
GENERAL NOTICES

NOTICE 199 OF 2015

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MERGENCE AFRICA PROPERTY INVESTMENT TRUST

AND

REDEFINE PROPERTIES LIMITED IN RESPECT TO A PORTFOLIO OF 6 (SIX) PROPERTY LETTING ENTERPRISES

CASE NUMBER: 2014OCT0579

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 17 October 2014, the Competition Commission (Commission) received a notice of an intermediate merger whereby the primary acquiring firm, Mergence Africa Property Investment Trust (Mergence), intends to acquire control over 6 retail properties (Target Properties) within the portfolio of Redefine Properties Limited (Redefine). Following implementation of the proposed transaction, Mergence will control over the Target Properties, in terms of section 12 (2)(a) of the Competition Act 89 of 1998, as amended (the Act).

The primary acquiring firm is Mergence, a firm incorporated in terms of the laws of the Republic of South Africa. Mergence is part of a group of firms that invest in real estate with a property portfolio comprising of retail, industrial and office properties located throughout South Africa.

The primary target firms are 6 retail centres, 4 of which are classified as convenience centres located in the suburbs of Soweto. The remaining 2 are classified as neighbourhood centres located in Hammanskraal. The 4 Target Properties located in Soweto are Proteapoint Shopping Centre, Dopsonpoint Shopping Centre, Pimville Square Shopping Centre and Meadowpoint Shopping Centre and the 2 centres located in Hammanskraal are Kudube Hammanskraal Centre and the Kopanong Shopping Centre.

The Commission considered the activities of the merging parties in the provision of rental space in convenience centres. The Commission found that a geographic overlap only exists within a 10 km radius of Meadowpoint Shopping Centre, situated in Meadowlands, Soweto. Post-merger the merged entity will have low market shares post-merger. Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rental space in convenience centres in Meadowlands Soweto.

The Commission identified a concern in the existence of exclusivity clauses in Lease Agreements of 5 of the Target Properties, namely, Meadowpoint Shopping Centre, Proteapoint Shopping Centre, Dopsonpoint Shopping Centre, Pimville Square Shopping Centre and Kubube Shopping Centre. The Lease Agreements are between Redefine and the respective anchor tenants. The Commission is of the view that the exclusivity clauses have the effect of precluding small businesses and competitors of the anchor tenants, in competing in the shopping centres, as it is unlikely that the anchor tenants will give permission to lease the space to its competitors. In order to alleviate the concerns, the Commission imposes the conditions contained in **Annexure A**.

The proposed transaction does not raise concerns on other public interest grounds.

The Commission therefore approves the proposed transaction with conditions in terms of section 14 (1) (ii) of the Act.

Annexure A

Mergence Africa Property Investment Trust / Redefine Properties Limited in respect to a portfolio of 6 (six) property letting enterprises

CC Case Number: 2014Oct0579

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 Commission's merger clearance certificate (Form CC 15);
- 1.2. **"Commission"** means the Competition Commission of South Africa, as established in terms of the Competition Act 89 of 1998 as amended;
- 1.3. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.4. **"Conditions"** means these conditions;
- 1.5. **"Dopsonpoint Shopping Centre"** means the buildings and improvements, including parking area, erected on the Property in accordance with the Shopping plans as contained in Shopping Centre Lease Agreement;
- 1.6. **"Exclusivity Clauses"** means the clauses in the Lease Agreements concluded between the landlord of the respective Target Properties and the anchor tenants;
- 1.7. **"Kudube Shopping Centre"** means the immovable property known as Hammanskraal Shopping Centre, situated on the corners of Douglas Rens Road, Tracey and Stanley Avenue, Erf 4456, Unit 4, Kudube Township, Hammanskraal;

- 1.8. **“Lease Agreements”** mean the lease agreements between the landlord of the respective centres and the anchor tenants collectively.
- 1.9. **“Meadowpoint Shopping Centre”** means the buildings and improvements, including parking area, erected on the Property in accordance with the Shopping plans as contained in the Meadowpoint Shopping Centre Lease Agreement;
- 1.10. **“Mergence”** means Mergence Africa Property Investment Trust, its subsidiaries, its controlling firms and any associated or affiliated firms;
- 1.11. **“Pimville Square Shopping Centre”** means the Shopping Centre situated in zone 7, Pimville, Soweto;
- 1.12. **Proteapoint Shopping Centre”** means the buildings and improvements, including parking area, erected on the Property in accordance with the Shopping plans as contained in the Proteapoint Shopping Centre Lease Agreement;

2. Recordal

- 2.1. The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rental space in convenience centres.
- 2.2. The Commission however, identified a public interest concern in the existence of exclusivity clauses in Lease Agreements of 5 of the Target Properties, namely, Meadowpoint Shopping Centre, Proteapoint Shopping Centre, Dopsonpoint Shopping Centre, Pimville Square Shopping Centre and Kudube Shopping Centre in favour of the anchor tenants. The Commission is of the view that the exclusivity clauses contained in the Lease Agreements raise a significant public interest concern in terms of section 12A (3) (a) and (c) of the Competition Act. In order to alleviate the concerns, the Commission imposes these conditions.

3. Conditions to the approval of the merger

- 3.1. Mergence or the relevant lessor in respect of each Lease Agreement undertakes to use reasonable commercial endeavours to negotiate with:

3.1.1. The anchor tenants in the utmost good faith within sixty (60) days of the Approval Date, to remove the exclusivity clause contained in the lease agreements.

3. Monitoring of compliance

- 3.2. Mergence shall provide the Commission with an affidavit setting out the outcome of its negotiations with the anchor tenants as contemplated in paragraphs 3.1 above, within 90 days of the Approval Date.
- 3.3. Mergence shall submit a copy of each new signed lease agreement to the Commission with the affidavit mentioned in paragraph 4.1 above, should it succeed in removing the exclusivity clause.
- 3.4. The said affidavit shall be attested to by a senior official within Mergence and must comply with the South African Legal Standards.
- 3.5. Any breach of these Conditions shall be dealt with in accordance with Rule 39 of the Competition Commission Rules.

All reports and correspondences in relation to these conditions must be submitted to the following email 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.