

NOTICE 290 OF 2013**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ACCELERATE PROPERTY FUND LIMITED****AND****61 LETTING PROPERTIES SOLD BY ORTHOTOUCH LIMITED****AND****13 LETTING PROPERTIES SOLD BY THE TRUSTEES OF THE TIME BEING OF THE
GEORGE NICOLAS TRUST****CASE NUMBER: 2012DEC0739 AND 2012DEC0740**

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 in both intermediate transactions, filed under Commission case 2012Dec0739 and 2012Dec0740, is Accelerate Property Fund Limited ("Accelerate"), a firm incorporated in terms of the laws of the Republic of South Africa. Accelerate does not control any other firms. Accelerate is controlled by a single shareholder. The acquiring group own various letting properties located throughout the Republic of South Africa which are classified as retail, industrial and office properties.

In the intermediate transaction filed under Commission case no. 2012Dec0739 the primary target firms are 13 letting properties sold by the trustees of the time being of the George Nicolas Trust ("the George Trust"). In the intermediate transaction filed under Commission case no. 2012Dec0740 the primary target firms are 61 letting properties sold by Orthotouch Limited ("Orthotouch"). The properties sold in both transactions are classified as rentable retail,

industrial, mixed use properties and office properties located across the Republic of South Africa.

It is important to note that the two transactions were filed separately as Orthotouch and the George Trust are separate entities which are selling the rentable properties separately to Accelerate. However, both transactions were filed on the same date and they involved a common acquiring firm (Accelerate). The Commission has therefore consolidated the analysis and the reasons for the decision of the two transactions.

The Commission finds that there is no overlap in the activities of the merging parties in relation to the provision of hotels and the market for the provision of rentable retail property specifically in comparative centres as the acquiring group does not own hotels and comparative centres. The Commission therefore concludes that the transaction is unlikely to substantially prevent or lessen competition in those markets.

However, the Commission finds horizontal product overlap in the markets for provision of rentable A-Grade, B-Grade and C-Grade office property. However, a geographic overlap only exists in the market for the provision of rentable B-Grade office property. The Commission finds that the post-merger market share of the merging parties in the market for provision of rentable B-Grade office space remains minimal. The Commission therefore concludes that the transaction is unlikely to substantially prevent or lessen competition in all of the affected rentable office property markets.

In addition, the Commission finds horizontal product overlap in the activities of the merging parties' in two additional markets namely: (i) the market for the provision of rentable retail space specifically in convenience centre; and (ii) the market for the provision of rentable light industrial property. The Commission finds that the activities of the merging parties do not overlap in the narrowest geographic market where competition takes place. The Commission therefore concludes that the transaction is unlikely to substantially prevent or lessen competition in these markets.

Furthermore, the Commission finds exclusivity clauses in lease agreements in certain of the Orthotouch rentable properties classified as retail centres which have the effect of excluding rivals of the anchor tenants from the respective centres. The exclusivity clauses have the effect of preventing small businesses from competing effectively in the respective centres. In order to address the concern, the merging parties agreed to a condition to have the exclusionary clauses removed (in accordance with the contractual terms) in the individual lease agreements upon renewal.

The Commission confirmed that the transaction does not have an adverse effect on employment.

The Commission therefore approves the proposed merger 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 Firms**" means Accelerate Property Fund Limited
- 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. "**Merger**" means the acquisition of control over 13 letting properties sold by George Nicolas Trust and 61 letting properties sold by Orthotouch Limited to Accelerate

Property Fund Limited;

- 1.8. **"Merging Parties"** means Accelerate Property Fund Limited and Orthotouch Limited and the George Nicolas Trust;
- 1.9. **"Lease Agreements"** means 12 identified lease agreements in respect of the sold letting properties containing exclusivity clauses;
- 1.10. **"Lessees"** means all the entities leasing retail space as anchor tenants in the letting properties;
- 1.11. **"Orthotouch"** means Orthotouch Limited;
- 1.12. **"The George Trust"** means the George Nicolas Trust;

2. Recordal

- 2.1. Accelerate 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. Accelerate shall negotiate with the respective lessees in respect of the current effective Lease Agreements, in the utmost good faith to have each exclusivity clause contained in the Lease Agreements removed at the approaching renewal date.

4. Monitoring of compliance with conditions

- 4.1. Should Accelerate succeed in removing the exclusivity clause in any, or all lease agreements mentioned in 3.1 above, it shall submit a copy of the signed, new lease

agreements to the Commission as proof of compliance within 30 days of concluding each new lease agreement.

- 4.2. Should Accelerate not succeed in the removal of the exclusivity clause from any of the lease agreements mentioned in 3.1 above, it shall submit a report setting out the details and outcome of its negotiations with each party mentioned in conditions 3.1 and an affidavit confirming the accuracy of the report within 30 days of concluding its negotiations.

All correspondences in relation to all the monitoring 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.