

Big supermarket chains at a crossroads over exclusive leases

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The Competition Commission has stopped short of declaring it an anti-competitive practice for national supermarkets and property developers to enter into long-term exclusive lease agreements for shopping centre space. Instead, it is passing the problem back to the parties themselves. The big supermarket chains especially have some tough choices to make following the conclusion of the Commission's three-year market inquiry into the grocery retail sector.

It will be interesting to see what direction they take at this particular crossroads.

Will they take the high road that the Competition Commission has laid out, which is to voluntarily refrain from enforcing clauses that restrict landlords from leasing out space in the same shopping centre to potential competitors? Will they continue doing what their lease agreements allow them to do, and which – at this point anyway – is neither illegal nor anti-competitive? Or will they seek some middle ground and start phasing out exclusive lease arrangements, thus partly following the wishes of the Competition Commission?



Exclusive leases are one of three concerns pinpointed

In its preliminary report issued at the end of May 2019, the Competition Commission pinpointed long-term exclusive lease agreements and the buying power of the big four supermarket chains as one of three "principal areas of concern that warrant remedial action." (The other two are

the regulatory landscape and the competitiveness of small and independent retailers.)

Long-term lease agreements with clauses that give a major grocery retailer exclusivity in a particular mall have long been a sore point among property owners and developers, not to mention small and independent supermarkets. Least popular of all are those ultra-long-term leases spanning 20, 30 or even 40 years.

In its preliminary report, the Competition Commission minces no words about the effect it believes exclusive lease agreements have had

on competition in the grocery retail sector. Such leases have 'substantially hindered' the emergence of challenger retail chains to the four national retailers, it says, and served to prevent economic participation by small independent retailers.

Despite this criticism, the Commission appears to be leaving it up to grocery retailers to decide on the next steps.

The way ahead will probably be more difficult to navigate in non-urban areas. Many urban landlords no longer grant exclusive tenancy as a matter of course, but exclusivity is more common in far-flung areas where tenants may be more difficult to attract.

Retailers and landlords alike will have to tread carefully as to what they believe they can and cannot justify when it comes to exclusive lease arrangements. The big retailers may also have to rethink their business models if they are no longer assured an absence of competitors in the shopping centres they occupy.

Dealing with displacement of small retailers

Meanwhile, another important issue for the major supermarket chains to chew on is whether they should be doing more to assist small grocery retailers displaced or potentially displaced in areas where the big players open their doors.

The Competition Commission, which conducted its own small business survey to assess the impact on small retailers, notes a decline in the number of these businesses in non-urban areas.

While emphasising that it cannot conclusively attribute this decline to the entry of national supermarket chains, the Commission's preliminary report does make the stark comment that their entry has shifted the competitive landscape in non-urban areas. "...there is an observed diversion of customer demand from small and independent businesses that previously served these customers. This appears to have displaced the small and

independent businesses in non-urban areas," the preliminary report says.

Granted, the report does refer in some detail to the positive effects large retailers are having in non-urban areas, these include some new formal employment opportunities, but the biggest benefits are consumer welfare gains through lower prices, convenience, choice and lower transport costs.

The question large grocery retailers probably need to ponder at this point is whether these benefits outweigh the social and economic cost of displacing small, local businesses. Will the jobs that the big players add compensate for the loss of jobs when small grocery retailers close down?

For some small retailers, closing down their store may mean poverty for them and the families they support.

Big, established retailers are coming under increasingly close scrutiny. They would be well advised to consider hard and carefully – but not for too long – how to deal with the thorny questions of exclusive leases and the displacement of smaller players outside the main urban centres. Both issues could well be considered low-hanging fruit for anyone pushing for local government regulatory changes in the grocery retail sector in line with the expanded public interest provisions of the recently amended Competition Act. **SR**

