

MEDIA RELEASE

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Commission re-opens supermarkets investigation

The Competition Commission has received a fresh complaint from commercial property owners constituted under the banner of the South African Property Owners Association (SAPOA).

SAPOA has requested the Commission to re-look the issue of exclusive clauses in long term lease agreements between owners of large retail shopping centres and retail anchor tenants across the country. The property owners association alleges that these give rise to considerable competition concerns and could amount to substantial prevention or lessening of competition in violation of the Competition Act.

The Commission is currently screening the complaint and will make a determination on whether to launch a full-scale investigation or not.

Earlier this year, the Commission concluded its investigation into the exclusive leases, looking at local markets across the country where exclusive leases had been agreed and enforced by the three major supermarket groups (Pick n Pay, Shoprite and Spar) and found that the anti-competitive effects of the conduct could not be demonstrated conclusively.

The evidence did not meet the test required in order to prosecute the firms involved and therefore the Commission took a decision not to refer the matter to the Tribunal.

The Commission remains concerned about the potential dampening effects of exclusive leases on competition, particularly as they affect small competitors and potential entrants to the market.

In addition to the latest complaint, the Commission was already addressing the residual competition concerns arising out of the conduct of the respondents through advocacy engagements with key industry stakeholders including landlords and supermarkets.

The Commission is advocating against the parties entering into long term exclusive agreements as by default for each new development and encourage their use only where justified by the investment made by the supermarket in a particular centre.

The Commission has also noted the recent High Court judgment which has upheld such exclusive lease agreement between Pick n Pay stores and Hyprop, the owner of the Cape Gate Shopping Centre in the Western Cape.

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