

**NOTICE 999 OF 2013****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****TOWER PROPERTY FUND LTD****AND****THE CAPE QUARTER PROPERTY COMPANY (PTY) LTD AND PARCH PROPERTIES 30  
(PTY) LTD****CASE NUMBER: 2013MAY0175**

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 Tower Property Fund Ltd ("Tower"), a public company yet to be incorporated in accordance with the laws of the Republic of South Africa. Tower is controlled by Tower Asset Managers (Pty) Ltd ("TAM"), which is ultimately controlled by Spire Property Group (Pty) Ltd ("Spire"). Spire controls Spire Property Management (Pty) Ltd ("SPM") and Intersect Sectional Title Services (Pty) Ltd ("Intersect"). Tower currently does not conduct any activities and is in the process of assembling a mixed, commercial property portfolio for listing on the main board of the Johannesburg Securities Exchange in July 2013. Spire, TAM, SPM and Intersect do not control, directly or indirectly, any immovable properties and properties letting enterprises.

The Commission recently approved the acquisition of rentable and immovable properties by Tower (the "Acquired Properties"), which the Commission took into account in the investigation of the instant transaction. The Acquired Properties comprise of rentable office, retail and vacant land located within various nodes in Johannesburg, Gauteng Province.

The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market as there is no geographic overlap.

In addition, the Commission also found that the proposed transaction is unlikely to lead to any foreclosure concerns as the merged entity has no ability to foreclose its rivals.

With respect to the public interest assessment, the Commission found that 16 employees would be retrenched as a result of the proposed merger. In this respect, the Commission engaged with the merging parties to impose conditions to ensure that not all 16 employees would be retrenched. The conditions imposed ensure that the affected employees obtained placement within and outside of the acquiring firms with the assistance of the merging parties. The conditions also ensure that those employees whom the merging parties fail to secure placement for, will obtain the relevant training and up-skilling. It is the Commission's view that the conditions will alleviate the impact of loss of employment arising from the proposed merger.

The Commission therefore approved the merger subject to conditions in terms of section 14(1)(b)(ii) of the Competition Act no.89 of 1998, as amended.

## 1 DEFINITIONS

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

- 1.1 **"Affected Employee"** means any Pyramid Employee who has a qualification of grade 12, matric or lower, who has not received a firm offer of reasonable alternative employment by the Spire Group or any other firm within two (2) months of the Merger Approval Date and who is retrenched by Pyramid;
- 1.2 **"CQPC"** means Cape Quarter Property Company Proprietary Limited, a limited liability private company duly incorporated in the Republic of South Africa, a primary target firm;

The primary target firms are the Cape Quarter Property Company (Pty) Ltd ("CQPC") and Parch Properties 30 (Pty) Ltd ("Parch"), collectively referred to as (the "Cape Quarter Company"). The Cape Quarter Company is controlled by Profin Investment Trust (the "Profin Trust"). The Cape Quarter Company is currently owned by the vested beneficiaries of the Profin Trust (the "Sellers"). The Cape Quarter Company owns rentable and immovable properties which comprises of mixed use properties classified into retail, office, residential and gym located within the Cape Town CBD, Western Cape Province (collectively referred to as the "Target Properties").

The Sellers also have 75% shareholding in Pyramid Property Management (Pty) Ltd ("Pyramid"), a company that provides property management services to the Target Properties. The Commission was informed by the merging parties that Pyramid is closing down its operations as the Cape Quarter Company, which is its major client is being sold and that the Sellers have decided to part ways for a variety of personal reasons, primarily retirement.

In terms of the proposed transactions, Tower intends to acquire 100% of the issued share capital of the Cape Quarter Company from the Sellers. Following the implementation of the proposed transaction, Tower would have sole control over the Cape Quarter Company and thereby acquire indirect sole control over the Target Properties and businesses of the Cape Quarter Company. Also as a result of the proposed transaction, the Sellers will dispose of their 75% shareholding in Pyramid, thereby closing down Pyramid operations.

The Commission's investigation of the proposed transactions found that the activities of the Cape Quarter Company and the Acquired Properties overlap horizontally in the market for the provision of rentable Grade A office properties. However, the Commission also found that there is no geographic overlap in the activities of the Cape Quarter Company and the Acquired Properties as they are located within separate Provinces being the Western Cape Province and the Gauteng Provinces, respectively. With respect to the provision of rentable retail properties, the Commission found that the rentable retail properties of the Cape Quarter Company are not comparable with those of the Acquired Properties. Moreover, there is also no geographic overlap between the rentable properties of the merging parties.

- 1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.4 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
- 1.5 **"Completion Date"** means the date on which the LRA Process is completed as meant under section 189 (7) of the LRA;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"LRA"** means the Labour Relations Act, 66 of 1995;
- 1.8 **"LRA Process"** means the process undertaken by Pyramid in respect of the Pyramid Employees under section 189 of the LRA;
- 1.9 **"Merged Entity"** means Tower, CQPC and Parch, post implementation of the Merger;
- 1.10 **"Merger"** means the transaction in terms of which Tower will acquire control over CQPC and Parch respectively and notified to the Commission under the above case number;
- 1.11 **"Merger Approval Date"** means the date on which the Merger is approved by the Commission as meant under section 14 of the Competition Act;
- 1.12 **"Parch"** means Parch Properties 30 Proprietary Limited, a limited liability private company duly incorporated in the Republic of South Africa, a primary target firm;
- 1.13 **"Pyramid"** means Paddy's Pad 2509 Proprietary Limited trading as Pyramid Property Management;
- 1.14 **"Pyramid Employees"** means the sixteen (16) employees of Pyramid as at the time of notification of this merger;
- 1.15 **"Retrenchments"** do not include (i) voluntary separation arrangements; (ii) voluntary early retirement package; (iii) refusal to be redeployed on reasonable grounds; and (iv) termination due to resignation or retirement;

- 1.16 **"Re-skilling"** means the training undergone by an Affected Employee determined after consultation with the Affected Employee and identification of appropriate and accredited courses;
- 1.17 **"Spire Group"** means Spire Property Group Proprietary Limited, registration number 2006/032072/07, a limited liability private company duly incorporated in the Republic of South Africa, and its subsidiaries TAM, SPM and Tower, the acquiring firms under the Competition Act;
- 1.18 **"SPM"** means Spire Property Management Proprietary Limited, a limited liability private company duly incorporated in the Republic of South Africa;
- 1.19 **"TAM"** means Tower Asset Managers Proprietary Limited, a company duly incorporated in the Republic of South Africa;
- 1.20 **"Tower"** means Tower Property Fund Limited, registration number 2012/066457/06, a public company duly incorporated in the Republic of South Africa;
- 1.21 **"Training Amount"** means ten thousand rands (R10,000) disbursed in respect of the Re-skilling of an Affected Employee.

## 2 RECORDAL

- 2.1 The Commission found that this Merger as a whole is unlikely to raise significant competition concerns. However, the Merger will have a negative impact on employment. The merging parties have advised the Commission that this Merger will result in the retrenchment of sixteen (16) Pyramid Employees within the Republic of South Africa. Of the 16 Pyramid Employees, 9 have been offered employment at SPM, and 1 has been offered employment at TAM. 4 employees have received offers of employment by firms other than the acquiring firms. The remaining 2 employees have thus far not received any offers of employment.
- 2.2 In order to ensure that the Pyramid Employees obtain placement within and outside of the acquiring firms with the assistance of the merging parties, the Commission imposed

the conditions as listed in 3 below. The conditions also ensure that those employees for whom the merging parties fail to secure placement, will obtain relevant Re-skilling. It is the Commission's view that the conditions will alleviate the impact of loss of employment arising from the proposed merger.

### **3 CONDITIONS**

- 3.1 SPM shall guarantee positions of employment for, and make offers of employment to nine (9) Pyramid Employees, independent of the section 189 of LRA Process. SPM shall make offers of employment to the nine (9) Pyramid Employees during the section 189 of LRA process. SPM undertakes that each Pyramid Employee is entitled to accept the SPM offer of employment at any time, but by no later than 30 days after the Completion Date.
- 3.2 For two (2) months after the Merger Approval Date, the Spire Group, and the Merged Entity if listed on the main board of the Johannesburg Securities Exchange before the elapse of the said period, are obliged, and the sellers of CQPC and Parch shall procure that Pyramid is so obliged, to continue taking reasonable steps to identify reasonable alternative employment for any of the Pyramid Employees who have not had firm offers of employment from any firm as at time of Merger Approval Date.
- 3.3 For a period of two (2) years after the Completion Date, the Merged Entity shall make available the Training Amount to be disbursed on behalf of an Affected Employee for Re-skilling.
- 3.4 No portion of the Training Amount shall be paid to the Affected Employee or be allocated to any other purpose than Re-skilling.

### **4 MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 4.1 Within ten (10) days of the elapse of the two (2) months period in 3.2, the Merged Entity:
  - 4.1.1 shall report to the Commission on the endeavors under 3.2 and if applicable, the identity of any Affected Employee;

- 4.1.2 shall deliver to the Commission, Pyramid's report on the outcome of the section 189 of LRA Process.
- 4.2 If applicable, and within ten (10) days of the elapse of the two (2) year period in 3.3, the Merged Entity shall deliver a report and provide proof to the Commission on the disbursement of the Training Amount(s) in respect of Re-skilling of any Affected Employee and results thereof.

All correspondences in relation to the Conditions shall be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).