

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 5660****13 December 2024****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****SPEAR REIT LIMITED****AND****THIRTEEN IMMOVABLE AND RENTAL ENTERPRISES LOCATED IN THE WESTERN CAPE
PROVINCE CONTROLLED BY EMIRA PROPERTY FUND LIMITED****CASE NUMBER: 2024MAY0008**

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. On 06 May 2024, the Competition Commission ("Commission") received notice of an intermediate merger wherein Spear REIT Limited ("Spear") intends to acquire thirteen immovable rental enterprises ("Target Properties") from Emira Property Fund Limited ("Emira"). Following the implementation of the proposed transaction, Spear will exercise sole control over the Target Properties.

Parties and their Activities

2. The primary acquiring firm is Spear, a South African firm. Spear is listed as a Real Estate Investment Trust ("REIT") on the Main Board of the JSE Limited ("JSE") and is not controlled, directly or indirectly, by any firm. Spear is a diversified property ownership firm, with a portfolio of 28 immovable properties and rental enterprises. Spear's properties are located in the Western Cape.
3. The primary target firms are the Target Properties controlled by Emira. Emira is listed as a REIT on the Main Board of the JSE. Emira is controlled by Castlevue Property Fund Limited ("Castlevue"). Emira invests in a varied portfolio of commercial, industrial, and retail assets.

The Target Properties are Light Industrial Properties, Grade A Office Properties and two Specialist Medical Retail Centres.

Competition Assessment

4. The Commission considered the activities of the merging parties and found that the proposed transaction result in a horizontal overlap in the market for the provision of light industrial and A grade office space property in, Brackenfell, Epping and Cape Town CDB. The Commission however found that the proposed transaction is unlikely to substantially prevent competition in any market in South Africa.
5. As such, the Commission is of the view that the proposed transaction is unlikely to substantially prevent competition in any market in South Africa.

Public interest

6. To address the Commission's public interest concerns, the parties tendered a number of commitments as set out in the conditions set out in Annexure A **hereto**.

Conclusion

7. The Commission approves the proposed transaction subject to the attached conditions.

ANNEXURE A
CONDITIONS

SPEAR REIT LIMITED
AND
THIRTEEN IMMOVABLE AND RENTAL ENTERPRISES LOCATED IN THE WESTERN CAPE
PROVINCE ULTIMATELY CONTROLLED BY EMIRA PROPERTY FUND LIMITED
CASE NUMBER: 2024MAY0008

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:

- 1.1. **“Acquiring Firm”** means Spear REIT Limited;
- 1.2. **“Approval Date”** means the date the Commission issues a clearance certificate (Notice CC15);
- 1.3. **“Commission”** means the Competition Commission of South Africa;
- 1.4. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.5. **“Competition Act”** means the Competition Act No 89 of 1998, as amended;
- 1.6. **“Conditions”** means these conditions;
- 1.7. **“Day”** means any business day, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.8. **“Emira”** means Emira Property Fund Limited, a Real Estate Investment Trust incorporated in accordance with the laws of South Africa with registered business address located at 1st Floor, Block A, Knightsbridge, 33 Sloane Street, Bryanston, Gauteng Province;
- 1.9. **“HDPs”** means historically disadvantaged persons, as contemplated in section 3(2) of the Competition Act;
- 1.10. **“HDP Employee”** means a worker who is a HDP as contemplated in section 3(2) of the Competition Act;

- 1.11. **“HDP Transaction”** means the increase in HDP ownership to 31.4% of the total issued share capital in the Acquiring Firm within 36 (thirty-six) months from Implementation Date;
- 1.12. **“HDP Suppliers”** means suppliers which are controlled by HDPs as to, at least, 50% plus 1 share;
- 1.13. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented;
- 1.14. **“Merger”** means the acquisition of control over the Target Properties by the Acquiring Firm;
- 1.15. **“Merging Entity”** means collectively the Acquiring Firm and the Target Properties;
- 1.16. **“Target Properties”** means thirteen immovable and rental enterprises located in the Western Cape Province which, prior to the Merger, are all ultimately controlled by Emira;
- 1.17. **“Target Properties Expenditure”** means the procurement of (i) cleaning services, (ii) day to day electrical services (iii) pest control, (iv) roof and waterproofing, and (v) fire equipment, maintenance and repair services by the Target Properties; and
- 1.18. **“Tribunal”** means the Competition Tribunal of South Africa.

2. EMPLOYMENT

- 2.1. As at the Approval Date, the Acquiring Firm has 19 HDP employees which equates to 63% of the employees of the Acquiring Firm.
- 2.2. Within a period of 1 (one) year following the Implementation Date, the Acquiring Firm undertakes to increase the number in clause 2.1. above to 21 HDP employees or 65% of the Acquiring Firm's employees.

3. HDP TRANSACTION

- 3.1. Spear shall, within 36 (thirty-six) months of the Implementation Date, implement the HDP Transaction.

4. HDP EDUCATION INITIATIVE

- 4.1. Spear commits to increase its current bursary contributions to HDPs from R50 000 per annum to R150 000 per annum for three years following the Implementation Date.

5. HDPs PROCUREMENT

- 5.1. The Acquiring Firm commits to procure 100% of the Target Properties' Expenditure from HDP Suppliers for the period of 3 (three) years from the Implementation Date. For the avoidance of doubt this includes the procurement of the following services: cleaning, day-

to-day electrical, pest control services, roofing and waterproofing, and fire equipment, maintenance and repair services.

6. MONITORING

6.1. The Merging Entity shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.

6.2. Prior to the implementation of the HDP Transaction, the Acquiring Firm shall provide the Commission with details of the HDP Transaction in writing. These details shall set out:

6.2.1 the structure of the HDP Transaction;

6.2.2 the identities of the HDP shareholder/s;

6.2.3 evidence that the prospective participants to the HDP Transaction are HDPs.

6.2.4 confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.

6.3. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval. The Commission will provide its written decision within 30 Days of written notification, or such other period as may be agreed in writing.

6.4. Within 10 (ten) Days of having complied with clauses 2. 3. 4, and 5 above, Spear shall submit an affidavit deposed to by a Director of Spear, attesting to the compliance with the clauses.

6.5. The Commission may request such additional information from the Merging Entity which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

7. APPARENT BREACH

7.1. 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 Entity of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 39 of the Commission Rules.

8. VARIATION

8.1. The Merging Entity may at any time, on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the Conditions, the Merging Entity shall apply to the Tribunal,

on good cause shown and on notice to the Commission, for the Conditions to be waived, relaxed, modified and/or substituted.

9. GENERAL

All correspondences in relation to the Conditions must be submitted to the following email 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