



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:016410**

In the matter between:

**The Corob Trust: Palm Trust and Others Limited**

Acquiring Firms

And

**Longland Investments (Pty) Ltd and Tangmere**

**Investment Corporation (Pty) Ltd**

Target Firms

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Panel	:	Norman Manoim (Presiding Member) Andiswa Ndoni (Tribunal Member) Mondo Mazwai (Tribunal Member)
Heard on	:	05 June 2013
Order issued on	:	05 June 2013
Reasons issued on	:	27 June 2013

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### Reasons for Decision

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#### Approval

[1] On 05 June 2013 the Competition Tribunal ("Tribunal") unconditionally approved the merger between the two consortiums of acquiring firms and Longland Investments (Pty) Ltd and Tangmere Investment Corporation (Pty) Ltd. The reasons for approval follow below.

## The Transaction

[2] The primary acquiring firms are the Palm Trust, the Corob Trust, Standard Bank Properties (Proprietary) Limited (“SBP”), Tsogo Sun One Monte (Proprietary) Limited (“One Monte”), HCI Invest 5 Holdco (Proprietary) Limited (“HCI”), Sable Holdings Limited (“Sable”) and Abbeydale Investment Holdings (Proprietary) Limited (“Abbeydale”). These firms have formed two consortiums, namely: Consortium 64 and Consortium 12, in order to facilitate this transaction.

[3] The Palm Trust is a discretionary property trust, formed for the purpose of holding movable, immovable and incorporeal property of whatever nature. The Corob Trust is a discretionary property holding trust, formed for the purpose of holding movable, immovable and incorporeal property of whatever nature.

[4] One Monte is a wholly owned-subsidiary within the Tsogo Sun Group of companies. Tsogo Sun is involved in the hotel, gaming, exhibition and conference facilities and entertainment industries and has operations throughout Africa, the Middle East and the Seychelles. The Tsogo Sun Group’s operation can be subdivided into two principal business activities; namely: gaming and hotels. In addition to these activities, the Tsogo Sun Group has commercial property interest in Pallazo Towers and the Pivot office park.

[5] The primary target firms are Longland Investments (Pty) Ltd (“Longland”) and its wholly owned subsidiary Tangmere Investment Corporation (Pty) Ltd (“Tangmere”). Longland and Tangmere are both property investment companies that own adjacent portions of land in Witkopen a suburb on the northern outskirts of Johannesburg. At present this land is zoned as farmland and has not been commercially developed with the exception of two buildings one

an office block, Longpoint Building and another a hotel, City Lodge which do not form part of the present transaction.<sup>1</sup>

### **The relevant market and the impact on competition**

[6] At present the land being acquired through this transaction is zoned as farmland, the acquiring consortiums wish to develop it as commercial property. Some of the members of the acquiring firm are already active in the commercial property market. The Commission was concerned that the merging firms were unable to commit on which commercial uses the properties would be turned to. The merging parties indicated that they had a development plan which was before the local authority for zoning approval but that until the approval was given it was not possible to confirm that the developments would take place in terms of the zoning plan as submitted. Secondly, if the zoning process took long which is possible, then the commercial imperatives existing now may change. For instance if the plan provided for extensive office space and the commercial office market in the area changed from what it is presently then they might use that space for another purpose ie expanding on the retail space.

[7] The Commission was not satisfied with this and required that merger be approved subject to the following condition:

[8] *“that should the Consortium Members decide to build anything other than Grade AAA office property (or Grade P); Grades 4 and 5 Hotel accommodations; and a retail box property as assessed by the Commission in the current transaction, the Consortium Members shall, within a period of thirty (30) business days of the taking of such decision, inform the Commission in writing to enable it to assess how*

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<sup>1</sup> In terms of the Sale of Land Agreement entered into between the primary target firm and the primary acquiring firm, Consortium 64 will purchase in undivided shares from Longland the Remaining Extent of Portion 109 (Portion 109) and the remaining Extent of Portion 185 (Portion 185) of the farm Witkoppen 194. Post-merger, Consortium 64 will own Portion 109 and Portion 185 of the acquired land. Furthermore, Consortium 12 will purchase in undivided shares from Longland the Remaining Extent of Portion 40 (Portion 40) of the farm Witkoppen 194 from Tangmere. Post-merger, Consortium 12 will own Portion 40 and Portion 230 of the acquired land

*such change in development plans, which were not the subject of the Commission's assessment, might affect the state of competition in any property market within the Fourways node.*

[9] *Further, that in the event that the Commission is of the view that such change in development plans is likely to give rise to substantial lessening and preventing of competition concerns in any property market within the Fourways node, it shall require the Consortium Members to notify the merger in terms of section 12A of the Act and the Consortium Members shall notify the merger accordingly."*

[10] The merging parties objected to the condition being imposed on them arguing that there was no reason for it to be imposed as the merger did not on the Commission's own analysis, raise any competition or public interest concerns, which would be a necessary jurisdictional basis for the imposition of conditions.

[11] We agreed with the merging parties and have decided to approve the merger without conditions for the following three reasons: (i) it is not clear whether the subsequent change in usage of the property would constitute a merger as such; (ii) the Commission was not able to adequately identify any competition concerns within any of the commercial properties it analysed so imposing a condition on a future change of usage does not seem justified by any existing concern;(iii) the merging parties are not taking over the existing assets and thus increasing concentration in the market. Rather the merger contemplates the investment in new assets and thus increasing existing supply to the market.

## CONCLUSION

[12] There are no significant public interest issues and we accordingly approve the transaction without conditions.

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**N Manoim**

27 June 2013  
**DATE**

A Ndoni and M Mazwai concurring.

Tribunal Researcher: Thabo Ngilande  
For the merging parties: Werksmans Attorneys  
For the Commission: Lindiwe Khumalo