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Competition Act, 89 of 1998

MEETING WITH SHOPRITE OPEN SESSION

DATE: 2017-11-01

VENUE: CSIR PRETORIA

CHAIRPERSON: Ms L Mtanga

COMMISSION MEMBERS

Ms S Grimbeeck : Principal Economist
Mr T Khumalo : Senior Legal Counsel
Prof Halfon Cheadle : Apology / Absent

ON BEHALF OF SHOPRITE

Mr L Kuschke
Mr Du Preez
Mr Langenhoven
Ms Krushe
Mr Van der Merwe
Mr D van der Spuy



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In the hearing of:

COMPETITION COMMISSION AND SHOPRITE

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PROCEEDINGS ON 1 NOVEMBER 2017

CHAIRPERSON: Good morning, ladies and gentlemen, welcome to the Grocery Retail Market Inquiry public hearings that are being held in Gauteng in Pretoria. My name is Lulama Mtanga, I will be chairing these public hearings, specifically just these ones.

I did explain yesterday and the day before that the chairperson of this inquiry is Professor Halton Cheadle, as you may know, however, he is not able, he has not been able to join us this week due to circumstances beyond his control and our control or the
10 Commission's control.

Without further ado I would like to hand over to you, oh, sorry, sir, before I do so I will ask my colleagues to introduce themselves, thereafter I will ask the delegation from Shoprite to introduce itself and then you may proceed with your, and then just indicate to us how you intend to proceed because different stakeholders have come before us and have had a different plan, so we never know how, which way to go, whether it is us asking questions or you actually have a presentation to make, and then we take it from there, however, I do understand that you would like us to first start
20 with the trade term questions, possibly market definition, but we think we will leave that for last.

The order of our questions from our side, we have decided that we will start with the supply related questions, those are your trading terms, as per your request, and then go into exclusive leases, and then if we have got any time left, we will then deal with market definition questions. Over to you.

MS GRIMBEEK: Good morning, my name is Sunel Grimbeek, I am the principal economist at the Commission, and I am leading the technical team that is working on the grocery retail inquiry.

30 MR KHUMALO: Good morning, my name is Thabo Khumalo, I am the senior legal counsel working on the retail inquiry.

MR KUSCHKE: Morning, Chair. Shall I go on the record first? My

name is Leon Kuschke, I am counsel practicing at the Cape Town Bar.

Just to explain briefly what my role is today and the reason for my presence, the panel may be aware that there are pending proceedings before the Competition Tribunal between Massmart and Shoprite, together with two other retailers, Pick'nPay and Spar, so there is a level of sensitivity, if I can put it that way, about the questioning around exclusive leases, and I am just here to watch, as it were, in regard to possibly compromising those proceedings, but I do not intend to sit and object, I might just whisper to my colleagues if I feel that it may be a territory where we would defer discussion, if that is in order, so I am instructed by Werksmans from Cape Town.

Ms Krushe is also present at the hearing, and then we have further representatives from Shoprite's Legal Department, Mr Du Preez and Mr Langenhoven, who are also present. The presentation will be undertaken by Mr Van der Merwe, who is the head of the Property division of Shoprite, Mr Van der Spuy, who is in the position of Supplier Relationship Executive, and the intention is to do a very short introductory presentation from both of these gentlemen, to be followed by questions as the panel pleases moving from there, and perhaps it fits well, with respect, if I may put it that way, to leave the market definition for the end because that may well be a bone of contention in relation to the pending proceedings, so thank you, that is my, that is my presence for today. So perhaps if we can then hand over to Mr Van der Spuy?

CHAIRPERSON: Before you proceed, I just want to note that on what you have said regarding what may be sensitive or concerning *sub judice* matters on the tribunal, relating to the tribunal matter, we do, we can deal, if there are any we can deal with those in a closed session.

We do hope, though, that we will not, we are hoping that none of

the questions that will be asked will be so directly affecting that matter. We are hoping so, but should that be the case, we can just make note of all the answers that you cannot answer in a public session, and then we will then deal with them in a closed session, thank you.

MR KUSCHKE: As you please.

CHAIRPERSON: Mr Van der Spuy, were you going to introduce yourself or are you going to proceed with your presentation?

10 MR VAN DER SPUY: I will introduce myself and then go onto the presentation, if that is fine?

CHAIRPERSON: Okay, and then I also just want to say, when we ask our questions, we are, it is not a very formalistic kind of setting, so feel free to have any member of your delegation answering questions, so when we do ask questions or clarification questions that you may not be able to answer as the person making the main presentation, feel free to defer to your colleagues for answers.

MR VAN DER SPUY: Noted, thank you.

CHAIRPERSON: Thank you.

20 MR VAN DER SPUY: Alright, my name is Daniel Van der Spuy, I will just introduce myself, sketch a bit about my role and where my role fits within the buying organisation at Shoprite, and then I will address a few matters, I will address the matters that we believe cover the questions that we received upfront. You are welcome to stop me at any point for clarification, or if you want to jump into questions.

I have been employed for Shoprite about almost six years now, I am a chartered accountant by profession but I moved into the retail sector when I joined Shoprite, initially in the Operations
30 Department and Projects Department, and then now for almost three years in the buying, in our home office, buying, supporting. My role there is Supplier Relationship Executive and, ja, as I said,

it forms part of the home office support team.

So my responsibilities there, amongst others, are optimising the buying functions of the Shoprite Group, this includes supporting the overarching business strategies, holistic improvement of business practices and delivering strategic initiatives with the view of optimising our buying processes, as well as our ways of working with suppliers.

10 Just to give you some context around how our buying around groceries works. Within South Africa there are the six teams, of which our home office support team is one team, and then we have got give decentralised buying teams, which more or less represents Provinces across the country, so we have a buying team in the Western Cape, Eastern Cape, Kwa-Zulu Natal, the Free State and in Gauteng.

20 So these divisional buying teams serve the main supermarket banners of the Shoprite Group which most people are aware with, that is Shoprite, Checkers and Usave banners, and in some instances a buyer could serve both the Shoprite and Checkers banners, and in other instances a buyer could be only buying for the Checkers, a Shoprite or a Usave banner exclusively, it depends on the situation. So the responsibility of these buying teams is primarily the day-to-day activities that include negotiating the cost prices with suppliers, the ranging of products to stores and determining the sell prices and planning and promotional activities for products within their portfolio. These buying teams are also responsible for managing the relationships with suppliers in matters pertaining to their divisions.

30 The home office support team supplies system and master data support, for example, the listing of venders or the adding of new items, it negotiates the national trade terms, which I will address later on as a lot of your questions were referring to those trade terms, we also guide and support the divisional buying operations,

we facilitate national negotiations and provide strategic direction, and on an ongoing basis we performance manage the suppliers, so we look at specific performance indicators, such as the suppliers' service levels into Shoprite, we analyse their performance within specific categories, we try to identify opportunities for efficiencies and then we align on overarching strategies for particular banners, brands or seasons and categories.

Our home office support team is also responsible for managing the relationship with suppliers and dealing with them in matters that
10 affect the country as a whole, or where it is required to intercede on behalf of any of the divisional buying groups.

I will now just speak about the trade term agreements, which many of your questions referred to. So prior to purchasing any product from a supplier, Shoprite enters into a trade term agreement with a supplier and agrees on the terms and rebates and allowances, as well as the method and frequency of payments. These are renegotiated with suppliers annually, and this approach gives certainties to suppliers and Shoprite as to the terms of trade over and above what will be negotiated on an ongoing basis in the
20 divisions. Suppliers therefore have an upfront visibility of rebates before they enter into cost and promotional negotiations with the divisions. The terms are applied to all purchases from that suppliers, irrespective of the actual cost price which is negotiated by each of these divisions, and all our suppliers are treated the same in this respect.

I will not deal with specific items on our trade term agreements, for which you have received samples, and I will just explain the background around them. The first one being the "Basic Rebate". This refers to a contribution by the suppliers to Shoprite's cost of
30 doing business, for example, Shoprite has to incur the upfront costs of purchasing the stock before it is sold, maintaining inventory, financial and business-to-business IT systems, provide

for receiving processes at all the sites to which stock will be delivered, the safe storage of stock and making these products available to be bought by customers in an inviting environment. With the limited space available in our stores, the inclusion of every product comes with an opportunity cost of another possible product, or having to remove a similar product from our offering. This facilitates Shoprite being able to offer the lowest prices to customers, while still maintaining an accurate record, safe custody, due care and considered value of products in a world class shopping environment.

I will move on now to our “Settlement Terms Discount”, to which there was a specific question as well. This relates to the payment terms negotiated in respect of how quickly and frequently a supplier requires payment. Various suppliers have different cash flow requirements and Shoprite accommodates them in this regard at a fee.

The “Growth Incentives”, which the Commission also highlighted, I would like to explain. This is not necessarily with every supplier but only where it is suitable for both parties to negotiation. This contribution incentivises both the supplier and Shoprite to drive sales volumes together, and both parties share in the increased volume throughput. So by way of an example, the supplier knows that an increased production improves efficiency and lowest costs, and larger volumes purchased by the retailers will improve the supplier’s efficiencies. The agreed targets must be reached in order for Shoprite to earn their incentive, so it is conditional upon those. On the supplier knows the benefit of producing the additional volumes, and the supplier then choses to distribute this benefit to all its customers, its customers being all retailers and buying groups, and it distributes this to those customers at its own discretion. The supplier will then through negotiation share this efficiency with Shoprite and in turn passes the saving onto the

customer.

I will now speak about the “Warehouse Allowances”. This is a cost that is charged to the supplier for the warehousing and distribution of products via Shoprite’s Distribution Centres. Shoprite’s centralised warehousing and distribution function removes many of the risks and logistical costs that suppliers would otherwise incur in order to stock our supermarkets. Furthermore, it drives efficiencies across the supply chain, it drives efficiencies across the supply chain, doing it this way. Just by way of example, one truck or one
10 full load truck going to a Shoprite store is much more efficient than seven half trucks going from seven different suppliers to that same store. There is a time saving at the receiving process and then there is also the efficiency of delivering full truck loads. The supplier will then through negotiation share the efficiency with Shoprite and Shoprite will in turn pass this saving onto the customer. If a supplier, this is not a required contribution, if suppliers choose to deliver directly to the stores, then that is their own prerogative and they would, they can do so and this charge will not be applicable to them.

20 I now deal with the question of “Stock Responsibility”, and I think, I assumed through the questions there was a damage allowance. I think this is covered within Shoprite under what we could call “stock responsibility”. This is where Shoprite accepts responsibility for more than just the damages, it is for the returns, the wastages, the damages and the safe disposal of the supplier’s products, and this is a fee charged to them. The benefit here is to the supplier not carrying those risks and then through a process of negotiation we would determine the fee and then the saving on our side, Shoprite, would carry over to the customer.

30 I will address now the “Advertising Fees on rebates”. This is the supplier’s contribution to Shoprite’s cost of promoting products and is based on an agreed percentage of the goods. This fee enables

Shoprite to plan its advertising and marketing campaigns months in advance. Shoprite is one of the biggest investors in advertising in the country and it supplies benefit from this level of exposure through “knock and drops”, leaflets, national TV adverts, taxi TV and rank TV, local and in store radio, digital forms of marketing, Facebook, mailers, websites, Twitters, as well as many in-store types of media, for example, till points, gondola ends, power wings and in-store point of sale. Shoprite is also the only retailer to advert suppliers’ products in all South Africa’s official 11
10 languages.

There is a line on our rebates, which is “total off statement”. That is not an additional rebate, it is just for the panel’s clarification that is just the sum of the total of the rebates on the different types of rebates on the agreement, it is not something extra.

I did notice that there are some other types of allowances that were in the questions, some of which do not pertain to Shoprite, for example, a central office allowance. It is not something that we charge suppliers for or a term that we use. We also do not have something similar, I cannot think of any similar that we charge
20 suppliers for.

There were questions about redistribution allowances, it was a question of warehousing and redistribution, so I have addressed the warehousing. I think in terms of the redistribution I would like to take note of. There are instances where suppliers have a return centre allowance, at this stage it is only in Gauteng, and what this is, it is similar to the distribution centre, except it is a return centre. So instead of suppliers, where they take responsibility for stock, having to pick up that stock at every one of the Shoprite stores they deliver to, we would go, we would send our trucks to pick up
30 that stock and have it delivered to the return centre, and the supplier would then only have to go to the return centre to pick up all the returned stock.

So where this creates efficiency in the supply chain is that our trucks are going to the stores with full loads to deliver, and then coming back to the DC, which is their home, to pick up more stock. On their return leg they are mostly empty, so there is an opportunity there for us to take stock that would otherwise have been picked up by the suppliers and bring it back to a centralised location. So this return centre creates efficiency across the whole supply chain, and this efficiency we then share with the supplier through negotiation. It is for the supplier to agree to it or not, and

10 Shoprite uses that money then to put into the price for the customer.

The other type of efficiency allowance is a backhauling fee. This is not something that would be on the trade term but it is to my mind what was closely linked to when I read “redistribution fee”, so I thought for clarity sake I would explain it. This is something that would be negotiated by a DC in a specific area, and by way of example I will explain how this works.

If a truck was going to our Shoprite Zeerust store to deliver goods and we know that the Zeerust fruit juice factory is there, on its

20 return leg the truck would then just stop at the factory and pick up the goods that would have otherwise have to be delivered by the supplier to our distribution centre.

So, once again, this creates an efficiency across the whole supply chain. Shoprite and the supplier will through way of negotiation share in this efficiency, and Shoprite would look to put this back into the price for the customer. These agreements are done on an *ad hoc* basis due to the nature of the agreement.

There was also reference made to “Category Management Contributions”. So Shoprite is busy with a category management

30 program, but this comes at no additional cost or fee or allowance to any suppliers that are involved in this initiative or to the categories affected in this initiative. So ... [intervened]

CHAIRPERSON: Mr Van der Spuy, just go back to the category management, I did not quite get what you were saying there?

MR VAN DER SPUY: Oh, so we do, okay, we have ... [intervened]

CHAIRPERSON: Category management allowance.

MR VAN DER SPUY: Okay, there was a question around Category Management Contributions. So we have a category management program but it is mostly internal of nature, of course suppliers do get involved as partners in our category, but it does not come at a fee.

10 So our category management program is an initiative for us to be more strategic around specific categories where we want to go into a greater level of detail and actually appoint specialists for key categories in our business. Because of the increased attention on these categories, it allows us to be more customer centric, to analyse data more closely and monitor these categories more closely, but there is an incidental knock-on to the supplier. Because we are focussing on the category more we will interact with them more, but there is no fee for the suppliers in this.

CHAIRPERSON: And the specialists that you appoint are paid for
20 by Shoprite?

MR VAN DER SPUY: Yes, madam, they are paid for by Shoprite, they are our own employees.

CHAIRPERSON: Okay.

MR VAN DER SPUY: So just by way of example, many of these rebates, as I have discussed, relate back to efficiencies, which we then through negotiation share with the suppliers. There are other allowances that come as a service to Shoprite. I will name two just for completeness sake or just to broaden the spectrum of what could be on a trade term.

30 One, for example, is a "Data Sharing Agreement", whereby we would share that supplier's data, which we view as a commodity on our side, we would make available to them at a fee. It is not

required that every supplier participate in this, and if they did not, if they chose not to have the fee or they see no return on investment for it, it is their option not to sign up for that.

Another type of allowance which could be present, and it is only applied in relevant cases, is a "Quality Assurance Allowance", and this is applied in cases where a supplier manufactures our private label house brand or right brand products, where we recover a fee from the supplier because we do our own independent lab testing on those products to ensure that they are of the quality standard we require.

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And then there was a question on "Store Openings". So in respect of store openings or refurbishments, these are contributions in the form of promotional support, which is negotiated with suppliers. Suppliers get the opportunity here to market their products and leverage of the excitement of the store opening. Shoprite makes a big effort to advertise all new stores and refurbishments to the target market of that store.

This is also one of the few opportunities that our individual stores get to lower their prices lower than what would be available to the divisions. So generally our prices are set across a division for the buying groups and our buyers get really excited when there is a store opening and the opportunity to excite the customers in the local market, and our suppliers jump on board with that excitement. I will deal now with "Listing of New Suppliers". There was a question around this. So the requirements is that there must be a viable business case for a supplier of goods to be listed as a Shoprite supplier. This business case is driven by the natural market forces.

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Shoprite will determine what needs date a certain product is serving, and consider that product in light of the existing and competing products in that category. It will also along with that consider what Shoprite's strategy is in the category, the customers'

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demand and market trends. New products do not require what was called in the questioning as a “listing fee”, but there would be a support fee, which is charged to subsidise the promotional activities that go with new products, such as leaflet, preferential space in store, a bin or a shelf in store, and these are all to give the suppliers’ new products the best chance of success.

Once Shoprite has established that a new product or supply listing is required, the supplier will have to pass due diligence, and they will be able to provide the required volumes, the consistency of
10 delivery, the quality and adhere to the necessary food safety requirements, and then there will also be other administrative requirements, such as just proof of a bank account or the company’s documents, official company documents with which we are entering into, or in the case if it is an individual, an ID document will suffice.

We then require that they sign our terms of supply and the trade term agreement, and that would complete the listing process.

There was a question regarding the “Classification of Suppliers”. Shoprite does not have a policy on how to classify suppliers for
20 purposes of differential treatment. Where we would rank suppliers is only regarding, we will rank them high to low in size, but this is only relevant for reporting purposes.

And I would just like to address in closing the question around “Buying Power” and the “Waterbed Effect”. Shoprite does not believe that it is in a position as a large buyer and its practices, as I have previously described, negate competitiveness in the retail market. Just addressing the so-called “waterbed effect”. As I have
30 previously stated, Shoprite offers much efficiency to suppliers and it is the suppliers who ultimately decide how they distribute efficiencies or inefficiencies across their customers, which is all retail and buying groups.

I do not believe it is financially feasible for large suppliers, who are

mostly large listed companies or subsidiaries of listed companies, to recoup the margin that is lost on their main customer base, which is alleged to be the retail change from the marginal sales of the small players.

To the contrary, it is likely that in certain instances suppliers exercise more agility with smaller purchases, such as offering deeper discounts which would not be affordable in respect of larger players, as margins would be more adversely affected. Small firms are also able to join buyer groups or franchises, for example, that
10 of Shoprite's own OK brand, and these groups also benefit from prices and terms negotiated by the group, however, these small firms are not bound to purchase only through these opportunities, and they have the opportunity and the luxury of being able to shop around for prices.

We would also just like to highlight the agility of small and independent traders and spaza shops, and their competitiveness is not to be underestimated. We deem them highly respectable competitors, as they are very customer centric. The fact that they are so conveniently located is a big plus point to the customer and
20 adds value. They can be very nimble, they can pop up anywhere and with little formal setup cost, infrastructure, little accountability towards their staff, and there is the kind of regulations and administration that large corporates have to accept as reality are not always applicable to such smaller retailers, and that makes them formidable competitors to us, and we respect them just as much as we respect the other large retailers.

Shoprite, when we started, we started as a small group of eight stores initially, which means we too were once classified as a "small retailer", and the practices and the principles we employ
30 both internally and towards the suppliers are the same today as they were back then, when we had far less buying power. Since we have grown, we have been able to offer many efficiencies to

suppliers, and we have passed these onto our customers, ensuring that they have lower prices they can trust always. That concludes my briefing and I welcome any questions.

CHAIRPERSON: Thank you, Mr Van der Spuy. I will just start off with just a general comment from us as this inquiry, having sat and looked at all these rebates, allowances that are charged, the contributions that are made by suppliers. It left us with the feeling that for a major retailer, this is how it comes across to us, it looks like there is no, you actually incur no costs whatsoever, that is the
10 perception we have, and I would like you to use this opportunity to educate us and to change our view on this and make us understand at which point does Shoprite incur costs when you have all these allowances, when you have all these contributions coming from suppliers in respect of all the things, all the functions that you ought to be conducting as a retailer?

So every question that we are asking is actually in that context, and as you answer, try and give us a better picture so that we understand. We want to understand, we do not want to judge, we want to understand.

20 Then as a first question I just want to understand, obviously a lot of the allowances that you have mentioned and the contributions that are made relate to your operational costs, am I correct?

MR VAN DER SPUY: No, they do not relate to operational costs.

CHAIRPERSON: What would you call them as a business, what do you call all these allowances?

MR VAN DER SPUY: We call them, ja, rebates.

CHAIRPERSON: No, no, no, I mean the actual functions that they pertain to, that they relate to, not the rebates, not the payment themselves but the actual function that is being conducted. Would
30 that not be an operational function?

MR VAN DER SPUY: I suppose to an extent they would be operational functions, but it is over and above, for example, the

warehouse allowance, it is not necessarily traditionally just retail, it is another type of operation altogether, and for that there is a separate allowance, for example, the data sharing, which is an allowance. That is not necessarily our core business, but we do view the data as a commodity to which there is a value attached, which we would then sell to suppliers, for example, the quality assurance allowance. That is directly related to us having to test the quality of a product, because in those cases we own the trademarks of those brands and we feel responsible to keep, to
10 maintain those brands up to a specific standard.

Where it pertains to advertising costs one can say that we would always have to advertise as a retailer, but, of course, it is generally accepted in the market that when we advertise, it is not only that we advertise our brand because we do not sell Shoprite, we sell Koo bake beans and we sell chicken, so it is a partnership that we enter into. So the cost, the admin and the planning of those adverts are budgeted, well, are planned all by Shoprite, and there is terminology that the suppliers are aware of, they talk about "above the line" and "below the line" marketing.

20 So "above the line" would be their own, let me use Koo as the example that popped into my head, they would market the Koo brand, but they also have budget for actual spend on promotions, which would be in lower prices, and that allows us to take that to the consumers, but also getting that product onto the leaflets and onto TV advertising. So in that sense, when we do advertise, it is necessary for us but it is part of marketing a specific supplier's brand as well.

CHAIRPERSON: Okay, let me put my question differently then. Based on the answer you have given. What would constitute
30 operational costs in the manner in which you operate as Shoprite, just give us those, if you could?

MR VAN DER SPUY: Alright, so just regarding the warehousing,

my colleague would like to answer. It is just that it costs billions of Rands to set up the warehouse and to procure the trucks, and the operations around that is staff costs, the rental costs, the electricity costs, the capital expenditure necessary, the maintenance on these buildings, the petrol costs and the like, the staff costs I have mentioned. Other operational costs would be our rent.

If I just think of the simple income statement that we have, it would be our employee costs, our rental and electricity, our IT costs, which in this day and age have become quite a big component of the business. I think those are probably our main four costs, unless my colleague... Ja, so for rental, electricity and for staff costs, which are probably our biggest three, those are not recovered from suppliers.

CHAIRPERSON: Okay, just then for our understanding, you have given us what amounts, operational costs for Shoprite, and you have also indicated, and there may be a fine line from where I am sitting between what is your operational cost and the contributions that are made on some of these, that is our view, that is my view for now, but be that as it may, I just want to understand, on your financial statements, if you can answer this question, if any of you present today can answer this question for us so that we understand as well, if we were to look at Shoprite's annual financial statements in your annual report, your income statement, and we look at operational costs, would these operational costs include any of the functions to which these contributions apply at all, or are these completely separate, there is a clear line that is drawn, that this has nothing to do with your operations?

MR VAN DER SPUY: I think the closest one probably is our marketing costs, which is excluded there, but I feel I have explained the reasons why there is a specific advertising allowance. For the rest... I just want to think how I would like to answer this.

MR VAN DER MERWE: While he is thinking I just want to explain to you. You know, Shoprite went on the road of central distribution 20 years ago, which was different to our competitors in South Africa, which only recently started to centralise distribution. Now, centralised distribution is a whole philosophy of how do you run your business, so for the people here in Gauteng, you know, our DC there in Midrand, Centurion, on the hill there, that is the biggest warehouse in the southern hemisphere, it is 104 000 square metres, it is 25 metres high, it is filled with stock of billions of Rand, but the whole philosophy is that the suppliers now delivers to that DC and we distribute from there to our various stores.

So obviously that is why the supplier pays us a warehouse allowance. He does not have to run, first, he keeps his DC, and also secondly, he runs a truck to our store in Musina. We now put it then in our truck with a full load and we send it to Musina, and that is the philosophy of our business. If you come now to, if you have been to Cape Town recently, we have just opened in September this year a new facility in Brackenfell also, which is 80 000 square metres, right on the R3 from the airport to the N1, you know.

So that is the type of investment, and obviously all that costs is in our income statement, you know, the money that we have laid out, the staff that works there, you know, if the petrol goes up one cent it affects, it is like R30-million a month just petrol one in, because that is the fleet that we have on the road to go to our various stores all over the country.

CHAIRPERSON: Okay, so just to make an example with your warehousing allowance. You are basically saying that you have saved your suppliers the costs and the effort of having to distribute to each and every store?

MR VAN DER SPUY: That is right.

CHAIRPERSON: Was this the case before you had a DC?

MR VAN DER SPUY: Before we had the DC, the whole supply chain was less efficient, so the products were more expensive from the supplier, so, yes, we saved them costs. We do not know how much costs we saved them, we are not privy to that information, but the fact that they have entered in this agreement with us we can only assume it is worth it for them, and we do not know what additional savings they are still sitting with.

CHAIRPERSON: Okay.

10 MR VAN DER SPUY: I would... sorry, madam, I would like to address your question because I do understand your point of view and how it would look like, this is all over and above.

CHAIRPERSON: Yes.

20 MR VAN DER SPUY: I think the first important point to understand is that these allowances and agreements are agreed upfront with the substantively unfair supplier, before any cost is negotiated, so in the first instance the supplier would already know the sum of these rebates before they present a costing to Shoprite. So in that, what suppliers would call a cost of doing business with Shoprite, they are aware of that, so, in essence, that is already built into their costing model, into our funding model.

What it also affords us, it also allows us to know what kind of profitability we are sitting with the supplier before any costs are negotiated with, and in that respect the profit that we make between the difference of our cost price and selling price, as well as the margin on these trade terms, those combined contribute to the targets of our nett profit.

30 So the Shoprite Group has many stakeholders, of which the customer is the most important one, so we put all our efforts into providing lower prices for that. Our other stakeholders are, for example, our shareholders for which we are accountable for a certain trading margin. So both the gross margin on difference between cost and sell prices, as well as these rebates contribute to

the lower prices and to the margins that we need to make, and those margins would essentially cover all operational costs. That is why we can highlight specific costs here, where everything relates back to a service or a reason for the fees. Does that satisfy the...?

CHAIRPERSON: Yes, I understand what you are saying. Let me maybe change the direction of this question a little bit and give it a little bit of context. We have been approached by smaller suppliers, some of whom are actually still suppliers who are looking for retailers, to access retailers in order to get their goods on your shelves, and I think it does become quite a surprize for a lot of them when they are faces with all these charges that are charged by the retailers, not only Shoprite, for that matter, and so what we want to, what I would like to understand is, you say these are agreed upfront.

From a small supplier point of view, I do not think it is a matter of agreeing from what we have seen or heard, they have no choice, they just have to because the way they look at the markets... We had one submission specifically in Gauteng by a new supplier, we actually sat and analysed the market for us. We see these things and at times you do not connect the dots the way someone else does, and in his submission the supplier connected the dots for us to show, for example, Shoprite tends to operate across LSM categories and therefore it does not matter where you want to list, it does not matter what you want to do, you are going to encounter a Shoprite buyer with these terms, so there is no way of avoiding this one. Two, if you go to the next retailer, this is what they say they will still encounter because it seems to be the norm and the practice in the sector.

So when you say it is agreed upfront, it is also a situation where smaller suppliers find themselves without an option. They are forced to agree because they do want their products. You are the only route to market for them, so that is the context that you also

need to understand some of the questions that we are asking today in relation to these trade terms. So that is the desperation and that is the very desperate voice that we have had coming out of those small suppliers. You mentioned the basic rebates. Is that a basic rebate or there are a number of rebates, you wanted to comment on what I have just said?

MR VAN DER MERWE: I just want to comment on your previous statement. There is you know, food security and safety, the new law that has come into effect. It has meant that we had to delist a
10 lot of small suppliers, because we are ultimately responsible for the product on the shelf. If anybody goes and put in a claim against us, our directors can be criminally charged for that, so unfortunately, you know, our previous CEO had an initiative, for instance, where he wanted to encourage housewives to bake for us, to sell, even to buy and to set them up into business, but we had to put it to him that either you are going to end up in court or you must stop this practice, because that is the fact of the law.

So sometimes it is prohibited for a small supplier to actually supply to us because ultimately we are responsible for the product on the
20 shelves. Even the sheep that comes from the farm, we must trace that back exactly to where, which farm it comes from, we must stand in for that. So it is a formal process that you must go through, unfortunately.

CHAIRPERSON: No, we understand that, in fact, I will address that, I intend to address some of that towards the end of these questions.

MR VAN DER MERWE: Okay, I just wanted to add that, thank you.

CHAIRPERSON: No, that is definitely understood from our side. On the basic rebates, I wanted to understand is that a once of
30 rebate, which is called a "basic rebate", or is it a number of rebates that are lumped under that?

MR VAN DER SPUY: No, madam, it is one rebate that applies to,

it is a percentage that applies to the total cost of products purchased annually from a supplier.

CHAIRPERSON: Okay, and is this rebate, that benefit, is it passed onto consumers and how is that, how is it passed on, can you explain that to us?

MR VAN DER SPUY: Yes, it is certainly passed onto consumers, so it is a deduction off the cost of the goods purchased. So the cheaper we purchase the goods, the cheaper we can sell them to our customers, it is widely accepted that we are the cheapest
10 retailer or it is the most competitive, and there you can see it is reflected in the price to customers. So we deduct, we know that that reduces the cost of goods purchased from the suppliers.

CHAIRPERSON: Yes. So basically it means the supplier, I just want to understand the mechanics of it, so does that mean when a supplier supplies to Shoprite, if they were expecting R40 for their goods, they will then be getting maybe R38 because there was a basic rebate taken off?

MR VAN DER SPUY: Correct. So if in your example there was a
20 2% basic rebate, let us use, I am just going to use numbers by way of example. The supplier agree to a 2% basic rebate and he came and sold a tin of bake beans for R10 to Shoprite, we would then pay him at the end of the month, or as agreed, we would then pay him R8, so we would deduct the 2% rebate off that fee, and that ...[intervened]

MR VAN DER MERWE: We deduct 20%.

MR VAN DER SPUY: Oh, sorry, 20%, the R9.80. Sorry, my calculator, so ... [intervened]

CHAIRPERSON: So the supplier gets lesser money, basically?

MR VAN DER SPUY: Yes, and that is why I was stressing the
30 upfront agreement, in that the supplier, before he decides to sell the product at R10 to Shoprite, he is aware of what would automatically be deducted off his statement or be supplied, or not

always in every case deducted off statement, it could be monthly supplied by them.

CHAIRPERSON: So it becomes money taken off what he would have earned, not money added onto the cost of the product that is then sold?

MR VAN DER SPUY: No, it becomes, it becomes a reduction in cost to Shoprite, which we then can, which means we can afford to set a cheaper selling price.

CHAIRPERSON: It is a reduction by Shoprite on...? [intervened]

10 MR VAN DER SPUY: It reduces the cost of goods purchased by Shoprite.

CHAIRPERSON: Yes, but it is a reduction that is incurred by the supplier?

MR VAN DER SPUY: Correct, yes.

CHAIRPERSON: Okay, and it is not added on in any way or form onto the product that is sold?

MR VAN DER SPUY: No, it is deducted from the product sold.

CHAIRPERSON: So it is money then that Shoprite holds onto?

MR VAN DER SPUY: That is right.

20 CHAIRPERSON: Okay. You mentioned settlement terms. Can you just tell us in terms of the periods that are applicable to your settlement, the minimum settlement period and the maximum applicable?

MR VAN DER SPUY: Alright, we do not have minimum or maximum. There are, it differs by supplier every time. I am not aware of what the minimum or maximum are. A typical one would be 30 days from statement, monthly 30 days that would mean that a supplier gets paid once they submit their statement, 30 days after statement has been submitted we pay them for the goods
30 purchased, but there are suppliers with shorter terms and suppliers with longer terms in that.

CHAIRPERSON: And is a settlement fee charged on the supplier

for settling, for paying them?

MR VAN DER SPUY: Where we consider the settlement terms to be, let me say quicker than the rate of sale or the turnover of the product, or the cost of us holding onto that goods, so, for example, in instances where we pay the supplier every seven days, that comes at a cost of capital to Shoprite and we then share that fee. It also means it increases the cash flow for that supplier and they will do a calculation on their side and say what is that worth in terms of their working capital management. So it is not necessarily a fee in every case, it is where it comes at a cost to Shoprite, and the benefit to the supplier.

CHAIRPERSON: Okay. So the settlement fee, I just want to understand how it comes about. Does it come about because, does it come about as a result or because the supplier asked for it because they need it for their, because they need to be paid on time for their cash flow, or is it something that Shoprite offers or imposes?

MR VAN DER SPUY: No, not something Shoprite imposes, it is where they require to be less than the norm or quicker than the norm.

CHAIRPERSON: The "norm" being what?

MR VAN DER SPUY: I am not, I do not know what all the different terms are. There are some, not every supplier pays this fee. I think is that the question? It is where they require a cash flow and they are willing to pay a price for that.

CHAIRPERSON: Okay, we would like just a follow-up, a written submission on this because we would like to understand. We had a retailer here before you, Massmart, and they were able to give us the minimum period applicable to their settlement terms and the maximum. I do understand when you say you are not aware what this period may be in relation to Shoprite because it depends on each supplier, but we would like to understand what is the

minimum period applicable to settlement in your settlement terms, and what is the maximum applicable, because we also found that, I will tell you why I am asking this question, we found it odd, for example, if you were to look at the maximum period that you would be offering, let us say that period is 30 days, if Shoprite agrees with the supplier that Shoprite will pay the supplier in 30 days, that is the maximum, you have just performed, you have not exceeded any performance, it is not like you have paid in 27 days in that 30 day period, so we do not understand from our perspective, and
10 therefore that written submission needs to make us understand, you need to help us understand why would you be paid for what you have, for just meeting your obligation in terms of that agreement, that is what we want to understand?

MR VAN DER SPUY: It is a fair question. We can get that information for you.

CHAIRPERSON: However, where Shoprite pays in advance we understand that there is a saving made and cash flow advantage for the supplier, we completely understand.

MR VAN DER SPUY: Ja, so you... Okay, I understand your
20 question, I think that is, so it is where there is an advantage there is a fee, but we can get that information for you.

CHAIRPERSON: Ja, ja, and also you say it is imposed by, this fee is imposed or is it...? [intervened]

MR VAN DER SPUY: It is not imposed.

CHAIRPERSON: Okay. So when you say: "It is not imposed," just explain to me what do you mean by that?

MR VAN DER SPUY: So I do not know the visibility of ...
[intervened]

CHAIRPERSON: Do they have a choice to not agree to any
30 settlement fee?

MR VAN DER SPUY: Yes, yes.

CHAIRPERSON: Okay, at any point?

MR VAN DER SPUY: At any point.

CHAIRPERSON: And still be listed as a supplier?

MR VAN DER SPUY: Yes.

CHAIRPERSON: And you have a list of suppliers of any size, small and large, who come in and there are no settlement fees applicable to them?

MR VAN DER SPUY: I cannot answer that, I am sure I would be able to, that would have ... [intervened]

CHAIRPERSON: Confirm that.

10 MR VAN DER SPUY: Ja, confirm where suppliers do not have any settlement fee.

CHAIRPERSON: Okay, and also when you do confirm, just confirm as well whether or not this would be also in relation to small, medium, across board, it just exist, a new supplier, everyone can actually elect not to be part of this arrangement if they do not like it. And I missed the other one, I am sure my colleagues will pick up on it. The warehouse allowance we have already discussed, and you said the advertising allowance, you mentioned the advertising allowance.

20 On the advertising allowance, how does, how does Shoprite account to, it is almost a service that you are rendering on behalf of the supplier, so to speak, you know, you are advertising their product for them, so I kind of understand why you charge for that, how do you account for charging this allowance? How do they know, how do you ensure that, okay, we have charged you and we have advertised and, well, the benefits may be there or may not be, you can advertise and customers are basically going to buy, but at least there has to be an advertising on the part of Shoprite because you have been paid an advertising allowance, so how do
30 you account for the act of advertising to your suppliers across board?

MR VAN DER SPUY: So where we have on the advertising, you

can have an advertising guarantee to which that portion of money that the supplier would then pay is guaranteed to us, and for that guarantee we then detail out the specific media, there is a menu that the supplier could choose from, it is related to specific media that they could purchase, so whether that, and there is values to that, whether that is TV adverts, gondola ends or supply stands in the stores.

CHAIRPERSON: Is there a way of ensuring that this does happen, the advertising, because the complaint is that they are paying for
10 these allowances, which is cash in your pocket, but in most instances there is no advertising that happens? In fact, you will notice that in these public hearings there are no, we have not called, I want to put it on record we have not called a single supplier because they are scared of talking, a lot of them, oh, ja, they are. So we are having to speak to, we are speaking on their behalf and we are trying to understand what is going on. They are very scared of voicing these views in the event that they get delisted, because they need you, they do.

MR VAN DER SPUY: We need them too. We do not manufacture
20 any products.

CHAIRPERSON: Ja, I know, ja, we do not know, we will see, we will see. Okay, and then so you were saying, so I was saying, so you can, we just want to see how you account and whether this accounting, maybe you can do that for us again or just speak to it for us so that we understand?

MR VAN DER SPUY: So where there is an advertising percentage, the supplier can opt to guarantee that percentage of what would be our planned, our planned turnover with that supplier for the year, so that gives us a Rand value. So we take the percentage, if it was
30 2%, no, I do not want to get my sums wrong if I use 2% the whole time, the percentage happen to add up to an amount of R100 000, we would then say, alright, Mr Supplier, with this R100 000 you are

able across the 12 months then to purchase seven gondola ends per month, two or three TV adverts, you are allowed to put I two or three supplier stands, and then we know if you say you want to put in three supplier stands, that means it is across a certain spectrum of our stores ...[intervened]

CHAIRPERSON: Sorry, what is a “gondola ad”?

MR VAN DER SPUY: Oh, sorry. In our stores gondola ends are at the end of the isle ... [intervened]

CHAIRPERSON: Ends, oh.

10 MR VAN DER SPUY: So it is generally accepted, it is preferred space, it gets a lot more attention and it often requires the purchasing of extra stock to fill that space.

CHAIRPERSON: Would that be the end towards the tills or the end towards the back or any of them?

MR VAN DER SPUY: Both, both ends, but then towards the tills is more popular, but we do not differentiate between the two at this point in the negotiation.

CHAIRPERSON: Okay. So they pay to have, so it is also a payment towards that?

20 MR VAN DER SPUY: Yes.

CHAIRPERSON: Okay. Okay, and then ... [intervened]

MR VAN DER SPUY: Ja, sorry, you made a good point. So where the guarantee is done, those terms are stipulated in the notes of the agreement. So they would then use that guarantee when they go back to them and say we have already paid for these adverts or preferential space, or whatever the case may be.

CHAIRPERSON: And this is done to all suppliers?

MR VAN DER SPUY: No.

30 CHAIRPERSON: Let me ask this question differently. Where you charged an ad allowance or contribution from a supplier you always ensure that all the products that your suppliers supplied to you are advertised?

MR VAN DER SPUY: No, the suppliers have a large range of products, and not all products need to be advertised, not all products respond to advertisements, and it is also not always the supplier's strategy to advertise all products, and neither is it ours, so although that percentage would apply to all products, it is not necessarily that each product would get the same amount of advertising.

CHAIRPERSON: Where there is no advertising at all because the product does not need advertising, why is there still an advertising allowance charged to that supplier?
10

MR VAN DER SPUY: Well, the agreement is just done upfront on the whole account for simplification, so ... [intervened]

CHAIRPERSON: Okay, that is concerning though.

MR VAN DER SPUY: Ja, it is a percentage of the account. What I must make clear though is when specific advertising and promotion activities is negotiated in the divisions, that is where it becomes product specific.

CHAIRPERSON: Okay. Can you give us perhaps just for our understanding an example of a product that may not need advertising or would not need advertising?
20

MR VAN DER SPUY: Yes, a three point plug or two point plugs.

CHAIRPERSON: Okay, and therefore, in that case why would you charge an advertising allowance to a supplier of those products, because that is a very clear category of products, you will not advertise it?

MR VAN DER SPUY: No, so where suppliers sell products like that, so I know this investigation is specifically towards the retail but I can speak from my colleagues in the general merchandise, of which that is a typical example, a two point plug, there would be no advertising allowance, but in the grocery sector there is a lot, the products are not advertised, all products are not advertised equally. If I can think of another one ... [intervened]
30

CHAIRPERSON: In the grocery?

MR VAN DER SPUY: Ja, would you like an example in the grocery?

CHAIRPERSON: Ja, ja, just to make sense of it.

MR VAN DER SPUY: I would say there are some very expensive shampoos which we would not advertise because they do not respond to marketing, it is not marketed to price sensitive shoppers at all, but at the same time that same supplier could have very price sensitive shampoos that are very price elastic, and they
10 would be promoted often. So for simplicity at this point in the upfront negotiation, it is a fat percentage for the supplier's account, but where that shampoo is then marketed in the division planned, there would not be a payment for the products not marketed.

CHAIRPERSON: Okay, just to end off this point, is it possible, based on the answers you have given, is it possible that there are products that are supplied to Shoprite specifically, that you charge an advertising allowance on that may actually, that actually do not get advertised because they do not require any advertising, groceries, focussing on groceries?

20 MR VAN DER SPUY: If you are asking if it is possible, it is possible. Some products would not even, their life cycle is possibly even just a season or once of pack sizes that we would do, and in such instances once off pack sizes would likely be promoted, but it would be, I think, wrong to say it is impossible. It is possible.

CHAIRPERSON: Yes, okay. I think the concern probably relates to those. We would not have asked, we would not have teased our questions appropriately the way you are explaining to us today, however, the point has been made that suppliers are paying for advertising allowance, which is money taken off what would have
30 been their income, and yet there is no advertising done on their behalf.

MR VAN DER SPUY: Yes.

CHAIRPERSON: I just want to put that on record.

MR VAN DER SPUY: I would like to also say that the percentage fee would also be far less for heavily promoted products than what it would be, so it is very possible that some products, the percentage fee that we charge is far under what it would cost Shoprite to promote those products.

CHAIRPERSON: Okay.

MR KHUMALO: So, Mr Van der Spuy, while we are on the promotional and advertising, we have been told about some products that are called "looser items", for instance, where you will advertise to draw the people to the store to buy, you know, a product that they know would cost, say R30, normally, and then for that period it will cost maybe R25 just so you can come and buy that product than all other products. Is it something that happens within Shoprite, and is it negotiated with the supplier when their trading terms are negotiated?

MR VAN DER SPUY: So initially you said "looser items", I think "loss leaders" is the term I refer to, "loss leaders".

MR KHUMALO: Loss leaders?

MR VAN DER SPUY: That is the term I have heard often. Yes, so we do have, we recognise that certain products are more competitive and will draw more feet, and we do focus our pricing more sharply on such products, however, to the second part of your questions, where you say is this negotiated upfront with suppliers. No, it is not part of a trade term agreement where you say you will be a loss leader this year and we are going to undercut your prices, no.

MR KHUMALO: So how is it done, is it done *ad hoc*, on an *ad hoc* basis, and who bears the loss for that product for that period?

MR VAN DER SPUY: So, look, I think the first point to understand is that the market determines the selling price, and it is up for us to negotiate a cost price with suppliers. We have certain strategies in

categories and we know what certain products can do, for example, we know if we are promoting Coca-Cola that is something that drives a lot of feet. A good price on Coca-Cola will get people to come to the store, but to use my two point plug example, if I tell you a two point plug costs R3.99, you are not going to get into your car and go.

So we do want to promote our brands that way, and that selling price for Coke is not determined by the supplier, really, it is determined by the market. You know what you would like to pay for
10 a Coke, and if we can excite you, then you would come. So for us, we know what cost we can negotiate with the supplier, and if we would like to get you a specific price and the cost did not allow it, that would require investment on our own part, and that also does happen.

MR VAN DER MERWE: What we are saying is, then we sell it below cost.

MR KHUMALO: So you would carry the cost and not the supplier?

MR VAN DER SPUY: It is not the same instance very time. There are instances where we would negotiate, we would have a strategy
20 to negotiate a specific product and to get to a price point, and our negotiation would allow us not to have to make an investment ourselves. In other instances, in unsuccessful negotiation or where we cannot get to a certain cost and we wanted to get to certain sell price, that would require us to invest.

CHAIRPERSON: Okay, and then you mentioned the redistribution allowance, and when you explained that you touched on return stock. Can you just explain what is "return stock" and, ja, all types of "return stock", what does this relate to?

MR VAN DER SPUY: Alright, so it differs across the spectrum of
30 categories, so for example in highly perishable categories, for example milk, the products will often reach their sell-by dates, or by the time they reach the store they are damaged, or a customer

will drop them in store or there will be, the product would go off prematurely, which could happen, and for that we would return that stock to the supplier, or in instances, like we mentioned the stock responsibility, if we take responsibility for that stock, there would then be a fee and we would not require the supplier to return it, but we would incur the cost of the loss basically of that product that we bought and ensure the safe disposal of that product.

10 So where it still remains the supplier's responsibility, we would put it in a returns locker at the store and upon delivering their other products, the supplier would then pick up the returns, they would have to agree in our receiving bay that it is in fact damaged goods or passed sell-by date, and they return, take that stock back. Where the return centre comes in is that where suppliers are still responsible for stock, instead of having to pick it up at our stores, that stock would then be returned by a Shoprite truck to a return centre and the supplier would then just pick it up at that centralised return centre.

20 CHAIRPERSON: Okay. In relation to damaged stock, what happens when the stock is damaged by Shoprite's employees, whose responsibility, is the supplier still contributing towards the return of that stock to them?

30 MR VAN DER SPUY: If they were responsible for the stock, the first point is that we are not aware of whose damaged stock it is. Where there is very little visibility on a countrywide scale as to how that product got damaged, whether it was a shelf packer that knocked it off and accidentally a customer that took some milk and decided at the till that they are not going to buy it anymore and just put it down on the shelf, which caused that to go sour, or whether it arrived sour at the door. So it is a level of detail between us and the supplier, we recognise we cannot go into detail in, both parties are usually aware of the typical standards of waste in the category. For the supplier, they understand what wastage is across various

retailers, and for us, we understand what wastage is across various suppliers.

CHAIRPERSON: Okay, given that these products are supplied by the suppliers to your DC's, and you have already said you charge them for saving, they save cost for delivering to you, I mean, from doing store-to-store deliveries. So if they arrive at your distribution centre, why would Shoprite not be able to pick up the damages stock at that point of delivery to the DC and therefore return them? At this point this happens and it does not happen where, it cannot
10 relate to a product that is damaged when it is on the shelf already, because when that happens, that is obviously Shoprite's problem, not a supplier problem, in my view, and you can correct me if I am wrong.

MR VAN DER SPUY: So we, my colleague just said, so the question around when do we take responsibility, so if it lands in our DC it is then our responsibility, that is when we take ownership of the goods. I think there is a recognition of the supplier's part that not all the products they always deliver are in a perfect condition, a small percentage, and it is not feasible to check every single one
20 of the products, and secondly, there is the recognition that the operation of retail and the transport of goods also results in damaged stock.

CHAIRPERSON: Okay.

MR VAN DER MERWE: I think what we are trying to say is that it is not physically possible when the stock arrive at our DC to check everything, so we work on percentages and the norms in the market. If I would have delivered direct to the store, I know the damage would have been X percent of that specific commodity, and so we work on averages.

30 CHAIRPERSON: Okay, and then just going back to the question that you tried to answer when you spoke about having to delist smaller suppliers due to safety regulations, and all that. Can you

10 speak to us on Shoprite's program for listing new suppliers and supplier development in general, and as you answer, I will make this a very broad question so that you can just cover everything in your answer, and also there has been a huge complaint coming from areas, especially where Shoprite operates, you are the biggest operator in these areas, townships, rural areas, peri-urban, you have a huge presence as Shoprite, so we would like an answer from you on the extent to which you source from local suppliers in the communities in which you are located, and to what extent do you support them, to what extent do you assist them to develop to be at the calibre of suppliers that Shoprite can actually deal with them?

20 MR VAN DER SPUY: Okay, I think, first of all, there is no supplier that we will not consider as a supplier to Shoprite. If I speak from our fresh produce side, which I am not, it is not my forte in my experience in the business, that is where we source from local farmers and local producers, and in that sense we have to procure locally because there is no other way to get fresh produce to our stores, and in that sense I think we are open to anyone that can produce a product of the right standard and can meet the food safety requirements, as we are in all areas. In the sense of the township, so that is in terms of the fresh and the farmers, everyone is a potential supplier to one of our companies, Freshmark, which is part of our group.

30 In terms of the more typical grocery goods, that is also, the buying groups purchase for a division as a whole, so it is not necessarily that we have somebody that purchases for a specific store only, and we had that program which Mr Van der Merwe alluded to, we are open to suppliers and there are mechanisms for local suppliers to deliver to specific stores, but on the whole we are a national retailer, so we are looking for suppliers that could supply all our stores, but we have many cases where supplies, for example

bakeries, that can only service certain areas, and in many cases those suppliers provide us with the best goods and then we purchase our product from them.

So I think it is a case of being fit for purpose, and I am not aware of any instance where a supplier that was fit for purpose was turned away because he was classified as a small supplier or because of the area where he was situated.

CHAIRPERSON: Okay, can I request that then we be provided with a written submission on Shoprite's initiatives, where it supports, develop small suppliers, suppliers from the previously disadvantaged groups in the communities in which you operate, and you give us the split, you speak on what you are doing there but it must not be CSI stuff, it must be specifically related to groceries, supply, enabling a business operator to supply you and having developed that operator to come through your system and become a significant, not significant, well, whatever, because significance can also depend on their performance and everything, so you cannot drive that completely, but just your initiative as Shoprite, how you have done that, and also just give us a percentage of those in relation to your other suppliers, how much of that do you have in your...? [intervened]

MR VAN DER SPUY: Okay, look, but it will be hard for us to give a percentage because we do not classify suppliers like that. Every supplier is a supplier, we do not have, these are people we have to nurture and these are people we can deal harshly with. We deal fairly with everyone.

CHAIRPERSON: So you do not nurture anyone?

MR VAN DER SPUY: We maintain healthy business relationship with everyone.

CHAIRPERSON: So are you saying you do not have suppliers that you are actually developing in the manner in which you operate business?

MR VAN DER SPUY: No, we certainly do.

CHAIRPERSON: I am looking for those.

MR VAN DER SPUY: The suppliers that we help develop?

CHAIRPERSON: Yes.

MR VAN DER SPUY: Okay.

CHAIRPERSON: And then in those I would like you to identify those that you would consider or you would classify as small, and obviously those that are coming from the previously disadvantage groups would be obvious, you would know who they are. Thank
10 you. And just a comment, I would like you to comment on this. We have had a submission from Fruit & Veg City or Food Lover's Market, I do not know what they call themselves, we say Fruit & Veg City or Food Lover's Market, and they commented on this issue of damaged goods allowance.

They say they do not charge, and they deal with fresh produce by far than Shoprite does, they do not charge this allowance. You mentioned the support fee allowance, or what did you call it, in relation to the listing fee, you said there is some kind of support fee that you charge, and again they do not charge that.

20 They do charge for the gondola, their gondola, when you walk into Fruit & Veg City then you find those veggies at the entrance there and then that is the prime space almost, and then the supplier would say I would like to put my products there, and they pay a fee to have their products there. I just want your comment as to why would some suppliers, let us say on damaged goods, why would some suppliers, like yourselves, very big suppliers for that matter, require contribution, why would you require contribution on those costs on damaged goods?

MR VAN DER SPUY: So fruit & veg, in this specific instance, I am
30 not aware that we charge any damage allowance on our fruit and veg to our suppliers either.

CHAIRPERSON: Okay, you do not?

MR VAN DER SPUY: No, not that I am aware of.

CHAIRPERSON: On return stock, what is the return stock?

MR VAN DER SPUY: We would not return fruit, sorry, in our instances in our stores fruit and veg is supplied by our own supplier, which is Freshmark.

CHAIRPERSON: Okay.

MR VAN DER SPUY: So for that reason we would return, but I am also not aware of any allowances where Freshmark would return damaged, for that purpose it does not go back to the supplier, so
10 we would not have ...[intervened]

CHAIRPERSON: And in relation to Fruit & Veg, they do supply other groceries which are not, which cannot, which are not classified as fresh, even for the non-fresh products they do not charge a damage fee, and you have already said you do charge, sir, because you have to return those, there is a cost in there for you and you would want a contribution on that. So I just want to understand why would there be a need for a contribution by others and others not? I just want to understand the manner in which you operate, give us the context, we do not know your business ...
20 [intervened]

MR VAN DER SPUY: Ja, so just... That is fair. So just in that sense, that damage fee is not charged as a flat rate to everyone, I think that is important to notice, like in the case of the Fruit & Veg, and secondly, if that is their business model, that is okay. I think maybe if you are asking from a supplier's perspective, like when we recognised and saw some of these other allowances you were asking, I suppose, I mean, we are not aware of what other retailers do or do not do. I can only imagine that from a supplier's perspective they go and, they are aware what all the retailers do
30 and they go and do the costing themselves of what is the cost of doing business with each retailer. I am not in a position to say how all the different allowances from each retailer stack up against one

another.

CHAIRPERSON: Okay.

MS GRIMBEEK: I just have a few follow-up questions on what you have submitted to us. So, firstly, can you maybe explain to us, we have heard during the course of these proceedings that there is something called a “back margin” and a “front margin”, can you maybe explain to us from your perspective what your understanding is of those margins?

10 MR VAN DER SPUY: Certainly. So the back margin would typically be what we described, well, this is how I understand it, we agree upfront in the rebates, so that would be these percentages of, whatever the mix of percentages is for each supplier, that would be classified as the “back margin”, and then the front margin would be the difference between what we sell the product for and then what we actually buy the product for.

20 MS GRIMBEEK: Then just on something else that you have submitted today. You have said that there is evidence that efficiencies are passed onto consumers. So I think what we would want to ask for as part of your follow-up written submission if you could maybe please provide us with a few examples of direct evidence where consumers have benefitted as a result of supply chain efficiencies, so where those cost savings were actually passed onto consumers, if you have any examples of this, any evidence on this we would please like you to submit those to us in writing?

Then also another thing that we have heard from our engagements with the suppliers, smaller suppliers in particular, during the course of this inquiry is that suppliers have to charge a higher price for their products to make up for all of these allowances and rebates that they are charged by large retail chains such as yourself.

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What would be your view on this as Shoprite, so suppliers are arguing that their own margins are being reduced because they

just have to try and make up for the difference between the rebates that they are charged by the retail chains and their own cash that they receive for their products?

MR VAN DER SPUY: Okay, I would just like to address the first question, where you asked for the evidence of where these rebates are passed directly onto the supplier. I am not, and I welcome any suggestions that the panel might have on what such evidence would look like, because to my mind the best evidence I believe we could present would be our published financial statements, which
10 show what our margin is we make, the expenses that we incur as a business, and the total profit we make.

It is quite clear that the profit that our company makes is not exorbitant, but we still match what our shareholders expect of us, at the same time our gross profit is also visible for all to see.

So it is the combination of our front and our back margin together that allows us to eventually make that nett profit margin, so it is the way we manage our expenses, the amount of front and back margin together that allow us to get to a competitive customer price. So I just do not want to submit that and then, I do not see a
20 better way of explaining how that is passed onto the customer.

CHAIRPERSON: An example of this point is that some of the suppliers... You need to understand us as laypeople as well, we are not business people, so we listen and then we make sense of what the concern is and we try, we are asking these questions to also try and understand from you so that you educate us. The understanding is that they will come, a supplier will approach a retailer like Shoprite with having done a market analysis for its product, looking at the pricing, obviously the better your price, the more likely they are hoping their product would sell, and then when
30 they then engage with the retailer their view is that there tends to be, by the time your product gets to the market, the price is much higher, much, much higher, I mean, compared to what they would

have wanted, and this is the biggest complaint that has come through. So I think it is us trying to understand that better possibly with that question.

MR VAN DER SPUY: Okay, so I take that point. So in that instance, just to clarify, you are saying ... [intervened]

CHAIRPERSON: We are basically saying, asking that where is the saving for the customer, where is this saving for the customer. We feel that the risk is still passed onto the customer in this case, from what they are saying.

10 MR VAN DER SPUY: So you are saying they know what Shoprite bought it for and they see the price in the store and there is a big difference, and that instance, if there was a bigger difference between our price and their price, Shoprite would not have its price position that it has in the market as the cheapest retailer. So maybe the question should be better directed at other retailers that have more expensive pricing.

MR VAN DER MERWE: Obviously, if I may add, obviously we measure our prices against our competitors on a daily, weekly, we do 100 lines, 1 000 lines because we want to be the lowest in the market, so we measure ourselves against the market on a daily basis So is that not the proof that you are looking for, to see if we are the cheapest or not, or our prices are then exorbitant or...?

20 CHAIRPERSON: Okay, just to illustrate this for us, it may help maybe if you provide us with a written example, a written submission, that preferably is not confidential, so that we can share it with the parties where these concerns have been raised, and generally for the public, the public's benefit. In relation to, maybe you pick up a few products from your KVI list and then tell us how you would, for example on that specific product how this works and how these allowances are applied and where the benefit is for the consumer, where the supplier specifically paid so much, and I am sure there would be. Let us take an example... I do not

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want to, I am trying to think of tomato sauce, is it All Gold?

MR VAN DER MERWE: Ja.

CHAIRPERSON: Yes, All Gold tomato sauce, where you do not have many products that fit into that category, you would be able to just identify a single product, maybe five KVI items and then you give us examples how this is applied so that we understand, and make sure that you try and educate us, just make us understand how this works and where the benefit is for the consumer, and how this payment that is deducted?

10 MR VAN DER SPUY: Okay, so would you be satisfied if we showed you our prices for those five KVI lines and other competitors' prices, because in our minds our cheaper prices or consistent prices would show that that is where the benefit for the consumer lies?

CHAIRPERSON: I guess it would, but it is also important to show us how much you purchased it for, it will be the whole pricing thing, so that we compare likes, we know exactly what we comparing.

MR VAN DER SPUY: So that would be confidential what we purchased it for.

20 CHAIRPERSON: No, no, we understand that, we will keep that confidential ... [intervened]

MR VAN DER SPUY: Excuse me?

CHAIRPERSON: The pricing information we will keep confidential, but just for us to understand how it has all been worked out. What I am saying is, the bulk portion of that submission and explanation, we would like it not to be confidential so that we can, so that it can form of the explanation that we can provide ...[intervened]

30 MR VAN DER SPUY: Yes, the selling prices would be public. Alright, so just what you could also not expect from that is we would not know what the cost prices of any of those competitors would be.

CHAIRPERSON: Yes, no, we know, we can get that, we can and

we will.

MR VAN DER SPUY: Okay.

CHAIRPERSON: Thank you. Any further questions? I think with regards to questions relating to suppliers, and I think we are... Oh, the last question that I wanted to know from our side is, if we ask for or when we look at Shoprite's trading term agreements or trading agreements, are we going to find all your trading terms in those agreements or are there other documents where these terms may be contained other than the agreements, the trading agreements, that is the last point?

MR VAN DER SPUY: So, no, the trading agreements are the agreements that are agreed upfront nationally, so those are the terms, but like I say, these are not produce specific, these are more supplier account specific or category specific or brand specific, so these are very holistic in nature.

In the divisions would be the specific cost agreement, so those are also the official agreements with suppliers, that is where the cost price is actually determined, or if there is other specific marketing activity around that.

CHAIRPERSON: And all those negotiations will be reduced into an agreement or some sort between the division and the supplier?

MR VAN DER SPUY: Yes.

CHAIRPERSON: Okay, thank you. Thank you, Mr Van der Spuy. I do not know whether it was you who needed to leave, and then we will move to our questions on, I do not know if you want to make introductory remarks on these exclusive leases or do you want us to just...?

MR KUSCHKE: Chair, may I be permitted just to make an observation at this point arising from your suggestion that one tries to distinguish between what might be a closed session and what might be open session questions in this regard.

I just did a quick review of the questions which were put forward

under the 13 October 2017 letter, there is that list of about 70 odd questions, which covers both topics, and on my count what I have done is I have taken the liberty to mark up one copy with a yellow marker of those questions which I believe are appropriate for open session and those which have no marking, up to question 51 I should say, are those which I believe are sensitive in the context of the pending proceedings.

So I do not know what is the best way to proceed in that regard because on my count about 20 out of the 51 questions relating, let
10 us just call it to “exclusive leases” and matters surrounding that, are okay for open session, if I may put it.

Could I perhaps, and just by way of obtaining guidance from the panel, could I perhaps just place before you one marked up copy so that you can perhaps just cast your eye over what I suggest are questions for open session versus those, and it may be that there is a practicality which arises because the questions overlap in a sense and it may interrupt the flow if one goes open and goes closed, but I am entirely guided by the panel in that respect, so the yellows are those which I say are probably fine for open session?

20 CHAIRPERSON: So yellow is confidential?

MR KUSCHKE: No, yellow is open, yellow is open.

CHAIRPERSON: Okay. Okay, I think given the long list of your closed session questions we just want to, we think the best way to deal with this is to maybe have a five minute adjournment so that we can discuss why these questions are, why all these questions must be dealt with in a closed session.

MR KUSCHKE: I am guided by the tribunal in that respect, but that is just what struck me, and I should add that I am involved in that case and I have marked up the subject matter of materials which
30 by my own observations have been discussed in affidavits and submissions already before the tribunal.

CHAIRPERSON: Alright, okay, thank you. At this point we would

like to request all members of the public to excuse us for a moment whilst we discuss this issue, and then also the live streaming, the media live streaming to be switched off and then the transcription can be left on.

HEARING ADJOURNS