

Mall leases - Competition Commission to investigate

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A call for the Competition Commission to address exclusivity clauses in shopping-mall leases that may be anti-competitive and restrain economic growth has been made by the South African Real Estate Investment Trust (Reit) Association.



Major anchor tenants have exclusivity clauses that they invoke to prevent other retailers from operating in selected malls. Image: [Sandton City](#)

Exclusivity clauses have historically been signed between landlords and the anchor tenants to prevent direct competitors from opening stores at the same malls.

"The association is of the opinion that grocery retailers are using these clauses in their fight to restrict each other in market share," the association said.

The Reit Association represents SA's listed Reit sector and includes many owners of shopping centres.

It comprises all SA's property companies which abide by certain tax rules and pay out at least 90% of their income to unitholders each year. The association's members

represent about R250bn in real estate assets.

The association said shopping-centre owners are caught between contractual obligations with their supermarket tenants and the restriction of providing a variety of grocery retailers to their customers to the detriment of SA's consumers.

Exclusivity clauses undesirable

It considered exclusivity clauses undesirable and was asking to the Competition Commission to intervene. The association has confirmed its members side with consumers on this issue and support upholding free market principles.

OBC Chicken added its voice to the association's complaint, saying it is often prevented from opening branches at certain malls. OBC sells chicken products predominantly in township areas and around train stations and taxi ranks.

"When positive negotiations with landlords are suddenly reneged on for no reason whatsoever, one becomes concerned," said Managing Director Tony da Fonseca.

Da Fonseca says the franchise group is concerned that malls opening in its traditional areas of business often practise the blocking of sites by the anchor tenants who obviously have a greater say in the tenant mix of shopping centres. This is perpetuated by many of the big retailers in the supermarket arena who are unlocking the potential of trading in high-density black areas", he said.

In 2009 the Competition Commission investigated the exclusivity clauses of lease agreements of shopping malls. It concluded the investigation two years later, without prosecuting any of the parties.

But it noted that it's the new landlord's or acquiring party's responsibility to use its best endeavours to negotiate with their supermarket tenants for the removal of exclusivity clauses from their leases.

The association said property owners had been unable to get retailers to remove exclusivity clauses from the lease



Tony da Fonseca says anchor tenants in new malls in townships are preventing smaller competitors from opening stores through the exclusivity clauses in lease agreements with developers. Image: OBC Chicken

agreements.

Source: Business Day via I-Net Bridge

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