

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM006Apr22

In the matter between:

U Reit Collins Proprietary Limited

**Primary Acquiring Firm**

and

Collins Property Projects Proprietary Limited

**Primary Target Firm**

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Panel : Y Carrim (Presiding Member)  
: E Daniels (Tribunal Member)  
: A Ndoni (Tribunal Member)

Heard on : 20 May 2022

Order issued on : 20 May 2022

Reasons issued on : 25 May 2022

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### REASONS FOR DECISION

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- [1] On 20 May 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the prior implemented large merger between U Reit Collins Proprietary Limited (“U Reit”) and Collins Property Project Proprietary Limited (“Collins”). In terms of the transaction, U Reit subscribed for 25.7% of the issued share capital in Collins, thus acquiring joint ownership thereof. The transaction was implemented by the merging parties in and around May 2019 (“Implementation Date”).
- [2] The merging parties failed to notify the merger in accordance with section 13A (3) of the Competition Act.<sup>1</sup> This prior implementation has been notified to the Competition Commission (“Commission”), as a result the Commission is currently engaging the merging parties on a settlement agreement relating to their failure to notify the transaction as required by the Competition Act.<sup>2</sup>
- [3] Prior to the Implementation Date, U Reit was active in the leasing of retail and residential properties located in and around South Africa. Collins, on the other hand, held a portfolio of retail, office, and industrial properties primarily in Gauteng, Eastern Cape, Northwest, and KwaZulu Natal provinces.

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<sup>1</sup> Competition Act No.89 of 1998, as amended.

<sup>2</sup> Merger Recommendations, p9 of 25, para [27].

## Competition Assessment

- [4] The Commission considered the activities of the merging parties at the Implementation Date and found that both parties were active in the provision of rentable retail space in convenience shopping centres (neighbourhood) and comparable shopping centres (community shopping centres). Consequently, there was a product overlap between the activities of the merging parties in the provision of comparative shopping centres and convenience shopping centres.
- [5] When assessing the effect of the transaction on the provision of convenience shopping centres, the Commission considered and relied upon Tribunal precedent in *Fortress Income Fund Limited and Capital Property Fund Limited*,<sup>3</sup> where the Tribunal accepted the Commission's view that a 10 km radius could be used in assessing competition between various regional shopping centres or convenience shopping centres. In the implemented transaction, the Commission found that the merging parties' convenience shopping centres are located further than 10km from each other. Therefore, there is no geographic overlap between the activities of the merging parties in respect of the provision of convenience shopping centres.
- [6] In relation to the assessment of the geographic overlap in the provision of comparative shopping centres, the Commission considered and relied upon Tribunal precedent in *Growthpoint Properties Ltd and Redefine Properties Limited*,<sup>4</sup> where the Tribunal agreed with the Commission that a 15-kilometer radius could be used to assess competition between distinct comparative centres. The Tribunal further held that comparative centres within a 15-kilometer radius would constrain each other for competition law purposes.<sup>5</sup> In the implemented transaction, the Commission found that U Reit did not own any comparative shopping centre located within 15km of Collins' comparative shopping centre. As a result, there was no geographic overlap between the activities of the merging parties in respect of the provision of comparative shopping centres.
- [7] No third parties raised concerns regarding the effects of the implemented transaction on competition.

## Public Interest

### *Effect on employment*

- [8] The merging parties submitted that the implemented transaction did not result in any negative effect on employment and in particular, there were no transaction specific retrenchments or job losses. The Commission engaged the merging parties' employee representatives and confirmed that no concerns were raised by employees in relation to the transaction.<sup>6</sup> The Commission concluded that the implemented merger is unlikely to result in employment concerns.
- [9] We concur with the findings.

### *Effect on the spread of ownership*

- [10] The merging parties made no submissions in respect of promoting a greater spread of ownership for Historically Disadvantaged Persons ("HDPs") and an Employee Share Ownership Plan ("ESOP"). Furthermore, the Commission noted that the merging parties do not have any shareholdings by HDPs or ESOP.

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<sup>3</sup> *Fortress Income Fund Limited and Capital Property Fund Limited*, Case No: LM064Jul15.

<sup>4</sup> *Growthpoint Properties Ltd and Redefine Properties Limited*, Case No: LM038Jun13.

<sup>5</sup> Merger Recommendations, p20 of 25, para [28].

<sup>6</sup> Merger Record, p957 of 960, para [3].

- [11] Given that the transaction was implemented prior to the Competition Amendment Act,<sup>7</sup> being signed into law, the Commission did not assess the effect of the implemented transaction on the promotion of a greater spread of ownership for HDPS and ESOP.
- [12] Having considered the above, the Tribunal concludes that the implemented transaction does not raise any public interest concerns.

### **Conclusion**

- [13] We find that the implemented transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the implemented transaction raises no public interest concerns.

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**Mr Enver Daniels**

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**25 May 2022**

**Date**

**Ms Yasmin Carrim and Ms Andiswa Ndoni concurring**

Tribunal Case Managers: Matshidiso Tseki and Sinethemba Mbeki

For the Merging Parties: Susan Meyer and Preanka Gounden of Cliffe Dekker Hofmeyr Inc.

For the Competition: Innocent Mhlongo and Themba Mahlangu

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<sup>7</sup> Competition Amendment Act No.18 of 2018.