

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NO. 1834****4 March 2022****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****THE CAPITAL APARTMENTS AND HOTELS GROUP PROPRIETARY LIMITED****AND****IFA FAIR-ZIM HOTEL AND RESORT PROPRIETARY LIMITED (“ZIMBALI”)****CASE NUMBER: 2021APR0037**

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 abovementioned firms subject to conditions as set out below:

1. On 22 April 2021, the Competition Commission (the Commission) received notice of an intermediate merger whereby The Capital Apartments and Hotels Group (Pty) Ltd (The Capital Apartments) intends to acquire the entire issued share capital of IFA Fair-Zim Hotel and Resort (Pty) Ltd (Zimbali). Upon the implementation of the proposed transaction, The Capital Apartments will own and exercise control over Zimbali as envisaged by clause 12(2)(a) of the Competition Act 89 of 1998, as amended (the Act).

**The parties and their activities**

2. The primary acquiring firm is The Capital Apartments, a private company incorporated in accordance with the laws of the Republic of South Africa. The Capital Apartments is ultimately controlled by Intamarket Properties (Pty) Ltd (“Intamarket Properties”).
  3. The Capital Apartments operates nine hotels and self-catering apartments in the four-to-five-star category in Johannesburg, Pretoria, Cape Town, and Durban. The Capital Apartments
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also operates events and conferencing spaces in Johannesburg, Pretoria, and Durban. Relevant to the proposed transaction, The Capital Apartments operates The Capital Pearls, a hotel in Umhlanga, KwaZulu-Natal.

4. The primary target firm is the Zimbali, a private company incorporated in accordance with the laws of South Africa, which is currently in business rescue. Zimbali is controlled by IFA Hotels and Resorts Company KSCP ("IFA Hotels"). Zimbali has not operated since March 2020 and was placed into business rescue in September 2020 as a result of the impact of the Covid-19 pandemic on the hospitality industry. As at the date of this filing, Zimbali was still not operational.
5. IFA Hotels, the seller, is involved in the development of mixed-use hotel and residential resort projects as well as luxury leisure services. IFA Hotels operates a number of premium vacation and residential destinations in Dubai and Tanzania. In South Africa, IFA Hotels operated the Zimbali and the Legends Golf & Safari Resort. Zimbali operates a five-star hotel in Ballito, Zimbali Coastal Resort, Kwa-Zulu Natal. Zimbali also developed property for sale around the hotel complex. Traditionally, Zimbali has been a leisure focused hotel and is not focused on the corporate market, which is the focus of the Acquiring Firm.
6. As indicated above, Zimbali ceased operations in March 2020 as a result of the impact that the Covid-19 lockdown had on the hospitality industry and subsequently, in September 2020, went into voluntary business rescue.

### **Competition analysis**

7. The Commission considered the activities of the merging parties and found that the proposed transaction results in a competitive overlap in the market for the provision of short-term accommodation in four- and five-star hotel accommodation in Durban and the surrounding areas. The Commission found that the merged entity will have relatively low estimated market share in the market for the provision of short-term accommodation in four- and five-star hotel accommodation in Durban and the surrounding areas. The Commission further
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found that there are at least 10 (ten) four-star and five-star graded hotels which will continue to compete with the merged entity's hotels in Durban post-merger.

8. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in South Africa.

### **Public Interest**

9. The Commission notes that Zimbali is currently under business rescue and it has not been operating since March 2020. As such, the proposed transaction will result in the resumption of service at Zimbali and will save a number of jobs.
10. The Commission notes that the merging parties submit that the proposed transaction is likely to result in job duplications. However, the Commission notes that the employees that are likely to be affected are skilled or professional employees who appear to have transferable skills which are not specifically related to the hospitality industry.
11. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to raise significant employment or public interest concerns.
12. Despite the above, the Commission is of the view that the proposed transaction should be approved subject to the conditions that will limit the number of retrenchments that will take place within Zimbali post-merger and that record the merging parties' undertaking to offer the affected employees alternative future employment that may arise within the acquiring group post-merger. The conditions are contained in Annexure "A" of the report.

### **Conclusion**

13. In light of the above, the Commission therefore approves the proposed transaction subject to the conditions attached in Annexure "A".
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**ANNEXURE A****THE CAPITAL APARTMENTS AND HOTEL GROUP (PTY) LTD****AND****IFA FAIR-ZIM HOTEL AND RESORT (PTY) LTD****CASE NUMBER: 2021APR0037**

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**CONDITIONS**

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**1. DEFINITIONS**

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

- 1.1.1. **“Acquiring Firm”** or **“The Capital”** means The Capital Apartments and Hotel Group (Pty) Ltd;
  - 1.1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
  - 1.1.3. **“Affected Employees”** means the employees of the Target Firm that are likely to be retrenched as a result of the Merger, including any duplications;
  - 1.1.4. **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);
  - 1.1.5. **“Commission”** means the Competition Commission of South Africa;
  - 1.1.6. **“Conditions”** means the conditions set out herein;
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- 1.1.7. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.8. **“Implementation Date”** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.9. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.10. **“Merged Entity”** means the Acquiring Firm and the Target Firm;
- 1.1.11. **“Merger”** means the acquisition by Acquiring Firm of the entire issued share capital of the Target Firm;
- 1.1.12. **“Merging Parties”** means The Capital Apartments and Zimbali;
- 1.1.13. **“Target Firm” or “Zimbali”** means IFA Fair-Zim Hotel and Resort (Pty) Ltd; and
- 1.1.14. **“Tribunal”** means the Competition Tribunal of South Africa.

## 2. RECORDAL

- 2.1. On 22 April 2020, the Commission received notice of the Merger.
  - 2.2. From a competition perspective, the Commission found that the Merger is unlikely to substantially prevent or lessen competition.
  - 2.3. In relation to public interest, the Merging Parties submit that the Merger will result in a retrenchment of a certain number of employees due to a duplication of roles within the Merging Parties. The Merging Parties submit that although these duplicated roles have been identified, they undertake that the likely affected employees will be considered for alternative positions that may arise within the Merged Entity post-merger within the larger Capital group.
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- 2.4. In order to restrict the impact of the Merger on employment, the Merger is approved subject to these Conditions, which the Merging Parties have agreed to.

### **3. CONDITIONS**

- 3.1. Other than the Affected Employees, the Merging Parties shall not retrench any employees as a result of the Merger for a period of two (2) years from the Implementation Date as well as the period between the Approval Date and the Implementation Date.
- 3.2. For the sake of clarity, retrenchments for purposes of paragraph 3.1 above will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and/or (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- 3.3. The Merging Parties commit that for a period of two (2) years after the Implementation Date, they will give preference to the Affected Employees provided they have the requisite qualifications, skills, know-how and experience should there be available vacancies at the Merged Entity.
- 3.4. The Merging Parties shall use their best endeavours to communicate available vacancies at the Merged Entity to the Affected Employees for a period of two (2) after the Implementation Date.

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

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Merging Parties shall circulate a copy of the Conditions to their employees, the Affected
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Employees and/or their respective representatives within 5 Days of the Approval Date.

- 4.3. As proof of compliance thereof, the Merging Parties shall within 10 Days of circulating the Conditions, provide the Commission with an affidavit from a director employed by the Acquiring Firm and/or the business rescue practitioner of the Target Firm attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4. The Merged Entity shall submit an affidavit within 5 Days after the anniversary of the Implementation Date and for a period of 2 years, to the Commission and the DTIC, confirming compliance with clause 3 of the Conditions. This affidavit must be deposed to by a director of the Merged Entity.
- 4.5. Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.
- 4.6. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

## **5. VARIATION**

- 5.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

## **6. GENERAL**

- 6.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).
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Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.