Competition Commission and Spar have reached a consent agreement

The Competition Commission and the Spar Group have reached a consent agreement aimed at ending long-term exclusive lease agreements in the grocery retail sector. The consent agreement follows a mediation process conducted under the auspices of the Honourable Justice Dennis Davis, the former Judge President of the Competition Appeal Court.

Image by Jasmine Lin from Pixabay

As part of this agreement, the Spar Group has committed to end exclusive leases by December 2026 and to opening opportunities to small, medium, and micro enterprises (SMMEs) and historically disadvantaged persons-owned (HDPs) supermarkets immediately. The consent agreement will be submitted to the Competition Tribunal for confirmation and will ultimately pave the way for greater fairness and competition in South Africa's grocery retail market to the benefit of consumers across the country.

The Spar agreement is in response to recommendations made by the Grocery Retail Market Inquiry (GRMI) and follows similar consent agreements with Shoprite and Pick n Pay. Collectively these cover all national chains that had exclusive lease agreements in place. The exclusive lease agreements of Shoprite, Pick n Pay and Spar covered close to 2,000 shopping malls and convenience centres nationally, and excluded any specialist or general grocery supermarkets from competing for consumers in those malls.

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As more than 50% of grocery shopping journeys are to malls and convenience centres, collectively these leases prevented competition for most consumer purchases. These leases also contributed significantly to the exclusion of SMEs and HDPs in the grocery sector, where they are under-represented relative to other countries. The end of exclusive leases opens opportunities for SMEs and HDPs in thousands of shopping malls and convenience centres nationally.

The GRMI, initiated by the Commission, was established in accordance with 49D(1), read with section 58(1)(b) of the Competition Act No 89 of 1998 (as amended) to investigate and address features within the grocery retail sector that could hinder competition. One of the key issues identified was the impact of long-term exclusive lease agreements on local competition.

In its final report published on 17 December 2019, the GRMI concluded that long-term exclusive lease agreements limit consumer choice within shopping centres, sustain concentration levels, pose particular barriers to participation by SMEs and HDPs, and hinder dynamism and innovation in the grocery retail sector. To address these concerns, it recommended that national supermarket chains voluntarily comply with specific measures to phase out exclusive leases within five years.

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Karabo Ledwaba 1 Aug 2023

As a result of ongoing discussions between the Commission and the Spar Group, a consent agreement has been reached that commits the Spar Group to cease enforcing exclusivity provisions for company-owned stores with immediate effect and will not include such provisions in future lease agreements. In respect of Spar Group head leases for stores owned by Spar retail members, the Spar Group will cease enforcing exclusivity against SMEs, HDP specialist stores and HDP supermarkets with immediate effect.

This excludes franchisees of national chains in the first year but covers them thereafter. The Spar Group will not include exclusivity provisions in any new head leases and will cease to enforce exclusivity against all competitors by December 2026. The Spar Group will also actively seek to persuade Spar retail members to adhere to the agreement's provisions within 12 months from the date of signature. This consent agreement is a full and final settlement of all matters related to The Spar Group arising from the GRMI's final report and Commission investigations.

This final consent agreement concludes the work of the Commission in opening up the grocery retail sector to competition and participation by all.