



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: CRH064Aug23/DSC008Apr25**

In the matter between:

**Bentel Group Proprietary Limited**

Applicant

And

**Pick n Pay Retailers Proprietary Limited**

Respondent

**Case No: CRH064Aug23/DSC009Apr25**

In the matter between:

**Pick n Pay Retailers Proprietary Limited**

Applicant

And

**Bentel Group Proprietary Limited**

**Case No: CRH064Aug23**

*In re: the matter between*

**Bentel Group Proprietary Limited**

Applicant

And

**Pick n Pay Retailers Proprietary Limited**

Respondent

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Panel : Geoff Budlender (Presiding Member)  
: Thando Vilakazi (Tribunal Member)  
: Andiswa Ndoni (Tribunal Member)

Heard on : 4 July 2025  
Last date of submission : 01 August 2025  
Order issued on : 05 September 2025

## REASONS FOR DECISION

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### INTRODUCTION

1. This matter involves two separate interlocutory applications to compel further and better discovery. The first is an application by Bentel Group Proprietary Limited (“Bentel”), a developer and manager of commercial properties, to compel discovery by Pick n Pay Retailers Proprietary Limited (“Pick n Pay”), a major retailer. The second is an application by Pick n Pay to compel discovery by Bentel. Both applications were opposed, and they were heard together.
2. These applications arise from a pending application to the Johannesburg High Court instituted by Bentel against Pick n Pay, in which Bentel contends *inter alia* that an exclusivity clause in a lease agreement between Bentel and Pick n Pay contravenes section 5(1), alternatively section 8(1)(d)(i) and/or section 8(1)(c) of the Competition Act 89 of 1998, as amended (“the Act”).
3. By the time we heard these applications, some of the documents originally requested had been furnished or tendered, or were no longer pursued. We confine ourselves to documents that remain in dispute.

## Background

4. On 25 June 2019, Bentel<sup>1</sup> and Pick n Pay concluded a lease agreement in terms of which Pick n Pay leased premises at Carletonville Mall, a shopping centre owned and managed by Bentel.
5. The dispute between Bentel and Pick n Pay has its genesis in an exclusivity clause<sup>2</sup> in that lease. It provides that save for a Pick n Pay supermarket, a Choppies Enterprises Limited supermarket (“Choppies”), a Woolworths and a Roots Butchery, Bentel may not permit, without Pick n Pay’s consent, the business of a hypermarket, supermarket or grocery store to be conducted at Carletonville Mall.
6. One of Bentel’s tenants at Carletonville Mall was Choppies. Choppies vacated the premises in 2022, and Bentel then leased the premises to Shoprite Checkers Proprietary Limited (“Shoprite Checkers”), allowing Shoprite Checkers to open a grocery store in the mall.
7. On 21 October 2022, Pick n Pay notified Bentel that it was with immediate effect cancelling the lease, alleging that Bentel had materially breached the lease by permitting Shoprite Checkers to occupy the premises previously occupied by Choppies.
8. On 16 November 2022, Bentel instituted urgent proceedings<sup>3</sup> against Pick n Pay in the Johannesburg High Court, contending that: (i) there was no material breach of the exclusivity clause; (ii) Pick n Pay waived its right to cancel the

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<sup>1</sup> Under its previous name, Anganna Investments 126 Proprietary Limited.

<sup>2</sup> Clause 5.1 of Annexure B2 to Bentel’s referral affidavit.

<sup>3</sup> We understand that these proceedings have been pended pending the determination by the Tribunal of Bentel’s complaint against Pick n Pay.

lease by virtue of its conduct; and (iii) the exclusivity clause contravenes section 5(1), alternatively section 8(1)(d)(i) and/or section 8(1)(c) of the Act.

9. Bentel then applied to the Johannesburg High Court for an order referring the alleged competition law infringements by Pick n Pay to this Tribunal for determination. Pick n Pay did not oppose that application.
10. Acting in terms of section 65(2)<sup>4</sup> of the Act, on 30 May 2023 the Johannesburg High Court issued an order referring the competition law aspects of Bentel's application to this Tribunal for determination. Accordingly, on 11 August 2023, Bentel filed its complaint referral with the Tribunal,<sup>5</sup> seeking an order declaring that the exclusivity clause contravenes section 5(1), alternatively section 8(1)(d) and/or section 8(1)(c) of the Act.

### **Legal framework**

11. The legal principles applicable to discovery in Tribunal proceedings are well established.
12. The Rules for the Conduct of Proceedings in the Tribunal ("Tribunal rules") do not expressly provide for a process for compelling discovery. However, Rule 55 read with Rule 22 of the Tribunal rules empower the Tribunal to have regard to

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<sup>4</sup> (2) If, in any action in a civil court, a party raises an issue concerning conduct that is prohibited in terms of this Act, that court must not consider that issue on its merits, and-

(a) if the issue raised is one in respect of which the Competition Tribunal or Competition Appeal Court has made an order, the court must apply the determination of the Tribunal or the Competition Appeal Court to the issue; or

(b) otherwise, the court must refer that issue to the Tribunal to be considered on its merits, if the court is satisfied that-

(i) the issue has not been raised in a frivolous or vexatious manner; and

(ii) the resolution of that issue is required to determine the final outcome of the action.

<sup>5</sup> Under Tribunal case number CRH064Aug23.

Rule 35 of the Uniform Rules of the High Court when regulating discovery processes in its proceedings.<sup>6</sup>

13. While the Tribunal is empowered to have regard to Rule 35 of the Uniform Rules, the Tribunal has emphasised that its proceedings are *sui generis* and cautioned against an uncritical borrowing of High Court rules in a manner that may lead to impracticalities, bearing in mind the inquisitorial powers vested in the Tribunal.<sup>7</sup>
14. The Tribunal has emphasised that the guiding principle in discovery proceedings is fairness,<sup>8</sup> bearing in mind the Tribunal's wide discretion to conduct its own proceeding and its inquisitorial powers, which in appropriate cases must be exercised in carrying out its truth-seeking functions.<sup>9</sup>
15. The overarching principle in determining whether a document must be discovered is whether the document sought may - not must - either directly or indirectly enable the party requiring the document to advance its own case, or damage that of its opponent.<sup>10</sup>
16. Against this background, we consider Bentel and Pick n Pay's respective applications to compel discovery.

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<sup>6</sup> Allens Meshco (Pty) Ltd and others v Competition Commission and others, Case No. 63/CR/Sep09.

<sup>7</sup> *Ibid.*

<sup>8</sup> Competition Commission v Telkom SA Ltd; Telkom SA Ltd v Competition Commission (73/CR/Oct09) [2013] ZACT 9 (13 February 2013) ("Telkom") para 29.

<sup>9</sup> Cape Gate Proprietary Limited v Emfuleni Municipality, Case No. CRP162Jan22/DSC131OCT22.

<sup>10</sup> Swissborough Diamond Mines v Government of the RSA 1999 (2) SA 279 (T); Goosen v Muller (1224/2015) [2017] ZAFSHC 212 (3 November 2017) at para 38.

## Assessment

### Bentel's application

#### *Documents relating to Pick n Pay's competitive position: item 2*

17. In item 2, Bentel sought discovery of documents relating to Pick n Pay's assessment of its competitive position, as follows:

*Pick n Pay is required to provide all documents relating to its assessment of (i) the scope of the product market/s in which its stores (including its Pick n Pay, Boxer and QualiSave branded stores) compete, including the types and formats of stores that compete with its stores; (ii) the market share/s of Pick n Pay and the market share/s of its competitors in the national market for the products identified in response to (i) above; and (iii) the market share/s of Pick n Pay and the market share/s of its competitors in any geographic market for the products identified in response to (i) above in which Pick n Pay's store in the Carletonville Mall competes.*

*The documents provided should include all documents submitted by Pick n Pay to the Grocery Retail Market Inquiry that relate to the abovementioned issues.*

18. After Pick n Pay had discovered and tendered various documents that are relevant to this request, Bentel narrowed its request to documents that Pick n Pay provided to the Grocery Retail Market Inquiry (GRMI) that relate to Pick n Pay's assessment of the issues set out item 2 of Bentel's further request.
19. Bentel contended that the documents Pick n Pay submitted to the GRMI are directly relevant to the determination of the relevant product and geographic market in Bentel's complaint referral, Pick n Pay's market share in the relevant

markets, and the types and formats of stores that compete with Pick n Pay's different store brands (Pick n Pay, Boxer and QualiSave) both nationally and in any relevant local market. Bentel contended that the requested documents fall to be discovered.

20. Pick n Pay contended that Bentel's request for all documents is impermissibly broad. Pick n Pay stated that it had already provided Bentel with its principal substantive submissions to the GRMI, and it disputed the relevance of the submissions requested by Bentel on the basis that those it had refused to produce were specific to shopping centres other than Carletonville Mall, and were therefore not relevant to Bentel's complaint, because that complaint only relates to the Carletonville Mall lease agreement.
21. In its complaint referral, Bentel defined the relevant product market in which Pick n Pay is alleged to abuse its dominant position as the market for large grocery stores. It distinguished between small and large grocery stores and contended that these are distinct product markets.<sup>11</sup> Bentel defined the geographic market at its widest as a radius of a 20-minute drive time of Carletonville Mall.<sup>12</sup> Alternatively, Bentel defined a narrower local market that included Carletonville Mall and larger grocery retail stores within a 20-minute drive of Carletonville Mall, that can be accessed via public transport.
22. Pick n Pay disputed Bentel's market definition. It contended that there is no basis to distinguish between smaller and larger retailers because it faces intense competition from various retailers in the relevant market, which would

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<sup>11</sup> Bentel's founding affidavit in its complaint referral, para 31 – 36.

<sup>12</sup> Bentel contends that this predominantly reflects the scope of the local market that can be easily accessed by customers with private motor vehicles.

include small and larger retailers.<sup>13</sup> In relation to the geographic market, Pick n Pay disputed Bentel's market definition on the basis that it faces intense competition at a national level and is also constrained in the local market by various competing retailers.

23. Bentel pointed out that in its submissions to the GRMI, Pick n Pay submitted that the different grocery store formats:<sup>14</sup>

23.1. *“are differentiated from each other in terms of price levels, product range, customer service levels, in-store environments and overall equipment levels, value-added services (e.g financial services) and opening hours”* and

23.2. *“serve different customer needs and therefore tend to generally be complementary rather than direct competitors in relation to certain features of their product and service offerings”*

24. There is thus a dispute as to how the relevant market (both product and geographic) should be defined. In our view, Pick n Pay's assertions to the GRMI as to what differentiates and informs different grocery retail formats, and its submissions in its answering affidavit that it faces competition at both national and local level, render the documents requested by Bentel relevant to the determination of the relevant market (product and geographic) in the complaint referral. The documents (submissions) sought are relevant to Bentel's ability

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<sup>13</sup> Pick n Pay's answering affidavit to Bentel's complaint referral, p 22 para 56 - 59.

<sup>14</sup> Consolidated heads of argument bundle, p 11 para 21.

to advance its own case, or to damage Pick n Pay's case in relation to the definition of the relevant market.

25. We find that the requested submissions are relevant and must be produced.

*Documents relating to the impact of Pick n Pay's consent agreement with the Commission: item 4*

26. Under item 4, Bentel sought discovery of documents that discuss or assess the impact of the consent agreement between Pick n Pay and the Commission on Pick n Pay's commercial viability and the competitive position of its existing stores and the feasibility of opening new stores. Bentel submitted that these documents are relevant to the rationale for and competitive effects of the exclusivity clause in the lease.<sup>15</sup> Bentel further submitted that these documents are relevant to Pick n Pay's considerations when deciding whether to include an exclusivity clause in a lease, and if so, a clause of what kind.
27. Initially, Pick n Pay resisted production on the basis that the request was overbroad and that Bentel had failed to show that the documents it requests are relevant. However, Pick n Pay tendered four additional documents to what it had already produced. They deal with exclusive leases in general.
28. Bentel's request under item 4 calls for the production of documents generally discussing and assessing the impact of Pick n Pay's consent agreement with the Commission, which will disclose Pick n Pay's general disposition towards exclusive lease agreements. Pick n Pay stated that it had provided Bentel with all documents in its possession that relate to Pick n Pay's general disposition

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<sup>15</sup> Transcript, p 33 – 34.

to exclusive lease agreements, as well as documents specific to Carletonville Mall that are responsive to item 4.

29. Pick n Pay asserted that certain other documents that fall within Bentel's request under item 4 are legally privileged. Bentel did not dispute this.
30. Pick n Pay stated that it has provided Bentel with all documents that are responsive to Bentel's request, other than documents that are legally privileged.
31. In our view, Pick n Pay has complied with Bentel's application in this regard, by discovering the documents sought other than those that are privileged.

#### Pick n Pay's application

*Copies of all lease agreements in respect of other commercial properties owned by Bentel: item 5.10*

32. Pick n Pay sought discovery of all lease agreements containing exclusivity clauses in respect of what it described as other commercial properties owned and managed by Bentel. Pick n Pay based this request on: (i) a statement on Bentel's website that Bentel operates at least 15 shopping centres in South Africa; and (ii) a statement by Bentel in its founding affidavit in the Johannesburg High Court that Bentel develops, owns and manages commercial properties.
33. Pick n Pay argued that these agreements are relevant because they will enable a comparison of the Carletonville Mall agreement with the kinds of agreements that Bentel concludes in relation to its other commercial properties, including whether they contain exclusivity provisions. In other words, the documents are

relevant to the determination of Bentel's disposition towards exclusivity provisions in leases.

34. Bentel responded that Carletonville Mall is the only commercial property it owns and leases. It stated that the reference to properties within its "portfolio" includes 15 other properties that are owned and operated by separate legal entities (which are in turn owned by various other legal entities).<sup>16</sup> Bentel stated that in respect of those other properties, it performs management services and acts as an agent of the entities that own and lease them. On this basis, Bentel disputed the relevance of the leases sought by Pick n Pay.<sup>17</sup>
35. At the hearing, we enquired about the nature of the relationship between Bentel and these other entities, including the extent to which Bentel, as an agent that performs management services on their behalf, is involved in negotiating lease agreements on their behalf.
36. This information was not available at the hearing. The Tribunal formed the view that it was not possible for it to determine whether those leases should be discovered, without further information which would bear on the relevance of those leases to the matters in issue.
37. On 4 July 2025 the Tribunal accordingly issued a directive requiring Bentel to file an affidavit explaining the nature of its relationships within the entities that own the properties that fall within Bentel's portfolio of properties, and the nature

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<sup>16</sup> Pick n Pay application hearing bundle, p 14, para 54.

<sup>17</sup> Pick n Pay application hearing bundle, p 15, para 55.

of its involvement in negotiating lease agreements for or on behalf of those entities.

38. Bentel thereafter, without admitting that it was obliged to do so, made discovery (subject to an appropriate confidentiality regime) of the eight leases in its possession that fell within the terms of the discovery that Pick n Pay sought.
39. Pick n Pay now seeks an order that Bentel must comply with the directive which the Tribunal issued. It contends that Bentel is obliged by the Tribunal's directive to file an affidavit explaining the nature of its relationships within the entities that owned the properties that fall within its portfolio of properties, and the nature of its involvement in negotiating lease agreements for or on behalf of those entities.
40. However, there is no longer a live application before the Tribunal to compel discovery of leases by Bentel, because Bentel has now made the discovery which Pick n Pay sought in this regard.
41. The Tribunal sought that information in order to decide whether Bentel should make discovery of the leases in question. Bentel has now made discovery of those leases. Accordingly, the directive of 4 July 2025 falls away. Pick n Pay is now attempting to obtain discovery of documents and information which it never sought, and to which it is not entitled through the process of discovery.
42. We therefore conclude that Bentel is not obliged to file the affidavit referred to in the directive of 4 July 2025.

*Documents claimed as privileged*

43. Bentel asserted privilege over documents requested by Pick n Pay under items 5.46.3,<sup>18</sup> 5.46.4<sup>19</sup> and 5.46.5,<sup>20</sup> namely all documents and calculations that Bentel relied on to estimate Pick n Pay's market shares in the markets identified by Bentel in its founding affidavit in the complaint referral, including all documents discussing or reflecting the basis for the store space measurement used by Bentel to estimate Pick n Pay's estimated market shares.

44. In paragraphs 43.1 and 43.2 of its founding affidavit in the complaint referral, Bentel states:

*"43.1. Pick n Pay holds a market share of approximately 40% in the market for large grocery stores located within a twenty-minute drive time of the Shopping Centre; alternatively".<sup>21</sup>*

*"43.2. Pick n Pay holds a market share of approximately 60% in the market for large grocery stores located within a twenty-minute drive time of the Shopping Centre and which are easily accessed via public transport*

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<sup>18</sup> Under item 5.46.3, Pick n Pay requested "All documents and underlying calculations which inform the statement in paragraph 43.1 of the complainant's complaint referral affidavit, that Pick n Pay has "approximately 40% in the market for large grocery stores located within a twenty-minute drive time of the Shopping Centre".

<sup>19</sup> Under item 5.46.4, Pick n Pay requested "all documents and underlying calculations which inform the statement in paragraph 43.2 of the complainant's complaint referral affidavit, that Pick n Pay has a market share of "approximately 60% in the large grocery stores within at most, but potentially less than, a twenty-minute drive time of the Shopping Centre and which can be accessed via public transport notes, such as taxi ranks".

<sup>20</sup> Under item 5.46.5, Pick n Pay requested "all documents discussing or reflecting the basis for the store space measurement considered and used by Bentel in calculating the market shares referred to above".

<sup>21</sup> Para 43.1 of Bentel's founding affidavit in the complaint referral.

*(which includes large grocery stores located in the Shopping Centre, as well as in the Gateway Mall in Carletonville). ”<sup>22</sup>*

45. Bentel resisted producing the documents on the basis that the documents and calculations are legally privileged. Bentel made this claim as follows<sup>23</sup>:

*“The requested documents, calculations and methodology were prepared and conducted, at the instance of Bentel and its legal advisors, for the purposes of pleading and prosecuting Bentel’s complaint referral against the respondent, and are accordingly legally privileged information”.*

46. In its supplementary answering affidavit<sup>24</sup> filed in response to allegations made by Pick n Pay in its replying affidavit in Pick n Pay’s application, Bentel stated that the only pre-existing document that informed the statements made in paragraphs 43.1 and 43.2 of its complaint referral for which it does not assert privilege has already been discovered as item 13.2 in its response to Pick n Pay’s first request for discovery.

47. Pick n Pay challenged Bentel’s claim of privilege on two fronts. First, Pick n Pay submitted that Bentel had failed to make out a case for privilege. Second, Pick n Pay contended that should Bentel be found to have had privilege over the documents, it had waived its privilege by referring to and relying on the requested documents in its pleadings.

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<sup>22</sup> Para 43.2 of Bentel’s founding affidavit in the complaint referral.

<sup>23</sup> Bentel’s answering affidavit in Pick n Pay’s application, P. 94 para 126; Heads of Argument bundle, P. 43, para 124.

<sup>24</sup> Bentel filed an unsigned version of this affidavit on 3 July 2025, which was commissioned on 4 July 2025.

48. Pick n Pay contended that it is simply not credible that all the information, figures and calculations relied on by Bentel to compute Pick n Pay's estimated market shares were prepared and created at the instance of Bentel's legal advisors. Pick n Pay further disputed Bentel's claim of litigation privilege on the basis that anything that was produced by Bentel for its legal team must have had its basis in documents that already existed.<sup>25</sup>
49. In *Arcelomittal*<sup>26</sup> the Supreme Court of Appeal stated that a litigant claiming litigation privilege must show the following:
- 49.1. The document or communication was prepared for a litigant's submission to a legal advisor for legal advice;
- 49.2. At the time that the communication took place, litigation was pending or contemplated as likely.
50. Litigation privilege is not assumed: it must be established.<sup>27</sup>
51. In *Ibex*<sup>28</sup>, the Supreme Court of Appeal stated that the party asserting privilege must demonstrate that the disputed document is "*A document created with the dominant purpose of its author, or of the person or authority under whose direction it was created, of using it to obtain legal advice, or in the conduct of existing or contemplated adversarial litigation, is privileged and shielded from inspection.*"

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<sup>25</sup> Pick n Pay's heads of argument, heads of argument bundle, p 67, para 49.

<sup>26</sup> *Competition Commission v Arcelormittal South Africa Ltd and Others* 2013 (5) SA 538 (SCA).

<sup>27</sup> *Continental Tyres South Africa (Pty) Ltd and Another v Competition Commission of South Africa and Others* (157/CAC/Nov 2017) [2018] ZACAC 9; [2018] 2 CPLR 476 (CAC) (11 October 2018).

<sup>28</sup> *Ibex RSA Holdco Limited and Another v Tiso Blackstar Group (Pty) Ltd and Others* [2024] ZASCA 166; 2025 (2) SA 408 (SCA) (4 December 2024).

52. Bentel stated, under oath, that the documents, calculations and methodology over which it claims privilege were created at the instance of its legal representatives for the purposes of pursuing its complaint referral against Pick n Pay. Bentel stated, under oath, how the documents came in to being, at whose instance and for what purpose. These allegations supported its claim of privilege.
53. A court will not readily go behind factual allegations on affidavit supporting a claim of privilege.<sup>29</sup> We see no reason for the Tribunal to go behind Bentel's allegations in this regard.
54. The final issue to be addressed is Bentel's alleged waiver of its privilege. Pick n Pay argued that to the extent that Bentel is found to have demonstrated privilege in respect of the requested documents, it waived such privilege through its reliance on the requested information in relation to its pleadings.
55. Bentel responded that it did not rely on the contents of the documents that it claimed as privileged. Rather, what it did was to plead the material facts as required of it by the Tribunal rules.<sup>30</sup>
56. In our view, in paragraph 43.1 and 43.2 (quoted above) Bentel does not refer to or rely on the contents of the documents that it has claimed as privileged. Rather, Bentel has pleaded, as it ought to in terms of Rule 15<sup>31</sup> of the Tribunal

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<sup>29</sup> Turkcell Iletisim Hizmetleri AS and Another v MTN Group Limited and Others [2020] ZAGPJHC 244 (6 October 2020).

<sup>30</sup> Transcript, p 85 – 86.

<sup>31</sup> 15. *Form of Complaint Referral*

- (1) *A complaint proceeding may be initiated only by filing a Complaint Referral in Form CT 1(1), CT 1(2) or CT 1(3), as required by Rule 14.*
- (2) *Subject to Rule 24 (1), a Complaint Referral must be supported by an affidavit setting out in numbered paragraphs -*

rules, the material facts that are relevant to its complaint. Bentel's complaint is that Pick n Pay has abused its dominant position. In our view, given the nature of the Bentel's complaint, it follows that Bentel would allege that Pick n Pay is dominant in a specified market, and by extension, allege what it asserts Pick n Pay's market share to be, as part of the material facts on which it relies to establish Pick n Pay's alleged dominance. This does not constitute a waiver of privilege in respect of the underlying documents.

57. For the above reasons, Pick n Pay's contention in this regard cannot succeed.

## Conclusion

58. In light of the above, we make the order that follows:

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### ORDER

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Having considered the applications by Bentel and Pick n Pay to compel further and better discovery from each other, the Tribunal makes the following order:

#### **Bentel's application under case number: CRH064Aug23/DSC008Apr25**

1. Pick n Pay must within 10 (ten) days of this order, produce and provide, subject to an appropriate confidentiality regime being concluded between the parties, the following documents to Bentel -

#### Documents in dispute:

- 1.1. **Item 2:** All documents, in addition to the documents identified in paragraph 1.2 below, that were provided by Pick n Pay to the Grocery Retail Market

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- (a) *a concise statement of the grounds of the complaint; and*
  - (b) *the material facts or the points of law relevant to the complaint and relied on by the Commission or complainant, as the case may be.*

Inquiry (GRMI) and that relate to Pick n Pay's assessment of the issues set out at item 2 of Bentel's further request.

Tendered documents:

- 1.2. All the contents of Annexures A and B to item 108 in Pick n Pay's response to Bentel's further request dated 14 November 2024 (Bentel's further request), that reflect the extent of retail competition and the number of competitors in relation to all Pick n Pay's stores in Carletonville.
- 1.3. The documents containing the data underlying the evaluation in the tables at pages 97, 99 and 101 of item 124 (discovered by Pick n Pay in response to Bentel's application to compel) of the impact of stand-alone, single anchor and multi anchor competitor stores on Pick n Pay stores nationally.
2. The costs are reserved for determination at the conclusion of the hearing of the complaint.

**Pick n Pay's application under case number: CRH:064Aug23/DSC009Apr25**

3. Bentel must within 10 (ten) days of this order, produce and provide, subject to an appropriate confidentiality regime being concluded between the parties, the following documents to Pick n Pay –
  - 3.1. **Item 5.2:** All lease agreements entered into with tenants at the Carletonville Mall (including non-grocery tenants) since inception.
  - 3.2. **Item 5.1.6:** All documents related to the Carletonville Mall concerning "lease duration" (including in relation to non-grocery tenants) insofar as this is not reflected in the agreements referred to in paragraph 3.1 above;
  - 3.3. **Item 5.10:** Copies of the eight lease agreements containing exclusivity provisions concluded with tenants in any other properties owned or operated by Bentel.

3.4. The final lease agreement entered into between Bentel and Shoprite in relation to the Carletonville Mall.

4. Save as aforesaid, the applications to compel discovery are dismissed.

5. The costs are reserved for determination at the conclusion of the hearing of the complaint.

Signed by: Geoff Budlender  
Signed at: 2025-09-05 11:18:41 +02:00  
Reason: Witnessing Geoff Budlender

*Geoff Budlender*

**05 September 2025**

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**Advocate Geoff Budlender SC**

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**Date**

**Concurring: Professor Thando Vilakazi and Ms Andiswa Ndoni**

Tribunal Case Manager(s): Ofentse Motshudi

For Bentel: Advocate Michelle Norton SC and Advocate Michael Tsele instructed by Gideon Pretorius Inc.

For Pick n Pay: Advocate Jerome Wilson SC and Advocate Sarah Pudifin-Jones instructed by Nortons Inc.