



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM137Dec21

**Heriot Properties (Pty) Ltd**

Primary Acquiring Firm

And

**Safari Investment (RSA) Ltd**

Primary Target Firm

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Panel: M Mazwai (Presiding Member)  
T Vilakazi (Tribunal Panel Member)  
F Tregenna (Tribunal Panel Member)

Heard on: 2 March 2021  
Order Issued on: 2 March 2021  
Reasons Issued on: 18 March 2021

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### REASONS FOR DECISION

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[1] On 2 March 2022, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger in terms of which Heriot Properties (Pty) (“Heriot Properties”)<sup>1</sup> Ltd intends to increase its shareholding in Safari Investment (RSA) Ltd (“Safari”)<sup>2</sup>, thereby acquiring control over Safari.

[2] Pre-merger, the Heriot Group owns 32.77% of the shares in Safari and intends to acquire more Safari shares listed on the Johannesburg Stock Exchange Limited from willing sellers on the open market, therefore, there is no merger agreement. The

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<sup>1</sup> Heriot Properties is a wholly owned subsidiary of Heriot REIT Limited (“HET”). The Heriot Group is a property holding and investment company that owns a diversified portfolio of retail, industrial, commercial, and specialised properties in South Africa.

<sup>2</sup> Safari is a property-owning company, which is not controlled by any firm/s. It is listed on the JSE as a real estate investment trust. The Heriot Group has shares in Safari through the Heriot Properties, Heriot Investments and Reya Gola Investments (Pty) Ltd.

acquisition of additional shares by the Heriot Group is likely to result in it having a majority of the voting rights, thereby, giving it control over Safari. This is because, according to the Heriot Group's calculations, taking into account shareholder turnout at the last five general meetings of Safari, the acquisition of additional Safari shares will likely result in the Heriot Group being able to vote the majority of votes at future Safari shareholders' meetings.

### **Competition Assessment**

[3] The Competition Commission ("Commission") considered the activities of the merging parties and found that there is horizontal overlap between their activities. However, based on Competition Tribunal precedent,<sup>3</sup> the Commission concluded that there is no geographic overlap as none of the properties owned by the Heriot Group are near the target properties owned by Safari.

[4] The Commission also noted that the Heriot Group and Safari have a joint venture called Polly Cat Security (Pty) Ltd. The joint venture was established to provide security services to the respective property assets of the Heriot Group and Safari. It is not a core business to either of the merging parties. The Commission evaluated whether the merging parties' structural connections through the joint venture may permit the exchange of competitively sensitive information between both firm's post-merger. It found that there will be no cross directorships between Heriot, HET, Safari as joint venture partners and Polly Cat. [REDACTED]

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<sup>3</sup> *Redefine/Pivotal Merger* Competition Tribunal Case No: LM099Sep16; and *Vukile Property Fund Limited and 5 properties owned by Encha Properties (Pty) Ltd* Competition Tribunal Case No: LM038Jun13.

[5] Furthermore, the information exchange concern is less likely since the merging parties do not compete in the same geographic markets.

[6] No third party raised any concerns with the proposed transaction.

[6] Based on the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. We concur with this finding.

## **Public Interest**

### *Effect on Employment*

[7] The Commission noted that the merging parties have no plans to retrench any employees because of the proposed transaction. Therefore, the proposed transaction will not adversely affect employment.

[8] The Commission concluded that the proposed transaction is unlikely to raise any significant employment concerns post-merger.

### *Effect on the greater spread of ownership*

[9] The merging parties submit that the Heriot Group is involved in various empowerment projects. Employees of the Heriot Group currently hold ████████ of the shares in HET, as Heriot Properties' (which is 100% owned by HET). Safari's B-BBEE shareholding is 10.36%. The merging parties submitted that the acquisition of shares in Safari will result in the workers of the Heriot Group indirectly benefitting from the increased ownership of the Safari shares which promotes ownership as contemplated in section 12A(3)(e) of the Competition Act. Safari's existing B-BBEE shareholders will retain their shareholding and the increase by the Heriot Group of its shares in Safari will not result in any dilution of B-BBEE shareholding whatsoever. Therefore, the proposed transaction will have no negative impact on any Historically Disadvantaged Persons ("HDPs") shareholding within the Heriot Group or within Safari.

[10] The Commission concluded that the proposed transaction is unlikely to have a negative impact on the promotion of a greater spread of ownership.

*Other public interest issues*

[11] The proposed transaction raised no other public interest concerns.

**Conclusion**

[12] For the above reasons, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.



**Ms Mondo Mdzwai**

**18 March 2022**

**Date**

**Dr Thando Vilakazi and Professor Fiona Tregenna**

Tribunal Case Managers:	Sinethemba Mbeki and Camilla Mathonsi
For the Merging Parties:	Graeme Wickins of Werksmans Attorneys
For the Competition:	Portia Bele and Grashum Mutizwa