



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO077Aug22

In the matter between:

The Competition Commission of South Africa

Applicant

And

QCP1 Investments (Pty) Ltd and Cape Trans
Property Investments (Pty) Ltd

Respondent

Panel: I Valodia (Presiding Member)
Y Carrim (Tribunal Member)
T Vilakazi (Tribunal Member)

Heard on: 22 August 2022

Decided on: 22 August 2022

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission And QCP1 Investments (Pty) Ltd and Cape Trans Property Investments (Pty) Ltd annexed hereto.

Signed by: Imraan Valodia
Signed at: 2022-08-22 14:04:17 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

**Presiding Member
Prof. Imraan Valodia**

**22 August 2022
Date**

Concurring: Ms Yasmin Carrim And Dr. Thando Vilakazi

RECEIVED

By Themba Chauke at 12:32 pm, Aug 03, 2022

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No:

CC Case No: 2022Feb0046

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

QCP1 INVESTMENTS (PTY) LTD

First Respondent

CAPE TRANS PROPERTY INVESTMENTS (PTY) LTD

Second Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D OF THE ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED, BETWEEN THE COMPETITION COMMISSION, QCP1 INVESTMENTS (PTY) LTD AND CAPE TRANS PROPERTY (PTY) LTD IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 13A(3) OF THE COMPETITION ACT, 1998.

1. PREAMBLE

The Competition Commission ("Commission") and QCP1 Investments Proprietary Limited ("QCP1 Investments"), and Cape Trans Property Investments Proprietary Limited ("Cape Trans") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this settlement agreement as a consent order of the Tribunal in terms of section 49D read with sections 58(1)(b) and 59(1)(d) of the






Competition Act, on the terms set out below.

2. DEFINITIONS AND INTERPRETATION

2.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

- 2.1.1 **“Agreement”** means this agreement duly signed and concluded between the Commission and QCP1 Investments, and Cape Trans that will be referred to the Tribunal for confirmation as a consent order;
- 2.1.2 **“Cape Trans”** means Cape Trans Property Investments (Pty) Ltd. Cape Trans is incorporated in terms of the laws of South Africa, with registration number 1992/003793/07 and has its principal place of business at 302 Satbel Centre , 2 De Smidt Street, Cape Town, South Africa;
- 2.1.3 **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 2.1.4 **“Competition Act”** means the Competition Act 89 of 1998, as amended;
- 2.1.5 **“Commissioner”** means the Competition Commissioner of South Africa, appointed in terms of section 22 of the Competition Act;
- 2.1.6 **“Confirmation Date”** means the date upon which the Tribunal confirms this Agreement as a consent order in terms of section 49D, read with section 58(1)(b) of the Act;

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- 2.1.7 **"Days"** means any business day being a day which is not a Saturday, Sunday or an official holiday in South Africa;
- 2.1.8 **"Merging Parties"** means Cape Trans (Pty) Ltd and QCP1 Investments (Pty) Ltd;
- 2.1.9 **"Parties"** means the Commission and the Respondents collectively;
- 2.1.10 **"QCP1 Investments"** means QCP1 Investments Property Limited, a company duly incorporated in terms of the laws of South Africa, with registration number: K2013054311. QCP1 is jointly controlled by [REDACTED] and by [REDACTED] through [REDACTED] a [REDACTED] [REDACTED] QCP1 Investments has its principal place of business at ground floor Belmont Square, Belmont Road, Rondebosch, Cape Town, South Africa;
- 2.1.11 **"Respondents"** means the first to the second Respondents being QCP1 Investments and Cape Trans; and
- 2.1.12 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act, with its principal place of business at 1st Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

3. RECORDAL





This consent agreement relates to the transaction between QCP1 Investments and Cape Trans which was implemented on the 23 February 2017 without the approval of

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the Commission.

4. BACKGROUND

- 4.1 On 18 February 2022, the Commission received notice of a prior implemented intermediate merger in terms of which QCP1 Investments, acquired full control of a rental enterprise known as 47 Somerset Road, Cape Town, Western Cape from Cape Trans in 2017.
- 4.2 QCP1 Investments, is a special purpose vehicle set up for the purposes of owning property directly and/or investing in a property-owning company. Shares in QCP1 Investments were issued to [REDACTED] and [REDACTED] [REDACTED] on 19 January 2017 and the property was transferred on 23 February 2017.
- 4.3 The Respondents voluntarily approached the Commission and filed the transaction on 18 February 2022. The Respondents advised the Commission that this transaction occurred within the property industry which is a highly fragmented and unconcentrated sector with hundreds of market players.
- 4.4 In the merger filing, the Respondents acknowledged that the transaction was a notifiable intermediate merger, and that their conduct of implementing the merger without the required prior approval constitutes an implementation of a merger without the Commission's approval in contravention of section 13A of the Act.
- 4.5 The Commission assessed and classified the merger as an intermediate merger and approved it without conditions on 12 April 2022.

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5. THE COMMISSION'S FINDING

5.1 The Commission investigation found that QCP1 Investments is a special purpose vehicle set up for the purposes of owning property directly and/or investing in a property-owning company. The investigation revealed that on 23 February 2017, QCP1 Investment acquired full ownership and control of property known as, 47 Somerset Road Green Point, from Cape Trans. This transaction constituted an intermediate merger and was notifiable in terms of section 13A of the Act. The respondents implemented this transaction without prior approval and therefore contravened section 13A(3) of the Act .

5.2 The Commission assessed the transaction and approved the intermediate merger without conditions on 12 April 2022.

6. ADMISSION

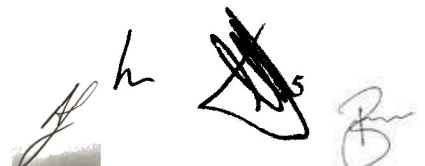
The Respondents admit they have contravened section 13A(3) of the Act by implementing the transaction prior to the approval of the transaction by the Commission.

7. AGREEMENT REGARDING FUTURE CONDUCT

7.1 The Respondents agree and undertake to:

7.1.1 notify the Commission of any future transactions that constitute a notifiable merger as defined in section 12(1) read together with section 11(5) of the Act;

7.1.2 refrain from engaging in prior implementation of notifiable mergers in contravention of section 13A(3) of the Act;



7.1.3 develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, and executive directors do not engage in future contraventions of the Act; and

7.1.4 submit a copy of such compliance programme to the Commission within 120 days of the date of confirmation of the Agreement as an order by the Tribunal.

8. ADMINISTRATIVE PENALTY

8.1 Having regard to the provisions of section 59(1)(d), 59(2) and 59(3) of the Act, the Respondents accept that they are jointly and severally liable for the payment of the administrative penalty, the one paying, the other to be absolved.

8.2 The Respondents have agreed that QCP1 Investments will pay an administrative penalty in the total amount of R2 000 000.00 (Two Million Rand). This penalty does not exceed 10% of the respondents' annual turnover.

8.3 The Respondents shall pay the administrative penalty within 30 Days from the date of confirmation of this Agreement by the Tribunal.

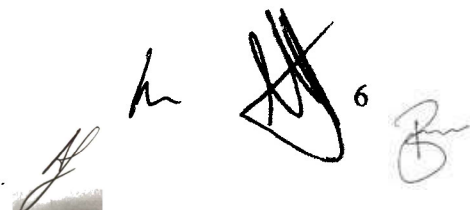
8.4 The administrative penalty will be paid into the Commission's bank account. The Commission's banking details are as follows:

Bank: ABSA Bank

Name of Account: The Competition Commission

Branch Name: Pretoria

Branch Code: 632005

Handwritten signatures and initials at the bottom right of the page. There are four distinct marks: a signature on the left, a large 'h' in the middle, a signature with a circled '6' to its right, and another signature on the far right.

Account Number: 40-8764-1778

Payment Ref: 2022Feb0046/QCP1/CAPE TRANS

8.5 The administrative penalty will accrue interest in terms of the provisions of section 80(1) of the Public Finance Management Act No. 1 of 1999 for any amounts not paid within a year from the date of confirmation of this Agreement by the Tribunal.

8.6 The Commission will pay the administrative penalty amount into the National Revenue Fund in compliance with section 59(4) of the Competition Act.

9. FULL AND FINAL SETTLEMENT

This Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and the Respondents relating to the contravention of section 13A(3) of the Act by the Respondents that were subject of the Commission's investigation under CC case number: 2022Feb0046.

Dated and signed at Cape Town **on the** 22nd **day of** July **2022**



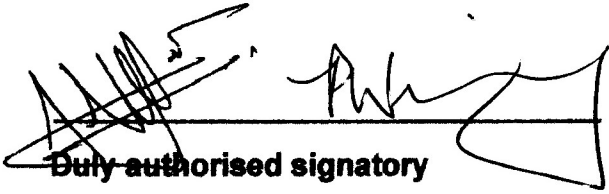
Duly authorised signatory
QCP1 Investments (Pty) Ltd

Name in full: Theophilus Andrew John Spooner

Authority: Director



Dated and signed at Cape Town on the 18th day of July 2022



Duly authorised signatory
Cape Trans Property (Pty) Ltd

Name in full: Michael Walters / Pam WISENBERG

Authority: C.F.O. / Director

Dated and signed at Johannesburg on the 02nd day of August 2022

For the Commission



Tembinkosi Bonakele
The Commissioner: Competition Commission

