

Firms to pay R1.4m penalty for jumping the gun on merger

Four firms have admitted that they unintentionally contravened the Competition Act (the Act) by implementing a merger transaction without prior approval by the Competition Commission (the Commission), and have agreed to jointly pay an administrative penalty of R1,485,000. This consent agreement has been confirmed by the Competition Tribunal.



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Section 13A(3) of the Act stipulates that parties to a large merger may not implement that merger until it has been approved, with or without conditions, by the Commission.

Terms of the consent agreement

In addition to agreeing to pay the penalty, I Group Consolidated Holdings (I Group), U Reit Collins (U Reit), Tradegro Holdings (Tradegro) and Collins Property Projects (Collins) agree to notify the Commission of any future transactions that constitute a notifiable merger and to refrain from engaging in prior implementation of notifiable mergers. They will also implement a competition law compliance programme.

Background

In May 2019, U Reit acquired shares in Collins (the I Group/Collins transaction). 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.

The Commission became aware of the transaction in 2021 when the firms voluntarily informed it of the transaction's implementation. The firms were of the view that the transaction did not constitute a notifiable merger and requested guidance from the Commission.

According to the firms, they became aware of the possible argument that the transaction could be construed as a notifiable merger during May 2021, while preparing a merger notification for a different transaction. Following their engagements with the Commission, the firms in good faith acceded to the Commission's request that the transaction be notified in April 2022*.

In the Commission's opinion, the transaction resulted in I Group (through U Reit) acquiring *de facto* control over Collins which it did not exercise before the transaction. The firms argued that they were *bona fide* in forming their opinion that U Reit had not acquired *de facto* control over Collins. Ultimately, the Commission found that the firms' conduct was in contravention of section 13A(3) of the Act. For the purpose of conducting a full and final settlement with the Commission the firms said that, notwithstanding their *bona fide* view as referred to above, they were willing to admit that they unintentionally contravened the Act.

*The I Group/Collins transaction was notified in April 2022. The Commission assessed the merger and recommended that it be approved without conditions. The Tribunal approved the merger without conditions on 20 May 2022.

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