



**THE NATURE AND STATE OF COMPETITION IN THE BOTSWANA SHOPPING MALL RETAIL
PROPERTY MARKET**

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PREFACE

(Research Provision in the Competition Act)

According to Section 49 (1) of the Competition Act, the Competition Authority can initiate market inquiries in particular sectors of the economy. These inquiries refer to conducting market research in identified sectors of the economy. Such research is the means to provide relevant, valid and up-to-date information mainly for decision making in competition matters by the Competition Commission (Board of Directors). The research also enables the Authority to advise Government on the actual or likely anti-competitive effects of current or proposed policies (and how to avoid those effects).

To fulfil the mandate of the Authority, the research output should be continuous and up-to-date. The inquiries can be done at macro level, thus sector research; and can also be done at micro level in terms of specific firm-level assessments. Some of these inquiries can be done in-house by analysing the available information/data while others require field research. In that respect, this inquiry about Shopping Malls required a market research mainly because there was no data available to address the set objectives.

In all these instances of research, the Authority seeks to understand market structures or characteristics, as well as areas of unfair competition. Sectoral studies involving field work, such as this one for the shopping malls and anchor tenants, are an important part of the Authority's advocacy strategies, which play a pivotal role in ensuring fair play in the market place in the Botswana economy.

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Table of Contents

| | | |
|-----|------------------------------------|----|
| 1.0 | Introduction..... | 4 |
| 2.0 | Scope of the research..... | 6 |
| 3.0 | Research methodology..... | 8 |
| 4.0 | Limitations of the study..... | 11 |
| 5.0 | Qualitative research findings..... | 11 |
| 6.0 | Quantitative findings | 14 |
| 7.0 | Conclusion..... | 26 |
| 8.0 | Recommendations..... | 27 |

1.0 Introduction

The Competition Authority (Authority) is a statutory body established under section 4 of the Competition Act, 2009. Amongst its functions the Authority is expected to undertake general market studies, whether by way of a market inquiry in terms of the Act or otherwise, on the effectiveness of competition in individual sectors of the economy. Arising from this function, the Authority took the initiative to carry out a market study in the Shopping Mall sector. This was premised on the various concerns that the Authority had been inundated with. The concept of shopping malls finds its roots in the developed world; objective being to take into account a fully transforming urban reality, partly due to the expansion of urban space and the changing nature of the population. The transformation from strip malls¹ to enclosed malls² was aimed at providing quality shopping convenience away from adverse climatic elements for patrons, in an accessible and centralised location. Botswana not being an exception, this phenomenon has infiltrated the market as the trend continues to shift from independent stores to the aesthetically appealing shopping mall structures that bring together different types of stores in one place. This influx of shopping malls however has brought competition dynamics that the Authority sought to understand at national level.

This report therefore focuses on the state, nature and form of competition in the Botswana shopping mall retail property market (shopping malls).

1.1 Overview or background

According to the history of shopping centres provided by Consumer Reports (1986),³ shopping centres came about in the 1920's in the United States of America-California where supermarkets would anchor and serve as a magnet for a strip of smaller stores. Shopping malls have since become strong indicators of urbanisation, and this has been consciously replicated in less developed countries. In the case of Botswana, the first mall (Gaborone Main mall) was designed in 1963 in preparation for the then eminent independence. As a strip shopping mall, it was characterised by shops

¹ A long usually one-story building or group of buildings housing several adjacent retail stores or service establishments. www.merriam-webster.com/dictionary/strip%20mal

² A shopping mall (or simply mall), shopping center, or shopping arcade is a building or set of buildings that contain retail stores, with interconnecting walkways enabling visitors to easily walk from store to store. The walkways may be enclosed. http://www.newworldencyclopedia.org/entry/Shopping_mall

³ Kowinski, W. (1985) *The Mall of America: An Inside Look at The Great Consumer Paradise*, New York: W. Morrow.

(grouped together) that opened into a walk way, the shops stood on independent lots. The third oldest mall to emerge in Botswana (Kagiso Centre) adopted the one stop shop mall concept (on a single lot) this sparked a desire amongst property developers to steer towards consolidating stores for the convenience of shoppers. Ten years later in the year 2000 River Walk shopping mall opened its doors to the public; this led to a sprouting of these particular shopping malls (enclosed) around the country. From that period to Dec 2014, the country hosts over 50 shopping complexes;⁴ and out of these, there are approximately between 10 and 15 super malls⁵. The inception of the shopping mall industry has since grown in leaps and bounds and is destined to continue growing as Botswana's 2 million plus population which entails a vibrant purchasing power⁶ grows.

1.2 Customary business practices, commercial terms and conditions

The shopping mall industry is characterised by certain customary business practices, commercial terms and conditions that may attract regulator concern. Initially shopping mall developers either provided start-up capital by reinvesting profits and or sourcing from financial institutions. Since property development is the intent, rental becomes the key source of return to investors; therefore a stable and reliable source of rental revenue needs to be secured before-hand, hence the need to secure reputable and stable anchor tenants⁷. Submissions by stakeholders are that Anchor tenants validate the developer's proposal and give feasibility to the project. Financial institutions, on the other hand apply investment criteria and loan up to 85% of initial capital required. Once construction of the shopping mall is completed, property developers engage a property manager to populate the rest of the shopping mall with tenants through a well-planned tenant mix⁸ process. Subsequently the property managers become responsible for the management and promotion of the shopping mall brand whilst collecting rentals. It is important to note that anchor tenants are

⁴ Data Collection 2014 Shopping Mall study: Competition Authority

⁵ Data Collection 2014 Shopping Mall study: Competition Authority

⁶ Purchasing/buyer power enables a single buyer, or a group of buyers, to influence or dictate the terms of trade with upstream suppliers: Institute of European and Comparative law workshop

⁷ Anchor store is a major department or chain store located at a shopping mall so as to give maximum exposure to smaller, satellite stores. <http://definitions.uslegal.com/a/anchor-tenant/>

⁸ Tenant mix is a continuous policy of maximizing public patronage of a shopping centre by optimizing the number of traders, the size of their premises, their styles and goods sold or services rendered: Urban Planning and Real Estate Development By John Ratcliffe, Michael Stubbs, Mark Shepherd

integral to marketing of shopping malls as they are the primary source of the shopping malls traffic and revenue.

1.3 Government's presence/leverage in the market

All shopping mall locations around the country are allotted in line with the country's development plans. The Department of Town and Regional Planning (DTRP) under the Ministry of Land and Housing, as the custodian of the country's development plans, has guidelines in place which determine how and when the areas in question are to be developed.⁹ According to the DTRP, commercial plots follow a hierarchy where there is Central Business District (CBD), then Local Centres and lastly Corner Shops. Shopping Malls around the country are however dependent on the population around their locality. That is, a population of over 5000 people together with a minimum of 1000 residential plots in a particular locality necessitates a shopping mall to serve the area.

2.0 Scope of the research

2.1 Research problem and focus

According to section 49(1) of the Competition Act, the Authority can initiate market inquiries in particular sectors of the economy. With that in mind, this study emanates from the Molapo Crossing shopping mall enquiry,¹⁰ which revealed the existence of an anti-competitive exclusive agreement between the landlord and the anchor tenant (supermarket). The lease agreement had the following clauses:

“Save in respect of the supermarket, the lessor shall not permit the following business to be conducted on the property:-

- *Any supermarket; or*

⁹ http://www.gov.bw/index.php?option=com_town&id=28

¹⁰ The case between Sphinx Associates (Pty) Ltd t/a Molapo against Horn of Africa (Pty) Ltd t/a Molapo Crossing Pick n Pay Family Supermarket. The conduct of Pick n Pay, summary, Molapo has foreclosed the upstream market by eliminating the effective access of actual or potential competitors to customers. That is, the existence of the exclusionary contract has created an obstacle for any competitor to enter the market at Molapo crossing shopping mall. With the absence of any direct competitor as indicated in the lease agreement, it can therefore be concluded that the conduct has prevented competition.

- *Save for Woolworths, unless otherwise agreed by the lessee and Pick' n Pay, any store with either a single or several food departments, the aggregate square meterage of which exceeds 100 (one hundred) square metres; or*
- *Any business or operation which sells fresh fish or meat; or*
- *Any grocery, fresh fish shop, butchery, bakery or fruit and vegetable shop”.*

This clause was advanced by the Anchor tenant Pick n' Pay at Molapo Crossing mall¹¹ during their lease renewal with mall management. There was a disagreement between the two parties which lead to Pick n' Pay approaching CA for advice. Basically Pick n' Pay wanted to be protected from competition through the lease agreement. The Authority had made an observation following various complaints of unfair business practices in shopping malls that continued to house certain chain stores. This therefore motivated an inquiry into the shopping mall retail property market.

The inquiry was undertaken to ascertain how agreements relating to leasing of the space, amongst others, was done; why the same stores continued to be found in shopping centres as opposed to others, in other words, what criterion is used in the selection of anchor tenants in shopping malls. It was upon this rationale that the Authority decided that an inquiry across the country be carried out in order to ascertain whether other shopping malls might have entered into any agreements that restrict competition. There was a need, within the major shopping malls, to establish if there was any possible feature that would prevent, distort or restrict competition. The study was also geared at further assisting the Authority in ensuring and promoting fair competition in the shopping mall retail property market (shopping malls).

¹¹ Molapo Crossing is a shopping mall located at Plot 33695, Western Bypass / Molepolole Road Junction, Gaborone, Botswana. Pick n' Pay is an Anchor chain store located within this mall.

2.2 Research objectives

The objective of the study was to understand the nature and state of competition in the Botswana Shopping Mall retail property market (shopping malls). Specific study objectives were to:

- (i) understand the landscape of the shopping mall retail property market in order to increase transparency and competition;
- (ii) ascertain whether the existing tenant and landlord system takes into account aspects of competition when drawing up a tenant mix; and
- (iii) identify competition aspects and make recommendations on issues that affect the regulatory framework.

2.3 Research aim

Based on the above specific objectives, the study is expected to contribute and help redress competition issues that may exist in the shopping mall retail property market.

3.0 Research methodology

3.1 Geographic coverage

Botswana is vast; covering approximately 581,730 square kilometres¹², and the geographic coverage of this research covered the entire country. With the complex nature of retail industry, the geographical scope of this inquiry focused on the major shopping malls across the country. This included cities, towns and major villages. A total of fourteen (14) localities were visited, out of which ninety two (92) stores, ten (10) financial institutions and twenty (20) property developers were interviewed. The diagram below shows how distributed the sampled units were, and how representative they are of their entire country.

¹² travel.nationalgeographic.com/travel/countries/Botswana-guide/

Diagram 1: Map showing Areas visited



Source: <http://www.ezilon.com/maps/africa/botswana-maps.html>

The building structure icons on the map show locations visited. The following table 1, further details the number of selected units per locality. The selection primarily follows the prevalence of one stop shopping mall around the country and the number of stores they house.

Table 1: Number of shopping malls and stores selected for this study per locality

| Location | No. of malls | Non Anchor stores | Anchor stores |
|---------------|--------------|-------------------|---------------|
| Francistown | 3 | 8 | 6 |
| Gaborone | 7 | 28 | 14 |
| Ghanzi | 2 | 2 | 1 |
| Jwaneng | 2 | 5 | 1 |
| Kanye | 1 | 3 | 2 |
| Lobatse | 1 | 2 | 1 |
| Maun | 2 | 4 | 2 |
| Mochudi | 1 | 2 | 1 |
| Mogoditshane | 1 | 3 | 1 |
| Molepolole | 1 | 3 | 1 |
| Palapye | 2 | 6 | 2 |
| Ramotswa | 1 | 3 | 1 |
| Selibe-Phikwe | 1 | 3 | 2 |
| Serowe | 1 | 3 | 1 |
| | 26 | 75 | 36 |

Source: Data Collection 2014 Shopping Mall study: Competition Authority

3.2 Method of data collection

Both qualitative and quantitative methods of data collection were used to collect information from the retail industry. Quantitative information was obtained through a questionnaire designed to address the objectives of the study; including answering the 'what', 'how much/how many', 'who' and 'why' lines of which according to Jenny Kitzinger,¹³ 'capitalises on communication between research participants in order to generate data, and to collect data from several people simultaneously'. The qualitative aspect is utilised in drawing perception and opinion based data. The data collection method applied was that of direct interviews using questionnaires.

3.3 Sampled units and response rate

From the shopping mall retail property market, 135 sampling units were selected. Out of these, 75 were retail stores, 36 were anchor tenants, 12 were Financial Institutions and 12 were Property Managers. This study yielded an 87% response rate from retail stores, 100% response rate from financial institutions, and 90% response from property managers. This translated to 124 cases to study, which is adequately significant. Interviews were conducted with top management of the different retailer shops, property management companies and financial institutions in order to understand how the industry operates.

Table 2 below shows the response rate per each sampled unit.

Table 2: Response rate

| Sampled units | No. of units sampled | No. of units responded | Response rate (%) |
|---------------------------------|-----------------------------|-------------------------------|--------------------------|
| Non anchor tenant ¹⁴ | 75 | 65 | 87 |
| Anchor tenants | 36 | 36 | 100 |
| Financial Institutions | 12 | 12 | 100 |
| Property Managers | 12 | 11 | 92 |
| | 135 | 124 | 95 |

Source: Data Collection 2014 Shopping Mall study: Competition Authority

¹³ Jenny Kitzinger (1995) Qualitative Research: Introducing focus groups, BMJ; 311:299. Available in: <http://www.bmj.com/content/311/7000/299>.

¹⁴ These are all others stores located in a mall establishment besides anchor stores.

4.0 Limitations of the study

Although the study was conducted successfully, it is prudent to highlight the limitations the research team faced. Shortages of manpower/staff posed a significant problem. As a first study of its kind by a competition law enforcement agency in the region, there was unavailability of prior studies to benchmark against. Lastly, most anchor store head offices are based in foreign countries, and this delayed data collection.

5.0 Qualitative research findings

During the survey design it became apparent that some data collected was going to be more abstract and subjective rather than being empirical. This was supplemented by data collection tool which accounted for the qualitative aspect of the study, hence the following questions were posed to financial institutions and property developers:

Table 3: Questions posed to Financial Institutions

| | | |
|----|--|--|
| a. | Identification of tenant mix ¹⁵ | To ascertain criteria used locally to advise a tenant mix. |
| b. | Externalities ¹⁶ | To determine whether local shopping mall managers' account for the positive benefits that Anchor Tenants bring to other stores in a mall environment. |
| c. | Financing ¹⁷ | To determine the requirements property developers have to satisfy in order to get funding from financial institutions (Requirements may have the potential of being a barrier to entry). |
| d. | Property management ¹⁸ | To determine their role in the value chain. |

¹⁵ Selection of, and location of retail tenants, in a mall establishment, in order to maximise the income of the landlord and stimulate business in general

¹⁶ A consequence of an economic activity, which is experienced by unrelated third parties, an externality can be either positive or negative. A positive externality is a benefit that is enjoyed by a third-party as a result of an economic transaction; Contracts, Externalities, And Incentives In Shopping Malls. Eric D. Gould, B. Peter Pashigian, and Canice J. Prendergas

¹⁷ Money that is lent to a business by a bank or other financial organization: <http://dictionary.cambridge.org/dictionary/english/business-finance>

¹⁸ "Property Manager" means a person engaged in rent collection, management or administration of real estate-Real Estate Institute of Botswana Real Estate Act

5.1 Identification of the tenant mix

In the context of shopping mall retail property, tenant mix is one way of selecting, and locating retail tenants within a shopping mall establishment and this is done in order to maximise the income of the landlord and to stimulate business in general. That is, the key to a successful shopping mall business is to be able to have an impeccable tenant mix plan. According to the shopping mall developers interviewed, tenant mix is highly dependent on several success factors namely: location, size, and type and target market of the shopping mall. This is usually planned well in advance of any construction and the following is what shopping mall developers cited as criteria to having a well-balanced tenant mix; reliability (ability to pay); amount of rental space required; reputation of the store; and whether the store is an international chain store or a local retailer. Usually a viable business plan detailing all these factors is presented to the property developers and subsequently to financiers.

5.2 Externalities

A positive externality is a benefit that is enjoyed by a third-party as a result of an economic transaction. Third-parties include any individual, organisation, property owner, or resource that is indirectly affected. In this case, it is apparent that anchor stores create some positive net externalities which are inadvertently or otherwise shared by non-anchor tenants in the said establishment. The intrinsic but tangible benefits can and should be taken into account in order to optimally manage a shopping mall establishment. Certain stores, such as anchor tenants (department stores) and national name-brand stores, generate positive externalities by drawing customer traffic not only to their own store, but also to other stores. As a result, contracts should reflect these benefits provided to other stores.

5.3 Financing

As is the case with any other business, development financiers seek a secure investment proposal, and in the case of shopping mall development, developers hinge the credibility of their business proposals on anchor tenants. Having identified the right anchor tenants, the shopping mall developers approach the financiers for capital. However, it is important to note that shopping mall developers in Botswana either source money from financial institutions or use shareholder re-investments.

According to questionnaires administered to relevant bank officials, the response show that banks tend to fund these investments at a level of 85-90% of the initial capital investment. This implies that banks also bear a substantial amount of risk in these endeavors. For Botswana, the quantitative research findings showed that the three main considerations when financial institutions assess proposals from developers are:

- type of anchor tenant, that is, the financial stability and market power of the anchor store is identified and scrutinised. The type of anchor tenant and projections on their rental levels is also considered. Therefore, anchor tenants are critical to property developers securing loans;
- the location, that is, whether the proposed development is in an economically viable location or not; and
- the investor, that is, the assessment of the investor's financial viability.

Table 4 shows the minimum set criteria by financial institutions in order to finance Shopping Mall establishments in Botswana.

Table 4: Criteria by Financial institutions

| |
|--|
| Permits and Licenses (approved Plans, etc.) |
| Audited Financial Statements (including personal balance sheets) |
| Development Team Profile |
| 15% Contribution |
| Repayment capacity of the promoter |
| Valuation of the proposed security |

Source: Data Collection 2014 Shopping Mall study; Competition Authority

5.4 Property management

Interviews with prominent property managers of shopping malls showed that property managers are more evident at operational level wherein after the right financing is secured, the tenant mix they desire depicts design, fittings and allocating space accordingly. With this at hand, the shopping mall management endeavor to create an exciting shopping experience by grouping compatible shops that complement each other. Property managers ensure the shopping malls are maintained and rentals are collected as per the signed lease agreements. Anchor stores too act as an excellent tool for property managers to market the shopping mall establishment. Anchor tenants become synonymous with the shopping mall brand and help draw customers to the establishment.

6.0 Quantitative findings

It is imperative to note that the study findings from the response represent the retail property value chain from Retailers, Property Managers/Developers and the Financiers of Shopping malls which addressed the nature and state of competition in the Botswana shopping mall retail property market (shopping malls). Therefore, the analysis shows the existing phenomenon.

6.1 Landscape of shopping mall retail property market

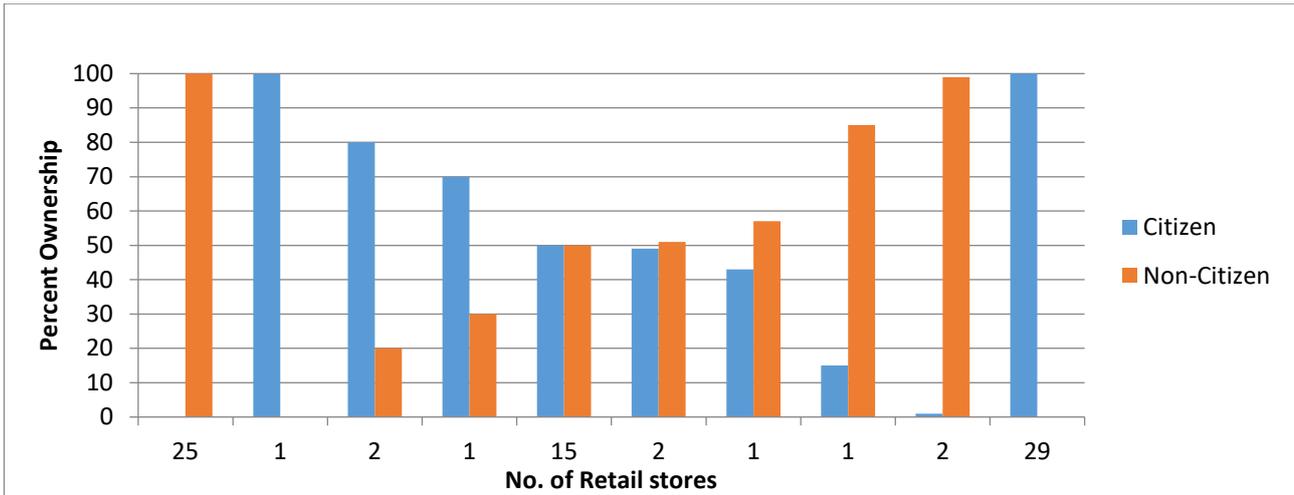
The aim was to capture data that will give insight on how the landscape of Botswana shopping mall retail property market is structured and operates.

6.1.1 Shareholding¹⁹

According to the data, out of a total of 75 retail stores sampled, 69 stores responded to the question on ownership. This meant that that 15 (i.e. 22%) of the stores are equally owned by both Citizens and Non-Citizens. While only 29 (i.e. 42%) of all stores are 100% citizen owned, contrasted with 25 (i.e. 36%) wholly held by Non-Citizens. This implies that the bulk of the sampled stores are primarily owned by citizens. See Chart 1.

¹⁹ Please note that the data collected on shareholding relates to store ownership (Anchor and Non-Anchor stores) and not Shopping Malls.

Chart 1: Ownership by Citizenship



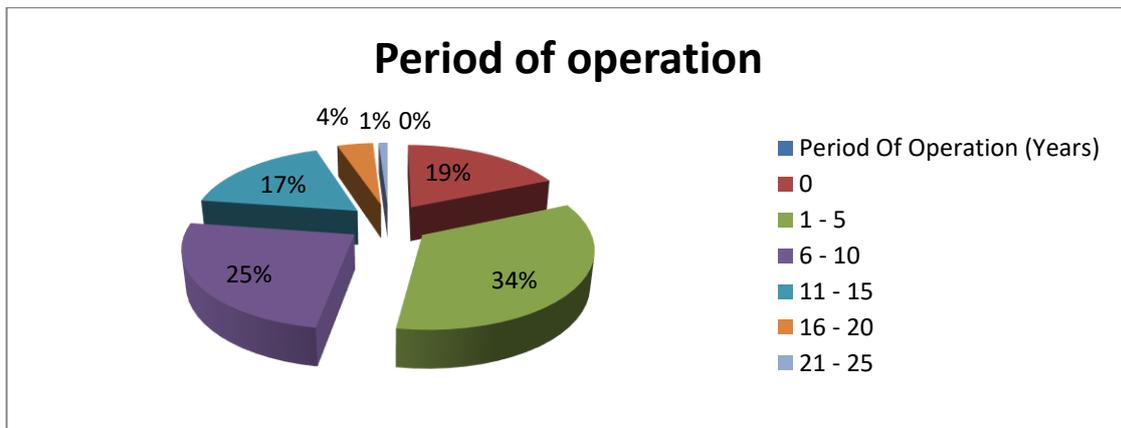
Source: Data Collection 2014 Shopping Mall study: Competition Authority

When considering anchor tenants, citizens have relevant shares, with 41% of the stores being wholly citizen owned, while the remaining 59% of the stores is owned by both citizens and non-citizens. This proves that citizens are using the available Government investment facilitation service and thus hold substantial share in both local and international chain stores.

6.1.2 Period of operation

This variable sought to establish the period of operation of the sampled stores. This is done in order to allow one to have an idea of the life span of this industry. According to the data collected, the majority (59%) of stores fall in the 1 to 10 year range implying that the industry is still in its infancy growth stage.

Chart 2: Period of operation of stores



Source: Data Collection 2014 Shopping Mall study: Competition Authority

6.1.3 Initial capital investment (stores)

The data collected shows that for one to start up a medium sized store (120m² to 800m²) the costs range from BWP40, 000.00 to BWP3, 000,000.00, that is an average cost of BWP 950,000.00²⁰. The bulk of the capital is sourced from shareholders.

Table 5: Initial capital investment (Non-anchor stores)

| Initial Capital Investment | Prevalence |
|----------------------------|-------------|
| P 7,500,000.00 | Most Common |
| P 4,318,157.00 | Average |
| P 25,000.00 | Lowest |
| P 65,000,000.00 | Highest |

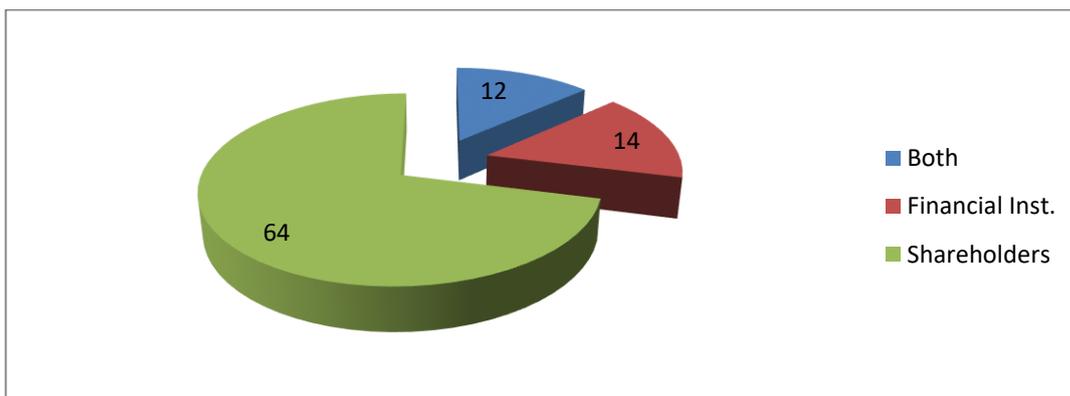
Source: Data Collection 2014 Shopping Mall study: Competition Authority

Anchor-tenant alone need to raise an average of P11, 743,548.39 for initial investment, the minimum start-up is P750, 000.00, and the maximum start up recorded was P65, 000,000.00. This shows that an anchor-tenant requires a much higher capital investment than regular stores.

6.1.4 Source of investment

In general, most stores reinvest capital for expansion. About 64% of the source of investment is from shareholders, followed by 14% from financial institutions. About 12% of the stores acquire their capital from both sources.

Chart 3: Source of investment



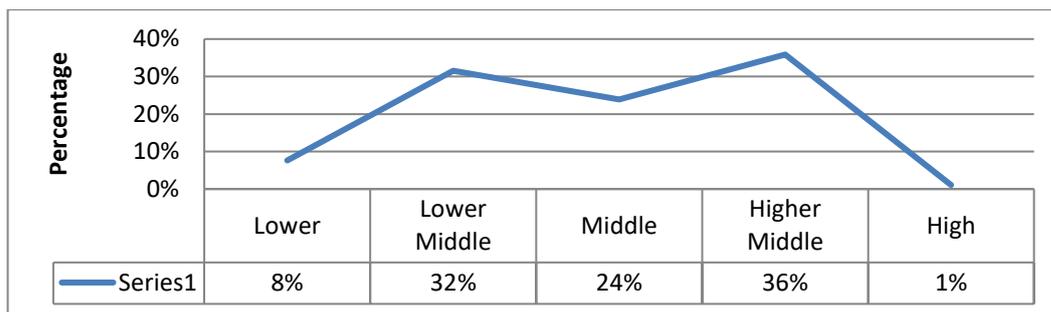
Source: Data Collection 2014 Shopping Mall study: Competition Authority

²⁰ BWP 950 000 is the average of an array of data that ranges from BWP 40 000 to BWP 3 000 000 and is not just the average of the two figures.

6.2.1 Target market

During the study, it became apparent that when shopping malls are constructed, there are various markets that are targeted. This study shows that 92% of shopping malls target (predominantly) middle income customers. Using middle income as the core target market; stores maybe lower middle income or higher middle income to correspond with low and high income catchment areas. Chart 4 shows how these stores reported their target markets.

Chart 4: Target market



Source: Data Collection 2014 Shopping Mall study: Competition Authority

Chart 4 concludes that, most of the shoppers that visited the shopping malls frequently were from the primary catchment areas.²¹ Therefore, the tenant mix identified by the property developers/managers attracts catchment area populations by meeting their demand for goods and services.

6.2.2 Anchor tenant contribution to the shopping mall

Table 6: Anchor tenant contribution to shopping mall revenue (BWP)

| Retail revenue (Rental 2014) | Non anchor tenants | Anchor tenant rental |
|------------------------------|---------------------|----------------------|
| 120,691,124.00 | 72,414,674.00 (60%) | 48,593,661.00 (40%) |

Source: Data Collection 2014 Shopping Mall study: Competition Authority

Table 6 above shows that, anchor tenants contribute 40% of shopping malls' total rental revenue. This is a significant portion of the total revenue considering that the proportion of the number of anchor tenants to non-anchor tenant stands at 1:7.²²

²¹ A catchment area is the area and population from which a city or individual service attracts visitors or customers. Rural-urban Marketing Linkages: An Infrastructure Identification ..., Issue 161

²² On average there are seven (7) non-anchor stores to every anchor store, despite this, anchor rental payments are almost half of the monthly revenue collected by shopping malls.

Non-anchor tenants themselves also attest to the fact that anchor tenant externalities benefit their businesses on a regular basis, as they draw traffic to shopping malls.

6.2.3 Anchor tenant shares in the market

According to the data, the three most prevalent anchor tenants in most shopping malls visited are Choppies, Pick n Pay and Spar. They command about 42.4%, 16.28% and 11.32% market share, respectively, and 30% is allotted to the rest of the remaining stores.

**Table 7: Concentration Ratio and HHI
(Major retailers in shopping malls)**

| Store | Market Share % | Concentration | |
|-------------|----------------|---------------|---------|
| | | CR3% | HHI |
| Choppies | 42.4 | 42.4 | 1797.55 |
| Spar | 16.28 | 16.28 | 264.99 |
| Pick n Pay | 11.32 | 11.32 | 128.23 |
| Shoprite | 9.11 | - | 83.05 |
| Payless | 6.64 | - | 44.15 |
| Food lovers | 4.28 | - | 18.35 |
| Shoppers | 4.11 | - | 16.86 |
| Others | 5.85 | - | 34.22 |
| Total | 100 | 70 | 2190.77 |

Source: Data Collection 2014 Shopping Mall study: Competition Authority

The three firms (CR3) concentration ratio²³ is **70%**,²⁴ which is quite high as the global threshold for a high market concentration is at **70%**.²⁵ Additionally, the Herfindahl-Hirschman Index at **2190.77** depicts a highly concentrated market as it is significantly above the concentration global threshold of **1800**. This indicates that the market is likely to give rise to anti-competitive conducts, and therefore requires close monitoring.

6.3.1 Price per square metre

Due to the amount of space anchor tenants occupy in shopping malls, they manage to negotiate lower price per square metre. About 73% of all anchor stores are charged between P51.00 and P100.00/m², while non-anchor tenants are distributed

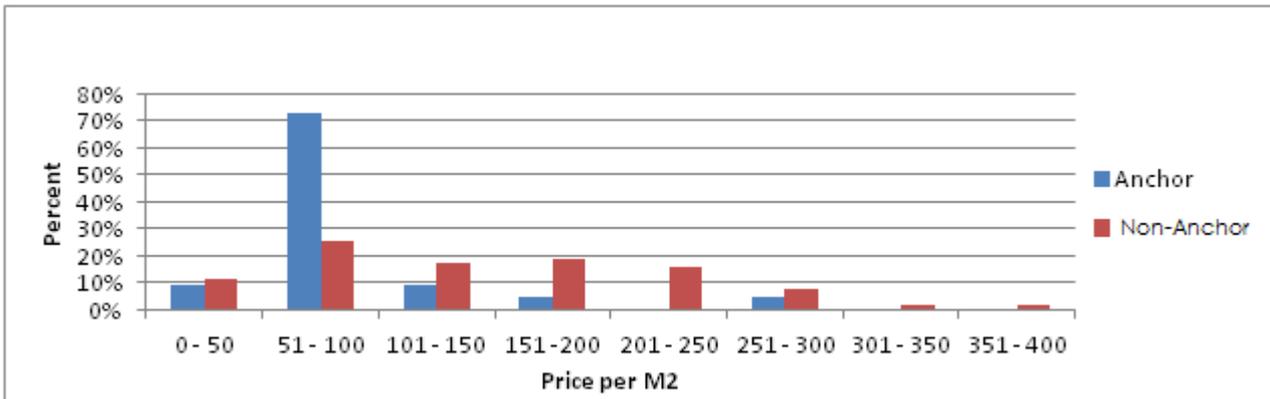
²³ Concentration ratio (CR3) measures the market share of the top three firms in an industry.

²⁴ The Competition Authority has set a threshold of 70% for three firms, beyond this figure the market is said to be concentrated.

²⁵ Merger assessment guidelines: Competition Authority of Botswana

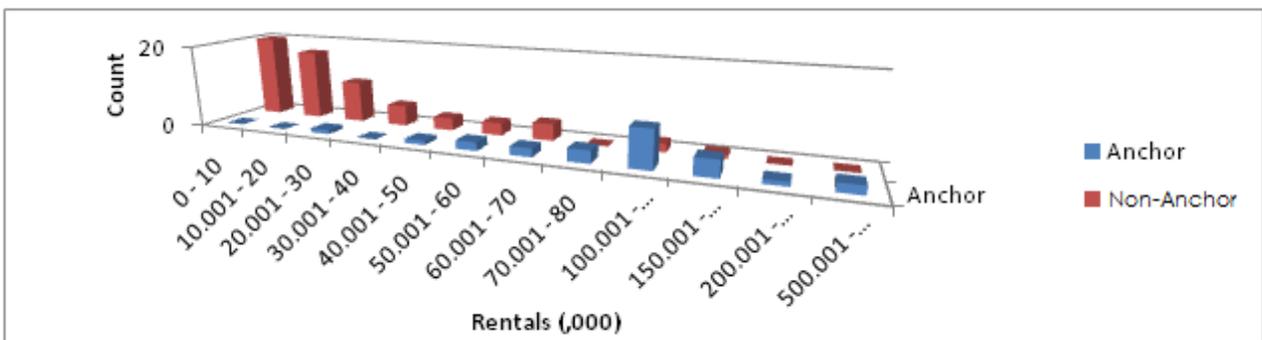
more along the rental spectrum, with a few paying high rentals of between P300.00 to P400.00/m².

Chart 5: Rental per square meter



Source: Data Collection 2014 Shopping Mall study: Competition Authority

Chart 6: Rental levels



Source: Data Collection 2014 Shopping Mall study: Competition Authority

Chart 6 shows that anchor tenants congregate at about P100, 000.00 to P150, 000.00 in terms of rental payments per month, while non-anchor tenants congregate at a much lower P10, 000.00.

However, there is a criterion that shopping mall management deems integral to the identification of anchor tenants to include in their tenant mix. The data below (Table 8) details three main criteria that property managers consider important and they are ranked in order of priority. The most prevalent prerequisite is the relevance of the anchor tenant to target market.

Table 8: Criteria for Tenant Mix

| Criteria | Response to each (%) |
|--|-----------------------------|
| Their name is an identifiable house hold brand. | 61% |
| Their ability to pay high rentals. | 21% |
| The amount of space they occupy and length of lease. | 18% |

Source: Data Collection 2014 Shopping Mall study: Competition Authority

6.4 Competition and policy issues

6.4.1 Exclusivity of lease agreements

Exclusive agreements are a breach of section 30 of the Competition Act, which states that, *“Any conduct on the part of one or more enterprises is subject to prohibition by the Authority if, following an investigation by the Authority, such conduct is determined to amount to an abuse of a dominant position in any market.”*

Furthermore, paragraph 78 of the Authority’s Abuse of dominance guidelines state that:

Anti-competitive foreclosure may arise through exclusive dealing – preventing competitors from selling to customers through the use of exclusive purchasing obligations and rebates.

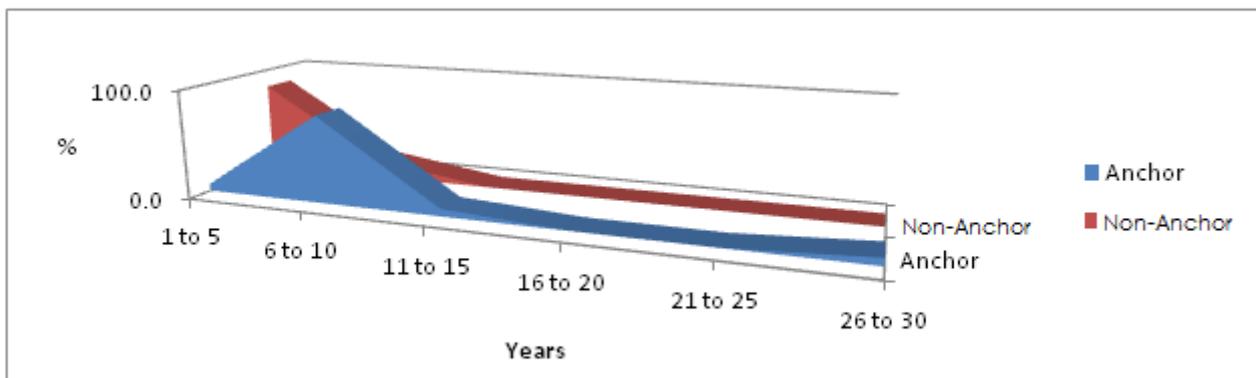
Therefore, exclusive dealing is a conduct of abuse of market power since anti-competitive foreclosure may arise through this practice. When inquiring about exclusive agreements between anchor tenants and shopping mall establishments, all anchor stores reported that there was no prevalence of any exclusive clauses in their lease agreements. Subsequent perusal of the lease agreements collected from the said anchor stores revealed that indeed there were no exclusive clauses in their contracts. However, some non-anchor stores reported some form of implicit exclusive agreements prevailed. This is because anchor tenants are integral to the planning and development of the shopping malls (As reported above by the interviewed financial institutions). Most shopping malls are designed in line with anchor tenants’ aesthetic and space requirements. These initial terms may give anchor tenants leverage in decisions of which stores to incorporate in the shopping malls they are located in.

6.4.2 Barriers to entry through long term anchor tenancy

Notwithstanding the above, the length of the lease agreement and exclusivity conferred on anchor tenants are usually linked and can be indicative of barriers to entry. It is possible through long term anchor tenancy, that goods and services traded in the shopping malls are screened explicitly in the contract or implicitly by concerted practice. That is, there is a possibility that exclusivity or other anti-competitive conduct can prevail in this sector through unwritten agreement²⁶ or by effect²⁷ (feel of the market). However, the current lease agreements revealed no exclusive clauses in the lease agreements. This is despite the fact that generally shopping mall management endeavour to draw up leases aimed at securing prolonged occupancy of anchor tenants. The shopping mall management mainly cites this as a financial security issue when sourcing funds for development. This implies some level of co-dependency between shopping malls and anchor tenants. As noted earlier in the report, financial institutions are also seen to take into consideration the viability of anchor tenants listed in mall development proposals.

The chart below shows that average lease length for anchor tenants ranges around 10 years, while non-anchor tenants stay an average of 5 years.

Chart 7: Period of lease of stores



Source: Data Collection 2014 Shopping Mall study: Competition Authority

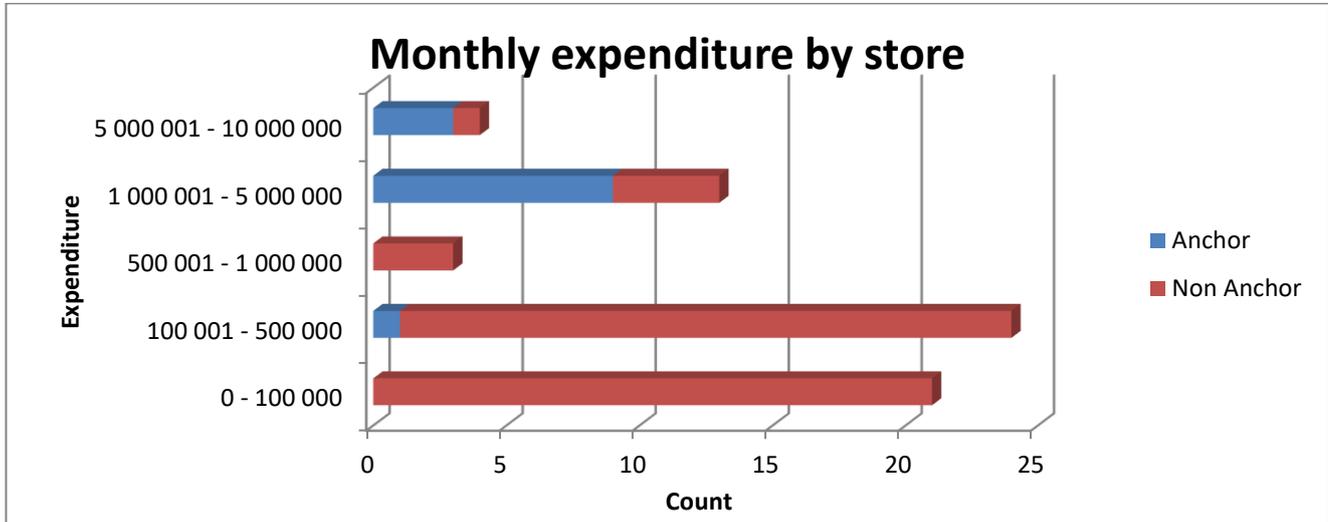
Chart 8 depicts that on a monthly basis, anchor tenant stores operational costs amount to approximately 10 times (P1, 000, 000 to P5, 000, 000) more compared to non-anchor tenants (P100, 000 to 500, 000). The elements of these expenses include

²⁶ Undocumented agreements mostly reached by verbal communication.

²⁷ Conditions implied or put forth in a market in attempt to block prospective entrants (into the said market)

staff remuneration, utilities, rentals, stock and advertising. This implies that anchor tenants employ more staff, occupy more space and advertise more compared to other stores.

Chart 8: Monthly expenditure by stores

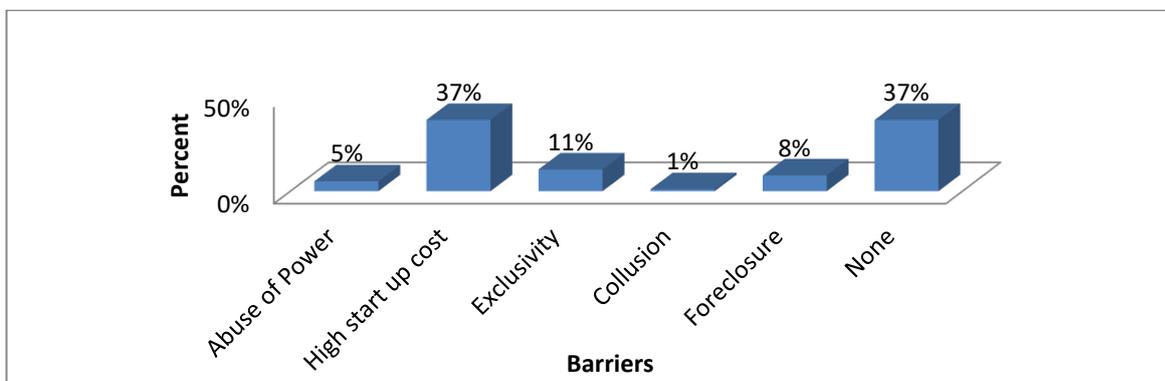


Source: Data Collection 2014 Shopping Mall study: Competition Authority

6.4.1 Other prevalent barriers to entry

Barriers to entry are hindrances or bottlenecks that make entry into a said market difficult or impossible. Under the study, it was reported that start-up costs (according to 37% of the respondents, the most prevalent barriers to entry in the industry. With high start-up costs, these could deter initial market entry, and may lead to oligopolies and monopolies maintaining their dominant position. It is important to note that some barriers can be created or exploited by the existing incumbents. Existing tenants report that property developers charge high rentals due to the level of demand for store space.

Chart 9: Barriers to Entry



Source: Data Collection 2014 Shopping Mall study: Competition Authority

6.5 Positive impact of anchor tenants'

According to section 32(1)(a) of the Act which states that;

“Where the Authority finds, on investigation that an agreement other than a horizontal agreement or a vertical agreement prohibited by section 25 and section 26 (1), respectively, prevents or substantially lessens competition, the Authority may, subject to section 34, grant an exemption from the prohibition if it can be reasonably expected that there will be offsetting benefits for the public directly attributable to the agreement in the form of — (a) the maintenance of lower prices, higher quality or greater choice for consumers”.

Bearing that in mind, it is essential that the study also show the positive impact anchor tenants may present to the shopping mall retail property market. It is imperative since the sector is still at infancy stage (Chart 2) and therefore anchor tenants may still be very crucial to its expansion. Financial institutions consider anchor tenants to be surety for financing shopping mall developments. Therefore there are some offsetting benefits that may have to be considered when concluding on the overall findings of this study. These are identified below.

6.5.1 Anchor tenant externalities

It is apparent that anchor tenants create some positive benefits to other stores in a mall environment. It was deemed imperative to probe further to see if local property developers take this into account. The following questions were asked to determine this.

6.5.1.1 Overage²⁸ rentals and rental subsidies

Stores were asked if they pay or collect any overage rentals, and all of them reported that they do not. Property managers on the other hand were asked if they have any initiatives in place to account for externalities, and they reported that though most contracts had clauses that required that stores report their monthly revenues in order for property managers to determine overage rentals, this has never been

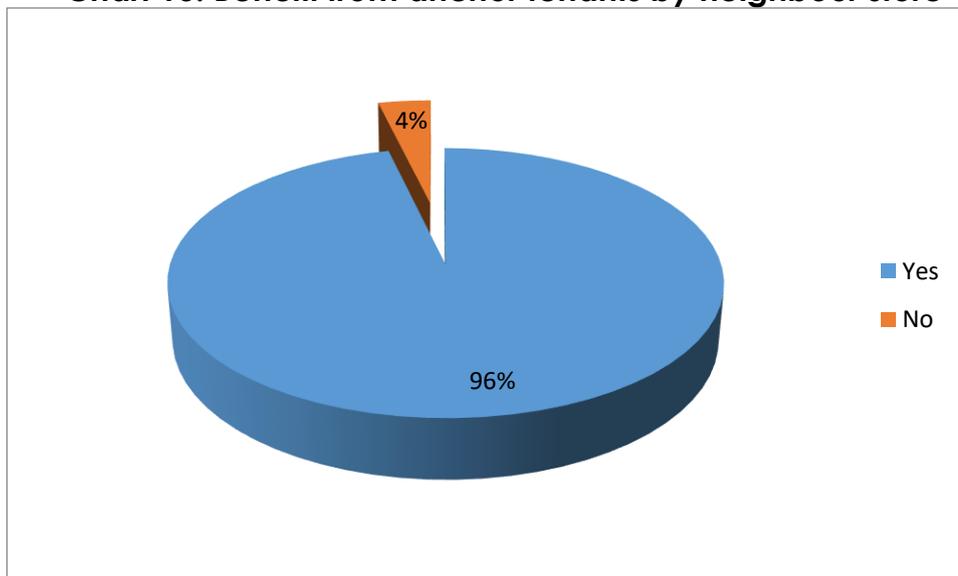
²⁸ Overage rent is a term used to describe the additional amount of rent that a tenant needs to pay once sales reach a pre-determined target.
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implemented. With no prevalence of overage rentals property managers reported that they do not subsidise anchor tenant rentals.²⁹

6.5.1.2 Benefit from anchor tenants by non-neighbour stores

When answering the question whether non-neighbor stores³⁰ pay higher rentals due to their proximity to anchors stores, 49% of the stores that were studied recorded a Yes, while 51% said No. The data showed that there is a recent shopping mall development that property management take anchor tenant externalities into consideration in determining rental, while the older establishments did not. These findings are indicated under Chart 10 below.

Chart 10: Benefit from anchor tenants by neighbour store



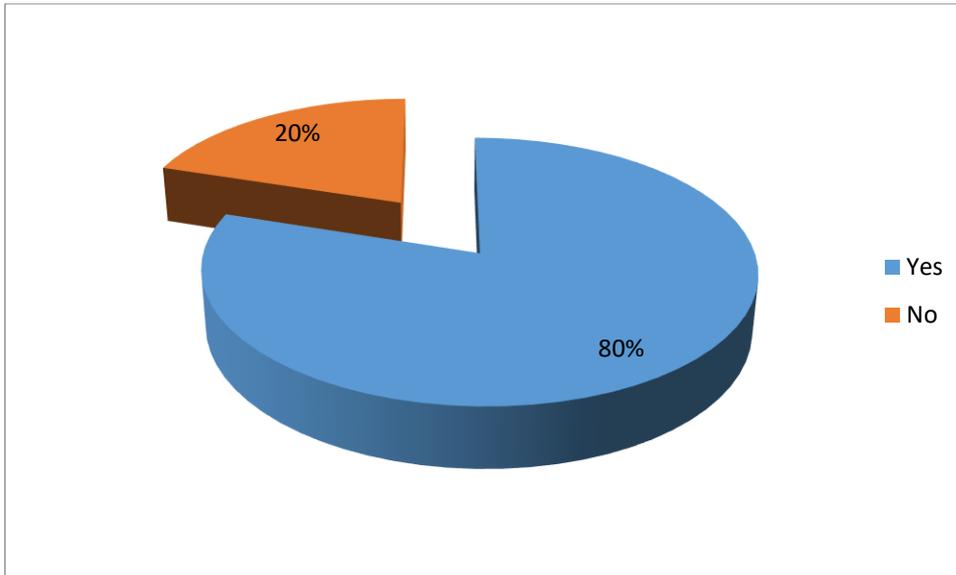
Source: Data Collection 2014 Shopping Mall study: Competition Authority

Chart 10 shows response to the question on whether stores that are located next to anchor tenants benefit from their presence (anchor tenant). About **96%** of the stores indicated that they benefit from anchors stores, while only **4%** did not. This confirms that non-anchor tenant owners acknowledge the fact that the traffic drawn by anchor tenants is beneficial to them.

²⁹ These subsidies are incentives given to anchor stores by property managers usually to compensate for the externalities they produce; overage rentals are usually used to pay for these subsidies.

³⁰ All stores that are located in the same mall but are not immediate neighbours of any anchor store

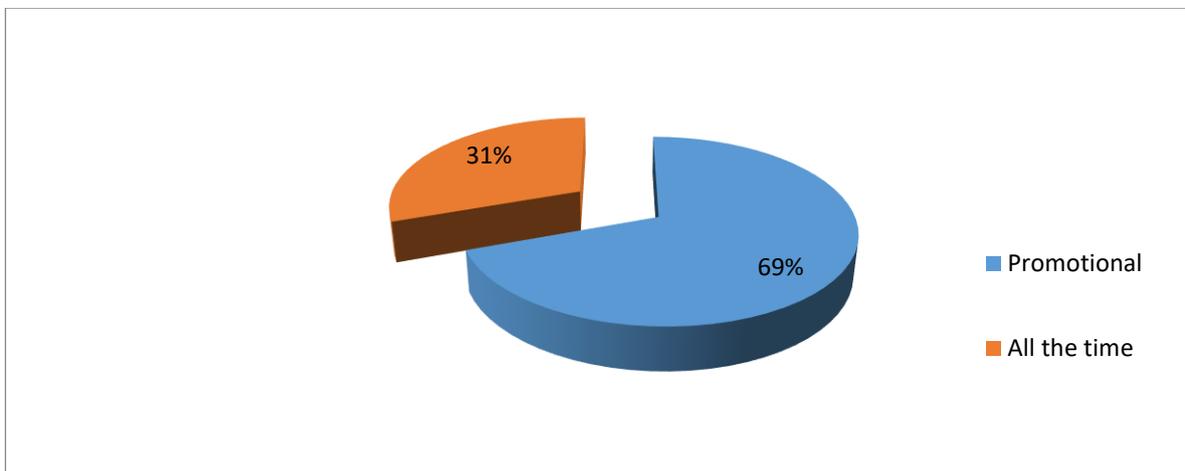
Chart 11; Benefit from anchor tenant by non-neighbor stores



Source: Data Collection 2014 Shopping Mall study: Competition Authority

Chart 11 reveals that **80%** of stores that are located further from anchor tenants report that they benefit from anchor generated traffic, while **20%** believe otherwise. Out of the stores that benefit from traffic attracted by anchor tenants, **69%** benefit the most during monthly promotions, while **31%** benefit all the time (as per Chart 12).

Chart 12: Benefit during anchor tenant promotions



Source: Data Collection 2014 Shopping Mall study: Competition Authority

According to charts 11, 12 and 13, local anchor tenants create externalities which benefit non-anchor tenants. In order to achieve absolute operational efficiency by shopping mall management, these externalities need to be considered as they are a critical secondary advantage and play a big role in property developers soliciting funds. Therefore, since local shopping mall property development is still at its infancy

stage, externalities should also be considered when assessing anchor tenants' effects on competition and the sector as a whole.

7.0 Conclusion

The primary intent of this study was to understand the landscape of the shopping mall retail property market in order to increase transparency and competition; and ascertain whether the existing tenant and landlord system could be improved in the conditions that affect competition. The study also looked at whether or not anchor tenant stores located in shopping malls around the country were contracted to shopping malls through exclusive agreements which could be an entry barrier. The probe revealed no prevalence of explicit exclusivity between anchor tenants stores and shopping mall lease agreements. Even though no explicit exclusive agreements surfaced, interviews with non-anchor stores revealed that these agreements may exist implicitly in the form of verbal agreements cloaked under the veil of tenant mix. This is due to the fact that anchor tenants being the first tenants and being better associated with shopping mall developers and managers can have influence in the type and caliber of stores to be in the tenant mix. These implied agreements may exist because anchor tenants proved to be an integral part of shopping mall development and in their own right may feel they deserve some guarantees or incentives. It is apparent that in the short term anchor tenants are necessary in ensuring growth of this industry.

The study further revealed that it is normal in the local market for anchor tenants to be contracted to shopping malls for much longer periods of time than non-anchor stores. This is due to the fact that anchor tenants initially invest heavily in setting up as compared to non-anchor stores and therefore require a much longer period of time to recoup costs. Anchor tenants also provide property developers with surety for investors/financiers. They (anchor tenants) subsequently provide the shopping malls with an allure to customers, and a positive benefit to non-anchor stores due to their well-established and marketed brand names. Unfortunately, these long lease periods pose some barriers to entry. In terms of competition law, long term anchor tenancy leases undoubtedly raise concern because the nature of the lease can give rise to anti-competitive behaviour. Monitoring to ensure that anchor tenants do not operate

within the realm of exclusive agreements beyond recovering their costs is essential. The best approach is to balance the level of detriment of the infringement on competition law against public benefit and economic development in order to reach an amicable solution. Every case related to exclusivity of anchor tenants should therefore be handled on the merit of its uniqueness.

8.0 Recommendations

With regard to the discussions above, the research report recommends the following:

| Possible Infringement | Recommendation | Remedy |
|--|---|----------------------------|
| Barriers to entry (High Rentals) | Real estate governing bodies, such as Real Estate Institute of Botswana, should monitor optimal rental levels of shopping mall establishments. A high instance of high rentals was reported during the study. In terms of competition, this constitutes the prevalence of excessive pricing which is a pertinent barrier to entry to other players in the market, particularly for newly developed shopping malls. This can lead to abuse as existing enterprises may exploit rivals in order to maintain market share more especially where anchor tenants have bargaining power or control over shopping mall management. | Investigation and Advocacy |
| Barriers to entry (Long term anchor tenancy) | The Authority should continuously monitor the lease period anchor tenants enter into with shopping mall establishments to ensure that these agreements do not translate into any anti-competitive behaviour. There is | Investigation and Advocacy |

| | | |
|--|---|-----------------------------------|
| | <p>need for advocacy to enforce maximum lease periods for anchor stores. (Basically that period that will allow anchor tenants time to recoup their initial investment). After this Anchor tenancy should be opened up to competitive bidding to allow viable candidates entry into the market. The recommended period is 10 years.</p> | |
| <p>Explicit or implicit exclusive agreements</p> | <p>The Authority should continuously monitor shopping mall developments to ensure that the prevalence of either explicit or implicit exclusive agreements in this industry is avoided and to ensure that the local industry players are not foreclosed in the long run</p> | <p>Investigation and Advocacy</p> |