NOTICE 244 OF 2012

COMPETITION COMMISSION

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

SYNERGY INCOME FUND LIMITED

AND

KHUTHALA ALLIANCE (PROPRIETARY) LIMITED

2011OCT0310:

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 Limited ("Synergy"), a company incorporated in terms of the laws of the Republic of South Africa. Synergy is a variable loan stock company. Synergy has acquired retail property assets classified as neighbourhood shopping centres, being the Sediba Plaza located in Hartebeespoort Dam, North West and KwaMashu Shopping Centre in Durban, KwaZulu Natal. In November, Synergy filed an acquisition of seven properties from SA Corporate Real Estate Fund which the Commission is investigating.

Synergy has been established by Capital Land Asset Management ("Fund Manager") through its close association with Spar Group. The shareholders of the Fund Manager are Spar Group (20%), Baleine Capital Pty) Ltd (15%), AM Family Trust (10%), The Brooks Family Trust (25%), Liberty Group Properties (Pty) Ltd (18.75%) and Capital Land Asset Management Employee Trust (11.25%).

The primary target firm is Khuthala Alliance (Pty) Ltd ("Khuthala"), a private company incorporated in terms of the laws of the Republic of South Africa. The transferring firm is the letting enterprise, King Senzangakhona Shopping Centre, situated in Ulundi, KwaZulu Natal and owned by Khuthala.

In terms of the Letting Enterprise Purchase Agreement, Synergy will acquire the letting enterprise from Khuthala, comprising the fixed and moveable assets, goodwill as well as rights and obligations of Khuthala. Pursuant to the implementation of the proposed transaction, Synergy will have sole control over the business of Khuthala.

Synergy owns rentable retail properties classified as neighbourhood centres in Greater Hartebeespoort Dam, North West and in KwaMashu, being KwaMashu Shopping Centre and Sediba Plaza. Khuthala owns the King Senzangakhona Shopping Centre, a community centre in Ulundi, KwaZulu Natal. The distance between KwaMashu and Ulundi is approximately 180km; this means that the two shopping centres are not able to pose a competitive constraint on each other. These are the only two centres owned by the merging parties in KwaZulu Natal. The Commission found that Synergy does not own any community centre in Ulundi, KwaZulu Natal. Accordingly, the merger is unlikely to lead to a substantial prevention or lessening of competition in the market as there is no geographic overlap between the activities of the merging entities.

The Commission found that there is a public interest concern arising from the proposed transaction around an exclusivity clause found in the Lease Agreement between Spar and the landlord and the Shareholders Agreement. The exclusivity clause has the effect of preventing small businesses from competing effectively in the shopping centre. Further the shareholders agreement allows the Spar Group as part of the Fund Manager which will manage the centre, post-merger, to appoint a director. The Commission is of the view that the change in Spar's position within the vertical chain will change the competitive conditions within King Senzangakhona Shopping Centre. The Spar franchisee post-merger will have an advantageous position within the King Senzangakhona Shopping Centre; this means they will face no competition for their position within the shopping centre when the lease expires as the strategy employed by Synergy ensures that the Spar franchisee will remain the anchor tenant at their shopping centres.

The exclusivity clause on the other hand ensures that the Spar franchisee succeeds in excluding its rivals from the centre. Further, the Spar franchisee will moves from being a tenant who would have had to bid to maintain his/her position within the centre against other retailers when the lease currently in place comes to an end, to being the sole retailer with a guaranteed position within King Senzangakhona Shopping Centre. For this reason the Commission is concerned about the exclusivity clause in the lease which prevents small businesses from gaining access to the 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 clause on renewal of the lease agreement.The Commission initially considered this proposed condition, but is however concerned with the renewal date as it occurs at a later stage and is unlikely to fully address the public interest concern that arises as a result of the proposed transaction. To this end the Commission proposed that the merging parties remove the exclusivity clause that is the cause of the public interest concern and this be made a condition of the approval of the proposed transaction, which the merging parties opposed. However since these are significant concerns the Commission approved the transaction subject to the following conditions:

Conditions to the approval of the merger

1. The merging parties must have the exclusivity clause in the lease agreement removed within two (2) months of the approval date of the proposed transaction.
2. The Spar Group shall not appoint a director on the board of the Fund Manager.

Monitoring of compliance with the Conditions

3. The merging parties shall provide proof of the removal of the exclusivity clause to the Commission within two (2) months after the approval date and at the same time provide an amended lease agreement in relation to the King Senzangakhona Shopping Centre to the Commission.

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.