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GENERAL NOTICES

NOTICE 997 OF 2013

COMPETITION COMMISSION

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:
TRUSTEES FOR THE TIME BEING OF MERGENCE AFRICA PROPERTY INVESTMENT
TRUST**

AND

**SHOPRITE PRETORIA NORTH, ZIYABUYA SHOPPING CENTRE, GEZINA GALLARIES,
BLACKHEATH PAVILION, WOODMEAD SQUARE AND WOODMEAD VALUE MALL**

CASE NUMBER: 2013MAY0174

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm in the proposed transaction is the Trustees for the time being of Mergence Africa Property Investment Trust ("Mergence"). Mergence is wholly owned by Mergence Africa Property Fund (Pty) Ltd ("MAPF"), which is in turn wholly owned by Dipula Income Fund Ltd ("Dipula"). Dipula is a public company listed on the Johannesburg Securities Exchange Ltd ("JSE"). Dipula also controls the Dipula Property Investment Trust (Pty) Ltd ("Dipula Property Trust") and Asakhe Realty Investment Fund (Pty) Ltd ("Asakhe"), which owns Emerald Fire Investments (Pty) Ltd ("Emerald Fire"). Dipula and all its subsidiaries will from hereon be referred to as (the "Acquiring Group"). The Acquiring Group invests in and owns a diversified property portfolio of retail, industrial and office properties throughout the Republic of South Africa.

The primary target firms in the proposed transaction are four retail properties, namely: Shoprite Pretoria North, Ziyabuya Shopping Centre, Gezina Galleria, Blackheath Pavilion and the

leasehold rights in terms of the Notarial Deeds of Sub-Lease to two letting properties namely, Woodmead Square and Woodmead Value Mall. Collectively referred to as (the "Target Properties").

In terms of the proposed transaction, Mergence intends to acquire four of the Target Properties. In addition, Mergence also intends to acquire the leasehold rights in terms of the Notarial Deeds of Sub-Lease in respect of the other two Target Properties. Post-merger, Mergence would have sole control of the four Target Properties and would become the new lessor of other two Target Properties.

The Commission's investigation of the proposed transaction identified a horizontal overlap in the activities of the merging parties in the market for rentable retail properties, particularly for convenience centres. The Commission found that there is a geographic overlap in the activities of the merging parties in the market for retail properties within the Gezina node and the Randburg node. In relation to the Gezina node, the Acquiring Group owns one convenience centre located 3.69km away from the Target Property. Post-merger the merged entity would have an estimated minimal market share to raise any competition concerns. Furthermore, there are many other convenience centres within the Gezina node and surrounding areas which will continue to constrain the merged entity.

In relation to the Randburg node, the Acquiring Group owns two convenience centres located within close proximity from the Target Property. One convenience centre is located within 1.08 km while the other is located within 3.85km radius from the Target Property. Post-merger, the merged entity would have an estimated minimal market share within the Randburg node. The Commission also identified several viable alternative convenience centres in the Randburg node that will continue to constrain the merged entity post-merger.

In light of the above, the Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected markets.

The Commission found exclusivity clauses in the lease agreements in respect of Ziyabuya Shopping Centre and Gezina Galleries. In order to address the exclusivity concern, the

Commission negotiated with the merging parties to have the clause removed as the exclusivity clauses could prevent SMMEs from operating within the aforementioned centres the merging parties agreed to a condition to have the exclusivity clauses removed (in accordance with the contractual terms) in the agreements.

The Commission therefore approved the proposed transaction subject to conditions in terms of section 14(1) (b) (i) of the Competition Act no.89 of 1998, as amended. The Commission hereby issued a certificate in the prescribed form approving the merger.

CONDITIONS

1. Definitions

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

- 1.1 **"Acquiring Firms"** means Trustees for the time being of the Mergence Africa Property Investment Trust;
- 1.2 **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.3 **"Commercial reasons"** means reasonable principles of commerce, or bona fide reasons, taken into account in arriving at a decision in the ordinary course of business;
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6 **"Conditions"** means these conditions;

- 1.7 **"Lease Agreements"** means agreement concluded between Ziyabuya Shopping Centre, Gezina Galleries and Shoprite Checkers (Pty) Ltd;
- 1.8 **"Merger"** means the acquisition of control over Shoprite Pretoria North, Ziyabuya Shopping Centre, Gezina Galleries, blackheath Pavilion, Woodmead Square and Woodmead Value Mall by the Trustees for the time being of the Mergence Africa Property;
- 1.9 **"Merging Parties"** means Trustees for the time being of the Mergence Africa Property and Shoprite Pretoria North, Ziyabuya Shopping Centre, Gezina Galleries, Blackheath Pavilion, Woodmead Square and Woodmead Value Mall.
- 1.10 **"Shoprite"** means Shoprite Checkers (Pty) Ltd; and
- 1.11 **"Mergence"** means Trustees for the time being of the Mergence Africa Property Investment Trust.

2. Recordal

- 2.1 Mergence has agreed to the following undertakings which are meant to address the public interest concerns.
- 2.2 The conditions, in the current form, are necessary to address the public interest concerns.

3. Conditions to the approval of the merger

- 3.1 Mergence shall negotiate with Shoprite in respect of the current effective lease agreements, in the utmost good faith, to have the exclusivity clauses in the lease agreements in respect of the Ziyabuya Shopping Centre and Gezina Galleries removed within 180 (one hundred and eighty) days of receipt of the merger clearance certificate from the Competition Commission.

4. Monitoring of compliance with the Conditions

4.1 The following monitoring conditions in respect of the lease agreements are applicable:

4.1.1 Should Mergence succeed in removing the exclusivity clause in the aforesaid lease agreements, it shall submit a copy of the new signed lease agreement to the Commission as proof of compliance within 30 days of the concluding the new lease agreement.

4.1.2 Should the Mergence not succeed in the removal of the exclusivity clause from the lease agreement, it shall submit a report setting out the details and outcome of its negotiations with Shoprite and an affidavit confirming the accuracy of the report within 30 days of concluding its negotiations.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@comppcm.co.za.

NOTICE 998 OF 2013**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****SEKUNJALO INDEPENDENT MEDIA PROPRIETARY LIMITED****AND****INDEPENDENT NEWS & MEDIA SOUTH AFRICA (PROPRIETARY) LIMITED****2013APR0167**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

On 30 April 2013 the Competition Commission (the Commission) received a notice of an intermediate merger whereby Sekunjalo Independent Media (Pty) Ltd (Sekunjalo) and Public Investment Corporation (PIC) will acquire 75% and 25%, respectively, of the entire share capital as well as claims in Independent News & Media South Africa (Pty) Ltd (INMSA). Following implementation, Sekunjalo will have sole control over INMSA. Although PIC is not an acquiring firm for competition law purposes as it will not acquire control of INMSA, its 25% acquisition is relevant for purposes of assessing the proposed transaction. The Commission has also been informed that over and above the 25% acquisition, PIC will also partly finance the transaction.

The Commission, during the investigation of the proposed transaction, also learnt that Sekunjalo was in discussions with two sovereign wealth funds (i.e., China Africa Development Fund and China International Television Corporation) which could result in the acquisition of direct interest in INMSA (i.e., potentially lowering Sekunjalo's interest to less than 75%). However, for the purposes of this review, the Commission did not assess in any further detail the potential

acquisition of interest in INMSA by the two sovereign funds, as that has subsequently been notified under case 2013Jul0317.

Sekunjalo is a newly formed entity and it has no existing business activity. The Sekunjalo group of companies (i.e., Sekunjalo Investment Holdings (Pty) Ltd and Sekunjalo Investment Limited) have interests in various sectors such as Health; Technology; Private Equity; and Telecoms. The Sekunjalo group of companies currently do not have any interest in the print media industry (i.e., newspapers, publishing, printing, etc.) where the target firm is active. According to the submissions from the merging parties none of the shareholders of Sekunjalo has any interest in the print media industry.

PIC holds investment interests in various sectors including in the media industry through its 19.2% interest in Times Media Group (TMG), formerly known as AVUSA – a direct competitor of INMSA. In addition to its shareholding in TMG in the media industry, PIC also has a 17.22% shareholding in Naspers Limited (Naspers). PIC submits that it does not currently exercise control over Naspers. The media and entertainment products owned by TMG include newspapers (i.e., Sunday Times, The Times, Sowetan, Sunday World, Weekend Post, The Herald, Saturday Dispatch and Daily Dispatch); magazines (i.e., SA Mining, South African Home Owner, Elle and Elle Decoration, Built, Pursuit, etc.).

Through its subsidiaries, Naspers newspapers titles include; City Press, Beeld, Soccer Laduma, Rapport, Volksbald, Daily Sun, Sondag, Sunday Sun, Daily Sun, Ulundi Media, UmAfrika and numerous other community newspapers in various local languages. Magazines owned by Naspers include; FHM, Drum, Women Health, Destiny, Kick-off, House & Garden, Fin Week, Heat, You, Huisegenoot, TV Plus, Golf Digest, Fairlady, True Love, Home, amongst several others. Some of these newspapers and magazines compete with those owned by INMSA.

The INMSA group's main business activity is in the publication, printing and distribution of 18 daily and weekly paid for newspapers (i.e., The Star, Pretoria News, Saturday Star, The Sunday Independent, The Mercury, Daily News, Isolezwe, Post, Sunday Tribune, Cape Times, Cape

Argus, and Daily Voice amongst others). The INMSA also has interests in free community newspapers (i.e., Record, Berea Mail, Highway Mail, Rising Sun, Tygertalk and Vukani amongst others) that are distributed in Gauteng, KwaZulu Natal and the Western Cape. In addition, the INMSA group publishes and distributes three magazines, namely: Glamour, GQ and House & Garden and also has interests in the online space (electronic media) through its IOL portal.

Any likely horizontal or vertical overlap only arise in the event that PIC exercises control over TMG, Naspers and/or INMSA as defined in section 12 (2) (a) – (g) of the Act, post-merger. According to the merging parties, there is currently no shareholders agreement in place or any other document that defines the relationship between the merging parties and how INMSA will be run post-merger. The Commission's view on control is thus based on other submissions made by the merging parties. The Commission is however concerned that, in the absence of a shareholders agreement the issues of control by PIC over Sekunjalo as contemplated in Section 12 (2) of the Act remain uncertain. The Commission is of the view that the issue of whether PIC has control or will have influence over the business operations of INMSA post-merger is critical because if it were found that PIC, post-merger has some control over INMSA, the proposed merger notice would likely exceed the threshold for an intermediate merger and therefore the ultimate jurisdiction rests with the Competition Tribunal. In order to address the ambiguity with respect to the governance structure of INMSA post-merger, the Commission deems it necessary to impose a remedy which would require the merging parties to inform and/or notify it when a change in control over INMSA is contemplated.

Based on the information provided by the merging parties, the Commission finds that it is unlikely that the proposed transaction will result in unilateral and vertical effects in any markets where the merging parties and its shareholders are active and/or have investments. This is because PIC does not exercise any control over TMG or Naspers and it will not assume control of INMSA in any form contemplated in the Act, post-merger.

TMG is a listed company with wide range of shareholders all whom have equal rights and none of the shareholders at TMG have the right to appoint or vote on the appointment of a majority of

directors. PIC has the right to appoint two directors on the board of directors of TMG. PIC, despite its majority shareholding in TMG does not have a representative on the board of directors of TMG. The Commission therefore considers that it is not necessary to conduct an extensive unilateral and vertical effects analysis of this ownership interest.

With regards to PIC's shareholding in Naspers, PIC submits that it is currently not represented on Naspers' board of directors and it does not have a specified right to appoint a director. Further, according to PIC there is no shareholder's agreement in place that affords it rights that may confer control on it, for competition law purposes. As such, the Commission is similarly of the view that it is not necessary to conduct an extensive unilateral and vertical effects analysis of PIC's share ownership in Naspers.

Notwithstanding the aforesaid, the shareholding interest held by PIC in three competing entities TMG, Naspers and INMSA raises concerns related to potential information exchange post-merger. The potential presence of the PIC on boards of INMSA, Naspers and the TMG could facilitate the sharing of competitively sensitive information between companies that could increase the likelihood of anti-competitive coordination between them.

Furthermore, according to the merging parties, PIC will also provide a loan to Sekunjalo for purposes of financing the proposed transaction. The merging parties have indicated that it is not contemplated that such a loan will be convertible into equity and that the loan will not afford PIC any rights that will afford it control. As merger assessment is forward looking, the Commission is concerned that should Sekunjalo default on the loan, PIC will be in a position to take control over INMSA.

The Commission is of the view that conditions are necessary to address the likely competition concerns that may arise due to the cross-ownership of shares by PIC in competing entities. Essentially the conditions will address the possibility of PIC being in control of INMSA in whatever form post-merger and the possible information exchange that could arise as a result of PIC's shareholding and potential board representation at TMG, Naspers and INMSA. The conditions will ensure that the ambiguity with regards to the control of INMSA is addressed and

that any possible information exchange is alleviated. Therefore, the Commission approves the proposed transaction subject to the following conditions, the merging parties have agreed to these conditions and the merging parties accept that these may change following discussion at the Commission Meeting:

- Sekunjalo shall submit the signed shareholders agreement in respect of INMSA, and all ancillary agreements thereto, in respect of INMSA, to the Commission within 5 business days of its signature by the parties thereto;
- Sekunjalo shall submit the signed loan agreement in respect of the PIC's loan to it, and all ancillary agreements thereto, to the Commission within 5 business days of its signature by the parties thereto;
- In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and TMG post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and TMG;
- In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and Naspers post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and Naspers;
- The PIC shall, notwithstanding the listing of INMSA or delisting of TMG or Naspers, ensure that its investments in INMSA, Naspers and TMG remain housed in different departments within PIC and shall continue to adhere to the existing safe guards, thus ensuring:
 - the physical separation, including controlled access to office space, of the Listed Equities department and Unlisted Equities department of PIC, to continue to regulate the restricted access of the Listed Equities department and Unlisted Equities department to shared IT systems;
 - that Competitively Sensitive Information in respect of either INMSA or Naspers or TMG is not shared between the different management teams within PIC

- managing Listed and Unlisted Equities respectively.; and
- o Should either TMG or Naspers be delisted and INMSA be listed at the same time, the PIC will manage its investments in the three entities separately, thus ensuring that the PIC personnel managing its investment in each of TMG, Naspers and INMSA will not be the same.
 - If, after the Approval Date and/or the shareholders agreement has been finalised, PIC acquires a form of control over INMSA as contemplated in section 12(2) of the Act, the Merging Parties shall file a new merger notification with the Commission in terms of the Act within 30 business days; and
 - In the event that the PIC enters into any loan agreement with Sekunjalo and such a loan is converted into shares such that PIC acquires additional shares in INMSA; Sekunjalo will inform the Commission of this conversion within 5 business days of the conversion and will submit to the Commission all the necessary information including the signed loan agreement to enable the Commission to determine whether a notification is required. In the event that a merger notification is required, PIC will not, prior to obtaining the approval of the Competition Authorities, implement the transaction by exercising any of the rights accruing to such shares that may afford it control over INMSA.

The proposed transaction will not result in retrenchments. On a likely positive note, it may result in the transformation of the print media industry. Historically disadvantaged persons currently do not have any shareholding in INMSA and INMSA is 100% foreign owned. The rationale for the transaction includes to - increase black shareholding in the media sector in South Africa and to return an important asset to South African ownership.

The proposed transaction does not raise any other public interest concerns.

The Commission approved the proposed transaction with conditions in terms of section 14(1) (b) (ii) of the Act, as amended.

Definitions

1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
 - 1.1. **"Act"** means the Competition Act No. 89 of 1998, as amended;
 - 1.2. **"Approval Date"** means the date of the merger clearance certificate;
 - 1.3. **"Commission"** means the Competition Commission of South Africa;
 - 1.4. **"Competition Authorities"** means the Commission and the Competition Tribunal of South Africa;
 - 1.5. **"Competitively Sensitive Information"** includes any trade secrets, prices, discounts, rebates margins, circulations figures, advertising rates, distribution methods, editorial content, promotional plans, business plans and strategies, customer information;
 - 1.6. **"Conditions"** means these conditions;
 - 1.7. **"INMSA"** means Independent News & Media South Africa (Pty) Ltd, with registration number: 1991/005270/07, or any subsequent name which may lawfully be registered to that entity;
 - 1.8. **"Merger"** means the acquisition of control over INMSA by Sekunjalo;
 - 1.9. **"Merging Parties"** means Sekunjalo and INMSA;
 - 1.10. **"Naspers"** means Naspers Limited
 - 1.11. **"PIC"** means the Government Employee Pension Fund acting through its authorised representative the Public Investment Corporation SOC Limited;
 - 1.12. **"Sekunjalo"** means Sekunjalo Independent Media (Pty) Ltd; and
 - 1.13. **"TMG"** means Times Media Group Ltd.

2. Recordal

- 2.1. Given that the shareholders agreement between Sekunjalo and PIC in respect of INMSA has not been finalised, the Commission assessed the proposed merger in the absence of a shareholders agreement or any other document(s) that articulates the nature of the relationship between Sekunjalo and PIC post-merger. The Commission is concerned that in the absence of a shareholders agreement it is uncertain whether PIC will acquire a form of control over INMSA post-merger, as contemplated in section 12(2) of the Act.
- 2.2. According to the Merging Parties, PIC will, in addition to its own direct acquisition of equity in INMSA, also provide a loan to Sekunjalo to fund a portion of the purchase price. In the event that a loan agreement is concluded between Sekunjalo and PIC, the Merging Parties have indicated that such a loan is unlikely to be convertible into equity in the event of a default; and is therefore unlikely to afford PIC any rights that will confer control on it in terms of section 12 (2) of the Act. Given the uncertainty regarding the terms of any loan agreement that may be entered into between Sekunjalo and PIC, the Commission is concerned that the terms of such a loan agreement may confer some form of control in terms of section (12)(2) of the Act to the PIC, in the event of a default.
- 2.3. In addition, post-merger, PIC will have shareholding in TMG, Naspers and INMSA and may appoint representatives on board of directors of TMG, Naspers and INMSA. Given PIC's common shareholding in the three competing firms post-merger, the Commission is concerned that if PIC appoints representatives to the board of directors of TMG, Naspers and INMSA, this could potentially facilitate the sharing of Competitively Sensitive Information between INMSA, Naspers and TMG.
- 2.4. The Commission is therefore of the view that the Conditions set out in paragraph 3 below are necessary and sufficient to address the Commission's concerns as set out above. For the avoidance of doubt, the Conditions seek to remedy the following concerns -

- 2.4.1. the likelihood of any potential coordination which may result from the sharing of Competitively Sensitive Information given PIC's shareholding in INMSA, Naspers and TMG post-merger, which are competing firms;
- 2.4.2. the uncertainty with respect to the shareholding and management structure of INMSA post-merger; and
- 2.4.3. the uncertainty with respect to the terms of PIC's loan agreement to Sekunjalo.

3. Conditions to the approval of the Merger

- 3.1. Sekunjalo shall submit the signed shareholders agreement in respect of INMSA, and all ancillary agreements thereto, in respect of INMSA, to the Commission within 5 business days of its signature by the parties thereto;
- 3.2. Sekunjalo shall submit the signed loan agreement in respect of the PIC's loan to it, and all ancillary agreements thereto, to the Commission within 5 business days of its signature by the parties thereto;
- 3.3. In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and TMG post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and TMG;
- 3.4. In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and Naspers post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and Naspers;
- 3.5. The PIC shall, notwithstanding the listing of INMSA or delisting of TMG or Naspers, ensure that its investments in INMSA, Naspers and TMG remain housed in different departments within PIC and shall continue to adhere to the existing safe guards, thus ensuring:

- 3.5.1. the physical separation, including controlled access to office space, of the Listed Equities department and Unlisted Equities department of PIC, to continue to regulate the restricted access of the Listed Equities department and Unlisted Equities department to shared IT systems;
- 3.5.2. that Competitively Sensitive Information in respect of either INMSA or Naspers or TMG is not shared between the different management teams within PIC managing Listed and Unlisted Equities respectively; and
- 3.5.3. In addition to clause 3.3 and 3.4 above, should either TMG or Naspers be delisted and INMSA be listed at the same time, the PIC will manage its investments in the three entities separately, thus ensuring that the PIC personnel managing its investment in each of TMG, Naspers and INMSA will not be the same.
- 3.6. If, after the Approval Date and/or the shareholders agreement in 3.1 has been finalised, PIC acquires a form of control over INMSA as contemplated in section 12(2) of the Act, the Merging Parties shall file a new merger notification with the Commission in terms of the Act within 30 business days; and
- 3.7. In the event that the PIC enters into any loan agreement with Sekunjalo and such a loan is converted into shares such that PIC acquires additional shares in INMSA; Sekunjalo will inform the Commission of this conversion within 5 business days of the conversion and will submit to the Commission all the necessary information including the signed loan agreement to enable the Commission to determine whether a notification is required. In the event that a merger notification is required, PIC will not, prior to obtaining the approval of the Competition Authorities, implement the transaction by exercising any of the rights accruing to such shares that may afford it control over INMSA.

4. Duration

- 4.1. Clause 3.3 and 3.4 of these Conditions shall remain in place for as long as PIC has shareholding in INMSA, Naspers and TMG; and
- 4.2. Clause 3.5 of these Conditions shall remain in place for as long as PIC has shareholding in INMSA, TMG and Naspers.

5. Monitoring of compliance with the Conditions

- 5.1. Should there be any deviation to the existing safe guards as captured in clause 3.5 of these Conditions, INMSA and/or PIC must inform the Commission of such changes within 10 business days.
- 5.2. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 5.3. The Commission may on good cause shown, lift, revise or amend these Conditions.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@comcom.co.za.

NOTICE 999 OF 2013**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****TOWER PROPERTY FUND LTD****AND****THE CAPE QUARTER PROPERTY COMPANY (PTY) LTD AND PARCH PROPERTIES 30
(PTY) LTD****CASE NUMBER: 2013MAY0175**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is Tower Property Fund Ltd ("Tower"), a public company yet to be incorporated in accordance with the laws of the Republic of South Africa. Tower is controlled by Tower Asset Managers (Pty) Ltd ("TAM"), which is ultimately controlled by Spire Property Group (Pty) Ltd ("Spire"). Spire controls Spire Property Management (Pty) Ltd ("SPM") and Intersect Sectional Title Services (Pty) Ltd ("Intersect"). Tower currently does not conduct any activities and is in the process of assembling a mixed, commercial property portfolio for listing on the main board of the Johannesburg Securities Exchange in July 2013. Spire, TAM, SPM and Intersect do not control, directly or indirectly, any immovable properties and properties letting enterprises.

The Commission recently approved the acquisition of rentable and immovable properties by Tower (the "Acquired Properties"), which the Commission took into account in the investigation of the instant transaction. The Acquired Properties comprise of rentable office, retail and vacant land located within various nodes in Johannesburg, Gauteng Province.

The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market as there is no geographic overlap.

In addition, the Commission also found that the proposed transaction is unlikely to lead to any foreclosure concerns as the merged entity has no ability to foreclose its rivals.

With respect to the public interest assessment, the Commission found that 16 employees would be retrenched as a result of the proposed merger. In this respect, the Commission engaged with the merging parties to impose conditions to ensure that not all 16 employees would be retrenched. The conditions imposed ensure that the affected employees obtained placement within and outside of the acquiring firms with the assistance of the merging parties. The conditions also ensure that those employees whom the merging parties fail to secure placement for, will obtain the relevant training and up-skilling. It is the Commission's view that the conditions will alleviate the impact of loss of employment arising from the proposed merger.

The Commission therefore approved the merger subject to conditions in terms of section 14(1)(b)(ii) of the Competition Act no.89 of 1998, as amended.

1 DEFINITIONS

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

- 1.1 **"Affected Employee"** means any Pyramid Employee who has a qualification of grade 12, matric or lower, who has not received a firm offer of reasonable alternative employment by the Spire Group or any other firm within two (2) months of the Merger Approval Date and who is retrenched by Pyramid;
- 1.2 **"CQPC"** means Cape Quarter Property Company Proprietary Limited, a limited liability private company duly incorporated in the Republic of South Africa, a primary target firm;

The primary target firms are the Cape Quarter Property Company (Pty) Ltd ("CQPC") and Parch Properties 30 (Pty) Ltd ("Parch"), collectively referred to as (the "Cape Quarter Company"). The Cape Quarter Company is controlled by Profin Investment Trust (the "Profin Trust"). The Cape Quarter Company is currently owned by the vested beneficiaries of the Profin Trust (the "Sellers"). The Cape Quarter Company owns rentable and immovable properties which comprises of mixed use properties classified into retail, office, residential and gym located within the Cape Town CBD, Western Cape Province (collectively referred to as the "Target Properties").

The Sellers also have 75% shareholding in Pyramid Property Management (Pty) Ltd ("Pyramid"), a company that provides property management services to the Target Properties. The Commission was informed by the merging parties that Pyramid is closing down its operations as the Cape Quarter Company, which is its major client is being sold and that the Sellers have decided to part ways for a variety of personal reasons, primarily retirement.

In terms of the proposed transactions, Tower intends to acquire 100% of the issued share capital of the Cape Quarter Company from the Sellers. Following the implementation of the proposed transaction, Tower would have sole control over the Cape Quarter Company and thereby acquire indirect sole control over the Target Properties and businesses of the Cape Quarter Company. Also as a result of the proposed transaction, the Sellers will dispose of their 75% shareholding in Pyramid, thereby closing down Pyramid operations.

The Commission's investigation of the proposed transactions found that the activities of the Cape Quarter Company and the Acquired Properties overlap horizontally in the market for the provision of rentable Grade A office properties. However, the Commission also found that there is no geographic overlap in the activities of the Cape Quarter Company and the Acquired Properties as they are located within separate Provinces being the Western Cape Province and the Gauteng Provinces, respectively. With respect to the provision of rentable retail properties, the Commission found that the rentable retail properties of the Cape Quarter Company are not comparable with those of the Acquired Properties. Moreover, there is also no geographic overlap between the rentable properties of the merging parties.

- 1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.4 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
- 1.5 **"Completion Date"** means the date on which the LRA Process is completed as meant under section 189 (7) of the LRA;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"LRA"** means the Labour Relations Act, 66 of 1995;
- 1.8 **"LRA Process"** means the process undertaken by Pyramid in respect of the Pyramid Employees under section 189 of the LRA;
- 1.9 **"Merged Entity"** means Tower, CQPC and Parch, post implementation of the Merger;
- 1.10 **"Merger"** means the transaction in terms of which Tower will acquire control over CQPC and Parch respectively and notified to the Commission under the above case number;
- 1.11 **"Merger Approval Date"** means the date on which the Merger is approved by the Commission as meant under section 14 of the Competition Act;
- 1.12 **"Parch"** means Parch Properties 30 Proprietary Limited, a limited liability private company duly incorporated in the Republic of South Africa, a primary target firm;
- 1.13 **"Pyramid"** means Paddy's Pad 2509 Proprietary Limited trading as Pyramid Property Management;
- 1.14 **"Pyramid Employees"** means the sixteen (16) employees of Pyramid as at the time of notification of this merger;
- 1.15 **"Retrenchments"** do not include (i) voluntary separation arrangements; (ii) voluntary early retirement package; (iii) refusal to be redeployed on reasonable grounds; and (iv) termination due to resignation or retirement;

- 1.16 **"Re-skilling"** means the training undergone by an Affected Employee determined after consultation with the Affected Employee and identification of appropriate and accredited courses;
- 1.17 **"Spire Group"** means Spire Property Group Proprietary Limited, registration number 2006/032072/07, a limited liability private company duly incorporated in the Republic of South Africa, and its subsidiaries TAM, SPM and Tower, the acquiring firms under the Competition Act;
- 1.18 **"SPM"** means Spire Property Management Proprietary Limited, a limited liability private company duly incorporated in the Republic of South Africa;
- 1.19 **"TAM"** means Tower Asset Managers Proprietary Limited, a company duly incorporated in the Republic of South Africa;
- 1.20 **"Tower"** means Tower Property Fund Limited, registration number 2012/066457/06, a public company duly incorporated in the Republic of South Africa;
- 1.21 **"Training Amount"** means ten thousand rands (R10,000) disbursed in respect of the Re-skilling of an Affected Employee.

2 RECORDAL

- 2.1 The Commission found that this Merger as a whole is unlikely to raise significant competition concerns. However, the Merger will have a negative impact on employment. The merging parties have advised the Commission that this Merger will result in the retrenchment of sixteen (16) Pyramid Employees within the Republic of South Africa. Of the 16 Pyramid Employees, 9 have been offered employment at SPM, and 1 has been offered employment at TAM. 4 employees have received offers of employment by firms other than the acquiring firms. The remaining 2 employees have thus far not received any offers of employment.
- 2.2 In order to ensure that the Pyramid Employees obtain placement within and outside of the acquiring firms with the assistance of the merging parties, the Commission imposed

the conditions as listed in 3 below. The conditions also ensure that those employees for whom the merging parties fail to secure placement, will obtain relevant Re-skilling. It is the Commission's view that the conditions will alleviate the impact of loss of employment arising from the proposed merger.

3 CONDITIONS

- 3.1 SPM shall guarantee positions of employment for, and make offers of employment to nine (9) Pyramid Employees, independent of the section 189 of LRA Process. SPM shall make offers of employment to the nine (9) Pyramid Employees during the section 189 of LRA process. SPM undertakes that each Pyramid Employee is entitled to accept the SPM offer of employment at any time, but by no later than 30 days after the Completion Date.
- 3.2 For two (2) months after the Merger Approval Date, the Spire Group, and the Merged Entity if listed on the main board of the Johannesburg Securities Exchange before the elapse of the said period, are obliged, and the sellers of CQPC and Parch shall procure that Pyramid is so obliged, to continue taking reasonable steps to identify reasonable alternative employment for any of the Pyramid Employees who have not had firm offers of employment from any firm as at time of Merger Approval Date.
- 3.3 For a period of two (2) years after the Completion Date, the Merged Entity shall make available the Training Amount to be disbursed on behalf of an Affected Employee for Re-skilling.
- 3.4 No portion of the Training Amount shall be paid to the Affected Employee or be allocated to any other purpose than Re-skilling.

4 MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 Within ten (10) days of the elapse of the two (2) months period in 3.2, the Merged Entity:
 - 4.1.1 shall report to the Commission on the endeavors under 3.2 and if applicable, the identity of any Affected Employee;

- 4.1.2 shall deliver to the Commission, Pyramid's report on the outcome of the section 189 of LRA Process.
- 4.2 If applicable, and within ten (10) days of the elapse of the two (2) year period in 3.3, the Merged Entity shall deliver a report and provide proof to the Commission on the disbursement of the Training Amount(s) in respect of Re-skilling of any Affected Employee and results thereof.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

NOTICE 1000 OF 2013**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****CANNISTRARO INVESTMENTS 282 (PROPRIETARY) LIMITED****AND****ALERT STEEL HOLDINGS LIMITED****CASE NUMBER: 2013MAY0099**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

On 07 March 2013, the Competition Commission (the Commission) received a notice of an intermediate merger whereby the primary acquiring firm, Cannistraro Investments 282 (Pty) Ltd (Cannistraro) intends to acquire Alert Steel Holdings Limited (Alert Steel). As such, post-merger, Alert

Steel would become a wholly owned entity of Cannistraro.

Cannistraro is a newly formed entity incorporated in accordance with the laws of the Republic of South Africa. The merging parties indicate that Cannistraro has been formed for the purposes of purchasing shares in Alert Steel. Alert Steel Holdings is a company listed on the Johannesburg Securities Exchange (JSE) and therefore is not controlled by any single entity. Alert Steel is active in retail sale of light steel, steel related products and related value added services. It is also involved in retail of hardware, building materials, plumbing and sanitary ware.

The Commission finds that the proposed transaction raises no horizontal overlap between the business activities of the merging parties. Furthermore, there is no vertical relationship between

the business activities of the merging parties. The Commission therefore is of a view that the proposed transaction is unlikely to substantially prevent or lessen competition as there is no competitive overlap between the activities of the merging firms.

The Commission's investigation, however, found evidence that suggests that the proposed transaction is likely to raise public interest concerns relating to employment as contemplated in section 12A (3) of the Competition Act No 89 of 1998. In order to address the public interest concerns raised by the proposed merger, the Commission approved the merger subject to a condition, that Alert Steel does not retrench specified number of people, in terms of section (14) (1) (b) (ii) of the Competition Act No 89 of 1998, as amended. The Commission hereby issued a certificate in the prescribed form approving the merger.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@comscom.co.za.

NOTICE 1001 OF 2013**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****WEIR HEAVY BAY FOUNDRY (PTY) LTD****AND****THE ASSETS OF XMECO FOUNDRY (PTY) LTD AND THE IMMOVEABLE PROPERTY OF
ILLANDO PROPERTIES (PTY) LTD****CASE NUMBER: 2013MAR0110**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

On 13 March 2013, the Competition Commission (the Commission) received a notice of an intermediate merger whereby the primary acquiring firm, Weir Heavy Bay Foundry (Pty) Ltd (Weir) intends to acquire the assets of Xmeco Foundry (Pty) Ltd (Xmeco) and the immovable property of Illando Properties (target assets). Following implementation, the target assets would be wholly-owned by Weir.

Weir is active in South Africa as a manufacturer of slurry pumps, hydrocyclones and valves. Xmeco is primarily involved in developing the patterns and the manufacturing of ferrous castings based on the customer orders. The castings Weir sources from Xmeco are used in the manufacturing of the aforementioned products. The proposed transaction therefore raises a vertical relationship between the business activities of the merging parties. Xmeco supplies castings (upstream market), which are used to manufacture slurry pumps, valves and hydrocyclones (downstream market) by Weir.

The Commission finds that Weir is the largest player in the downstream market for the manufacturing of slurry pumps. Accordingly, the Commission considered the potential of customer foreclosure given the size of Weir. The Commission finds that Xmeco has low market share in the upstream market and therefore has no market power. Moreover, there is excess production capacity available in the upstream market which suggests that there are alternatives for downstream competitors. The Commission therefore is of the view that, in light of the available capacity in the market and ability of customers to switch, the proposed transaction is unlikely to raise input foreclosure. The customers of Xmeco contacted by the Commission who compete with Weir in the downstream markets did not raise any concerns with the proposed transaction citing the presence of alternative suppliers available in the upstream market.

The Commission finds that the proposed merger is unlikely to result in retrenchments at Weir and Xmeco as there will be no duplication of duties post-merger given that Weir's in-house foundry operation is situated in Isando, Johannesburg, whilst Xmeco foundry is situated in Port Elizabeth.

The only public interest concern raised by the proposed merger relates to the retrenchments, should a customer of Weir be foreclosed Weir as a sizeable customer. The Commission impose a condition that Weir continues purchasing castings from the concerned supplier for a period of six months after the approval of the merger.

The Commission therefore approved the proposed merger with conditions in terms of section (14) (1) (b) (ii) of the Competition Act No 89 of 1998, as amended. The Commission hereby issued a certificate in the prescribed form approving the merger.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@comcom.co.za.

- University of Pretoria – Hatfield;
- University of Cape Town (UCT) – Rondebosch and Claremont;
- Parow Centre – Cape Town;
- Stellenbosch University (SUN) – Stellenbosch campus;
- Tshwane University of Technology (TUT main campus)– Pretoria West;
- TUT Arcadia Campus – (TUT Arcadia campus), Pretoria; and
- TUT Ga-Rankuwa Campus - Tshwane

The proposed merger is a small merger in terms of Section 11 (5)(a) of the Act because the turnover and/or asset value of the merging parties falls within the lower threshold established in terms of sub-section (1)(a) of the Act, as amended. The merging parties have notified the proposed merger in order for the Commission to assess whether it will substantially prevent or lessen competition in the market.

In terms of the Sale of Business Agreement entered into between Juta and Company and Times Media, Times Media will acquire certain of the assets and liabilities of Juta and Company as a going concern. Post-merger, the Juta Bookshops will become a wholly-owned division of Times Media and will be managed by Van Schaik.

The Commission found that the activities of the merging parties overlap in the following areas:

- University of Johannesburg (UJ) – Auckland Park;
- Carlton Centre - Central Johannesburg;
- University of Pretoria – Hatfield;
- University of Cape Town (UCT) – Rondebosch and Claremont;
- Parow Centre – Cape Town;
- Stellenbosch University (SUN) – Stellenbosch campus;
- Tshwane University of Technology (TUT main campus)– Pretoria West; and
- TUT Arcadia Campus – (TUT Arcadia campus), Pretoria.

The Commission carried out an extensive investigation which included site visits to the areas where the activities of the merging parties overlap; interviews with store managers of the merging parties; universities; competitors; publishers and students in order to assist it enhance

NOTICE 1002 OF 2013**COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****VAN SCHAIK BOOKSTORES, A DIVISION OF TIMES MEDIA (PTY) LTD****AND****JUTA BOOKSHOPS ("JUTA BOOKSHOPS"), A DIVISION OF JUTA AND COMPANY LIMITED****CASE NUMBER: 2013JUN0263**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms:

On 10 June 2013, the Competition Commission (Commission) received a voluntary notification of a small merger whereby the primary acquiring firm, Van Schaik Bookstores (**Van Schaik**), a division of Times Media (Pty) Ltd (**Times Media**), intends to acquire Juta Bookshops (**Juta Bookshops**), a division of Juta and Company Ltd (**Juta and Company**) as a going concern.

The primary acquiring firm is Van Schaik, a division of Times Media. Times Media is a wholly-owned subsidiary of Times Media Group Limited (**Times Media Group**), a public company listed on the Johannesburg Stock Exchange Ltd. The Times Media Group controls various firms. The primary target firm is Juta Bookshops, a division of Juta and Company. Juta and Company is controlled by Kagiso Media Limited (**KML**). The Juta Bookshops to be acquired comprise of 10 academic bookshops located in the following areas:

- University of Johannesburg (UJ) – Johannesburg;
- Carlton Centre - Central Johannesburg;

its understanding of the relevant markets and the likely effects of the proposed merger in each area of overlap. Finally, the Commission continuously liaised with the merging parties and their legal representatives. No further investigation was carried out in respect of the TUT Ga-Rankuwa Campus because the activities of the parties did not overlap in this area.

The merging parties submitted that the relevant product market is specifically the market for the retail sale of academic books. The merging parties excluded the sale of general books. The Commission agrees with the merging parties' view that the retail sale of academic books market is separate from the market for the sale of general, school and religious books since the different types of books are not substitutable.

The merging parties also sell school books in their bookshops. The Commission's investigation showed that there are sufficient suppliers and potential suppliers to the school books market and as such, it is unlikely that the proposed merger will raise competition concerns in this market. Therefore, the Commission did not assess this market any further.

The Commission also considered whether online sale of academic books is in the same market as brick and mortar. The Commission found that online sale of academic books do not form part of the same relevant product market for each of the areas of overlap. The Commission found that online sale of academic books does not provide a credible alternative to students because of a number of factors including the different route to market and payment methods. The Commission also found that online retailers mainly target distance education students, which is distinguishable from non-distance learning universities which are mainly covered in the areas of overlap. The Commission also found that online sale of academic books has not provided effective competitive constraint in the majority of the areas in which the activities of the merging parties overlap. For example, Van Schaik reported that its online sales of academic books account for far less than its total sales of academic books.

The Commission therefore agrees with the merging parties' view that the relevant product market is that for the retail of academic books through brick and mortar outlets.

Each university in South Africa prescribes different academic textbooks to students. The result is that students of a particular university turn to bookstores that stock their prescribed textbooks which are mainly located within their campus and a few kilometres (km) thereof. The

Commission considered evidence from various sources including results of interviews of students and competitors. Student interviews carried out by the Commission support the view that the geographic market is likely to be within a 5km radius of each university campus where the activities of merging parties overlap. During its investigation, the Commission asked students to indicate the bookshops they consider as viable options and in response the vast majority of students interviewed at each university campus indicated that they buy their books within a 5km radius from their campus. Students were also asked to indicate which bookstores is their first and second best option and the results showed that students' first and second choices are also located within a 5km radius from their campus. Competitors of the merging parties also confirmed that they compete within a close proximity of the university campus. The Commission therefore agrees with the merging parties that the relevant geographic market is localised and is limited to a radius of 5 kilometres from a university campus.

The Commission therefore assessed the likely effects of the proposed merger in the following markets:

- The market for the retail sale of academic books within SUN and a 5 km radius thereof;
- The market for the retail sale of academic books within UCT and a 5 km radius thereof;
- The market for the retail sale of academic books within UJ and a 5 km radius thereof;
- The market for the retail sale of academic books within UP and a 5 km radius thereof;
- The market for the retail sale of academic books within TUT Main Campus and a 5 km radius thereof;
- The market for the retail sale of academic books within TUT Arcadia Campus and a 5 km radius thereof;
- The market for the retail sale of academic books within the Parrow Centre and a 5 km radius thereof; and
- The market for the retail sale of academic books within the Carlton Centre and a 5 km radius thereof.

During its investigation, the Commission considered whether the implementation of the proposed merger will result in the removal of an effective competitor and lead to higher prices for academic books sold to students at each of the relevant markets. In respect of the Parrow Centre and the Carlton Centre areas, the Commission found that the proposed merger is unlikely to raise competition concerns in these areas in respect of the sale of academic books through brick and mortar outlets. These bookshops cater predominantly for UNISA students

who are mainly distance learning students and benefit from a range of suppliers. The Commission therefore finds that the proposed merger is unlikely to raise competition concerns in respect of the Parrow Centre and the Carlton Centre areas.

However, in respect of the majority of the remaining markets, the Commission found that the proposed merger will reduce the number of sellers of academic books through bricks and mortar outlets from 3-2 players. The merged entity will account for high market shares in all of the affected markets for the retail sale of academic books and will be dominant in terms of the Competition Act No.89 of 1998, as amended (the Act). These market shares show that the merged entity will acquire market power as a result of the proposed merger. Each of the relevant markets is highly concentrated with an Herfindahl-Hirschman index that indicates that the proposed merger is likely to raise competition concerns in each of these markets. This fact has not been disputed by the merging parties. However, the merging parties submitted that the merged entity would not abuse the acquired market power position post-merger because *inter alia* there are low barriers to entry, countervailing power of customers and the role of online academic retailers.

The findings of the Commission's investigation did not support the contention of the merging parties that the proposed merger is unlikely to lead to a substantial lessening of competition concerns. Many of the entities interviewed by the Commission that sell academic books and some of the universities expressed concerns that the implementation of the proposed merger will result in a substantial prevention or lessening of competition.

The Commission's investigation shows that the implementation of the proposed merger is likely to result in the removal of an effective competitor from each of the SUN, UCT, UJ and TUT Main Campus areas, while it will result in the removal of a potential and credible competitor from TUT Arcadia area. The Commission's view is supported by the views of the merging parties' own bookstore managers, other academic bookstores, students and the Commission's analysis of pricing and volume data of the merging parties. The Commission found that the proposed merger is, however, unlikely to substantially prevent or lessen competition in the UP area as there are sufficient alternative academic textbook retailers that will continue to exercise a competitive constraint post-merger.

The Commission also found that barriers to entry are not as low as claimed by the merging parties. Factors considered by the Commission include access to the universities' booklist, capital investments and the importance of the bookstore being located close to university campuses. These are factors that are not easily surmountable. Potential entrants do not have access to trading sites located on university premises and the implementation of the proposed merger is likely to deter entry thereby increasing barriers to entry. Also, a review of the merging parties' lease agreements confirms that these can be extended and the merging parties have occupied certain premises for a long time. The lease agreements do not contain any provision that allow the merging parties' landlord to terminate the lease agreement in the event of an anti-competitive conduct by the merging parties.

The Commission found that not all customers have countervailing power, especially students who form the majority of customers of the merging parties. A significant amount of the merging parties' academic books are sold directly to students who are unable to exercise countervailing power in terms of the Act. Although institutional customers such as universities do have bargaining power, this is unlikely to protect students from unilateral price increases.

The Commission did not find evidence that support the merging parties' view that online academic retailers will constrain the ability of the merged entity from unilaterally increasing prices. Among the factors which restrict online sales is students' lack of access to credit card facilities which is the primary payment method. The vast majority of students interviewed by the Commission indicated that they do not buy academic books from online retailers and that they do not consider online academic retailers as a viable alternative. The Commission's view that online retailers exert only a very limited competitive constraint on brick and mortar retailers is supported by other academic bookshops.

The merging parties submit that the implementation of the proposed merger will create a number of pro-competitive efficiency gains that could be passed on to customers.

The Commission has interrogated the efficiency claims of the merging parties where after the merging parties conceded that it is not expected that any efficiencies will be generated. The claimed efficiency gains appear to be pecuniary efficiencies which are unlikely to offset the anti-competitive effects of the proposed merger. However, as the merging parties subsequently indicated that the claimed efficiencies are unlikely to arise, the Commission has concluded that

the proposed merger does not result in any efficiency gains or pro-competitive effects, which will offset the competitive harm caused by the proposed merger.

The Commission also assessed the vertical relationship between Juta Bookshops and the Times Media Group which controls Van Schaik. The Commission has found that this relationship is unlikely to raise any foreclosure concerns.

The implementation of the proposed merger will bring about a change in the market structure in each of SUN, UCT, UJ, TUT Main and TUT Arcadia markets which will make each susceptible to anti-competitive conduct. The Commission and the merging parties agree that the merged entity will have market power post-merger. However, the Commission is further of the view that the merged entity will have the ability and incentive to profitably increase prices post-merger at the affected relevant markets. The efficiency claims of the merging parties are unlikely to off-set the likely anti-competitive harm arising out of the proposed merger. The proposed merger is most likely to be detrimental to students at the affected markets.

The Commission also considered whether the substantial prevention or lessening of competition identified could be remedied. The parties suggested structural and behavioural remedies but the Commission found that these will not address the anti-competitive harm that will result from the proposed merger.

The Commission is therefore of the view that the merged entity will have market power and the incentive to unilaterally increase the prices of academic books to students. On the whole, the Commission has found that the proposed merger will substantially prevent or lessen competition in:

- The market for the retail sale of academic books within SUN and a 5 km radius thereof;
- The market for the retail sale of academic books within UCT and a 5 km radius thereof;
- The market for the retail sale of academic books within UJ and a 5 km radius thereof;
- The market for the retail sale of academic books within TUT Main Campus and a 5 km radius thereof; and
- The market for the retail sale of academic books within TUT Arcadia Campus and a 5 km radius thereof.

Juta Bookshops employs several employees at its head office and a substantial number of people at the different retail outlets. The merging parties indicated that the implementation of the proposed merger is likely to result in employees at head office level being retrenched.

The merging parties also concluded an agreement that makes a provision that Van Schaik may restructure Juta Bookshops due to operational requirements. The merging parties however maintained that the rationale for the acquisition of Juta Bookshops is to continue to operate the bookstores with the bookstore personnel. The Commission is of the view that there is insufficient evidence to suggest that the implementation of the proposed merger will give rise to significant public interest benefits, which can justify the approval of the proposed merger.

The Commission therefore prohibited the proposed merger in terms of section 13(5)(b)(iii) of the Act. The Commission hereby issued a certificate in the prescribed form prohibiting the merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

NOTICE 1003 OF 2013**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**A NEWLY FORMED ENTITY TO BE INCORPORATED IN THE REPUBLIC OF MAURITIUS
WHICH WILL BE CONTROLLED BY CHINA INTERNATIONAL TELEVISION
CORPORATION TO BE CALLED INTERACOM INVESTMENT HOLDINGS LIMITED.**

AND

SEKUNJALO INDEPENDENT MEDIA PROPRIETARY LIMITED

AND

INDEPENDENT NEWS & MEDIA SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2013JUL0317

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The proposed transaction involves two acquiring firms. The first acquiring firm is Sekunjalo Independent Media (Pty) Ltd ("Sekunjalo"), a private firm incorporated in terms of the laws of the Republic of South Africa ("SA"). Sekunjalo is a newly incorporated entity and does not control any other firm either directly or indirectly.

The second acquiring is Newco, a newly formed entity to be incorporated in the Republic of Mauritius. In the Shareholders Agreement entered between China International Television Corporation ("CITVC") and China Africa Development fund ("CADF"), it is indicated that Newco shall be called Interacom Investment Holdings Limited.

There is no horizontal overlap and/or a vertical overlap in the activities of the merging parties (i.e. Sekunjalo, Sekunjalo Investment, CITVC (acting through Newco) and INMSA). As a result

of PIC's involvement in the proposed transaction, any likely horizontal or vertical overlap only arise in the event that the PIC exercises control as defined in sections 12 (2) of the Act over TMG and Naspers, and/or whether the 25% shareholding at INMSA confers control to it post-merger.

In the initial transaction,¹ the Commission concluded that PIC does not currently exercise control over TMG or Naspers. As such, the Commission is of the view that it is unlikely that the proposed transaction will result in unilateral and vertical effects in any markets where the TMG, Naspers and INMSA are active. Similarly, the Commission does not deem it necessary to undertake a unilateral or vertical effects analysis as the proposed transaction does give rise to horizontal or vertical overlaps.

Notwithstanding the aforesaid, the shareholding interest held by PIC in three competing entities TMG, Naspers and INMSA post-merger raises concerns related to potential information exchange post-merger. The potential presence of the PIC on the board of directors of INMSA, Naspers and the TMG post-merger, could facilitate the sharing of competitively sensitive information among the three competing companies that could increase the likelihood of anti-competitive coordination between them. The Commission concludes that it is necessary to impose conditions to address the likely competition concerns that may arise due to the cross-ownership of shares by PIC in competing entities. The conditions imposed by the Commission in the initial transaction aimed to address the possibility of PIC being in control of INMSA in whatever form post-merger and the possible information exchange that could arise as a result of PIC's shareholding and potential board representation at TMG, Naspers and INMSA.

The conditions sought ensure that the ambiguity with regards to the control of INMSA post-merger is addressed as the shareholders agreements between Sekunjalo and PIC and Sekunjalo and CITVC in respect of INMSA has not been finalised.

The Commission therefore approves the proposed transaction subject to the following condition to which the merging parties are amenable, that:

- Newco and Sekunjalo shall submit the signed shareholders agreement in respect of INMSA, and all ancillary agreements thereto, in respect of INMSA, to the Commission within 5 business days of its signature by the parties thereto;

¹ Refer to Commission case no: 2013Apr0167

- Sekunjalo shall submit the signed loan agreement in respect of the Newco's and PIC's loan(s) to INMSA, and all ancillary agreements thereto, to the Commission within 5 business days of its signature by the parties thereto;
- In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and TMG post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and TMG;
- In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and Naspers post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and Naspers;
- The PIC shall, notwithstanding the listing of INMSA or delisting of TMG and Naspers, ensure that its investments in INMSA, Naspers and TMG remain housed in different departments within PIC and shall continue to adhere to the existing safe guards,
- If, after the Approval Date and/or the shareholders agreement in 3.1 has been finalised, PIC acquires a form of control over INMSA as contemplated in section 12(2) of the Act, the Merging Parties shall file a new merger notification with the Commission in terms of the Act within 30 business days; and
- In the event that the PIC enters into any loan agreement with Sekunjalo and such a loan is converted into shares such that PIC acquires additional shares in INMSA; Sekunjalo will inform the Commission of this conversion within 5 business days of the conversion and will submit to the Commission all the necessary information including the signed loan agreement to enable the Commission to determine whether a notification is required. In the event that a merger notification is required, PIC will not, prior to obtaining the approval of the Competition Authorities, implement the transaction by exercising any of the rights accruing to such shares that may afford it control over INMSA.

The Commission approved the proposed transaction with conditions in terms of section 14(1) (b) (ii) of the Act, as amended.

1. Definitions

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

- 1.1. "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.2. "Approval Date" means the date of the merger clearance certificate;
- 1.3. "CADF" means China-Africa Development Fund, a limited liability company established and validly existing under the law of the People's Republic of China;
- 1.4. "CITVC" means China International Television Corporation, a limited liability company established and validly existing under the law of the People's Republic of China;
- 1.5. "Commission" means the Competition Commission of South Africa;
- 1.6. "Competition Authorities" means the Commission and the Competition Tribunal of South Africa;
- 1.7. "Competitively Sensitive Information" includes any trade secrets, prices, discounts, rebates margins, circulations figures, advertising rates, distribution methods, editorial content, promotional plans, business plans and strategies, customer information;
- 1.8. "Conditions" means these conditions;
- 1.9. "INMSA" means Independent News & Media South Africa (Pty) Ltd, with registration number: 1991/005270/07, or any subsequent name which may lawfully be registered to that entity;
- 1.10. "Merger" means the acquisition of control over INMSA by Newco and Sekunjalo;
- 1.11. "Merging Parties" means Newco, Sekunjalo and INMSA;
- 1.12. "Naspers" means Naspers Limited;

- 1.13. "Newco" means a newly formed entity to be incorporated in the Republic of Mauritius controlled by CITVC to be called Interacom Investment Holdings;
- 1.14. "PIC" means the Government Employee Pension Fund acting through its authorised representative the Public Investment Corporation SOC Limited;
- 1.15. "Sekunjalo" means Sekunjalo Independent Media (Pty) Ltd; and
- 1.16. "TMG" means Times Media Group Limited.

2. Recordal

- 2.1. In terms of the proposed transaction, Sekunjalo intends to acquire 55%, PIC intends to acquire 25% and Newco intends to acquire 20% of the shares in INMSA. The shareholders of Newco are CITVC, which owns 75% of the shares, and CADF, which owns 25% of the shares in Newco. CITVC controls Newco as contemplated in section 12(2) of the Act, whereas CADF does not have any form of control over Newco as contemplated in section 12(2) of the Act.
- 2.2. Given that the shareholders agreement between Newco, Sekunjalo and PIC in respect of INMSA has not been finalised, the Commission assessed the proposed merger in the absence of a shareholders agreement or any other document(s) that articulates the nature of the relationship between Newco, Sekunjalo and PIC post-merger. The Commission is concerned that in the absence of a shareholders agreement it is uncertain whether PIC will acquire a form of control over INMSA post-merger, as contemplated in section 12(2) of the Act.
- 2.3. There is currently also no shareholders agreement or any other document(s) that articulates the nature of the relationship between Newco, Sekunjalo and INMSA post-merger. The Commission is concerned that in the absence of a shareholders agreement the nature and extent of Newco's control over INMSA is uncertain.
- 2.4. According to the Merging Parties, PIC will, in addition to its own direct acquisition of

equity in INMSA, also provide a loan to Sekunjalo to fund a portion of the purchase price. In the event that a loan agreement is concluded between Sekunjalo and PIC, the parties to this agreement have indicated that such a loan is unlikely to be convertible into equity in the event of a default; and is therefore unlikely to afford PIC any rights that will confer control to it in terms of section 12(2) of the Act. Given the uncertainty regarding the terms of any loan agreement that may be entered into between Sekunjalo and PIC, the Commission is concerned that the terms of such loan agreement may confer some form of control in terms of section 12(2) of the Act to PIC, in the event of a default.

- 2.5. In addition, post-merger, PIC will have shareholding in TMG, Naspers and INMSA and may appoint representatives on the board of directors of TMG, Naspers and INMSA. Given PIC's common shareholding in the three competing firms post-merger, the Commission is concerned that if PIC appoints representatives to the board of directors of TMG, Naspers and INMSA, this could potentially facilitate the sharing of Competitively Sensitive Information between INMSA, Naspers and TMG.
- 2.6. The Commission is therefore of the view that the Conditions set out in paragraph 3 below are necessary and sufficient to address the Commission's concerns as set out above. For the avoidance of doubt, the Conditions seek to remedy the following concerns –
 - 2.6.1. the likelihood of any potential co-ordination which may result from the sharing of Competitively Sensitive Information given PIC's shareholding in INMSA, Naspers and TMG post-merger, which are competing firms;
 - 2.6.2. the uncertainty with respect to the shareholding and management structure of INMSA post-merger; and
 - 2.6.3. the uncertainty with respect to the terms of PIC's loan agreement to Sekunjalo.

3. Conditions to the approval of the Merger

- 3.1 Newco, Sekunjalo and PIC shall submit the signed shareholders agreement in respect of INMSA, and all ancillary agreements thereto, in respect of INMSA, to the Commission within 5 business days of its signature by the parties thereto;
- 3.2 Sekunjalo shall submit any signed loan agreement in respect of the Newco and PIC's loan(s) to INMSA, and all ancillary agreements thereto, to the Commission within 5 business days of its signature by the parties thereto;
- 3.3 In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and TMG post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and TMG;
- 3.4 In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and Naspers post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and Naspers;
- 3.5 PIC shall, notwithstanding the listing of INMSA and/or delisting of TMG and/or Naspers, ensure that its investments in INMSA, Naspers and TMG remain housed in different departments within PIC and shall continue to adhere to the existing safe guards, thus ensuring:
- 3.5.1 the physical separation, including controlled access to office space, of the Listed Equities department and Unlisted Equities department of PIC, to continue to regulate the restricted access of the Listed Equities department and Unlisted Equities department to shared IT systems;
- 3.5.2 that Competitively Sensitive Information in respect of either INMSA or Naspers or TMG is not shared among the different management teams within PIC managing Listed and Unlisted Equities respectively; and

- 3.5.3 in addition to clause 3.3 and 3.1 above, should either TMG or Naspers be delisted and INMSA be listed at the same time, PIC will manage its investments in the three entities separately, thus ensuring that PIC personnel managing its investment in each of TMG, Naspers and INMSA will not be the same.
- 3.6 If, after the Approval Date and/or the shareholders agreement in Error! Reference source not found. has been finalised, PIC acquires a form of control over INMSA as contemplated in section 12(2) of the Act, the parties to this merger shall file a new merger notification with the Commission in terms of the Act within 30 business days;
- 3.7 In the event that PIC enters into any loan agreement with Sekunjalo and such a loan is converted into shares such that PIC acquires additional shares in INMSA; Sekunjalo will inform the Commission of this conversion within 5 business days of the conversion and will submit to the Commission all the necessary information including the signed loan agreement to enable the Commission to determine whether a notification is required. In the event that a merger notification is required, PIC will not, prior to obtaining the approval of the Competition Authorities, implement the transaction by exercising any of the rights accruing to such shares that may afford it control over INMSA; and
- 3.8 If, after the Approval Date and/or the shareholders agreement in respect of Newco has been finalised, CADF acquires a form of control over Newco as contemplated in section 12(2) of the Act, by any amendment to the shareholders agreement in respect of Newco, the parties to this merger shall file a new merger notification with the Commission in terms of the Act within 30 business days.

4 Duration

- 4.1 Clause 3.3 and 3.4 of these Conditions shall remain in place for as long as PIC has shareholding in INMSA, Naspers and TMG; and
- 4.2 Clause 3.5 of these Conditions shall remain in place for as long as PIC has shareholding in INMSA, TMG and Naspers.

5 Monitoring of compliance with the Conditions

- 5.1 Should there be any deviation to the existing safe guards as captured in clause 3.5 of these Conditions, INMSA and/or PIC must inform the Commission of such changes within 10 business days.
- 5.2 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 5.3 The Commission may on good cause shown, lift, revise or amend these Conditions.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@comcom.co.za.

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