

NOTICE 883 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****THE TRUSTEES FOR THE TIME OF THE MERGENCE AFRICA PROPERTY INVESTMENT TRUST****AND****GOLDEN POND 322 (PTY) LTD, SALESTALK 298 (PTY) LTD AND RAINBOW BEACH TRADING 180 (PTY) LTD
CASE NUMBER: 2012JUL0422**

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 firms are the trustees of the time being of Mergence Africa Property Investment Trust Fund (Pty) Ltd ("Mergence"). Mergence is a trust incorporated in terms of the laws of the Republic of South Africa. Dipula is a property loan stock company listed on the JSE. Dipula indirectly controls a diversified property portfolio of retail, industrial and office properties throughout South Africa.

The primary target firms are Golden Pond 322 (Pty) Ltd ("Golden Pond") in respect of Randfontein Station Shopping Centre ("Randfontein Centre"), Salestalk 298 (Pty) Ltd ("Salestalk") in respect of Bushbuckridge Shopping Centre ("Bushbuckridge Centre") and Rainbow Beach Trading 180 (Pty) Ltd ("Rainbow") in respect of The Plaza Shopping Centre ("The Plaza").

The target properties are lettable retail shopping centres fully described as follows:

Randfontein Centre is a retail centre with a gross lettable area ("GLA") of 5,963m² (five thousand nine hundred and sixty three square metres). Randfontein Centre is located on the corner of Station Road and Sutherland Roads, Randfontein on the West Rand.

Bushbuckridge Centre is a retail centre with a GLA of 14,640m². Bushbuckridge Centre is located on Main Bushbuckridge Road, Bushbuckridge, Mpumalanga.

The Plaza is a retail centre with a GLA of 25,000m². The Plaza is located on Mopoi Street, Phuthaditjaba, Free State.

In terms of the Sale Agreements, Mergence will acquire, as a going concern, the target properties together with the letting enterprises, conducted by the target firms on the target properties. Post-merger Mergence will wholly own the target properties.

There is an overlap in the activities of the merging parties overlap in the market for the provision of rentable retail space specifically in convenience centre. However, the Commission found that none of the retail centres owned by the acquiring firms overlap geographically with the target properties. The Commission concludes that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition as there is no geographic overlap in the activities of the merging parties.

There is a concern arising in respect of exclusivity clauses contained in the following:

- Memorandum of Lease between Century Retail Developments and Shoprite Checkers (Pty) Ltd
- Memorandum of Lease between Golden Pond 322 (Pty) Ltd and Shoprite Checkers (Pty) Ltd
- Memorandum of Agreement of Lease between Rainbow Beach Trading 180 (Pty) Ltd and Score Super Markets (Trading) (Pty) Ltd and Pick 'n Pay Retailers (Pty) Ltd
- Memorandum of Agreement of Lease between Setsing Shopping Centre (Pty) Ltd and Shoprite Checkers Limited

The Commission found that the exclusivity clauses have the effect of excluding rivals of Shoprite, Score and Pick n Pay from the centres with the implication that small businesses are prevented from competing effectively in the centres. In order to address the concern the Commission negotiated with the merging parties to have the clause removed as the exclusivity clauses could not be justified. The Commission reached an agreement to impose a condition to

have the exclusionary clauses removed (in accordance with the contractual terms) in the agreements.

The Commission therefore approves this merger transaction subject to conditions as listed below:

1. Definitions

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

- 1.1. **"Acquiring Firms"** means the trustees of the time being of Mergence Africa Property Investment Trust;
- 1.2. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.3. **"Bushbuckridge Centre"** means Bushbuckridge Shopping Centre held by Salestalk 298 (Pty) Ltd;
- 1.4. **"Century Retail/Shoprite Agreement"** means the Memorandum of Lease concludes between Century Retail Developments and Shoprite Checkers (Pty) Ltd;
- 1.5. **"Commercial reasons"** means reasonable principles of commerce, or bona fide reasons, taken into account in arriving at a decision in the ordinary course of business;
- 1.6. **"Commission"** means the Competition Commission of South Africa;
- 1.7. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.8. **"Conditions"** means these conditions;
- 1.9. **"Golden Pond/Shoprite Agreement"** means Memorandum of Lease between Golden Pond 322 (Pty) Ltd and Shoprite Checkers (Pty) Ltd;
- 1.10. **"Merger"** means the acquisition of control over Randfontein Station Shopping Centre held by Golden Pond 322 (Pty) Ltd; Bushbuckridge Shopping Centre held by Salestalk 298 (Pty) Ltd and The Plaza Shopping Centre held by Rainbow Beach Trading 180 (Pty) Ltd, by the trustees of the time being of Mergence Africa Property Investment Trust;

- 1.11. **"Merging Parties"** means the trustees of the time being of Mergence Africa Property Investment Trust and Randfontein Station Shopping Centre held by Golden Pond 322 (Pty) Ltd; Bushbuckridge Shopping Centre held by Salestalk 298 (Pty) Ltd and The Plaza Shopping Centre held by Rainbow Beach Trading 180 (Pty) Ltd, by the trustees of the time being of Mergence Africa Property Investment Trust;
- 1.12. **"Mergence"** mean the trustees of the time being of Mergence Africa Property Investments Trust.
- 1.13. **"Randfontein Centre"** means Randfontein Station Shopping Centre as held by Golden Pond 322 (Pty) Ltd;
- 1.14. **"Setsing/Shoprite Agreement"** means Memorandum of Agreement of Lease between Setsing Shopping Centre (Pty) Ltd and Shoprite Checkers Limited;
- 1.15. **"The Plaza"** means the Plaza Shopping Centre held by Rainbow Beach Trading 180 (Pty) Ltd;

2. Recordal

- 2.1. Mergence has agreed to the following undertakings which are meant to address the public interest concerns.
- 2.2. It is the Commission's view that the conditions, in the current form, are necessary to address the public interest concerns.

3. Conditions to the approval of the merger

- 3.1 Mergence shall negotiate with Shoprite Checkers (Pty) Ltd (Pty) Ltd in respect of the Century Retail/Shoprite Agreement, Golden Pond/ Shoprite Agreement and Setsing/Shoprite Agreement, in the utmost good faith to have the exclusivity clauses in the lease agreement in respect of the target property, removed at the renewal of the lease.
- 3.2 Mergence shall negotiate with Pick n Pay Retailers (Pty) Ltd and Score Super Markets (Trading) (Pty) Ltd in respect of the Rainbow/Score Agreement, in the utmost good faith

to have the exclusivity clauses in the lease agreement in respect of the target property, removed at the renewal of the lease.

4. Monitoring of compliance with the Conditions

4.1. Mergence shall within (30) thirty days after entering into the new lease agreements in respect of the centres, provide the Commission with reports setting out in details the extent to which they have complied with the conditions of removing the exclusivity clause.

4.2. All correspondence in relation to Conditions should be forwarded to mergerconditions@compcom.co.za.

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.
