

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: FTN051Jun22

In the matter between:

The Competition Commission of South Africa

**Applicant**

And

I Group Consolidated Holdings (Pty) Ltd

**First Respondent**

U Reit Collins (Pty) Ltd

**Second Respondent**

Tradegro Holdings (Pty) Ltd

**Third Respondent**

Collins Property Projects (Pty) Ltd

**Fourth Respondent**

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Panel : I Valodia (Presiding Member)  
: A Ndoni (Tribunal Member)  
: F Tregenna (Tribunal Member)  
Heard on : 22 June 2022  
Decided on : 22 June 2022

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### Consent Agreement

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and I Group Consolidated Holdings (Pty) Ltd, U Reit Collins (Pty) Ltd, Tradegro Holdings (Pty) Ltd, and Collins Property Projects (Pty) Ltd annexed hereto.

Signed by: Imraan Valodia  
Signed at: 2022-06-22 15:22:50 +02:00  
Reason: Witnessing Imraan Valodia

*Imraan Valodia*

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**Presiding Member  
Prof. Imraan Valodia**

**22 June 2022**

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**Date**

**Concurring: Ms. Andiswa Ndoni and Prof. Fiona Tregenna**

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA  
(HELD IN PRETORIA)**

**CC Case No:** 2021JUN0013

**CT Case No:** .....

In the matter between

**THE COMPETITION COMMISSION**

Applicant

and

**I GROUP CONSOLIDATED HOLDINGS (PTY) LTD**

First Respondent

**U REIT COLLINS (PTY) LTD**

Second Respondent

**TRADEGRO HOLDINGS (PTY) LTD**

Third Respondent

**COLLINS PROPERTY PROJECTS (PTY) LTD**

Forth Respondent

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**CONSENT AGREEMENT IN TERMS OF SECTION 49D OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND, I GROUP CONSOLIDATED HOLDINGS (PTY) LTD, U REIT COLLINS (PTY) LTD, TRADEGRO HOLDINGS (PTY) LTD AND COLLINS PROPERTY PROJECTS (PTY) LTD IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 13A(3) OF THE COMPETITION ACT, 1998.**

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**1. PREAMBLE**

The Competition Commission and, I Group Consolidated Holdings (Pty) Ltd, U Reit

Collins (Pty) Ltd, Tradegro Holdings (Pty) Ltd and Collins Property Projects (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D read with sections 58(1)(b) and 59(1)(d) of the Competition Act No. 89 of 1998, as amended on the terms set out below.

## 2. DEFINITIONS

For the purposes of this Consent Agreement the following definitions shall apply:

- 2.1. “**Act**” means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 2.2. “**Collins**” means Collins Property Projects (Pty) Ltd, a private company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at BDO House, 1 Richefond Circle, Ridgeside Office Park, Umhlanga, 4319, South Africa;
- 2.3. “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1<sup>st</sup> floor, Mulayo Building (Block C), the DTI Campus, 77 Melintes Street, Sunnyside, Pretoria, Gauteng;
- 2.4. “**Commissioner**” means the Commissioner of the Commission as appointed in terms of section 22(1) of the Act;

- 2.5. **“Consent Agreement”** means this agreement, duly signed by the Commissioner and concluded between the Commission and the Respondents;
- 2.6. **“Days”** means business days, being any day which is not a Saturday, Sunday or public holiday gazetted in the Republic of South Africa from time to time;
- 2.7. **“I Group”** means I Group Consolidated Holdings (Pty) Ltd, a private company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at has its registered office at 411, The Hills, Buchanan Square, 160 Sir Lowry Road, Woodstock, 7925;
- 2.8. **“I Group/Collins transaction”** means the May 2019 transaction whereby U Reit acquired 25.7% of the issued share capital of Collins;
- 2.9. **“Merging Parties”** means U Reit and Collins. U Reit is a wholly owned subsidiary of I Group, and Collins was a wholly owned subsidiary of Tradegro prior to the I Group/Collins transaction;
- 2.10. **“Respondents”** mean I Group, U Reit, Tradegro and Collins;
- 2.11. **Tradegro”** means Tradegro Holdings (Pty) Ltd, a private company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Leinster Hall, 7 Weltevreden Street, Gardens, Cape Town, 8005;

- 2.12. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 1<sup>st</sup> Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and
- 2.13. **“U Reit”** means U Reit Collins (Pty) Ltd, a private company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at office 411, The Hills, Buchanan Square, 160 Sir Lowry Road, Woodstock, 7925. U Reit is a wholly owned subsidiary of I Group.

### **3. BACKGROUND TO THIS CONSENT AGREEMENT**

- 3.1. Prior to the implementation of the I Group/Collins transaction, Tradegro held 100% of the shares of Collins. The Respondents did not notify the transaction during 2019 and did not obtain the approval of the Commission before implementing the I Group/ Collins transaction.
- 3.2. The Commission became aware of the I Group/Collins transaction during 2021 when the Respondents voluntarily informed the Commission of the implementation of the I Group/Collins transaction, advised the Commission of the Respondents’ view that the I Group/Collins transaction did not constitute a notifiable merger, and in good faith requested guidance from the Commission as to whether it was of the contrary opinion that mandatory merger notification was in fact required prior to implementation thereof. According to the Respondents they only became aware of the possible

argument that the I Group/Collins transaction could be construed as a notifiable merger during May 2021 while preparing a merger notification to the Commission in respect of an unrelated transaction whereby I Group (through its wholly owned subsidiary, Maitlantic 10 (Pty) Ltd) would acquire control of Emira Property Fund Ltd.

- 3.3. Pursuant to their engagements with the Commission, the Respondents in good faith, acceded to the Commission's request that the I Group/Collins transaction be notified on 08 April 2022.

#### **4. COMMISSION'S INVESTIGATION AND FINDINGS**

- 4.1 Prior to the implementation of the I Group/Collins transaction, Collins was a 100% wholly owned subsidiary of Tradegro; I Group and U Reit did not directly or indirectly hold any shareholding or exercise any control over Collins. In terms of the I Group/Collins transaction, I Group (through U Reit), acquired 25.7% of the issued shares of Collins and Tradegro held the remaining majority shareholding of 74.3%.
- 4.2 In terms of the Collins Shareholders' Agreement and its MOI, Collins could not engage in, agree to, perform or undertake in any of the acts listed as Reserved Matters unless it was approved by way of Reserved Matter Approval; namely, the approval of shareholders holding at least 85% of the Collins issued shares. It is common cause that this requirement means that both Tradegro and U Reit, who were the only shareholders of Collins at the time, were required to approve Reserved Matters.

- 4.3 The Reserved Matters, which required Reserved Matter Approval included the approval of a change to the Collins group's consolidated annual budget, senior executive appointments, and remuneration of the managing director and financial director. According to the Respondents, notwithstanding the rights conferred upon U Reit in terms of the MOI and Shareholders' Agreement, none of those rights were ever factually exercised by U Reit since the implementation of the U Reit/Collins transaction.
- 4.4 In the Commission's opinion, the requirement of Reserved Matters Approval for Reserved Matters gave I Group (through U Reit) a veto over any exercise of powers by Tradegro, and therefore material influence over the strategic decisions and policy of Collins. Notwithstanding the fact that U Reit only acquired a 25.7% minority shareholding in Collins, the Commission is nevertheless of the view that the I Group/Collins transaction resulted in I Group (through U Reit) acquiring *de jure* control over Collins as contemplated in section 12(2)(g) of the Act, which it did not exercise before the transaction.
- 4.5 According to the Respondents were *bona fide* in forming their opinion that the Reserved Matters did not result in U Reit acquiring *de jure or de facto* control over Collins as contemplated in section 12(2) of the Act.
- 4.6 The I Group/Collins transaction was implemented at the end of May 2019. The Respondents voluntarily informed the Commission of their *bona fide* prior implementation on 9 June 2021, and notified the Commission of the I Group/Collins transaction on 08 April 2022, twenty-three months after the transaction was implemented. The Commission assessed the I

Group/Collins merger under CC Case number: 2022Apr0024 and recommended that the transaction be approved without conditions. The Tribunal approved the I Group/Collins transaction without conditions on 20 May 2022.

- 4.7 The Commission's opinion is that the above conduct by the Respondents is in contravention of 13A(3) of the Act, which stipulates that parties to a large merger may not implement that merger until it has been approved, with or without conditions, by the Commission in terms of section 14(1)(b).

## **5. ADMISSION OF LIABILITY**

Pursuant to their *bona fide* engagements with the Commission, and for the purpose of concluding a full and final settlement with the Commission, the Respondents are willing to admit that, notwithstanding the bona fide view referred to in paragraph 4.5, they have unintentionally contravened section 13A(3) of the Act by implementing the I Group/Collins transaction prior to the approval of the transaction by the Commission.

## **6. FUTURE CONDUCT**

- 6.1. The Respondents agree and undertake to notify the Commission of any future transactions that constitute a notifiable merger as defined in section 12(1) read together with section 11(5) of the Act. The Respondents further agree and undertake to refrain from engaging in prior implementation of



notifiable mergers in contravention of section 13A(3) of the Act.

- 6.2. The Respondents also agree and undertake to develop and implement a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors, and agents do not engage in future contraventions of section 13A(3) of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection, and monitoring of contraventions of section 13A(3) of the Act.
- 6.3. The Respondents furthermore agree and undertake to submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of this Consent Agreement as an order by the Tribunal.

## **7. ADMINISTRATIVE PENALTY**

- 7.1. Having regard to the provisions of section 59(1)(d), 59(2) and 59(3) of the Act, a contravention of section 13A(3) of the Act results in the contravening parties being liable to pay an administrative penalty which is not more than 10% of its annual turnover in the Republic of South Africa and its exports from the Republic of South Africa during the preceding financial year.
- 7.2. The Respondents have agreed that they will jointly pay an administrative penalty in the total amount of R1 485 000.00 (one million, four hundred and eighty-five thousand Rand).
- 7.3. The Respondents will pay the penalty as set out in paragraph 7.2 above to

the Commission over a period of 6 (six) months, in equal instalments of R247 500.00 (two hundred and forty-seven thousand, and five hundred Rand). The first instalment shall be payable within 30 (thirty) days from the date of the confirmation of this Consent Agreement as an order of the Tribunal. The remainder of the instalments payable on the 30<sup>th</sup> of each month following the first payment.

- 7.4. The administrative penalty will accrue interest in terms of the provisions of section 80(1) of the Public Finance Management Act No. 1 of 1999 for any amounts not paid within a year from the date of confirmation of this Consent Agreement by the Tribunal.
- 7.5. The penalty and such interest as may become payable in terms of 7.3 above, must be paid into the Commission's bank account which is as follows:

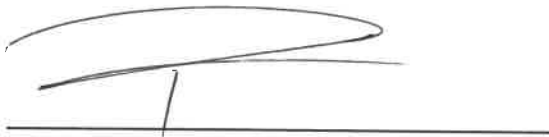
**NAME** : THE COMPETITION COMMISSION  
**BANK** : ABSA BANK BUSINESS BANK  
**ACCOUNT NUMBER** : 40-8764-1778  
**BRANCH CODE** : 632005  
**PAYMENT REF** : 2021JUN0013/UREIT/COLLINS

- 7.6. The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

## 8. FULL AND FINAL SETTLEMENT

This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and the Respondents relating to the contravention of section 13A(3) of the Act by the Respondents that were the subject of the Commission's investigation under CC case number: 2021JUN0013.

Dated and signed at CAPE TOWN on the 1<sup>st</sup> day of JUNE 2022



**Duly authorised signatory**

**I Group Consolidated Holdings (Pty) Ltd**

Name in full: Paul Philip Munday

Authority: Director

Dated and signed at CAPE TOWN on the 1<sup>st</sup> day of JUNE 2022



**Duly authorised signatory**

**U Reit Collins (Pty) Ltd**

Name in full: Wilhelmus Hendrikus Louwser

Authority: Director

Dated and signed at ZUG, SWITZERLAND on the 3 day of JUNE 2022



Duly authorised signatory

Tradegro Holdings (Pty) Ltd

Name in full: K. L. NORDIER

Authority: DIRECTOR

Dated and signed at DURBAN on the 26 day of MAY 2022



Duly authorised signatory

Collins Property Projects Pty Ltd

Name in full: DAVID PAUL COLEMAN

Authority: DIRECTOR

Dated and signed at Pretoria on the 03rd day of June 2022

For the Commission 

Tembinkosi Bonakele

The Commissioner: Competition Commission