



**competitiontribunal**  
*south africa*

## *fax form*

<b>to</b>	Paul Cleland Werksmans Inc	<b>fax</b>	011 535 8600
	Legal Services Competition Commission		44283
<b>ref</b>	45/LM/Jun11	<b>date</b>	03 October 2011
<b>from</b>	Tebogo Mputle	<b>pages</b>	4 (including this page)
<b>re</b>	Reasons		

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Attached please find the Tribunal's reasons for the decision in the above matter.

Regards

Tebogo Mputle

CC: Zanele Hadebe 44583



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 45/LM/Jun11

In the matter between:

**TP Hentiq 6159 (Pty) Ltd**

**Acquiring Firm**

And

**Xeedan Property Portfolio**

**Target Firm**

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Panel	:	Norman Manoim (Presiding Member) Andreas Wessels (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	07/09/2011
Order issued on	:	07/09/2011
Reasons issued on	:	03/10/2011

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### Reasons for Decision

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## APPROVAL

[1] On 7 September 2011 the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving TP Hentiq and Xeedan Property Portfolio. The reasons for approval of the proposed transaction follow below.

## THE TRANSACTION AND RATIONALE

[2] The proposed deal is a property merger in terms of which TP Hentiq 6159 (Pty) Ltd ("TP Hentiq") intends to acquire the Xeedan Property Portfolio ("Xeedan"), comprising of Xeedan Properties.

[3] TP Hentiq, the acquirer in this transaction, was established for the purpose of this deal and is controlled by Investec Bank Limited ("Investec") which provides a range of financial products and services solutions, including properties. Xeedan is a

property portfolio comprising residential, vacant land, commercial office, as well as golf estate, agriculture/farm and industrial properties.

[4] The rationale for the proposed transaction is essentially commercially driven as it arises from financial transactions between the merging parties in terms of which Investec advanced monies to Xeedan in relation to Xeedan property portfolio and acquired security rights in respect of the Xeedan property portfolio. Xeedan fell into default with the repayment obligation and Investec exercised its security rights in respect of the Xeedan properties so that it can sell these properties to discharge the debts due to it.

[5] Post merger, Hentiq will take transfer of the Xeedan property portfolio and retain ownership thereof for the purpose of later selling the properties in order to recover the indebtedness due to it.

#### **COMPETITION ASSESSMENT**

[6] The Commission in its assessment of the proposed transaction found that the proposed transaction gives rise to horizontal product and geographic overlaps in rentable light or heavy industrial space in Wynberg node and grade A office space in Sandton and Environs node. However at the hearing the merging parties submitted that the Wynberg Property space has since been sold to third parties, which means that there is no overlap in that market. The Wynberg node therefore no longer becomes relevant for the purpose of competition assessment in this proposed deal, and the relevant market is the Grade A office Space in Sandon and Environs node.

[7] There are no competition concerns in the relevant market as the post merger combined market share of the merging parties in this property space is low. The Commission calculated the post merger combined market share in this market to be 3.98%, whereas the merging parties submitted that the post merger combined market share in this market is 3.98% if you take into account grade A and B, but that if you only take into account grade A, the post merger combined market share drops to 1.22%.

[8] In addition, it was submitted that there are a large number of competitors in this relevant property space, and that customers have countervailing power as they are

able to negotiate the rent payable and are also able to switch to other office spaces within the nearest surroundings fairly easily, which further eliminates any potential competition concerns which may arise.

## **PUBLIC INTEREST**

[9] This deal does not give rise to any public interest issues.

## **CONCLUSION**

[10] The proposed transaction is unlikely to substantially prevent or lessen competition in any property market, and is accordingly approved without conditions.

  
\_\_\_\_\_  
**N Manoim**

**03/10/2011**

Date

**Y Carrim and A Wessels concurring**

Tribunal Researcher:	Londiwe Senona
For the merging parties:	Werksmans Attorneys
For the Commission:	Zanele Hadebe

\* \* \* Communication Result Report ( 3.Oct. 2011 11:57 ) \* \* \*

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