



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: LM092Aug24

In the matter between:

Plett Market Square Properties (Pty) Ltd

Primary Acquiring Firm

And

Market Square Shopping Centre C/O Emira
Property Fund Ltd

Primary Target Firm

Panel:	T Vilakazi (Presiding Member) I Valodia (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	15 October 2024
Last submission on:	28 October 2024
Decided on:	28 October 2024

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Signed by: than
Signed at: 2024-10-28 14:51:47 +02:00
Reason: Witnessing than

Thando Vilakazi

**Presiding Member
Prof. Thando Vilakazi**

28 October 2024

Date

Concurring: Prof. Imraan Valodia and Adv. Geoff Budlender SC



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 28 October 2024

To : Adams and Adams Attorneys

Case Number: LM092Aug24

Plett Market Square Properties (Pty) Ltd And Market Square Shopping Centre C/O Emira Property Fund Ltd

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **14 August 2024** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

Tebofo Mphahlele

ANNEXURE A

PLETT MARKET SQUARE PROPERTIES PROPRIETARY LIMITED

AND

MARKET SQUARE SHOPPING CENTRE C/O EMIRA PROPERTY FUND LTD

CASE NUMBER: LM092Aug24

CONDITIONS

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 Plett Market Square Properties (Pty) Ltd (“PMSP”);
- 1.2. **“Approval Date”** means the date referred to on the Tribunal's merger clearance certificate (Notice CT 10), being the date on which the Merger is conditionally approved in terms of the Competition Act;
- 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. **“HDP”** means historically disadvantaged persons as defined in section 3(2) of the Competition Act;
- 1.9. **“HDP-owned”** means owned as to, at least, 50% plus 1 share by HDP(s);
- 1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented;

- 1.11. **“Lease Agreement”** means the agreement of lease entered into between Prime View Properties (Pty) Ltd and Woolworths (Pty) Ltd in respect of the Target Property, dated 25 March 2003;
- 1.12. **“Merger”** means the acquisition of the Target Property by PMSP;
- 1.13. **“Merging Parties”** means collectively the Acquiring Firm and the Sellers, Emira Property Fund Ltd;
- 1.14. **“Target Property”** means Market Square Shopping Centre;
- 1.15. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act; and
- 1.16. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

2. HDP PROCUREMENT SPEND

- 2.1. PMSP undertakes to procure 20 (twenty) computers on behalf of Formosa Primary School with (an) appropriate HDP-owned service provider(s) to the value of no less than R [REDACTED], excluding VAT (including installation), within 24 (twenty-four) months of the Implementation Date.
- 2.2. PMSP further undertakes to procure the services of (an) appropriate HDP-owned service provider(s) to conduct the refurbishment of all of Formosa Primary School’s ablution facilities to the value of no less than R [REDACTED], excluding VAT, within 24 (twenty-four) months of the Implementation Date.
- 2.3. For the avoidance of doubt, PMSP must disburse the amounts in clauses 2.1 and 2.2 within 24 (twenty-four) months of the Implementation Date.

3. HDP PROCUREMENT CONDITION

- 3.1. In March 2028, upon expiry of the existing contract in respect of the provision of security services at the Target Property, PMSP undertakes to outsource security services at the Target Property to HDP-owned service providers for a period of 3 (three) years.
- 3.2. Upon expiration of the 3 (three) year period indicated at clause 3.1, PMSP shall endeavour to give preference to HDP-owned service providers when sourcing security service providers at the Target Property.

4. EXCLUSIVITY CLAUSE

- 4.1. PMSP undertakes to use reasonable commercial endeavours to negotiate with Woolworths (Pty) Ltd, in good faith, when renewing the Lease Agreement to remove the exclusivity provisions set out in clause 12.5 of the Lease Agreement (“the Exclusivity Clause”).

5. MONITORING

- 5.1. PMSP will provide the Commission with an affidavit setting out the outcome of its negotiations with Woolworths (Pty) Ltd as contemplated in clause 3 above, within 1 (one) month of the renewal of the Lease Agreement between Woolworths (Pty) Ltd and PMSP.
- 5.2. A copy of the new signed Lease Agreement shall be submitted to the Commission, should PMSP succeed in removing the Exclusivity Clause, within a month of signature of the new Lease Agreement.
- 5.3. PMSP will, within 10 (ten) Days of the HDP procurement spend in relation to the computers (as envisaged in clause 2 above), submit an affidavit deposed to by its director in relation to compliance with these Conditions.
- 5.4. PMSP will, within 10 (ten) Days of the end of 24 (twenty-four) months following the Implementation Date, submit a further affidavit deposed to by its director, confirming compliance with these Conditions.

- 5.5. PMSP shall submit a report to the Commission indicating compliance with respect to clause 3.1 within 30 (thirty) Days of the expiration of the contract with the current service provider and shall continue to submit such a report annually for a period of 3 (three) years thereafter. This report shall be accompanied by an affidavit, attested to by a senior official of PMSP, confirming the accuracy of the report.
- 5.6. The Commission may request any additional information from PMSP which the Commission, from time to time, may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

6. APPARENT BREACH

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 PMSP of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. VARIATION

The Merging Parties and/or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified or substituted.

8. GENERAL

All correspondences in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.