



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 84/LM/Aug12  
(015610)

In the matter between:

**Fairvest Property Holdings Limited**

**Primary Acquiring Firm**

And

**A portfolio of commercial properties of  
SA Corporate Real Estate Fund**

**Primary Target Firms**

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Panel	:	Andreas Wessels (Presiding Member) Medi Mokuena (Tribunal Member) Takalani Madima (Tribunal Member)
Heard on	:	24 October 2012
Order issued on	:	24 October 2012
Reasons issued on	:	07 November 2012

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### Reasons for Decision

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#### Conditional approval

- [1] On 24 October 2012 the Competition Tribunal ("**Tribunal**") conditionally approved the acquisition by Fairvest Property Holdings Limited of a portfolio of commercial properties of SA Corporate Real Estate Fund.
- [2] The reasons for conditionally approving the proposed transaction follow below.

## Parties to transaction

- [3] The primary acquiring firm is Fairvest Property Holdings Limited ("**Fairvest**"), a JSE-listed property investment holding company. Fairvest currently holds a number of commercial properties in the Eastern Cape, Free State, Gauteng and KwaZulu-Natal.
- [4] The primary target firms are a portfolio of commercial properties of the SA Corporate Real Estate Fund ("**SACREF**"). SACREF is a diversified real estate investment fund invested in retail, office and industrial properties situated in the major metropolitan areas of South Africa.
- [5] The to be acquired properties comprise of one office rental property, namely Omniplace located at Rosen Park in the Western Cape, and the following ten retail properties:
- (i) 210 Church Street – Pietermaritzburg;
  - (ii) 212 Church Street – Pietermaritzburg;
  - (iii) 425 West Street – Durban Central;
  - (iv) The Ridge – Honeydew Ridge;
  - (v) Clubview Corner – Clubview;
  - (vi) Middelburg Pick 'n Pay - Middelburg;
  - (vii) Tokai Junction – Tokai;
  - (viii) Main Street – Gingindlovu;
  - (ix) Mkuze Corner – Mkuze; and
  - (x) St Georges Square – George.

## Proposed transaction and rationale

- [6] In terms of the proposed transaction, Fairvest will acquire the above-mentioned eleven letting enterprises from SACREF, each as a going concern (hereinafter referred to as "**the target properties**"). Post-transaction, Fairvest will exercise sole control over the target properties.
- [7] According to Fairvest, the proposed transaction is in line with its current expansion strategy.

[8] The seller, SACREF, no longer wishes to hold the target properties.

### **Competition and public interest assessment**

[9] Although both the merging parties own rentable retail and commercial office space in South Africa, there is no geographic overlap between their activities since their properties are located in different geographic nodes.

[10] The Competition Commission ("**Commission**"), however, in relation to three of target shopping centres, namely St Georges Square (George), Mkuze Corner (Mkuze) and Middelburg Pick 'n Pay, raised a concern pertaining to certain exclusivity clauses contained in the existing lease agreements with anchor tenants. These lease agreements expire in 2013 and 2014.

[11] The Commission was concerned that these exclusivity clauses could have the effect of preventing small businesses, such as butcheries, bakeries, delicatessen stores and the like, from gaining access to rentable retail space in the respective shopping centres. In order to address this concern the Commission, based on certain undertakings by the merging parties, recommended that certain conditions be attached to the approval of this transaction.

[12] The above-mentioned exclusivity clauses in the lease agreements with anchor tenants raise likely public interest concerns in terms of section 12A(3)(c) of the Competition Act of 1998<sup>1</sup> and conditions are therefore warranted to address such concerns. As such, the Tribunal has approved the proposed merger subject to the following conditions:

a. Fairvest shall negotiate with Checkers, Pick 'n Pay and Bridge Wholesale in the utmost good faith to have the exclusivity clause in the lease agreement removed at the renewal of the lease in respect of each of the following centres and on the dates indicated below:

- St Georges Square (2013)

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

- Middelburg Pick 'n Pay (2013)
- Mkuze Corner (2014)

b. Fairvest shall within thirty days after entering into a new lease agreement with Checkers, Pick 'n Pay and Bridge Wholesale in the above listed centres, provide the Commission with a report setting out in detail the extent to which they have complied with the above condition.

[13] The merging parties confirmed that no negative effects on employment are envisaged as a result of the proposed transaction.<sup>2</sup> Apart from the above-mentioned likely effects on small businesses as a result of certain exclusivity provisions in certain existing lease agreements, the proposed deal raises no other public interest concerns.

## CONCLUSION

[14] We approve the proposed transaction subject to the above highlighted conditions. A full set of the imposed conditions is attached hereto as "Annexure A".

  
**ANDREAS WESSELS**

07 November 2012  
**DATE**

**Medi Mokuena and Takalani Madima concurring**

Tribunal researcher: Nicola Ilgner

For the merging parties: Ahmore Burger-Smidt of Werksmans Attorneys

For the Commission: Zanele Hadebe

<sup>2</sup> See pages 10, 89 and 121 of the merger record.

## **ANNEXURE A**

### **Fairvest Property Holdings Limited and the South African Corporate Real Estate Fund (CT case number: 84/LM/Aug12)**

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## **CONDITIONS**

### **1. DEFINITIONS**

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

- 1.1. "Approval Date" means the date referred to in the Competition Tribunal's merger clearance certificate (Form CT 10);
- 1.2. "Bridge Wholesale" means Bridge Wholesale (Pty) Ltd;
- 1.3. "Checkers" means Shoprite Checkers (Pty) Ltd;
- 1.4. "Commission" means the Competition Commission of South Africa;
- 1.5. "Conditions" means these conditions;
- 1.6. "Fairvest" means Fairvest Property Holdings Limited;
- 1.7. "Pick 'n Pay" means Pick 'n Pay (Pty) Ltd.

### **2. RECORDAL**

- 2.1. Fairvest has agreed to the following undertakings meant to address the public interest concerns.
- 2.2. It is the Commission's view that the conditions, in the below form, are necessary to address the public interest concerns.

### **3. CONDITIONS TO THE APPROVAL OF THE MERGER**

3.1 Fairvest shall negotiate with Checkers, Pick 'n Pay and Bridge Wholesale in the utmost good faith to have the exclusivity clause in the lease agreement removed at the renewal of the lease in respect of each of the following centres and on the dates indicated below:

- St Georges Square (2013)
- Middelburg Pick 'n Pay (2013)
- Mkuze Corner (2014)

### **4 MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1 Fairvest shall within 30 (thirty) days after entering into a new lease agreement with Checkers, Pick 'n Pay and Bridge Wholesale in the centres listed in 3.1 above, provide a report setting out in detail the extent to which they have complied with condition 3.1 above.

4.2 All information submitted in respect of the monitoring requirements for these conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).