

**REMARKS BY THE CHAIRPERSON OF THE GROCERY RETAIL MARKET INQUIRY**

**PROFESSOR HALTON CHEADLE**

**TO**

**THE GROCERY RETAIL MARKET INQUIRY STAKEHOLDERS AND MEMBERS OF THE  
MEDIA**

**AT**

**THE PUBLIC LAUNCH OF THE FINAL REPORT OF THE GROCERY RETAIL MARKET  
INQUIRY**

**BLUE ROOM, COMPETITION COMMISSION**

**PRETORIA**

**25 NOVEMBER 2019**

## **Greeting**

Minister of the Department of Trade, Industry and Competition, Honourable Ebrahim Patel;

Commissioner of the Competition Commission, Mr Tembinkosi Bonakele;

Deputy Commissioners, Messrs Hardin Ratshisusu, James Hodge and Bukhosibakhe Majenge;

Ms Lulama Mtanga, panel member of the Grocery Retail Market Inquiry;

Mr Yongama Njisane, the head of the technical secretariat and the members of that secretariat;

Stakeholders and members of the media;

I would like to formally greet everyone in attendance and welcome you to the public launch of the Final Report of the Grocery Retail Market Inquiry.

## **Context**

A market inquiry in general seeks to understand whether any market features may be hindering competition, but also undermining the purpose of the Competition Act. These purposes include, among others, ensuring SMMEs have an equitable opportunity to participate in the economy, to promote transformation of the economy, and to provide consumers with greater product choice.

Following the publication of the Terms of Reference in the Government Gazette on 30 October 2015, the Inquiry officially commenced on 27 November 2015.

In conducting this Inquiry, due regard was given to ensuring that the processes followed were both thorough and fair. The Inquiry reached out to and received submissions (both written and oral) from numerous stakeholders operating at different levels of the grocery retail value chain. Among these stakeholders were 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.

To give you a sense of the numbers, the Inquiry received well over 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 the form of site revisits, in Limpopo, Mpumalanga, the Northern Cape, the Eastern Cape and the North West. In addition, the Inquiry also conducted site visits to spaza shop owners, grocery retailers, wholesalers and other stakeholders at a number of sites in towns and cities where local grocery retailing issues had been brought to its attention.

These submissions made up the substantial body of information, evidence and data which provided the basis for the Inquiry's final findings and recommendations as set out in the Final Report being launched today.

The overarching objective of the Grocery Inquiry was to get a deeper understanding of the grocery retail sector, and features of this market that have led to increased concentration and a diminishing space for small and independent retail, in both urban and non-urban economies. In township economies, there has been a noticeable decline in South African-owned spaza shops, as national grocery chains and immigrant retailers increasingly moved into these areas. In urban areas, the big four national chains – Shoprite/Checkers, Pick n Pay, Spar and Woolworths – dominate shopping malls and convenience centres with emerging national chains making limited headway and a dearth of specialist stores and independent general traders. This situation is in stark contrast to most countries which have a large, thriving and dynamic ecosystem of small and independent grocery retailers and specialist food stores.

The Inquiry confirmed these trends and, in the process, identified three broad areas that require intervention in order to promote greater competition and consumer choice, and open up access to markets for greater participation by SMMEs and historically disadvantaged South Africans.

I now turn to the Inquiry's final findings and recommendations.

## **Final findings and recommendations**

### Exclusive leases

The first area is that of exclusive leases and tenant mix clauses negotiated by the national chains in shopping malls across the country. Shopping malls predominate as the favoured shopping destination for South Africans, particularly in urban areas, with almost over 2000 malls nationally, according to the Council of Shopping Centre's 2015 estimates. These malls account for roughly half of all grocery sales nationally. The Inquiry found that well over 70% of these shopping centres are subject to exclusive lease agreements. What is even more

concerning about this picture is that these exclusive lease agreements endure for significant periods of time, some up to 20 to 40 years.

These agreements not only keep out other national retail chains, they also deny opportunities for emerging chains to get traction in the market by locating where the bulk of consumers do their weekly and monthly shopping. Of even greater concern, these agreements also systematically deny the opportunity for specialist stores and independent entrepreneurs to locate in the mall if they compete with any of the national chains' product lines. These agreements not only hinder competition, but they also deny opportunities for SMMEs and historically disadvantaged entrepreneurs to participate in the economy, and they deny consumers the benefit of a broader product choice.

The Inquiry did not find any compelling justification for the continued existence of these exclusive lease agreements. On the contrary, and in support of the Inquiry's position which I will elaborate on shortly, the Inquiry found that the industry conduct is beginning to change with diminishing support for these exclusive lease agreements and the national supermarket chains starting to waive the enforcement of these exclusive provisions in some instances.

Consequently, the Inquiry is of the firm view that exclusive leases need to end. As such, the Inquiry recommends the following approach to eliminating exclusive leases:

- That there is an immediate cessation in the enforcement of exclusivity clauses against:
  - specialist; and SMME stores in shopping malls in order to open the sector up to participation by all these players;
  - all grocery retailers, whether national or emerging chains, in non-urban areas where there are fewer alternative malls present;
- No exclusivity in new lease agreements or in lease renewals in order to stop the practice going forward; and
- The phase out of all remaining exclusivity clauses over a five-year period.

The Inquiry recommends that this is achieved through voluntary undertakings by the national supermarket chains, a process that the Inquiry has initiated but not finalised. The recommendation is that the Commission should, within 6 months from today, continue the Inquiry's process and secure voluntary compliance with the recommendations, failing which legislation in the form of regulations or a code of practice should be introduced along the lines of the recommendations.

## Fair trading practices

The second area relates to what I broadly refer to as fair trading practices. This relates to the treatment of SMMEs in the context of both rental rates within shopping malls and the buyer power of national supermarket chains in the procurement of fast-moving consumer goods and the implications for the competitiveness of wholesalers as well as small and independent grocery retailers.

The Inquiry found that the buyer power of the national retail chains enables them to get far more favourable treatment by suppliers relative to the buyer groups and wholesalers that service the small and independent retailers, including spaza shops. This is in the form of higher rebates and qualification for rebates, some of which are not even given to the wholesalers and buyer groups. The Inquiry has found that some of these differences are justified, but this is not always the case. For instance, some of the rebates paid to the national supermarket chains are higher than those paid to the buyer groups even when the volumes purchased by these retailers are smaller than those bought by the buyer groups. Similarly, some rebate categories are not open to wholesalers merely because they don't retail even if the traders purchasing from them do incur similar costs as the national supermarket chains. Some rebate categories just seem to have no obvious rationale.

This differential in treatment for grocery products clearly makes it far more difficult for small and independent retailers to compete against the national supermarket chains and has contributed to the national supermarkets chains' dominance. This is of great concern to the Inquiry, especially as these chains are seemingly evolving from pure supermarkets into convenience shopping. In this regard, the Inquiry highlights their recent direct entry into the township spaza shop segment. In other words, the advantages obtained through their significant buyer power will now, going forward, extend to all forms of retail operations that compete and even more directly with the spaza shops and independent traders.

The Inquiry appreciates that recent amendments to the price discrimination provisions in the Competition Act will partially address this concern. The Inquiry also appreciates that it may be counterproductive to interfere too extensively in price negotiations. However, the Inquiry believes there is a need to ensure equal treatment, especially in respect of the granting of rebates.

The Inquiry seeks to achieve this through recommendations which ensure transparency, fair and equal treatment in the rebates offered. In particular, suppliers of FMCG products must ensure that:

- The trade terms are uniformly available to all retailers, wholesalers and buyer groups;
- The trade terms offered have an objective justification based on cost savings, efficiencies or sales promotions;
- The trade terms and conditions of qualification are communicated and applied uniformly;
- The rebate size is linked to the value provided, rather than simply the volume purchased; and
- They take measures to support qualification for rebates by wholesalers and buyer groups that supply the small and independent trade.

The Inquiry has outlined a framework, which it initially mooted as a possible code of conduct, as a means through which the recommendations I have just outlined can be implemented. As such, the Inquiry recommends that the next six months is used to secure voluntary commitments by FMCG suppliers to this framework. If this is not successful, then government should move to legislate this framework and provide for an Ombud to police it.

The Inquiry similarly received complaints of differential treatment for small and independent stores in shopping mall developments, in terms of rental rates charged and their related increases. The Inquiry was concerned that the benefit of ending exclusivity provisions may be undermined if these small and independent stores are not fairly treated by the landlords. This is particularly so because it appears that the negotiations between the landlords and the national supermarket chains, among other factors, have a bearing on the rental rates charged to these smaller line tenants.

As with suppliers, the Inquiry recognised that it is not desirable for it to interfere in rental negotiations across thousands of malls and tenants and therefore also recommends a lighter touch fair trading regime for shopping malls. In this context, the Inquiry recommends that shopping mall owners must:

- Use fair, transparent and commercially justifiable criteria to determine differences in rental rates, lease deposits and shop fitting allowances within a property; and
- Ensure that rental escalation formulae are uniform across customers unless there are commercially justifiable reasons for differences.

Once more, the Inquiry recommends a period of six months is used to secure voluntary compliance with the Inquiry's framework before moving to legislating this and policing it with an Ombud.

The Inquiry also found that concentration at the retail level has ripple effects down and up the value chain. For this reason, the Inquiry recommends that smaller suppliers are given more support. The amendments to introduce buyer power provisions in the Competition Act provide one means of support and are welcomed by the Inquiry, along with the Commission's enforcement guidelines. The Inquiry also welcomes the fact that the national chains all have some programme of small supplier development. The Inquiry recommends the industry formalise this commitment and set minimum and progressing targets for small supplier sales in their stores.

#### Regulatory and competitiveness support

The Inquiry found that South African spaza shops have faced a shifting competitive environment since the end of apartheid. On the one hand, they have seen the entry of national retail chains into township areas. The supermarkets have made bulk weekly and monthly shopping more accessible for non-urban residents, with the benefits of lower prices and product variety but at the same time they have also eaten into the daily top-up and convenience shopping that characterises the spaza shopping expedition in townships.

The Inquiry found that due to the bulk vs convenience shopping expedition focus, there is scope for coexistence and for spaza shops to survive and thrive. However, the regulatory and infrastructural environment favours the national chains and fails the spaza shop owners. Apartheid era trading times and slow, inflexible and costly zoning laws have hindered spaza shops from responding to entry and fulfilling the convenience role. This has been exacerbated by a lack of basic trading infrastructure (mainly capital for setting this up) and crime, which is cited as the biggest impediment to business. It discourages custom early morning and evenings, and forces spaza shop owners to hold limited stock. At the same time, national chains are given prime locations near transport hubs and infrastructure by municipalities. The township malls constructed then exclude scope for small and informal business in the demarcated area.

On the other hand, township trading has seen the entry of immigrant community retailers. The tight knit nature of immigrant communities has enabled them to cooperate collectively to bulk purchase and distribute more efficiently and raise credit for new stores. Their trading experience gained in their less concentrated and corporatized retail home markets has also

stood in good stead in competing against local small and independent retailers. An example is their ability to offer residents a more extensive stock range in smaller packaging as a response to the affordability dynamics of the communities they serve. They have also benefited from the lax enforcement of counterfeit cigarettes and other goods. The Inquiry found that domestic spaza shop owners are unable to replicate these advantages, being less integrated into buying groups and unable to access lines of credit.

The Inquiry believes that there is a need for a change in the approach to economic development at the local municipality level, particularly insofar as it relates to offering greater support to informal and township trading businesses. These businesses have a role in the township economy and offer a means for people to participate as business owners in the economy.

First, there needs to be the removal of regulatory obstacles, with revisions to trading times, introduction of proactive zoning, enhanced law enforcement and the registration of businesses to track informal economic activity. This will require coordination across spheres of government to achieve a common approach.

Second, there needs to be a conscious effort to set up infrastructure in support of informal and township businesses, including lighting and sanitation, as well as restrictions placed on new developments such that they must accommodate space for independent and historically disadvantaged retailers.

The Inquiry also believes that government should support the integration of spaza shops into beneficial buyer groups and distribution networks to meet the entry of more professional trading. This should involve facilitating and harnessing the existing entrepreneurial efforts and do so by:

- Facilitating the establishment of distribution centres and wholesale markets in township areas; and
- Providing seed finance for innovative commercial models that seek to incorporate spaza shops into buyer groups and logistics chains and put in place the preconditions for credit extension and provide business management support.

## **Conclusion**

In conclusion, the Inquiry strongly believes that a less concentrated grocery retail sector, with a large ecosystem of small independent traders alongside national retail chains is in the best interests of the economy and the consumers. Independent retailers provide important avenues

for participation in the economy, provide support for smaller suppliers further up the value chain, whilst also offering consumers greater product choice. There is still a role for large supermarkets for the bulk shopping experience, but this should not be to the exclusion of others.

The Inquiry trusts that its recommendations are well-received and that the Commission as well as broader government institutions will study its findings and implement its recommendations.

Before I hand over this Final Report to the Commissioner, I would like to take this time to acknowledge the support that the panel received from the technical team, some of whom have since left the Commission. I would like to thank Ms Louise Du Plessis, Ms Sunel Grimbeek and Yongama Njisane who were the first, second and final heads of the technical team.

I also want to acknowledge Ms Azania Yokwana, Ms Nonjabulo Sambo, Ms Nonkululeko Moeketsi, Ms Lerato Moore, Mr Keabetswe Mojapelo and Ms Louise Clark who provided economic support to the panel. Mr Hugh Dlamini, Mr Thabo Khumalo and Mr Yariv Parvese provided invaluable legal support.

I would also like to acknowledge those of the technical team that remained and saw this project to its completion. Thank you to Ms Nomsa Mokoena and Ms Zinhle Cele for their administrative support. I also want to thank Ms Queen Khetsi, Mr Ian Mrozak, Ms Beverley Chomela for their economic support and Ms Nyadzani Mabasa, Ms Priya Reddy and Ms Sewela Moshoma for their legal support.