

SAPOA SUBMISSION DOCUMENT
DRAFT GUIDELINES ON THE ASSESMENT OF PUBLIC INTEREST PROVISIONS IN
MERGER REGULATION
COMMENTS SUBMITTED BY SAPOA

A. INTRODUCTION

The South African Property Association (SAPOA) was established in 1966 and is a unique, member driven organization that aims to represent, protect and advance members' commercial and industrial property interests within the property industry in terms of ownership, management and development.

SAPOA represents approximately 1300 companies and organisations (some of which include ABSA, Nedbank, Investec Property Group, Old Mutual Properties, Liberty Properties, Eskom, Transnet, East London IDZ, Growthpoint Properties, the V&A Waterfront Company, ACSA, Eris Property Group, Encha Properties, Zenprop, Redefine Properties, and Resilient Properties etc. Our members own and control about 90% of all commercial, retail, office and industrial properties in South Africa to the value of approximately R500bn and constitute some of the largest rate payers in South Africa.

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SAPOA is in support of and cognisant of the imperatives that flow from the Competition Act, 1998 (Act No. 89 of 1998) hereinafter referred to as the Act. Namely to ensure that the following is achieved:

“That the economy must be open to greater ownership by a greater number of South Africans.

That credible competition law, and effective structures to administer that law, are necessary for an efficient functioning economy.

That an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focussed on development, will benefit all South Africans.”

B.FORMAL COMMENTS

The following concerns have been raised below:

- 1) The Draft Guidelines on the assessment of public interest provisions in merger regulation hereinafter referred to as Guidelines are indeed a good step in ensuring that the objectives of the Act are met. The public interest consideration is one that has been made provision for in the Act. However, it is a consideration that must be applied cautiously and holistically to ensure that there is avoidance of unintended consequences which could effectively be detrimental.
- 2) There is set criteria that aids a merger analysis namely that the pro and anti-competitive effects must be analysed. This will then be followed by consideration of the effect of the merger on public interest grounds.
- 3) The general approach to assessing the public interest provisions is based on whether these effects are substantial, which forms part of the considerations. However the word substantial has not been defined and therefore it is unknown what interpretation can be associated with it that is whether the Competition authorities will give way for a narrow or wide interpretation as a set standard. We suggest that the latter would be most appropriate and yield the best results.



- 4) We are of the view that when public interests are being considered a balanced approach needs to be implemented which would effectively enable the objectives of the Act to be reached but also ensure that mergers which could be beneficial for the economy are not compromised.
- 5) The declining economic climate and particularly the effect it has had on the property market must be taken into consideration when balancing public interest considerations as well as the approval of mergers. Statistics have shown that conditions in South Africa's commercial property sector have weakened during the course of 2014. Further, the macroeconomic and interest rate environment do not bode well for the sector.
- 6) The aforementioned economic position therefore necessitates that there will be situations where job losses occur. However it would be important for the Competition authorities to then look at the long term benefits of the merger, given that the economy is likely to benefit in the long run from the merger therefore enabling an environment where more jobs may be created. The approach needs to be able to give way to a long term projections and ultimately what would be in the best interests of affected parties holistically as well as the economy. Job creation remains a huge challenge for our country and indeed a priority; however the realisation of this priority must take into consideration the strategies of business as well as long term desired outcomes.
- 7) The justification of public interest with regards to mergers must be looked at within reason and realistic parameters must be set in order for an accurate analysis of efficiency gains of a merger to be assessed and policy imperatives to be met.

CONCLUSION

We look forward to consideration of our comments and further engagement on the Guidelines.



Yours faithfully,

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