



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020040

In the matter between:

VUKILE PROPERTY FUND LIMITED

Primary Acquiring Firm

And

SYNERGY INCOME FUND LIMITED

Primary Target Firm

Panel : Norman Manoim (Presiding Member)
: Yasmin Carrim (Tribunal Member)
: Mondo Mazwai (Tribunal Member)
Heard on : 12 December 2014
Order Issued on : 12 December 2014
Reasons Issued on : 16 January 2014

Reasons for Decision

Approval

[1] On 12 December 2014, The Competition Tribunal unconditionally approved the acquisition of control by Vukile Property Fund Limited ("Vukile") over Synergy Fund Limited ("Synergy").

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

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm is Vukile, a public company listed on the Johannesburg Securities Exchange ("JSE"). Vukile is not controlled by any firm.

[4] Vukile is a property investment fund with a property portfolio comprising of retail and office property as well as vacant undeveloped land. Relevant for purposes of this transaction are 29 retail properties within its portfolio classified as neighbourhood, community and regional centres located in the Gauteng, Limpopo, Mpumalanga, Free State, Northern Cape, Kwazulu-Natal and Western Cape provinces.

Primary target firm

[5] The primary target firm is Synergy or its property portfolio in the alternative.¹ Synergy is a public company listed on the JSE. Synergy is not controlled by any firm.

[6] Synergy is a property investment fund with a property portfolio comprising of retail property classified as community and neighbourhood centres located in the Free State, Limpopo, Mpumalanga, North West and Kwazulu-Natal provinces.

Proposed Transaction

[7] Vukile currently holds 39% of the shares in Synergy, pursuant to the proposed transaction; Vukile will be increasing its shareholding in Synergy. The terms of the transaction include, Vukile either exercising its obligation to make a mandatory offer to acquire the remaining shares in Synergy, or in the alternative, exercising its right by making an offer to acquire the property portfolio of Synergy.

¹ See details surrounding the transaction at paragraphs 7, 8 and 9 below.

- [8] These mandatory offers will result in Vukile increasing its shareholding by having sole control over Synergy, or in the alternative, sole control over the property portfolio of Synergy in terms of section 12(2) of the Competition Act, Act No 89 of 1998 (the "Act"). Regardless which option Vukile implements, being either the acquisition of the shares and property portfolio, both will result in Vukile having control over the property portfolio of Synergy.
- [9] The merging parties submitted that they are unable to provide the exact number of shares that Vukile will acquire in Synergy, as the mandatory offer was subject to unconditional approval from the South African Competition Authorities. Thus the Commission adopted a worst case scenario and assessed the proposed acquisition on the basis of sole control being acquired.

Rationale

- [10] Vukile has submitted, as a rationale for the transaction, to increase its exposure to retail property. Synergy has not submitted its rationale as Vukile has not, as yet, made its mandatory offer.

Relevant Market and Impact on Competition


- [11] The Commission considered the activities of the merging parties in the provision of rental space in convenience centres and found that a geographic overlap exists in Kwazulu-Natal, specifically within a 10km radius of the KwaMashu Shopping Centre. The Commission found that the merged entity will have a post-merger market share of 16.35%, with an accretion of 5.13%.
- [12] Based on its analysis, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rental space in convenience centres within a 10km radius of KwaMashu Shopping Centre, as the merged entity's post-merger market share remains low. This is a finding upon which we incur.

Public Interest Analysis

- [13] The Commission noted a potential public interest concern with respect to an exclusivity clause contained in a Lease Agreement at the KwaMashu Shopping Centre concluded in favour of the Spar Group (Pty) Ltd ("Spar"). This exclusivity clause was deemed to raise a potential public interest concern in terms of section 12A (3) (a) and (c) of the Act. The Commission noted however, that this concern was addressed by it in a previous investigation performed when Synergy initially acquired a 100% interest in the KwaMashu Shopping Centre in 2011.²
- [14] In this respect, the Commission approved the transaction subject to the condition that Synergy was required to negotiate with Spar for the removal of the exclusivity clause upon expiry of the lease agreement in 2015. The obligations placed upon Synergy in terms of the aforementioned condition will be passed onto Vukile should it acquire the KwaMashu Shopping Centre. Thus the Commission found, given the existence of this condition, that a further condition applicable to this transaction is not necessary.
- [15] The proposed transaction raises no public interest concerns other than those surrounding exclusivity as discussed above.

Conclusion

- [16] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified markets. Accordingly we approve the proposed transaction unconditionally.



Norman Manoim

16 January 2015
DATE

Yasmin Carrim and Mondo Mazwai concurring

Tribunal Researcher: Derrick Bowles

For the merging parties: Andries Le Grange – Cliffe Dekker Hofmeyr

For the Commission: Xolela Nokele and Seema Nunkoo

² Refer to Commission case number 2011Jul0147.