

NOTICE 877 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****CAPITAL PROPERTY FUND****AND****CLAIRWOOD RACECOURSE****CASE NUMBER: 2012JUN0337**

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 Capital Property Fund ("Capital"), a property fund portfolio registered with the Financial Services Board and listed on the Johannesburg Stock Exchange. Capital is not controlled by any firm. Capital owns a portfolio of properties which include offices, industrial and retail property. Capital properties are located across Gauteng, Eastern Cape, KwaZulu-Natal, Western Cape, Mpumalanga and Free State province.

The primary target firm is the property known as the Clairwood Race Course ("Clairwood"). Clairwood is an asset owned by Natal Racing Properties (Pty) Ltd ("NRP"). NRP is controlled by Gold Circle (Pty) Ltd ("Gold Circle"). Clairwood is an immovable property utilised as a horse racing, stabling and training venue. It holds the infrastructure required to support the sport of horse racing, including seating facilities (grandstands and standing areas); a grass racing surface; stabling and training facilities for thoroughbred racehorses.

The proposed transaction entails an acquisition of Clairwood by Capital from NRP.

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition, as there is no overlap in the activities of the merging parties.

With respect to public interest, the Commission is of the view that the proposed transaction is likely to have a negative impact on employment, since Clairwood would no longer be used for horse racing activities after two (2) years following the transfer of Clairwood to Capital. In light of the foregoing, Gold Circle and NRP made an undertaking that two years after the date of transfer of Clairwood to Capital, Clairwood employees will be re-deployed to existing Gold Circle and NRP facilities on terms not less favourable than the existing terms and conditions of employment.

The Commission therefore approves the proposed transaction subject to the following conditions:

1. Definitions

- The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Acquiring Firm"** means Capital Property Fund;
- 1.2. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.3. **"Capital"** means Capital Property Fund, the primary acquiring firm;
- 1.4. **"Clairwood"** means Clairwood Racecourse, the primary target firm;
- 1.5. **"Commission"** means the Competition Commission of South Africa;
- 1.6. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.7. **"Conditions"** means these conditions;
- 1.8. **"Date of Transfer"** means the date of registration of transfer of ownership of Clairwood Racecourse into the name of Capital Property Fund;

- 1.9. " **Gold Circle**" means Gold Circle (Pty) Ltd;
- 1.10. " **Merger**" means the acquisition of control by Capital Property Fund over Clairwood Racecourse;
- 1.11. " **Merging Parties**" means Capital and Clairwood; and
- 1.12. " **NRP**" means Natal Racing Properties (Pty) Ltd.

2. Recordal

The Commission finds that the proposed transaction is unlikely to raise competition concerns as there is no overlap in the activities of the Merging Parties. However, the proposed transaction is likely to have a negative impact on employment since Clairwood would no longer be used for horse racing activities after two (2) years following the transfer of Clairwood to Capital. In light of the foregoing, Gold Circle and NRP undertake that two years after the Date of Transfer of Clairwood to Capital, Clairwood employees will be re-deployed to existing Gold Circle and NRP facilities on terms not less favourable than the existing terms and conditions of employment. For purposes of monitoring the undertaking made by Gold Circle and NRP this undertaking is made a condition for the approval of this merger.

3. Conditions to the approval of the merger

- 3.1. No employees of Clairwood, NRP or Gold Circle shall be retrenched as a result of this Merger within (2) two years after the approval date and within, a further 2 (two) year period after Clairwood's employees have been re-deployed to the other existing facilities of Gold Circle and/or NRP.
- 3.2. The prohibition in 3.1 shall not apply to any employee who is offered re-deployment as recorded in 2 above, and who does not accept that re-deployment.
- 3.3. Should Gold Circle or NRP wish to retrench within the period mentioned in 3.1 above, they shall notify the Commission of such contemplated retrenchments and motivate as to why these retrenchments are not merger specific or merger related.

4. Monitoring of compliance with the Conditions

- 4.1. Gold Circle or NRP shall report any retrenchments with respect to 3.2. by e-mail to mergerconditions@compcom.co.za.
- 4.2. An apparent breach by the Gold Circle and NRP of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings of the Competition Act.

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.