

Unpacking the Competition Commission's Grocery Retail Market Inquiry report

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On Monday, 25 November 2019, the Competition Commission published the final report in relation to its Grocery Retail Market Inquiry. The inquiry, which officially commenced on 27 November 2015, sought to elucidate features of the grocery retail market that have resulted in reduced competition and diminished space for the participation of small and independent retail outlets (both in urban and non-urban economies).



Image source: Getty Images

Three broad areas of concern have been identified by the inquiry, namely:

- i. exclusive leases in shopping malls;
- ii. discriminatory treatment of Small, Medium and Macro Enterprises (SMMEs) in respect of trading practices; and
- iii. inadequate regulatory support for informal businesses.

The key findings and recommendations are briefly set out below.

Exclusive leases in shopping malls

Summary of findings:

- The inquiry found that national retail chains — including Shoprite/Checkers, Pick 'n Pay, Spar and Woolworths — dominate shopping malls and convenience centres. This is, in part, a result of the national chains negotiating long-term exclusive lease agreements, which restrict the lessor from letting premises in the same mall or convenience centre to a competitor of the national chain. The inquiry found that over 70% of shopping centres are subject to exclusive lease agreements, with some enduring for up to 40 years.
- Exclusive lease agreements were found to have denied SMMEs the opportunity to position themselves in malls and convenience centres, which is where the bulk of consumers do their weekly and monthly shopping. According to the

inquiry, the detrimental effects on competition are felt largely by historically disadvantaged entrepreneurs (who are unable to participate effectively in the economy) as well as consumers (who are denied the benefit of a broader product choice).

Recommendations:

Consequently, the inquiry has taken the view that long-term exclusive leases must end. It has proposed that this must be done through a process whereby the Commission would, over the next six months, secure voluntary undertakings from national chains to:

- a. immediately cease enforcement of exclusivity clauses against SMMEs and against specialist stores and grocery retailers in non-urban areas where there are fewer malls;
- b. cease the inclusion of exclusivity clauses in new lease agreements; and
- c. phase-out all remaining exclusivity clauses over a five-year period.

The inquiry recommends that, should the Commission fail to secure adequate voluntary undertakings on the terms set out above, appropriate industry requirements should be enacted in the form of a code or regulations.

Discriminatory treatment of SMMEs in respect of trading practices

Summary of findings:

- The inquiry found that SMMEs are treated less favourably than the national chains in terms of the trading terms imposed by suppliers. This is particularly in respect of rebates, which in some cases, are not offered at all to the wholesalers and buyer groups that service small and independent retailers.
- The inquiry's view is that, while some forms of differential treatment may be justified, others are clearly not — for example, some of the rebates paid to the national chains are allegedly higher than those paid to the wholesalers and buyer groups even when the volumes purchased by the national chains are smaller.

Recommendations:

The inquiry has emphasised the need for equal treatment of SMMEs in order to promote economic inclusivity. To this end, it recommends that the Commission secure voluntary undertakings from suppliers to offer equivalent trading terms to all retailers, wholesalers and buyer groups.

Suppliers should also voluntarily undertake to link rebates to the value provided (rather than simply to the volume purchased) and to take measures to support qualification for rebates by wholesalers and buyer groups.

Separately, the Commission is to secure voluntary undertakings from shopping mall owners to contract on fair, transparent

and commercially justifiable terms when entering into lease agreements with SMMEs.

Inadequate regulatory support for informal businesses

Summary of findings:

- The inquiry is of the view that there is scope for both national chains and spaza shops to coexist and thrive. However, it found that the regulatory and infrastructural environments favour national chains at the expense of spaza shops.
- Historical trading times and slow, inflexible and costly zoning laws have hindered spaza shops from entering into the convenience shopping market. This has been exacerbated by a lack of basic trading infrastructure and crime.
- According to the inquiry, township trading has also seen a large increase in immigrant community retailers, which act collectively in purchasing, distributing and raising credit, thereby driving efficiencies.
- Local spaza shop owners (being less integrated and unable to access credit to a comparable extent) have been unsuccessful in replicating such efficiencies and have struggled to compete.

Recommendations:

The inquiry is of the view that greater governmental support must be given to informal and township trading as these businesses play an important role in the township economy. In addition, infrastructure needs to be improved in order to support informal and township business. This, it is suggested, includes imposing requirements on new shopping centre developments to allocate trading space to independent and historically disadvantaged retailers.

Finally, the inquiry is of the view that the government should support the integration of township trading businesses into beneficial buyer groups and distribution networks in order to enable efficiencies to be harnessed.

Moving forward

The grocery retail sector could face radical changes if the inquiry's proposals are accepted by the Commission.

On the one hand, exclusivity arrangements are often necessary to ensure a shopping centre's financial viability and sustainability or to secure favourable funding to develop a mall in the first place. Adopting a blanket approach that all exclusivity arrangements are problematic will undoubtedly affect investors' risk appetite to invest in new shopping mall developments, which may itself have undesirable effects.

Similarly, forcing suppliers to offer equivalent trading terms to all retailers, wholesalers and buyer groups may have serious financial implications and erode incentives that stimulate frequent bulk purchases.

On the other hand, the inclusion of smaller independent traders in the grocery retail sector is necessary and will bring about its own benefits for communities and the broader economy.

In deciding what measures to adopt following the inquiry's findings, the Commission would need to strike a balance between a broad-brush approach that has the undesirable effect of stifling investment in the sector and the need to stimulate the ability of smaller players to compete.

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