

NOTICE 242 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:****SYNERGY INCOME FUND LTD****AND****LETTING ENTERPRISE KNOWN AS KWA-MASHU SHOPPING CENTRE HELD BY SIPAN I (PTY) LTD AND SUPERSTRIKE INVESTMENT (PTY) LTD****CASE NUMBER: 2011JUL0147**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is Synergy Income Fund Ltd ("Synergy"), a company incorporated in terms of the laws of the Republic of South Africa. Synergy is a variable loan stock company.

The primary target firms are Sipan I (Pty) Ltd ("Sipan") and Superstrike Investments 53 (Pty) Ltd ("Superstrike"), in respect of the property letting enterprise known as Kwa-Mashu Shopping Centre. Sipan and Superstrike are co-owners of Kwa-Mashu Shopping Centre.

In terms of the Sale of Property Agreement, Synergy will acquire from Sipan and Superstrike property letting enterprise known as Kwa-Mashu Shopping Centre, which is categorised a neighbourhood centre comprising of 11 126m² of rentable retail space. Synergy will acquire undivided shares in the properties of KwaMashu shopping centre.

There is an overlap in respect of major shopping centres in the activities of the merging parties. The Commission found that there is no geographic overlap, as Synergy does not own retail property in KwaZulu Natal. Accordingly, the merger is unlikely to raise any significant competition concern because neither Synergy nor Synergy investors own any convenience retail shopping centres in Springfield/Umgeni/Durban North area.

The Commission is however concerned that the merger changes Spar's position within the vertical chain. For this reason the Commission is concerned about the exclusivity clause in the lease which prevents their rivals from gaining access to the centre. The conflict of interest inherent in the transaction entrenches the Spar franchisees' position in the mall. This raises public interest concerns especially with regard to independent and small businesses' ability to gain access to the shopping centre. The Commission engaged with the parties regarding this concern and the parties proposed to try their best to negotiate with Spar and the franchisee to remove the exclusivity clause at renewal of the lease.

The Commission therefore approves this merger with the condition that the parties undertake to negotiate with Spar and its franchisee in the utmost good faith to have the exclusivity clause removed at renewal of the lease in the KwaMashu centre.

The Commission therefore approved this merger with the following conditions:

- 1) The parties shall negotiate with Spar and its franchisee in the utmost good faith to have the exclusivity clause removed at renewal of the lease in the KwaMashu shopping;*
- 2) The parties shall provide a report to the Commission within 30 (thirty) days after entering into a new lease agreement with Spar and its franchisee in the KwaMashu shopping centre setting out in detail the extent to which they complied with the condition.*

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.