

University of Cape Town

A Priority Crime that is not a Priority?
The Illegal Cigarette Trade: A Case Study of Mowbray

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Introduction

The trade in illegal cigarettes has occupied much public attention in South Africa in recent years following revelations of the prevalence thereof and the involvement of prominent public figures. The connections between distributors of illicit tobacco and the Zuma family, for instance, has been well-documented in both the news and journalistic pieces. Despite the media attention, there remains notable gaps in knowledge about where these cigarettes are sold, who buys them and what factors stimulate the demand for these cigarettes. This paper investigates the illegal cigarette trade on a micro-level, using a single suburb as a case study to demonstrate the ubiquity of the trade and public awareness thereof. The case study uses Mowbray, a middle-income suburb in the Southern Suburbs of Cape Town, as its target for investigation. The study investigates the nature and type of stores where illegal cigarettes are bought and sold and if and how this influences consumer perceptions of the illicit market. The aim of this paper is to learn more about the accessibility of illegal cigarettes and how this influences consumers.

Accessibility entails two factors: affordability and availability. In terms of affordability, illicit cigarettes are cheap, selling for as little as R10 per pack. As far as availability goes, these cigarettes can be found at street vendors and the average corner store/superettes. This is the case in most suburbs of Cape Town, whether poor, working class, or affluent. The relationship between cigarette consumption, cigarette prices, and income is noted as being particularly strong in South Africa.¹ Hence, when cheap cigarettes are made available a plausible assumption can be made that the low price and ready availability mean that illicit cigarettes are highly accessible and likely to be popular amongst consumers, especially those in the low-income bracket. Central questions to this research project are therefore: For what prices do these cigarettes sell? Where and at what type of stores are they usually sold? On average how many people buy these products? And, are consumers aware of the illegal nature of these products? By investigating these questions, we can learn more about the prevalence of illegal cigarettes, what motivates demand for them, and how the problem can be addressed.

¹ Corné van Walbeek 'Measuring Changes in the Illicit Cigarette Market using Government Revenue Data: The Example of South Africa' (2014) 23 *Tobacco Control* 69 at e73.

Chapter 1: Why is This Paper Important?

The importance of this paper cannot be emphasised without first understanding what illegal cigarettes are, the nature of the trade thereof, what threat this poses, and why it deserves attention. The following chapter will briefly describe when cigarettes are considered illegal and the certain forms that they may take, before detailing how it became a problem, the prevalence of this problem, and finally what this paper will add in terms of answers to this problem.

What are illegal cigarettes?

Cigarettes are considered illegal when they are counterfeited, i.e. cheap imitations of well-known brands, or when the requisite duties (usually in the form of import/export tax, excise tax and value added tax) have not been paid prior to the product being sold on the retail market. The crime in the latter instance is thus one of tax evasion. In the literature examined, three kinds of illegal trade are listed. These are ‘counterfeit’, ‘contraband’, and ‘illicit’.² The distinction between these forms of the illegal trade will be elaborated upon below.

What are ‘fake’ cigarettes and how do these relate to the illegal trade?

‘Fake’ or counterfeit cigarettes are a type of illegal cigarette. However, the terms ‘fake’ and ‘counterfeit’ should not be used interchangeably with ‘illegal’. The reason for this is that cigarettes can be illegal without being counterfeit, as is the case with cigarettes which have been legally manufactured but on which duties have not been paid. For instance, a registered company may legally manufacture cigarettes but then fail to declare a portion of the produce, then proceeding to sell the surplus without paying tax. Counterfeit cigarettes are generally imitations of well-known brands that are illegally produced and sold at a much lower price than what the brand usually sells for.³

² Directorate for Priority Crimes Investigation ‘Illicit Cigarettes in South Africa: A Presentation’ *Parliamentary Monitoring Group*, 2018, available at <https://pmg.org.za/page/Illicit%20Tobacco%20Trade>, accessed on 3 January 2019.

³ S Geduld ‘How to Spot a Fake’ *Independent Online*, 23 December 2010, <https://www.iol.co.za/news/south-africa/western-cape/how-to-spot-a-fake-1004629>, accessed 20 August 2018.

'Genuine' illegal products

While counterfeits are one kind of illegal product, 'genuine' products can also be sold illegally. In fact, these 'genuine' illegal cigarettes are seized more often than counterfeit cigarettes, although the latter are present in substantial amounts.⁴ To provide an example, in an affidavit deposed to by an employee of the South African Revenue Service, one Johannes Cornelius de Villiers, SARS data lists a total of 192 020 535 contraband cigarettes and 3 661 078 counterfeit cigarettes seized in South Africa between April 2009 and February 2010.⁵ This indicates that the market for non-counterfeit products is much larger than counterfeit products. To narrow the scope of this study, it is on these 'genuine' products that this paper will focus. These genuine products are divided into two categories: contraband and illicit. Contraband cigarettes refer to products that are smuggled across borders and into South Africa to avoid the requisite duties, whereas illicit cigarettes are products that are manufactured locally but then are either wholly or partially not declared to the relevant authorities. Thus, while the manner in which the cigarettes enter the market differs, the crime is substantially the same, that being tax evasion. Therefore, while the contraband and illicit trades are distinguishable, the difference is not pertinent to this study. References to the 'illicit trade' in this paper will encompass both the illicit and contraband trades.

Determinants of Illegality

One manner of determining illegality is to check whether the product in question has met the prescribed packaging regulations as set out in the Tobacco Products Control Act and the Customs and Excise Act. These requirements include: the 'SA' diamond stamp (which can be present anywhere on the packaging but is usually found on the bottom of the packet), health warnings on both the front and back of the packet, the correct 'quit line' telephone number (011) 720-3145 (which also may be written as +27(0) 11 720-3145), readings of tar and nicotine not exceeding 12mg of tar and 1.2mg of nicotine, and the 'Reduced Ignition Propensity' marking on the side of the pack on the top left.⁶ Products that do not meet these regulations are most probably counterfeit.

⁴ Court Affidavit deposed to by Johannes Cornelius Vermaak, Oudtshoorn Magistrate's court (2016) 201 at para 84.

⁵ Ibid.

⁶ Tobacco Products Control Act 83 of 1993; Customs and Excise Act 91 of 1964.

The main determinant of illegality for the purposes of this paper is price. The reason for this is that crafty manufacturers involved in illegal trading often ensure that the packaging of their products adhere to the regulations described above. These companies are also often enterprises lawfully incorporated in terms of the Companies Act 3 of 2008 who and are well within their right to manufacture and distribute tobacco products. This makes it difficult, even impossible, for consumers and even law enforcement officials, to determine the legality of the product by looking at the packaging and manufacturer alone. However, if the price of the cigarettes is suspiciously low, especially if below the tax threshold, this indicates that the cigarettes are not tax compliant and are therefore considered illegal for the purposes of this paper.

Excise and value-added tax combined result in a minimum total of R17.85 tax exercisable on every pack of 20 cigarettes. If anything under this amount is charged for a pack of 20, it is almost certainly illegal. While a reliable indicator of illegality, price is not a comprehensive determinant. The reason for this is that there may potentially be scenarios where duty may not have been paid on a product but where the usual market price is still charged. For example, a brand made by a corporation that is generally tax compliant may sell for R30 per pack. Although tax is usually paid, there could be occasions where a company deliberately avoids declaring certain shipments. Duty is consequently not paid and the cigarettes heading into circulation are therefore illegal. Given the established nature of the brand and the genuineness of the product, the corporation can still charge the usual price of R30 and successfully sell the product. It follows from this that it is entirely possible that there are cigarettes on the retail market that sell for more than R25 that are not tax compliant and are therefore illegal. To determine the legality of products in the circumstances described is impossible barring an investigation into the company's tax affairs and distribution records, which goes beyond the scope of this project. What is considered 'illegal' for the purposes of this paper are cigarettes where non-compliance with tax regulations is obvious, which means that the cigarettes are being sold for a price below the tax threshold of R17.85.

Why is the illegal cigarette trade a problem?

Smoking itself, whether of legal or illegal products, is a health hazard. Part of the rationale behind excise taxes is to limit or altogether eliminate unhealthy habits by making them expensive or unaffordable to large swathes of the population and in doing so, reduce the

public health burden. Illegal cigarettes, being cheap, counter the disincentive to smoke that excise taxes try to promote. This is one health concern. A second is that illegal products may not be subject to the same quality standards as legal ones.⁷ This would especially be the case for counterfeit brands.

Given that smoking is a threat to public health, efforts to curtail it through taxation is understandable and has been vindicated in the past as the number of packs of cigarettes smoked per year substantially diminished in the years between 1991 and 2002 with a reported reduction of 600 million packs smoked.⁸ By selling products at ultra-low prices, efforts to curtail the negative impact on public health are undermined. In addition to this, a crime in the form of tax evasion is being committed. While this may appear to be a victimless crime, this is not the case. Potential tax revenue is left uncollected and, as will be described later in this paper, profits made from illicit trading are often used to fund other nefarious dealings, which include efforts to gain political influence and, in certain cases, funding organised criminal activity. That tobacco products be taxed is essential, not in the least because of the positive impact on public health, but also because money flows left unregulated can see that money be used for other illegal purposes. It is for these reasons that the illegal trade is problem, in that it undermines public health and creates problems in security governance.

A Brief History of the Illicit Trade in South Africa post-apartheid

Under the apartheid regime, tobacco and related products incurred minimal taxation and stringent border controls and global isolation prevented smuggling of tobacco related products en masse.⁹ During the transition to democracy the dangers of smoking and its effects on public health came to the fore. Smoking poses a substantial hazard to public health, both for smokers and those around them. In South Africa in the early 1990s, considering the mounting evidence of the threat posed by smoking,¹⁰ action was required to address these concerns. Strict legislation, increased taxation and advertising constraints were three such actions.¹¹ The impact was almost immediate. Between 1991 and 2003, during which time the

⁷ Craig Lemboe and Phillip Black 'Cigarette taxes and smuggling in South Africa: Causes and Consequences' (May 2012) *Stellenbosch University Economic Working Papers* 9 at 12.

⁸ Mia Malan and Rosemary Leaver 'Political Change in South Africa: New Tobacco Control and Public Health Policies' (2011) *World Bank Tobacco Control Policy: Strategies, Successes, and Setbacks* at 125.

⁹ *Ibid* at 121.

¹⁰ *Ibid* at 125.

¹¹ *Ibid*.

Tobacco Products Control Act of 1993 and its 1999 amendment were introduced, as well as an increase to a 50 per cent excise tax, the estimated number of cigarette packs bought per year diminished by 600 million.¹² This demonstrates the efficacy of both legislation and increased taxation in reducing smoking. The total tax on cigarettes, which includes both excise and value-added tax, currently stands at 52 per cent.¹³

Unfortunately, the increase in price also created a niche for opportunistic enterprises to fill by avoiding paying tax and undercutting competition by selling cigarettes for much lower prices. The opening of South Africa's borders following the dissolution of apartheid compounded this issue. Between 2000 and 2010 the estimated size of the illicit market as part of the total market for cigarettes stood at roughly between 7 and 12 per cent.¹⁴ 2010 has been noted as a year where there was both an increase in illicit trade and an emergence of smaller tobacco companies in the country.¹⁵ By 2012, the illegal market apparently started to decline once again.¹⁶ After 2014 however, the illegal market ceased to be policed with the same vigour with which it previously had been.¹⁷ This is likely due to changes in governance in the South African Revenue Service, which is the main custodian of matters relating to the taxation of cigarettes.

The Tobacco Market in South Africa

Large multinational tobacco corporations (Big Tobacco) maintain a substantial majority of the market for tobacco and related products in South Africa. British American Tobacco (BAT) alone has maintained a consistent market share of above 80 per cent since 1993 until the present.¹⁸ Phillip Morris International (PMI), trading in well-known brands such as Marlboro and Chesterfield, and Japan Tobacco International (JTI), best known for the Camel brand, are the other big-name players present in the country. JTI claims approximately 8.4

¹² Malan and Leaver op cit (n 8) 125.

¹³ Daniel J Linegar and Corné van Walbeek 'The Effect of Excise Tax Increases on Cigarette Prices in South Africa' (2017) *British Medical Journal* 27 at 65.

¹⁴ Evan Blecher 'A Mountain or a Molehill: is the Illicit Trade in Cigarettes undermining Tobacco Control in South Africa?' (2010) 13 *Trends in Organized Crime* at 299.

¹⁵ Van Walbeek op cit (n1) at e71.

¹⁶ Ibid.

¹⁷ Interview by email with Brigadier Casper Jonker of the Directorate for Priority Crimes Investigation, 2018, Cape Town.

¹⁸ L Steyn 'The Tobacco Industry by the Numbers' *Mail and Guardian*, 18 May 2012, available at <https://mg.co.za/article/2012-05-18-the-tobacco-industry-by-the-numbers>, accessed on 27 August 2018.

per cent of the total market in South Africa.¹⁹ This demonstrates a market dominated by Big Tobacco. Filling a small niche are smaller local and regional manufacturers of tobacco products mentioned above, who, for the purposes of this paper, shall be referred to as ‘independent manufacturers.’ Although comprising a small portion of the market, these manufacturers have caused quite a stir in South African politics. Allegations of smuggling and tax evasion have followed these companies and further controversy has resulted from their links to several high-profile politicians and public figures, as notably detailed in journalist Jacques Pauw’s book *The President’s Keepers*.²⁰ This book outlines how a number of these companies had provided funding for political endeavours. One such instance involved the director of Carnilinx Tobacco Ltd, Adriano Mazzotti, who allegedly provided funding for the Presidential campaign of Nkosazana Dlamini-Zuma,²¹ as well as providing money to Economic Freedom Fighters leader, Julius Malema, allegedly to help settle the latter’s tax affairs.²² Also noteworthy is the involvement of Edward Zuma, son of the former president, as a director of Amalgamated Tobacco Ltd.²³ This company allegedly made regular payments to the Zuma family as part of a contribution to the former President’s controversial private homestead in Nkandla.²⁴ These are not isolated examples. What this illustrates is the connection that independent manufacturers have with politics and the potential influence that they seek to acquire through these connections. It is this politicisation of matters relating to illegal tobacco that perhaps serves to explain why the trade is not policed as strictly as it should be, which may also explain why the illegal cigarettes are so prevalent throughout the country. This will be built on later in this paper.

While occupying only a comparatively small portion of the revenue market, these products are reportedly popular with consumers as demonstrated by sales thereof. In November 2018 it was alleged by numerous news sources that the best-selling brand of cigarettes in South Africa was an illicit one, RG, manufactured by Gold Leaf Tobacco and selling for as little as

¹⁹ ‘Share of the South African Tobacco Market’ *Japan Tobacco Industry*, December 2017, available at <https://www.jti.com/africa/south-africa>, accessed on 3 January 2018.

²⁰ Jacques Pauw *The President’s Keepers* (2017) at chp ten.

²¹ Jacques Pauw ‘Gangster Republic: Dirty Cigarette Money is Funding NDZ’s Bid for President’ *Times Live*, 29 October 2017, available at <https://www.timeslive.co.za/sunday-times/news/2017-10-29-gangster-republic-dirty-cigarette-money-is-funding-ndzs-bid-for-president/>, accessed on 27 August 2018.

²² B Bateman ‘Malema’s Family Living in House on Estate Owned by Adriano Mazzotti’ *Eyewitness News*, 3 December 2018, available at <https://ewn.co.za/2018/12/03/malema-s-family-living-in-house-on-estate-owned-by-adriano-mazzotti>, accessed 10 December 2018.

²³ Pauw op cit (n 20) at 91.

²⁴ *Ibid* at 94.

R10 per pack.²⁵ Big Tobacco still maintains a large majority in terms of revenue generated from sales, but in terms of actual units sold it is apparent that Independent Manufacturers have been very effective in terms of growing their unit market share. Thus, while Big Tobacco dominates the revenue market share, competition appears to be much greater insofar as unit market share is concerned. In other words, while Big Tobacco makes a much larger profit, the deficit between it and independent manufacturers in terms of actual units sold may not be that large. This is important when assessing the scale of the illegal trade and how it could be combated.

What this paper adds to the literature

This paper adds insight into the prevalence of illegal cigarettes in a middle-income suburb of South Africa and how many people buy them. It provides an estimate of the size of the illegal market, which is helpful to anyone who may not possess intimate knowledge of the trade and/or suburb to acquire an understanding of the scale of the problem. By identifying the type of stores that typically sell illegal cigarettes, a platform for future research into these peculiar types of businesses and their relation to the trade is established. The issue of public awareness of the trade is brought to light in this paper. If public awareness of the trade can help diminish the trade itself, this is something that can be considered in policy development going forward. Conversely, if public awareness of the illicit trade has no effect on whether or not consumers buy illegal cigarettes, policy makers will know that public awareness campaigns may not have the desired effect and can focus policy initiatives elsewhere.

²⁵‘R10 cigarette pack becomes SA’s top seller’ *IOL News*, 28 November 2018, available at <https://www.iol.co.za/news/south-africa/western-cape/r10-illegal-cigarette-pack-becomes-sas-top-seller-18292543>, accessed on 30 November 2018; ‘Illegal Cigarettes Trade in SA Increase Drastically-Study’ *Eyewitness News*, 27 November 2018, available at <https://ewn.co.za/2018/11/27/illegal-cigarettes-trade-in-sa-has-increased-dramatically-study>, accessed on 30 November 2018.

Chapter 2: The Literature on Illegal Cigarettes

Internationally, a wealth of material has been written on the illicit trade, particularly dealing with cross-border smuggling and the flows of both the product and the monetary proceeds thereof. Comparatively less has been written about the trade and its impact in South Africa. The following section compares what has been written on the matter at a local level to that which has been written on the trade internationally in order to identify how the trade in South Africa is similar to the trade elsewhere in the world, if it differs, and, most importantly, where the gaps in the local literature arise.

1. The Global Literature

1.1 Enablers in global markets

Acknowledging what factors motivate and stimulate the illegal trade on a global level can assist in understanding how the South African market might be similar and what can be done to combat the trade. An ‘enabler’ is basically a factor that allows the trade to flourish, in other words, it enables the trade to exist. The findings of Project SUN list the most significant enablers as demand for cheap tobacco products, corruption amongst customs officials, the low-risk, high reward nature of the trade, the perception of the trade in illicit tobacco being a ‘victimless crime’, and also the growth of e-commerce.²⁶ This is corroborated by the work of Ross et al,²⁷ Joosens et al,²⁸ and Shelley and Meltzer. With developments in technology and global commerce, small entrepreneurs have been able to exploit markets across borders and access global markets, something which used to be solely dominated by big multinationals. The work of Shelley and Meltzer is of particular interest here in how it demonstrates not only how e-commerce is utilised in illicit tobacco trading but also what the proceeds of these endeavours are used for, and in light of this, how the illegal tobacco trade is far from a victimless crime.

²⁶Project SUN: A Study of the Illicit Cigarette Market in the European, Norway and Switzerland (2016) *KPMG* at 9.

²⁷ Hana Ross, Nicole Vellios, Katherine Clegg Smith, Jacqueline Ferguson and Joanna E Cohen ‘A Closer Look at ‘Cheap White’ Cigarettes’ (2016) 25 *Tobacco Control* 527 at 528.

²⁸ Luk Joossens and Martin Raw ‘From cigarette smuggling to the illicit trade’ (2015) 21 *Tobacco Control* 2 at 230.

The concept of a ‘victimless crime’ is one in which an activity or transaction might be illegal but in which all parties voluntarily participate, and which results in no harm to those concerned. This is an important concept because debunking the myth that the illegal trade does not harm anyone is key in illustrating why the illegal trade is a problem. Shelley and Meltzer discuss the link that certain enterprises dealing in illegal cigarettes in the USA have to terrorist operations in the Middle East. In one example presented, the authors mentioned how an American cigarettes company utilised political connections and established smuggling routes to proliferate their products in Iran, despite a US embargo.²⁹ The second example presented involves a Hezbollah cell operating in the North Eastern USA. The group distributed illegal cigarettes through North Carolina and Michigan, the proceeds of which were wired to an account in Lebanon and used for the purposes of terrorist activity in Levant.³⁰ What these examples demonstrate is that established smuggling networks are utilised by groups trading in illegal tobacco, that developments in e-commerce mean that seemingly innocuous dealings in one part of the world can be sources of funding for more serious criminal activity in another, and importantly, that the illegal trade in tobacco and cigarettes is not a victimless crime.

1.2 Methods of smuggling

Joossens et al. identify four types of illicit trade:

- 1) Legal products illegally distributed at a national level
- 2) Legal products illegally distributed across borders
- 3) Illegal products destined for the domestic market
- 4) Illegal products destined for a cross-border market.³¹

There is therefore a distinction between illegal products (3 and 4) and products traded illegally (1 and 2). For example, the independent manufacturers in South Africa are registered

²⁹ Louise I. Shelley and Sharon A. Meltzer ‘The nexus of organised crime and terrorism: two case studies in cigarettes smuggling’ (2008) 32 *International Journal of Comparative and Applied Criminal Justice* 1 at 48.

³⁰ *Ibid* at 54.

³¹ Joossens *op cit* (n28) at 232.

companies with the requisite licenses but seek to gain footholds in the market by over-producing (declaring fewer cigarettes than what are manufactured) and avoiding tax on a large portion of the cigarettes produced, thus allowing them to undercut competition by selling cheap products and still managing to make a profit. Joossens et al. describe this as being legal products illegally distributed at a national level.³² This introduces the concept of a ‘grey market’, namely a market in which there is a semblance of legality but where an aspect of the market, which in this case is tax evasion, ultimately makes it illegal. This ‘grey market trade’ whereby cigarettes are legally produced but illegally sold is reportedly the most popular form of illegal trade in South Africa, with most manufacturers selling tax-free products being based in the country.³³ Also prevalent are legally manufactured brands that are illegally distributed across borders. It is this type of trading in which Big Tobacco has often been involved, as evidenced by the work of Titeca et al,³⁴ as well as LeGresley et al,³⁵ and will be described below.

1.3 Big Tobacco and Smuggling

Much of the global literature chronicles the nefarious dealings of Big Tobacco in third world states. The rationale behind targeting states of this nature was often due to these states having weak regulatory and law enforcement institutions, making smuggling easier and low-risk.³⁶ These were also emerging economies and thus Big tobacco saw opportunities to establish their brand names in places where globalisation had not yet taken hold.³⁷ Due to economic inequality and disposable income being low in many of these states, particularly African states, Big Tobacco saw fit to avoid paying duties where possible and reducing price were necessary in order to appeal to smokers in the low-income bracket.³⁸

³² Joossens op cit (n28) at 232.

³³ B Nkosi ‘RG is an Illegal Tax-Dodging Cigarette Brand- Research’ *Independent Online*, 27 November 2018, available at <https://www.iol.co.za/the-star/news/rg-is-an-illegal-tax-dodging-cigarette-brand-research-18282756>, accessed on 10 December 2018.

³⁴ K. Titeca, L. Joossens and Martin Raw, ‘Blood cigarettes: cigarette smuggling and war economies in central and eastern Africa’ (2011) 20 *British Medical Journal* 3 at 226.

³⁵ E. LeGresley, K. Lee, M. E. Muggli, P. Patel, J. Collin and R. D. Hurt, ‘British American Tobacco and the insidious impact of the illicit trade in cigarettes across Africa’ (2008) 17 *Tobacco Control* 5 at 339.

³⁶ *Ibid* at 340.

³⁷ *Ibid*.

³⁸ *Ibid*.

Big Tobacco would usually establish a legal presence in the country in question in order to gain an initial foothold. The company would then create a façade of legality by complying with the country's tax and other regulations and having its stock lawfully distributed. However, a large amount of the products manufactured would not be declared to the relevant authorities, allowing a large number of cigarettes to be sold tax-free, usually in more informal settings.³⁹ Where states had banned foreign tobacco products from being sold in their countries, Big Tobacco sought to circumvent these barriers. This was achieved through smuggling, which itself entailed taking advantage of corrupt officials and opportunistic grey market entrepreneurs, such as truck drivers who would hide undeclared stock amongst other goods before offloading it at various retailers along the supply chain.⁴⁰ In this manner, Big Tobacco was able to break into new territory and expand its business. What the involvement of Big Tobacco demonstrates is that dealings in illicit and contraband tobacco are not limited to smaller and independent companies. The trade is ubiquitous in nature and prevalent in the global market on a grand scale with companies often using neighbouring states as springboards into potentially more lucrative markets.

Regarding illegally produced cigarettes, in other words, cigarettes on which tax has not been paid or that have not been legally manufactured, such may not be the most desirable course of action for tobacco companies. For instance, Ross et al., acknowledging the distinction between counterfeit and illicit cigarettes, explain how the latter is the more favourable for tobacco companies to distribute given that there is no risk of contravening trademark laws.⁴¹ This is because the tobacco companies in question manufacture their own brands legally before deviously avoiding taxation on their products. Therefore, while they may be charged with tax evasion, they will not incur the added charge of trademark infringements as they are not distributing imitations of another company's brand. Illegal production also runs the risk of having factories raided and shut down. Hence, it could prove to be a costly endeavour as opposed to much lower-risk enterprise of legally producing cigarettes but illegally trading them.

³⁹ E. LeGresley op cit (n35) at 342.

⁴⁰ Ibid at 341.

⁴¹ Ross op cit (n27) at 527.

1.4 The impact of tax and legislation on cigarette consumption

While big tobacco companies claim that high taxes encourage black market activity, research has shown that illicit markets are more prevalent in countries where legal cigarettes are cheaper.⁴² Moreover, the high prices of cigarettes are largely due to the industry itself increasing prices rather than tax imposed on the products.⁴³ An example of this as evidenced by Ross, is Brazil, where tax reduction policy has been instituted to no success, in part because the tobacco industry decided to increase prices while benefiting from tax cuts.⁴⁴ To illustrate this using an example, if tax accounts for R20 on a pack of cigarettes that would cost R20 before tax, the logical step would be to price the pack at R40. However, tobacco companies tend to increase prices more than what is necessary. So, in this case such a company may charge R50 for the pack in question and then claim that the increase is due to tax. In South Africa, although reporting a decrease in smoking, both tax revenue and big tobacco profits increased after 1993.⁴⁵ The effect of tax increases on the legitimate industry is mostly benign and demonstrates a positive impact on public health and tax revenue. As to whether it influences growth in illicit activity, this is negligible at best. Established smuggling networks and weak state institutions tend to play a bigger role in stimulating the illicit trade than tax.⁴⁶

Gilmore et al. support the claims made by scholars such as Ross by reiterating the efficacy of increased taxation in reducing smoking, but also claim that this effectiveness is dependent on tobacco company pricing strategy.⁴⁷ What these authors have found is that tobacco companies have increased prices on some of their brands but not all of them.⁴⁸ To elaborate, the authors organised prices of cigarettes into four categories, which in order of most expensive to cheapest are Premium, Economy, Mid, and Ultra-low Priced.⁴⁹ Tobacco companies tend to ‘overshift’ the price of the first three categories, meaning that the prices are increased to compensate for tax but are then increased more than what is necessary. This

⁴² Joossens op cit (n28) at 230.

⁴³ Hana Ross ‘Controlling Illicit Tobacco Trade: International Experience’ (May 2015) *Economics of Tobacco Control Project, University of Cape Town* at 2.

⁴⁴ Ibid.

⁴⁵ Corné Van Walbeek *The Economics of Tobacco Control in South Africa* PhD (University of Cape Town) (2005) at 132.

⁴⁶ Joossens op cit (n28) at 230.

⁴⁷ Anna B Gilmore, Behrooz Tavakoly, Gordon Taylor and Howard Reed ‘Understanding Tobacco Industry Pricing Strategy and whether it Undermines Tobacco Tax Policy: The Example of the UK Cigarette Market’ (2013) 108 *Addiction* 1317 at 1322.

⁴⁸ A Gilmore op cit (n47) at 1321.

⁴⁹ Ibid at 1319.

is the practice that has been criticised by Ross above and which is used to refute the claim that reduced tax will reduce illicit trading. Returning to the price categories, it is noted by Gilmore et al. that while the first three categories incur price increases, the Ultra-low-priced cigarettes remain the same.⁵⁰ What this pricing strategy does is allow tobacco companies to profit from expensive brands that are sold at an inflated price to the wealthier demographic while avoiding a potential loss of consumers by keeping certain brands ultra-cheap. This pricing strategy undermines efforts to reduce smoking for public health purposes as it ensures that tax does not deter people buying cigarettes. Hence, while increased taxation has proved effective in reducing smoking it is often only effective if the compliance of tobacco companies has been secured.

2. Local Level

2.1 The Illegal Trade in southern Africa

Independent tobacco companies in southern Africa are currently employing the very same tactics as big multinational firms have in the past, albeit on a smaller scale. The practice of avoiding tax by selling undeclared surplus cheaply has been mentioned. In addition to this is cross-border smuggling and ‘transiting’. As mentioned earlier, neighbouring countries, Zimbabwe in particular, are common countries of origin for cigarettes entering South Africa illegally. Syndicates with stronger purchasing power exploit Zimbabwe’s high-scale production of tobacco and unfavourable economic conditions to their advantage.

Zimbabwean citizens employed in goods transportation are susceptible to exploitation by these syndicates given the relative disparity in income and economic advantages between South Africa and Zimbabwe.⁵¹ Seeking a better living, many of these Zimbabweans accept the risks involved and are willing to smuggle at a cheaper rate than South Africans. If apprehended, these low-level smugglers are often left to face the charges alone, with little linking them to the command structure higher up.⁵² This allows for smuggling to be a low-risk enterprise for those in command. Such instances are common in the illicit tobacco trade

⁵⁰ A Gilmore op cit (n47) at 1319.

⁵¹ Affidavit op cit (n4) para 78.

⁵² T Muleya ‘Cigarette smuggling pair nabbed in SA’ *The Herald*, 6 Feb 2017, available at <https://www.herald.co.zw/cigarette-smuggling-pair-nabbed-in-sa/>, accessed on 24 August 2018.

throughout the third world, demonstrating how southern Africa forms part of a global problem.

2.2 Impact on legitimate industry

Numerous news articles cite the illicit trade as a threat to both the legal tobacco market and to the labour market in the industry. However, these are often unaccompanied by statistics or evidence. Academic articles cite evidence that demonstrates that the labour market in the tobacco industry has been in steady decline since the 1970s, before the illicit trade became prominent.⁵³ The decline in the market for labour is more likely due to mechanisation, industrial developments and the decrease in the number of smokers in the country.⁵⁴ The legitimate industry itself has apparently not suffered much, if at all. Reported revenue from large multinationals in South Africa has increased, with higher prices making up for the decrease in smokers.⁵⁵ On this note, it is a regular refrain used by Big Tobacco that higher taxes are a primary stimulator of the illicit trade as increased prices compel smokers to pursue cheaper, often illicit, products. However, while price certainly influences consumption, research has demonstrated that Big Tobacco companies themselves are the primary drivers of higher prices as opposed to taxes on their products.⁵⁶ These companies do this by increasing their prices to a greater amount than what is necessary to account for tax meaning that, even including tax, cigarettes are more expensive than what is necessary to make a profit.

Furthermore, increases in excise tax has proven to be an effective manner in reducing consumption of cigarettes, as demonstrated by Linegar et al and discussed earlier.⁵⁷ Corné van Walbeek also prudently states that increased prices are only one factor amongst many in terms of motivating factors for the illicit trade, and while higher prices may provide an incentive for illicit trading, it does not necessarily translate into illicit trading.⁵⁸ It would appear from what has been mentioned in this paragraph that the effect of the illicit market on the legitimate industry is therefore negligible at best and that the grievances expressed by Big

⁵³ Van Walbeek op cit (n45) at 131.

⁵⁴ Ibid.

⁵⁵ Corné van Walbeek and Lerato Shai 'Are the Tobacco Industry's Claims about the Illicit Trade Credible? The Case of South Africa' (2013) *South African Labour and Development Research Unit* at 6.

⁵⁶ Ibid at 7.

⁵⁷ Linegar op cit (n13) at 69.

⁵⁸ Ibid, 73.

Tobacco have more to do with eliminating competition than out of any genuine concern for legality and public health.

It is also important not to automatically associate the term ‘legitimate industry’ with names such as British American Tobacco and Phillip Morris International. Although generally compliant with tax regulations, Big Tobacco has been heavily associated with the trade in illicit cigarettes in the past.⁵⁹ BAT has also been under investigation by the South African Revenue Service (SARS) as recently as 2015 for unpaid taxes.⁶⁰ The ‘legitimate industry’ should not be associated with any company or brand of cigarette, but only with products that have complied with regulations and on which tax has been paid, regardless of brand or associated company. As mentioned earlier though, Big Tobacco has found ways around this, meaning that it is immensely difficult to determine whether all of its products have complied with tax regulations and would be impractical to do so considering the scope of this project. Hence why price and compliance with packaging regulations are the most pragmatic indicators of illegality, at least for the objects of this paper.

2.3 Smuggling and the contraband trade

In as far as this applies to the South African market, cross-border smuggling is prevalent, with Mozambique, Botswana, and particularly Zimbabwe being common countries of origin. The Beitbridge border post is a notable point of entry for illicit stock often hidden amongst other goods and in false floors and hidden compartments on the underside of transport vehicles.⁶¹ Seizures at this border post accounted for 82 per cent of all illicit cigarettes seized by the national authorities in 2016.⁶² In spite of the majority of seizures made being of products being smuggled into South Africa, the majority of illicit cigarettes in the country are

⁵⁹ Linegar op cit (n13) at 73.

⁶⁰ Pearlie Joubert ‘How SARS bust Lifman’ *City Press*, 12 March 2015, available at <https://www.news24.com/Archives/City-Press/How-Sars-bust-Lifman-20150429>, accessed 24 August 2018.

⁶¹ ‘Cigarettes Seized at Beitbridge’ *Independent Online*, 11 October 2012, available at <https://www.iol.co.za/news/cigarettes-seized-at-beit-bridge-1401296>, accessed on 24 August 2018; Obey Manayiti ‘Face to Face with Beitbridges’ Daring Smuggling Syndicates’ *The Standard*, 4 December 2016, available at <https://www.thestandard.co.zw/2016/12/04/face-face-beitbridges-daring-smuggling-syndicates/>, accessed on 10 December 2018; Jonckie ‘Hawks Probe Cigarette Smuggling at Beitbridge’ *Insurance Chat*, 7 February 2014, available at <http://www.insurancechat.co.za/tag/hawks-probe-cigarette-smuggling-at-beit-bridge/>, accessed 24 August 2018.

⁶² Affidavit op cit (n4) para 78.

manufactured locally.⁶³ This indicates much greater success in disrupting illegal products coming in from across the border with Zimbabwe than in disrupting locally produced illicit stock. It is therefore illegal products produced locally that provide the biggest challenge for law enforcement and the legitimate market. This also reveals something about the priorities of law enforcement in that focus on preventing smuggling of contraband products into the country is a higher priority than disrupting local production and dissemination even though the latter appears to be a larger problem.

2.4 The Prevalence and Accessibility of Illegal Cigarettes in the Western Cape

As the empirical aspect of this paper utilises a case study of Mowbray for its findings, it is necessary to investigate literature which deals with the illicit trade in the Western Cape and the city of Cape Town, the province and city respectively in which the suburb of Mowbray is located. In a 2016 court affidavit, Johannes de Villiers, an employee of SARS, lists a significant number of towns and suburbs in the Western Cape where illicit tobacco has been found and seizures made.⁶⁴ These include suburbs of the Cape Flats, Cape Town City Bowl, Southern Suburbs, and the Overberg, just to name a few. The list is not exhaustive and is indicative of the ubiquity of the trade.

Delft Case Study

In a study conducted by the Sustainable Livelihoods Foundation, the suburb of Delft was used as a case study for an investigation into informal traders who sold what the authors describe as ‘grey market’ cigarettes. The ‘grey market’ is described by the authors as being that of products that may be legally manufactured but that are illegally distributed, whether via unauthorised channels or where tax has been avoided.⁶⁵ The study sought to determine the scale of grey market cigarettes being sold by informal traders in the suburb, the impact that

⁶³ Tammy Petersen ‘Most illicit cigarettes now made in SA-Soty’ *News24*, 10 November 2015, available at <https://www.news24.com/SouthAfrica/News/most-illicit-cigarettes-now-made-in-sa-soty-20151110>, accessed 10 December 2018.

⁶⁴ Affidavit op cit (n4) para 99.

⁶⁵ Rory Liedeman and Beth Mackay ‘A Smokescreen Economy: The Nature and Scale of the Township Grey Market Cigarette Trade in Delft’ (2015) *Sustainable Livelihoods Foundation* at 3.

state bodies have on the trade, and whether it is primarily locally-owned or foreign-owned businesses that sell these products.

The researchers used similar methods to the ones used in this study. They went to various stores in Delft and asked for the cheapest available loose cigarette without asking for any specific brand. 93 per cent of the stores visited were found to be sellers of illegal cigarettes in the 2015 resurvey, an increase from the 82 per cent in an initial survey conducted in 2010/2011.⁶⁶ This demonstrates a very high availability of illegal products and this, coupled with the fact that Delft is considered a very poor area with 69 per cent of households earning less than R3200 per month,⁶⁷ means that these cheaper products are likely to find traction amongst smokers in the area.

2.5 Nature of the Companies Involved in the Illegal Trade

Grand scale trafficking was once the domain primarily of big multinationals. Independent manufacturers, limited in terms of contacts and resources, tended to operate at a more local level. In southern Africa, for instance, the illicit trade tends to be a domain dominated by independent manufacturers with the big companies rallying against it in pursuance of their own interests of stamping out competition, rather than out of genuine concern for public health and considerations of legality.⁶⁸ However, with developments in technology and global commerce, small entrepreneurs have been able to exploit markets across borders and access global markets.⁶⁹ Furthermore, although espousing anti-illegal trade rhetoric, Big Tobacco may not be completely innocent as it has been involved in illegal trading in the past, as will be discussed in the section dealing with the global literature on the matter.

2.6 Limitations of the Available Literature

News articles make up the bulk of the literature on the topic of illegal cigarettes in South Africa. The academic work that exists on the matter tends to focus on quantitative analyses, with particular emphasis being placed on the taxation component and how it relates to the

⁶⁶ Liedeman op cit (n65) at 8.

⁶⁷ Ibid, 5.

⁶⁸ Van Walbeek and Shai op cit (n55) at 9.

⁶⁹ Project Sun op cit (n26) at 9.

tobacco industry. These studies also have the weakness of being single-source dependent as most have been conducted by, or reference, only a handful of authors.

What the favouring of quantitative methods has resulted in are various estimates based on comparisons between the overall market and the legitimate market, where the discrepancy between the two is used to estimate the size of the illicit market. This has obvious difficulties, such as limitations in data collection in establishing the number of cigarettes smoked.

Estimating the size of the total market invariably means including the illicit market to begin with, which means that the total number of cigarettes smoked in the Republic needs to be determined. Estimates may vary depending on methods employed which can result in substantial variations in the size of the illicit market.

The lack of qualitative research on the matter has left numerous gaps and unanswered questions, such as: where are illicit cigarettes bought and sold? Where does the tobacco come from? Who smokes these cigarettes and how often? Do consumers know that they are illegal? How easy is it to find them? To what extent have they infiltrated the market? Is the sale of these cigarettes localised or ubiquitous? The work of the Sustainable Livelihoods Foundation in Delft, detailed above, provides a good qualitative study on the illicit trade but, as discussed, leaves numerous gaps open for further research. It does not answer the questions of who buys these cigarettes and whether these consumers are aware of the illicit trade. Greater empirical research and more qualitative analyses are therefore necessary to better understand the illicit trade and its impact in South Africa, particularly at a suburban level.

3. Commonalities in the Local and Global Literature

What most of the expert opinions have in common is that taxation is an effective method of reducing consumption.⁷⁰ These same authors also note that tax reduction has not alleviated illicit trading and that the black market is larger in countries where cigarettes are cheaper.⁷¹ However, it must be considered that in these countries the average disposable income will be lower and therefore the even cheaper, tax-free, cigarettes will be more appealing.

⁷⁰ Van Walbeek op cit (n1) at e73; Joossens op cit (n29) at 230; Ross op cit (n28) at 45.

⁷¹ Ibid.

A second noteworthy common feature is the observation that established smuggling networks and weak state institutions are a greater contributor to illicit dealings than price.⁷² Inefficient policing and corruption amongst employees of the state, such as customs officials, are common enablers for the trade. Thirdly, low penalties on tobacco smuggling make it a favourable enterprise for opportunists, as little or no consequences exist. This is compounded by issues relating to state capture and security governance. As will be established in the findings section, the policing of the trade is limited and inadequate.⁷³ This means that the trade in illicit tobacco, for the most part, is low-risk, high-reward.

4. The Gaps in the Literature

At a local level, most of what has been written has been done so from a positivist paradigm and has been focused on the economics of the trade at a macro-level. Academic writers in South Africa have been primarily concerned with the impact of the trade on tax revenue and the legitimate market. Other literature, such as journalistic pieces, has dealt with the players involved in the illicit trade and its links to politicians.

Little research has been done in terms of micro-level factors that stimulate the trade, such as consumer preferences, their knowledge of the illicit market, the relationship between stores where these products are sold and the community, and the relationship between the community, the traders and the police. The study conducted by the Sustainable Livelihoods Foundation is one of the few that deals with the illicit trade in this regard. As noted, it deals with which, and at how many, stores illegal cigarettes are sold but does not deal with consumers of illicit stock and what factors motivate their purchases. My paper aims to add to the research by finding out the nature and number of stores that sell illegal cigarettes in a middle-income suburb, in this case Mowbray, and how this may affect consumption and consumer perceptions of the illicit market. It will do this by documenting the nature and number of these stores and through surveying consumers of cigarettes, as will be outlined in the methods section below.

⁷² Van Walbeek op cit (n1) at e73; Joossens op cit (n29) at 230; Ross op cit (n28) at 45.

⁷³ Interview op cit (n17).

Chapter 3: Methodology

1. Research Outline

The study at hand takes the form of a case study of Mowbray, a suburb situated in the Southern Suburbs area of Cape Town. Mowbray was selected for its diverse demographics and central location in relation to the suburbs, the city, and hubs for public transport.⁷⁴ This makes Mowbray a good case study as a wide variety of people ranging from wealthy homeowners to working class people who travel to Mowbray on a daily basis. Because of this, the study will include participants of various backgrounds and attitudes rather than being too focused on one demographic.

The methods used include data collection by identifying how many stores sell illegal cigarettes and at what price they are sold. This was done by entering these stores and asking the store clerk in each what the cheapest cigarettes on offer were. Next, surveys were conducted throughout the suburb. The surveys conducted involved smokers in Mowbray who were asked various questions about their purchasing habits, such as the type of store from which they purchased cigarettes, the price paid for the cigarettes, and whether they were aware of the illicit trade in cigarettes. Lastly, an interview was conducted with a member of the South African Police Service's Directorate for Priority Crimes Investigation and centred on how the illicit trade is policed and what measures are taken to curtail it, among other things.

These methods were chosen as they were the best equipped to answer the questions posed at the beginning of this paper. By observing how many stores in the suburb sell illegal cigarettes and at what price, an indication of the prevalence and availability of illegal cigarettes. The surveys supplement this by revealing how popular these products are with consumers. Finally, the interview sheds light on how the matter is policed and why, in spite of policies present to combat the trade, it continues to flourish and remains relatively undisrupted.

⁷⁴ 'Census 2011, Mowbray, Sub Place 199041027' Adrian Frith, 2011, available at <https://census2011.adrianfrith.com/place/199041027>, accessed 10 December 2018.

2. Methods

2.1 Finding stores where illegal cigarettes are sold

The suburb of Mowbray was traversed on foot. My aim was to walk along every road in the suburb and document every retail outlet that I could find. Upon finding a store, I would enter the establishment in question and ask whether cigarettes were sold at the store. If so, I would then inquire as to what the cheapest pack of cigarettes on offer was. Any store that sold packs of 20 cigarettes for under R17.85 or loose cigarettes for under 90 cents was categorised as selling illicit cigarettes. The name and precise locations of the stores will remain undisclosed to protect the store owners and employees. Characteristics of the location in which the stores are found, for example being close to main roads or areas frequented by students, were noted in order to investigate whether such factors may influence the sale and purchase of illicit stock. The purpose of this exercise was to determine prevalence of illegal cigarettes and availability of illegal products to the public. Stores selling cigarettes were categorised into three types based on the nature and character of the store. These were supermarkets, superettes, and street vendors. A fourth category, labelled 'other', was included for the sake of recording responses where the participant bought their cigarettes from a different source or else did not favour any one type of store. The differences between each category are explained below.

Street vendors

Street vendors are stores run by salespeople who set up shop on the sidewalk next to typically busy roads. This 'store' is usually simply a table with stock in crates or cardboard boxes.

Superettes

Corner-stores, which are sometimes informally referred to as 'Pakistani' or 'Somali' stores (named for the nationality of persons who typically run them), and also known as superettes, are a sort of convenience store that usually sell a wide variety of stock and are typically run by foreign nationals. They are much smaller than the average supermarket but usually operate for longer hours. The produce in these stores very often may not be subject to the same sort

of regulation and/or quality control as in larger supermarket chains. Many of these stores bear their name on the outside of the store on red Coca Cola sign boards but this is not always the case.

Supermarkets

These are stores that are typically part of a well-known chain and have large inventories. Cigarettes in these stores are usually sold at a kiosk behind the check-out counters.

Other

Respondents who did not favour any one source listed above, or else purchased their cigarettes from a different source entirely, were recorded under this heading.

The rationale behind recording the type of store where respondents bought their cigarettes is that, firstly, it is postulated that stock and sale of illicit cigarettes will be more prevalent in certain outlets than others. In this instance, the postulation is that superettes and street vendors will be the primary sellers of illegal products. Secondly, the nature of the store and where it is situated may influence the consumers perception of the product. For example, if the person bought their cigarettes from an established supermarket, he/she would probably not think about the legality of his/her purchase since he/she would assume it to be legal if bought from this type of store. On the other hand, if the cigarettes were bought from a street vendor at an unusually low price, the purchaser may have more reason to consider whether the purchase is legal or not. Where the store is situated and the interactions between it and the public may also contribute to consumer perceptions thereof. For instance, if an authoritative body such as the police purchase from the store or pass it by without taking any action, this could possibly serve as a tacit legitimization of the store and its products. The ultimate postulation here is that the nature of the store and its location may influence consumer perceptions of its products and serve to legitimise purchases made therefrom. For example, if a consumer purchases a pack of cigarettes for under R17.85 (in other words, illegal cigarettes) from an established supermarket in a well-frequented public place, the consumer is likely to believe that his/her purchase was perfectly legal. In this way, the purchase of illegal cigarettes is legitimised by virtue of the nature of the store and public attitudes towards it.

The type of the store selling the illicit stock was noted as this could have an effect on legitimising the purchases made by consumers. For example, a consumer would probably not stop to think about the legality of his/her purchases if he/she had bought from a well-known supermarket. Attitudes could perhaps be different if the same purchase was made from a street vendor or superette. A limitation to this exercise is the possibility of having missed stores that are not as noticeable as others during the scouting of the suburb. Also, stores often open and close, meaning that the number of stores selling cigarettes in Mowbray may not stay consistent over extended periods.

2.2 Surveys

2.2.1 Outline

Surveys were utilised in order to gain an understanding of the behaviour of the average smoker in Mowbray. These were all conducted in-person using printed copies of the survey and the responses of each participant were recorded by myself by circling the option selected by the participant. Each survey took approximately one minute to complete, and participants were offered some loose cigarettes in exchange for his/her participation.

The reason for using surveys was because they are quick method of obtaining general but pertinent information about purchasing habits. It thus allowed me to obtain a large sample size of 100 in a relatively short space of time. The information sought was also of the nature that only required short answers that could be selected from a closed list of options. Lengthy in-depth interviews and other such methods were not required for this component of the research, so surveys provided a quick, timeous and appropriate means of acquiring a large sample size. Each participant was asked his/her age for record purposes and for the purpose of ensuring that the said person was 18 years or older, the reason being a consideration of ethics as cigarettes are only legally available to persons of 18 years of age or older. Other demographic information, such as race and sex, was not asked. The reason for this is because the purpose of the exercise was to establish the purchasing habits and preferences of the average smoker in Mowbray. This meant questioning a diverse array of smokers rather than confining the focus to any race or sex. Selection of participants was random, the only exception to this of course being whether the participant was a smoker or not.

Initially, 60 surveys were conducted over the course of two months. After the collection of 60 surveys, an initial set of results was recorded. Another 40 surveys were then subsequently conducted over another two-month period. The two sets were then combined for results of the overall 100 surveys conducted. Surveys were conducted on different days and at different times. Only people who identified as smokers were asked to participate. Participants were first asked whether they consented to participating before being questioned. Each respondent was then asked eight questions relating to their purchasing practices. Participants were asked what their preferred brand of cigarette was, whether they generally buy cigarettes loose or by the pack, at what type of retailer they typically bought from, how often they purchased cigarettes, and how much they paid per pack. Lastly, respondents were asked whether they were aware of the illicit trade in cigarettes and whether if they were made aware that the products that they currently favour were illegal they would consider switching to a legal product.

The findings of the initial 60 and subsequent 40 surveys were initially kept separate and then compared to test if any general trends or discrepancies were present. This was done more for interest's sake more than anything else as any discrepancy in the data could be explained as being ordinary variation and thus the exercise was not wholly useful to the main aim of this study. However, the comparison did bring to light certain correlations present between buying loose cigarettes and the frequency of purchases and type of store bought from. As more results came in, responses to certain questions started to differ from the trend that had been observed early on. What was noticed here is that an increase in the number of people buying loose cigarettes was met with an increase in the number of people who bought at a higher frequency and in the number of people buying from superettes and street vendors and a decrease in those buying from supermarkets. The significance of this will be highlighted in the discussion section.

2.2.2 How this research builds upon previous studies

Although similar to the Delft case study mentioned in the literature section, the Delft study should be distinguished from the aims of this paper for a number of reasons. Firstly, Delft has

a much larger population than Mowbray.⁷⁵ Secondly, the character of the two areas differs. Delft is considered an impoverished area whereas Mowbray is considered middle income, meaning that the allure of cheaper cigarettes may not be as high in the latter as in the former. Thirdly, the scope of the research differs. The focus of the Sustainable Livelihoods study was only on micro-enterprises, such as spaza shops and informal traders, and does not deal with larger stores like supermarkets. It also focuses only on the retailers. Consumers were not involved in the study meaning that the findings relate only to the availability of illegal cigarettes and not to the consumption thereof, meaning that the popularity of these products remains unknown. A consumer survey would have been helpful as the findings thereof, coupled with the research done on retailers in the area, would have been able to demonstrate a link between availability, household income, and consumption of illegal cigarettes. Nevertheless, this study provides insight into the nature of stores that typically sell illegal cigarettes and for how much these cigarettes are typically sold.

This paper can build upon what has been written on the trade in Cape Town by addressing the gaps left by previous studies, which in this case means investigating consumer preferences and knowledge of the illicit trade. It adds the dimension of who is buying these cigarettes and not just where they are sold. Light can also be shed on whether consumer knowledge of the illicit market has any impact on the trade itself.

2.2.3 Getting answers out of people

All surveys were conducted by me over a period of five months between August and December 2018. It was initially with some degree of trepidation that I began the process, uncertain as to how I would be received on the streets of Mowbray, requesting participation from street-goers who might be reluctant to assist. It was because of this anticipated reluctance that an incentive was offered to hopefully entice people into participating. A few loose cigarettes were offered to anyone willing to participate. As I would discover, this was to be a handy incentive. Even without such though, I came across numerous folk who were more than willing to help regardless. Nevertheless, the exercise was met with some expected difficulties. The first was to be able to stop random strangers on the streets, or ring strangers'

⁷⁵ Census op cit (n74); 'Census 2011, Delft, Sub Place 199023' Adrian Frith, 2011, available at <https://census2011.adrianfrith.com/place/199023>, accessed 10 December 2018.

doorbells, and ask them to participate. The first thing that needed to be gauged after getting their attention was to find out if he/she was a smoker. This was easier in cases where the person was smoking or visibly had cigarettes on his/her person. In such cases, I would first greet them and then immediately follow up with an offer of free cigarettes in exchange for participation in the survey. Where the person did not visibly possess cigarettes, I would greet him/her and ask if he/she was a smoker. There were of course many answers in the negative, both in terms of whether the person was a smoker and other times simply an unwillingness to participate. In some instances, people would walk by without any acknowledgement of me whatsoever. While such experiences can be disheartening, I was undaunted by what I deemed to be temporary setbacks and pressed on with the task at hand.

As my foray into the field continued, I found the response rate to generally be quite pleasing. Some days were better than others, often depending on the weather and/or time of day. Blustery and/or overcast days typically saw fewer respondents, while sunny but temperate days often saw greater ones. Some days saw as few as four responses while others saw as many as 13. I decided not to conduct too many surveys on any one day to try to ensure the integrity of the study. For instance, it could have been that on one particular day, more of a certain character type could have been present on the streets than others. If, for instance, 50 surveys were conducted on this particular day, it could have the effect of obtaining findings that may not be wholly reflective of all smokers in the suburb.

Very often the most responsive participants were homeless people who saw participation not only as an opportunity to get some free cigarettes but also as a manner of passing the time. On numerous occasions I was engaged in conversations about a wide array of topics, including but not limited to the illegal trade in cigarettes. It was because of instances such as these that I saw it necessary to conduct all surveys myself and not employ the help of an assistant, so that I could note and record anecdotes, witticisms and idiosyncrasies that arose. Numerous other participants offered their insights and perspective on the illegal trade that went beyond the questions they had been posed in the survey. I had a pen and notebook on hand to write down some of these responses and record them as anecdotal evidence, which turned out to be very helpful. A few of these anecdotes are recorded and discussed in the discussion section and can help shed more light on the behaviour of different consumers and how it relates to the type of store they buy from, what they pay for cigarettes, and why they favour certain types of store and brands of cigarettes.

2.3 Interviews

An interview was conducted with a member of the Directorate for Priority Crimes Investigations (more commonly known as the Hawks) regarding the illicit cigarette trade on national level. The purpose of this interview was to gain background knowledge from a law enforcement perspective on the matter and to acquire an understanding as to how the illicit trade is policed and whether this is likely to have any impact on consumer perceptions of the illicit market and whether this influences their purchases in any manner. An interview was the ideal method for this aspect of the research as the person interviewed was a knowledgeable individual who provided good insight into the trade from the perspective of someone who is actively involved in the policing thereof.

The reason for selecting a member of the Directorate for Priority Crimes Investigations was because it is this branch of the South African Police Service that deals with the trade more so than any other branch as the illegal cigarette trade is classified as a priority crime. Secondly, the brigadier in question was willing to participate and was responsive to requests for information. Numerous attempts were made to contact relevant parties involved in policing the trade who are based at the Mowbray Police station but none of these attempts were successful.

I asked the Brigadier some general questions about the trade, such as how illegal cigarettes are identified, the origin of these cigarettes, where they are typically sold and what the penalty for selling and/or buying illicit stock is. Importantly, they were asked whether they believed that the consumers of illicit stock were aware of the illegal nature of their purchases. The interviewee was then asked more specific questions relating to the policing of the trade. He was asked how often and where seizures of illicit stock were made and whether sellers, or buyers, of the products were typically arrested and what sanction they faced. The postulation is that the more frequent and more public the police activity against the illicit trade, the less likely consumers would be to buy this stock and the less likely retailers would be to sell it. The end goal of the interviews is thus to determine the impact of police activity and law enforcement has on the prevalence of the trade.

2.4 Limitations

As with all research projects, certain limitations exist. Beginning with establishing which stores sold illegal products, businesses often open and close, meaning that these numbers might not stay consistent over time. I found this to be the case on one of my walks through the suburb while conducting surveys. I walked past a store that I had previously recorded as a retailer selling illegal cigarettes to find that the store was no longer in operation. On another such walk some time later, I happened across a store that I had not previously noticed that I discovered sold illegal cigarettes. Whether it was a newly opened business or whether I had simply missed it on my initial excursion, I could not be certain. However, it serves to illustrate the fact that the number of stores in the suburb is regularly changing, even if only marginally so. Given that in this particular observation, one store closed and another opened, it was not necessary to change the initial results.

In as far as the surveys are concerned, the first issue is one of honesty. Although assured that the survey was anonymous, there is always the probability that participants may not be completely truthful when answering. A similar but distinct problem is that participants may be truthful but erroneous in their answers. For example, a participant may provide an incorrect price that he/she pays for cigarettes even though he/she believes it to be correct. People of a certain demographic are also perhaps more difficult to access than others. Most participants were found on the streets. Residents of Mowbray, particularly those part of the wealthier demographic, may be less likely to walk the streets as often as those who are not as wealthy, meaning there was potentially a lesser chance of accessing this demographic than others. This could result in the estimate of the size of the illicit market in Mowbray being higher than what it actually is. The number of stores selling illegal products is also susceptible to change as time progresses, as such businesses regularly open and close.

It was also the case that the study was confined to the geographical area of Mowbray but not particularly to Mowbray residents. The person surveyed must have been present in Mowbray in order to be eligible to participate in the survey, but he/she was not required to be a Mowbray resident. The reason for limiting the study purely to the area of Mowbray and not Mowbray residents is because finding participants who are both willing to participate and are residents of Mowbray may have been overly cumbersome given the time period in which the research had to be conducted. Also, being a Mowbray resident does not necessarily mean that he/she buys his/her cigarettes in Mowbray. Conversely, a participant could live elsewhere but

purchase his/her cigarettes in Mowbray. Furthermore, asking participants whether they bought their cigarettes in Mowbray or not may not have yielded satisfactory answers as smokers are often inclined to purchase cigarettes wherever they find them and not at any single location. Given these problems, I saw fit to confine the study purely to people currently present in the suburb.

In terms of the interview, given Brigadier Jonker's work schedule and that he was based in a different city, a face-to-face in-person interview was not possible. For convenience sake the interview was conducted via email correspondence. This has obvious disadvantages such as the inability to record on-the-spot answers and reactions, allowing time for rehearsed responses. A second limitation is that the subject could not be asked to elaborate on answers given. In spite of these limitations, the answers given proved helpful to the study.

Chapter 4: Findings

1. How Easy is it to Find Illegal Cigarettes in Mowbray?

16 stores in the suburb were found to be sellers of cigarettes that are priced below the tax threshold of R17.85. These included 14 superettes and 2 street vendors. The stores were typically located close to well-traversed roads and hubs for public transport. This means that cheap, illegal cigarettes are remarkably easy to obtain in the suburb. Each store clerk was specifically asked what the cheapest product on sale was as in some instances these cheap products were not on display but rather kept under the counter. Something which I believe can be drawn from this observation is that buyers of these ‘under-the-counter’ products actively seek them out, as if these products are not on display buyers must be aware of their presence if they are to find them.

The fact that every superette in the suburb that sells cigarettes has illegal stock in its inventory demonstrates just how readily available illegal products are to the public. Given the high availability and low prices, it is logical to assume that these products will be very desirable among consumers, especially those in the low-income bracket. A finding that I believed to be pertinent was that of all the stores found to be sellers of cigarettes, only two did not stock illegal cigarettes, both of which were supermarkets. This means that 16 of a total 18 stores selling cigarettes are sellers of illegal products, a total of 88.9 per cent. This is a number markedly similar to the finding of the Delft case study mentioned earlier. What makes this more interesting is that Delft is considered a low-income area whereas Mowbray is considered middle-income, yet the percentage of stores selling illegal cigarettes is substantially similar. This is yet another indicator of the high prevalence of illegal products and also suggests that people in the low-income bracket are not the sole targets of these products. This is where the study at hand stands to distinguish itself from previous endeavours such as the case study of Delft. Whereas the Delft study focused only on sellers, this study introduces the aspect of buyers, which is why the surveys conducted are of great significance.

2. Surveys: What did People Say?

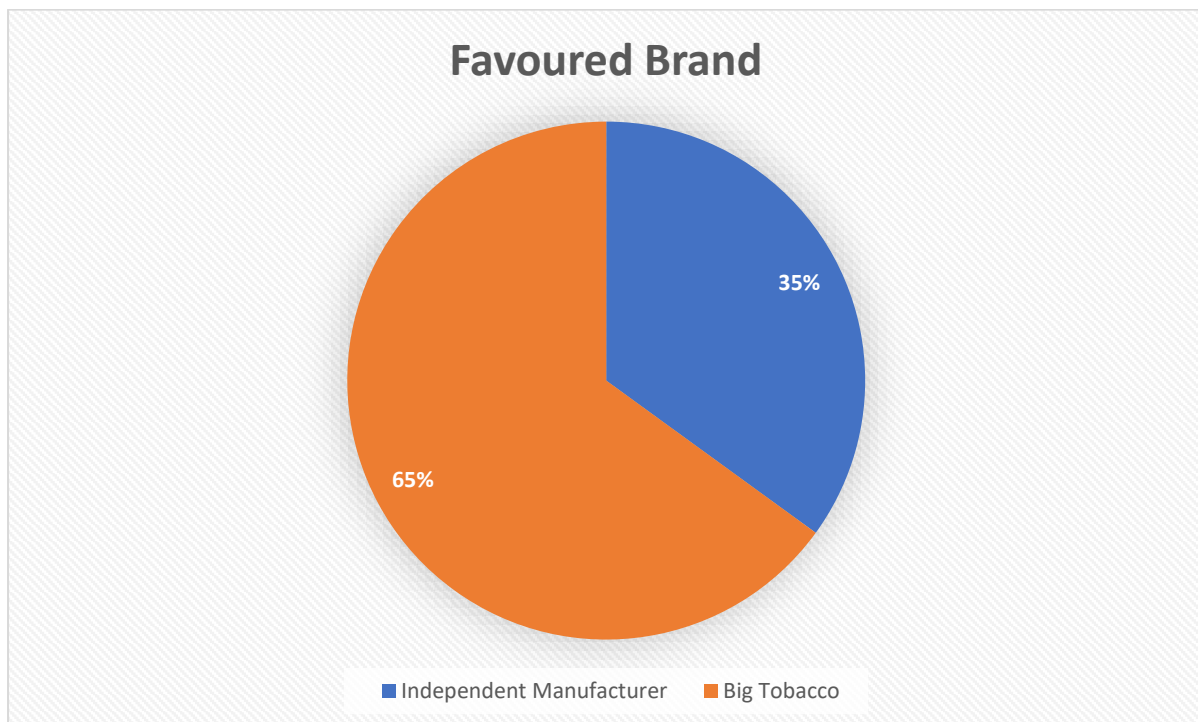
The results of the surveys are categorised under results in terms of the questions asked. They are then grouped under headings specific to certain questions asked in the survey. These are; buyers of legal cigarettes, buyers of illegal cigarettes, and type of store from which the participants purchased their cigarettes. The rationale behind creating these separate categories is to test whether and how purchasing habits differ between buyers of illegal products and buyers of legal products and whether buyers of each favour particular stores over others. The type of store is important in this respect as some are more notorious than others for selling illicit products and also only certain types of stores offer loose cigarettes.

2.1 Overall Results

This section presents the collective findings from the surveys. Under each heading are the recorded responses for each question posed to the participants. The findings under each heading are accompanied by a graph at the end of each section.

2.1.1 Favoured Brand

Brands of cigarettes were broadly grouped into two categories: Big Tobacco brands and smaller, independent brands. Big Tobacco brands are products manufactured by the large multinational corporations with a presence in South Africa. These are British American Tobacco, Phillip Morris International, Japan Tobacco International and Imperial Tobacco, to name a few. The smaller brands are those manufactured by local and/or regional producers and include Carnilinx Tobacco Ltd, Amalgamated Tobacco Ltd, Pacific, Gold Leaf and Benson Craig, among others. The cigarette brand itself is a potential indicator of illegality. Some brands more than others are associated with smuggling and tax avoidance by virtue of who manufactures them. However, name of the manufacturer is insufficient to conclude that a brand is illegal. Conversely, it is not necessarily the case that all products distributed by Big Tobacco are tax compliant, as established in the section dealing with the literature on the matter. It is therefore possible that any company/distributor could be involved in illicit trading and while name of the manufacturer is a potential indicator, it is not conclusive.



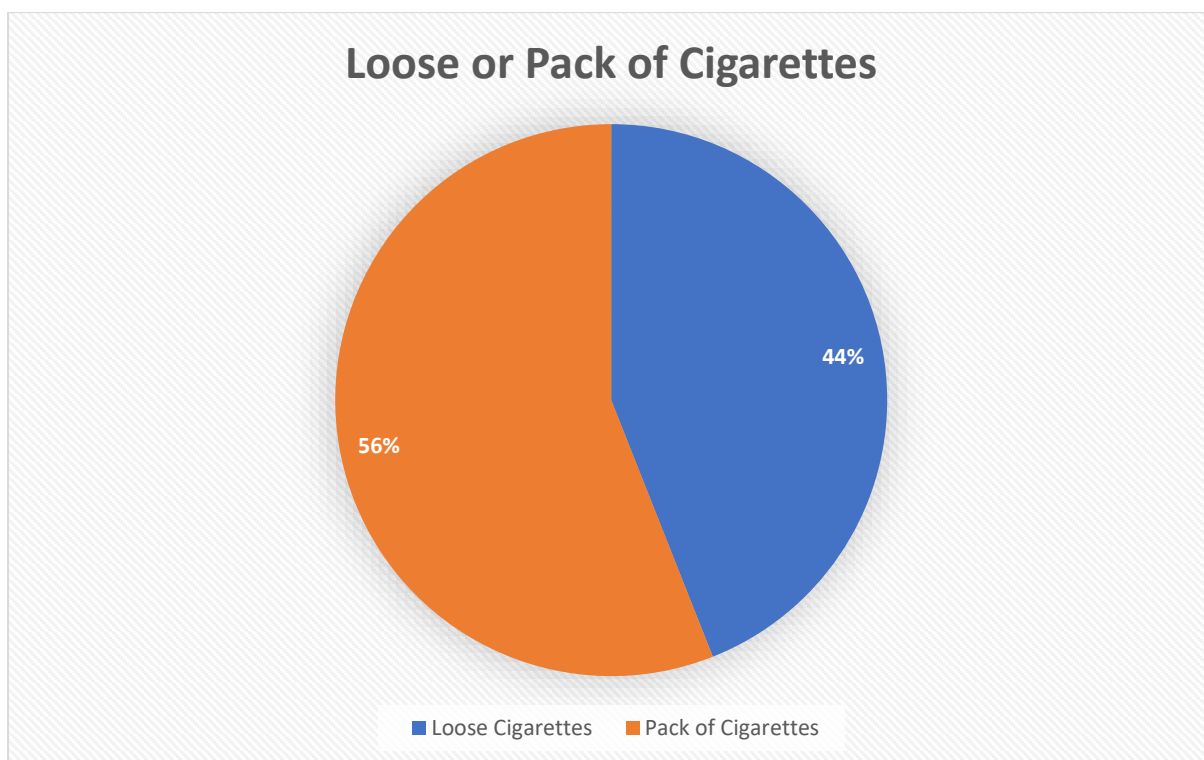
65 respondents favoured Big Tobacco brands as opposed to 35 favouring smaller ones. This indicates that Big Tobacco maintains a majority on cigarette sales in the suburb. However, as mentioned earlier, a brand manufactured by an Independent Manufacturer, RG, is the top-selling brand in the country. This finding was also interesting given how closely the numbers correlate to the findings of the number of cigarettes deemed to be legal or illegal (which was 69 per cent and 31 per cent respectively), indicating that there is a correlation between brand name and legality.

2.1.2 Whether purchases are made loose or by the pack

Where respondents answered that they usually bought loose cigarettes, the amount paid per single cigarette was multiplied by 20 to get an estimate price per pack. When I asked store clerks about the price of loose cigarettes I discovered that retailers generally do not mark up the price for single cigarettes, meaning that the price per loose cigarette as a fraction of the total price per pack of a certain brand are congruent. For example, brands selling for R10 per

20-pack when sold loose typically sold for 50c. Thus, recording the prices paid per loose cigarette multiplied by 20 to reflect the pack price should not prejudice the data.

In total, 56 participants favoured buying cigarettes by the pack and 44 favoured buying loose. This demonstrates that buying a pack at a time is the more favourable option but not by a large margin. Buying loose cigarettes is a popular option amongst consumers. The reason that this is significant is because buying loose is, firstly, a means of buying cigarettes cheaply or at least cheaper than if one had to buy a whole pack, and secondly, a matter of convenience. For example, one can buy a couple of cigarettes and smoke them on-the-go, rather than carry a pack in one's pocket or clutter one's handbag. It also has significance in terms of the type of store bought from given that the option to buy loose is only available at certain outlets, such as superettes.

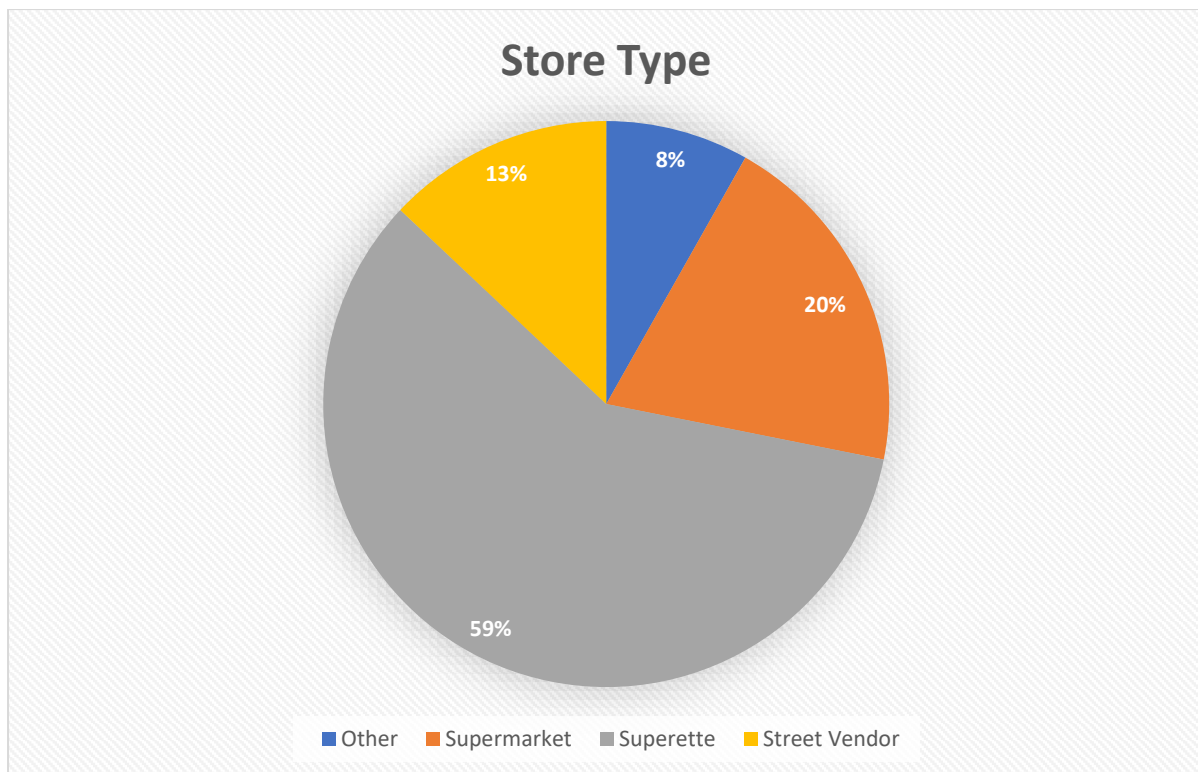


2.1.3 Type of store from which purchases are made

Participants were asked at what kind of store or outlet they favoured when purchasing their cigarettes. Four options were presented. These were street vendor, corner store/superette, supermarket, and other.

Who bought from where?

59 participants bought from superettes, 20 from supermarkets, 13 from street vendors, and 8 from 'other' stores. Superettes are thus the most common type of store from which cigarettes are purchased. This was expected as they are the most common type of store in the suburb. Another potential reason for the high number of participants purchasing from this type of store has to do with the convenience of purchases and availability of loose and/or cheap cigarettes at these stores. While only 13 participants answered that they bought from street vendors, this number is not to be underestimated. Only two street vendors selling cigarettes were identified in the suburb, substantially fewer than the number of superettes, of which there were 14. This means that 13 is quite a substantial number given the proportionately fewer number of street vendors than superettes. The reasons for participants frequenting this type of store are substantially similar to those frequenting superettes, that being the availability of cheap (and most probably illegal) cigarettes, the option to buy loose, and the convenience of purchase offered. Street vendors offer an even greater convenience than superettes in that a consumer need not even enter a building and can simply make a transaction on the side of the road. Supermarkets are probably chosen for different reasons than superettes and street vendors. Loose cigarettes are typically not available at these stores and the cheapest cigarettes on offer are typically R25. It is more likely that buyers of Big Tobacco brands, who typically have higher disposable incomes, buy cigarettes from this type of store.

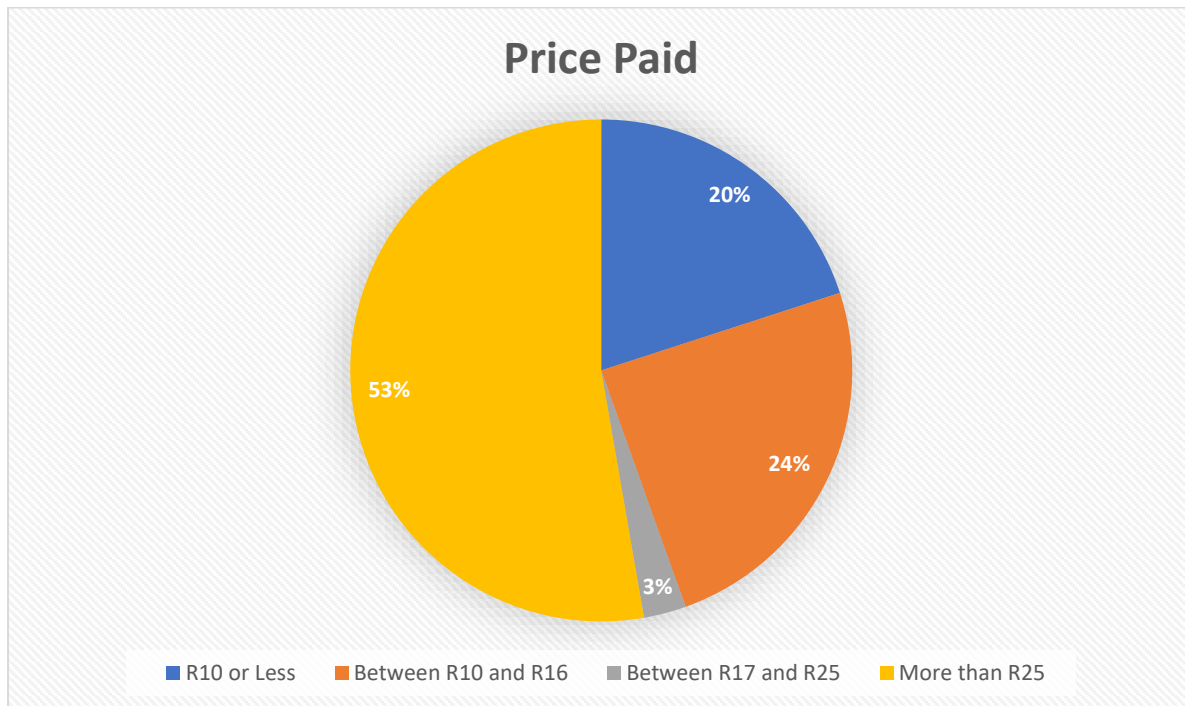


2.1.4 Price paid per pack

Four price categories were presented to participants. These were: R10 or less, more than R10 but less than R17, R17 to R25, and more than R25. Participants were not presented with these categories but were instead asked what they usually paid per pack of cigarettes. Recalling that the tax threshold is set at R17.85 per pack, any participant who was recorded as paying R10 or less, or more than R10 but less than R17, was recorded as a buyer of illegal cigarettes. The two categories were separated as such to see whether consumers gravitated towards the absolute cheapest cigarettes or whether even among cheaper cigarettes preferences and brand loyalty exists. The postulation here is that if consumers are willing to pay a higher price than the cheapest cigarettes on offer, albeit only around R2-R7 more, then these same consumers may be willing to pay a higher price for a legal brand if they were not previously aware of the illegal nature of their purchases.

The price range of R17-R25 was included to delineate a category considered to be 'suspicious'. Products within this category are priced high enough to be compliant with tax regulations but perhaps not high enough to make a substantial profit when considering production and associated costs. While cigarettes being sold in this price category cannot be

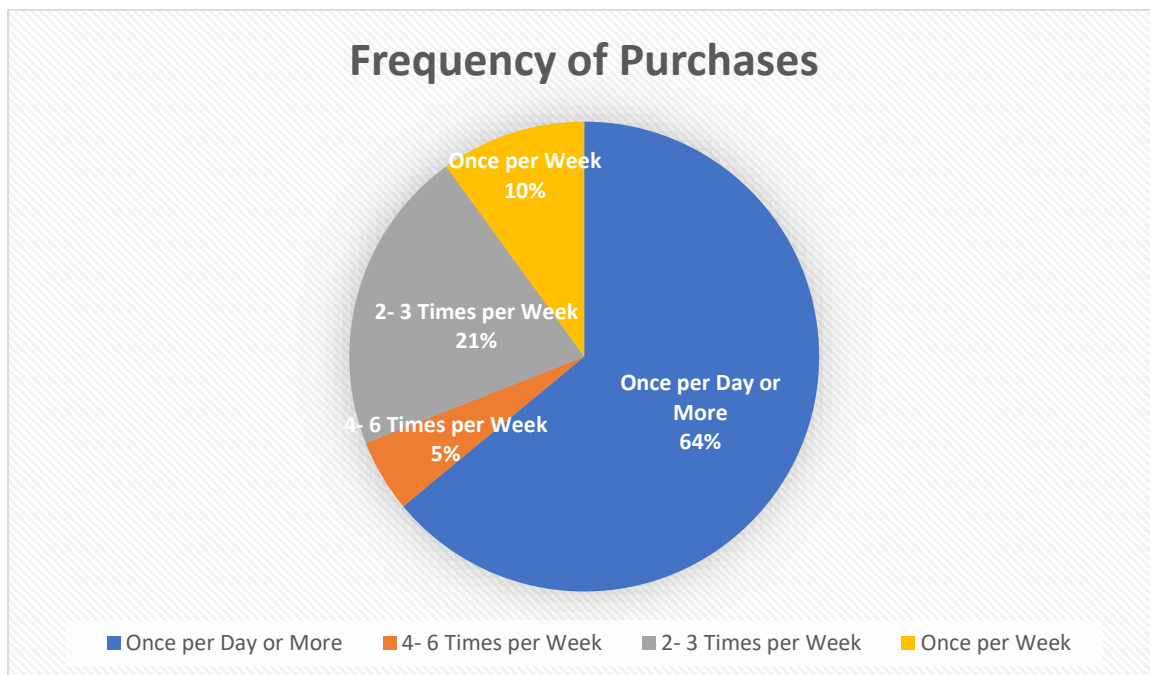
conclusively regarded as being illegal, it merits its own category to bring attention to potentially opportunistic producers who avoid tax but aim to make a higher profit by charging prices that are still cheaper than the more established brands, but that are expensive enough to appear to be tax compliant. The ‘more than R25’ category denotes products that are assumed to be tax compliant and legal, in spite of the potential difficulties mentioned above.



22 participants paid R10 or less per pack of twenty cigarettes; 17 paid more than R10 but less than R17; 3 paid between R17 and R25 and 58 paid more than R25. The grand total of 100 surveys demonstrates that 61 per cent of buyers favour legal products and 39 per cent favour illegal ones. This shows that the illegal market is large in the suburb. That 39 per cent of buyers favour illegal products is indicative of a flourishing market.

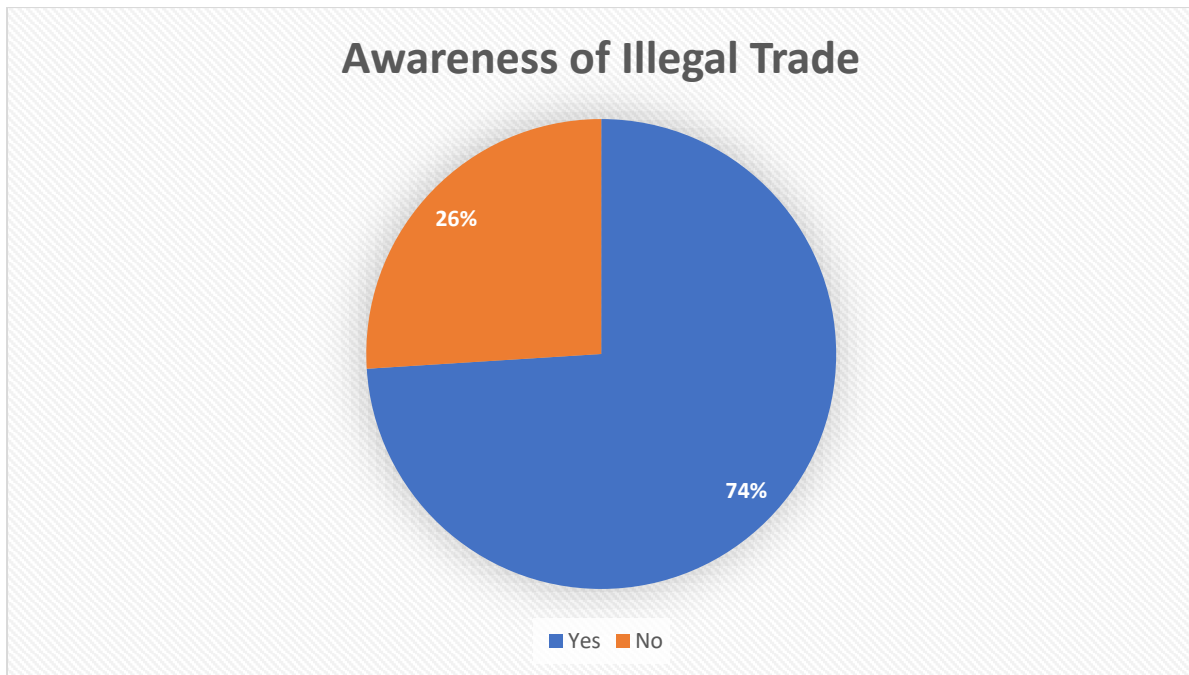
2.1.5 Frequency of purchases

64 participants in total bought cigarettes once per day or more, five bought four to six times a week, 21 bought two to three times per week, and 10 bought once a week. This indicates that the majority of smokers buy cigarettes very often. This is important to note when comparing the purchasing habits of buyers of legal and illegal products respectively, which will be discussed later.



2.1.6 Awareness of the illicit trade

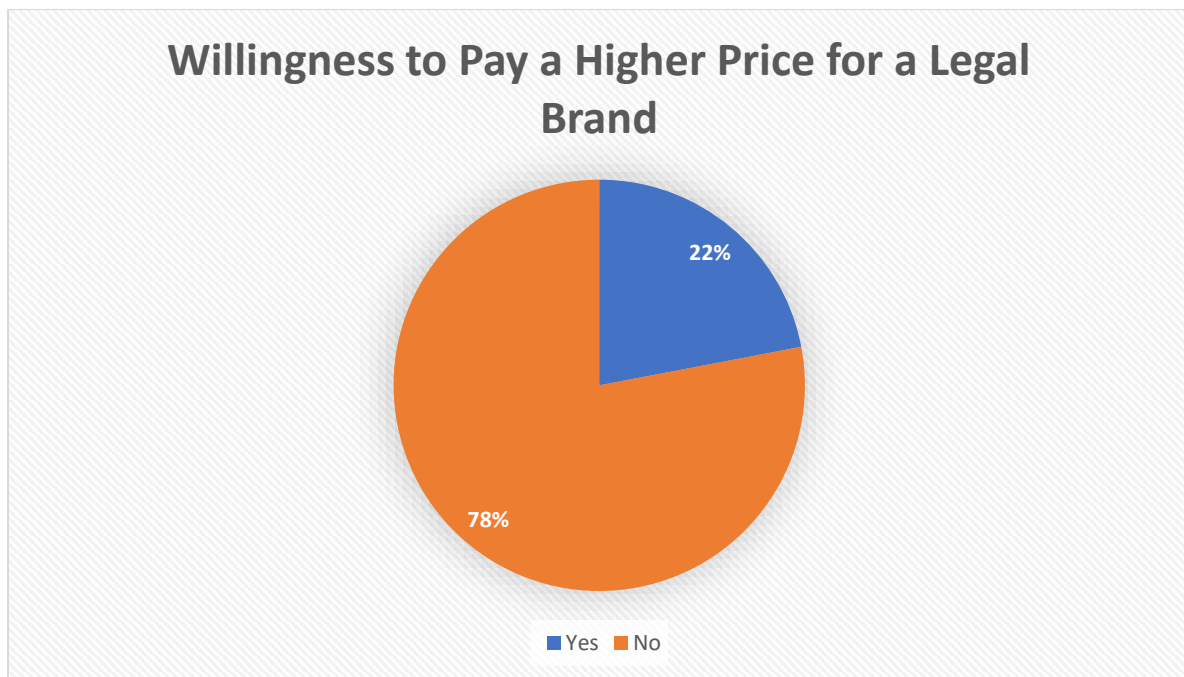
Participants were asked whether they were aware of the existence of illicit trade in cigarettes. They were not quizzed on the extent of their knowledge, but simply if they had some form of awareness thereof. This was done to determine the level of public awareness of the illicit trade and, secondly, how public awareness affects consumption of illicit products, if at all. The result is that 74 participants claimed to be aware of the illegal trade and 26 claimed to be unaware of it. In establishing whether awareness has an impact on participants' decisions of which products to purchase, these findings should be compared to those of the size of the illegal market and to the answers given regarding willingness to pay a higher price for legal products. This is a central tenet to the research project as whether awareness of the illegal trade influences consumer behaviour at all is a vital policy consideration. For example, if it is found that being aware of the illicit market deters consumers from buying illegal products, policies should be developed to increase awareness of the trade.



2.1.7 On whether consumers would pay a higher price for legal products

Finally, participants were asked if they would consider paying a higher price for a legal brand. This had the function of determining whether public awareness of the illegal trade could have an impact in terms of diminishing the illegal market. For instance, if buyers of illegal products were previously unaware that their purchases were illegal but upon discovering this to be the case they pledged to buy legal cigarettes, this will demonstrate that having knowledge of the trade contributes to combating the trade. Conversely, if buyers are aware of the illegal nature of their purchases but are unfazed by it, this will demonstrate that public awareness will not have an impact on the illegal trade.

Overall, 22 participants answered that they would pay a higher price for a legal product if they were to find out that their current purchases were illegal. 78 answered that they would not pay a higher price. This shows that increasing public awareness of the illegal trade can possibly have a small effect on the illegal market.



2.2) Responses of buyers of illegal products compared with those of legal products: Do the purchasing habits differ?

As this study deals with the illicit trade, an analysis of the responses of buyers of illicit products is necessary in order to see if, and how, their purchasing habits differ from buyers of legal stock. The responses of buyers of illicit products will therefore be compared with the responses of buyers of legal stock under the appropriate subheadings.

2.2.1 Favoured Brand

35 of the 39 buyers of illegal cigarettes listed brands manufactured by independent tobacco companies as their prime choice. All 61 buyers of legal stock listed Big Tobacco brands. This shows that Big Tobacco brands are generally legal, at least in terms of how legality has been construed in this paper. Brands associated with Independent Manufacturers are most often illegal. It should be remembered though, that this may not always be the case as there are other factors that influence legality that go beyond the scope of this project.

2.2.2 Whether cigarettes were purchased loose or by the pack

23 out of 39 buyers of illegal products preferred to buy cigarettes loose (59 per cent), as opposed to only 21 out of 61 buyers of legal stock (34 per cent). This contrasts with the overall results in that most people typically bought by the pack. That most people who bought illegal cigarettes bought loose highlights a difference in the purchasing habits of those buying legal cigarettes versus those buying illegal ones. This potentially is indicative of the level of disposable income available to each consumer. It also hints at the availability factor in influencing the purchases of the consumers. Where cigarettes can be bought cheaply and easily in smaller quantities, a substantial number of consumers may be attracted. This brings us back to the question of accessibility asked at the outset of this paper. If these cigarettes are readily available and affordable, as loose cigarettes often are, this is likely to contribute to a greater number of people buying them.

2.2.3 Type of store from which cigarettes are purchased

31 of the 39 buyers of illegal products answered that superettes are their stores of choice when buying cigarettes, a total of 79.49 per cent. For buyers of legal products, 28 out of 61 bought from superettes, a total of 45.9 per cent. Five buyers of illegal cigarettes chose street vendors as their preferred store, while three answered 'other'. Of the buyers of legal cigarettes eight bought from street vendors, 20 from supermarkets, and five selected 'other'. Superettes are therefore popular choices for buyers of both legal and illegal products but proportionately more so with buyers of illegal products. This is noteworthy given the prevalence of superettes in Mowbray and their association with the daily living of the inhabitants of this suburb. In Mowbray at least, these stores greatly outnumbered every other store listed, which in turn demonstrates just how readily available illegal cigarettes are to the public.

2.2.4 Frequency of purchases

32 out of 39 buyers of illegal cigarettes answered that they bought at a frequency of once a day or more, amounting to 82 per cent. In contrast, 32 out of 61 buyers of legal products

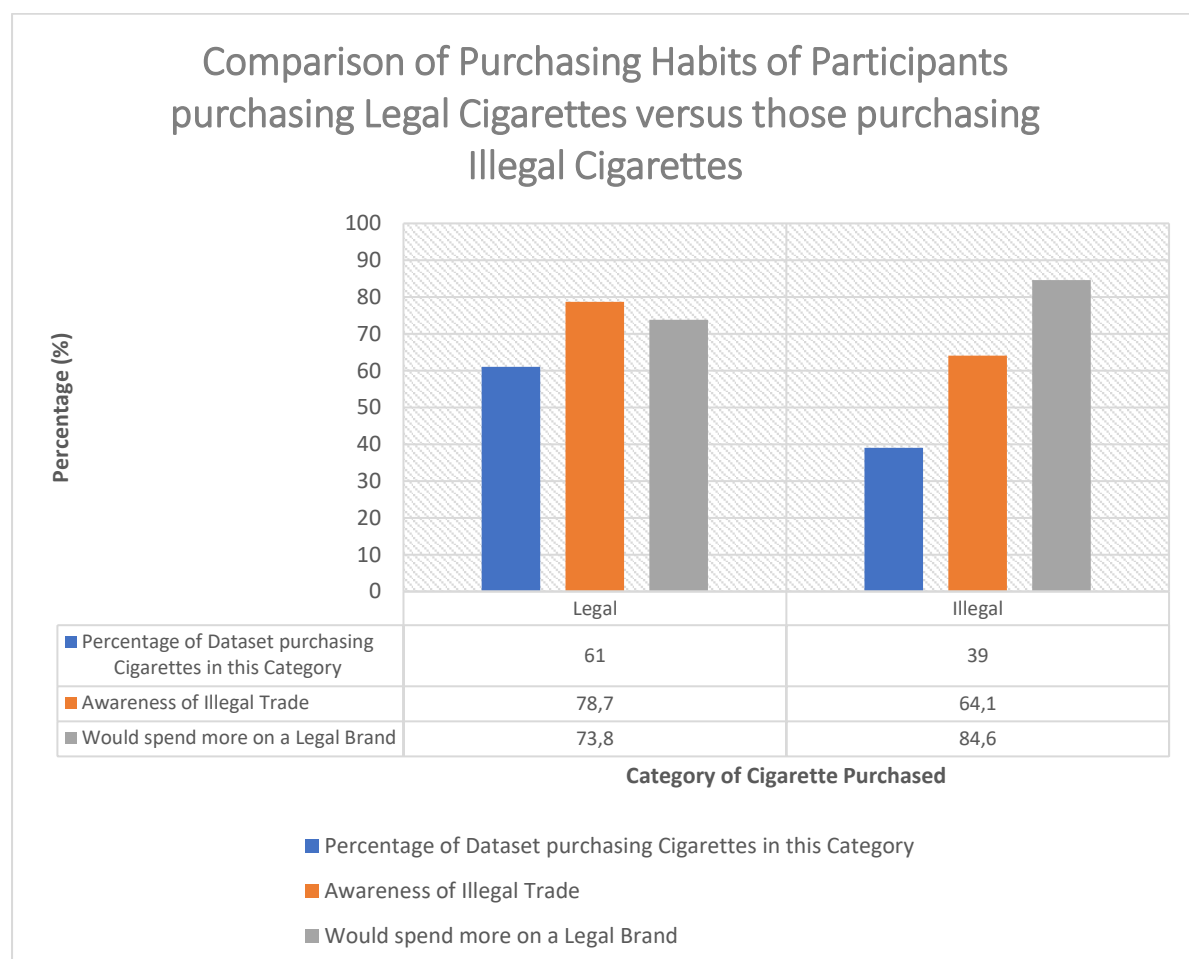
purchased cigarettes daily, a total of 52.5 per cent. This shows that buyers of illegal cigarettes buy more often than buyers of legal cigarettes. What it does not show however, is whether or not buyers of illegal stock actually buy more cigarettes. Recalling that most buyers of illegal cigarettes purchase their cigarettes loose, it could simply be a case of participants buying fewer cigarettes more often as opposed to actually buying a greater number of cigarettes. This is important because if buyers of illegal products buy fewer cigarettes, then the size of the illegal market in terms of unit market share will be smaller than estimated. To use an example, if out of 10 smokers, five buy legal and five buy illegal, the size of the illegal market in terms of number of buyers would be 50 per cent. However, if the buyers of legal products all buy 20 cigarettes per day and the buyers of illegal cigarettes buy 10 cigarettes per day, the size of the illicit market in terms of actual units bought would be 33.3 per cent. Therefore, even though the number of respective buyers of legal and illegal products is the same, the number of respective cigarettes bought differs, which has an impact on the size of the market. This shows that the number of buyers does not always accurately reflect the number of cigarettes bought, which in turn shows why it is important to record frequency of purchases and whether they are bought loose or by the pack.

2.2.5 Knowledge of the Illegal Trade: Who knows more?

In total, 49 out of 61 smokers of legal products answered that they were aware of the illegal trade, a total of 78.7 per cent. 25 out of 39 smokers of illegal products answered that they were aware of the illicit trade, a total of 64.1 per cent. Buyers of legal products are therefore generally more aware of the illegal trade in cigarettes than those who buy illegal products. This may appear to lend credibility to the postulation that lack of knowledge of the illegal trade may contribute to its prevalence. However, given that 64.1 per cent of buyers of illegal products claimed to have knowledge of the trade it can be established that most buyers of these cigarettes are not bothered by the legality of their purchases. It must be factored into consideration whether, in spite of being aware of the illegal trade, these buyers may not know that their brand of choice is illegal. In other words, they may know about the illegal trade, but not know which products are illegal. More on this will be mentioned in the discussion section. For now, what may be better indicators of the effect of public knowledge on the trade are the answers provided to the final question below.

2.2.6 Whether consumers would pay a higher price for legal products

I asked whether upon finding out that their favoured brand was illegal, participants would pay a higher price for a legal brand. This was done to test whether knowledge of the illegal trade has an impact on consumption of illegal cigarettes. In total, 33 of the 39 buyers of illegal cigarettes (84.6 per cent) said that they would not pay a higher price for a legal product. 45 of the 61 buyers of legal products (73.8 per cent) also said that they would not pay a higher price. What can be concluded from this is that most people, whether buyers of legal or illegal products, will not pay a higher price for a legal product. Secondly, buyers of illegal products are even less likely to do so than buyers of legal stock. In this regard it has been demonstrated that public knowledge has only a minimal impact on consumer choices. The fact that a small number of participants did answer that they would pay a higher price for legal products shows that promoting public awareness is not a futile means of combating the illegal trade but also not a particularly effective one.



2.3 Favoured Store

The nature of the establishment selling cigarettes is a central tenet of this research project as it is only at certain stores that illegal cigarettes are sold. Moreover, certain types of stores are actively sought out due to convenience and the availability of loose cigarettes. As such, consumer responses based on the type of store from which they purchase their cigarettes requires investigation. The responses are presented collectively in the first part of this section before being divided into buyers of illegal cigarettes and buyers of legal cigarettes in the second part.

2.3.1 Buyers who favour superettes

A total of 59 of the 100 participants chose superettes as their store of choice when purchasing cigarettes. 31 of these 59 were buyers of illegal products, 42 out of 59 had knowledge of the illegal trade, and nine out of 59 answered that they would pay a higher price for a legal brand if they were to discover that their product of choice was illegal. 31 out of the total 59 also preferred buying cigarettes loose rather than buying a pack at a time. This shows that superettes are a prime source of both loose cigarettes and of illegal cigarettes. The number of people who were willing to pay a higher price for legal cigarettes is also low in spite of knowledge of the trade being quite high. This shows that public awareness of the illegal trade has only a negligible effect on deterring smokers from buying illegal products.

2.3.1.1 Buyers of legal products from superettes

28 out of the 59 who bought from superettes were buyers of legal products. 22 of these 28 were aware of the illegal trade. Five out of 28 answered 'yes' when asked if they would pay a higher price for a different product if they were to discover that their brand of choice was illegal. 13 out of 28 favoured buying cigarettes loose as opposed to by the pack. From this it appears that superettes are not as popular among buyers of legal products as they are among buyers of illegal products, which tells us something about the reputation of these stores. If most consumers seeking illegal cigarettes frequent superettes, it demonstrates that these stores are known hubs for the illegal trade.

2.3.1.2 Buyers of illegal products from superettes

31 out of the total of 59 participants who bought from superettes were buyers of illegal products, which at 52.5 per cent accounts for the majority of superette cigarette shoppers. This finding is particularly pertinent in that it shows that superettes are a haven for the illegal market. 20 of the 31 had knowledge of the illegal trade. Four out of 31 answered 'yes' when asked if they would pay a higher price for a legal product and 27 answered 'no' to this question. 18 out of these 31 buyers also favoured buying loose cigarettes as opposed to packs. This shows that more participants bought illegal cigarettes from superettes than what bought legal cigarettes. Buyers of illegal products from this type store also typically favoured loose cigarettes more so than buyers of legal products, but not by a great margin. Buyers of illegal products were also less knowledgeable of the trade and also less willing to pay a higher price for legal products than buyers of legal ones, but again the margin was small in both instances. What must be considered is that while the margins of difference appear small, there are fewer buyers of illegal cigarettes in total than buyers of legal ones, meaning that proportionately these small margins are much higher. For example, 31 buyers of illegal products buy from superettes as opposed to 28 buyers of legal cigarettes. This does not seem like a huge margin but given the fact that there are 39 buyers of illegal products in total versus 61 buyers of legal products, this means that 79.5 per cent of buyers of illegal products buy from superettes, as opposed to 45.9 per cent of buyers of legal products, thus demonstrating that superettes are considerably more popular amongst buyers of illegal products than among those of legal products. This reiterates the point made above that superettes appear to be known hubs for the illegal trade and attract seekers of cheap products.

2.3.2 Buyers who favour supermarkets

As noted earlier in the findings, no purchasers of illegal cigarettes answered that they buy their cigarettes from supermarkets. Therefore, all participants who answered that they buy their cigarettes from supermarkets are deemed to be consumers of legal cigarettes, at least to the extent that they bought from supermarkets as smokers may occasionally vary the stores that they purchase from.

20 of all 100 participants answered that they buy their cigarettes from supermarkets. All who did so answered that they pay more than R25 per pack and were therefore categorised as

buyers of legal products. 15 out of these 20 had knowledge of the illegal trade. 13 out of 20 answered 'no' when asked if they would pay a higher price for a legal product and seven answered 'yes'. This means that buyers favouring supermarkets were proportionately the most likely to pay a higher price for a legal product, with 35 per cent answering that they would do so. This number is quite substantially higher than that of buyers favouring superettes, which is 15.25 per cent. What makes this interesting is the fact that those who buy from supermarkets are all considered to be buyers of legal products and therefore not directly part of the problem of the illegal trade, yet these are also the participants that are more likely to pay a higher price for a legal product. What this means is that most people who would consider paying more money to avoid buying illegal products are the same people who bought legal products, meaning that their responses will not influence the illicit market. This perhaps illustrates a difference in perception of the illicit trade between those who favour supermarkets and those who favour superettes, as superettes appear to be known to sell cheap illegal products whereas supermarkets are places where consumers go to actively avoid the illicit trade.

2.3.3 Buyers who favour Street Vendors

13 participants out of the total 100 listed street vendors as their store of choice. Five out of 13 (38.5 per cent) were buyers of illegal cigarettes. 10 out of 13 were aware of the illegal trade and three out of 13 answered that they would pay a higher price for a legal product. This means that street vendors are a common retailer from which illegal cigarettes are sold, although apparently not as common as superettes. Once again, while a high number of participants claimed to be aware of the trade, a very low number were willing to pay a higher price for a legal product.

2.3.3.1 Buyers of Illicit Products from street vendors

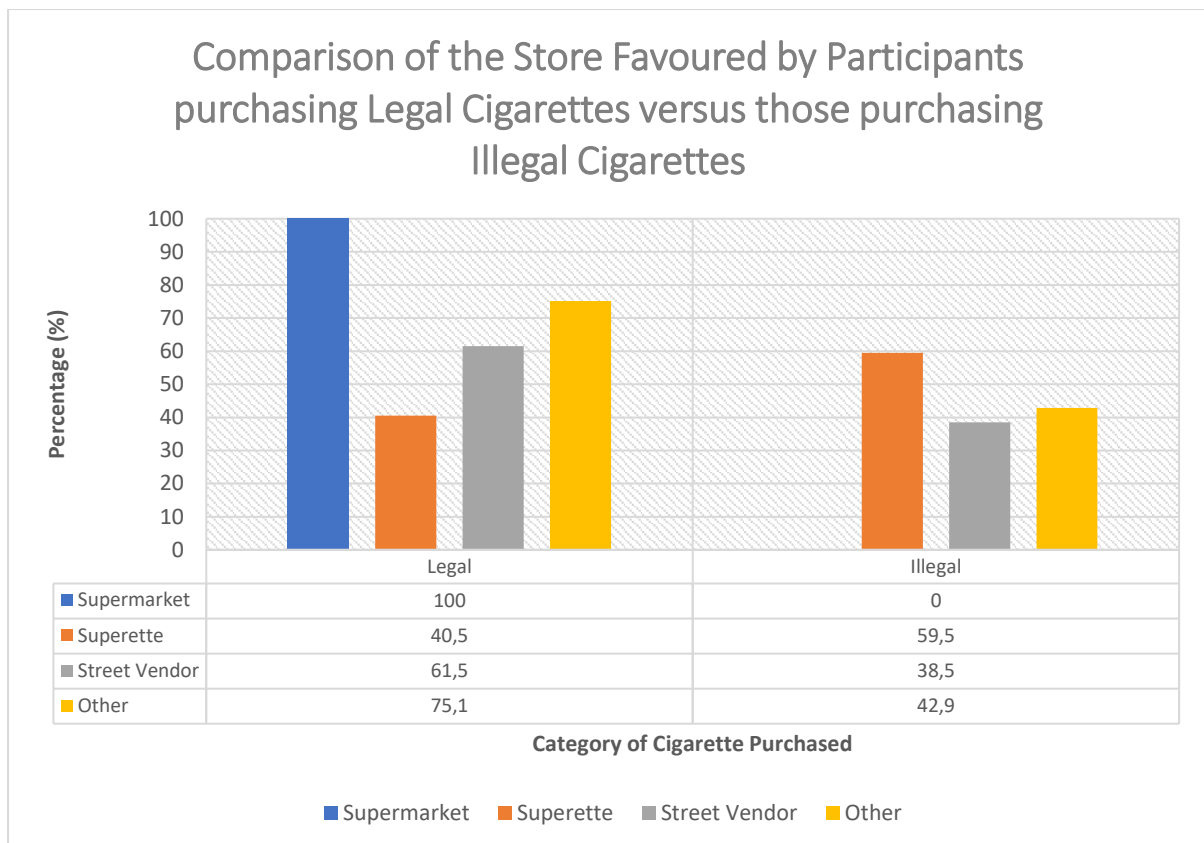
Five participants who bought from street vendors were buyers of illegal cigarettes. One of these five answered 'yes' when asked if they would pay a higher price for a legal product.

2.3.3.2 Buyers of Legal Products from street vendors

Eight out of the 13 participants who bought from street vendors were buyers of legal products. Five out of eight were aware of the illegal trade. Two out of eight answered that they would pay a higher price for a legal product. Eight out of the total 13 were buyers of loose cigarettes.

2.3.4 Buyers who selected 'other'

Seven out of 100 participants selected 'other' when asked for their store of choice. Three out of seven were buyers of illegal cigarettes. Six out of seven were aware of the illicit trade. One out seven answered 'yes' when asked if they would pay a higher price for a legal product. Three of these seven preferred to buy cigarettes loose. The difficulty that comes with this section is that there is no way to know the precise nature of the type of outlet from which the cigarettes are bought. It could be a unique sort of medium from which they make their purchases, or it could simply be that the participants in question favoured no particular sort of store, choosing instead to buy from various outlets depending on their predicament at the time.



3. Interview

Many of the answers provided were facts already known, such as the price of illegal cigarettes and where they typically come from. Significant light was shed on various other factors. Various bodies are responsible for the enforcement of the law as it applies to illegal cigarettes. Most notably, it is the South African Revenue Service that is the custodian for the enforcement of legislation governing the cigarette trade. Brigadier Jonker also said that seizures of illegal stock were common in the period between 2000 and 2014 but have diminished drastically following this period. It should be remembered that 2014 was the year in which numerous senior members in the Revenue Service were dismissed and Tom Moyane took over as commissioner of the Service. Moyane's tenure was plagued by controversy until his eventual dismissal in 2018. This episode has been extensively chronicled elsewhere and will not be detailed here. The point being made here is that the decrease in seizures of illegal cigarettes coincided with the beginning of Moyane's tenure at SARS, indicating the politicisation of the trade in cigarettes. This part of the interview provided very important insight as well as highlighting the depth of the issue in South Africa. The information

provided demonstrated that it is an issue that goes beyond smuggling and the choices of individuals to buy and sell illegal products but is one that has been inextricably tied to political turmoil in the country. That the problem of illegal cigarettes has become so great is in large part due to the disintegration of state institutions in the face of state capture that were tasked with combating the trade. This highlights how influential the success or failure of the relevant institutions is in allowing the illegal trade to flourish.

Another point of interest to come out of the interview was to do with penalties incurred for trading in illegal cigarettes. Brigadier Jonker explained that even in the period prior to 2014 when seizures were often made, sellers were only very seldom arrested, and buyers were never arrested. Furthermore, penalties for selling illegal products was seldom anything more than a fine. Buying illegal products incurs no penalty. The lack of consequences not only makes these cheap cigarettes appealing to buy, it makes them especially appealing to sell. As mentioned in the literature section, the trade in illicit tobacco and related products is one of minimal risk, yet high reward. Tobacco is not treated with the same degree of moral disdain as harder drugs, such as heroin, cocaine, or even cannabis. Furthermore, it appears that law enforcement is not as concerned with the matter as it is with the 'real' drug trade, for lack of a better term. Escapades into tobacco smuggling have proved very profitable, as detailed in the literature, and come at very minimal risk for those involved. It is therefore no surprise that it is an enterprise that has attracted numerous opportunistic smugglers and nefarious businesspeople.

Chapter 5: Discussion

How some of the survey data changed as the study progressed

Differences in responses in the initial sixty surveys compared with the subsequent forty. As mentioned previously, the surveys were conducted in two waves; the initial 60 and subsequent 40. In the initial 60 surveys, 52.6 per cent of participants answered that they had knowledge of the illegal trade whereas in the subsequent 40, 75 per cent of participants claimed to have knowledge of the illegal trade. There was also a difference in the answers to the question as to whether one would pay a higher price for a legal brand. Only one participant out of 19 (5.3 per cent) buyers of illegal cigarettes of the initial 60 participants surveyed answered that they would pay a higher price for a legal product. In the subsequent 40, five out of 20 (25 per cent) buyers of illegal products answered that they would pay a higher price for a legal product. The latter number is quite significantly higher than the former and challenges the idea that public awareness will have little or no effect on the size of the illicit market and suggests that more people may be willing to pay higher prices for cigarettes than initially hypothesised. However, some qualifications must be considered before taking the latter number at face value.

‘It costs too much.’: A practical example of the link between income and expenditure when buying cigarettes

In at least three of those five instances where buyers of illegal products claimed that they would pay a higher price for a legal product, the proviso of disposable income arose during conversations with the participants in question. Although answering that they would pay a higher price when asked that question, earlier in the survey some of these very same buyers remarked that the brand that they bought and whether they bought loose or by the pack was dependent on how much money they had available to spend. One participant remarked that he was “very aware” of the illegal trade and would pay a higher price for a legal product, but earlier in the survey recounted how he formerly bought Peter Stuyvesant (an expensive brand usually associated with being legal) but transitioned to smoking Derby (a cheap brand associated with the illegal trade) when the price of Peter Stuyvesant got too high. In this case,

although the participant claimed to be aware of the illicit trade, he may not have been aware that his favoured product (Derby) was illegal. It is not to say that he would not return to paying a higher price for a legal product but given that the high price was what deterred him from buying a legal product in the first place, his willingness to pay a higher price for a legal product is questionable. The main point to come out of this is that these buyers may be willing to pay a higher price but only if they have sufficient funds available, thus reiterating the strong relationship between the purchase of cigarettes and disposable income.

Motivations for choosing loose cigarettes and the link between buying loose, frequency of purchases and type of store bought from

Significant variation in the purchasing habits of buyers of legal cigarettes was observed when comparing the findings of the initial 60 surveys to that of the subsequent 40. The number of buyers who bought loose cigarettes was noticeably higher in the subsequent forty surveys with 40 per cent preferring this mode of purchase, as opposed to the 29.2 per cent in the initial 60 surveys. In terms of the type of store from which the purchases were made, there was an increase in the number of buyers who favoured street vendors and superettes, and a decrease in those who bought from supermarkets and 'other' places. Buyers favouring street vendors increased from 9.8 per cent to 20 per cent, and those favouring superettes increased from 41.5 per cent to 55 per cent. Buyers favouring supermarkets decreased from 36.6 per cent to 25 per cent, and those favouring 'other' stores decreased from 12.1 per cent to 0 per cent. The frequency at which cigarettes were bought also increased. 70 per cent of buyers in the subsequent 40 reported buying once a day or more as opposed to the 44 per cent in the initial 60. 19.5 per cent of participants in the initial 60 reported only buying once a week whereas no one in the subsequent forty reported buying at this rate.

The numbers above suggest a correlation between buying loose cigarettes and both the type of store bought from and the frequency at which cigarettes are bought. An increase in the number of people buying loose cigarettes coincides with an increase in the frequency of purchases as well as an increase in the number of people buying from street vendors and superettes, and a decrease in those buying from supermarkets. This is a correlation that makes sense when one considers the nature of buying cigarettes loose. Firstly, loose cigarettes are not typically sold at large supermarket chains, meaning that a person seeking to buy

cigarettes in small quantities would need to buy from an outlet that allows the sale of loose cigarettes, namely street vendors or superettes. Hence, it is logical that with an increase in the number of buyers of loose cigarettes comes an increase in purchases from these types of stores and a decrease in purchases from supermarkets. Secondly, when buying smaller quantities of cigarettes at a time, as is the case with loose cigarettes, the purchased products will be consumed faster. It is logical to think that, for example, two loose cigarettes will be consumed sooner than a pack of 20. Therefore, buyers of loose cigarettes will need to buy more often to replenish their consumables. Therefore, frequency of purchases will be greater. This explains the connection between buying loose cigarettes and the type of store bought from, and the frequency of purchases. Why this is important is because determining whether buyers of loose cigarettes buy fewer cigarettes than people who favour buying packs at a time has implications for the size of the illicit market in terms of actual units bought.

Participants surveyed in the subsequent 40 demonstrated greater awareness of the illegal trade than those in the initial 60. 75.6 per cent of participants claimed to know about the trade in the initial sample compared with 85 per cent in the subsequent sample. However, when posed with the question as to whether they would pay a higher price for a different brand, 80 per cent of participants in the subsequent 40 answered 'no' compared with 68.3 per cent in the initial 60. This could simply be due to variance in the character of persons who were surveyed on that day or possibly linked to disposable income. As discussed above, more buyers of legal cigarettes in the subsequent 40 bought loose cigarettes than in the initial 60. One of the motivations behind buying cigarettes loose is to avoid paying the full price for a packet, often due to monetary constraints. Thus, the greater number of smokers buying loose cigarettes is likely to be the consequence of lower disposable income amongst these buyers. It is reasonable to assume that people with low disposable incomes will be less likely to be willing to pay a higher price for cigarettes. Therefore, the increase in the number of people answering 'no' when asked if they would pay a higher price for a different product could very well be linked to the increase in the number of people who buy loose cigarettes, which in turn is related to lower disposable income.

Analysis of the Overall Results

1. Favoured Brands: What people like to smoke

The answers of participants as to their favoured brands generally affirmed the hypothesis that certain brands would be associated with prices lower than the tax threshold, i.e. cigarettes that are illegal. All of the 61 participants who were identified as buying legal products named a Big Tobacco brand as their brand of choice. 35 of the 39 participants who were identified as buying illegal products named a product made by an independent manufacturer as their brand of choice. Interestingly, four of these 39 named a Big Tobacco brand as their brand of choice. This could indicate that these consumers buy counterfeit stock. However, this can also be due to numerous other reasons. For instance, while the Big Tobacco brand might be their favourite, they may lack the disposable income to purchase it on a regular basis and thus settle for a cheaper product. There is also the possibility that the participants in question answered erroneously or untruthfully. Thus, while this anomaly indicates a possibility of counterfeit stock being purchased in the suburb, the possible explanations available are too numerous to make any definite conclusions.

What can be established from the sample is that in every case where a participant answered that an independent brand was their brand of choice, they also reported that they paid a price less than the tax threshold. This indicates that brands manufactured by independent manufacturers are not tax compliant and are by and large illegal. This is supported by the research conducted by asking store clerks the prices of cigarettes. All independent brands identified were being sold at prices as low as R10 and no higher than R16. This, coupled with the results of the survey, demonstrates that by and large, independently manufactured brands sell for below the tax threshold and are illegal.

2. The Main Culprits: From which stores are the most illegal cigarettes bought?

2.1 Superettes: the go-to retailer

Superettes are the most common source from which all respondents bought their cigarettes, whether legal or illegal, although the portion of buyers of illegal cigarettes who bought from these stores is higher than for buyers of legal cigarettes. What is meant by this is that out of

the total number of buyers of illegal products a substantially large portion of these buyers frequented superettes. This compared with the number of buyers of illegal products purchasing from superettes demonstrates that superettes are proportionately much more popular amongst buyers of illegal products than legal ones.

2.2 Supermarkets: The trustworthy option?

No participant who was recorded as buying illegal cigarettes reported purchasing from supermarkets. This was expected to be the case given that when visiting supermarkets in Mowbray, each listed its cheapest product at R25, and no brands made by independent manufacturers were identified in these stores. Supermarkets are a popular place of purchase amongst buyers of legal cigarettes. Although not asked in the survey, some consumers gave their reasons for their choice of store, which I recorded by taking side notes. One respondent answered that he bought at supermarkets because they were cheaper than in other stores. This is indeed the case when it comes to Big Tobacco brands, but not smaller ones. This shows that there exist consumers who are either committed to buying legal products, or at least committed to their favoured brands, but also seek out the cheapest available option of that specific brand.

Another respondent also answered that he/she bought from supermarkets precisely in order to avoid buying illicit products, showing that awareness of the illicit trade can impact consumer behaviour in some instances, even if it is only in terms of where they shop. In both cases, the respondents answered that they were aware of the illicit trade. This demonstrates an instance where the place of purchase influences the respective consumers perception of the illicit market. In buying from an established supermarket chain, the purchases of these participants are legitimised as they assume that, due to the nature of the store, all goods sold there are legal. While this assumption can be supported by the data collected in Mowbray suggesting that no supermarkets sold illicit products, supermarkets have in the past been discovered selling such products elsewhere in the country.⁷⁶ The point made here is that the nature of the store provides assurance to the consumer that the product that he/she is purchasing is legal even though it may not necessarily be the case. This shows that the type of store is often

⁷⁶ Wilma Stassen 'Who is to blame for the flourishing illegal cigarette trade?' *Health E News*, 13 June 2013, available at <https://www.health-e.org.za/2013/06/13/who-is-to-blame-for-flourishing-illegal-cigarette-trade/>, accessed 10 December 2018.

selected by the consumer based on availability of certain cigarettes and the affordability thereof, in line with the question of accessibility asked at the outset, and also sometimes in line with considerations of legality. This shows that public awareness can potentially assist in policy formulation on the matter. However, while these perceptions are held by the individuals mentioned above, such perceptions may be the exception rather than the norm. Awareness of the illicit trade did not show much variance according to the nature of the store from which the respondent purchased and neither did the responses as to whether they would pay a higher price for a legal product upon discovering that their product of choice was illegal.

2.3 Street Vendors: Convenient, but fewer in number

Of those who bought from street vendors, the number of those who buy legal cigarettes is slightly higher than those who buy illegal cigarettes. Aside from having proportionately fewer buyers of illegal cigarettes frequenting these stores, there are also far fewer of these stores situated in the suburb, so it is logical that only a relatively small number of people bought from these stores. What this means is that superettes are the most popular type of store from which to buy cigarettes and are also the most common source of illegal cigarettes. This is primarily due to there being a much greater number of these stores than any other type of store listed. Another factor is that these stores are convenient for making swift purchases as one need not wait in lines at check-out counters. Loose cigarettes are also typically not sold at supermarkets, so this serves as a deterrent for buyers who prefer buying loose cigarettes. Interestingly, it is only illegal cigarettes that are cheaper at superettes. Legal brands are usually, albeit marginally, sold for a higher price in these stores than those same brands are sold for at supermarkets, yet more participants answered that they buy their legal brands from superettes than from supermarkets. This could be due to lack of knowledge of price discrepancy or could indicate the influence that convenience and/or the opportunity to buy loose cigarettes has on consumers. This is potentially demonstrative of the effect of availability on consumption. While this point concerns not just illegal cigarettes but also legal cigarettes, it is interesting to note how convenience and availability potentially affect consumer behaviour. If purchasing illegal cigarettes were made less convenient and purchasing legal cigarettes more convenient, this could have a potential impact on consumer behaviour and, in turn, the size of the illicit market.

3. How cheap? The prices paid for cigarettes in Mowbray

The majority of buyers of illegal products favour the absolute cheapest cigarettes but a large number of buyers of illegal cigarettes buy products that are slightly more expensive. That some buyers pay a higher price than the lowest price available, is perhaps indicative of the possibility of buyers being willing to transition to legal products if they are made aware that their current products of choice are illegal. However, the number of these buyers who said that they would pay a higher price for legal products was miniscule. This is contrary to the idea that participants in the R10-R17 category would be more willing to pay a higher price for a legal product. Therefore, this hypothesis is without merit.

There were buyers who bought from what has been deemed the ‘suspicious category’, in other words the category where the retail price is above the minimum tax threshold but perhaps still too low to make a substantial profit. It was initially postulated that there might not be any buyers falling into this category at all, but the findings have demonstrated otherwise. In each case where this price category was the one selected, the same brand of cigarettes was preferred by each participant, that of Pall Mall cigarettes. These cigarettes are available at most retailers, including supermarkets, where they typically sell for R25 or just under (with some stores selling them for R24.99).

3.1 The curious case of Pall Mall cigarettes in South Africa

The Pall Mall brand is an internationally recognised one. It is manufactured by the RJ Reynolds company in its country of origin, the United States of America,⁷⁷ but much of its international distribution is controlled by British American Tobacco, including distribution in southern Africa.⁷⁸ This shows that it is a brand manufactured and distributed by Big Tobacco and sold at prices above the tax threshold in South Africa. This may indicate compliance with the regulations, but the lower price is not the only factor contributing to the suspicion surrounding this brand in South Africa. In a presentation given by the Directorate for Priority Crimes Investigation on the matter of illegal cigarettes, Pall Mall was listed as a ‘commonly

⁷⁷ ‘What We Make: Drive Brands’ *R.J. Reynolds Tobacco Company*, 2019, available at <https://www.rjrt.com/transforming-tobacco/what-we-make/>, accessed on 15 January 2019.

⁷⁸ ‘Our Brands’ *British American Tobacco South Africa*, 2019, available at http://www.batsa.co.za/group/sites/BAT_A2ELAD.nsf/vwPagesWebLive/DO9YAEUN, accessed on 15 January 2019.

smuggled brand' with Mozambique listed as a common country of origin.⁷⁹ Pall Mall was also the only brand listed that is manufactured and distributed by Big Tobacco companies.⁸⁰ This is not to say that all Pall Mall cigarettes are smuggled but what this does suggest is that duty is not paid on a sizeable portion of this brand, which links it to the contraband trade. When this product reaches the shelves though, it is most probably impossible to determine whether duty has been paid on it or not as it is sold at a price above the tax threshold, which for the purposes of this study disqualifies it as being categorised as 'illegal'. However, it is a matter worthy of mention given the controversy, and although not categorised as illegal in this paper, it still presents an instance of a suspicious brand, one which is interesting given that it is manufactured by Big Tobacco.

3.2 Most people buy legal...most of the time

Most smokers in the suburb favour legal products. This shows that in spite of the allure of much cheaper cigarettes, buyers who have adequate disposable income are willing to pay a higher price for established brands that are generally considered legal. This does not mean that all of these buyers are averse to the illicit market. Although not asked in the survey, some did admit to buying illegal products on occasion. One participant claimed to be fully aware of illegal cigarettes and remarked that in spite of favouring an established legal brand, he occasionally, and knowingly, purchased illegal cigarettes. Another participant was not as open about occasionally purchasing illegal cigarettes but did in fact do so. The participant in question professed to favour an established brand and paid more than R25 for it. He also answered that he would pay a higher price for a legal brand. However, while the survey was being conducted, this participant had in his hand a brand of cigarettes known to sell for R15 per pack. This demonstrated that although usually buying legal products and demonstrating willingness to pay a higher price for legal products, this person was not averse to buying illegal products on occasion. The point being made here is that buyers who usually favour legal products may still buy illegal products on occasion. This potentially has ramifications for the actual size of the illicit market in Mowbray, which could in fact be higher than

⁷⁹ Parliamentary Monitoring Group op cit (n2).

⁸⁰ Ibid.

estimated in this study. It must be remembered though, that this evidence is merely anecdotal and established by casual observation as opposed to scientific method.

4. Just how large is the illegal market in Mowbray?

On the topic of the illicit market size, the fact that 39 per cent of participants were identified as purchasers of illicit stock indicates that the market in Mowbray is large. It must be factored into consideration that this number is representative of the number of people who buy illicit cigarettes but not necessarily of the number of cigarettes bought. For example, buyers of illegal stock could potentially buy more or fewer cigarettes than buyers of legal products, meaning that although 39 per cent of people buy illicit cigarettes, the actual number of cigarettes bought could be higher or lower. The answers given as to the frequency of purchases, as well whether cigarettes were typically bought loose or by the pack, are helpful here.

At face value it would appear that buyers of illegal products purchase more cigarettes with the frequency of purchases made being much greater than that of buyers of legal products. However, the majority of consumers of illegal products also favour buying loose cigarettes whereas buyers of legal stock are more inclined to purchase their cigarettes by the pack. This means that although smokers of illicit cigarettes purchase at higher rates, there is nothing to suggest that they buy more cigarettes than smokers of legal products. For example, a person who buys three loose cigarettes a day and a person who buys one pack per week consume roughly the same number of cigarettes. On the data available, there is nothing to suggest that buyers of illegal products buy more cigarettes than buyers of legal stock. Assuming that smoking habits in terms of the number of cigarettes bought is roughly the same amongst buyers of legal and illegal cigarettes alike, this means that the size of the illicit market as estimated by the number of buyers should roughly reflect the size of the market in terms of actual number of units bought. Therefore, it may be fair to assume that the estimated market size of 39 per cent is a more or less accurate reflection of the market in Mowbray.

5. Does being aware mean buying legal? The effect of knowledge of the illegal trade on consumption.

'Yes, I know about that.'

A greater number of buyers of legal products have knowledge of the illegal trade than buyers of illegal products. Although not asked to name which products they thought to be illegal, a number of buyers of illegal products correctly identified the names of brands associated with illegality but were unaware that their own purchases were illegal. This is potentially an instance where greater knowledge of the illicit trade could help combat illicit purchases. As noted earlier, some consumers bought from specific outlets because they believed them to be trustworthy and did not sell illicit products. 22 per cent of the total number of participants also answered that they would pay a higher price for a legal brand if they were to discover that their current preferences were illegal. This may lend credibility to the postulation that knowledge of the illegal market affects consumption of illicit products. However, the majority of participants who answered 'yes' to the aforementioned question were consumers who already bought legal cigarettes. Only six per cent of participants who bought illegal cigarettes answered 'yes' to the same question. A proviso needs to be added here though. Buyers of legal products generally already paid high prices for their cigarettes, so when asked if they would pay an even higher price, it is likely that they would be reluctant to do so. Had the question posed to them been phrased differently, such as whether they would pay more than R25 for a legal brand, it is likely that they could have answered differently. It must also be remembered that while the answers of buyers of legal products can be helpful, they are not the main focus of this paper. The fact that they buy legal products means that they are not directly part of the problem of the illegal trade.

Turning our attention to buyers of illegal cigarettes, it is seen that a small number would appear to be open to paying a higher price for a legal product. This finding should not be taken at face value without qualification, however. As discussed earlier in the section comparing the initial and subsequent samples, a number of those who answered that they would pay a higher price for a legal brand also implied that that they would do so only if they could afford to. Even though a large portion of buyers of illicit products did not know of the illegal market, their answers to the question of whether they would pay a higher price for a legal product suggest that acquiring knowledge thereof would not influence their purchasing

habits. This suggests that awareness of the illegal market alone is not enough to deter consumers from buying illegal products.

'Ja, well...no, I wouldn't.' *The unwillingness to pay higher prices.*

Finally, when comparing the findings of awareness of the illegal trade to the findings of whether participants would pay higher prices for legal cigarettes, no correlation exists. 74 per cent of participants answered that they knew about the illegal trade in cigarettes but only 22 per cent answered that they would pay a higher price for a legal product. If knowledge had a noticeable impact on purchases, one would expect the number of people willing to pay a higher price for legal cigarettes to be higher. Therefore, the conclusion to be made is that the impact of knowledge of the illegal trade on the purchases of smokers is negligible at best.

Chapter 6: Concluding Remarks: Where do we go from here?

Reassessing the limitations of this study

The size of the illicit market for cigarettes in Mowbray is large. It should be remembered that the estimate reached in this paper is reflective of the number of smokers who buy illegal cigarettes and not necessarily the number of cigarettes smoked. It must also be borne in mind that buyers who favour legal products may not be averse to occasionally purchasing illegal products, as the anecdotal evidence implies. Thus, while 39 per cent may be a fair estimate of the illicit market size in the suburb, it may not be the most accurate. Compounding this issue is the presence of illicit and contraband products that may appear legal at face-value but on which duty has potentially not been paid. An example of this is the Pall Mall brand mentioned in this paper. While the brand itself cannot be conclusively defined as contraband or illicit, a great deal of suspicion surrounds it. Its status as a commonly smuggled brand means that much of the stock sold on shelves could be illicit. These above-mentioned factors mean that the size of the illicit market could in fact be higher than what has been established. However, it may be impossible to conclusively determine. Another factor to consider is the character and background of the average person surveyed. Most of surveys were conducted on the side of streets and outside of buildings. People indoors, particularly those living in secure complexes, were difficult to get hold of and not very responsive. Therefore, potential smokers from the wealthier demographic may have been overlooked. This could mean that the illicit market is actually smaller than established in this study.

From the above it can be gauged that the findings of the surveys were acquired in what was far from a controlled environment. This needs to be borne in mind when reading this paper as the illicit market could be either smaller or larger than that which has been found throughout the research presented here. The purpose of this study though, was not to provide an accurate estimate of the illegal market. It set out to establish the effect the type of store from which consumers bought could potentially have on their purchasing habits and perception of the illegal cigarette trade, as well as public awareness of the illicit market and whether this public knowledge is likely to have any influence on consumer preferences, and in turn on the illicit market itself.

How accessible are illegal cigarettes?

Illegal cigarettes are sold at most stores that stock cigarettes in the suburb. This ready availability combined with the ultra-low prices of these products means that illegal cigarettes are highly accessible and have found traction amongst a large number of consumers, as evidenced by the findings of this study.

Does the type of store influence consumer behaviour?

The nature of the establishment from which cigarettes are bought can potentially influence consumers' perception of legal and illegal products. Some buyers from supermarkets admitted that they bought from supermarkets precisely to avoid illicit products. However, this evidence is anecdotal. Those buying from superettes were largely aware of the illicit trade, including those who buy illegal cigarettes. The majority of these buyers also were unwilling to pay a higher price for a legal brand. Thus, far from reinforcing consumers' beliefs that their purchases are legitimate, these types of stores are often publicly known to sell cheap, illicit, cigarettes which are actively sought out by consumers thereof. Even among those who were previously unaware of the illicit trade, willingness to pay a higher price for a legal product was low. Stores like superettes and street vendors are typically chosen due to their convenience and their sale of cheap, but illegal, cigarettes. It would therefore appear that supermarkets are perceived as stores where illegal products are not sold and where buyers go to actively avoid purchasing illegal products. Superettes and street vendors are stores which consumers frequent for convenience and often to actively seek out cheaper products.

How helpful is awareness in combating the trade?

The findings demonstrated that those consumers who are willing to pay higher prices for legal products are typically people who already purchased legal cigarettes. However, a number of participants, albeit a very small number, did answer that they would be willing to pay a higher price for a legal product. This is subject to numerous qualifications as set out in the discussion section but does represent evidence that public awareness of the illicit trade may have an impact on which cigarettes consumers buy, albeit a very small one. Public awareness campaigns, as established by the findings of this paper, may not be a particularly

effective manner of combating the illicit trade but their value should not be dismissed. Even if the number of consumers who are receptive to such campaigns is small, it still contributes to diminishing the prevalence of the illegal trade.

What are the main problems and how can they be dealt with?

It remains to be reiterated that the primary stimulators of the illegal cigarette trade are low disposable income and widespread availability of illegal cigarettes. Compounding this is the fact that only minimal penalties are incurred for indulging in the illegal trade. No penalty is incurred for purchasing illegal cigarettes, so no disincentive exists in this regard for consumers. That is not to say that penalties for buying these products should be the case, as this would create another dilemma altogether. Buyers of illegal products are often poor so a fine may have a disproportionately, and unjustly, adverse effect. Imprisonment would also be an unreasonable and unnecessary sanction. Punishing buyers would only serve to replace one problem with another, if it even succeeds in curbing the illegal trade. More severe penalties for trading in illegal cigarettes, however, may be more appropriate.

Recalling that weak state institutions and established networks are greater contributors to illegal trading than price, the best way forward most probably lies in dealing with the availability of illegal cigarettes and ensuring that the matter is appropriately policed. If tax increases truly are an effective means of diminishing the prevalence of smoking, then the key to combating the illegal trade is to make illegal cigarettes less available. The findings of this paper suggest that for many buyers, convenience is a key factor in determining at which stores cigarettes are bought as well as the brand of cigarettes purchased. If buying illegal products is made inconvenient, or conversely if buying legal products is made more convenient, then it can potentially serve as a deterrent for the purchase of cheap, illegal cigarettes. This does not mean that tax reduction will be an effective strategy, as illegal products will remain cheap and perhaps become even cheaper and no less desirable. Even if legal products become more affordable, it is unlikely that they will become as cheap as illegal ones. Furthermore, if trends in the behaviour of Big Tobacco companies are to be heeded, such companies will continue to charge higher prices even if taxes are reduced, thus defeating the purpose of tax reduction.

Acknowledging that the smoking public are highly unlikely to forgo buying cheaper, illegal, products in the interests of legality, the logical conclusion is that the answer to the problem lies with the institutions responsible for upholding the law. The crimes involved in the matter are those of tax evasion and, in the particular case of contraband products, smuggling. In as far as tax matters are concerned, the onus should be on the South African Revenue Service to follow up on tobacco companies in the country. This is easier said than done given the difficulties faced by public institutions in the midst of state capture and government corruption, which reiterates the assertion that weak state institutions are a primary stimulator of illegal trading, more so than high taxes. While it may not be an innovative solution, it is perhaps the most logical and most effective. Until the institutions tasked with combating the trade are given the means and mandate to fulfil their respective purposes, the illegal trade will continue to thrive.

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