Presentation to the AQRate B-BBEE Forum

21 July 2016
Durban

B-BBEE COMMISSION

Presenters

Ms. Zodwa Ntuli

Acting Commissioner

Ms. Lindiwe Madonsela

Deputy Director

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Vision

An inclusive industrialised economy that is globally competitive

Mission

To facilitate the accelerated productive implementation of the Act

Values

An inclusive economy is our first consideration

Open access and availability to all economic citizens

Impartiality

Consistency

Accountability for all decisions and actions taken by us

Zero tolerance to corruption

Purpose

To share information on the B-BBEE Act and the Regulations with the AQRate B-BBEE Forum

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Background

- *Section 9(2) of the Constitution: Equality*

- B-BBEE Amendment Act 46 of 2013 adopted and came into effect on **24 October 2014**

- Codes of Good Practice came into effect on **1 May 2015**

- Acting Commissioner appointed effective **1 August 2015**

- Trumping provision section 3(2) effective on **24 October 2015**

- B-BBEE Commission operations commenced **1 April 2016**

- Regulations came into effect on **6 June 2016**

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Broad-Based Black Economic Empowerment

- *Viable economic empowerment* of *all black people,* in particular *women, workers, youth, people with disabilities* and *people living in rural areas,* through diverse but integrated socio-economic strategies that include:

  - *Increasing number of black people* that manage, own and control
  - *Facilitating* management and ownership by *communities*, *workers, cooperatives* & other collective enterprises
  - Human resource and *skills development*
  - Achieving *equitable representation* in all occupational workforce levels and categories
  - Preferential *procurement* from black owned or managed
  - *Investment* in enterprises that are black owned or managed

Institutional Framework
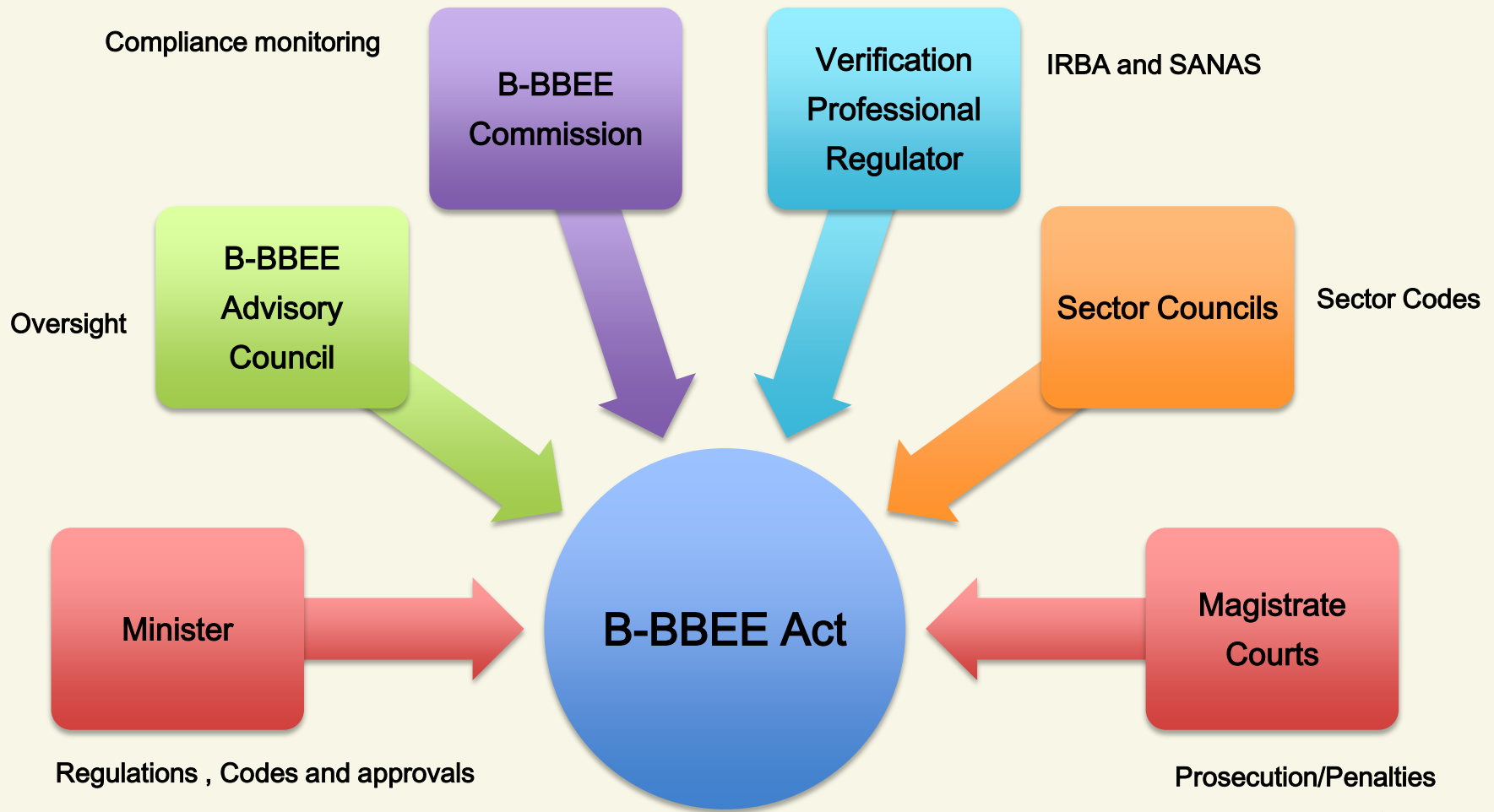
Mandate in terms of the Act

- **Section 13F outlines the following functions**

  – Oversee, supervise and promote *adherence* in the *public interest*

  – Strengthen *collaboration between public and private sector* to promote and safeguard the objectives of the Act

  – *Receive complaints* and/or *investigate* **complaints** in terms of this Act

  – Promote *advocacy*, *access to opportunities* and *educational programmes* and *initiatives*

…Mandate in terms of the Act

- Maintain a *register* of major B-BBEE transactions (above threshold)

- Receive and analyse prescribed *reports on compliance*

- Promote *good corporate governance* and *accountability* by creating an *effective and efficient environment*

- Increase *knowledge* and *public awareness* through educating, guiding, declaratory orders, and researching

- This informs the strategy, plan and required resources for the B-BBEE Commission

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Programmes

- The work of the B-BBEE Commission is organised according to the following programmes:

  – Compliance

  – Investigations and Enforcement

  – Research, Analysis and Reporting

  – Relationship building/Stakeholder Relations

  – Administration

Services Offered

- Stakeholders can engage the B-BBEE Commission on the following:

  - Lodging a Complaint

  - Requesting an Advisory Opinion

  - Requesting for Written Clarification

  - Requesting a Presentation, Workshop or Information Session

  - Referral for Alternative Dispute Resolution

  - General Telephone Enquiries

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Monitoring, Evaluation and Reporting

- *Sector Codes*, including reporting to sector councils (s9)

  – Minister to submit Sector Charter Report to the Commission within 30 days of receipt

- *Reporting Duties* : Part 2 of the Regulations

  – Organs of state and public entities reporting in annual reports (13G)

  – Listed entities and SETAs reporting to the B-BBEE Commission (13G)

- *B-BBEE verification professionals* who becomes aware of the commission or attempt to commit an offence [13O (2)]

- *Registration* of major B-BBEE transactions (13F) above threshold

  – Process set out in Part 5 of the Regulations – Minister to issue the threshold

Minister's Powers & Transparency

Clarifying the Minister's Powers in respect of Codes and Regulations

- S9 – power to issue guidelines, approve or repeal sector codes

- S10 – clarifies status of codes (generic and sector codes)

- S14 – power regarding regulations, guidelines, practice notes

Transparent process for organs of state/public entities to set higher criteria

- S9 (6) – permission to *exceed* the qualification criteria for procurement and other economic activities: *Part 6 of the Regulations*

- S10 (2) – allows for *exemption* from complying with the codes or *deviation* from the codes – on *objectively verifiable* facts or circumstances: *Part 7 of Regulations*

Prohibitions and Penalties

Introducing prohibitions, offences and penalties

- *Lodging complaints in accordance with Part 4 of the Regulations*

- 13N normal offences about *confidential information* and *obstructing the administration*

- 13O prohibits *fronting*, *misrepresentation* of status, providing *false information* to verification agents, verification agent *failing to report* contravention

- *Penaltie*s – natural person can be a fine or up to 10 years imprisonment – up to 10% annual turnover for juristic person – *Magistrate Court* has jurisdiction

…Prohibitions and Penalties

- *Cancellation of contract* or award in terms of 13A on account of false information

- *Exclusion* from doing business with the state (13P) for up to 10 years – could be limited to the directors, members or shareholders

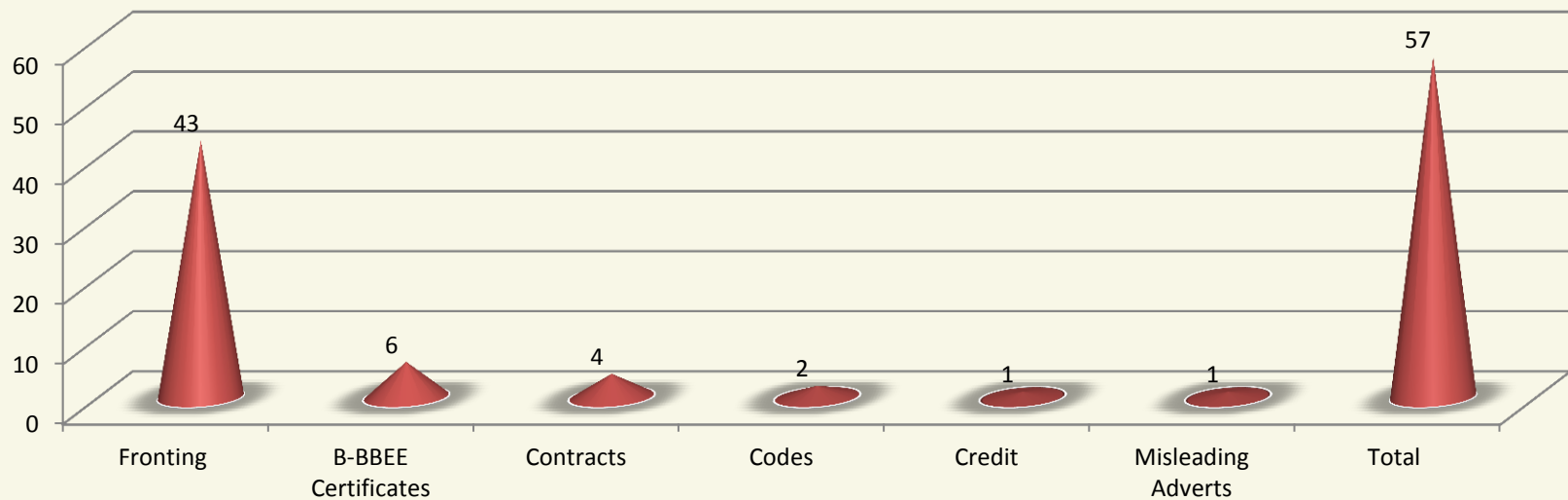- Registered on *tender defaulters register* of National Treasury

…Matters as at 30 June 2016
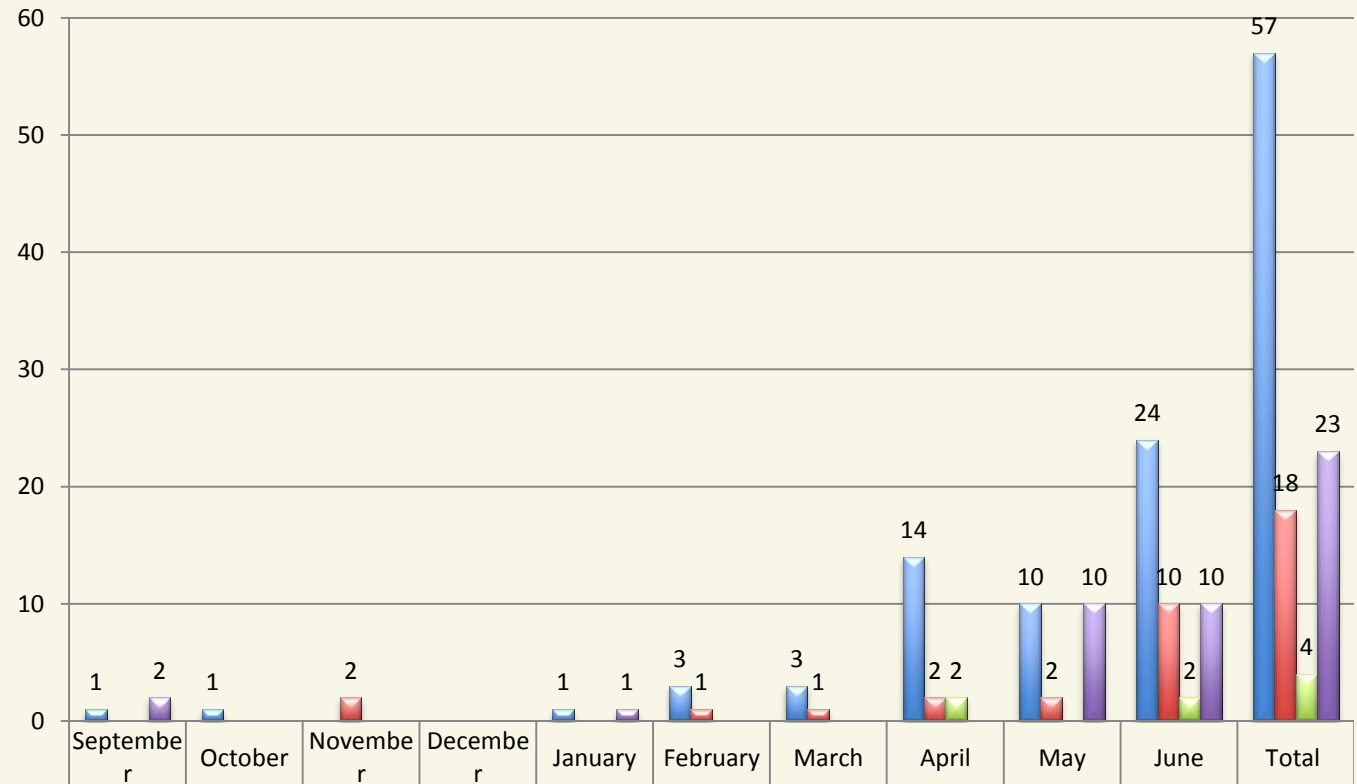
	September	October	November	December	January	February	March	April	May	June	Total
■ Number of complaints per month	1	1			1	3	3	14	10	24	57
■ Clarifications received per month			2			1	1	2	2	10	18
■ Advisory opinions finalised per month								2		2	4
■ Complaints meetings held per month	2				1				10	10	23

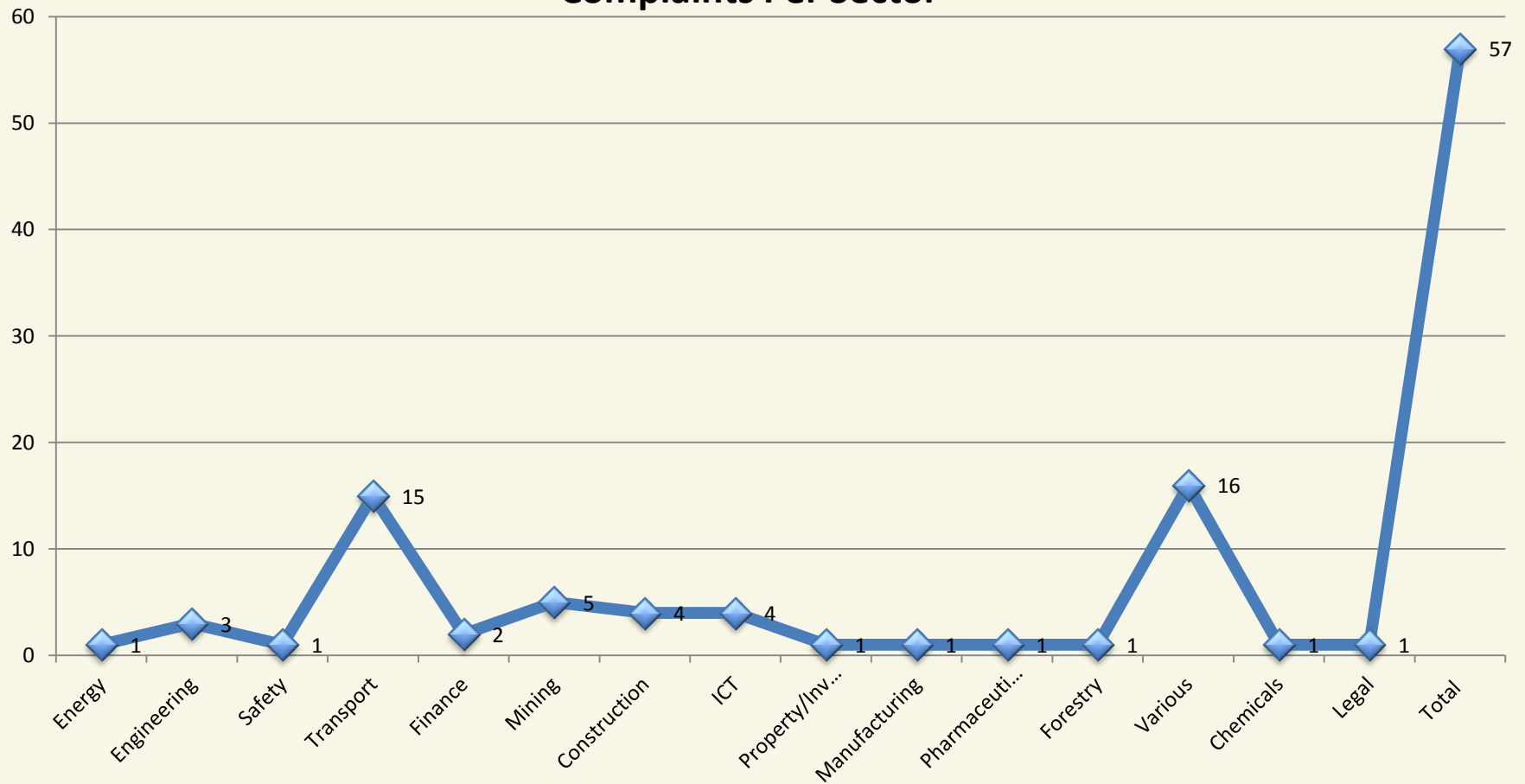B-BBEE COMMISSION
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…Matters as at 30 June 2016

Complaints Per Type

…Matters as at 30 June 2016

Complaints Per Sector

…Matters as at 30 June 2016

Meetings Per Month
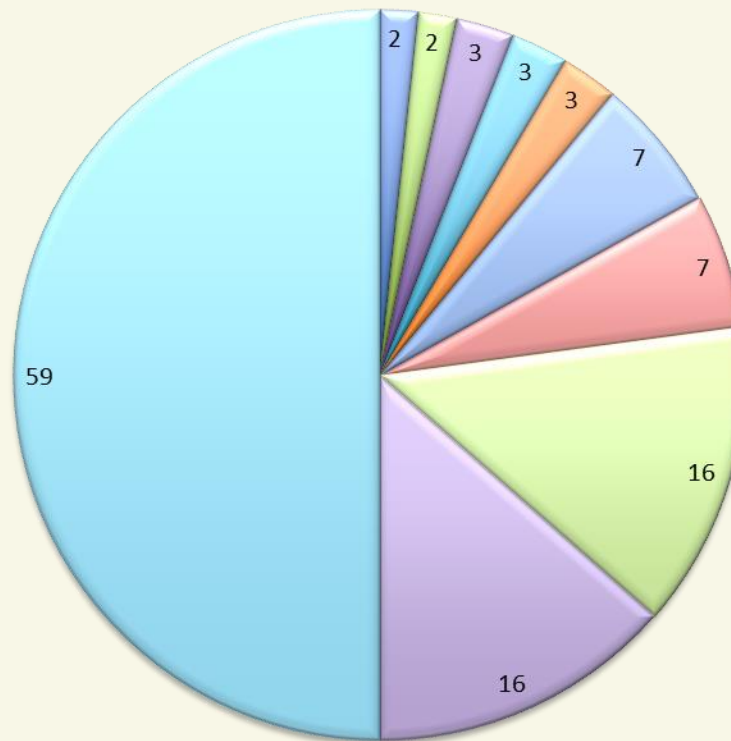
Pie chart legend:
- September
- October
- November
- December
- January
- February
- March
- April
- May
- June
- Total

Values shown: 2, 2, 3, 3, 3, 7, 7, 16, 16, 59

Conclusion

- B-BBEE must be part of the *company strategy* and plans

- Need to shift from *tick box exercise* to real implementation

- B-BBEE must help achieve *equality, create jobs* and *reduce poverty*

- Focus on *quality, impact* and *sustainability* of B-BBEE initiatives

- *Remove obstacles* to transformation, including addressing the lack of financial support and market access for black businesses

- Both *private and public sector* must implement this Act consistently

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Thank you