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**Unitrade Management Services (UMS) Responses to Submissions by other parties
to the Grocery Retail Market Inquiry**

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1. Introduction

Pursuant to the Competition Commission's retail market inquiry (**Inquiry**) Unitrade Management Services (Pty) Ltd (UMS) made its submissions on 21 July 2016. UMS reiterates the issues it raised in its submission of 21 July 2016, and respectfully requests the Inquiry to take all its recommendations into account when devising solutions to the challenges faced by small and independent retailers in South Africa. Here we refer to the submissions by various other parties to the Inquiry, as published online, and appreciate the opportunity to make a further contribution to the Inquiry in relation to them. In doing so, we wish to draw the panel's attention to our original submission, in which several of the points raised below are elaborated upon at length.

Overall, our core concern remains promotion of fair access to grocery retail markets for independent retailers. We also wish to restate our concern that the full complexities of the various categories of players in the independent grocery retail space are not sufficiently distinguished from each other in the various respondents' submissions, and address this issue explicitly below. This also applies to others' characterization of the UMS business model, which is not sufficiently understood and is therefore briefly restated here.

2. Comments

UMS has reviewed various submissions ranging from views by private citizens to large retail market players and wishes to highlight the following:

- a. **Role of UMS** – UMS has been referred to as a buying group in the submissions by both Massmart¹ and Spar². As noted in our submission, UMS's offerings go beyond those of a typical buying group. UMS considers itself to be a voluntary trading association³ and, as such, its business model falls somewhere between a full franchise operation and a buying group. UMS offer its members all of the advantages of franchising without the associated costs. In other words, ***UMS operates as a typical franchisor but without charging franchise fees to independent store owner(s)***. UMS distinguishes itself from typical buying groups in that it

¹ Page 19 and paragraph 3.4.22.2. of Massmart's submission to the Inquiry.

² Page 13 and Table 3 of Spar's submission to the Inquiry. Though Spar's description is more detailed it does not fully capture what UMS's role in the market is.

³ The Spar Group is another example of a voluntary trading association.

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provides additional benefits to independent stores at no additional charge over and above providing the benefit of increased buyer power. Such additional benefits include skills development and training; marketing that is uniquely tailored to community dynamics; administrative support including a buying team; credit facilities; sales and operational support; store development; private label programmes; business development plans; and customised promotional plans. In short UMS is a critical player in the retail market space and enables its members to have access to both wholesale and retail opportunities in the groceries sector. This is a critical, un-remunerated, function that strongly promotes inclusion of previously disadvantaged groups in the grocery retail market space.

- b. **Small and Independent (S&I) retailers are deprived of support by suppliers** – UMS agrees with the issues raised in the submission by Private Citizen 6⁴, that S&I do not receive many benefits offered by suppliers to large retailers, which therefore enables large retailers to have an unfair advantage. The S&I has submitted fairly detailed information in this regard and so UMS would like to draw the Inquiry’s attention to this matter. Further, and as stated in our original submission, UMS is of the view that ***the buying power of the big 5 supermarkets is abused by them***, leading to anti-competitive outcomes in the market to the detriment of S&I retailers and consumers. As set out in more detail in UMS’s original submission, the downward pressure placed on prices by the big 5 supermarkets may lead suppliers to recoup lost margins through charging independents higher prices, or to offer them smaller price discounts⁵. The submission by Private Citizen 6 affirms this point. This matter needs to be urgently resolved in order to enable S&I retailers to have an opportunity to compete fairly with larger retailers to the benefit of consumers and the economy as a whole, and in order to promote diversity in the grocery retail market space rather than rewarding size, and the abuse thereof.
- c. **Barriers to entry arising from exclusivity clauses in long-term lease agreements entered into by large retailers and property developers in shopping malls** – We note that Pick ‘n Pay has proffered some explanation for exclusive lease agreements by, inter alia, arguing that:

In many instances where Pick n Pay has exclusive lease arrangements, and landlords have requested access for small and independent retailers to particular

⁴ Being required to pay cash up-front, no discounts or rebates provided, no advertising rebates, not allowed to return damaged or expired goods, no shelf space payment, and no point of sale support – such as promotional or advertising material.

⁵ Please refer to the discussion on the waterbed effect on page 8 of UMS’s original submission of 21 July 2016.

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*shopping malls, Pick n Pay has generally consented thereto. Indeed, it is not Pick n Pay's experience that small and independent retailers have been disproportionately affected by exclusive lease arrangements and that, in fact, the primary rationale for such lease arrangements was to ensure that other large retail grocers did not "free ride" on the goodwill which Pick n Pay had established in particular shopping centres and thereby seek to undermine the profitability of particular Pick n Pay stores in those centres.*⁶

As provided in more detail in our submission of 21 July, UMS accepts that there could be instances where exclusive lease agreements are desirable (i.e. to allow an anchor tenant to recoup its initial sunk costs in respect of the property development). Nonetheless, UMS contends that ***these clauses have been abused and a new regulatory regime is required to ensure pro-competitive outcomes***. In this regard, we agree with the submission by Massmart that the implementation of the exclusivity clauses in lease agreements has led to anti-competitive outcomes. However, UMS is also alive to the need to ensure that in the interest of fairness, any of the big 5 retailers should not be allowed to free ride as argued by Pick 'n Pay. Our view is that appropriate regulations need to be introduced to ensure that exclusivity clauses are not used to exclude S&I retailers and that it should not be up to a big 5 anchor tenant to decide whether to allow an independent retailer into a shopping mall or not. Therefore, we reiterate our view (as per our submission on 21 July) that ***existing exclusive lease agreements must be phased out in existing shopping malls and that in new mall developments exclusive lease agreements, when necessary, should not exceed 5 years***. We note that Woolworths is of the same view in regard to this issue: "*Exclusivity clauses should therefore only endure for as long as is necessary to recover a retailer's initial investment and for no longer than 5 years*"⁷.

- d. **Scope of S&I category** – Certain arguments by some big 5 retailers seem to focus on challenges faced by spaza shops and other very small scale retail operators. It is important to note that ***the S&I retailers' category comprises a range of retailers*** encompassing hawkers, spaza shops, mom and pops stores, as well small, medium and large supermarkets and wholesalers that are not affiliated to any of the large national retail chains. It is important for the Inquiry to bear this in mind when considering claims by some big 5 operators that (i) they do not compete with S&I

⁶ Pick 'n Pay's submission to the Inquiry, page 42, paragraph 105.3.

⁷ Woolworths 'submission to the Inquiry, paragraph 5.2.2.2.

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retailers (ii) that their exclusive lease agreements in respect of shopping malls do not prejudice S&I retailers. As such, UMS contends that ***all S&I retailers including the relatively larger ones that pose a competitive threat to the big 5 need to be afforded fair trading terms by suppliers*** and that exclusive lease agreements should not be used to their detriment.

3. Conclusion

UMS wishes to emphasize that the issues it has raised in its 21 July 2016 submission to the Inquiry are based on the actual experiences of its members and that its recommendations will go a long way towards creating fair competition in the market to the benefit of all players, notably small and independent retailers, as well as consumers. From our review of the various submissions made, it appears that our concerns are supported in certain quarters, even though there are misconceptions regarding the nature of small and independent retailers. We trust that our brief review of key points raised in the various submissions, in relation to our original submission, will clarify these issues, and that the panel will give them the full consideration they deserve.