



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018721

In the matter between:

**FIRSTRAND BANK LIMITED N.O. AS TRUSTEES
FOR THE TIME BEING OF THE EMIRA PROPERTY
FUND**

Primary Acquiring Firm

And

MENLYN CORPORATE PARK (PTY) LTD

Primary Target Firm

Panel : Dr T Madima (Presiding Member)
: Ms A Ndoni (Tribunal Member)
: Dr I Valodia (Tribunal Member)
Heard on : 21 May 2014
Order Issued on : 21 May 2014
Reasons Issued on : 18 June 2014

Reasons for Decision

Approval

[1] On 21 May 2014, The Competition Tribunal ("Tribunal") unconditionally approved the acquisition by First Rand Limited N.O. as Trustee for the Time

being of the Emira Property Fund for all the issued shares in the Menlyn Corporate Park (Pty) Ltd.

- [2] The reasons for approving the proposed transaction follow hereunder.

Parties to the transaction

- [3] The primary acquiring firm is First Rand Limited N.O. as trustee for the time being of the Emira Property Fund ("**Emira**"), a portfolio created under the Emira Property Scheme and listed on the Real Estate Investment Trusts sector on the Johannesburg Securities Exchange.
- [4] Emira has various shareholders such as Tiso Group, Old Mutual and Government Employment Pension Fund. Emira is administered by Strategic Real Estate Managers, it manages Emira subject to oversight of the Registrar and FirstRand. Emira wholly controls Freestone Property Holdings Limited ("**FPH**"). FPH wholly owns Freestone Property Investments (Pty) Ltd and Arnold Properties (Pty) Ltd. Arnold in turn wholly owns various subsidiaries.
- [5] The primary target firm is Menlyn Corporate Park (Pty) Ltd ("**MCP**"). MCP is wholly owned by Feenstra Group (Pty) Ltd ("**Feenstra**"). MCP owns the target property Menlyn Corporate Park.

Proposed Transaction and Rationale

- [6] Emira intends to acquire the entire issued shares in MCP and through this control Emira will control the target property.
- [7] Emira wishes to acquire quality property in the growing area of Menlyn. Feenstra wants to realise profit on the sale of the property and this affords it an opportunity to re-invest the proceeds in other developments.

Relevant Market and Impact on Competition

- [8] Emira owns a portfolio comprising of office, retail and industrial properties located throughout South Africa. In Pretoria it owns more than 17 properties.
- [9] MCP owns the Target Property and two other properties in Pretoria and Bloemfontein. However only the Target property in the Menlyn node forms part of the proposed transaction.
- [10] The proposed transaction does result in horizontal overlap in regards to activities between the merging parties in respect of lettable A -Grade office space.
- [11] The relevant market is the provision of rentable A-Grade office property in the Menlyn node.
- [12] In this market the merging parties market share will increase post transaction from 14% to 25%. The market share accretion is 11%, the Commission viewed this as unlikely to substantially prevent or lessen competition given that approximately 75% of the market is held by other competitors such as Growthpoint, Capital Properties, Hyprop and Atterbury.

Countervailing Powers

- [13] The Commission identified that the Menlyn node has a vacancy rate of 7% and the merging parties having a vacancy rate of 8%. The Commission further identified that the merged entity contributes about 28% towards total vacant Gross Leasable Area ("GLA") in Menlyn while other competitors contribute 72%. This means that competitors in the Menlyn area have more vacant space to lease compared to the merged entities and therefore tenants will still have alternative buildings available to lease from post-merger.

[14] According to Emira its lease agreements contain escalation rate clauses that restrict Emira from unilaterally increasing rental amounts above the agreed escalation rate.

[15] The Commission has recommended that all the above factors are likely to deter the merged entity from charging higher rental prices given that tenants will have options when choosing office space in the area.

Conclusion

[16] In light of the above I conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for provision of rentable A -Grade office property. In addition, no public interest issues arise from the proposed transaction. Accordingly I approve the proposed transaction unconditionally.



Dr T Madima

18 June 2014
DATE

Dr I Valodia and Ms A Ndoni concurring

Tribunal Researcher:	Moleboheng Moleko
For the merging parties:	Albert Aukema and Andries Le Grange – Cliffe Dekker Hofmeyr
For the Commission:	Hardin Ratshisusu, Lindiwe Khumalo, Portia Bele and Mogau Aphane.