

# Tribunal kicks out Massmart's mall case

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The Competition Tribunal has dismissed Massmart's complaint that Shoprite Checkers, Pick n Pay and Spar were taking part in anticompetitive behaviour through exclusive leases with shopping-mall landlords.



Pick n Pay Constantia. ©Lauren Hartzenberg

In a blow to Massmart's strategy to roll out fresh food at its Game stores in malls, the tribunal said that at best Massmart had relied on generalised contentions by some of its rivals in submissions to the retail-market inquiry by the Competition Commission.

The tribunal also found that no purpose would be served by allowing Massmart an additional opportunity to amend its referral and it decided to dismiss the referral with costs.

Given that this was the second time Massmart had been given an opportunity to present its case, the tribunal found the referral to be "embarrassing and vague".

Group communication manager at Massmart Annaleigh Vallie said that the company believed its referral to the body was dismissed at a preliminary stage on a technical legal exception. "We are therefore disappointed that the merits of this case were not assessed," she said, without clarifying whether it would appeal against the decision.

Massmart first lodged the case with the tribunal in June 2015, claiming leases between retailers and landlords had an essential feature that prohibited landlords from letting any other tenants in the mall sell fresh grocery products, a strategic sector of the market that Massmart has wanted to penetrate with its Game stores.

"In my opinion, this whole process was an attempt by the other three retailers to prevent Massmart from intensifying competition," said portfolio manager at Gryphon Asset management Casparus Treurnicht. "They've been procrastinating Massmart's strategy to enter this category for as long as they could. And it looks like they've succeeded or Massmart gave it away," he said.



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Citing Pick n Pay's 30-year rental, which began in 2003 at Midlands Mall, Massmart alleged that the long-term and anticompetitive leases were trickling down to consumers and limiting their choices.

The retailer has 119 Game stores, of which 102 are in the same malls as rivals Pick n Pay, Spar and Shoprite Checkers.

It claimed to know of 53 of its stores being subject to exclusive contracts, but it was unable to provide a clear picture of how many leases had been enforced or invoked against and by whom. Portfolio manager at Mergence Investment managers Peter Takaendesa said that Massmart was already growing its fresh-food offering through the introduction of food in selected Makro stores as well as through low-LSM player Cambridge Foods.

However, the key issue was that they needed to optimise their presence in shopping centres where they were represented by Game and Dion Wired, Takaendesa said.

Massmart said that it remained of the view that exclusive lease agreements were "intuitively anticompetitive, protectionist and prejudicial" to South African consumers. Equity analyst at Vele Asset managers Matthew Zunckel cautioned that investors would need to wait to hear from management whether the ruling warranted a change in strategy.

"This restricts them in terms of building scale in their food offering," he said.

David North, Pick n Pay group executive, strategy and corporate affairs, said the group welcomed the Tribunal's "clear" decision. "We have always maintained that our lease agreements are not anticompetitive and have helped to deliver more stores, more choice and greater competition for South African consumers."

*Source: Business Day*

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