



**competition commission**  
*south africa*

**PRESS RELEASE**

**IMMEDIATE RELEASE**

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**COMPETITION TRIBUNAL CONFIRMS CONSENT AGREEMENT TO HALT ENFORCEMENT OF  
EXCLUSIVE LEASES BY SHOPRITE CHECKERS**

The Competition Commission welcomes the decision by the Competition Tribunal to confirm as an order the consent agreement between the Commission and Shoprite Checkers. In terms of the consent agreement, Shoprite Checkers will no longer enforce the exclusivity clauses contained in various lease agreements against SMEs and specialist line stores with immediate effect. Exclusivity against other supermarkets will cease immediately in non-urban areas and will be phased out over five years in urban areas.

The confirmation of this consent agreement marks a significant milestone in the enforcement efforts of the Commission following twelve years since the initiation of the first broad investigation against exclusive lease agreements by the national supermarket chains. More importantly, this agreement ushers in a new era in the South African grocery retailing environment as it opens up access for SMEs and other retailers in more than 1000 locations across the country in which Shoprite Checkers has exclusivity.

In its final report on Grocery Retail Market Inquiry (GRMI), the Commission found that Long-Term Exclusive Lease Agreements are widely prevalent in the grocery retail sectors and give rise to customer harm as they limit consumer choice within Shopping Centres. In line with the recommendations of the GRMI, Shoprite Checkers has, on behalf of its brands Shoprite, Checkers, and Usave, undertaken to do the following:

- waive exclusivity against small and independent grocery retailers and speciality stores in all shopping centres with immediate effect;
- waive exclusivity against other supermarket chains in all non-urban shopping centres with immediate effect and phase out exclusivity over five years in urban areas. The phase out will involve waiving exclusivity as leases come up for renewal; and

- not sign any new lease agreements that contain exclusivity clauses.

Importantly, this undertaking also applies to Shoprite Checkers' franchise business, OK Foods. Specifically, where Shoprite Checkers holds the lease on behalf of a franchisee, the undertaking will be implemented immediately. Where franchisees hold the lease, Shoprite Checkers and the Commission have agreed that within a period of 12 months, Shoprite Checkers will work with its franchisees to ensure compliance with the undertaking. Shoprite Checkers will also ensure that its franchise agreements will, in future, not allow franchisees to hold exclusive leases.

"The decision by the Tribunal is an important and positive step towards the rebuilding of the South African economy, following the devastating impact of the corona virus pandemic, particularly on SMEs. The opening of space in shopping centres as a result of this historic agreement also provides an opportunity for new businesses to emerge in the South African retailing environment and this is crucial in providing consumers with product choice and alternative places to shop for grocery products," said Competition Commissioner, Tembinkosi Bonakele.

**[ENDS]**

**Issued by:**

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## BACKGROUND

On 30 October 2015, the Commission gave notice in Government Gazette No 3924 announcing the establishment of the GRMI in terms of section 43B(2) of the Competition Act.

Consistent with the purposes of and chapter 4 of the Competition Act, the GRMI was not concerned with prohibited conduct of an individual firm, or group of firms, but to understand how the grocery retail sector operates because it believed there to exist features, or a combination of features, in the sector that had the capacity to prevent, distort or restrict competition.

Amongst others, the Commission identified the impact of Long-Term Exclusive Lease Agreements, and the role of financiers in these agreements on local competition in the grocery retail sector as an objective of the GRMI.

In respect of Long-Term Exclusive Lease Agreements, the GRMI did not investigate identified markets, but considered the effect of this market feature broadly. Shoprite Checkers participated in the work of the GRMI.

The Final Report recorded the view that Long-Term Exclusive Lease Agreements are widely prevalent in the grocery retail sector and that the foreclosure of competing retailers, particularly small and independent retailers as well as emerging challenger retailers, is sustained over significantly long periods.

The Final Report concluded that Long-Term Exclusive Lease Agreements give rise to customer harm as they limit consumer choice within Shopping Centres. The continued presence of such Long-Term Exclusive Lease Agreements will perpetuate the observed concentration levels and sustain the existing incumbency patterns, and thus deprive consumers of dynamism and innovation in the grocery retail sector and there are no compelling justifications to substantiate the continued unfettered presence of Long-Term Exclusive Lease Agreements.

Accordingly, the GRMI in respect of Long-Term Exclusivity Lease Agreements recommended the remedial action that within six months of publication of the Final Report the Commission must seek to secure voluntary compliance by the national Supermarket chains with the following recommendations:

1. National Supermarket chains must, with immediate effect, cease from enforcing exclusivity provisions, or provisions that have a substantially similar effect, in their lease agreements against:
  - 1.1 SMMEs;
  - 1.2 Specialty Stores; and
  - 1.3 other grocery retailers (including the emerging challenger retailers) in Shopping Centres located in Non-Urban Areas.

2. No new leases or extensions to leases by grocery retailers may incorporate exclusivity clauses (or clauses that have substantially the same effect) or clauses that may serve to restrict the product lines, store size and location of other stores selling grocery items within Shopping Centres.
3. The enforcement of exclusivity in Long Term Exclusive Lease Agreements by the national Supermarket chains as against other grocery retailers must be phased out by the next extension of the lease or within five years from 17 December 2019 (the date of the publication of the Final Report), whichever is earlier.

Following the publication of the Final Report the Commission and Shoprite Checkers have engaged in discussions regarding the recommendations relating to Long Term Exclusive Lease Agreements.