

NOTICE 246 OF 2014**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ARCTOZONE INVESTMENTS PROPRIETARY LIMITED****AND****THE LYNNRIDGE MALL (OWNED BY EMIRA PROPERTY FUND A PROPERTY FUND
CREATED UNDER THE EMIRA PROPERTY SCHEME, AS THE COLLECTIVE INVESTMENT
SCHEMES CONTROL ACT NO 45 OF 2002)****CASE NUMBER: 2013DEC585**

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:

On 03 December 2013, the Competition Commission ("the Commission") received a notice of an intermediate merger whereby the primary acquiring firm, Arctozone Investments (Pty) Ltd ("Arctozone") intends to acquire sole control over the LynnrIDGE Mall from Emira Property Fund. Following the implementation of the proposed transaction, Arctozone will exercise sole control over the LynnrIDGE Mall.

The Commission finds that there is product overlap in respect of rentable retail space. However, there is no geographic overlap in the activities of the acquiring group and the LynnrIDGE Mall, as the retail property owned by the acquiring group is situated within the Western Cape and Northern Cape provinces, and the LynnrIDGE Mall is situated within the Gauteng Province. As a result, the Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in any market within South Africa.

The Commission has found an exclusivity clause in the lease agreement between the landlord and one of the anchor tenants. This exclusivity clause has the potential effect of preventing small businesses from accessing the Lynnridge Mall, such as grocery stores and bakeries of a certain size, cafés and delicatessen which sell fresh fish or meat; butcheries other than halaal butcheries; and fresh produce businesses. The exclusivity clause contained in the lease agreement raises a potential public interest concern. The Commission has not received any evidence suggesting that the proposed merger is likely to raise any other public interest concerns.

Therefore the Commission approves the proposed transaction with conditions in terms of section 14(1)(b)(ii) of the Act, as amended. The Commission hereby issues a certificate in the prescribed form approving the merger subject to the following conditions:-

CONDITIONS

1. DEFINITIONS

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

- 1.1. "Approval Date" means the date referred to in the Competition Commission's merger clearance certificate (Form CC15);
- 1.2. "Arctozone" means Arctozone Investments (Pty) Ltd, its holding companies and subsidiaries;
- 1.3. "Commission" means the Competition Commission of South Africa;
- 1.4. "Conditions" means these conditions;
- 1.5. "Merger" means the acquisition of control over the Lynnridge Mall by Arctozone;
and

2. RECORDAL

Arctozone has agreed to the following undertakings meant to address the public interest concerns identified by the Commission.

3. CONDITIONS

Arctozone undertakes to use reasonable commercial endeavours to negotiate with the anchor tenant, in the utmost good faith within sixty (60) days of the Competition Commission's decision, to remove the exclusivity clause contained in the lease agreement between the landlord and anchor tenant.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. Arctozone shall provide the Commission with an affidavit setting out the outcome of its negotiations with the anchor tenant, as contemplated in paragraph 3 above, within 90 days of the Commission's decision.
- 4.2. Should Arctozone succeed in removing the exclusivity clause, it shall submit a copy of the new signed agreement to the Commission with the affidavit mentioned in paragraph 4.1 above.
- 4.2. The said affidavit shall be attested to by a senior official within Arctozone and must comply with the South African Legal Standards.
- 4.3. Any breach of these conditions shall be dealt with in accordance with Rule 39 of the Competition Commission Rules.

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