

**ELETRA Pty Ltd, 27 July 2007**

## **Submission to the Inquiry into the Market for Retail Tenancy Leases in Australia**

We have been in the market for a retail tenancy in Melbourne's prime retail strips for the past 3 months. Although we have only dealt with reputable real estate agencies as landlords' agents, we have had very negative experiences.

There is clearly a **lack of competition and imbalance of power** in favor of the landlords (and/or their agents) as evidenced by our following observations and experiences:<sup>1</sup>

- 1- Landlords' unwillingness to deal with tenants who are demanding their legal rights such as receiving a disclosure statement and the draft of the lease contract before signing a legally binding heads of agreement.
- 2- Rents increasing significantly faster than retail sales turnover in the past 5 years.
- 3- Landlords not negotiating any of the terms of their lease contracts ("take it or leave it attitude").
- 4- Ratio of average rents to retail revenues climbing up to historical highs that are also above international benchmarks.
- 5- Landlords declining to offer 5 year initial leases and instead forcing 3 year terms with annual CPI-indexed increases plus 3 or 5 year options with a market review at the start of the option.
- 6- Landlords making unreasonable demands such as requesting tenants to
  - a. sign legally binding "Commercial Terms of Lease" agreements that make them commit to signing a lease prior to receiving the lease agreement terms or the disclosure statements;

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<sup>1</sup> We have documents and evidence supporting these observations and would be happy to share these with the commission upon request.

- b. pay for the landlord's insurances for payment of 12 months rent if the lease is terminated prematurely;
  - c. agree to annual CPI increases as well as market reviews which can be requested at any time and can only be above the current rentals; and
  - d. provide personal guarantees in addition to deposits.
- 7- Landlords agreeing on a rental amount during negotiations and then demanding a substantial increase just prior to signing the lease.
- 8- Landlords making further demands such as deposits or onerous lease conditions once their initial demands are met during negotiations.
- 9- Wide variations in the definition and ratio of outgoings to net rents (ranging from %13 to %233).
- 10- Lack of a low cost dispute resolution avenue when the landlords' conduct before a lease is signed is against the law. Existing processes are all designed for disputes that occur after a lease is signed.

## **Recommendations:**

- 1- **Increase the transparency in the market by requiring "gross rents"** (all-inclusive) to be used in advertising and lease contracts. This will improve competition by making it easier to compare alternatives for tenants.
- 2- **Require provision of a draft lease contract and the disclosure statement (or an estimate of costs), if applicable, at the start of the lease negotiation phase.** Lack of information only results in market inefficiencies and prolonged negotiations.
- 3- **Improve the enforcement of existing laws and regulations** including the period prior to signing a lease.
- 4- **Make it easier to report landlords and tenants acting against the laws and regulations** including the period prior to signing a lease.