
GENERAL NOTICES

NOTICE 997 OF 2013

COMPETITION COMMISSION

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:
TRUSTEES FOR THE TIME BEING OF MERGENCE AFRICA PROPERTY INVESTMENT
TRUST**

AND

**SHOPRITE PRETORIA NORTH, ZIYABUYA SHOPPING CENTRE, GEZINA GALLARIES,
BLACKHEATH PAVILION, WOODMEAD SQUARE AND WOODMEAD VALUE MALL**

CASE NUMBER: 2013MAY0174

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 the proposed transaction is the Trustees for the time being of Mergence Africa Property Investment Trust ("Mergence"). Mergence is wholly owned by Mergence Africa Property Fund (Pty) Ltd ("MAPF"), which is in turn wholly owned by Dipula Income Fund Ltd ("Dipula"). Dipula is a public company listed on the Johannesburg Securities Exchange Ltd ("JSE"). Dipula also controls the Dipula Property Investment Trust (Pty) Ltd ("Dipula Property Trust") and Asakhe Realty Investment Fund (Pty) Ltd ("Asakhe"), which owns Emerald Fire Investments (Pty) Ltd ("Emerald Fire"). Dipula and all its subsidiaries will from hereon be referred to as (the "Acquiring Group"). The Acquiring Group invests in and owns a diversified property portfolio of retail, industrial and office properties throughout the Republic of South Africa.

The primary target firms in the proposed transaction are four retail properties, namely: Shoprite Pretoria North, Ziyabuya Shopping Centre, Gezina Galleria, Blackheath Pavilion and the

leasehold rights in terms of the Notarial Deeds of Sub-Lease to two letting properties namely, Woodmead Square and Woodmead Value Mall. Collectively referred to as (the "Target Properties").

In terms of the proposed transaction, Mergence intends to acquire four of the Target Properties. In addition, Mergence also intends to acquire the leasehold rights in terms of the Notarial Deeds of Sub-Lease in respect of the other two Target Properties. Post-merger, Mergence would have sole control of the four Target Properties and would become the new lessor of other two Target Properties.

The Commission's investigation of the proposed transaction identified a horizontal overlap in the activities of the merging parties in the market for rentable retail properties, particularly for convenience centres. The Commission found that there is a geographic overlap in the activities of the merging parties in the market for retail properties within the Gezina node and the Randburg node. In relation to the Gezina node, the Acquiring Group owns one convenience centre located 3.69km away from the Target Property. Post-merger the merged entity would have an estimated minimal market share to raise any competition concerns. Furthermore, there are many other convenience centres within the Gezina node and surrounding areas which will continue to constrain the merged entity.

In relation to the Randburg node, the Acquiring Group owns two convenience centres located within close proximity from the Target Property. One convenience centre is located within 1.08 km while the other is located within 3.85km radius from the Target Property. Post-merger, the merged entity would have an estimated minimal market share within the Randburg node. The Commission also identified several viable alternative convenience centres in the Randburg node that will continue to constrain the merged entity post-merger.

In light of the above, the Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected markets.

The Commission found exclusivity clauses in the lease agreements in respect of Ziyabuya Shopping Centre and Gezina Galleries. In order to address the exclusivity concern, the

Commission negotiated with the merging parties to have the clause removed as the exclusivity clauses could prevent SMMEs from operating within the aforementioned centres the merging parties agreed to a condition to have the exclusivity clauses removed (in accordance with the contractual terms) in the agreements.

The Commission therefore approved the proposed transaction subject to conditions in terms of section 14(1) (b) (i) of the Competition Act no.89 of 1998, as amended. The Commission hereby issued a certificate in the prescribed form approving the merger.

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 Trustees for the time being of the 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 **"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 Agreements"** means agreement concluded between Ziyabuya Shopping Centre, Gezina Galleries and Shoprite Checkers (Pty) Ltd;
- 1.8 **"Merger"** means the acquisition of control over Shoprite Pretoria North, Ziyabuya Shopping Centre, Gezina Galleries, blackheath Pavilion, Woodmead Square and Woodmead Value Mall by the Trustees for the time being of the Mergence Africa Property;
- 1.9 **"Merging Parties"** means Trustees for the time being of the Mergence Africa Property and Shoprite Pretoria North, Ziyabuya Shopping Centre, Gezina Galleries, Blackheath Pavilion, Woodmead Square and Woodmead Value Mall.
- 1.10 **"Shoprite"** means Shoprite Checkers (Pty) Ltd; and
- 1.11 **"Mergence"** means Trustees for the time being of the Mergence Africa Property Investment Trust.

2. Recordal

- 2.1 Mergence has agreed to the following undertakings which are meant to address the public interest concerns.
- 2.2 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 in respect of the current effective lease agreements, in the utmost good faith, to have the exclusivity clauses in the lease agreements in respect of the Ziyabuya Shopping Centre and Gezina Galleries removed within 180 (one hundred and eighty) days of receipt of the merger clearance certificate from the Competition Commission.

4. Monitoring of compliance with the Conditions

4.1 The following monitoring conditions in respect of the lease agreements are applicable:

4.1.1 Should Mergence succeed in removing the exclusivity clause in the aforesaid lease agreements, it shall submit a copy of the new signed lease agreement to the Commission as proof of compliance within 30 days of the concluding the new lease agreement.

4.1.2 Should the Mergence 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 Shoprite and an affidavit confirming the accuracy of the report within 30 days of concluding its negotiations.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@comppcm.co.za.