

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5551

15 November 2024

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****KATLEHO PROPERTY INVESTMENTS PROPRIETARY LIMITED****AND****ASCENSION PROPERTIES PROPRIETARY LIMITED IN RESPECT OF 4 (FOUR)
PROPERTY RENTAL ENTERPRISES****CASE NUMBER: 2023NOV0007**

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 set out below:

Background

1. The primary acquiring firm is Katleho Property Investments Proprietary Limited ("Katleho Property Investments"), a South African firm. Katleho Property Investments is controlled by Heriot Investments Proprietary Limited. For purposes of the present transaction, Katleho Property Investments, all the firms controlling it and the firms controlled by its controlling entities, will collectively be referred to as the "Heriot Group".
2. Heriot Group owns a property portfolio comprising retail, industrial, office, residential and specialised properties, as well as vacant land in South Africa. Of relevance to the proposed transaction are the office properties of the Heriot Group in Johannesburg, South Africa.
3. The primary target firm is Ascension Properties Proprietary Limited ("Ascension") in respect of 4 (four) property rental enterprises ("Target Properties"). Ascension is duly represented by Phahlani Lincoln Mkhombo N.O. and Jacques Du Toit N.O., in their capacities as the duly appointed Joint Business Rescue Practitioners of Ascension (which is currently in business rescue). Ascension is wholly owned by Rebosis Property Fund Limited ("Rebosis") (in business rescue).

Competition assessment

4. The Commission found that the merger will result in an overlap in the provision of Grade A and B office property. However, the merger is unlikely to result in a substantial prevention or lessening of competition in any market.

Public interest assessment

5. The Commission found that the acquiring firm currently does not have any shareholding held by historically disadvantaged persons ("HDPs"). The Target Properties, by virtue of being indirectly owned by Rebosis, have a HDP shareholding of 62.28%. To address the dilution in HDP shareholding arising from the merger, the merging parties have agreed to implement an HDP transaction at the acquiring firm post-merger.
6. These commitments are set out in the conditions attached as **Annexure A** hereto.
7. The merger does not raise any further public interest issues.

CONDITIONS - ANNEXURE A
KATLEHO PROPERTY INVESTMENTS PROPRIETARY LIMITED
AND
ASCENSION PROPERTIES PROPRIETARY LIMITED ("ASCENSION") IN RESPECT OF
4 (FOUR) PROPERTY RENTAL ENTERPRISES
CASE NUMBER: 2023NOV0007

1. DEFINITIONS

In this document, the expressions used below will have the appropriate meaning assigned to them and the following and related expressions will bear the following meaning:

- 1.1. **"Acquiring Firm"** means Katleho Property Investments Proprietary Limited;
- 1.2. **"Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.3. **"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);
- 1.4. **"B-BBEE Newco"** means a newly formed entity for the purposes of the HDP Transaction which will hold **[CONFIDENTIAL]**% of the issued shares in the Acquiring Firm;
- 1.5. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.6. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.7. **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.8. **"Conditions"** means the conditions in this **Annexure A**;
- 1.9. **"Days"** means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.10. **"HDP"** means a historically disadvantaged person as contemplated in section 3(2) of the Competition Act;

- 1.11. **"HDP shareholders"** means the black males and females to be identified by the Merging Parties;
- 1.12. **"HDP Transaction"** means Katleho's **[CONFIDENTIAL]**% shareholder will be B-BBEE Newco upon Implementation Date;
- 1.13. **"Heriot Investments"** means the controller of the Acquiring Firm;
- 1.14. **"Implementation Date"** means the date on which the Merger is implemented by the Merging Parties;
- 1.15. **"Merger"** means the acquisition by the Acquiring Firm of the Target Firm;
- 1.16. **"Merging Parties"** means Acquiring Firm and the Target Firm;
- 1.17. **"South Africa"** means the Republic of South Africa;
- 1.18. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.19. **"Target Firm"** means Ascension Properties Proprietary Limited ("Ascension"), in respect of 4 (four) property rental enterprises; and
- 1.20. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

2. HDP OWNERSHIP TRANSACTION

- 2.1. Within 18 months of the Implementation Date, the Acquiring Firm shall implement the HDP Transaction in terms of which HDP Shareholders shall be allotted a **[CONFIDENTIAL]**% indirect interest in the Acquiring Firm, through B-BBEE Newco.
- 2.2. The HDP Shareholders are required to hold **[CONFIDENTIAL]**% indirect ownership in the Acquiring Firm, via B-BBEE Newco. **[CONFIDENTIAL]**.

3. MONITORING

- 3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 3.2. Prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall

include, but not be limited to, the identity of the HDP Shareholders, evidence that the HDP Shareholders are HDPs, and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.

- 3.3. The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.
- 3.4. Any person who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of clause **Error! Reference source not found.** below.

4. VARIATION OF CONDITIONS

- 4.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

5. APPARENT BREACH

- 5.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. GENERAL

- 6.1. All correspondence concerning the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

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.