

MEDIA RELEASE FROM THE SA REIT ASSOCIATION

25 July 2014

***Shopping Centre landlords ask Competition Commission  
to address exclusivity clauses in retail leases***

The SA REIT Association has raised concerns on behalf of its members about the exclusivity clauses in leases. The association is of the opinion that grocery retailers are using these clauses in their fight to restrict each other in market share.

Shopping centre owners are caught between their contractual obligations with their supermarket tenants and providing a variety of grocery retailers to their customers – to the detriment of South Africa’s consumers.

The SA REIT Association represents South Africa’s listed REIT sector. SA REIT members comprise all listed SA REITs and represent around R250 billion worth of real estate assets. They include major owners of shopping centres in the country. The quality of these SA REITs influence our economy and the quality of people's lives.

SA REIT Association considers the exclusivity clauses undesirable and is looking to the Competition Commission to intervene.

Exclusivity clauses in a lease agreement are driven by retailers to prevent similar competing businesses from being able to trade at the same shopping centre. In most of the instances the property owners were not the original party to the lease agreement where the exclusivity clause was negotiated with the retailer.

Today’s consumers, however, prefer multiple grocery retailers at centres for greater variety and choice. The SA REIT Association confirms its members side with consumers on this issue and support upholding free market principles.

The Competition Commission considered the undesirability of the practice some years ago. While not ruling if it considered the behaviour uncompetitive, in each retail acquisition or merger transaction brought to the commission since 2009, it has noted that it’s the new landlord’s or acquiring party’s responsibility to use its best endeavour to negotiate with their supermarket tenants the removal of exclusivity clauses from their leases.

However, in all these cases property owners have been unable to get the retailers to remove these clauses from the lease agreements. Retailers are unwilling to surrender this hold over their competition and are now taking aggressive advantage of exclusivity clauses, leaving landlords caught between a rock and a hard place.

SA REIT Association is concerned that this push by retailers is driving restrictive business practice and believes it has the responsibility to raise its apprehension over this undesirable

situation and will be asking the Competition Commission to turn their attention to exclusivity clauses again.

The association is aware of various properties across SA where some of the food retailers have threatened legal action claiming landlords are in breach of existing lease agreements - insisting landlords enforce exclusivity clauses against certain national retailers. They are also pushing through their cases with urgency, even in instances where this national retailer has already been open and trading for quite some time at a shopping centre.

Landlords have become the ham in the sandwich. The landlord is left in the objectionable position of either having to prevent the opening or trade of that national retailer or facing claims for damages for breach of contract due to the exclusivity clauses.

SA REIT Association members have indicated they are against these clauses and they are not driving this exclusivity. The consumer should have the ultimate choice. A free market is a fundamental in this country and SA REIT members we would like to see that principle perpetuated.

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