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Your Ref:  
Our Ref: Stephen Spring

Thursday, 13 March 2008

The Productivity Commission,  
Market for Retail Tenancy Leases,  
PO Box 80,  
Belconnen,  
ACT 2616.

**ATTENTION: COMMISSIONER NEIL BYRON**

Dear Sir,

**RE: COSBOA'S SUBMISSION – THE MARKET FOR RETAIL TENANCY LEASES**

I refer to my letters dated 25 February 2008 and Tuesday 11 March 2008. I also refer to the Shopping Centre Council's (SCCA) submission dated 10 March 2008.

This letter further clarifies COSBOA's position of collection, distribution and dissemination of retailer's turnover figures by Australian shopping centre lessors.

COSBOA has submitted that collection of turnover figures by landlords creates an information imbalance. This occurs at lease renewal and upon entering into a new lease. As the Commission has quite rightly pointed out, essentially, these are one and the same thing.

COSBOA has recommended at pages 10 and 38 - 40 of its submission that lease provisions from collection of turnover figures should be made void and that information should be aggregated (so that no individual retailer could be identified) and made available to the retail and property industry at large.



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COSBOA has pointed out to the Commission at the public hearings and in its submission at page 39 that in some States (NSW for example) there is a disclosure requirement by landlords to produce a breakdown of turnover of the centre in the broad categories of food, non food and services, which was set against industry benchmarks at the time. This was done so a prospective retailer could benchmark a centre's performance against retail industry averages.

COSBOA has pointed out two problems with this system. Firstly, at page 39 of its submission, it showed the SCCA changed the method of collection and "moved the goal posts" thereby inflating the sales figures supplied to the tenant. Secondly, landlords can plainly refuse to abide by the system. This was evidenced by my letter of 11 March 2008, referring to [redacted] disclosure statement. That centre is currently in decline and would clearly show the benchmark figures to be below average – and justification for a retailer to request a lower rental. There is good reason why the landlord has chosen *not* to find more than one retailer out of the categories of food, non-food and services among the hundreds of shops in the centre!

As can be seen, the mechanism designed for open disclosure in broad range is being thwarted because landlords don't like retailers to know the true position before they sign leases.

In its submission dated 10 March 2008, the SCCA refers to disclosure of turnover by category. In addition to the above, it is important to note that the SCCA does not say that those categories are specific to the retailer's category. In truth, these categories are very broad, and at best can only track performance of the shopping centre according to an average. It does not mean prospective lessees can drill down and be made aware of sales in any particular merchandise category. Questions directed to a leasing manager about a particular category are usually met with stiff rebuke. As I pointed out at the hearings, there are no specific detailed categories like there are in other countries, say Canada, evidenced at page 8 of "Winning Retail, Canada". The Australian experience is all too secret.



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Merchandise by detailed category is as critical for landlords as it is for retailers. They both help set pricing.

COSBOA submits that this information imbalance (where a landlord would know sales by category, past sales history and rent, and therefore occupancy cost ratios) where a prospective retailer knows only the rent, places the retailer at a distinct disadvantage. As it currently stands, not only does a retailer not know if the rent is truly a market rent, it is impossible for them to tell if the occupancy cost ratio enables them to make a profit. This is information that the centre landlord often *does* know. In strip shops, the market is far less sophisticated, the rental information transportable (no secrecy clauses) and the market less restricted and more open.

COSBOA submits that it is in the landlord's best interest to keep the prospective lessee in the dark as much as possible – to the detriment of the prospective lessee.

Considering that retail businesses rarely operate with profit margins above 10% net, with most in the range of 5-8%, there is *very little* room for error. Information must be accurate. The information required by retailers to make proper, informed decisions should be available to all, not just to one side. This applies equally at the first lease or any subsequent renewal. After all, leases are the landlord's document and are largely a one way street.

If you have any further queries on this matter please do not hesitate to call me.

Yours sincerely,

Stephen Spring, on behalf of

COUNCIL OF SMALL BUSINESS OF AUSTRALIA