
GENERAL NOTICES

NOTICE 287 OF 2013

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SIZANAI GENERAL TRADING PTY LTD

AND

**THE HEATHWAY SHOPPING CENTRE OWNED BY MOMENTUM PROPERTY
INVESTMENTS (PTY) LTD**

CASE NUMBER: 2012FEB0072

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 Sizanai General Trading (Pty) Ltd ("Sizanai"), a company incorporated under the laws of the Republic of South Africa. Sizanai is a property letting firms which lets out rentable office space and retail properties.

The primary target firm is the Heathway Shopping Centre ("Heathway Centre") owned by Momentum Property Investments (Pty) Ltd ("MPI"). The Heathway Centre comprises of office property and rentable retail space located in Cresta/Blackheath to Randpark node, Gauteng.

In terms of the Sale of Letting Enterprise Agreement, Sizanai intends to acquire the Heathway Centre as a going concern. Pursuant the implementation of the proposed transaction, the Heathway Centre will be solely controlled by Sizanai.

There is an overlap in the activities of the merging parties in two markets: i) market for provision of B-grade office space within the Cresta/Blackheath to Randpark node; and ii) market for the provision of retail space specifically in convenience centres within a 5km radius from the

Heathway Centre. The Commission finds that the merged entity's market share remains minimal in all the affected markets and therefore, is of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in both affected markets.

In addition, the Commission confirmed that the proposed transaction does not result in significant effect on employment.

The Commission finds an exclusivity clause in the lease agreement between the anchor tenant and the owners of the Heathway Centre which has the effect of excluding rivals of the anchor tenant from the Heathway Centre. This implies that small businesses are prevented from entering and competing effectively in the Heathway Centre. In order to address this concern, the Commission negotiated with the merging parties to have the clause removed. The Commission reached an agreement with the merging parties to impose a condition to have the exclusionary clauses removed (in accordance with the contractual terms) from the agreements.

The Commission therefore approves the merger with conditions (attached in Annexure A) in terms of section 14(1)(b)(ii) of the Competition Act no.89 of 1998, as amended. The Commission hereby issues a certificate in the prescribed form approving the merger with conditions as set out below.

CONDITIONS

1. Definitions

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

- 1.1. **"Acquiring Firms"** means Sizanai General Trading (Pty) Ltd;
- 1.2. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.3. **"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;

- 1.4. "**Commission**" means the Competition Commission of South Africa;
- 1.5. "**Competition Act**" means the Competition Act 89 of 1998, as amended;
- 1.6. "**Conditions**" means these conditions;
- 1.7. "**Lease Agreement**" means agreement concluded between the lessor and the lessee.
- 1.8. "**Merger**" means the acquisition of control over the Heathway Shopping Centre owned by Momentum Property Investments (Pty) Ltd by Sizanai General Trading (Pty) Ltd;
- 1.9. "**Merging Parties**" means Sizanai General Trading (Pty) Ltd and the Heathway Shopping Centre owned by Momentum Property Investments (Pty) Ltd.
- 1.10. "**Sizanai**" means Sizanai General Trading (Pty) Ltd;

2. Recordal

- 1.1 Sizanai has agreed to the following undertakings which are meant to address the public interest concerns.
- 1.2 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

4. Sizanai shall negotiate with the anchor tenant in respect of the current effective lease 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.

5. Monitoring of compliance with the Conditions

- 5.1. Should Sizanai succeed in removing the exclusivity clause from the lease agreement, it shall submit a copy of the signed, new lease agreement to the Commission as proof of compliance within 30 days of concluding the new lease agreement.
- 5.2. Should Sizanai not succeed in the removal of the exclusivity clause from the lease agreement, it shall submit a report setting out the details and outcome of its negotiations with the anchor tenant and an affidavit confirming the accuracy of the report within 30 days of concluding its negotiations.
- 5.3. All correspondences in relation to these conditions shall be submitted to the e-mail address: 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.