

NOTICE 247 OF 2014**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****SHANGHAI ZENDAI PROPERTY LIMITED****AND****CERTAIN IMMOVABLE PROPERTIES HELD BY AECI GROUP AND HEARTLAND
BUSINESS****CASE NUMBER: 2013NOV0538**

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 Shanghai Zendai Property Limited ("Zendai"), a public company incorporated in terms of the laws of the Republic of Bermuda, and is listed on the Hong Kong Stock Exchange ("HKE"). Zendai is a listed entity and is therefore not controlled by any firms. Zendai is an investment holding company that engages in property development in the People's Republic of China, Hong Kong and New Zealand. The company focuses on the development, investment and management of residential and commercial properties in China, Shanghai and Hainan. Its activities include the development and sales of apartments, villas, detached houses, and office premises, provision of travel and related services, property rental, management, agency services and hotel operations.

The primary target firms are the immovable property held by AECI Group of companies ("the Target Asset") and the Heartland Properties (Pty) Limited ("Heartland") property development business based in Modderfontein in Gauteng Province ("the Heartland Business"). The Target Asset consists of 1600 hectares of land situated in Gauteng Province, Modderfontein, north of

the Sandton area. The Target Asset is zoned as industrial space, retail office space, commercial and residential development. ***The Target Asset is controlled by AECI Real Estate (Pty) Limited ("ARE") and Heartland Business is controlled by Heartland Properties (Pty) Ltd ("Heartland"). ARE and Heartland are controlled by AECI Limited ("AECI"). AECI is a public company listed on the Johannesburg Securities Exchange and is not controlled by any firm.*** The Target Asset and Heartland Business do not control any firm.

The Target Asset is the immovable property consisting of 1600 hectares of land situated within Modderfontein (Johannesburg, Gauteng Province). The Target Asset is zoned as industrial space, retail office space, commercial and residential development. Heartland Business is a property development arm of Heartland based within Modderfontein (Johannesburg, Gauteng Province).

In terms of the Framework Agreement, the Sale of Business Agreement and the Sale of Immovable Property Agreement, Zendai Development and Zendai Investment will acquire the immovable property consisting of approximately 1600 hectares of land and buildings thereon located in Modderfontein together with the leases related to these buildings for investment purposes from AECI and ARE.

Zendai will further acquire the Heartland Business (Modderfontein) carried on by Heartland and buildings thereon, as a going concern, including the moveable and certain intangible assets used or owned by Heartland in relation to the normal, ordinary and regular operations of its business. Heartland's property holdings in KwaZulu-Natal and Western Cape will not form part of the transaction.

The Commission finds that there is a horizontal overlap in the activities of Zendai and Heartland Business in the development and sale of immovable properties. However, there is no geographic overlap as Zendai does not own or operate any form of commercial activities in South Africa.

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition as there is no geographic overlap in the activities of the merging parties.

The Commission's investigation has found that there is a restraint of trade which effectively prevents the AECI/Heartland Properties from competing with Zendai within the Modderfontein node for a period of five (5) years (reduced by agreement with the merging parties from 10 years). The Commission is of the view that given the fact that the restraint is not absolute in its application, as Heartland Properties will still be active in KZN and Western Cape, the period of the restraint is reasonable and justified. Therefore, the Commission is of the view that the restraint clause, as contained in the Framework Agreement, is unlikely to substantially prevent or lessen competition in the property development market.

However, to ensure that no changes are effected to the signed addendum, the Commission approves the proposed transaction subject to the merging parties not changing the signed addendum to the Framework Agreement which reduce the restraint period to 5 years.

The proposed transaction does not raise any public interest concerns and has a positive impact on public interest grounds as it is likely to result in job creation opportunities.

The Commission therefore approves the proposed merger subject to conditions in terms of Section 13(5)(b) (ii) of the Act, as amended.

CONDITIONS

1. Definitions

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

- 1.1 **"Approval Date"** means the date referred to in the Competition Commission's merger clearance certificate (Form CC 15);
- 1.2 **"Acquiring Firm"** means; Shanghai Zendai Property Limited
- 1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.4 **"Conditions"** means these conditions;
- 1.5 **"Merging Parties"** means the Zendai Group of companies and the AECI Group of companies;

- 1.6 **“Target property”** means the immovable property in the Modderfontein Area held by the AECI Group of companies.
- 1.7 **“The Heartland business”** means the property development business situated within Modderfontein.

2. Recordal

- 2.1 Clauses 2.1.42 of the Framework Agreement between the merging parties defines the restraint period as ten (10) years, the Long Stop Date, or if applicable, the Grace period or Extended Grace Period.
- Clause 17.1 contains the following restraint in favour of Zendai Property Development:
- “Each of the AECI parties undertake to the Zendai Parties that it shall not, during the restraint period, directly or indirectly be engaged in, invest or participate in, or own any direct or indirect interest or right in any entities, business or service providers identical, similar to or competitive with the business of property development. This restraint shall only apply to the Remaining Assets.”*
- 2.2 The Commission found the restraint period of ten years to be unduly long and likely to result in the removal of effective competition within the Modderfontein node. A shorter period of five years was proposed and agreed to by the merging parties.
- 2.3 A Signed addendum to the Framework Agreement has already been submitted by the merging parties to the Commission on 17 January 2014. The amendments are in accordance with the conditions below.

3. Conditions to the approval of the merger

- 3.1 The merging parties shall not amend the (revised) signed addendum to the Framework Agreement until termination of the restraint period.

4 Monitoring of compliance with the conditions

- 4.1 Within 1 month of the termination of the restraint period, the merged entity shall submit an affidavit confirming compliance with clause 3. above.

4.2 The merging parties shall submit the affidavit referred to in 4.1. above to mergerconditions@compcom.co.za

5. Termination of Condition

The Condition will terminate once the restraint of trade period of five years has ended.