

Pick n Pay's exclusive lease agreements coming to an end

Supermarkets that are privately-owned and controlled by historically disadvantaged persons (HDP) can immediately access letting space in all shopping centres where a Pick n Pay store has exclusivity provisions in its lease agreement.



This forms part of the terms of a [consent agreement](#) entered into between the Competition Commission and Pick n Pay, which was confirmed as an order of the Competition Tribunal on Friday, 11 June.

In addition to the abovementioned HDP-owned supermarkets, the following two categories of retail stores will also no longer be restricted from letting space in shopping centres where any Pick n Pay store has exclusivity provisions in its long-term lease agreement:

- Small or medium-sized businesses (SMMEs) as defined in the Competition Act; and
- Specialty and limited line retail stores - stores within the grocery retail sector that focus on a specific product category such as butcheries, bakeries, delicatessens, liquor stores and greengrocers, or which stock and sell 15 or less product lines.

In terms of the consent agreement, Pick n Pay will with immediate effect cease enforcing any exclusivity provisions, or provisions that have a substantially similar effect, in its long-term exclusive lease agreements against the above three categories of retail stores.

No new agreements with exclusivity clauses to be signed

Pick n Pay will also phase out exclusivity against other supermarket chains over six years ending 31 December 2026, and not sign any new lease agreements that contain exclusivity clauses.

The retailer also undertook to, within a period of twelve months, seek to secure the agreement of its franchisees to cease the enforcement of exclusivity provisions in their lease agreements as well as ensure that they do not sign any new lease agreements that contain exclusivity clauses.



Expanding consumer choice, stimulating competition

Long-term exclusive lease agreements, entered into between property developers and supermarkets, include provisions that restrict the landlord from letting premises in the same shopping centre to potentially competing grocery retailers and specialty stores. These contracts sometimes span up to 25 years.

The new order will effectively eliminate exclusive leases in shopping malls in keeping with the recommendations of the [Grocery Retail Market Inquiry](#) (GRMI).

In its final report, the GRMI found that long-term exclusive lease agreements are widely prevalent in the grocery retail sector and give rise to customer harm as they limit consumer choice and reduced competition within shopping centres. Furthermore, such exclusive agreements prevent the participation of SMEs and historically disadvantaged persons in the grocery retail sector.



Unpacking the Competition Commission's Grocery Retail Market Inquiry report

Angelo Tzarevski, Ryan McKerrow and Kirsty Gibson 27 Nov 2019



Shoprite Checkers also [agreed last year](#) to stop enforcing exclusivity provisions in its long-term exclusive lease agreements with its landlords against SMMEs and speciality and limited line stores.

“The Commission has prioritised opening up markets by lowering barriers to entry and allow SMMEs and HDI firms have a fighting chance in the economy. This is the only sustainable way towards a growing and inclusive economy,” said Competition Commissioner Tembinkosi Bonakele.

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