

They're at it again!

The big supermarkets strong arm the little guys out of shopping centres

It's happening all over again! Despite the Competition Commission in November 2019 ordering the big four supermarket chains (Shoprite, Pick n Pay, Woolworths & Spar) that have a collective market share of 72%, to drop exclusivity clauses in shopping mall leases, one of them is back to its old tricks using its position at the expense of smaller players.

As one of the affected specialist challenger retailers that has had a footprint in the black retail market for over three decades, OBC Better Butchery was one of the companies that made their submission at the time to the Competition Commission on the power wielded by the major national supermarket chains over enforcing exclusive provisions in their lease agreements against challenger retailers and speciality stores.

Tony Da Fonseca, MD of OBC Better Butchery lodged a complaint on 4 November in terms of Section 49B(1) as read with Section 49(2) (b) of the Competition Act, 89 of 1998 against Spar franchisees and/or Spar Head Office as it has become apparent that they are vigorously enforcing exclusivity clauses against the landlord, preventing competition (in this case OBC) from entering shopping centres.



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According to Tony da Fonseca, it has come to their attention that some of the Spar Franchisees and/or Spar Head Office have entered into lease agreements whereby the landlord is prohibited from renting commercial retail space to the competitors of Spar, like OBC. "While attempting to conclude lease agreements for available space in various shopping centres where Spar is the anchor tenant, the landlords have openly communicated to us that they cannot conclude a lease agreement with us as Spar is enforcing their exclusivity clause."

A David and Goliath story

OBC was one of the first independent chicken and complementary products franchise retailers to set up supermarkets in townships, taxi ranks and rural areas over thirty years ago offering consistent quality, competitive prices and convenience. "At a time when the major supermarket retailers were not even considering entering peri-urban and rural areas, we were catering to local communities becoming famous as the 'chicken ekhaya' of choice and working with and supplying local spaza and informal traders."

"As a result of Spar's conduct, it is restricting the landlord's right to rent the available space to OBC. The landlords have told us that they do not agree with this exclusionary practice and do not support it but are bound by the terms of the signed lease agreement. This exclusionary conduct prevents competition and the loss on average of 30 to 50 potential job opportunities per store in the area" adds Da Fonseca.



“ OBC's has always had a strong symbiotic relationship with the informal township sector. OBC offers special deals and even ad hoc storage facilities to the informal traders that operate alongside them and have reached out a supporting hand to those family businesses. ”

OBC’s investment in the communities it serves goes back decades and there has always been a strong symbiotic relationship with the informal sector that plays such an important role in township life. Not only does OBC offer special deals and even ad hoc storage facilities to the informal traders that operate alongside them but have reached out a supporting hand to those family businesses, like local butchers who have been threatened by closure on the back of the big retailers’ aggressive pricing and margins, to partner with OBC and benefit from its distribution support, speed to market, product innovation and marketing muscle.

On the 29th November 2019, the Competition Commission concluded a grocery retail market inquiry into exclusionary practices regarding exclusivity clauses and made the following findings and recommendations:

National supermarket chains must, with immediate effect, cease from enforcing exclusivity provisions, or provisions that have a substantially similar effect, in their lease agreements at paragraph 98.1 against:

- SMME’s
- Speciality stores; and
- Other grocery retailers (including the emerging challenger retailers) in shopping centres located in non-urban areas.

In line with these findings and recommendations, OBC is a speciality butchery store and they are in agreement with the findings and recommendations, however Spar is refusing to adhere to the above findings.

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Landlords claim that they do not agree with exclusionary practices and do not support it, but are bound by the terms of signed lease agreements.

Fighting strong arm bullying tactics

Whilst in certain shopping centres like Vooslorus Crossing Mall, Gauteng and Hazyview Shopping Centre, Mpumalanga, OBC has traded alongside Spar (as the anchor tenant) in the same centre for the past five years and Spar has had no objections to OBC trading there.

But at the R578 Huybeni Shopping Centre, Mabobo, Elim; the shopping centre at 300 Mandela Road, Kwa Mashu; Gugulethu Square in Gugulethu and at Corner 1 Mapo & Motebank Street in Phuthuaditjhaba, there have been clear instances of anti-competitive or restrictive practices regarding exclusivity clauses in the lease agreements ...

“We won’t stand for these ‘blocking’ bullying tactics of these big players who flout competition

commission rulings and have engaged in vertical agreements which have the effect of preventing or lessening competition without any technological, efficiency or other pro-competitive gain, which outweighs the anticompetitive practice – with the intention of wiping out even the small challenger retailers like ourselves.”

“The stifling of local entrepreneurship – be it on any level – has no place in our country and we all need to play a role in making room for a variety of commercial and informal enterprises that cater to our rainbow nation.” concludes Tony Da Fonseca who has also played a key role in furthering entrepreneurship and ethical business practices as a past chairman of the Franchise Association of South Africa (FASA). **SR**



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