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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM218Jan16

In the matter between:

Southern Sun Hotels (Pty) Ltd	Primary Acquiring Firm
and	
Hospitality Property Fund Limited	Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Imraan Valodia (Tribunal Member)
	: Mondo Mazwai (Tribunal Member)
Heard on	: 10 August 2016
Order Issued on	: 10 August 2016
Reasons Issued on	: 09 November 2016

Reasons for Decision

Approval

[1] On 10 August 2016, the Competition Tribunal ("Tribunal") conditionally approved a large merger between Southern Sun Hotels (Pty) Ltd and Hospitality Property Fund Limited. The conditions are attached hereto as "A".

[2] The reasons for approving the proposed transaction follow.

Background to the transaction

[3] On 10 May 2016 the Competition Commission ("Commission") filed its recommendation with us, approving the proposed transaction subject to conditions

("the initial conditions"). These conditions attempted to address two potential competition concerns which were raised by third party Hotel Operators[1] during the Commission's investigation, i.e. input foreclosure and information exchange. In particular, the initial conditions provided that upon implementation, the merging parties would ensure that for as long as the Target Firm has lease agreements with Hotel Operators:

- The operations of the Target Firm are kept separate from the operations of the Acquiring Firm. This would include physical separation and the separation of information technology systems;
- Any director appointed to the board of the Acquiring Firm cannot be appointed to the board of the Target Firm and/or be invited and/or attend meetings of the board of the Target Firm and/or management committee(s) of the Target Firm;
- The employees, management and executive and non-executive directors of the Acquiring Firm are not involved in the operations of the Target Firm and/or attend any meeting relating to the operations of the Target Firm;
- The employees involved in the business operations, management and executive and non-executive directors of the Target Firm shall sign strict confidentiality undertakings that ensure that no Competitively Sensitive Information is made available to any of the Acquiring Firm's employees, management and any executive and non-executive directors;
- The employees involved in the business operations of the Acquiring Firm, specifically the hotel business of the Acquiring Firm, do not have access to the information technology systems of the Target Firm which may contain Competitively Sensitive Information;
- In the event that the Acquiring Firm assumes control of the operations of the hotel operators owned by the Target Firm, it shall notify the transaction to the Commission in terms of Rule 27 of the Competition Commission Rules irrespective of the category of the merger as defined in the Act.

[4] The Commission noted that the merging parties had not been in agreement with these conditions and submitted a set of undertakings for the Commission's consideration. However, the Commission deemed the measures proposed to be insufficient to address the concerns raised.

[1]Third party hotel operator refers to any firm that currently leases a hotel or hotels from the Target Firm and operates a hotel or hotels belonging to the Target Firm.

[5] Given that the merging parties opposed the initial conditions, the Tribunal convened a pre-hearing on 18 May 2016 to determine dates for the further conduct of proceedings as well as to determine whether third party hotel operators who had been contacted during the Commission's investigation, intended to intervene in these proceedings.

[6] During the course of the pre-hearing, three third party hotel operators, Marriott International Inc ("Marriott International"), Tourvest Holdings Proprietary Limited ("Tourvest") and ARgute Consulting (Pty) Ltd ("ARgute Consulting"), appeared before the Tribunal indicating an intention to participate. The merging parties indicated that the third party hotel operators must formally apply to intervene in the proceedings. As such, the Tribunal directed that a formal intervention application be filed.

[7] On 25 May 2016, Marriott International informed the Tribunal that it no longer sought to formally intervene but would continue to make itself available to assist the Competition Tribunal or Competition Commission to the extent that it was needed.

[8] In line with the dates set aside for filing, Tourvest and ARgute Consulting filed their intervention applications. However Tourvest subsequently withdrew its intervention application on 14 June 2016, while ARgute Consulting withdrew its intervention application on 15 June 2016, the day of the interlocutory hearing.

[9] Given the relatively short notice of withdrawal, the Tribunal requested that the interveners still make representation at the hearing in order to provide some insight into the decision to withdraw. At the hearing Tourvest stated that its decision to withdraw its intervention was due to its concerns (regarding information exchange and the possibility of the early termination of leases) having been addressed by the merging parties. ARgute Consulting also indicated that it no longer wished to pursue the intervention application. The timetable for the conduct of proceedings was accordingly adjusted, and the number of hearing days was reduced.

[10] On 21 July 2016, the Tribunal convened a telephonic pre-hearing to discuss hearing dates. The merging parties and the Commission advised that they were engaged in negotiations regarding the initial conditions. The parties submitted that the only issue that would be considered in the revised conditions would be that of information exchange.

[11] On 04 August 2016, the Tribunal was informed that the merging parties and the Commission had reached agreement on the relevant conditions in relation to the approval of the proposed transaction and a revised set of conditions was filed with the Tribunal.[2]

[12] On 10 August 2016, the Tribunal heard the matter and subsequently approved the proposed transaction subject to the revised conditions. Our reasons therefore follow.

Parties to the transaction

Primary acquiring firm

[13] The primary acquiring firm is Southern Sun Hotels (Pty) Ltd ("SSH"), a firm incorporated according to the company laws of the Republic of South Africa. SSH is wholly owned by Tsogo Sun Holdings Limited ("Tsogo").

[14] Tsogo Investment Holding Company (Pty) Ltd ("Tsogo Investment") holds approximately 47.6% of the share equity in Tsogo. Tsogo Investments is ultimately controlled by Hosken Consolidated Investments Limited.

[15] SSH operates various hotels such as Southern Sun, Garden Court, SunSquare, Stay Easy and Sun1. Relevant for the proposed transaction are the hotel activities undertaken by SSH.

Primary target firm

[16] The primary target firm is Hospitality Property Fund Limited ("HPF"), a firm incorporated according to the company laws of the Republic of South Africa. HPF is a public company listed on the Johannesburg Securities Exchange Limited and is accordingly not controlled by any shareholder.

[17] HPF is a Real Estate Investment Trust ("REIT") which offers investors a unique investment vehicle in the hospitality sector through the ownership of select hotel and leisure properties.

[18] HPF is not a hotel operator but merely owns the premises from which these hotel and leisure businesses are conducted. In essence, its business is to lease these properties

[2] See Letter to the Tribunal dated 04 August 2016

to hotel and leisure operators, who in turn operate the hotel and leisure business themselves.

Proposed transaction and rationale

[19] In terms of the proposed transaction, in exchange for the issue of HPF ordinary shares to SSH, HPF will acquire from SSH a portfolio of 10 hotel properties and each of the property-letting businesses conducted in respect of such properties, through the acquisition of 100% of the issued shares of a newly incorporated company which will own the Tsogo Portfolio of hotel properties, referred to as ResHub.

[20] Following the implementation of the proposed transaction, SSH will increase its shareholding from approximately 27% to hold more than 50% of HPF's ordinary shares.[3]

[21] Tsogo submits that the proposed transaction presents an attractive opportunity for Tsogo to develop its business in line with its property strategy.

[22] The primary target firm submits that the proposed transaction will allow it to acquire successful and established hotel properties.

Impact on competition

[23] The Commission considered the activities of the merging parties and found that there is a vertical overlap in the activities of the merging parties given that SSH currently leases hotels from HPF and other market participants.

[24] In addition the Commission also identified a potential horizontal overlap that could arise in the hotel operation market as post-merger SSH would be in a position to decide whether it wanted to operate the acquired hotels which are currently operated by third parties.

[25] The Commission thus defined the market in this merger as the upstream market for the provision of hotel property. It noted that although both Southern Sun and HPF own hotel properties, Southern Sun was not a competitor of HPF in the upstream market in the traditional sense as Southern Sun does not lease the hotels on its properties to third parties, but operates them itself. HPF, on the other hand leases the

[3] See Transcript page 4 line 10-11.

hotels on its properties to third parties who operate hotel businesses (defined by the Commission as short-term accommodation) in competition with Southern Sun.

[26] For that reason, the Commission defined the relevant mark as the upstream market for the provision of hotel property, and emphasised that it assessed the competition effects of the proposed transaction in the upstream market, not the acquisition of management or operational control of the hotel properties at the downstream level. The Commission submitted that the latter would require separate notification to the Commission, should Southern Sun acquire management control of HPF hotels leased to third parties. Consistent with this approach, the Commission, in its initial conditions, required the acquiring firm to notify it, in the event that the acquiring firm assumes control of HPF's hotel operations currently leased to third parties.

[27] However, for purposes of assessing the likely effect of the horizontal overlap and determining market shares, the Commission used the downstream short-term accommodation market as a proxy for market share analysis because it was unable to acquire data to calculate market shares in the upstream market. The market share provided in the downstream market provided an indication of the relative market power enjoyed by the merged entity and what effect that would have on the ability and incentive to foreclose competitors in the downstream market.

[28] The Commission estimated markets shares of the merging parties and their competitors in the market for the provision of hotel accommodation in the Sandton, Durban, Cape Town, Port Elizabeth and Drakensberg areas, in both the broader and narrower markets. In all the markets considered, the Commission's assessment identified a number of competing firms offering hotel accommodation such as Marriott/The Protea Group, Holiday Inn, Premier Group, Legacy Hotels, City Lodge and Three Cities, which would continue to pose a competitive constraint on the merging parties' hotels post-merger. In addition, customers of the merging parties including the travel agencies confirmed the presence of sufficient alternative players offering hotels in all areas where the merging parties' hotels are located. The Commission also found evidence that there were new and planned hotel developments currently underway in some of the markets that would increase the number of rooms available.

[29] However during the Commission's investigation two competition concerns were raised by hotel operators that suggested that post-merger (i) Tsogo could in the long-run

refuse to renew leases with a view to taking over the operation of these properties to the detriment of these hotel operators i.e. there would be potential "input foreclosure", and (ii) Tsogo would have access to certain confidential and proprietary intellectual property relating to third party hotel operators business operations i.e. there would be potential "information exchange".

[30] In order to assess these concerns the Commission considered the potential for input foreclosure and information exchange.

Vertical Analysis

[31] In assessing the potential for input foreclosure the Commission sought to determine the ability and the incentive of the merged entity to foreclose its rivals as well as the effect on competition.

[32] The Commission found that post-merger the merged entity would have both the ability and incentive to foreclose its rival's access to hotel properties owned and operated by HPF. However to the extent that the likely foreclosure would negatively impact upon competition, the Commission was of the view that there were a number of competitors in the market which would continue to constrain the behaviour of the merged entity.

[33] The Commission therefore concluded that while post-merger, the merged entity would have the ability and incentive to foreclose rivals, the impact of this foreclosure was unlikely to substantially prevent or lessen competition within the relevant market due to the presence of a number of competitors.

[34] However given that the strategy of SSH is to operate its own hotels, the Commission considered it likely that SSH would not renew lease agreements with third party hotel operators. As a result, and as mentioned above, in the initial as well as the revised conditions proposed by the Commission, it sought to address this eventuality by recommending that should the merging parties decide to operate these hotels on its own in the future, such change of control should be notified to the Commission.

Coordinated Effects

[35] The Commission found that post-merger SSH would have access to competitively sensitive information about its rivals through HPF. Given that the mere access to confidential information changes the competitive dynamics of the market, the Commission undertook an analysis of potential coordinated effects.

[36] According to the Commission, the assessment of coordinated effects typically involves the identification of three cumulative conditions to establish the likely emergence and sustainability of coordinated conduct from the proposed transaction. This includes (i) an assessment of the presence of market conditions conducive for coordination, (ii) identification of a likely mechanism for coordination, and (iii) merger specific effects.

[37] Briefly, the Commission found that the market is not concentrated and had a number of other independent players that would not be affected by the proposed transaction. In addition, the transparency that would be created through the merger only involved a few operators that lease properties from HPF and is not market wide. Based on the above, the Commission was of the view that the proposed transaction was unlikely to aid or result in collusion within the entire market but instead could be confined to the firms concerned.

[38] Nevertheless, the Commission found that SSH's access to information created an undesirable structural link between SSH and its rivals that lease hotels from HPF post-merger.

[39] The Commission concluded that based on the above, the merger was likely to promote or facilitate tacit collusion or at the very least mute the competitive interaction between SSH and its rivals that currently lease hotels from HPF.

[40] The Commission was therefore of the view that it was necessary to safeguard third party hotel operator information. As such, the Commission imposed a condition related to information sharing in order to remedy this concern.

Hearing

[41] At the hearing on 10 August 2016, the merging parties and the Commission primarily addressed the revised conditions and the reasoning behind the revision.

Input foreclosure

[42] The Commission had concluded that the merged entity would have the ability and incentive to foreclose its rivals by denying them access to hotel properties owned by HPF due to the fact that Southern Sun operated its own hotels and could decide not to renew third party leases with HPF, in favour of itself.

[43] In light of this, the Commission considered it prudent to request the merging parties to notify any change in control that may arise at any of the hotel properties operated by third party hotel operators.

[44] According to the original condition, "In the event that the acquiring firm assumes control of the operations of the hotel properties owned by the target firm it shall notify the transaction to the Commission in terms of Rule 27 of the Competition Tribunal Rules irrespective of the category of the merger as defined in the Act". Effectively this condition provided for the notification of not only large and intermediate mergers but also small mergers which are not required to be notified by the Act, to be notified in perpetuity.

[45] The Commission submitted that, during negotiations with the merging parties regarding this condition, the merging parties raised concerns with respect to (i) the indefinite time period attached to the above condition and (ii) the manner in which the Commission was to be notified.

[46] With respect to the indefinite time period the Commission submitted that this time period no longer appeared practical or effective in any sense. As such, the Commission opted to address this deficiency by limiting this condition to three years in order to account for changing market conditions.

[47] The revised condition reads as follows, "For a period of three years from the approval date, should the acquiring firm change any of the third party hotel operators at a specific HPF hotel, the acquiring firm shall inform the Commission in writing of any such change".

[48] For the sake of clarity, the Commission submitted that this obligation i.e. to give written notification, would not in any way affect the notification requirements provided for in the Competition Act 89 of 1998 ("the Competition Act").

[49] The merging parties submitted that while they intended to comply with the provisions of this condition, they took issue with the degree to which this would apply. In particular, they noted that entering into new leases or varying leases, or terminating leases was an incident of the use of the assets of the fund and would not necessarily involve a change in control which would necessitate the need for a notification.

[50] However, given that the notification filed with the Commission pertains to the acquisition of 51% of the shares in HPF's hotel property provision, not the acquisition

of operational or management control of the hotels, the Tribunal is of the view that the condition is warranted. In particular, the merging parties are to notify the Commission in writing in the event of a change in control at any of the hotels owned and operated by third party hotel operators under the fund.

[51] The Tribunal was also concerned that this merger could essentially result in a margin squeeze given that the lease agreements in question contained an exit clause on terms that could be renegotiated between the parties. Furthermore and importantly, given that post-merger the lessor would be a competitor of the lessee, it appeared to the Tribunal that the issue of margin squeeze was not only probable but also likely.[4]

[52] The Commission submitted that the possibility of a margin squeeze was unlikely due to the presence of a number of competitors upstream who would continue to constrain the behaviour of the merging parties.

[53] The merging parties added that in order for a theory of foreclosure (including margin squeeze) to be sustained, one would first need to establish that there is some dominance upstream, which has not been established. Moreover, the merging parties submitted that HPF is effectively compensated by the earnings that accrue to the hotel that is the lessee in respect of the lease, not on rental income. In other words, the merging parties assert that the whole structure of the fund is in effect predicated on trying to ensure that that the earnings of the hotel are as optimal as they can be as this would accrue to HPF. Hence there would be little incentive to engage in margin squeeze.

[54] The merging parties also submitted that there were other shareholders of HPF who have no incentive to make the underlying hotel that is the lessee (third party operator) less profitable as this would be highly disadvantageous to them.

[55] Absent evidence of a margin squeeze, we conclude that the foreclosure concerns are adequately addressed by the conditions.

Information Exchange

[56] With respect to the issue of coordinated effects, the Commission submitted that the theory of harm it was most concerned about was in essence, not the exchange of

[4] See transcript dated 10 August 2016 page 17-20

information, but rather access to information which would lead to a softening of competition.

[57] In the initial conditions, the Commission sought to keep the operations of the businesses separate which included physical separation by requiring that there be no cross directorship between HPF and SSH. However on review, the Commission submitted that they considered it more pertinent to prevent exposure to third party's competitive information by SSH. As such, the revised conditions differ significantly with the initial conditions, in that they stem the flow of information at its origin i.e. HPF will not have access to this information either, as opposed to the initial conditions which sought to limit the disclosure of the information to SSH once in the possession of HPF.[5]

In particular the revised conditions state that:

- The merging parties will ensure that HPF has its own executive management team, which will be responsible for day to day operations of HPF, such as marketing and pricing and such executive management team will not include any persons who are simultaneously employed in an executive management capacity by Southern Sun. However, this provision will not preclude the provision of Central Services[6] by Tsogo to HPF.
- HPF management and directors will ensure strict compliance with any confidentiality obligations contained in the lease agreements with Third Party Hotel Operators ("**confidential information**") in respect of confidential information provided to HPF, including that such confidential information will not be disclosed to employees of Southern Sun;
- Any directors appointed to the board of HPF will comply with their fiduciary duties in respect of HPF and will not disclose any confidential information relating to any hotels which are leased from HPF by Third Party Hotel Operators to employees of Southern Sun;
- HPF will not seek to enforce any specific term of any existing Lease Agreement to the extent that it requires any Third Party Hotel Operator that currently leases and/or operates hotels located at properties owned by HPF, to provide it with any Third Party Information. This condition will not limit HPF's ability to procure

[5] See transcript dated 10 August 2016 page 28-29
[6] Central Services include property maintenance services, information technology support services, company secretarial services, human resources services, financial reporting services, empowerment and CSI tracking and reporting services.

information, other than Third Party Information, which is specifically relevant to the management and operations of the particular hotels, which are owned by HPF and which are leased to and/or operated by Third Party Hotel Operators.

- For the avoidance of doubt, the obligations in the paragraphs above will remain in force for the duration of the existing Lease Agreements with Third Party Hotel Operators.

[58] The Commission and the merging parties sought to define"Third Party" information to allay concerns raised by third parties. In particular, the definition carves out certain competitively sensitive information which, not even HPF would have access to, namely: specific individual customer details; specific arrangements with agents or tour operators; supplier agreements; and employee specific remuneration. In other words the condition ensures that HPF only has access to information that is relevant to how it runs its operation. In addition, these conditions endure for as long as the lease agreement is in place. While the conditions endure for as long as the leases are in place, for practical reasons, the reporting obligation on the merging parties is limited to three years.

[59] The Commission submitted that it had solicited the views of third parties who indicated that the conditions addressed their concerns[7].

Public interest

[60] The merging parties submit that the proposed transaction is unlikely to result in any effect on employment. In particular, the merger does not result in job duplication.

[61] The Commission was therefore of the view that the proposed transaction does not result in any public interest concerns.

[62] The proposed transaction further did not raise any other public interest concerns.

Conclusion

[63] In light of the above, we approve the proposed transaction subject to the conditions attached hereto as Annexure A.

Prof Imraan Valodia

09 November 2016
DATE

[7] See transcript page 30 lines 13 to 18

Ms Yasmin Carrim and Ms Mondo Mazwai concurring

Tribunal Researcher:	Karissa Moothoo Padayachie
For the merging parties:	David Unterhalter S.C with Gavin Marriot and Ndumiso Ntuli on the instruction of Nortons Inc.
For the Commission:	Ruan Mare, Jabulani Ngubeni and Seabelo Molefe

ANNEXURE A

SOUTHERN SUN HOTELS (PTY) LTD

AND

HOSPITALITY PROPERTY FUND LTD

CT CASE NUMBER: LM218JAN16
CC CASE NUMBER: 2015DEC0720

CONDITIONS TO THE APPROVAL OF THE MERGER

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1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. "**Acquiring Firm**" means Southern Sun Hotels (Pty) Ltd, which is ultimately controlled by Tsogo Sun Holdings Limited;

1.2. "**Approval Date**" means the date referred to in the Tribunal's clearance certificate (Form CT 10);

1.3. "**Business Days**" mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.4. "**Central Services**" include property maintenance services, information technology support services, company secretarial services, human resources services, financial reporting services, empowerment and CSI tracking and reporting services;

1.5. "**Commission**" means the Competition Commission of South Africa;

1.6. "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;

1.7. "**Competition Act**" means the Competition Act 89 of 1998, as amended;

1.8. "**Conditions**" mean these conditions;

1.9. "**HPF**" means Hospitality Property Fund Limited;

1.10. "**Implementation Date**" means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.11. "**Lease Agreements**" means the thirteen (13) existing lease agreements that have been entered into between the Target Firm and the Third Party Hotel Operators and which remain in force after the Implementation Date;

1.12. "**Merger**" means the acquisition of control over HPF by Southern Sun, notified to the Commission under Commission case number 2015Dec0720;

1.13. "**Merging Parties**" means the Acquiring Firm and the Target Firm;

1.14. "**Southern Sun**" means Southern Sun Hotels (Pty) Ltd;

1.15. "**Target Firm**" means Hospitality Property Fund Limited;

1.16. "**Third Party Hotel Operator**" means any firm that currently leases a hotel or hotels from the Target Firm and operates a hotel or hotels belonging to the Target Firm;

1.17. "**Third Party Information**" means the following insofar as it relates to Third Party Hotel Operators (excluding information that is in the public domain):

1.17.1. Specific individual customer details (including customer-specific pricing and specific information relating to the identity of specific customer and distribution channels);

1.17.2. Specific arrangements and/or agreements with agents and/or tour operators including incentive structures which have been concluded with such agents or tour operators, excluding arrangements and/or agreements with agents and operators which are owned by or in part by the Third Party Hotel Operator in question;

1.17.3. Specific information in relation to supplier agreements (including the identity of such suppliers and pricing information in respect of such agreements);

1.17.4. Employee-specific remuneration information; and

1.17.5. Any confidential information which relates exclusively to hotels owned or operated by the Third Party Hotel Operator, which hotels are not the subject of a lease agreement with HPF, including information relating to the proprietary management systems of that Third Party Hotel Operator.

1.18. "**Tsogo**" means Tsogo Sun Holdings Limited.

2. RECORDAL

2.1. On 18 December 2015, the Merging Parties notified the Commission of a large merger transaction. Following its investigation of the Merger, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the affected markets.

2.2. However, in the Commission's view the proposed transaction raises potential access to Third Party Information concerns between the Acquiring Firm and its competitors in the market for the provision of short term accommodation through HPF. The Commission is of the view that access to the Third Party Information by the Acquiring Firm, through the Target Firm, could soften competition in the affected market.

2.3. While the merging parties do not agree with the Commission's view that access to the Third Party Information could soften competition in the relevant markets, they have agreed to the conditions set out herein.

2.4. Accordingly, the Commission recommends that the merger be approved subject to the conditions set out below.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

3.1. The merging parties will ensure that HPF has its own executive management team, which will be responsible for day to day operations of HPF, such as marketing and pricing and such executive management team will not include any persons who are simultaneously employed in an executive management capacity by Southern Sun. However, this provision will not preclude the provision of Central Services by Tsogo to HPF.

3.2. HPF management and directors will ensure strict compliance with any confidentiality obligations contained in the lease agreements with Third Party Hotel Operators ("**confidential information**") in respect of confidential information provided to HPF, including that such confidential information will not be disclosed to employees of Southern Sun;

3.3. Any directors appointed to the board of HPF will comply with their fiduciary duties in respect of HPF and will not disclose any confidential information relating to any hotels which are leased from HPF by Third Party Hotel Operators to employees of Southern Sun;

3.4. HPF will not seek to enforce any specific term of any existing Lease Agreement to the extent that it requires any Third Party Hotel Operator that currently leases and/or operates hotels located at properties owned by HPF, to provide it with any Third Party Information. This condition will not limit HPF's ability to procure information, other than Third Party Information, which is specifically relevant to the management and operations of the particular hotels, which are owned by HPF and which are leased to and/or operated by Third Party Hotel Operators.

3.5. For the avoidance of doubt, the obligations in paragraphs 3.1, 3.2, 3.3 and 3.4. above will remain in force for the duration of the existing Lease Agreements with Third Party Hotel Operators.

4. MONITORING

4.1. The Merging Parties shall circulate a copy of the Conditions to Third Party Hotel Operators within ten (10) Business Days of the Implementation Date.

4.2. As proof of compliance hereof, the Merging Parties shall within five (5) Business Days of the circulation of the Conditions submit an affidavit to the Commission by a duly authorised senior official of the Merging Parties confirming the circulation of the Conditions to the Third Party Hotel Operators.

4.3. The Merging Parties shall, within three (3) months of the Implementation Date develop and submit a written confidentiality and information exchange policy to the Commission in line with the Conditions as specified in paragraph 3 above.

4.4. The confidentiality and information exchange policy shall be sent to the Commission for approval. The Commission shall provide comments on the confidentiality and information exchange policy within ten (10) Business Days of receiving the confidentiality and information exchange policy.

4.5. Within ten (10) Business Days of the approval of the confidentiality and information exchange policy by the Commission, the Merging Parties shall submit an affidavit, deposed to by a duly authorised senior official of the Merging Parties, attesting to the establishment and implementation of the confidentiality and information exchange policy. The Merging Parties shall, at the same time, submit a copy of the confidentiality and information exchange policy to the relevant employees of HPF and any individuals who sit on the Board of Directors of HPF from time to time.

4.6. For a period of three (3) years from the Approval Date:

4.6.1. the Acquiring Firm shall submit an affidavit on each anniversary of the Implementation Date, confirming compliance with clause 3 of the Conditions. This affidavit must be deposed to by a senior official of the Acquiring Firm.

4.6.2. should the Acquiring Firm change any of the Third Party Hotel Operators at a specific HPF hotel, the Acquiring Firm shall inform the Commission in writing of any such change to the Third Party Hotel Operators within twenty (20) Business Days of such change.

4.6.3. should any existing Lease Agreement be terminated during this period and a new lease be concluded in respect of the premises which was the subject of the terminated Lease Agreement, HPF will provide the new lessee with a copy of these conditions.

4.7. The obligation in paragraph 4.6.2 above will not in any way affect the notification requirements provided for in the Competition Act for transactions that meet the requirements of the Competition Act for merger notification.

4.8. After the expiry of the three (3) year period provided for in paragraph 4.6 above, the Acquiring Firm shall provide the Commission with information, which the Commission may reasonably request in respect of compliance with clause 3 of the Conditions, in the event that the Commission requests such information.

5. GENERAL

5.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za.

5.2. In the event that the Merging Parties appear to have breached the above Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be dealt with in terms of Rule 35 of the Commission Rules.

6. VARIATION

6.1. The Merging Parties shall be entitled, upon good cause, to make a proposal to the Commission to consent to the waiver, relaxation, modification and/or substitution of one or more of the Conditions, which consent shall not be unreasonably withheld. "Good cause" shall have its normal meaning as interpreted under the Competition Act and the common law, save that 'good cause' shall additionally mean that the circumstances giving rise to the Merged Entity's request in terms of this clause shall require that the circumstances that could not reasonably have been foreseen by the Merging Parties at the time of the Tribunal's approval of the Merger and which cannot reasonably be mitigated or addressed in another manner.

6.2. In the event of the Commission and Merging Parties agreeing upon the waiver, relaxation, modification or substitution of any aspect of these Conditions, the Commission and Merging Parties shall apply to the Tribunal for confirmation by it of such waiver, relaxation, modification or substitution of any one or more of the Conditions.

6.3. In the event of the Commission withholding its consent to a waiver, relaxation, modification and/or substitution of any one or more of the Conditions, the Merging Parties shall be entitled to apply to the Tribunal for an order waiving, relaxing, modifying or substituting of any one or more of the conditions. The Commission shall be entitled to oppose such application.