

Exclusive retail lease agreements hamper leasing opportunities

By [Preston Gaddy](#)

13 Aug 2014

Exclusivity clauses hamper leasing opportunities that could potentially benefit property assets even though such agreements assist the initial development of the asset.



Historically, the majority of lease agreements with anchor tenants would have contained some form of exclusivity. Grocery anchor tenants naturally needed to protect their initial investment into the establishment of the new store, as well as their future trading and growth within the centre. Moreover, a number of retail developments would not have been possible without the inclusion of some form of exclusivity in the lease, as without the commitment of the anchor tenant, financial institutions would not have agreed to finance these developments.

Lately, we have seen variations to this, particularly in large shopping centre developments where there are two or three (in some cases four), grocery retailers. The exclusivities are then limited to these co-anchors and, in certain cases, become a co-tenancy provision in the lease - certain grocery retailers are comfortable with trading alongside a specific co-anchor.

For example, most 'exclusivities' contain a restriction on certain service lines eg. bakery, butchery, deli, etc and will limit these competing tenants to a specific size. This does preclude the landlord from having independent operators of this nature above a certain size, which poses a challenge from a leasing perspective.

Generally, when the company takes on buildings from previous owners and there is an exclusivity clause, it hampers leasing opportunities that could potentially benefit the asset. We have been able to identify a number of unique operators that are trading relatively well, within these size parameters, but the smaller trading area can limit any form of realistic competition within a specific category.

Landlords have tried implementing 'radius' clauses into certain agreements, whereby they limit the grocery chain from opening the same offering within a certain radius of the centre. This was meant to be a 'quid pro quo' for exclusivities to be agreed, but unfortunately not many landlords or developers have had much success with implementing these restrictions.

Anti-competitive

SA REIT Association believes these exclusivity clauses are anti-competitive and are being used by retailers in their fight to restrict each other in market share to the detriment of the consumer.

Dov Green, chairman of the legal and competition committee of the SA REIT Association, says while it has not lodged a formal complaint to the Competition Commission, it is currently considering the matter as a whole and researching the exact processes and procedures that need to be followed in order to get the matter before the tribunal. Once this has been done, the association will approach its members.

"We find that since the Competition Commission released its statement about exclusivity clauses, retailers have become a lot more aggressive and confident with regard to the enforcement of these clauses and that is why we would want the Commission to take a definitive stance and put an end to the uncertainty," says Green.

ABOUT THE AUTHOR

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