canned food. Succinctly, the study showed that a wider range of grocery products with longer shelf life in a small independent store located in a poverty-stricken area led to relatively higher gross margins.\textsuperscript{934}

265. In Scotland, Roger Tym and Partners (2006) assessed the impact of Tesco's expansion on the vitality and viability of small local retailers in both urban and rural areas. The assessment focused on: (i) shopper habits; (ii) direction of grocery expenditure; (iii) local retailer business performance; and (iv) changes in the retail structure. The main findings showed that small independent retailers reported a decline in turnover, lower marginal levels of profitability and closure of some stores. The paper concluded that large food stores can have a detrimental and adverse impact on independent grocery retailers.

266. In the United Kingdom Competition and Markets Authority's ("UK CMA") grocery market investigations (2008), the inquiry looked into several issues, including, an examination of the effects of the entry of large grocery stores on the performance (measured as revenue) of incumbent grocery stores in local areas. The regression-based analysis concentrated on how the change in an incumbent store's revenue varied with the size of an entrant store as well as the distance between the stores. The results showed that entry by a store either 1400m\textsuperscript{2} – 4000m\textsuperscript{2} or greater than 4000m\textsuperscript{2} in size had a much greater negative revenue effect on stores that were less than or equal to 1400m\textsuperscript{2} in size. Moreover, entry of stores 280m\textsuperscript{2} – 1400m\textsuperscript{2} tend to affect only the revenues of stores 1400m\textsuperscript{2} – 4000m\textsuperscript{2} in size when the stores were closely located (i.e. within a 5-minute drive-time)\textsuperscript{935}. In

\textsuperscript{932} See internationally (Donaldson and Strangways 1973; Sexton 1974; Roger Tym and Partners 2006; United Kingdom Competition and Markets Authority 2008) and locally (Lighthelm and Risenga 2006; Lighthelm 2008, 2010; Demacon 2010; Urban Landmark 2011; Madlala 2015; Dlamini 2015; Nielsen 2016).


\textsuperscript{935} The paper does not specify which model it used, but the quantitative impacts were specified. This means a Probit or Logit model was used, which does not permit reporting of the coefficient magnitudes.
conclusion, the paper showed that larger stores place a greater competitive constraint on smaller stores than vice versa. However, in a teleconference with the UK CMA, Bob MacDowall (the head of the inquiry) stated that smaller grocery retailers that closed down when large supermarkets entered their area were inefficient, and as such, the UK CMA could not attribute the liquidations to any competition related concerns.

South African literature

267. Tustin and Strydom (2006) investigated the nature and impact of current and potential opportunities arising from the expansion of large retail supermarket chain stores in townships. The study focused on the opportunities/challenges and threats/weaknesses of these expansions for entrepreneurs and township communities. The findings showed that the ability of large supermarkets to offer low prices imposed huge challenges for small businesses and, more importantly, increased the risk of excluding these smaller retailers from the transforming grocery retail market.

268. Ligthelm and Risenga (2006) explored the impact of a shopping mall development (grocery anchor: Shoprite) on small retailers located in Soshanguve, Tshwane. The study surveyed 100 small township retailers and spaza shops surrounding the new mall development in Soshanguve. The descriptive statistics reported that two in every three (59.2%) respondents confirmed a decline in the number of small businesses in their immediate vicinity. 75% of the respondents within 1km and 84.2% within 2km from the mall reported a significant decline in the number of businesses, which seemed to imply businesses located further from the mall were more prone to harm from the new development. Although fewer businesses closer to the mall closed down, those that remained reported a slight decline in their movement of stock, product range and turnover.

269. In a further study, Ligthelm (2008) investigated the sustainability of both spaza shops and small township retailers in Tshwane townships - Mabopane (grocery anchor: Spar), Garankuwa (grocery anchor: Shoprite) and Temba (grocery anchor: Shoprite). The study employed a survey which sampled 100 small informal and formal township grocery retail stores around the three mall developments. The descriptive statistics painted a generally negative impact of the shopping malls on the surrounding small informal and formal township retailers. Around 47% of the respondents reported a decline in the number of small businesses in their immediate vicinity during the first six months of the shopping malls. Similar to the previous study, the impact was dependent on distance from the mall. Respondents further from the mall (5km) generally reported a negative impact as opposed to respondents closer to the mall. Businesses closer to the mall developments stated that they adjusted their business strategies (i.e. assortment of merchandise, price levels, customer service and stock replenishment) to continue serving their immediate and regular customers as convenience stores.

270. In a study conducted around the Jabulani mall in Soweto, (grocery anchor: Shoprite), Ligthelm (2010) sampled and interviewed 300 small businesses located in a radius of 2km around the mall. The study concluded that businesses located further from the mall were more prone to harm from the new development. Although fewer businesses closer to the mall closed down, those that remained reported a slight decline in their movement of stock, product range and turnover.

937 Teleconference with Bob MacDowall, Manager, Remedies Monitoring Team, United Kingdom Competition and Market Authority’s market investigations division on 30 June 2016.
939 Descriptive statistics, show or summarize data in a meaningful way such that patterns might emerge from the data. Descriptive statistics do not, however, allow us to make conclusions beyond the data analysed or reach conclusions regarding any hypotheses made. They are simply a way to describe our data.
of 5km around the newly established mall. The first round of the survey was conducted in July 2007 (one year after the opening of the mall), repeated in July 2008 and in July 2009. Of the total of 300 businesses selected in 2007, the results extracted from the descriptive statistics showed that almost two in every five (38.3%) of the businesses closed down during the period from July 2007 to July 2008. By July 2009, almost half of the small businesses were reported to be out of business (47.6%). The attrition rate was shown to be substantially higher among home-based businesses compared to small businesses that operated from old shopping centres and standalone sites. A caveat is necessary for these results, since 2007 - 2009 was the time of the great financial crisis, hence, much of the economic downturn (including compulsory closures) cannot be attributed with certainty to factors outside the severe negative economic conditions that confronted the country at the time. The credibility of this study is thus questionable.942

271. In a wider study, Urban Landmark (2011) conducted a nationwide study on the impact of South Africa’s growing retail centre market on consumers, business and the economy.943 Six case studies from rural, semi-rural and urban areas were selected for the study, reflecting a fair distribution and variation in terms of socio economic differences. Two of the case studies were from Gauteng (Jubulani Mall, Soweto and Central City, Mabopane), with others from KwaZulu-Natal (Umlazi Mega City), the Western Cape (Liberty Promenade, Mitchell’s Plain), Mpumalanga (Thula Plaza, Bushbuckbridge) and Limpopo (Nkowa-Nkowa, Tzaneen). The study used both qualitative and quantitative research methods to collect the primary data. Quantitatively, 700 consumers and 360 local small businesses were enumerated. Qualitatively, face-to-face interviews were conducted with developers and investors involved in the retail centre developments.

272. The key findings showed that 50% of consumers perceived that the development of the centres caused a decline in their support of local traders. However, some local small businesses saw the development of the retail centre as having a positive effect on their business performance, with 74% reporting growth of 5% to 10% in revenue, while only 25% said their business performance declined. Consistent with other studies, performance varied with distance. Businesses located less than 2km away from the mall, indicated a slight increase in profits, turnover and consumer volumes. Businesses located within 2-5km indicated no change at all.

273. In a study conducted in Umlazi and KwaMashu, Dlamini (2015) set out to unpack the perceived challenges associated with the effects of township mall developments on local informal traders.944 The paper drew a sample of 291 outlets from a population of 1170 small retailers in Umlazi and KwaMashu. The descriptive statistics indicated that the development of township malls in the two areas had mostly not been beneficial for local informal traders. Due to increased price competition and the wider variety of goods and services offered by large chain stores, local retailers experienced decreased profitability and customer footfall. Some were entirely displaced and those that survived had to implement improved customer service processes and re-arrange their product mix. However, the author saliently noted that closures could not be solely attributed to the opening of the malls alone. There were other factors observed during the study that contributed to some of the closures, among others, generally poor economic conditions, inadequate business management skills and an obdurate approach to business operations.

274. Staying in the zonal area of KwaMashu, Madlala (2016) examined the competitive pressure a newly opened Pick n Pay store (opened in May 2013) exerted on informal grocery shops and spaza shops. The methodology employed a “before and after” qualitative approach. In the first round, between March – April 2014, a year after the store opened, interviews were held with 24 current and former informal grocery shop owners trading in Inanda, Ntuzuma and KwaMashu. In the second round, interviews were held in June 2014.

275. During these second interviews, it was revealed that out of the 24 traders initially sampled, only 10 (41.6%) were in operation. The most affected traders were those located in close proximity to the Pick n Pay store. The operators reported significant underperformance, citing declining customer footfall, profitability and stock movement. However, those located far from the Pick n Pay store experienced only a slight decline in consumer footfall and profitability. Madlala (2016) notes that because little was known about the limitations of these businesses before the Pick n Pay store opened, the findings cannot be solely attributable to the impact of the store.

276. In spite of the ambiguous outcomes of the surveyed literature, Nielsen (2016) reported that the non-urban market has experienced an overall increase in the number of small independent retailers (excluding hawkers and table tops). The study claims that small and independent retailers have grown from 34 000 stores to 134 000 stores over the last 20 years. The growth stems from the increasing number of foreign national run spaza shops, which have dwarfed local run spaza shops in most townships, peri-urban and rural areas. das Nair and Chisoro (2015) attribute the rebirth in the sustainability and profitability of informal market retailers to collective procurement practices.

277. In summary, the surveyed literature suggests a variety of factors that determine the impact of the entry of large supermarkets in non-urban areas on small businesses. Location is an important factor determining the sustainability and survival of small businesses. Secondly, small businesses with a wider product-mix tend to exhibit relatively higher margins even in the presence of large supermarkets. Some findings show that the larger the store, the greater the competitive constraint on smaller retailers, thereby increasing the likelihood of compulsory closure. Large retailers that offer better quality goods and lower prices impose a burden on smaller retailers.

278. There is uncertainty regarding the likelihood of compulsory closure and closeness to a mall. Some of the surveyed literature states the closer smaller retailers are to supermarkets, the less likely they are to close since supermarkets bring them increased foot traffic. Other evidence suggests the opposite: small retailers close to supermarkets are more likely to close than those further away. Nonetheless, new reports depart completely from the premise that the entry of supermarkets have caused the closure of small and independent retailers in non-urban areas, suggesting that the proliferation of foreigners in the non-urban grocery market has resulted in a significant increase in the number of small retailers. There is no uniformity in the literature enabling a reasonable conclusion on the impact of large supermarkets on small businesses in non-urban areas.

946 Meeting between the technical team and Nielsen, 24 February 2016.
947 Nielsen (2016), South Africa’s not so traditional, traditional trade, available at http://www.nielsen.com/ssa/en/insights/reports/2016/south-africas-not-so-traditional-traditional-trade.html. The data referred to by Nielsen is in respect of what it terms “traditional trade”, which includes (i) physical bricks and mortar outlets with a fixed location; (ii) informal, independently owned outlets; and (iii) outlets which stock at least one consumer goods product, selling directly to customers.
## 13.4 Stakeholder Submissions on the Impact of the Entry of National Supermarket Chains in Non-Urban Areas

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Place and Date</th>
<th>Type of Engagement</th>
<th>Summary of Views</th>
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<tbody>
<tr>
<td><strong>Eastern Cape</strong></td>
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<tr>
<td>Small Business Chamber (&quot;SBC&quot;)</td>
<td>EnNgcobo, 26 September 2016</td>
<td>Site Visit</td>
<td>The members of SBC mentioned that it is difficult for them to compete with the large retailers and as a result are not able to employ people in their shops anymore. Locals find it easier to shop in town and not in the rural areas or townships; they get more convenience in town as the banks and other businesses things are all situated there. Also since social grants are now accessible via the card system used, people find it easier to shop in town since spaza shops do not have speed points. It was also said that some large retailers give credit to social grant card holders a day or so before they actually receive their social grant money.</td>
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<td><strong>Free State</strong></td>
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<td>Bloemfontein Municipality</td>
<td>Bloemfontein, 20 July 2016</td>
<td>Site Visit</td>
<td>The National Planning Commission conducted a study that found that since the entry of malls into the township the number of spaza shops in the townships have decreased.</td>
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<td><strong>Mpumalanga</strong></td>
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<tr>
<td>City of Mbombela Municipality</td>
<td>City of Mbombela Municipal Offices, 05 September 2016</td>
<td>Site Visit</td>
<td>The municipality has observed that every time there is an opening of a new mall or a shopping centre, there is also an opportunity created for informal traders to capture the traffic that is directed to and from the mall. The municipality does not think that the opening of malls has any impact on spaza shops. The development of malls in the rural areas and townships has created more employment opportunities. It benefits the consumers and general dealers more as malls open until late compared to small businesses. There is also a change in transport and access to malls as consumers no longer have to travel long distances. There are informal traders who are selling outside the malls; the opening of malls has created an opportunity for them.</td>
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<tr>
<td>Supa Save Malelane</td>
<td>Malelane, 05 September 2016</td>
<td>Site Visit</td>
<td>It was submitted that there are limited opportunities to enter malls. However, Supa Save has not attempted to expand its operations into the malls in those areas.</td>
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<td>STAKEHOLDER</td>
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<tr>
<td><strong>GAUTENG</strong></td>
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<td>Free Market Foundation and the National African Federated Chamber of Commerce</td>
<td>Bryanston 03 May 2016</td>
<td>General consultation</td>
<td>It was stated that when a big retailer goes into the township with a shopping centre, they possess title deeds, security, mortgages and financing. The informal traders do not and cannot be expected to survive.</td>
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<tr>
<td>The African Council of Hawkers and Informal Business</td>
<td>Commission, DTI Campus</td>
<td>Meeting, 14 March 2016</td>
<td>Property investors are said to invest typically in areas formerly populated by street vendors and hawkers, and visible site of high pedestrian traffic. They then evict the street vendors, leading to closures of small businesses, as most informal sector owners do not have the skills to strategize and offer a commercially viable responses to the entry of supermarkets. An example of the Bruma Lake Flea market was given. It was liquidated, and a Chinese consortium procured the property with the intention to develop a mall. The traders were offered a deal to secure stalls for a R50 000 deposit, which is a steep price for small traders. The process led to the loss of 600 small businesses which were previously housed in Bruma Lake Flea market.</td>
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<tr>
<td>Bibi Cash and Carry</td>
<td>Commission, DTI Campus 18 March 2016</td>
<td>Meeting</td>
<td>Bibi has had shopping centres built around it and has been able to survive and trade alongside those malls.</td>
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<tr>
<td>Department of Small Business Development</td>
<td>08 March 2016</td>
<td>Meeting</td>
<td>DSBD has received by a complaint from a number of street vendors that have been driven out of the market by Shoprite and boxer.</td>
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<tr>
<td>Urban Landmark</td>
<td>CSIR Offices, Built Environment Offices 18 February 2018</td>
<td>Meeting</td>
<td>In 2011 Urban Landmark commissioned a study titled “Taking Stock: The impact of the development of formal retail centres in ‘emerging economy’ areas in South Africa (2011)”. The aim of the study was to determine the nature and impact of shopping mall developments in the emerging economy. The study examined the effect of the development of shopping malls in the townships on consumers as well as on small independent businesses. The general findings on the impact on consumers showed that consumers were saving due to easy access to the shopping centres, and lower prices. Small and medium independent businesses operating closer to the shopping centres adjusted, and most had changed strategy by opening late and diversifying products to include services such as printing and telephones. However, the main complaints were largely from the taxi owners who noticed a drop in the demand for transport to and from the CBD as people were now shopping closer to their homes.</td>
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<td>UNISA BMR</td>
<td>UNISA, PRETORIA 15 February 2016</td>
<td>Meeting</td>
<td>The BMR economic research division undertook a study on the impact of mall and casino development in Soshanguve and Mamelodi. The results showed that the entry and developments resulted in a negative impact on the growth of small businesses and positive effects on consumers through choice and pricing. There is an empirical research report that examined the impact of mall development on informal small businesses by examining the survival of the small businesses using turnover and expenditure data from 2007 to 2011 on businesses. It showed that the further away the small business was from the mall, the more the negative impact of the mall on daily operations, as pedestrian traffic decreased. However, small businesses closer to the mall had less negative impact benefiting from the traffic to the mall.</td>
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<td>EST Africa, Louis Greef</td>
<td>5 June 2017</td>
<td>Public Hearing</td>
<td>It was submitted that whenever retailers find themselves under strain as a result of the top retailers moving into townships, peri-urban areas and rural areas, that is when foreign traders start taking over the local owned stores. The local traders then find it more profitable to rent out the store. This happened after chain retailers moved into the townships. Smaller retailers have to react to the entry of large supermarkets by decreasing the number of products they stock or by cutting the price to such an extent that the business is not economical, resulting in their exit from the market.</td>
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<tr>
<td>Glo Bake, Noah Msibi</td>
<td>5 June 2017</td>
<td>Public Hearing</td>
<td>Glo Bake was doing very well, it was a profitable business selling over a thousand loaves of bread a day. It had roughly 15 employees. The business started experiencing challenges when bigger retail shops such as Shoprite Checkers and Spar moved closer, notwithstanding that these retailers brought about some development in the area. The business is facing challenges: there are only nine employees left, and Noah Msibi cannot afford to pay them. The business struggles to sell over 500 loaves a day while between 2010 and 2013 it sold over 1000 loaves a day.</td>
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<tr>
<td>Muagi’s Meat Supply, Mgezi Mazibuko</td>
<td>Gauteng, Johannesburg, 8 June 2017</td>
<td>Public Hearing</td>
<td>The entrance of malls has negatively impacted their revenue, which has been falling significantly (by 10% p.a) every year since 2011 when malls entered near where they are located in Sebokeng. About 10 jobs have also been lost.</td>
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<td>Gros Super Market, Trully Masinge</td>
<td>Gauteng, Johannesburg, 9 June 2017</td>
<td>Public Hearing</td>
<td>It was submitted that when a Checkers opened in a mall near where Gros Supermarket is situated in Sebokeng, Gros Supermarket was affected. Gros Supermarket was not making as much profit as before and it led them to retrench workers, from 12 to six employees. Thereafter a Spar opened, situated much closer to Gros Supermarket than the Checkers, and customers did not have to catch a taxi to get to the Spar. Gros Supermarket was affected even more and again had to retrench employees from six to three. Gros Supermarket cannot compete with the Checkers and Spar as they are able to offer cheaper prices.</td>
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<td>EarlJay Trading Enterprise, Lucky Kubheka</td>
<td>Gauteng, Johannesburg, 09 June 2017</td>
<td>Public Hearing</td>
<td>EarlJay Trading Enterprise submitted that it is difficult to say whether the negative impact they have seen in their business is a result of the malls entering the townships or the state of the economy. EarlJay Trading Enterprise stated that it is not too close to the malls, therefore it has not experienced a significant difference in its business, the sales dropped.</td>
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<td>Goseame</td>
<td>Polokwane, 22 August 2016</td>
<td>Site Visit</td>
<td>It was stated that since Cambridge and Shoprite opened in Seshego, many of the customers no longer shop at Goseame.  They further stated they have been able to curb the effects of these shops opening as they are known for fresh produce. Goseame however is not perceived as good source of dry goods which are the staple of feeding schemes. Feeding schemes prefer to supply Makro and since a Makro outlet has opened near Goseame, Goseame’s trade in dry goods has decreased.</td>
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<td>Polokwane Capricorn Municipality</td>
<td>Polokwane 22 August 2016</td>
<td>Site Visit</td>
<td>The spaza shop forum submitted that the building of malls has a negative effect on spaza shops and small retailers because consumers are buying bread from the malls and shopping centres. The spaza shop forum acknowledged the fact that the entry of the malls and shopping centres have efficiencies such as job creation. However, property developers who construct the malls have not considered the township economy and the livelihood of small business owners. When the shopping centre was constructed, the small business owners in the townships were neglected. The property developers should have considered the negative impact that the shopping centres would have on the small business owners. The spaza shop forum acknowledged the job creation aspect of the shopping centres but complained that the small business owners do not benefit from the entry of malls and shopping centres in townships and rural areas.</td>
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<td><strong>NORTH WEST</strong></td>
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<td>Choppies is of the opinion that the effect of the expansion and consolidation of supermarket chains in rural, peri-urban and townships is different dependings on the town. For example, in Odendaalrus, in the Freestate where there is a Pick n Pay, USave and Choppies, consumers have benefited from low prices that came with the development of these retailers. While in Modimolle in Limpopo, there are Pick n Pay, Shoprite, Choppies and Spar and recently a Checkers opened in a shopping centre. A lot of businesses have closed down and others opened up with the entrance of this shopping centre.</td>
</tr>
<tr>
<td>Choppies</td>
<td>20 June 2016</td>
<td>Teleconference</td>
<td>20 June 2016</td>
</tr>
</tbody>
</table>

**WESTERN CAPE**

<table>
<thead>
<tr>
<th>STAKEHOLDER</th>
<th>PLACE AND DATE</th>
<th>TYPE OF ENGAGEMENT</th>
<th>SUMMARY OF VIEWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gugulethu Liquor Traders</td>
<td>08 May 2017</td>
<td>Cape Town</td>
<td>Public Hearing</td>
</tr>
</tbody>
</table>

**KWAZULU-NATAL**

<table>
<thead>
<tr>
<th>STAKEHOLDER</th>
<th>PLACE AND DATE</th>
<th>TYPE OF ENGAGEMENT</th>
<th>SUMMARY OF VIEWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>KZN Youth Chamber of Commerce and Industry, William Zenzile</td>
<td>KZN, 03 July 2017</td>
<td>Public Hearing</td>
<td>According to the KZN Youth Chamber, there have been both a positive and negative impacts when shopping centres move into townships. Firstly, for the consumers it is a positive impact in that they secure cheaper priced goods but for the small independent retailers it is a negative impact as they are not able to compete with the big retailers on pricing.</td>
</tr>
<tr>
<td>UGU Association of Business, Wiseman Mcoyi</td>
<td>KZN, 03 July 2017</td>
<td>Public Hearing</td>
<td>Street vendors complain about malls, as they are not allowed to trade close to them. If they are lucky, they are given space behind the malls, where there is no traffic which disadvantages them.</td>
</tr>
<tr>
<td>Msunduzi Municipality, Rishi Remarak</td>
<td>KZN, 7 July 2017</td>
<td>Public Hearing</td>
<td>It was submitted that the challenge faced by the municipality when malls enter into townships is that the profits that are made by the chain stores in these malls do not stay/circulate within the local economy.</td>
</tr>
</tbody>
</table>
13.5 FUNDING PACKAGES AVAILABLE TO SMALL AND INDEPENDENT RETAILERS

Business funding and/or credit products that are geared towards small and independent retailers, including micro-enterprises

279. Financiers submit that they have various credit products geared towards SMMEs. They note that their lending programs include; overdrafts, and short, medium- and long-term loans (which can be paid between 6 to 60 months). Apart from loans, credit card facilities are offered in both revolving term and monthly payment terms. There are also commercial loans offered for the purposes of procuring property and to asset acquisition for small businesses.

280. Apart from the funding products available, financiers further stated that they have business development programmes that are offered to small businesses which entail project management, finance tool kits, as well as any other day-to-day skills that are needed in running a successful business.

Factors that give rise to difficulties for financiers to be able to grant credit facilities to micro-enterprises

283. Generally, financiers state that applicants that require the financing products available have various challenges which make it difficult for them to be granted these facilities. These challenges include; affordability, a poor credit record, and a lack of access to proper and sufficient information in order to make informed decisions. Such decisions include understanding lending to avoid a small business opting to source a loan from a loan shark as opposed to a bank.

284. Financiers also submit that it is pertinent that small businesses provide at least three months bank statements to show the cash flow activities in order to consider them viable. In some cases, financiers would require financial records such as cash journals, procurement of stock records etc. of which in most cases small businesses would fail to produce as they do not keep records of their transactions. All these requirements, according to financiers, are major factors that make it difficult to grant credit to small businesses.

Recommendations on how the barriers to accessing credit facilities that are faced by small businesses can be lowered and what other steps can be taken to improve overall access to credit facilities by micro-enterprises

FNB

285. FNB notes the importance of customer education around how and what credit is, and during which periods of growth one should look at credit and what portion should be based on capital investment. Support to SMMEs should be provided by government
to ensure viability tests and how to react when competition enters the immediate market. Better regulation and reporting of all credit facilities to micro-enterprises will allow greater visibility of credit and ensure accounting for all credit when the ability to repay credit is determined.

286. At a systemic level, FNB believes that there is great opportunity to shift the current operation of supply chains towards a more programmatic and electronic configuration, enabling the implementation of an information system that would be acceptable to both the informal micro-business, such as a spaza or a tavern, as well as to the manufacturers and suppliers that supply them with stock. Such a system should and could offer a real value proposition to all involved by way of digitising the stock ordering, delivery and payment processes along these supply chains. The obvious by-product of such a system would be verifiable data that could potentially be used as a proxy for credit decisions, and ultimately enable credit facilities to these micro-enterprises. Ancillary benefits would include removing cash from the equation, enhanced access to markets for both the micro-businesses and their suppliers by electronically connecting them via a system, and lastly multiple data spin-off benefits for regulators to govern many other aspects of this sector including taxation, counterfeit trade, fair trade, and licensing.

Nedbank

287. Nedbank suggests that from a regulatory perspective, regulators should ensure that they are mindful of the position of small businesses when they formulate the requirements that small businesses have to meet in order to secure credit facilities from financial service providers. Nedbank suggests that there should be a review of the National Credit Act to exclude micro-enterprises from its provisions and to provide exemption from tax liability.

288. Nedbank proposes that consumers must keep up to date data in respect of their financial activities, especially insofar as it relates to their income and expenditure. In Nedbank’s view this can be achieved through the opening of transactional accounts with financial institutions which can be used by credit providers as one of the reference points to determine the consumer’s ability to repay the loan. Further, Nedbank argues that consumer education in financial record keeping and decision making is a crucial aspect to assisting individuals with the requisite acquisition of knowledge. Lastly, Nedbank recommends that consumers should be exposed to mentorship programmes that facilitate exposure to end to end business management

ABSA

289. ABSA suggests that natural persons under the National Credit Act (“NCA”) seeking credit for business purposes (for example, sole proprietors) would benefit from the exemptions that apply to juristic persons. Alternatively, ABSA suggests that clear guidelines on how to apply the provisions relating to affordability assessment and reckless provisions must be issued (where reliance is placed on a commercial purpose and future, unknown, revenue flow). ABSA notes that the guidelines must take into consideration the constraints discussed above, for example, the lack of adequate documentation to conduct the assessments. Further, ABSA recommends that the definition for “small business” should be amended in the National Small Enterprise Act to include businesses in whatever format, which, in their view, would open the door to sole proprietors to also qualify for development credit under the NCA.

Financial services offered by agencies

Small Enterprise Finance Agency (“SEFA”)

290. The SEFA provides facilities to micro-finance intermediaries to on-lend to micro and survivalist businesses requiring funding of up to R50 000 to assist in expanding the business income and asset base. In some instances, if the applicant has a proper credit vetting or depending on the investment policy procedure, the loan amount could
be up to R100 000. These transactions are in exceptional cases and determined and assessed at the time of the application. The loans offered to these micro businesses are flexible and structured to meet the financial needs of the micro-finance intermediaries. In addition to this, various equity instruments are considered as part of the investment instrument strategy of the micro-finance intermediaries.

291. The eligibility criteria set for micro businesses is set out below:

291.1 The institution’s ability to meet basic criteria and the extent of risk sharing with SEFA.

291.2 Alignment of the institution’s operations to SEFA’s developmental objectives.

291.3 A minimum of two years in operation. The SMME must also be registered and operate within South Africa and comply with all the laws that apply to legal entities in the Republic.

291.4 The SMME must comply with relevant statutory and regulatory requirements in terms of governance and compliance including a board, regulatory compliance, risk management policies, reviewers and all other governance requirements as per Companies Act. Institutional Strengthening support will be provided where gaps have been identified.

291.5 Lending to be in line with the NCA with relevant and up-to date registration.

291.6 Key personnel – (e.g. senior and executive management) must have the relevant investment and development finance credentials and no less than 5 years proven working experience as SMME investment analysts and / or microfinance specialists.

291.7 Loan methodology including policies and systems to be able to assess, disburse, monitor and collect on loans.

291.8 Financial systems ability and appropriateness.

291.9 A 5-10% own contribution as percentage of the loan amount or the capital commitment may be required.

291.10 Must comply with B-BBEE codes of good practice.

291.11 Must be prepared to accept SEFA interventions and business institutional support services.

Credit facility for informal traders

292. In order to ensure that the needs of micro businesses such as informal traders and street vendors are met, SEFA has designed a funding program aimed solely at uplifting and sustaining micro-enterprises and other informal businesses trading in the Fresh Produce Markets around the country. The program is similar to the other financial programs put in place for small businesses under which informal traders are able to access a ‘revolving loan’ of between R500 and R10 000. Following the approval of the loan application, the same loan amount becomes available for withdrawal on a weekly basis over a 6-month period, providing that the client repays the full loan amount, one time each week. As soon as the minimum repayment has been received, the same amount will be available to the client to trade with again. Once the 6-month period has been successfully completed, the trader is required to re-apply for credit if need be.

293. The thresholds for small businesses are categorized as:

293.1 Survivalist and micro-enterprises – loans between R500 and R50 000

293.2 Small Enterprises – loans between R50 000 and R1 million

293.3 Medium enterprises – loans between R1 million and R5 million

Credit guarantee scheme - Banks and other Financial Sectors/Schemes

294. SEFA has developed a credit guarantee scheme which issues a range of credit guarantee products to lenders (commercial banks and other financial institutions) for
SMME borrowers whose access to finance is impeded by the fact that they do not have collateral required by the lenders. SMMEs would normally require finance in order to establish, expand or purchase existing businesses. There are three broad categories of indemnities that are available which are: individual, portfolio and institutional indemnities.

295. The financial institution will assess the business plan and loan application in terms of its lending criteria. SEFA will set certain guidelines for the assessing and monitoring of the loan process on which the indemnity will be enforced. Once the application has been approved, the financial institution will approach SEFA for indemnity cover and a mentor may be appointed to help with the implementation of the business plan, setting up of operational systems and general business management. The financial institution manages the loan and collects payments for the duration of the loan. The full repayment of the loan remains the responsibility of the applicant.

Eligibility criteria for the Banks and Financial Sector (“BFS”)

296. Commercial banks are automatically eligible to participate in the scheme by virtue of them being professional money lenders, registered, regulated and monitored by the Financial Services Board and overseen by the South African Reserve Bank. Other lenders will be incorporated into the scheme provided they meet the legislative conditions:

296.1 they must agree to the terms and conditions of the scheme, as they would appear in the Indemnity Agreement, and thereafter sign the agreement;

296.2 SEFA will have the right to review their credit lending policies and procedures to the SMME market.

Eligibility criteria for non-bank financial intermediaries:

297. The prospective intermediary’s objectives must be in line with the SEFA developmental mandate;

298. The prospective intermediary’s business must be financially sound enough to support its objectives;

299. The prospective intermediary must have sufficient human resource capacity and experience to implement its objectives to the satisfaction of SEFA

300. The prospective intermediary is required to submit a viable, convincing business plan to SEFA before it can be accredited to the scheme.

301. The RFI/SF must meet the minimum criteria as set out by SEFA.
14.1 THE PREVALENCE OF EXCLUSIVE LEASE AGREEMENT

Spar

302. Spar has submitted that because it does not own the vast majority of Spar retail outlets, it is not able to provide complete information on leases\(^949\) but it estimates that approximately [\(\mathcal{K}\)] of Spar stores have leases containing an exclusivity clause.\(^950\) A standard lease agreement for Spar has an average duration of [\(\mathcal{K}\)] years, often with [\(\mathcal{K}\)].\(^951\)

303. Of the [\(\mathcal{K}\)] Spar stores across the country that were in existence at December 2017, Spar holds [\(\mathcal{K}\)].\(^952\)

304. There are a range of exclusivity agreements in the [\(\mathcal{K}\)] held by [\(\mathcal{K}\)]. [\(\mathcal{K}\)] of the leases have complete exclusivity while [\(\mathcal{K}\)] have partial exclusivity. The type of exclusivity depends on the circumstances and the type of centre where the Spar is located.\(^953\) Table 14.1 below shows a summary of the exclusivity provisions in Spar’s lease agreements based on the regions of their distribution centres.

**Shoprite**

305. As at 30 September 2017, Shoprite had [\(\mathcal{K}\)] supermarket stores across South Africa, including Shoprite, USave, Checkers and Checkers Hyper stores.\(^957\) In addition, Shoprite owned [\(\mathcal{K}\)] liquor stores. Shoprite’s stores are summarized in Table 14.2 below.

<table>
<thead>
<tr>
<th>Region</th>
<th>[(\mathcal{K})]</th>
<th>[(\mathcal{K})]</th>
<th>[(\mathcal{K})]</th>
<th>[(\mathcal{K})]</th>
<th>[(\mathcal{K})]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Cape</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
</tr>
<tr>
<td>North Rand(^954)</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
</tr>
<tr>
<td>South Rand(^955)</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
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<tr>
<td>KZN</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
</tr>
<tr>
<td>Lowveld(^956)</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
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<td><strong>Total</strong></td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
<td>[(\mathcal{K})]</td>
</tr>
</tbody>
</table>

Source: [\(\mathcal{K}\)]

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950 Ibid, para. 53.
951 Response to final Statement of Issues dated 19 August 2016, p. 20, para. 52.
952 [\(\mathcal{K}\)].
953 [\(\mathcal{K}\)].
954 [\(\mathcal{K}\)].
955 [\(\mathcal{K}\)].
956 [\(\mathcal{K}\)].
957 As at 30 September 2017.
306. Shoprite estimates that there are exclusivity provisions in approximately [X] of their leases. Figure 14.1 shows the locations of Shoprite, Checkers, Checkers Hyper and USave stores, indicating whether or not an exclusivity provision exists in the lease.

Pick n Pay


308. Pick n Pay submitted that [X] of their stores located in shopping centres [X] contain exclusivity provisions in the lease agreements. A summary of the locations of

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Table 14.2: Shoprite stores in South Africa

<table>
<thead>
<tr>
<th>Type of Store</th>
<th>Number of stores</th>
</tr>
</thead>
<tbody>
<tr>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>[X]</td>
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<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>[X]</td>
<td>[X]</td>
</tr>
</tbody>
</table>

Source: [X]

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Figure 14.1: Location of Shoprite, Checkers and USave Stores with or without an Exclusive Agreement

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958 [X].
959 [X].
these exclusivity provisions can be found in Figure 14.2.

309. Pick n Pay has complete exclusivity in [✗] of their stores and partial exclusivity in [✗] of their stores across South Africa. A summary of Pick n Pay’s exclusivity agreements across store formats can be seen in Table 14.4 below.

Table 14.3: Pick n Pay and Boxer stores in South Africa

<table>
<thead>
<tr>
<th>Format</th>
<th>Corporate</th>
<th>Franchised</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[✗]</td>
<td>[✗]</td>
</tr>
<tr>
<td></td>
<td>[✗]</td>
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<td>[✗]</td>
</tr>
<tr>
<td></td>
<td>[✗]</td>
<td>[✗]</td>
</tr>
</tbody>
</table>

Source: [✗]

Figure 14.2: Location of Pick n Pay stores which have exclusivity in shopping centres of over 12 000 m²

Woolworths

310. Woolworths’ lease agreements do not contain an exclusivity clause, but they do generally contain a standard tenant mix clause as well as a standard usage clause. Woolworths has submitted template lease agreements for food stand-alone stores, full line stores, small clothing stores and
Now Now stores. While Woolworths does not have exclusivity provisions in its lease agreements, the Inquiry believes that the clauses discussed below could have a similar effect on potential competitors in shopping centres as exclusive lease agreements.

311. [X].

312. [X].

312.1 [X]. [X]. [X]. [X].

312.2 [X]. [X]. [X]. [X]. [X]. [X].

313. [X]. [X].

314. Pick n Pay and Spar submitted that exclusive lease agreements compensate national supermarket chains for the risk of having to sign a long-term lease agreement.

315. Pick n Pay stated that exclusivity provisions enabled a supermarket to maintain its financial viability in a centre over the period of a long-term lease, specifically in centres where its viability could be threatened if another supermarket opened in the shopping centre.

14.2 JUSTIFICATION FOR EXCLUSIVE LEASES

Justification 1: Exclusive lease agreements compensate anchor tenants for the risk of having to sign a long-term lease agreement

314. Pick n Pay and Spar submitted that exclusive lease agreements compensate national supermarket chains for the risk of having to sign a long-term lease agreement.

315. Pick n Pay stated that exclusivity provisions enabled a supermarket to maintain its financial viability in a centre over the period of a long-term lease, specifically in centres where its viability could be threatened if another supermarket opened in the shopping centre.

---

960 Pick n Pay Express stores at filling stations and Pick n Pay Spaza shops are excluded from this analysis as these store formats are always stand-alone stores and are not subject to exclusivity clauses.


962 [X].

963 [X].

964 [X].

965 [X].

966 [X].

967 [X].

968 [X].

969 [X].

970 [X].

971 [X].

972 [X].

973 [X].

974 [X].

316. In Spar’s view, the duration of the exclusive lease is negotiated to compensate the retailer, who has to trade and pay rent regardless of the success of the store.976 \[\text{[X]}\].977

317. Spar submitted that it is different from the other national supermarket chains because the majority of their stores are owned and operated by independent retailers and are not corporate stores, such as Pick n Pay and Shoprite. This, it submitted, meant that the risk of opening a store in a shopping centre is borne by the independent retailer without the financial standing to support a store that is trading unprofitably. The Inquiry is of the view that although the majority of Spar stores are independently owned, the affiliation with the Spar brand has allowed the owners of Spar stores to negotiate the inclusion of exclusive lease provisions. Such exclusivity provisions would not, in the Inquiry’s view, be extended to independent retailers who are not affiliated with Spar.

318. In contrast to these arguments, Liberty is of the view that the risk element at present is lower than it was in the past when exclusivity provisions became prevalent in the market. The proliferation of data and information collected by developers and retailers affords them new risk mitigation strategies that will negate the need for exclusivity provisions.978 It submitted that deep demographic research through household surveys into understanding what the customers in an area need979 enables developers to build the right size shopping centres in the right locations with the most appropriate tenant mix to meet customers’ demands. Anchor tenants, too, engage in careful demographic research to inform their decision to enter a shopping centre and mitigate risk.980 This was not the case historically when the extent and depth of this type of customer information was not available.

**Justification 2: Exclusive lease agreements protect the investment made in a store**

319. All of the national supermarket chains that have exclusive lease agreements have argued that these exclusivities protect the investment made in the store.

320. Spar submits that the cost of opening up a new Spar store could be anywhere between \[\text{[X]}\]. This cost and risk has to be borne by the Spar independent retailers, who do not have the same financial resources as corporate chain grocery retailers who are able to divert money from one store to another.\[\text{[X]}\].981

321. \[\text{[X]}\].982

322. Pick n Pay has submitted that without the long-term commitment of an anchor tenant, it would be more difficult for a shopping centre to attract other tenants and consumers. National supermarket chains are required to make a considerable investment into their new stores in new shopping centres for a protracted period of time and incur significant risk in pursuing these opportunities.983

323. \[\text{[X]}\]984

324. \[\text{[X]}\].985 [\text{[X]}].986

325. In its submissions, Spar gave three examples of Spar stores that have lost footfall and revenue when a competing store opened in or near the mall in which the Spar store was located.987 \[\text{[X]}\] Spar and Tops stores started trading at a loss after exclusivity
was waived in June 2010 and a Game store started trading groceries in the centre. Subsequently, the store has been sold by the independent retailer to the Spar Group and it has not made any profit since 2010. The Superspar experienced a drop in sales and decline in profits in 2015 after the landlord of the shopping centre where the Superspar is located built a store for Pick ‘n Pay on an adjacent piece of land following Superspar’s refusal to waive its exclusivity in the shopping centre. Spar also experienced a loss in turnover after Shoprite opened a store opposite the shopping centre where that Spar is located in 2014.

**Justification 3: The low margins earned by supermarkets justify the existence of exclusive lease agreements**

326. While exclusivity clauses are prevalent in respect of national supermarket chains, fashion retailers on the other hand usually require their main competitors to be present in the shopping centre before they will consider becoming a tenant in a development. Their reason suggested by the national supermarket chains, is due to the higher margins that fashion retailers make per sale when compared to grocery retailers which allows fashion retailers to forego some sales to competitors.

327. National supermarket chains have indicated that property developers may introduce a second grocery retailer in a shopping centre in order to collect more rent even if the area serviced by the shopping centre does not have the spending power to support a second grocery retailer.

328. According to Pick n Pay, one of the reasons for entering into an exclusive lease agreement with the landlord/developer is to control the different incentives that the parties to the agreement have. Pick n Pay insists on an exclusive lease agreement to ensure the viability of its store because there is a risk that a shopping centre may not perform well. Two grocery retailers in the same centre may lead to one or both retailers failing. The landlord, on the other hand, is primarily interested in the increased rent from having a second grocery retailer.

329. When asked why a landlord would lease space to more than one retailer in a shopping centre that is not likely to support more than one grocery supermarket, Pick n Pay explained that while it hoped that a developer/funder/landlord is able to correctly predict how much footfall the shopping centre can achieve, this is not always the case. Pick n Pay claims that there have been instances where landlords or centre owners have miscalculated the amount of customers that can be drawn to the centre, introduced a second grocery retailer and subsequently the shopping centre failed.

330. Property developers, on the other hand, argued that they would not introduce a second food anchor tenant into a shopping centre that is not capable of sustaining more than one food anchor tenant as this may result in the failure of the entire shopping centre.

331. Redefine stated that the size of the centre determines how many food anchors would be sustainable and viable in the centre. Responsible developers will not allow more than one large food retailer into a shopping centre that cannot support additional large food retailers as this will damage their investment as much as it will damage the investment of the retailers. The loss in rental...
income would mean that the developer would not be able to service the loan for developing the shopping centre. Redefine has in the past allowed Food Lover’s Market to enter Park Meadows shopping centre in Johannesburg without the consent of Pick n Pay, which had an exclusivity clause in place in the shopping centre. In the view of Redefine, both retailers are trading well in Park Meadows.

333. Redefine has conceded that it is possible that an irresponsible or desperate property developer or landlord could make tenant mix decisions based on increasing rental income in the short-term that are not aligned with the interest of keeping the shopping centre and all the tenants profitable. However, property developers and anchor tenants share joint responsibility for the profitability of an anchor tenant in a shopping centre. Redefine is of the view that there have been retailers in shopping centres owned by Redefine that have traded unprofitably due to the retailer failing to meet the needs of the consumers in the area in terms of merchandise. Therefore, unprofitability of retailers in a shopping centre is not solely as a result of property developers’ choices in terms of tenant mix. For this reason, Redefine monitors the trading densities of every tenant and compares these trading densities to those of similar stores in similar locations as well as similar stores within the same shopping centre. This monitoring is undertaken in order to protect the developer’s capital investment in the shopping centre which, according to Redefine, is far greater than that of the individual retailers.

334. Redefine also points out that property developers or landlords are also unlikely to introduce a second food anchor tenant in a shopping centre that cannot profitably accommodate two grocery retailers because they wish to achieve turnover rental from their tenants. If a retailer is not successful in a shopping centre, they will not achieve the threshold for turnover rental and this has a negative impact on the landlord or property developer’s income. It is in the interest of the owner of the centre to have all of the tenants do well.

335. Property developers have submitted that exclusive lease agreements prevent them from expanding and adapting the shopping centre to changing market dynamics and demographics. This is mainly due to the exclusivity clauses, whether complete or partial, applying to any extension or addition to shopping centres.

336. Resilient submitted that they prefer not to have exclusivity clauses in their lease agreements because of the dynamic nature of the market. It cited the example of the Jabulani shopping centre, access to which did not have tarred roads. The community has since expanded and the demographics and profile of the customers have changed, which has warranted an expansion of the shopping centre’s parking area. This means that the requirements and needs of the customers of Jabulani shopping centre have changed, and exclusivity provisions inhibit the developers’ ability to adapt the tenant mix in a shopping centre in order to address the changes.999

337. Emira has indicated that in the event that it would want to expand a centre where an existing tenant has an exclusive lease agreement, it would have to consult the retailer who has exclusivity in the centre before the commencement of the expansion.1000 This means that, should a market study indicate that an expansion of an existing centre is warranted, the new, larger centre is also subject to any exclusivities that were in place before the expansion.

998 Ibid, p. 27.
1000 See October / November Public hearing transcript for Emira (open session); p. 26, para 30.
338. Redefine indicated that it no longer allows exclusivity clauses in new developments but there are exclusivity clauses still in force in existing shopping centres that Redefine has purchased. Redefine explained that exclusivity clauses not only restrict other supermarkets from entering the shopping centre but other tenants, such as bakeries and butcheries through restrictions on their size. This, Redefine stated, inhibits the growth of the shopping centre because a successful tenant will be restricted from reaching full potential.1001

Justification 5: Exclusive lease agreements do not create barriers to entry

339. The national supermarket chains argue that exclusive lease agreements have not created barriers to entry into the grocery retail sector. In this Inquiry, they are the only ones who hold this view.

340. According to [X], there have not been any material changes in the barriers to entry for national or independent retailers in the grocery retail sector since the previous supermarket investigation.1002

341. According to [X], the significant growth in Choppies' and Food Lovers Market's respective operations over a short period of time does not give [X] reason to believe that factors such as exclusive lease agreements are a significant impediment to the entry of these supermarkets into the industry.1003 To some extent, even [X] submissions imply this in their reference to the entry of these players to negate the impediment caused by exclusive leases.1004

342. Pick n Pay submitted that South Africa has over 1800 shopping centres which puts it sixth in the world in terms of the number of shopping centres.1005 Pick n Pay argues that this contradicts the notion that the existence of exclusive leases has constrained the development of shopping centres.1006 [X].1007 This view is contradicted by Choppies which indicated that in some towns, large grocery retailers have blocked the development of other sites that are adjacent or close to where the major retailer's store is located. Often, the major retailer has the first option on properties that are adjacent to their stores.1008

343. [X] also submitted that the entry of independent retailers such as Choppies and Food Lover's Market demonstrate the opportunities that are prevalent in the grocery retail sector.1009 Moreover, forecourt convenience grocery outlets have been introduced at petrol stations which complements the grocery retail sector.1010

344. [X] believes that barriers to entry in the grocery retail market are not high because new malls are constantly being developed which provides opportunities for retailers, including new entrants, to trade in malls and the land adjacent to malls.1011 However, [X] fails to point out which new entrants are presented with an opportunity to trade in these new shopping centres.

345. As discussed previously, these views are contradicted by the submissions of Choppies and Food Lover's Market, who have indicated that exclusive lease agreements have affected their ability to compete in shopping centres. The majority of Choppies and Food Lover's Market stores are located on stand-alone premises. In the case of Choppies, this is not by choice but as a consequence of the exclusive leases.

1001 Redefine public hearing transcripts, 3 November 2017, p. 23.
1002 [X].
1003 [X].
1004 [X].
1006 Ibid., p. 7.
1007 [X].
1008 Minutes of meeting with Choppies, 2 May 2017, p. 3.
1009 [X].
1010 [X].
1011 [X].
346. The arguments submitted by the national supermarket chains fail to take into account the large proportion of their stores that are located in shopping centres. This is indicative of the attractiveness of a store being located within a shopping centre as opposed to a stand-alone store. This is especially the case for speciality stores and smaller retailers who do not have the capital or the ability to attract sufficient footfall to make a stand-alone store viable. It is also possible that the large number of shopping centres and the continued development of new centres is as a result of exclusive lease agreements.

Justification 6: Exclusive lease agreements do not harm consumers

347. [X] states that its national pricing strategy is not a function of exclusive lease arrangements. It sets its prices at a national level because it is a national business with central buying and distribution and because it wants to provide customers with uniform prices across its various stores countrywide. Exclusivity arrangements do not enable retailers to charge higher prices because the relevant markets are broader than the individual shopping centre.1012

348. [X] does not believe that exclusivity enables a retailer to raise prices because most shoppers are able to shop at alternative stores and barriers to entry are not sufficiently high to sustain higher prices.1013

349. Pick n Pay has publicly stated that it has a policy not to apply exclusivity to small traders - such as butcheries, bakeries, or other types of speciality stores - that have a size of up to 100m² in small shopping centres or 250m² in large shopping centres.1014 Pick n Pay’s exclusivity provisions in their lease agreements over the past 10 years have generally not been enforced for small traders.

350. [X].1015 [X].1016 [X].1017 [X].1018

351. [X].1019

352. Spar states that it is different to the corporate chain stores in the split between service departments and groceries. Service departments are the fresh food departments in the store such as a butchery, bakery, delicatessen and fresh produce. [X].1020

14.3 INTERNATIONAL EXPERIENCE ON EXCLUSIVE LEASES IN GROCERY RETAIL MARKETS

353. The UK Competition Commission (“UKCC”) scrutinised the effect of exclusivity arrangements between grocery retailers and landlords on competition in the UK.1021 It found that exclusivity provisions between large grocery retailers and landlords in highly concentrated markets in which the retailer held a strong position raised barriers to entry and gave rise to poorer outcomes for consumers in terms of quality, prices, and range and service than would have prevailed absent the exclusivity arrangements.1022

354. A number of steps were taken to restrict the use of exclusivity provisions in lease agreements in the UK:

354.1 Large grocery retailers were to be required not to enforce or seek the enforcement of any of the 30 existing exclusivity arrangements that were identified in the UKCC’s report beyond

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1012 [X].
1013 [X].
1015 [X].
1016 [X].
1017 [X].
1018 [X].
1019 [X].
1020 [X].
1021 UK Competition Commission 2008, The supply of groceries in the UK market investigation.
1022 It is important to note that the UKCC was able to clearly define local markets as only 30 existing exclusivity arrangements were identified in the investigation.
a period of five years from the date of the report.

354.2 Large grocery retailers were to be required not to enforce or seek the enforcement of any existing exclusivity arrangements beyond those identified in the report after the longer of (i) five years from the date of the report, or (ii) five years from the date the grocery store was opened, where that arrangement relates to land in a highly-concentrated local market where it has a strong local market position and which may restrict grocery retailing or have the equivalent effect.

354.3 Large grocery retailers were to be required not to enforce or seek the enforcement of new exclusivity arrangements once a period of five years from the opening of the grocery store to which the arrangement relates had elapsed.1023

355. The Australian Competition and Consumer Commission ("ACCC") undertook an inquiry to analyse the extent to which a lack of competition in grocery wholesaling and retailing had contributed to increased grocery prices for consumers.1024 A finding of the inquiry was that high barriers to entry and expansion were among factors limiting competition in the grocery retail market. These barriers were found to be in part attributable to the prevalence of restrictive lease arrangements between shopping centre owners and grocery supermarkets, in particular the two major supermarket chains.1025

356. Following the findings of the investigation, the ACCC had engagements with grocery retailers to secure the phasing out of all restrictive provisions in supermarket leases through court enforceable undertakings provided by the retailers. The ACCC succeeded in securing agreement from all grocery retailers that they would not include restrictive provisions in any new supermarket leases, and that in respect of existing leases they would not enforce any restrictive provisions five years after the commencement of trading at the relevant stores benefitting from the restrictive arrangements.1026

14.4 TENANT MIX AND CLAUSES

Tenant Mix and Usage Clauses in various Specimen Leases submitted by [X] to the Competition Commission in respect of the Grocery Retail Market Inquiry

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1027 [X].
1028 [X].
14.5 GROCERY RETAIL MARKET INQUIRY FRAMEWORK ON FAIRNESS AND TRANSPARENCY - RETAIL LEASING

1. Purpose
The purpose of this Framework is to provide guidance to property developers and managers on how to preserve a fair and transparent relationship between themselves and their small and medium enterprise (SMME) tenants, including tenants owned or controlled by historically disadvantaged persons (HDP), within retail centres. This is in order to facilitate the removal of impediments to increased participation of SMMEs and HDP retailers in the grocery retail sector by ensuring compliance with the new price discrimination provisions.

2. Objective
The Objective of this Framework is to guide the minimum standard of conduct between retail property owners and their SMME and HDP tenants, or prospective tenants, for the duration of their negotiation and contractual period, to ensure that transparency and fair treatment of tenants is maintained throughout the contractual relationship.

3. Definitions
In this Framework –


“designated class” includes small and medium businesses as defined in section 1 of the Act and any regulations made by the Minister or alternatively a firm controlled or owned by historically disadvantaged persons within the meaning of the Act and within the benchmarks determined by the Minister.

“exclusivity clauses” refers to those clauses within lease agreements that restricts the landlord from leasing out space in the same shopping centre to other grocery retailers or specialist grocery retailers in respect of specific service departments. These include provisions which provide rights to vet prospective tenants to the shopping centre.

“letting restriction provisions” refers to those clauses within lease agreements that require the landlord to place restrictions on other tenants in the shopping centre in

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1029 [X].
1030 [X].

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GROCERY RETAIL MARKET INQUIRY
terms of product lines, store size and location within the shopping centres. These include provisions which provide the right to stipulate such restrictions on prospective tenants to the shopping centre. These exclude provisions which provide for limited exclusion zones around the lessee’s premises justified by health and safety or brand preservation.

“retail property owner” includes a management company contracted to manage the property on behalf of the owner.

4. **Acting in good faith**

4.1 Retail property owners are required to negotiate in good faith with their prospective and existing lessees in the designated classes. “Good faith” requires a retail property owner to exercise its powers reasonably and not arbitrarily or for some irrelevant purpose; to always act fairly and to maintain transparency in their decision making.

4.2 The good faith obligation extends to all aspects of the lessee/tenant relationship, including:

4.2.1 pre-contractual negotiations;
4.2.2 the performance of the lease;
4.2.3 the exercise of any discretion under the lease;
4.2.4 the resolution of disputes;
4.2.5 the termination or cancellation of the lease.

4.3 The obligation to act in good faith may also extend to conduct after an agreement comes to an end. For example, if a lease agreement imposes obligations that will continue after the agreement has ended, the lessee or lessor may be required to carry out these obligations in good faith.

5. **Lease Negotiations**

If a retail property owner declines to grant a lease to a prospective lessee in the designated class, reasons must be provided in writing within 14 days.

6. **Lease Agreements**

6.1 All lease agreements, including amendments must be:

6.1.1 in writing;
6.1.2 drafted in plain language; and
6.1.3 in a language that the lessee in the designated class can understand.

6.2 All lease agreements with lessees in the designated class must contain the following:

6.2.1 the options for renewal;
6.2.2 the grounds for cancellation of the lease, which may not include cancellation on the grounds of a lessee exercising a right to exclusivity;
6.2.3 notices to lessees of changes in the operation of the retail property or requirements to relocate within the retail property along with notice periods that are proportionate to the nature and extent of the envisaged changes and to their consequences for lessees;
6.2.4 the methodology used to determine rates and timing of rental escalation;
6.2.5 fair and transparent procedures for decisions concerning renewal, cancellation, operational or relocation changes, and rental escalation.

6.3 All future new lease agreements, may not incorporate exclusivity clauses and letting restriction provisions.

7. **Rental rates and rates of escalation**

7.1 Differences in rental rates across tenants within the retail property must be determined using fair, transparent and economically justifiable criteria. The retail property owner must communicate these criteria to tenants with an explanation of why these criteria and not
others are preferred in setting relative rental rates. The property owner must communicate the resulting differences in average rentals across categories of tenants.

7.2 The escalation of rental rates will be in line with the methodology outlined in the rental agreement and the retail property owner will communicate the values for factors contained in the methodology to tenants. Escalation rates will be uniform unless there are fair, transparent and economically justifiable reasons for them to differ. In such cases, the property owner will communicate these reasons and the resulting differences in escalation across categories of tenants.

7.3 Lease deposits and shop fitting allowances will be based on fair, transparent and economically justifiable criteria. These should be similar across similar categories of tenants. The retail property owner will communicate these criteria to tenants with an explanation of why these criteria and not others are preferred, and the resulting differential in treatment across tenant categories.

7.4 Retail property owners commit not to unfairly or unjustly discriminate between different categories of tenants by ensuring that common costs such as security, common area electricity and water consumption, advertising and cleaning are shared between all categories of tenants uniformly.
15.1 METHODOLOGY AND DATA

Qualitative evidence gathered from meetings with market participants

357. The Inquiry employed both quantitative and qualitative evidence. The qualitative evidence was gathered from meetings with various small business associations from around the country as well as re-visits that served as platforms to engage with the leaders and individual members of the associations. The associations organised the individual small spaza shop owners from a certain area, as opposed to meeting them individually. These platforms allowed operators of spaza shops and other small independent traders who are members and non-members of the business associations to voice their concerns and make submissions to the Inquiry. In addition, there were submissions at the public hearings that took place in Cape Town, Pretoria and Johannesburg.

358. The second set of qualitative data used came from meetings with wholesalers. These stakeholders are particularly important as they serve small businesses and provide an insightful view of the procurement practices of small informal grocery retailers.

Quantitative Data from Surveys conducted in various townships, peri-urban and rural areas

359. Small Business Survey. A survey of small and independent retailers operating in the townships, peri-urban and rural areas was conducted assessing the dynamics of competition between local and foreign owned spaza shops.

360. Consumer Survey. The survey sought to understand the shopping behaviour of consumers, comparing and analysing their shopping patterns and preferences in relation to local and foreign owned spaza shops.

361. Before proceeding, the Inquiry highlights a few caveats relating to the investigation of this objective. One of the major obstacles the Inquiry experienced was gathering the appropriate evidence for a complete and methodical analysis. The prevailing information as contained in public debates around this issue contains conflicting views which tend to lack objectivity favouring either of the groups when discussing the reasons for the success or failure of each of the groups. Likewise, because of the nature and complexity of the subject matter, evidence submitted during the information gathering phase of this Inquiry constantly seemed to be in favour of the stakeholder making the submission. In general, the submissions made by each group were remarkably similar throughout the country with locals casting aspersions on foreign nationals and foreign nationals ascribing their success to their skill, their organisational structures, effort and perseverance.

362. Another problem that hindered the evidence gathering exercise was the poor participation and cooperation by the larger members of small business associations. One of the major reasons for this problem stems from small informal businesses’ lack of understanding of the Commission’s role in the economy. Before this Inquiry, the Commission’s primary stakeholders in inquiries have been formal large businesses...
who may have had some interaction with the Commission and who have legal experts who are able to clarify the role of the Commission. In the current Inquiry, more specifically for this objective, the primary stakeholders are of small informal businesses who are not aware of the Commission’s role, let alone its existence and who cannot afford the services of legal experts. This predicament created difficulties when communicating the purpose and objectives of the Inquiry and was evident during the Inquiry’s engagements with small business constituencies who shared a common misconception that the Commission was offering financial assistance. As a result, considerable time and resource were spent explaining the role of the Commission to these stakeholders in an attempt to secure their cooperation.

363. A recurring concern that manifested in the engagements with the informal sector organizations was their general discontent towards government. It was repeatedly claimed that many officials had been in discussions with these stakeholders but that no action had been taken to resolve their problems, in particular concerning the challenges faced by small informal business operators. The stakeholders who operate small businesses submitted that they had been promised all sorts of support structures in the past which were never implemented and as a result they grew weary of discussions with any government institutions. Participation was generally poor and non-interactive for the most part despite the Inquiry’s best efforts inviting the stakeholders to consultations, running week long activation initiatives not only to ensure that stakeholders were aware of the Commission but also about the Inquiry being conducted and its objectives and visiting the locals at their local municipalities.

364. The evidence presented in this chapter represents submissions made by the stakeholders during our engagements. The majority of consumers consulted seemed to favour foreign owned spaza shops because of their lower prices and the variety of their product offering. In general, local-owned spaza shops seems to receive most of their support from patriotic community members, who choose not to support foreign-owned spaza shops. From a business perspective, foreigners are said to be educated1031, savvier in their procurement processes and more responsive to the needs of the community. Local spaza owners have alluded to being skill deficient, inefficient in their procurement strategy and unresponsive to an environment that not only presents a rise in foreign nationals but also national supermarkets that have moved into townships operating within close proximity to their stores.

365. The qualitative information gathered also represents the views of most small business operators that were consulted across the country. The quantitative evidence is more recent, nationally representative and remarkably rich relative to the previous literature. There was input from all interested stakeholders, and the process afforded the affected stakeholders an opportunity to submit rebuttals, supported by adequate evidence, on any issue.

15.2 LITERATURE REVIEW

366. In this section, we discuss the findings of previous studies that have been conducted across different parts of the country by different authors on what is perceived to be the contributing factors to the success of foreign-operated spaza shops.

367. A wide range of studies have looked into the informal grocery market in non-urban areas. The literature is broadly divided into two categories. One category focuses on identifying the sources of violence against foreign nationals operating spaza shops in townships and rural areas. The other

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1031 It was submitted in some of the meetings that it was not unusual to find a qualified foreigner, i.e. with a business degree, operating a spaza shop due to ownership structure. As a result, they would be more efficient and apply their business skill when operating their business.
category concentrates on pinpointing the differences in the way local nationals run their spaza shops as opposed to those which are operated by foreign nationals. For the purposes of this Inquiry, the focus is on the second category.

368. It has been documented that the survival and prosperity of spaza shops in townships and rural areas thrives on sustained competitive advantage. Badenhorst-Weiss et al (2014) observe that small businesses that prosper often develop a set of core competencies which enable the business to serve the selected target customers better than their competitors. The paper examined how small businesses in Soweto compete and survive against strong competition, following the move of most of the large corporate retailers into the townships. Scarborough (2011), further states that the competitive advantage of small businesses lies in: (i) the uniqueness of the products they sell; (ii) savings and convenience offered to customers; (iii) the services provided to the benefit of customers; (iv) the prices charged; and (v) the business operating hours as well as provision of credit.

369. The above factors are referred to and discussed by Liedman (2013) who compared the manner in which foreign and local operated spaza shops operate in terms of: (i) ownership dynamics, (ii) capital investment, (iii) stock procurement, (iv) business operations, and (v) links to distribution networks. The primary findings of the study showed that the business approach and scale of operations of foreign run spaza shops contrast distinctly with the predominantly “survivalist” business approach of most local spaza shops. The author also reported that social networks play a major role in the observed differences between foreign and local owned spaza shops. In the case of Somalis, the networks enhance their competitive advantage by allowing the members access to various services including: (i) access to cheap labour recruited from Somalia; (ii) strategically locating business in a particular area to establish a Somali stronghold; (iii) group purchasing to secure discounts and operational economies of scale; and (iv) facilitating micro-loaning within group.

370. Expounding further on the competitiveness of Somalis, Gastrow and Amit (2013) interviewed 66 shopkeepers in the Western Cape in order to understand their experiences in the informal grocery retail market. The key findings indicated that Somalis: (i) tend to offer low mark-up on goods, (ii) rely heavily on high turnover, (iii) strategically locate their shops in high pedestrian traffic areas, (iv) participate in the practice of “collective buying”; (v) price compare and identify special offers from wholesalers before making a purchase for their stores; (vi) draw on collective investment in shops (the store will often be owned by more than one individual); (vii) engage in shareholding in multiple spaza shops; (vii) and are focused on customers’ needs and convenience which include operating within the satisfactory hours for the customer. Furthermore, the study noted difficulties facing local small informal grocery retailers, in particular: (i) the expansion of retail supermarkets in townships; (ii) food price increases that had reduced consumer spending; (iii) lack of business skills; and (iv) mismanagement of business funds.

371. Piper and Charman (2016) approach this topic from a different standpoint, interrogating price competitiveness between the different nationalities in the informal grocery retail market. In stark contrast to most studies, the findings reveal that local traders are slightly

1035 This aspect is discussed in detail under Objective 1 of the Inquiry.
cheaper on average than Mozambicans and Zimbabweans, though more expensive than Bangladeshis and Somalis. Furthermore, local owned spaza shops are more likely to offer half a loaf of white bread than most other nationalities. To a certain extent this is counter to the notion that local small grocery retailers do not cater to consumer preferences. On the other hand, Somalis and Ethiopians were found more likely to stock sugar than most other nationalities, and Mozambicans and Bangladeshis were found to be “dominant” in the supply of eggs.1037

372. Some studies have attributed part of the success of foreign owned spaza shops to illicit activities. SLF(2015) argue that spaza shops that sell contraband cigarettes (Figure 15.1 below) tend to have a market advantage1038. SLF make the assumption that cigarettes are a gateway product for consumers to direct them to a spaza shop. The hypothesis is that, the cheaper the cigarette, the more consumers will be directed to the specific spaza shop and thus purchase other products. The descriptive statistics from this study showed that 37 per cent of all (including both local and foreign operated spaza shops) spaza shops sell contraband brand cigarettes. It was further reported that 51 per cent of foreign-run spaza shops sell contraband tobacco.1039. SLF further alleged that foreign-run shops have greater access to contraband tobacco because they have the requisite network cooperation and substantial capital to procure these illicit supplies of tobacco.1040

373. Despite their relevance and insight, there are limitations to the conclusions that can be drawn from these studies. The majority

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1038 This is discussed in detail following an in depth study on counterfeit goods found in spaza shops.
1039 The Inquiry found computational errors in the specified numbers that give rise to serious limitations in interpreting these results.
of the studies were conducted in relation to a specific area. The characteristics and features of a specific area may influence a finding of a study since different areas are underpinned by individual features that give rise to their identity. For this reason, results found from a specific area may simply be the manifestation of the features that underpin the particular area, and cannot be representative of the general population in townships and rural areas. Therefore, it could be misleading to assume that 50 per cent of the foreign run spaza shops in all townships and rural areas sell counterfeit cigarettes that have been illegally obtained.

374. One of the earliest works in this area was furnished by Mbonyane (2006) who undertook a study in order to highlight factors that inhibit the success of local traders in Kagiso, Gauteng. A summary of the list of factors identified includes, amongst others: (i) lack of government support for small businesses; (ii) general lack of business acumen; (iii) lack of customer relations skills; (iv) poor location of businesses; and (v) lack of budget management.

375. Another study, argued for the role and contributions of spaza shops in creating jobs for the majority of previously disadvantaged South Africans, Moloi (2014) looked into the sustainability of local owned spaza shops in Soshanguve, Pretoria. The study relied on descriptive and qualitative data obtained from interviews with 18 local spaza owners. The findings outlined the following barriers to the success of spaza shops: (i) lack of financial support, (ii) lack of business management skills, (iii) expensive transportation of stock, (iv) limited trading space, (v) negative competition among spaza shop owners, and (vi) lack of cooperatives among spaza shop owners.

376. In his study, Fatoki (2014) isolates these barriers into internal and external factors. Internal factors are those attributable to the owner and include lack of management experience, lack of functional skills (e.g. planning, organizing, leading and controlling), poor staff development and poor attitudes towards customers. External factors are those largely uncontrollable and include, non-availability of a logistics chain, high costs of distribution, competition, rising costs of doing business and a lack of finance.

377. In a similar study, Seeletse (2012) offered reasons for the lack of sustainability of small businesses in the West Rand region of the Gauteng Province. Some of the identified common barriers highlighted were: (i) poor customer relations, (ii) poor inventory control, (iii) underdeveloped infrastructure, (iv) lack of finance, and (v) general lack of preparedness in business.

378. In summary, the studies reviewed outlined the absence of several critical managerial skills and competencies which inhibit local informal ventures from succeeding in townships. Broadly, the identified barriers can be categorized as, (i) business administration skills, (ii) understanding of regulatory and tax policies, (iii) simple marketing and finance and (iv) customer service skills. These barriers are tested below against stakeholder submissions and surveys.

15.3 ALLEGATIONS OF TRANSGRESSIONS

379. During the Inquiry’s country-wide engagements with small business associations, and following numerous submissions from industry participants, there were a significant number of allegations of criminal related transgressions on the part of foreign spaza shop owners. These allegations may arise from frustration at inability to compete successfully with foreigners, although there is some evidence of criminal transgressions on the part of foreign-owned spaza shops. There have been recent anti-immigrant protests directed against all African immigrants, in Gauteng, for their supposed and unproven criminal activities. For the purpose of this Inquiry, it is essential to outline these allegations in the retail sector in order to develop solid recommendations. The issues are tax evasion; predatory pricing;
unfair enforcement of regulations as well as shadow banking and finance practices.

**Tax evasion**

380. Most informal sector businesses are not formally registered (both local and foreign) and thus are untaxed. According to the DSBD, any product that carries a tax is always a good product to sell for the benefit of the country’s fiscus. However when the business is not registered for tax or procures the good illegally, the tax proceeds becomes illicit profits. An example of a product that earns illicit profits for small retail businesses is cigarettes. Cigarettes carry a sin tax and thus illegally sold cigarettes allow the retailers to evade that tax (recall cigarettes form part of the most purchased items in both local and foreign spaza shops).

381. Conversely, some government stakeholders, hold diverging views on the issue of tax. The Capricorn municipality in Limpopo and the Free State DESTEA state that local owned spaza shops are expected to register their businesses and therefore comply with tax requirements. They submit that because foreign spaza owners do not have bank accounts, it is difficult to enforce taxation on their businesses. However, the Western Cape Department of Economic Development confirm that while taxes are generally paid by formal businesses, the difficulties in monitoring and enforcing tax laws in the informal sector makes tax evasion prevalent. The Somali Community Board submitted that the perception that most of the foreign spaza shop owners are operating their shops in the townships without proper permits or legal requirements to paying tax is exacerbated by fictitious information spread both by common citizens and those in authority.

382. Another issue involving tax evasion is ghost imports. Ghost exports, formally known as round shipping, occurs when false documentation is submitted to indicate that a product was exported, whereas no export took place and then VAT is claimed back illegally. SARS indicated that this practice remains a challenge for them. Borders such as the Lebombo and Beitbridge have generally recorded high VAT refund claim queries. However, at the time of the discussions between the Inquiry and SARS, processes were being put in place to reduce illegal practices. Many stakeholders have complained about this practice but SARS notes that it is difficult to pin down the perpetrators.

**Predatory pricing**

383. Foreign spaza shops have been alleged to engage in predatory pricing to drive out competitors in townships, peri-urban and rural areas. It should be noted that the concern is not only reported by local spaza shop owners but also by some foreign owners. In Ledig, Rustenburg, Pakistani traders complained about Somalis and Ethiopians driving down prices significantly. The alleged practice apparently utilises the illegal funds or refugee package lump sum to hedge losses in order to price significantly low to drive out competition. These allegations were also raised by local traders in Free State Bloemfontein (Mangaung), Limpopo Polokwane (Capricorn), Gauteng Pretoria (Mamelodi) as well as the Northern Cape (Kimberley).

384. Figure 15.2 below illustrates how this practice is implemented as expounded by various stakeholders. The aim of the predator is to acquire the target spaza, which, for the purpose of this illustration, is locally owned. Foreigners will enter...
an area and occupy spaza shops 1 to 5, boxing in the target spaza. The next step is
to decrease pedestrian traffic to the target
spaza by selling essential perishables at
below cost. These products include among
others bread and soft drinks. As customers
purchase their daily convenience items
from spaza 1 to 5, the target firm’s profits
decline. When profits reach minimum levels
that cannot sustain the business operation
costs, it is said that the foreigners will then
make an offer to acquire or rent the spaza.
Consequently, when all six spaza shops are
foreign owned, prices of those convenient
goods will be raised to recover the losses
incurred from the lower prices.

Banking and finance

385. Another allegation raised concerns banking
and financial transactions by foreign-run
spaza shops. It is claimed that foreign spaza
shop owners do not bank their money
locally and use shadow banking for financial
transactions. SASA claimed that some
local banks reject prospective clients with
refugee status. But banks such as ABSA and
FNB allow some foreigners with refugee
status to open bank accounts subject to
stringent terms and conditions. The most
stringent of the conditions, states that if
a refugee permit expires, the account is
suspended pending the approval of a new
permit. A Section 24 refugee status permit
to remain in the Republic temporarily, which
is a permit granted by a Refugee Reception
Officer after various considerations, lasts
4 years, whereas a Section 22 permit is
renewed periodically, ranging from 3-6
months. A Section 22 is an asylum seeker
permit which is granted by a Refugee
Reception Officer pending the approval of
the Section 24 application. The obstacle lies
in the period it takes to apply and secure
a new permit, which creates a disincentive
for foreigners to use formal banking
methods. It was submitted that Standard
Bank and Nedbank do not allow refugee
status foreigners banking or credit facilities,
though no reason has been furnished.

Regulation

386. The issue of regulation enforcement has
been at the centre of the tensions between
local and foreign spaza owners. It is believed
that the lax enforcement has abetted the
perceived success of foreign nationals.
Local traders believe regulations are only
applied to the local-owned stores and not to
the foreign owned stores. This includes
enforcement of immigration laws, land
zoning and health and safety regulations,
amongst others.

1050 Free State Department of Economic, Small Business Development, Tourism and Environmental Affairs meeting on 27
July 2016.
387. It is commonly perceived that foreigners sleep in their spaza and small retail stores and retail expired goods. This puts into question issues of health and safety regulations and their enforcement. The alleged conduct by foreigners poses a health risk to consumers purchasing products and a safety risk to the community as these stores are habitually targeted by criminals. SASA states that some of their members in Cape Town do sleep in the spaza or shop structure. However, the rooms are properly subdivided into sleeping quarters and food sections. SASA provided justifications by stating that this practice is pursuant to safety, as they are unable to secure property to rent for residential purposes and also out of fear of their stores being looted. Additionally, SASA states that their members often start trading at very early hours in the morning and remain open until late in the evening, adding an extra room within the spaza structure allows them to minimize travelling time and the related costs. However, some foreigners have been confirmed to be illegally living within their business premises, as stated by some Somali traders in eThekwini (Kwazulu-Natal) during the Inquiry’s re-visit, as well as one of the participants at the re-visit who works for the refugees’ source services.¹⁰⁵¹

388. Municipalities have stated that issues of non-compliance are only uncovered when members of the public lodge complaints against specific traders. A compliance notice would then be issued to the non-compliant trader. However, in some instances, impromptu inspections are conducted quarterly in the shops¹⁰⁵². But it is alleged that some law enforcement agents do not apply the law because they receive bribes and other sweeteners. A claim by traders in Limpopo is that some South African Police Service officials do not enforce the regulations because they receive groceries for free from foreign nationals.

389. However, some municipalities have observed that some of the by-laws are outdated and cannot be applied to the current situations that the municipalities are facing. A solution is for Cooperative Governance and Traditional Affairs (“COGTA”) to assist the municipalities to review the by-laws so that they are in line with the current circumstances. In addition, most by-laws are not reviewed annually. However, due to economic difficulties.

390. Traders have also asserted that they have stopped paying for their trading licences because the municipality does not regulate or even conduct inspections in the spaza shops.¹⁰⁵³

Small business survey allegations

391. Across a range of activities, there are some business practices that were found to be in contravention of South African law. These were largely in:

391.1 wholesale merchant linkages;
391.2 retailing of contraband tobacco;
391.3 retailing of counterfeit goods; and
391.4 non-normative and illegal labour practices.

15.4 COUNTERFEIT STUDY FINDINGS

Effects of the sale of counterfeit goods

392. The results of the study demonstrate a considerable occurrence of likely counterfeit products retailed in township informal markets. This activity has the following wider implications:

392.1 unfair competitive advantage to those in supply chains that are able to source counterfeit items;
392.2 potential health risks to the consumer as some of these products are not compliant with health standards;

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¹⁰⁵¹ KwaZulu-Natal Revisit, Confidential Transcript, page 113.
¹⁰⁵² Northern Cape Department of Economic Development and Tourism meeting on 13 October 2016.
¹⁰⁵³ Ngcobo Small Business Chamber meeting on 26 September 2016
poor quality, which can impact on the reputation, brand identity and market share of legitimate manufacturers;

potentially huge losses of VAT, import and duty tax to the South African Revenue Services; and

counterfeit products pose a significant loss in income to the legitimate manufacturer.

Recommendations from the counterfeit study

There is a requirement for a licensing system for wholesale and retail grocery businesses, through which owners are compelled towards ‘formalization’ processes. Such processes are presently complex with the rules and regulations being unduly stringent making noncompliance an easier option. At present the informal nature of the grocery sector is embraced as an integral part of business competitiveness. Developing simple strategies of certification towards formalizing unlicensed traders, can allow for incrementally introducing minimum standards and legal compliance.

Remedies to South Africa’s ‘porous’ border crossings are required. Investment in appropriate technology such as container scanning machines would improve the identification of illegal items that may be being transported through border crossings. Border control authorities need to be consulted regarding border security improvements. Furthermore, intelligence services are required to uncover the deep and criminal local, national and transnational networks that operate in this context. Amendments to the 1964 Customs Act detailed by SARS in 2017 may assist this process, which will need bolstering through increased capacitation of customs services.

The manufacturers of readily counterfeited brands must evolve increasingly proactive strategies to engage with and limit their exposure to this market challenge. Current efforts focus on brand protection and private investigations at the retail level. However, there is also a need for greater co-operation with state investigatory authorities.

There is a requirement for a consumer education programme targeted on those exposed to such products in township retail markets. This issue has potential important human health implications that need to be considered.

Intelligence operations, coupled with enforcement actions are required at the stages in the supply chain where illegal activities are involved - whether counterfeit goods, contraband cigarettes or non-legally compliant labour models.
16.1 OECD TOOLKIT METHODOLOGY

398. The Inquiry utilized the OECD toolkit\textsuperscript{1054} which sets out a six-step process for the purpose of this assessment.

399. The six steps involved in assessing the impact which regulations have on the competitive dynamics of a market are: (i) identifying policies or regulations that need to be assessed; (ii) applying a checklist; (iii) identifying potential alternative ways in which to still achieve the purpose of a specific regulation whilst minimizing its negative impact on the state of competition in a market; (iv) selecting the ideal option from the range of alternative options (v) implementing the ideal option from the range of alternative options identified in the previous step; and (vi) reviewing the impact of the alternative option after its implementation to determine whether it was successful and how to further develop areas of improvement.

The First Step of the OECD Toolkit

400. The first step of the OECD toolkit, which is to identify those regulations or policies which are problematic; advises that the depth of a competition assessment should be proportional to the extent of the possible negative impact of the relevant policy or regulation. It is necessary to determine which economic activities fall within the sector being assessed, then to compile an exhaustive list of all the policies and regulations which are relevant to those identified economic activities which take place in the sector. These policies and regulations can ideally be solicited from national legal databases and interactions with stakeholders such as National, Provincial and Local government departments. The Inquiry identified those regulations which affect the day-to-day operations of local businesses in all 9 provinces in South Africa. Some of the aims were to determine which regulations, if any, restrict competition by, limiting the number of participants or product ranges in the grocery retail sector; are onerous; excessively enforced or not enforced at all.

The Second Step of the OECD Toolkit

401. The second step of the OECD's toolkit applies a checklist against which the identified policies or regulations are measured. The checklist seeks to ascertain whether or not the policy or regulation in question has any of the following anti-competitive effects:

401.1 limits the number or range of suppliers in specific areas which is likely to be the case if the policy/regulation: (i) grants exclusive rights for a supplier to provide goods or services; (ii) establishes a license, permit or authorization process as a requirement of operation; (iii) limits the ability of some types of suppliers to provide a good or service; (iv) significantly raises costs of entry or exit by a supplier; (v) creates a geographical barrier to the ability of companies to

supply goods, services, labor or invest capital;

401.2 limits the ability of suppliers to compete effectively which is likely to be the case if the policy/regulation: (i) limits a seller’s ability to set the prices for goods or services; (ii) limits the freedom of suppliers to advertise or market their goods or services; (iii) sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose; and (iv) significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants);

401.3 reduces the incentive of suppliers of compete effectively which is likely to be the case if the policy/regulation: (i) creates a self-regulatory or co-regulatory regime; (ii) requires or encourages information on supplier outputs, prices, sales or costs to be published; (iii) exempts the activity of a particular industry or group of suppliers from the operation of general competition law;

401.4 limits the choices and information available to customers which is likely to be the case if the policy/regulation: (i) limits the ability of consumers to decide who they purchase from; (ii) reduces mobility of customers between suppliers of goods or services by increasing the implicit or explicit costs of changing suppliers; (iii) fundamentally changes information required by buyers to shop effectively;

401.5 creates uncertainty amongst small and independent retailers regarding the requirements they are expected to comply with in order to trade and compete effectively;

401.6 is onerous, time consuming and costly to comply with;

401.7 is excessively enforced for insignificant transgressions, thereby restricting the participation of small and independent retailers in the market; and

401.8 is not being enforced, poorly enforced or selectively and corruptly enforced, thus creating uncertainty and an uneven playing field between small and independent retailers in townships, peri-urban and rural areas.

402. When the checklist shows a positive response, then a preliminary assessment of the effects on competition is recommended. Once a preliminary investigation is completed and if it indicates that there is likely to be significant harm to competition; a full investigation into the competitive restrictions should be carried out.

403. After applying the checklist, having due regard to the submissions received from numerous stakeholders as well as from the Inquiry’s own assessment, it was found that the above discussed categories of regulations warranted further analysis. The Inquiry’s investigation and information gathering activities indicated that the regulations and/or the manner in which they are enforced, indeed resulted in some of the effects which are identified by the second step of the OECD toolkit, as discussed in the preceding paragraphs.

404. Guided by the third to the fifth steps of the OECD toolkit, the Inquiry endeavored to make the relevant recommendations in order to bring about the desired outcomes of regulations in this sector. Steps three to five will be discussed below:

The Third to the Sixth Steps of the OECD Toolkit

405. The third step of the OECD Toolkit entails identifying all policy options which can achieve the desired aims, with the least amount of distortion on actual competition. In order to identify less restrictive alternatives to a policy or regulation, one is first required to have an understanding of the policy or regulation in question which would involve an understanding of the specific policy or regulation bearing in mind, among others:
the purpose for which it exists, by assessing its ultimate objective; the specific elements and provisions of the policy or regulation which are likely to generate competition concerns; whether or not these elements or provisions are strictly necessary in order to attain the objective and whether or not they can be amended in a way that does not impede competition, but still attains the objective.

406. The fourth and fifth steps of the OECD toolkit involve the selecting and implementing of the ideal option from the range of alternative options. This means that once all the alternative options are identified, they must be compared against each other in order to make a final recommendation for government action. Once the judgment regarding the best option is made, the recommendations should be presented to the decision makers who will consider and either accept or decline them. If the recommendations are accepted and new legislations are drafted or existing ones are amended, these may only be implemented and enforced according to standard government methods.

407. The sixth and final step involves a review of the impact of interventions based in the competition analysis of the identified policies and regulations. This is done over a period time, after the implementation of the recommendations, in order to ascertain whether or not the process has brought about the desired results. This is specifically to determine whether or not the concerns regarding distortion of competition as a result of the initial policy or regulation, has been dealt with positively.

16.2 STUDIES INTO THE REGULATORY FRAMEWORK AND ACTIONS TAKEN TO REDUCE THE REGULATORY BURDEN

408. Various departments within the South African government have undertaken studies into the impact of regulations and the regulatory framework with the intention of (i) identifying and reducing the regulatory burdens imposed on businesses by government (in particular those that affects small and medium sized businesses), and (ii) facilitating commerce and stimulating economic growth. We briefly discuss each of these below.

409. On 03 July 2013, The DTI released the SMME Guidelines for Reducing Municipal Red Tape (“Red Tape Guidelines”). The DTI developed the Red Tape Guidelines in partnership with the Department of Cooperative Governance and Traditional Affairs (“COGTA”), and the South African Local Government Association (“SALGA”). The Red Tape Guidelines were developed pursuant to a pilot study conducted by the DTI across twelve municipalities to determine the impact of red tape on the growth of small businesses.

410. One of the key outcomes of the pilot study was that reducing regulatory burdens on small, micro and medium enterprises should become a key focus area of the National Government. Through the Red Tape Guidelines, Government is focused on removing the inefficiencies, which result from the three spheres of government working in silos, while trying to achieve the same end, particularly in their legislative and administrative roles.

411. The National Department of Small Business Development (“DSBD”) and the Department

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1055 The Red Tape Guidelines define red tape as “rules, regulations, and/or bureaucratic procedures and processes that are excessively complex and which impose unnecessary delay(s), inaction and/or costs that exceed their benefits, and/or is no longer effective in achieving the purpose for which they were originally created.” It continues to state that “red tape results in undesirable economic, business and/or social impacts or outcomes. Red Tape involves excessive, or unevenly enforced, regulation or rigid conformity to formal rules that is considered redundant or bureaucratic and hinders or prevents effective action or decision-making.”
of Performance, Monitoring and Evaluation ("DPME") appointed Trade and Industrial Policy Strategies ("TIPS") to conduct a study on the national regulatory burden facing small businesses. TIPS produced a report in 2017, which DSBD shared with the Inquiry.\textsuperscript{1056} Although it is relevant and instructive, the scope of the TIPS’ study specifically excluded municipal by-laws and focused on the national regulatory system, which generally affects small but formal businesses. The study focused on formal businesses and on large informal businesses to the extent that they would be affected by national legislation, i.e., affecting their ability to reach certain markets as a result of them being informal and not complying with certain legislations. The study also looked at South African and international studies dealing with regulatory burdens on businesses such as the World Economic Forum Global Index.

412. The TIPS study found that there are high costs associated with the process of obtaining trading licences or permits that are more onerous on small businesses than for large formal businesses. Small businesses generally spend more time and money in ensuring they comply with legislative requirements than large businesses. Recommendations made to address the concerns have included:

412.1 calling on government to simplify regulations;

412.2 government to identify high priority regulations, their objective; and

412.3 to set up mechanism for regulatory impact assessments

413. On 18 March 2013, the Department of Trade and Industry ("DTI") released the Business Licensing Bill, to repeal the Businesses Act 71 of 1991 ("the Business Act"), with the aim of eradicating illicit and anti-competitive business practices. The Bill seeks to introduce a requirement that all businesses obtain an operating licence and become registered by local municipalities. This will effectively bring the informal sector to an end. The Business Licensing Bill appears to still be a draft law.

414. With regard to liquor, the DTI published "The Final National Liquor Policy, 2016" in the Government Gazette ("Liquor Policy").\textsuperscript{1057} It noted that the apartheid regime prioritised the economic benefits of the liquor industry and neglected the social well-being of the majority of South Africans. The Liquor Policy, therefore, sought to shift the focus towards an approach to economic and social policy that would balance the benefits of liquor trade and the harmful socio-economic effects of liquor use.\textsuperscript{1058} In addition, the Government sought to restructure the liquor industry in order to facilitate entry and the empowerment of new entrants.

415. In light of the fact that liquor was found to be easily available, the Liquor Policy recommends that the density of liquor outlets be limited through licensing and zoning regulations. It states that the primary regulation for limiting liquor outlet density is to improve public health and safety.\textsuperscript{1059}

416. In addition, SALGA’s Draft Strategic Framework 2017 – 2022 entitled “Justice and Social Cohesion through the Integrated Management of Space, Economies and People", set out the following priority actions for the next eighteen months which were approved by Cabinet:

416.1 “Identify and implement strategic interventions in the identified intermediary, medium and small towns to strengthen planning, governance and economic development in line with the Back to Basics Programme and existing strategic government programmes;
416.2 Develop spatial contracts for key restructuring zones in metropolitan municipalities and intermediate cities;

416.3 Develop and implement a model(s) to improve integrated planning in secondary cities to promote spatial integration and economic development;

416.4 Finalise a model/framework/protocols to fast-track the release and acquisition of state-owned land that is key for spatial transformation;

416.5 Develop and implement a framework to improve alignment and coordination between various strategic infrastructure projects (SIPs) and other strategic initiatives impacting on urban spaces; and

416.6 Upscale the implementation of red tape reduction in priority municipalities. [own emphasis]

417. There are provinces that have implemented certain strategies to advance the reduction of red tape within their provinces. The Western Cape Department of Economic Development and Tourism (“DEDAT”) established the Red Tape Reduction Unit in 2011 in order to help businesses to reduce red tape. In 2012, DEDAT commissioned a study to critically examine the City of Cape Town’s by-laws in relation to the informal sector. The final report on this study was released on 31 October 2012 (“the Imthente Study”). We refer to the findings and recommendations of the Imthente Study in more detail below.

418. An excerpt of the Press Summary issued by the KwaZulu-Natal (“KZN”) provincial Department of Cooperative Governance and Traditional Affairs on 09 May 2017 reads “In collaboration with the Department of Small Business Development, SALGA, the International Labour Organisation and DEDTEA, we will during this financial year spearhead the Red Tape Reduction Programme which aims to address administrative, compliance and regulatory processes impacting negatively on SMMEs, including cooperatives, thereby reducing their efficiency. The Red Tape Reduction Programme’s ultimate goal is to improve service delivery and reduce the cost of doing business at local government level. Ten districts and the eThekwini Metro will be supported in dealing with red tape in different areas of their business…” The KZN provincial Department of Economic Development, Tourism and Environmental Affairs made a formal submission during the Inquiry’s public hearings held in Durban on 05 July 2017. We refer to the submissions relevant to the regulatory environment in more detail below.

419. In the Free State, the provincial Department of Economic, Small Business Development, Tourism and Environmental Affairs (“DESTEA”) held an “Indaba” on reducing government red tape on small businesses in March 2016. In its presentation, DESTEA noted, among other things, that red tape lead to sharp increases in the cost of doing business and also hampered the performance of emerging, small and medium enterprises. Further, DESTEA proposed to simplify the regulatory process by, among others, creating “a single window station” for small and medium businesses to secure information and advice.

420. In addition to the above developments, academic literature also recognises the role that an appropriately designed regulatory regime plays in facilitating entrepreneurship. Studies have shown that there are high rates of new business failure in South Africa, partly resulting from bureaucracy and from corruption which often are related to regulatory processes. Of relevance to this Inquiry, this study

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considered factors within the regulatory regime, which included processes for registering or licensing a new business, labour restrictions and policy administration, i.e. the process of administering and enforcing applicable laws by authorities. The study found that issues surrounding bureaucratic processes as well as corruption should be addressed in order to create a conducive entrepreneurial environment.

421. Previous studies such as the Economic Development Department’s (“EDD”) Regulatory Impediments Index (EDD 2012) and the Small Business Projects (SBP 2012), were conducted to identify how regulations affect small businesses. Amongst other factors, the study found that government bureaucracy constituted the most burdensome regulatory constraints on small business. In response, various regulatory reforms were introduced to make it easier for potential entrepreneurs to start businesses, i.e. SARS introduced a single registration process for new business. Further in 2014, the government introduced the Socio-Economic Impact Assessment System (“SEIAS”) intended to assess costs and benefits of new regulation on a wider group of stakeholders.

422. Despite these regulatory reforms, there are still concerns raised by entrepreneurs and non-profit organisations that there are regulations, rules and government policies which continue to place a burden on small businesses. There is continually a need to review the purpose and objectives of regulations, which are applicable to small businesses in order to assess their impact.

423. Also relevant to this Inquiry, is a study which focused on the impact of municipal regulations on small businesses, focusing on the four categories of small businesses, i.e. micro-survivalist and micro non-survivalist, very small businesses and small and medium enterprises. The study acknowledged that regulations impact businesses differently. It examined municipal business support strategies, financial regulations, non-financial regulations such as town planning and land use management (zoning schemes), business licensing and informal trading.

424. The above studies and interventions cumulatively point to the need for a streamlined, efficient and enabling regulatory framework in order to create a conducive environment for small business development.

425. During the Inquiry’s engagements with small independent businesses, the lack of a supportive business strategy by municipalities was raised as a concern and further alleged to have a negative impact on the sustainability and success of these businesses in the grocery retail sector. With regard to the management of land use rights through zoning and consent by municipalities, studies have found that most of the Apartheid era by-laws and regulations were designed to restrict and curtail businesses in the townships and residential areas populated by Black, Coloured and Indian people, and are still in place.

16.3 OVERVIEW OF STAKEHOLDER SUBMISSIONS

Submissions by stakeholders during site visits and re-visits

426. It is important to highlight that the Inquiry endeavoured to engage with both local and foreign national traders in all provinces on the issue of regulations applicable to the grocery retail sector. As alluded to in chapters one and three, despite numerous attempts by the Inquiry to engage with foreign national traders, there was a general unwillingness and/or constant unavailability on the part of the foreign national traders to engage with the Inquiry. Nevertheless, the Inquiry was successful in meeting with

1063 Musara M, op cit.
foreign national traders in six out of the nine provinces. However, as a result of the limited engagements with the foreign national traders, the Inquiry had limited benefit of the views of foreign national traders on these very pertinent issues.

427. This matters because, as will become clearer below, there are allegations of differential treatment between local and foreign national traders in the enforcement of applicable laws by the relevant authorities. It is apt to point out at this stage that the Inquiry experienced very limited participation by some organs of State, particularly at municipal level, as well as, in respect of some provincial departments and agencies. As entities that are primarily tasked with the enforcement of various regulations in their spheres, their insights would have proved invaluable to the Inquiry process. This constraint notwithstanding, we now turn to discuss some of the concerns raised during the Inquiry's interactions with stakeholders.

428. Many participants raised issues regarding unequal enforcement of by-laws by municipalities especially when comparing treatment of local traders and foreign traders in relation to applicable regulations and by-laws. Local traders across the provinces indicated that there were many regulations which were not clear to them and that they were often unsure about which regulations were applicable to their businesses.

429. During a site visit in Limpopo, local traders indicated that the enforcement of health and safety laws were inconsistently enforced between local and foreign national traders. According to them, certain requirements such as ensuring that a spaza shop is properly ventilated with a window is enforced against the local traders whereas foreign traders get off lightly. The perception amongst these traders was that the government does nothing to assist them with regard to unequal and over-enforcement of by-laws by local authorities.

430. In places such as Mthatha in the Eastern Cape and Lebowakgomo in Limpopo, municipalities were, at the time of the public hearings, engaged in “clean up the city” operations to remove informal traders from the Central Business Districts (“CBD”), to a single centralised location. The municipalities submitted that the shift of these informal traders will create a central operation centre where consumers can obtain a variety of products and services in one location. However, the affected informal traders submitted that these initiatives generally work against their businesses, with authorities disregarding the nature of their businesses and the environment necessary for these businesses to succeed. The informal traders submitted that their businesses thrive on foot traffic generated within the CBDs. It was been alleged that often these businesses are moved from busy intersections within the CBDs to isolated areas, where there is no available foot traffic.

431. Local traders in the Eastern Cape submitted that they are required to comply with stringent requirements to set up shop, some of which include obtaining a health and safety certificate, keeping their stores clean and painted, as well as, the requirement that the store should be entirely separate from their dwelling area. They alleged that foreign traders were not required to comply with these requirements in order to trade and that they have not witnessed inspections by any health and safety inspectors on both local and foreign traders. They further claimed that there are foreign nationals who operate informal businesses and reside in the same building, in violation of stipulated regulations.

432. Various liquor traders complained that by-laws are strictly applied against them in terms
of trading hours whereas large retailers like Spar are not restricted with regards to their operating hours. It was alleged that liquors shops owned by the retail chains would often open as early as 8:00 when the adjoining retail supermarket opens and trade until 20:00 when the supermarket closes. This, however, is not the case for small independent liquor stores who are generally required to operate between 9:00 and 18:00. The traders point out that whatever social purpose the government sought to achieve by imposing trading times is eroded by the retail chains. Many liquor traders claimed that their patrons were less likely to be affected by road incidents, as many people prefer to consume alcohol in taverns that are closer to where they live.

433. The Inquiry also met with the Free State Provincial Government where various internal departments, such as the Department of Small Business Development (“DSBD”) and Consumer Protection Office were represented. The DSBD submitted that it had conducted a study in 2011 in conjunction with the University of Free State from which, it emerged that municipalities had begun placing a hold on the issuing of trade permits as there was (i) an increasing trend in the number of spaza shops and (ii) most of the spaza shops had been taken over by foreign traders. The study also suggested that municipalities found it difficult to track foreign traders because they are not registered business owners and that this tends to give them a competitive edge over their local counterparts as they are not faced with the legal barriers of registration and paying taxes. This had an impact on the slow rate of increase in the number of local owned spaza shops in the Province.

434. In Kwa-Zulu Natal, one of the major concerns raised by traders was the issuing of trading permits. Traders indicated that they faced difficulty in obtaining licences from the municipalities as municipal officials do not offer effective communication and assistance when dealing with them during the process. This, it was submitted, impedes their ability to trade because once found trading without a permit they are removed from their trading spaces.

Overview of submissions by participants during public hearings

435. As part of the information gathering process, the Inquiry conducted four sets of public hearings which were held in three provinces. The first set of public hearings were held in Cape Town from 8 – 12 May 2017; the second set of public hearings took place in Pretoria and Johannesburg and are collectively referred to as the Gauteng public hearings, were held from 5 – 9 July 2017; thirdly, the Durban public hearings took place from 3 – 7 July 2017; and the last set of public hearing took place again in Pretoria from 30 October – 6 November 2017. The stakeholders that attended the public hearings included a number of small and independent grocery retailers and liquor traders, owners of small speciality shops such as bakeries, butcheries, associations representing traders, and research institutions.

Cape Town Public Hearings

436. The submissions from the stakeholders focussed on the enforcement of the applicable regulations of the City of Cape Town Municipality. The Gugulethu Liquor Traders Association (“GLA”) submitted that as small independent retailers, they have been negatively affected by the move of the national supermarket chains, who also trade in liquor, into the townships. The GLA alleged that there was differential treatment of the national supermarket chains and local traders in terms of trading times. The GLA submitted that liquor licences for local traders were restrictive, prohibiting

1067 Ibid.
1068 Submissions by local traders at the Kwa-Zulu Natal re-visit 21 October 2016, p. 3.
1069 Pretoria from 5 – 7 June 2017 and Johannesburg from 8 – 9 June 2017
1070 Submissions by the Gugulethu Liquor Traders Association and Siyanda Mntoza at the Cape Town public hearings dated 08 May 2017.
GLA members from trading after 18:00 whereas the national supermarket chains were allowed to trade from 8:00 - 20:00. The GLA’s concern was that the requirement for local traders to close at 18:00 put their members at a disadvantage as they largely cater to the commuter population who generally return from work after 18:00. As such, customers would ordinarily purchase their liquor requirements from the national supermarket chains as they would still be open for trading.

437. The GLA also submitted that in certain instances the municipality required GLA members to apply for the rezoning of properties from which they trade, resulting in continuous harassment from the officials regarding their liquor licences.

438. Siyanda Mnotoza made submissions regarding what he considered to be selective and abusive enforcement of regulations by municipal officials in that, while the shack from which he traded had been demolished twice in four months, other traders operating from shipping containers were not treated in the same manner.

439. Skhoma Butchery submitted that it operated as a butchery and a buy-&-braai business. The business has operated in the Gugulethu Mall from 2010 but only received a food license in 2017. Skhoma Butchery was not permitted by the landlord to apply for a liquor licence even though Spur, and later Shoprite, were permitted to sell liquor from the Gugulethu Mall. Skhoma Butchery also submitted that the municipality constantly changes regulations without the knowledge of businesses that would eventually be affected by those laws.

440. The Sustainable Livelihood Foundation ("SLF"), a non-profit organisation, made a submission during the Cape Town Public Hearing. According to the SLF, they conducted research into the growth and development of micro enterprises and informal businesses in the informal economy in South Africa. To this end, SLF researchers cycled around each of the nine major townships in South Africa over the course of up to six weeks, per township and interviewed every business which could be found within the informal economy in the townships. In a nutshell, what came out of SLF’s research, was that:

440.1 street trade, liquor trade and spaza shops are predominant businesses in these areas, although according to government, since none of these businesses are registered and documented, - none of them exist;

440.2 this entire economy is reinforced in its informality in that none of it is documented through financial or banking services;

440.3 70% of these enterprises within the informal context are run by foreign nationals which the SLF attributes to under-regulation and the failure of the state to foresee the effects of non-regulation in the entire sector;

440.4 conversely there also exists the problem of over-regulation regarding certain aspects of selected laws for example, liquor in the Western Cape and zoning in various provinces; and

440.5 zoning and rezoning requirements has been a major inhibitor of growth on small business development.

Gauteng Public Hearings (Pretoria & Johannesburg)

441. During the Gauteng public hearings, stakeholders submitted that in general, there was a lack of enforcement of the by-laws, in particular the health and safety, and permit regulations by the authorities.1071 It was submitted that the majority of foreign owned small businesses operate without trading permits and often do not comply with the health and safety regulations. Local traders who conduct their businesses in rural

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1071 Submissions by the South African Bulk entrepreneurs Primary Cooperative Organization ("SABEPCO") at the Gauteng Public Hearings, dated 5 June 2017.
areas also submitted that they are required to pay an arbitrary amount, determined by the Tribal Chief, to the Tribal Authorities in addition to the cost of getting a business permit from the municipality.

442. The Gauteng Provincial Department of Economic Development (“Gauteng EDD”) submitted that within the Gauteng province, there are informal and formal traders that trade without legal documentation. The Gauteng EDD also made submissions in respect of its township revitalisation programme and various initiatives to assist and promote small business development within the Province. Noteworthy, among these, was the recommendation that municipalities should grant land use rights to developers subject to conditions that create a favourable trading environment for small businesses operating in townships, peri-urban areas and in rural areas.

443. The Inquiry also received a submission from a buyer group, UMS. According to UMS, one of the key difficulties for small traders in remaining functional in the market is the over enforcement of street regulations which in some instances, led to traders closing down their operations. According to UMS, there are two ways to solve this problem and afford the small retailers access to the market: firstly, by municipalities adopting the “blanket rezoning” approach which was adopted in the City of Cape Town and secondly, by communicating the requirements for zoning laws to independent entrepreneurs so that they are always aware of what requirements they are required to meet.

KZN Public Hearings

444. The UGU Association of Businesses raised issues around the unequal enforcement of regulations, particularly between independent owned liquor stores and liquor stores owned by national chain retailers. According to the Association, independently-owned liquor stores are subjected to distance limitations, as prescribed by the Kwa-Zulu Natal Provincial Liquor Board, such as being not less than 100 meters from a church and 200 metres away from a school, while such limitations do not apply to the national supermarket chains.

445. The KZN EDD, particularly the Consumer Protections Services, raised issues about the prevalence of expired products not only in the informal sector but in some national supermarket chain stores as well. The KZN EDD also outlined a number of interventions aimed at improving the competitive landscape in the grocery retail sector in KZN such as the requirement that all businesses be licensed in the informal sector through the Business Licensing Bill. This licensing process was aimed at ensuring that only properly registered business could participate in the provincial economy.

446. The Umsunduzi Municipality submitted that there were a number of challenges facing small businesses such as the complicated and expensive processes required to rezone a residential property for business. The Municipality noted the changes that will be brought into effect by the Business Licensing Bill as possible solutions to some of these challenges.

Engagements with Municipalities

447. The City of Mbombela Municipality submitted that much like the approach adopted in Mthatha and Lebowakgomo, it has launched a “clean-up” operation which relocates local informal trading out of the public transport hubs and into specified trading areas. At the time of the meeting,

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1072 As submitted by the MEC for the Gauteng Provincial Department of Economic Development, 07 June 2017.
1073 Submission by UMS at the Gauteng Public Hearing, dated 6 June 2016, transcript p.11
1074 Ibid, p. 9, para. 20.
1075 Ibid, p. 9, para. 20.
1076 Submission by UGU Association of Business at the Kwa-Zulu Natal Public Hearings, transcript p. 59, para. 237.
1077 Submission by Tshepiso Selepe (Director of Consumer Complaints) at the Kwa-Zulu Natal Public Hearings, transcript p.31, para. 134.
1078 Submission by Msunduzi Municipality at the Kwa-Zulu Natal Public Hearings
the City of Mbombela Municipality was being established by the merging of two pre-existing municipalities. This meant that all by-laws and spatial development frameworks from the previous municipalities were to be converted into one. Further, during the initial engagements with the City of Mbombela Municipality, the Youth Forum was threatening violence against foreign traders, alleging unfair trading.

448. The Drakenstein Municipality submitted with regard to the enforcement of by-laws that there are specific law enforcement sections within the municipality which are primarily responsible to (i) check permits of informal traders and (ii) ensure that health and safety by-laws are adhered to, specifically during the preparation of food stuff.

449. The Sol Plaatjes Municipality was one of the 12 municipalities that participated in the pilot study which was conducted by DTI, COGTA and SALGA. The municipality highlighted\textsuperscript{1079} that as part of the recommendations resulting from the pilot study, municipalities are encouraged to host informal trade forums to afford informal traders with a platform to voice their concerns. However, the municipality raised a concern that it is extremely difficult to persuade the informal traders to congregate on a regular basis.

16.4 VARIOUS CATEGORIES IN THE CITY OF CAPE TOWN ZONING SCHEME

450. Single Residential Zones (i.e. Conventional Housing Rights and Incremental Housing Rights), confer rights on the owner of the property to make use of the property in certain ways. Conventional housing rights together with additional rights permit the owner to use the property for residence as well as for other additional rights such as the operation of a bed and breakfast business.\textsuperscript{1080} The conditions\textsuperscript{1081} are that only one of the listed additional use rights that can be conducted at the premises. Incremental housing rights allows a resident to have a dwelling place, a second dwelling and utility, service, and additional rights are also allocated to the property owner. The additional rights include a house shop, home occupation, a bed and breakfast, and business operations subject to applicable conditions. Certain additional uses of the property require the owner to obtain consent from the municipality before embarking on such activities. The owner must also submit building plans to the municipality for additional use of the rights, where there might be informal trading or a house shop. There are also safety requirements that must be put in place, such as firebreaks.

451. General business subzones are areas that have mixed use rights allocated which includes a dwelling house, a second dwelling house, business and informal trading from the premises.

452. Mixed use sub-zones are areas that are zoned for multiple use including business, industry, dwelling and other services such as a hospital or a church. Informal trading is allowed provided that it is conducted on land set aside as a road reserve or identified as a future road reserve.\textsuperscript{1082} The condition is applicable provided that the informal trader: (i) does not erect a permanent structure on the area where they trade (ii) does not trade in a way that interferes with pedestrians, vehicles and any municipal services; and (iii) does not trade in a way that threatens public health and safety. Residents in mixed

\textsuperscript{1079} Telecon between Sol Plaatjes Municipality and Inquiry, 22 September 2016.

\textsuperscript{1080} The property is allocated as residential with additional use rights that allows the resident to use the property for home occupation (not described), home childcare and operate a BnB. There is also a limitation of employees that can be employed at the premises.

\textsuperscript{1081} Also, that the dominant use of the property will remain for purposes of a dwelling, accommodating a single family. The proprietor of the property must still live on the premises and he/she must obtain consent from the municipality if operating a house shop or a second dwelling.

\textsuperscript{1082} “Road reserve” means a designated area of land that contains or is able to contain a public street or public road, including the road and associated verge, which land may or may not be defined by cadastral boundaries;
use sub-zones can operate a house shop subject to certain conditions, namely:

452.1 the owner of the house shop must reside on the premises;

452.2 the size of the house shop cannot exceed the floor area for the dwelling house;

452.3 there must be a building plan that clearly defines the structure of the house shop and where it is situated;

452.4 no more than 3 persons can be involved in the retail activities of the house shop, including all occupants of the dwelling house;

452.5 no pets are allowed in areas used for the house shop, no door leading into the house shop should open to a bedroom;

452.6 if perishables are sold, there must be refrigeration to store the perishable items;

452.7 the house shop can only operate between 7:00 and 21:00, Mondays to Saturdays and 8:00-13:00 on Sundays; and

452.8 delivery vehicles should not exceed 3 500 kg.

453. General Residential Sub-zones are areas whose primary use is residential, but which also have limited mixed use subject to obtaining consent from the municipality. If approved, the proprietor can conduct other activities such as, operating a house shop or place of worship, as listed on the zoning scheme. The development of a second dwelling is subject to the approval of the building plans by the municipality.

454. Local Business Zones are areas that are intended to be of mixed-use offering convenience services to the residential areas located within their close proximity. Provision is made for informal trader to also conduct their business subject to obtaining consent from the municipality. Similarly, supermarkets, restaurants and liquor stores can trade in the area subject to obtaining approval from the municipality.

455. Risk Industry Zone, Transport Zones are areas where the City of Cape Town makes provision for informal trading and the operation of shops subject to obtaining consent from the Council. Informal trading can be conducted on areas demarcated by the Council and in accordance with the provisions of informal trading law.
ANNEXURE 8: OBJECTIVE FIVE: THE IMPACT OF THE BUYER POWER OF BUYER GROUPS AND OTHER LARGE PURCHASERS OF FMCG PRODUCTS ON SMALL AND INDEPENDENT RETAILERS IN TOWNSHIPS, PERI-URBAN AREAS, RURAL AREAS AND THE INFORMAL ECONOMY

17.1 LITERATURE REVIEW ON BUYER GROUPS

Introduction

456. This section provides a literature review of the most relevant legal and economic analysis, from South African and international sources of buyer groups.

457. The purpose of this section is to describe: the rationale behind the establishment of buyer groups; the types of buyer groups that may exist; the characteristics of buyer groups (such as the service offering of buyer groups which includes membership rights, decision making processes and negotiation methods with suppliers.); the pro-competitive nature of buyer groups; as well as the anti-competitive concerns arising from different types and characteristics of buyer groups.

The legal aspects of buyer groups

458. The major concern highlighted in the scholarly literature reviewed is that buyer groups may lead to collusive outcomes; a fuller discussion of this concern is outlined below. It follows that, while members of the buyer groups may be active in different markets, buyer groups generally comprise competitors in the relevant downstream market. Any collaborative action among competitors which may raise competition concerns stands to be assessed under Section 4 of the Competition Act (“the Act”). Buyer groups are formed pursuant to understandings or arrangements that constitute an agreement as contemplated in the Act.

459. In respect of cartels, there is no distinction between fixing the selling or purchase price. Section 4(1)(b)(i) of the Act prohibits the direct or indirect fixing of the purchase or selling price. This is in line with the enforcement provision in international jurisdictions. The Organization for Economic Co-operation and Development (“OECD”) claims that in the United States the per se rule against cartel activity in terms of the Sherman Act of 1890 has never distinguished between seller cartels and buyer cartels. The policy goes on to quote a U.S. decision of 2001 in Todd v Exxon Corp in which the court found that “a horizontal conspiracy among buyers to stifle competition is as unlawful as one among sellers.”1083

460. In South Africa, whether or not a joint purchasing agreement constitutes a buyer cartel will depend on the object, structure of the alliance and the terms of the agreement. The Competition Tribunal (“the Tribunal”) cautioned that even agreements that are seemingly innocuous from a competition law perspective may be designed and structured in a particular manner so to escape scrutiny under the competition laws.1084 Competition authorities are required to analyse the terms of the agreement in order to determine the object and design of the buyer group. In the Ansac

1083 OECD (2008); Pp 245-246.
1084 The Competition Commission v Pioneer Foods (Pty) Ltd Case No 15/CR/Feb07 at paragraph 34.
cartel the Supreme Court of Appeal ("the SCA") remarked that the Act prohibits agreements which have as their object the design to avoid competition as opposed to conduct that merely has that incidental effect. This is a decision that introduced the importance of characterisation of conduct including conduct which is alleged to fall within the ambit of section 4(1)(b) of the Act. Similarly, the EC Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements state that “joint purchasing arrangements restrict competition by object if they do not truly concern joint purchasing, but rather serve as a tool to engage in a disguised cartel. In other words, an agreement will have a prohibited object if it is actually designed as a means of implementing one or more hardcore restrictions.”

461. There are no cases that have been decided on the merits by the Tribunal or the courts in South Africa dealing with buyer groups or buyer cartels. The U.S. Supreme Court recognised in Northwest Wholesaler Stationers v Pacific Stationery that buyer groups are “designed to increase economic efficiency and render markets more, rather than less, competitive.”

The economic rationale behind forming buyer groups

462. Economies of scale and scope are often described as being the major barriers to entry in the grocery retail sector. Economies of scale occur when the average cost per unit of groceries sold by a retailer decrease with the increase in the scale or magnitude of the volume being produced, i.e. the average unit costs of a product reduce significantly as a retailer is able to procure the product at a higher volume. Similarly, economies of scope enable a retailer to derive efficiencies by providing a variety of diversified products to its customers i.e. enabling a retailer to derive cost savings gained from selling many different products in the same store.

463. In South Africa, buyer groups are a mechanism used by independent retailers, lacking the required volumes or buyer power and product variety, to enter the grocery retail market and compete against the incumbent retailers. The purpose of a buyer group is to leverage the combined purchasing power of its members to obtain volume discounts or negotiated discounts and thereby collectively achieve the desired economies of scale and scope on products with the intention of resale to end-consumers. Buyer groups enable smaller firms to act collectively to reach the outcomes of a single buyer, giving them a power akin to that of a monopsonist.

464. Not all buyer groups exist solely to pool volume orders for its members. Some buyer groups only provide information to their members as a type of “catalogue hub” which informs members about a supplier’s list prices. The members are then expected to negotiate terms with the supplier individually. Other buyer groups play a more active role by negotiating better terms with the suppliers on behalf of their members.

The different forms of buyer power

465. The main purpose of a buyer group is to collectively increase the buyer power of its
individual members. Buyer power can be defined as the situation where a firm or group of firms is able to obtain from a supplier more favourable terms than those available to other buyers. However, the literature indicates that there are two forms of buyer power: monopsony power and bargaining (or negotiating) power.

According to the OECD, a firm has monopsony power if its share of purchases in the upstream input market is sufficiently large that it can cause the market price to fall by purchasing a lower quantity of product or cause the price to rise by purchasing more of the product. Chen defines monopsony power as the situation in which suppliers in a perfectly competitive upstream market are forced by the buyer to sell below the normal market price (the competitive price).

The purpose of monopsony power is for the buyer to withhold purchases from suppliers so as to obtain a lower price from the upstream market. The deadweight loss of monopsony exists independently of what the state of competition is in the downstream market and therefore, it is not certain that end-consumers benefit from monopsony power.

The International League of Competition Law ("LIDC"), notes that laws against unfair trade practices in the grocery retail sector applied to the grocery retail sector are used to curb the negotiation power of large-scale retailers. Therefore, while it is possible that a retailer may abuse its buyer power in the traditional sense (monopsony power), the abuse of buyer power in the grocery retail sector is likely to manifest in other ways.

According to the LIDC, the prohibition of practices pertaining to the abuse of buyer power tends to vary from country to country which “reflects the specificities of the tensions between retailers and their suppliers in each country”. In Hungary it is prohibited for suppliers to contribute to a retailer’s price reduction. In Romania it is prohibited for retailers to receive payment for services that are not directly linked to a sales promotion while in France, retailers are prohibited from delaying payment to their suppliers.

Pro-competitive outcomes

Buyer groups have been identified as an alternative means for independent retailers to enter the grocery retail sector, enabling these retailers to reduce some of the high barriers to entry identified in the market.

The section below details the various efficiency justifications of why small retailers would choose to become members of buyer groups.

Volume discounts lead to lower costs per unit

The ability of the buyer group to pool the purchases of its members normally leads to suppliers offering volume discounts on the large order made by the buyer group. This is generally considered to be the traditional purpose of buyer groups.

Reduced transaction costs

A buyer group is able to reduce transaction costs by reducing the search costs between the sources of demand (the members) and the sources of supply (the suppliers); and

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1096 Ibid.
1101 Ibid p 9 - 10.
1102 CCRED, Research on Competition and Regulation: Case Study on Fruit and Veg City’, 2015, p. 38.
reducing the number of contracts that have to be entered into with the buyers. For this to be possible the buyer group must be in a better position to enter into contracts with its members than the supplier can with each member individually.1104

Improved productive efficiency

474. The existence of buyer groups can be beneficial to both the members of the group as well as the suppliers that engage with the buyer group. For instance, buyer groups can provide suppliers with demand assurances enabling suppliers to exploit economies of scale and scope. The Office of Fair Trading ("OFT") notes that buyer groups may allow suppliers to reduce delivery costs by delivering a single large load to various members without having to make numerous back-and-forth deliveries to members located relatively close to one another. If a buyer group provides a shared storage facility, this allows the supplier to make cost-effective ‘top-up’ deliveries to a single location from which the buyer group members can top-up.1105

475. Buyer groups may also enable the supplier to make investments based on a guaranteed minimum quantity of purchases, which individual members may not be able to guarantee on their own. This also enables the supplier to enter into a single contract with the buyer group as opposed to numerous contracts with individual members so as to reach the minimum quantity required to invest.1106

Increasing pricing efficiency

476. It is possible that dealing with buyer groups can avoid the problem of double marginalisation. Instead of a supplier adding a mark-up which is above marginal cost to downstream intermediaries (such as retailers), the supplier can supply the product at marginal cost, and charge an additional fee (a franchise fee) to the buyer group. The buyer groups may negotiate on behalf of its members to obtain a lower input price in exchange for paying a fixed fee. The buyer group would then have to recover the fixed fee from its members, which could be done through a membership fee structure.1107

Market expansion

477. Buyer groups may be able to sponsor the entry or further investment of suppliers into the relevant market. A buyer group may coordinate and monitor the contributions of its members to facilitate the supplier’s investment into producing more products for the buyer group.1108

Increasing competition amongst suppliers

478. Buyer groups may increase competition among their suppliers by making it easier to switch to alternative suppliers or pooling demand to intensify bidding among the suppliers. The increased competition amongst suppliers may incentivise suppliers to innovate so as to differentiate their products from their competitors.1109

Reducing switching costs

479. Buyer groups may reduce switching costs by maintaining a specialist procurement team; searching for alternative suppliers, monitoring the quality of the products produced by rival suppliers, trialling and testing new suppliers, and solving coordination failure among its members.1110

Sponsoring new entry

480. It may be the case that there are no independent retailers (i.e. retailers not forming part of any buyer groups) who are

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1107 Ibid, 3.24-3.28.
1108 Ibid, 3.29 and 3.32.
able to sponsor the entry of a new upstream supplier. This can either be due to the independent retailer simply being too small a competitor to do so, or it could be the result of incumbent suppliers employing divide and conquer tactics against independent retailers in the downstream market such that the independent retailers are unable to coordinate their demand to justify the sponsorship of a new entrant.1111

481. As a result, depending on the credibility of the buyer group, even the threat of sponsoring a new entrant into the market has the potential to improve competition in the upstream market as suppliers will provide the buyer group with greater compensation to prevent new entry from occurring.1112

Other Potential Procompetitive Effects

482. In the case where independent retailers require a tender process which involves fixed costs, a buyer group may facilitate a competitive tendering process by pooling the members’ demand to facilitate the process.1113

483. In cases where a buyer group comprises a significant portion of the market and consequently a supplier requires the involvement of the buyer group to obtain the required economies of scale, or the supplier needs to make a deal with the buyer group before it can sell its product to other buyers then this implies the buyer group has the potential to weaken the supplier’s fall-back option.1114

Buyer groups also raise anti-competitive concerns

484. There are two primary concerns regarding buyer groups. Firstly, they can have the potential to promote collusive behaviour amongst the buyers in the downstream market. Secondly, their potential to abuse their collective buyer power (monopsony power) against upstream suppliers. The latter would be possible if a buyer group is solely created to gain market power over the buyer group’s suppliers.1115

Collusive behaviour

485. It has been argued that the legality of cartel groups enables smart cartelization amongst members of the buyer group.1116 There has been concern in South Africa as to whether buyer groups and other forms of joint purchasing agreements could be a breach of Section 4(1)(b) of the Competition Act.1117

486. According to Doyle & Han (2014), central sourcing through a buyer group allows retailers to coordinate jointly on wholesale contracts with increased input prices.1118 In other words, retailers are able to act collusively in respect of wholesale contracts by charging higher prices. Therefore, instead of intending to reduce the price of inputs for retailers, the input price is kept high which then filters through to end-consumers in the downstream retail market in the form of higher prices for retail products. Increased input prices are then refunded from suppliers to retailers through slotting allowances, allowing the retailers to obtain monopoly profits.1119

487. Research shows that cartelisation amongst members of buyer groups is more likely when the buyer group has a closed-
membership structure enabling the buyer group to exclude other buyers. Open-membership buyer groups make collusion hard to sustain because: there is no credible threat to punish a deviant member by throwing it out of the buyer group; open-membership suggests that membership in the buyer group is large which limits the ability to effectively monitor members within the buyer group; and makes excluding mavericks unlikely.

488. King (2013) showed that if the buyer group and the supplier can enter a market-price contingent contract this could theoretically lead to an increase in the price paid by competitors who are outside of the buyer group.

489. Other aspects to consider when determining the likelihood of collusion within a buyer group include: whether an agreement on purchasing quantities is in effect an agreement to reduce output to the downstream market; whether the buyer group increases contact amongst its members; the type of information exchanged between the members of the buyer group and its management structure; whether the buyer group members have symmetric terms; whether the buyer group leads to product standardisation amongst its members which in turn leads to less product differentiation in the downstream retail market.

490. However, one cannot simply take a checklist approach to assessing whether a buyer group is a cartel in disguise. The efficiency justifications around buyer groups (discussed above) need also to be considered. It is argued that joint purchasing agreements do not necessarily lead to the same level of harm as joint selling agreements. Therefore, while buyer groups may be a violation of section 4(1) (b), joint purchasing amongst buyer groups should rather be assessed on a rule of reason approach so as to avoid prohibiting buyer groups that give rise to procompetitive effects in the downstream retail market.

Abuse of Bargaining Power

491. Circumstances may arise whereby buyer groups with substantial buyer power can weaken upstream competition in such a way that rival buyers (outsiders) are adversely affected by the conduct. Such strategies are more likely to occur when the buyer(s) does not only have substantial buyer power but also deals in intermediate markets. Buyer groups that are formed by end consumers are less likely to have an incentive to harm other buyers because they do not compete against each other in a downstream market. In such cases, anticompetitive concerns are more likely to be around rent shifting strategies which is discussed in greater detail below.

Input foreclosure

492. A powerful buyer may deny rival buyers access to key inputs either by paying the supplier of a key input to exclusively supply the buyer group, or the buyer group could over-purchase the key input such that rival buyers are faced with higher prices for sourcing the key input.

Waterbed effect

493. The waterbed effect predicts that as a buyer group is able to extract higher discounts from suppliers that this may lead to a

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1120 Normann et al., ‘Do buyer groups facilitate collusion?’, Journal of Economic Behaviour & Organisation, 2015, p. 82.
1123 King’s model assumed a single upstream supplier.
1127 Ibid para. 6.4-6.5.
1128 Ibid para 6.9-6.10.
494. Rivals may find it increasingly difficult to compete with the buyer group, marginalising the rival buyer in the downstream market. The waterbed effect, however, may not necessarily lead to end-consumers suffering.\textsuperscript{1131}

495. For the waterbed effect to occur, requires that the decline in demand from rival sales channels allows the supplier to charge a higher price to those channels.\textsuperscript{1132}

\textbf{Refusal to purchase}

496. If the buyer group comprises many important buyers this may lead to harm to competition by refusing to purchase from one or more suppliers.\textsuperscript{1133} However, for refusal to purchase from certain suppliers to be a competitive concern, the following conditions must hold: it must be crucial for other suppliers to deal with the buyer group so that the supplier operates efficiently; the excluded supplier(s) needs to be an important supplier to retailers outside of the buyer group; and retailers outside of the buyer group must face worse supply terms as a result of the buyer group’s action.

\textbf{Rent sharing}

497. A buyer group and a powerful supplier may agree to a cost raising strategy that may harm downstream competition. The supplier and the buyer group would then share the extra profit as a result of the conduct.\textsuperscript{1134}

\textbf{Rent shifting}

498. A buyer group may harm buyers and their end customers in a different downstream market, through affecting competition among their suppliers.\textsuperscript{1135} For rent shifting to be a concern there must be a situation in which there are two suppliers who are able to supply two separate markets, markets A and B (A is the larger market). It must be the case that the buyer group only operates in market A, but the suppliers require purchases from the buyer group to supply both markets A and B: i.e. the buyer group enables the suppliers to reach efficient levels of production.

499. If the conditions described above exist, then it is possible that the buyer group will exclusively purchase products from a single supplier forcing the other supplier to exit both markets A and B. The buyer group can then demand additional payments from the chosen supplier such that the buyer group receives the profits earned by the chosen supplier in market B. The buyer group effectively shifts rents from market B to market A.

\textbf{Reduced funds for investment by the upstream supplier}

500. Powerful buyer groups would not usually have an incentive to harm competition among its suppliers or discourage investment and innovation that would be valued by the end consumer. However, strong buyer groups that extract excess profit from their suppliers may reduce the incentive for suppliers to invest and innovate.\textsuperscript{1136} The OFT does not consider such conduct to be likely.\textsuperscript{1137}

\textbf{Reduced diversity of products available to the market}

501. If a buyer group adopts a uniform strategy regarding the procurement of standardised products for each of its members, this may lead to a reduction in production variation which would lead to concerns over end-consumers having fewer products to

\textsuperscript{1132} Ibid para 6.30.
\textsuperscript{1133} Ibid para 6.35.
\textsuperscript{1134} Ibid para 6.41.
\textsuperscript{1135} Ibid para 6.44-6.46.
\textsuperscript{1136} Ibid para 7.3.
\textsuperscript{1137} Ibid para 7.11.
choose from in the retail market. For this to be a competition concern, a reduction in diversity would have to be linked to an inability of rivals outside the buyer group to compete against the buyer group.

The Spiral Effect

502. The spiral effect may occur as a result of a powerful buyer obtaining lower prices, which in turn makes the buyer a larger competitor in the downstream market which allows the buyer to secure better terms with its suppliers.

17.2 TYPES OF REBATES

Basic Rebate

503. A basic rebate is a contribution that suppliers make to the retailers in order to do business with them. It is normally expressed as a percentage of sales to that specific retailer, and it is a guaranteed rebate. According to one of the suppliers, a basic rebate is a historic green fee. Suppliers do not receive any reciprocal benefits in return for paying the base rebate. Another supplier submitted that the basic rebate is for getting their products into the retailers’ store.

504. Shoprite submitted that a basic rebate is for the cost of doing business. These costs include upfront costs of purchasing the stock before it is sold, costs to maintain the inventory, the financial and business-to-business information technology systems, costs to provide for receiving processes at all the sites where stock will be received etc. Submitted that the basic rebate is that portion of margin that is guaranteed.

505. Suppliers are obligated to pay a basic rebate to the retailers, specifically the national supermarket chains, to be able to do business with them. While the purpose of the basic rebate is not obvious, given that most rebates have specific functions and rationales behind them, such as a distribution allowance, suppliers accept that these rebates have always been present and are part of how the retailing of FMCG products in South Africa. Suppliers submitted that they generally factor the basic rebate into the costs of supplying the products.

Listing fees

506. Listing fees are used to manage the costs of adding new products onto the shelves of supermarket stores. Previously, listing fees were charged in the grocery retail industry in order to afford a supplier an opportunity of having a product on shelf. However, the term “listing fees” has evolved over the years and is now related to work that has been done in managing space profiles.

507. The management of space profiles according to Massmart is essential so as to ensure that the new product can be positioned on the shelf in the right way. Massmart submitted that the fees related to space management are generally paid to it by suppliers where both parties (suppliers and Massmart) review what is available on the shelf so as to establish a possibility or need of placing a new product on shelf. Due to the limited shelf space, the introduction of a new product could result in the removal of another.

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1138 Ibid, para 7.13.
1139 Ibid, para 7.34.
1140 [X].
1141 [X].
1142 Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 5, para 30.
1143 Ibid p. 6, para 30.
1144 [X].
1145 [X].
1146 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript para 73
1149 Ibid.
1150 Ibid.
508. [K] explained that listing fees have two parts: the administrative costs behind listing the new product; and the larger portion for the retailers to make sure that a supplier is able to support that listing and the product. These support activities prove that a supplier will be able to sustain the new product.

509. Not all suppliers pay a listing fee, others prefer to promote their products differently. [K] prefers to do its own launch support which may include advertisements and putting products on display. The launch support is an additional cost that the supplier would incur, and unlike the listing fee, they are not obliged to pay it.

510. Not all retailers charge listing fees. For example, [K] argues that not charging listing fees gives a retailer more flexibility. If it does not like the product, it does not have to stock it on its shelves. [K] is not tied to any one supplier. It was also suggested that larger suppliers agree to pay listing fees because it guarantees space for their products on the shelves.

Advertising Allowance / Fee

511. The purpose of an advertising allowance/fee is for the supplier to contribute/pay towards the retailer’s costs for promoting/advertising the products of that specific supplier. This enables retailers to plan for their advertising and marketing campaigns in advance. The advertising allowance is captured as a guaranteed minimum amount in order to ensure that the advertising spend is covered.

512. In Shoprite’s view, an advertising fee benefits both the retailer and the supplier given that the suppliers benefits from the exposure through “knock and drops”, television advertisements and leaflets. According to Massmart, advertising allowances allow it to be able to put programs together with suppliers to ensure that the products on offer are relevant at the time the advertisement is aired, and that it is directed to the relevant audience.

513. The views of suppliers on the value of advertising allowances are mixed. [K] considers the advertising allowance as an investment which enables it to have direct contact with consumers. [K] also consider it important to track the advertisements of retailers to ensure that it receives the number that it pays for, and to make sure that it receives value from the advertising allowance that it contributes.

514. [K], a mid-size supplier, was uncertain about whether what they pay the retailers for advertising and marketing goes fully toward advertising or is it retained by the retailer. [K] cited an instance where it decided not to have its products included in the advertising by a certain retailer, but nevertheless, the retailer deducted the advertising allowance.

Settlement Discount

515. A settlement discount is provided to retailers to incentivise earlier settlement of their accounts. A supplier may choose to pay retailers a specific percentage when they settle their account much earlier than what is agreed upon in the trading terms. Fruit and Veg City explained that the reason why retailers would receive a settlement discount for paying earlier is because retailers would usually pay within 60 or 90 days. Since cash flow is important for suppliers, the
settlement discount is used to incentivise the retailer to pay at an earlier date. Certain suppliers are not obligated to pay settlement discounts, and do not have any settlement discounts with the retailers.

516. Various suppliers have different cash requirements and payment schedules for the various customer groups that they serve.

517. [X] submitted that its settlement discounts differ by customer. For its larger retail customers, such as Shoprite they give 1.65%, to incentivise them to pay within 14 days of receiving the invoice. While buyer groups receive 1.5% for settling 14 days from the weekly statement, and Massmart receives 1% for 30 days after receiving the invoice.

518. [X] considered the settlement discount to be one of the rebates that it has to pay regardless of whether or not they see a benefit from it or not. Woolworths indicated that it receives a settlement allowance which ranges from 0% to 4.5% depending on the payment period. These payment periods generally range between seven, thirty and forty five days from the date which the invoice was delivered.

Distribution Centre / Warehousing Allowance

519. The distribution centre (“DC”) or warehousing allowance is the payment made by suppliers to the retailers for re-distributing products from their warehouses/distribution centres to their respective stores. Practically, suppliers deliver to the retailer’s central distribution centre (as opposed to the retailer’s individual stores) and the retailer assumes the responsibility for delivery to its respective stores.

520. Some suppliers such as [X] and [X], use criteria to determine whether or not a specific retailer (specifically the wholesalers and buyer groups) qualifies for the DC allowance. [X] contracts an auditor such as PWC to audit and determine whether the wholesaler qualifies for a distribution allowance. [X] has a published set of criteria for when a retailer would qualify for a distribution allowance. For example, the retailer is required to have branded stores and to purchase a full basket of [X] products and [X] must be able to track the flow of the goods.

521. [X] submitted that they are obligated to provide distribution services to ensure that their products reach the stores. In cases where [X] products are distributed to a DC the retailer will ensure that the products reach the shelf.

522. Suppliers find efficiency in contributing a DC allowance as opposed to delivering to all the individual stores of a retailer across the country. Suppliers submitted that it is cheaper for them to distribute to a centralised DC.

523. The retailers charge a distribution allowance for the costs they incur in storing, handling and re-distributing the products to their respective stores. Spar submitted that it charges a distribution allowance for storing products in its warehouses and distributing the suppliers’ products with Spar’s trucks. The allowance that Spar charges can range from 2% to 15% depending on the type of product.

524. Shoprite submits that a warehousing allowance is a cost that is charged to a supplier for the warehousing and distribution of products through a retailer’s distribution centre. According to Shoprite, there are benefits to employing a centralised DC. A centralised DC removes the risk
and logistical costs that suppliers would otherwise incur in order to stock up retailers’ stores. Further, Shoprite is of the view that a centralised DC drives efficiencies along the supply chain. Although there are efficiencies that arise in employing a centralised DC, a supplier is at liberty to distribute their stock directly to their store if and as they please, there is no binding whatsoever.\(^{1171}\)

525. Woolworths does not charge a DC allowance.

**Category Management and Data Sharing Agreements**

526. Category management as an offering/service ranges from suppliers buying access to the sales data for their products, to a holistic discussion between the suppliers and retailers regarding the specific categories that suppliers operate in.

527. [K] sells access to its EPOS data, which provides the raw sales data for the relevant category.\(^{1172}\) Spar negotiates category management fees with suppliers who wish to participate in the category management process and receive the data relating to their products and categories. Spar submits that this is a voluntary contribution that varies between 0% and 2%.\(^{1173}\)

528. Shoprite has a broader category management program which enables the retailers to be more strategic around specific categories where they would want to go into a higher level of detail.\(^{1174}\) Shoprite submit that the program enables them to appoint specialists in each identified key category in the business. In Shoprite’s view, the program also affords them, as a retailer, the opportunity to be more customer-centric, as they are able to closely monitor these categories.\(^{1175}\) Shoprite notes that the category management program comes at no cost or fee for the suppliers that are involved in the program.

529. Category management research indicates the best way to layout a store, the best promotions to have, or the best ranges to stock that are ultimately beneficial to the shopper.\(^{1176}\) Category management is considered a good methodology for ensuring healthy collaboration between manufacturers and retailers.\(^{1177}\)

530. The larger suppliers appear to have a favourable view of category management and the data that is provided to them. The category management allowance is paid upfront for the supplier to have a seat at the table when the discussions happen.\(^{1178}\) This is mainly in an advisory capacity. The supplier gives suggestions on how best to run the retailers’ categories.\(^{1179}\)

531. However, concerns have been raised regarding the potential for category management to be abused by larger suppliers. One small supplier of cosmetic products informed the Inquiry that large suppliers sit on these category management committees and determine who can supply the market, and where goods are positioned. The concern amongst other smaller suppliers is that category management has the potential to allow competitors the opportunity to decide where their products can be situated.\(^{1180}\)

532. The Inquiry raised this issue with other suppliers. Most clarified that they do not meet with the retailer and their competitors at the same time. They will meet with the
Some suppliers explained that there was a concept of category captains, whereby a supplier whose categories were the best-selling would be the one to head that category. This obviously opened room for the suppliers to be biased towards their own products.

533. It appears that the wholesale channel is unlikely to receive a rebate for category management due to their perceived inability to provide reliable data on their customers’ purchases. [X] indicated that all retailers get the same percentage for category management. However, it does not pay category management rebates to buyer groups, as wholesalers as they tend to service traders and not the end consumer. [X]

534. The Inquiry has not found evidence that suppliers have been obliged to pay for category management and suppliers have chosen to opt out of it. For example, one supplier does its own category management planning internally. [X] Another supplier had been approached to contribute to category management with a retailer and on occasion pushed to purchase till slip data relating to their particular categories. However, the supplier resisted these requests as it considers itself too small to derive much value from such data. [X]

Merchandising services allowance

535. It was explained to the Inquiry that products on supermarket shelves are generally not placed there by supermarket staff but are often placed there by a suppliers’ team of sales and merchandisers. [X] Some retailers prefer to operate their own merchandisers (X) or use a third party merchandiser to stock the shelves (X).

536. Merchandising services are mostly in relation to packing, shelf health, and removing expired products. According to a supplier, it is a standard requirement to ensure that any product on offer is packed according to specific layouts, planner bags and the supplier ensures that there are specific requirements in terms of stock rotation. The visibility of products is high priority for national supermarket chains. [X]

537. According to one supplier, they prefer to use their own merchandisers, as opposed to paying the retailer to merchandise its products in their stores. [X] Some of the larger suppliers indicated that they outsource their merchandising services to a third-party company. [X]

538. While suppliers are not required to contribute towards a merchandising allowance, some suppliers believe that providing a merchandising service to a supermarket is obligatory. [X] However, a medium sized supplier indicated to the Inquiry that it recovers these merchandising costs in the selling price of its product. [X]

Volume / Growth Rebate

539. The growth rebate is a performance-based rebate and may be expressed in terms of a percentage or monetary value. For example, a supplier may agree with a retailer that if the retailer grows product sales by more than 10%, the supplier will provide a rebate of a particular magnitude. [X] Although the growth rebates are performance-linked, one large supplier considered the growth

1183 [X].
1184 [X].
1185 [X].
1186 [X].
1187 [X].
1188 [X].
1189 Submission by Spar at the Gauteng public hearing (open session) dated 15 December 2017, Transcript para 42.
1190 [X].
1191 [X].
1192 [X].
1193 [X].
1194 [X].
1195 [X].
rebate to be effectively a guaranteed rebate because when the retailer achieves the growth, the supplier is liable for making the payments. 1196

540. One large supplier stated that it generally offers growth rebates to wholesalers (wholesale channel).1199

541. Suppliers also claimed that growth incentive rebates are generally targeted at retailers who typically have lower sales volumes due to the types of customers that they target. For instance, Pick n Pay typically services higher LSM customers who tend to buy lower volumes of staple food products. However, because Pick n Pay has a large national footprint and high market share, suppliers would try to incentivise Pick n Pay to increasing their sales of lower value products.1198

542. Some suppliers claimed that although they provide volume-based rebates, they have steered away from such rebates. Some of the listed reasons for this decision was that suppliers’ products are experiencing growth on their own and that the retailers prefer to have guaranteed rebates for accounting reasons.1199

Store Opening Promotional Allowance

543. Most suppliers1200 stated that they do not contribute to store openings or store refurbishments allowances, with the exception of [X]. The suppliers only contribute an ad-hoc promotional allowance so that their products are part of the store opening promotions. For example, [X] and [X] stated that they do not contribute to store refurbishments, rather they provide an allowance for new store opening promotions. This is to ensure that when a store opens, they are represented1201 and their brands receive as much exposure as possible.1202

544. [X] submitted that store opening allowances are categorised as guaranteed payments, which are termed compulsory.1203 [X] submitted that they are required to contribute towards the opening of new stores as well as refurbishments done in the national supermarket chain stores. [X] is of the view that the store opening allowances are required by the retailers as an incentive for them to upgrade the store and make the shopping experience more pleasant in order to attract more consumers.1204

545. Shoprite receives refurbishments or store opening contributions from its suppliers as part of promotional support1205. Shoprite believes that the supplier also benefits when a new store opens, or when it is refurbished. The supplier benefits from the excitement of consumers for the new store and the suppliers are then given a platform to promote their products in the new store1206.

546. [X] submitted that store opening, and re-opening is a once-off fixed amount per opening of a new or a renovated store, to assist with merchandising of the suppliers’ products and the store-specific advertising.1207

547. Massmart has what it calls funding of stock, and this rebate is stretched into new store opening allowances where Massmart needs to stock the shelves of the store a long time before it is able to open the store and start trading. Massmart submitted that it is common practice in the industry for

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1196 [X].
1197 [X].
1198 [X].
1199 [X].
1200 These suppliers include, [X], [X], [X], [X].
1201 [X].
1202 [X].
1203 [X].
1204 The representative of [X] was however not sure of the rationale behind the allowance, see Submission by [X] at [X].
1205 Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 11, para 10.
1206 Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 11, para 10.
1207 [X].
suppliers to afford retailers extended terms when opening stores.\textsuperscript{1208}

548. Spar submitted that they do not require a store opening allowance from the suppliers but they do negotiate for the contribution with the suppliers as they will feature their products, and also because when they have a new store opening they undertake a lot of promotions and advertising.\textsuperscript{1209}

549. Woolworths does not charge new store opening promotional allowances.

\textbf{Swell Allowance}

550. The swell allowance is a contribution by suppliers towards damaged and returned products that are centrally distributed.\textsuperscript{1210} Shoprite explained that as a retailer, they make provisions within their business to cater for costs associated with any damages that might occur in light of the stock procured. Shoprite takes into account various other factors, apart from damages, and these factors include returns, wastages as well as the safe disposal of the supplier’s product.\textsuperscript{1211}

551. According to a large supplier, the value of a swell allowance is that rather than having to dispute every damage, a percentage is paid as an allowance. The swell allowance covers everything that is damaged between receipts and shelf but excludes expired stock and factory faults.\textsuperscript{1212}

552. However, a medium supplier that sells perishable products claimed that the swell allowance can be abused by certain retailers. According to [X] the challenge with the rejects/expired products is that some store managers order the products to fill the shelves not considering the demand, and when the products go off, they send them back to the supplier. This is an extra cost to the supplier and shifts the risk the retailer back to the supplier.\textsuperscript{1213}

\textbf{Other rebates}

553. The Inquiry also found that there are other rebates that are not common across all suppliers and retailers. These reflect some of the unique operational requirements of the various retailers from some the suppliers. These rebates are discussed further below.

\textbf{Drop Shipment Allowance}

554. A drop shipment discount is an allowance the supplier provides to a customer for ensuring that an account is paid through one channel as opposed to handling multiple accounts. Drop shipment discount will be most applicable to retailers who are able to centralise purchasing and payment systems.\textsuperscript{1214}

555. Spar submitted that it charges a drop shipment allowance to suppliers for administering its account in instances where the supplier makes its own deliveries to Spar stores. The drop shipment allowance can range from 2.5% to 6%.\textsuperscript{1215}

\textbf{Demand Planning Allowance}

556. According to [X] demand planning is applicable to fresh and general merchandise and it is charged to suppliers for services provided relating to demand planning to central distribution warehouses.\textsuperscript{1216}

\textbf{Training and Development Allowance}

557. [X] has a training and development allowance that it charges suppliers. The allowance is only applicable to fresh produce suppliers and it is used to train staff on fresh food preparation, presentation,
food handling, merchandising and related matters.  

Quality Assurance Allowance

558. Shoprite explained that a quality assurance allowance is a discount granted to retailers for the independent lab testing of the house products manufactured for the retailer’s private house brand.  

Margin Degradation Allowance

559. [X] submits that a margin degradation is an allowance paid to retailers for any reductions in their turnover (derived from selling [X] products) between the current financial year and the previous one. [X] submitted that in instances where there is a need for the allowance, it means that they either did not support the retailer, or their competitors lowered their prices, meaning that the prices of the market came down but [X]’s did not and thereby squeezing the margins of the retailer. According to [X], the retailers want to ensure that they, at least, make the same margins as the previous year. [X] further submitted that the rationale behind this allowance is to ensure that they as a supplier grow together with the national supermarket chain, whereas failure to do so could be bad for both businesses.  

Debt Net Margin

560. According to [X] debt net margin is the difference in the margins that the retailers make from different suppliers of similar products. This margin is a combination of what the retailers make on a supplier’s products at the back and at the front margin.  

Efficiency Allowance

561. [X] submitted that an efficiency allowance is the way in which it shares savings with the retailer. As an example, where previously [X] would have to deliver stock to the individual retailers across South Africa, if a retailer centralises and has their own distribution centre, the savings that [X] receives from not having to go to the different locations is shared with the retailer in question. Another example is that when a retailer orders a full truck, [X] shares the efficiencies. [X] incentivises retailers to order a full truck, and in order to make it more efficient savings are shared with the retailer.  

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1217  Ibid.  
1218  Submission by Shoprite at the Gauteng public hearing (open session) dated 1 November 2017, Transcript p. 15, ls. 6 - 9.  
1219  [X].  
1220  [X].  
1221  This appears to be similar to a Distribution Allowance.  
1222  [X].
### 17.3 DESCRIPTION OF REBATES BY DIFFERENT SUPPLIERS

<table>
<thead>
<tr>
<th></th>
<th>[✗]</th>
<th>[✗]</th>
<th>[✗]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basic Rebate</strong></td>
<td>According to [✗] every manufacture is obliged to have a guaranteed rebate. The Guaranteed Rebate would be part of a package which the retailer then would agree to list your products and your categories. Guaranteed rebate should cover the ability to have your products represented in their store, because they say the store is their real estate. That guaranteed rebate is predicated on obviously a number of factors like I have said value given for base rebates are expressed as a percentage of turnover. The percentage is fixed. The turnover is variable and from this perspective [✗] needs to guarantee the payment of the base rebates.</td>
<td>Guaranteed Rebate is a percentage that is given as rebate or a discounter tariff from R1 of business. This is for the ability to so business. The guaranteed rebates that [✗] offers its customers range between [✗]% and [✗]% depending on the product category in question</td>
<td></td>
</tr>
<tr>
<td><strong>Listing Fees</strong></td>
<td>For [✗] listing fee would be part of an advertising or promotion allowance because it is not an ongoing fee. There are moments where you may walk away from a listing fee. They are occasions when a retailer may walk away from demanding a listing fee. So, we would separate it out from our guarantee.</td>
<td>Listing Fees are allowances offered to customers specifically for new products.</td>
<td>[✗] does not operate with listing fees, what they do similar to listing fees is the support of new products, which they call [✗]. This may include placing it on adverts and putting it on display. The [✗] is separate from the guaranteed rebates.</td>
</tr>
<tr>
<td><strong>Settlement Discount</strong></td>
<td>[✗] finance department deals with settlement discounts based on interest rates, cost of capital etc. It’s a commercial skill.</td>
<td>Settlement Discount is a discount that is paid to [✗]'s customer for incentivising earlier settlement of their accounts. [✗] is not obligated to pay settlement discounts, and at the moment it does not have any settlement discounts with its customers.</td>
<td>[✗] has Settlement Discounts for its customers, in Modern Trade they give [✗]% to [✗] to incentivise them to pay within 14 days of the invoice. While in Traditional Trade the buyer groups get [✗]% for settling 14 days from weekly statement and [✗] gets [✗]% for 30 days.</td>
</tr>
</tbody>
</table>
**Growth Incentive**

Growth Incentive ([X]) is an allowance all [X] customers are entitled to receive for their ability to grow their sales of [X] products in their particular market. Growth Incentive is an allowance that is performance based and may be expressed in terms of a percentage or monetary value. Although the growth rebates are performance linked, [X] submitted it is a guaranteed rebate because when the retailer achieves the growth, [X] is liable for making the payments.

**Distribution Allowance**

[X] has a Distribution Allowances for distributing products and services to a warehouse of a retailer, and the retailer then delivers to its respective stores. Wholesalers also qualify for the distribution allowance provided they are audited and qualify. [X] is obligated to provide distribution services to ensure that its products reach the stores. In addition to the distribution, [X] also needs to ensure that the products are unpacked and clearly stacked onto the shelves. [X] is a savings that [X] shares with its customers for efficient services. For example, where [X] can distribute to a centralised DC and not individual stores it shares the savings with its customer. The Traditional Trade customers may also receive the efficiency allowance, provided they meet a set of published criteria.

**Advertising Allowance**

[X] offers its customers an Advertising Allowance, it does, however, monitor to ensure it receives the number of advertisements it pays for. Buyer Groups also get the advertising rebate. [X] pays Advertising Allowance, it uses the previous year as a base. [X] expects to receive the same amount and types of advertisements. [X] also contributes to a non-obligatory [X] for the house brands it supplies some national supermarkets, [X] views this as a form of an advertising allowance. Advertising Allowance is money given to the retailers to advertise [X]'s products on their media channels such as on television, newspapers, radios and broad sheets. [X] invests at different levels on the advertising allowance depending on the effectiveness of the retailer, and their ability to communicate with consumers. Modern Trade has direct contact with the end consumer, [X] therefore invests more heavily in Modern Trade advertising than in Traditional Trade.
| **Category Management Allowance** | **[X]** contributes towards Category Management initiatives focus on data sharing, where [X] shares research with the retailer. This allowance is paid upfront in order to get a seat at the table when the discussions happen. This is mainly on an advisory capacity. For [X] to participate in the category management process it pays between [X]% and [X]% of their nett invoice value. All Modern Trade customers get the same percentage for category management, for Traditional Trade, it is only applicable to [X]. [X] doesn’t pay category management rebates to buyer groups. |
| **[X]** provides an allowance for store opening promotions. However, it does not contribute to store renovations. [X] has guidelines for store opening allowance. | **Store Opening Allowance** |
| **[X]** prefers to use its own merchandisers, as opposed to paying the retailer to merchandise [X] products in their stores. [X] outsources its merchandising services to a third party company. | **Sales and Merchandising Services are mostly about packing, shelf health, and removing expired products. Sales and merchandising services are obligatory, [X] provides these services itself or through third parties.** |
| **[X]** does not pay retailers any Merchandising Allowance, they contract a third party and provide field sales services to the retailers based on a return on investment model. [X] will consider all the stores in South Africa and allocate resources based on foot traffic, size, scale and position, and will then provide service to the stores in the proportion that gives them a return on investment. | **[X]** |

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**Category Management**

Category Management is one of the range of services offered by the retailer to the supplier, where the retailer provides the sales data that goes through their tills to suppliers. [X] pays for the data because it is the best data you can get. [X] is of the view that category management is a good methodology for ensuring a healthy collaboration between manufacturers and retailers.
<table>
<thead>
<tr>
<th>Allowance Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drop Shipment Discount</td>
<td>A drop shipment discount is slightly different from a settlement discount in</td>
</tr>
<tr>
<td></td>
<td>that a supplier discounts a customer for ensuring that an account is paid</td>
</tr>
<tr>
<td></td>
<td>through one channel as opposed to handling multiple accounts. Drop shipment</td>
</tr>
<tr>
<td></td>
<td>discount will be most applicable to customers who are able to centralise</td>
</tr>
<tr>
<td></td>
<td>purchasing and payment systems.</td>
</tr>
<tr>
<td>Margin Degradation Allowance</td>
<td>Margin Degradation is an allowance paid to retailers for any reductions in</td>
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<tr>
<td></td>
<td>their turnover (derived from selling products) between current financial</td>
</tr>
<tr>
<td></td>
<td>year and the previous one. [K] is of the view that the rationale behind this</td>
</tr>
<tr>
<td></td>
<td>allowance is to ensure that they as a supplier grow together with the national</td>
</tr>
<tr>
<td></td>
<td>supermarket chain, whereas failure to do so could be bad for both businesses</td>
</tr>
<tr>
<td>Debt Net Margin Allowance</td>
<td>A debt net margin is the difference in the margins that the retailers make</td>
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<tr>
<td></td>
<td>from different suppliers of similar products. This margin is a combination</td>
</tr>
<tr>
<td></td>
<td>of what the retailers make on a suppliers' products at the back and at the</td>
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<tr>
<td></td>
<td>front margin.</td>
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<tr>
<td>Swell Allowance</td>
<td>Swell Allowance is an allowance given to customers which covers the cost of</td>
</tr>
<tr>
<td></td>
<td>destroying damaged products and the cost of the credit notes etc. that apply</td>
</tr>
<tr>
<td></td>
<td>to that product. It's very fact based value given for value received.</td>
</tr>
<tr>
<td></td>
<td>[K] gives retailers credit for those products that expire. [K] submits that</td>
</tr>
<tr>
<td></td>
<td>once a product has expired, it is their responsibility as a supplier to</td>
</tr>
<tr>
<td></td>
<td>remove the product from the shelf.</td>
</tr>
<tr>
<td></td>
<td>In Modern Trade [K] has a Swell Allowance which covers damaged products,</td>
</tr>
<tr>
<td></td>
<td>the damage covered can happen between when the customer takes receipt of</td>
</tr>
<tr>
<td></td>
<td>the product and when it gets to the shelf. This excludes expired stock and</td>
</tr>
<tr>
<td></td>
<td>factory faults.</td>
</tr>
</tbody>
</table>
17.4 DISAGGREGATED MILK (FRESH AND LONG-LIFE PRODUCTS) REBATE ANALYSIS – DIFFERENTIAL TREATMENT BETWEEN RETAILERS AND BUYER GROUPS

562. The Inquiry identified milk, as opposed to other dairy products such as cheese and yogurt, as it is considered to be a staple food and an essential source of protein. Milk is broadly divided into fresh milk and long-life milk. Based on the information provided by the milk processors, the Small Business Survey and site visits to numerous township and rural areas, the Inquiry determined that both fresh and long-life milk products are sold in supermarkets while spaza shops typically sell long life milk because of its longer shelf-life, without need for refrigeration.

563. The Inquiry received submissions from [K], [K], [K], and [K], which are considered to be some of the largest milk product manufacturers in South Africa. These are collectively referred to as the milk processors. The milk processors are multi-product firms, selling various types and sizes of dairy products. [K] and [K] sell both fresh milk and long-life milk, while [K] only sells long life milk and [K] only sells fresh milk.

564. The data suggests that long life milk is the more preferred option in South Africa. The Inquiry decided to analyse both fresh and long life milk, because even though long life is the most sold product, fresh milk is considered an important product. The most popular bottle size for fresh milk is the 2 litre bottle. Long-life milk is typically sold in the 1 litre format. Accordingly, the Inquiry focussed its analysis on the 2 litre fresh milk and 1 litre long-life products.

565. The Inquiry requested each milk processor to provide the revenue and volumes sold to customers making up 80% of the milk processors business. This was done to identify the major customers as well as any other customer that makes a significant contribution to the milk processor’s business.

566. Figure 17.1 and Figure 17.2 below show the volume and value of milk products sold by each milk processor to each of its customers from 2015 to 2017.

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1223 [K].
1224 [K].
1225 [K].
1226 [K].
1227 The volumes for [K] were not submitted to the Inquiry.
567. The top left of Figure 17.1 above illustrates the volumes of milk that were purchased by [X]'s customers for the period 2015 to 2017. [X], [X] and [X] are consistently the largest retail customers for [X]. However, wholesalers (which also includes [X]) are consistently purchasing similar quantities collectively, even if not individually. The top right of this figure depicts the volumes of milk purchased by the customers of [X]. Given the focus on long-life milk only at [X], the majority of its sales go through the wholesale channels, including [X], even if individually the large national retail chains may be the larger customers.

568. For [X] the volumes are depicted on the bottom left of Figure 17.1. It would seem that the large growth of [X] volumes has been on the back of increasing retail sales, which means that [X], [X], [X] and [X] are the top individual milk purchasers from [X] e. The smaller presence in the wholesale channel may be a reflection of a focus more on fresh milk relative to UHT milk.

569. Figure 17.2 above illustrates the revenue contributed by each of the top 10 customers of the milk processors for the period 2015 to 2017.

570. As expected, the revenue contributions above exhibit a similar pattern to that observed in respect of volume contributions (shown in Figure 17.1).
571. Even though the Inquiry did not consider the volumes of $[\mathfrak{X}]$, the revenue shows that $[\mathfrak{X}]$ followed by $[\mathfrak{Y}]$ and $[\mathfrak{Z}]$ are consistently the highest revenue contributors individually, but the collection of other customers still contributes more than any single retailer collectively.

572. The volume and revenue data of the milk processors showed that the three national supermarket chains, namely, $[\mathfrak{A}]$, $[\mathfrak{B}]$, and $[\mathfrak{C}]$, are consistently amongst the largest individual customers of the milk processors. However, it is noteworthy that the wholesale channel and other distributors also make up a significant combined contribution to the revenue for $[\mathfrak{X}]$, $[\mathfrak{Y}]$ and $[\mathfrak{Z}]$.

573. Taking the above into account, we now turn to assess the rebates paid by each of the different milk suppliers.

Assessment of the 1lt and 2lt milk rebates paid by $[\mathfrak{X}]$

574. $[\mathfrak{X}]$.

575. Figure 17.3 depicts the volumes and revenues contributed by $[\mathfrak{X}]$’s customers in 2017.

576. $[\mathfrak{X}]$.

577. $[\mathfrak{X}]$.

578. $[\mathfrak{X}]$.

579. $[\mathfrak{X}]$.

580. $[\mathfrak{X}]$.

581. Figure 17.4 above depicts the aggregated rebates that $[\mathfrak{X}]$ offered to some of its customers.$[\mathfrak{X}]$.

582. Figure 17.5 depicts some of the individual rebate categories that $[\mathfrak{X}]$ offered to some of its customers for the 2-litre full cream milk in the period 2017.

583. $[\mathfrak{X}]$.

584. $[\mathfrak{X}]$.

585. $[\mathfrak{X}]$.

586. $[\mathfrak{X}]$.

587. $[\mathfrak{X}]$.

588. Figure 17.6 shows the aggregated rebates that $[\mathfrak{X}]$ offered to some of its customers for the 1 litre long life milk in the period 2017.

589. $[\mathfrak{X}]$.$[\mathfrak{X}]$.$[\mathfrak{X}]$.

590. Figure 17.7 depicts the individual rebate categories that $[\mathfrak{X}]$ offered its customers for its 1 litre long life milk in 2017.

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1228 As it was not submitted to the Inquiry.
1229 $[\mathfrak{X}]$.
1230 $[\mathfrak{X}]$. 
<table>
<thead>
<tr>
<th>Figure 17.5:</th>
<th>[X]’s 2 litre fresh milk individual rebates by customer for 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image1.png" alt="Image" /></td>
<td>Source: Inquiry’s calculations based on data submitted by [X]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Figure 17.6:</th>
<th>[X]’s 1 litre long life milk aggregated rebates by customer for 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image2.png" alt="Image" /></td>
<td>Source: Inquiry’s calculations based on data submitted by [X]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Figure 17.7:</th>
<th>[X]’s 1 litre long life milk individual rebates by customer for 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image3.png" alt="Image" /></td>
<td>Source: Inquiry’s calculations based on data submitted by [X]</td>
</tr>
</tbody>
</table>
Assessment of the 1lt milk rebates paid by [X]

591. [X].
592. [X].
593. [X].
594. [X].

Assessment of the 1lt milk rebates paid by [X]

595. Figure 17.8 shows the rebates paid by [X] to its four largest customers for the 1 litre [X] UHT milk product.
596. [X].

Figure 17.8: [X]UHT Milk 6 X 1 litre aggregated rebates in 2017

Source: Inquiry’s calculations based on data submitted by [X]

Assessment of the 2lt milk rebates paid by [X]

597. [X].
598. Figure 17.9 sets out the rebates paid by [X] to its top customers.
599. [X].

Assessment of the 2lt milk rebates paid by [X]

600. [X].
601. [X].1231 [X].
Assessment of the 1lt milk rebates paid by [X]

602. Figure 17.11 illustrates the aggregated rebates that [X] offered its customers for the 1 litre long life milk in 2017. [X].

603. [X].

Evidentiary insights from rebates paid by milk producers

604. As may be clear from the analysis above, the premise of the Inquiry’s approach was that the customers that contribute the highest volumes and revenue would be considered important customers to the suppliers of FMCG. As such, by virtue of their size, these customers would be expected to possess more significant negotiating power. Accordingly, the more significant negotiating power possessed by these customers would manifest itself in the form of better trading terms from their suppliers. The Inquiry found that the national supermarket chains are primarily the largest and most important individual customers of all the milk processors and this is reflected in the largest individual rebates provided.

605. The Inquiry found that there were instances in which some customers who purchased and contributed more revenue (than others) were not able to extract as much favourable trading terms from their suppliers, for example, [X].
606. However, the wholesale channel collectively was often of more significance than any individual retailer but received lower rebates because each individual buyer group purchased a smaller volume. More importantly, wholesalers were effectively excluded from certain rebates focused on supermarket costs or benefits because they are not vertically integrated. Given that the independent retailers that depend on the wholesalers also incur many of these costs and yet do not enjoy rebates related to them, such retailers are likely facing a competitive disadvantage.

17.5 DISAGGREGATED SPARKLING SOFT DRINK PRODUCTS REBATE ANALYSIS – DIFFERENTIAL TREATMENT BETWEEN RETAILERS AND BUYER GROUPS

607. The Inquiry determined that sparkling soft drink products were popular products purchased by end-consumers, in supermarkets and spaza shops. The Inquiry received submissions from [X] and [Y].1232 The soft drink manufacturers are multi-product firms, selling various flavours of sparkling soft drink products.

608. [X] has [Y] distinct brands of flavoured sparkling soft drinks sold in South Africa.1233 As expected, [X] largest brand is [Z] ([A]) which contributed on average [B]% to [X]'s soft drink sales.1234 The highest selling (in terms of volumes and revenue) ([X] sparkling soft drinks product is the 2-litre [X] in a six pack at [C]%. 1235

609. [X] has [Y] distinct brands of sparkling soft drink products (including mineral water and soda). Similar to [X], [X]’s highest selling brand is [X] ([A]).1236

Assessment of the 2lt [X] rebates paid by [X]

610. The Inquiry requested the sparkling soft drink manufacturers to provide the revenue and volumes sold to customers making up 80% of their business. This was done to identify the major customers as well as any other customer that makes a significant contribution to the business.

611. [X].

612. Table 17.1 below shows [X]’s top ten customers for both of its categories and their relative contribution in terms of both volume and value.

Table 17.1: Breakdown of [X]’s Customers by Volume and Value for 2017

Source: [X] submissions

1232 It is noteworthy that the Inquiry did not enjoy the benefit of insights and information from [X] as the firm failed to make submissions in response to the Inquiry’s information requests.
1233 These brands can be further separated by the sugar content (eg. [Y]).
1234 [X].
1235 [X].
1236 [X].
619. We can also take a more disaggregated view from Figure 17.13 above, which compares the rebates that are given to all or most of the [X] customers and those that appear to only be offered to the national supermarkets.

1237 [X].
1238 [X].
1239 [X].
1240 [X].
1241 [X].
Table 17.2: [X]'s top 20 customers by revenue 2015 - 2017

Source: [X] submissions

Figure 17.14: Comparison of rebates to [X]'s largest customers in 2017

Source: [X] submissions

Figure 17.15: [X]'s rebates by category (2017)

Source: [X] submissions
Assessment of the 2lt \([\times] \) rebates paid by \([\times] \)

627. \([\times] \).
628. \([\times] \).
629. \([\times] \).
630. \([\times] \).
631. \([\times] \).
632. \([\times] \).
633. \([\times] \).
634. \([\times] \).
635. \([\times] \).
636. \([\times] \).

Evidentiary insights from rebates paid by software drink manufacturers

637. The software drink manufacturers tend to have a larger pool of customers compared to the dairy processors. While \([\times] \) largest customers are the national supermarkets, the company still derives a significant proportion of business from wholesale and smaller businesses. \([\times] \) is primarily focused on selling to wholesale customers.
638. Buyer groups do not appear to play a significant role in purchasing soft drinks for their members. Only \([\times] \) is identified as a large customer of \([\times] \) and \([\times] \). \([\times] \) obtain rebates which are slightly higher than some of the soft drink processors largest customers;
639. Both soft drink manufacturers appear to provide more favourable rebates to the national supermarket chains.
640. Despite \([\times] \) not relying on national supermarkets to sell its product, the company still provides higher rebates to the national supermarkets than businesses in the wholesale channel. This may be due to significant buyer power as a result of controlling access to the lucrative retail channel or the cost of doing business with the national supermarkets.
641. It also appears that the non-integrated nature of independent retailers is a significant disadvantage for them as they do not qualify the types of rebates that the supermarket retailers benefit from as a result of servicing directly to the end consumer.

17.6 DISAGGREGATED WASHING POWDER REBATE ANALYSIS – DIFFERENTIAL TREATMENT BETWEEN RETAILERS AND BUYER GROUPS

Assessment of rebates paid by \([\times] \)

642. Figure 17.16 below sets out the volume and revenue contributions to \([\times] \)’s handwashing powder business by its top ten customer for same.

Figure 17.16: \([\times] \)’s \([\times] \) 2kg handwashing powder volumes (in kg) and revenue contribution (in Rand) from top 10 customers for period 2017

\([\times] \)

Source: Inquiry’s calculations based on data submitted by \([\times] \)
Figure 17.17: [X]'s [X] 2kg handwashing powder aggregated rebates and aggregate rebates excluding distributors and Tally rebate by customer for 2017

Source: Inquiry’s calculations based on data submitted by [X]

Figure 17.18: [X]'s [X] 2kg handwashing powder individual rebates by customer for 2017

Source: Inquiry’s calculations based on data submitted by [X]

643. [X]^{1242}[X]^{1243}[X].

644. [X].

645. [X].

646. [X].

647. [X].

648. [X].

649. [X]^{1244}[X].

650. [X]^{1245}[X].

651. [X].

652. [X].

653. [X].

654. [X].

655. [X].

656. [X]^{1246}[X]^{1247}.
Assessment of rebates paid by [X]

657. Figure 17.19 above show the volume and revenue contributions by each of [X] top ten customers for the 2017 period.

658. [X].

659. [X].

660. [X].

661. [X]. Figure 17.20 above sets out the aggregated rebates as well as some individual rebates categories paid by [X] to its top ten customers in 2017.

662. [X].

663. [X].

664. [X].

665. [X].
Assessment of rebates paid by [X]

667. As previously indicated, the Inquiry first establishes the volume and revenue contributions by the various customers serviced by the handwashing powder manufacturers to determine which customer groups are likely to receive the most rebates. Depicted above in Figure 17.21 are the volumes and revenues of [X] washing powder contributed by [X]’s top 80% customers in 2017.

668. [X].

669. [X].

670. [X]\textsuperscript{1258}, [X]\textsuperscript{1259} and [X]\textsuperscript{1260} [X].

671. [X]\textsuperscript{1261} [X].

\[\text{Figure 17.21: } [X] \text{ handwashing powder volumes (in kg) and revenue (in Rands) for 2017}\]

\[\text{Source: Inquiry’s calculations based on data submitted by } [X]\]

\[\text{Figure 17.22: } [X] 2kg hand washing powder aggregated rebate and individual rebates by customer for 2017\]

\[\text{Source: Inquiry’s calculations based on data submitted by } [X]\]
672. [X].
673. [X].
674. [X].
675. [X].

Evidentiary insights from rebates paid by handwashing powder suppliers

676. As may be clear from the analysis above, the premise of the Inquiry’s approach was that the customers that contribute the highest volumes and revenue would be considered important customers to the suppliers of FMCG. As such, by virtue of their size, these customers would be expected to possess significant negotiating power. Accordingly, the significant negotiating power possessed by these customers would manifest itself in the form of better trading terms from their suppliers.

677. The Inquiry found that the national supermarket chains were the largest and important customers (based on volume and revenue contributions) for most suppliers of handwashing powder, with the exception of whose business is largely conducted through the wholesale channel.

678. The Inquiry found that there were instances in which the largest and important customers (these, in most instances, being the national supermarket chains) were able to extract favourable trading terms from their suppliers. However, the Inquiry also found instances wherein the largest customers did not enjoy the benefits of favourable trading terms relative to the national supermarket chains. These customers were largely the buyer groups that operate in the wholesale channel.

679. The Inquiry noted that in those instances where national supermarket chains appeared to be able to extract more favourable trading terms, notwithstanding the fact that they were not deemed the largest and important customers, it was difficult to divorce such behaviour from the exercise of buyer power.

680. The Inquiry found differential treatments in the way the rebates are offered. The differential treatment was evident in the rebate and in the quantum offered. For example, with the basic rebate, the Inquiry found that even though all customers of the three washing powder suppliers, that were considered in the analysis, received the basic rebate, the quantum differed significantly between the customers and as well as between the suppliers themselves. gave out the highest rebate quantum, followed by and then . The expectation was that would grant the highest rebates as a result of its handwashing powder being a premium brand, targeted at the higher LSMs and primarily sold through the national supermarket chains (evidenced by their top 80% revenue contributing customers). ’s whose product is quite the opposite of , whose most significant route to market is the wholesale channel, offers rebates higher than those of . This may be indicative of the bargaining dynamics at play between the different size suppliers of the same product categories and their customers. It may be that as a result of size compared to and considering the basket of products manufactured by , they were likely to be at a better negotiating position. For it may reflect the recent introduction of its brand and the need to achieve promotional opportunities and acceptance from the supermarkets in order to build market share, even though is a large multinational with a portfolio of products. The importance of supermarkets for brand development is what gives them additional bargaining power.
681. When considering other rebates such as the DC allowance rebate and the swell allowance rebate not all customers receive the rebate even though on the face of it, they qualify. The second issue is that even between customers who do receive these rebates the quantum is not the same. The wholesale channel customers generally do not receive the majority of these rebates and even in instances where they receive them, they receive a much smaller quantum than the national supermarket chains.

682. The Inquiry is thus of the view that these rebates that are mostly offered to the national supermarket chains reduce their costs of placing the products on shelf. The costs of the wholesale channel customers are not reduced to the same extent and are still incurred by independent retailers and spaza shop owners ultimately, which may impede these retailer’s ability to compete and grow.

17.7 DISAGGREGATED COOKING OIL REBATE ANALYSIS - DIFFERENTIAL TREATMENT BETWEEN RETAILERS AND BUYER GROUPS

Assessment of rebates paid by [X]

683. Figure 17.23 above illustrates the volumes (of [X] 2L cooking oil) purchased and revenue contributed by each of [X]’s top 10 customers in 2017.

684. To the left of Figure 17.23 are the volumes which shows [X] purchased the largest volumes, followed by [X], [X], [X], [X], [X], [X], [X] and lastly [X].

685. [X].

686. Figure 17.24 below illustrates the aggregated rebates and the individual rebate categories that [X] gave to its top 80% revenue contributing customers in 2017 for its [X] cooking oil.1269

687. [X]1270 [X]1271 [X]1272 [X].

688. [X].1273
Assessment of rebates paid by \[\times\]

689. \[\times\].
690. \[\times\]. \[\times\].
691. \[\times\]. \[\times\]. \[\times\].

Figures 17.24 and 17.25 depict the aggregate rebates and individual rebate categories that \[\times\] offered to its top 80% revenue contributing customers in 2017. The aggregate rebates are illustrated on the top left of Figure 17.26.

693. Figure 17.26 depicts the aggregate rebates and individual rebate categories that \[\times\] offered to its top 80% revenue contributing customers in 2017. The aggregate rebates are illustrated on the top left of Figure 17.26.

694. \[\times\].
695. \[\times\].
Assessment of rebates paid by \[\text{[K]}\]

Evidentiary insights from rebates paid by cooking oil suppliers

698. The customers purchasing the highest volumes of cooking oil would be expected to contribute the highest revenue. Such customers would be considered important customers to their suppliers by virtue of their size, and hence more likely to have better negotiating power and accordingly, better trading terms relative to customers contributing less.

699. The Inquiry found that the national supermarket chains were the largest and important customers for some of the cooking oil suppliers (i.e. \[\text{[K]}\]), on the basis of volume and revenue contributions. However, for other suppliers (\[\text{[K]}\] and \[\text{[K]}\]) the wholesale channel made up a larger proportion of their business.

700. Nevertheless, the national supermarket chains invariably received the highest rebates even where they were not the largest customers. This was also the case compared to smaller retail chains which contributed greater volume than the larger national chains.

701. The Inquiry also found instances where not all customers are granted rebates, even rebates such as swell allowance which are designed for reimbursing customers for damaged and returned products. Similar to the washing powder analysis, the wholesale channel customers are generally the customers not receiving most rebate categories, and even in instances where they receive specific rebates it is normally a much lower quantum compared to national supermarket chains. This is reflective of their buyer power.
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