

OBC Butchery accuses Spar of anti-competitive conduct in shopping malls

OBC Better Butchery has lodged a complaint with the Competition Commission, accusing supermarket retailer Spar of "vigorously enforcing exclusivity clauses" against landlords, thus preventing competition (in this case OBC) from setting up shop in certain malls...



Source: Reuters/Siphwe Sibeko

The Grocery Retail Market Inquiry concluded in 2019 by the Competition Commission ordered South Africa's large supermarket chains Shoprite, Pick n Pay, Woolworths and Spar - which have a collective market share of 72% - to drop exclusivity clauses in shopping mall leases as it resulted in reduced competition and diminished space for the participation of small and independent retail outlets.

As one of the affected specialist challenger retailers, OBC Better Butchery was one of the companies that made its submission at the time to the Competition Commission on the power wielded by the major national supermarket chains over enforcing exclusive provisions in their lease agreements against challenger retailers and speciality stores.

The following Grocery Retail Market Inquiry recommendation was made:

National supermarket chains must, with immediate effect, cease from enforcing exclusivity provisions, or provisions that have a substantially similar effect, in their lease agreements at paragraph 98.1 against: SMMEs, speciality stores; and

other grocery retailers (including the emerging challenger retailers) in shopping centres located in non-urban areas.



Unpacking the Competition Commission's Grocery Retail Market Inquiry report

Angelo Tzarevski, Ryan McKerrow and Kirsty Gibson 27 Nov 2019



But it appears that Spar is failing to adhere to the order. It recently came to the attention of OBC Better Butchery MD Tony Da Fonseca that "some of the Spar franchisees and/or Spar Head Office have entered into lease agreements whereby the landlord is prohibited from renting commercial retail space to the competitors of Spar, like OBC," the butchery group said in a statement.

Da Fonseca reacted by lodging a complaint on 4 November in terms of Section 49B(1) as read with Section 49(2)(b) of the Competition Act, 89 of 1998 against Spar franchisees and/or Spar Head Office.

Restricting landlord rights

"While attempting to conclude lease agreements for available space in various shopping centres where Spar is the anchor tenant, the landlords have openly communicated to us that they cannot conclude a lease agreement with us as Spar is enforcing their exclusivity clause," said Da Fonseca.

"As a result of Spar's conduct, it is restricting the landlord's right to rent the available space to OBC. The landlords have told us that they do not agree with this exclusionary practice and do not support it but are bound by the terms of the signed lease agreement. This exclusionary conduct prevents competition and the loss on average of 30 to 50 potential job opportunities per store in the area," he added.

The shopping complexes at the centre of the dispute include the Hubyeni Shopping Centre in Limpopo, KwaMashu Shopping Centre, Gugulethu Square and the Mandela Park Shopping Centre in the Free State, where OBC stated that there have been "clear instances of anti-competitive or restrictive practices regarding exclusivity clauses in the lease agreements".

According to the butchery group, in certain shopping centres like Vooslorus Crossing Mall, Gauteng and Hazyview Shopping Centre, Mpumalanga, OBC has traded in the same centre alongside Spar (as the anchor tenant) for the past five years and Spar has had no objections to this.

Responding to *Bizcommunity's* request for comment, Spar's chief ESG officer and company secretary Kevin O'Brien said: "The Spar Group is not aware of any complaint, whether formal or informal, from any national supermarket chain and to be specific from OBC Better Butchery about their exclusion from a retail centre due to the presence of a Spar store in the same shopping centre or mall. Therefore, we cannot comment on complaints that have not been received."

Stifling of local entrepreneurship

OBC has had a footprint in the Black retail market for over three decades and was one of the first independent chicken and complementary products franchise retailers to set up supermarkets in townships, taxi ranks and rural areas. Da Fonseca commented, "At a time when the major supermarket retailers were not even considering entering peri-urban and rural areas, we were catering to local communities becoming famous as the 'chicken ekhaya' of choice and working with and supplying local spaza and informal traders."

Da Fonseca added, "We won't stand for these 'blocking' bullying tactics of these big players who flout competition commission rulings and have engaged in vertical agreements which have the effect of preventing or lessening competition without any technological, efficiency or other pro-competitive gain, which outweighs the anti-competitive practice with the

intention of wiping out even the small challenger retailers like ourselves.

“The stifling of local entrepreneurship – be it on any level – has no place in our country and we all need to play a role in making room for a variety of commercial and informal enterprises that cater to our rainbow nation.”

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