

COMPETITION TRIBUNAL SOUTH AFRICA

Case No: 112/LM/Oct08

In the matter between:

Scarlet Sky Investments 36 (Pty) Ltd Acquiring firm

And

Meletse Big Five Reserve and

Golf Estate Development Target firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member) and M Moerane (Tribunal Member)

Heard on : 07 November 2008

Decided on : 07 November 2008

Reasons Issued on : 27 November 2008

Reasons for Decision

Approval

[1] On 07 November 2008 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Scarlet Sky Investments 36 (Pty) Ltd and Meletse Big Five Reserve and Golf Estate Development. The reasons appear below.

Parties

[2] The primary acquiring firm is Scarlet Sky Investments 36 (Pty) Ltd (“Scarlet Sky”) a private company duly incorporated under the laws of the Republic of South Africa.¹

[3] The primary target firm is Meletse Big Five Reserve and Golf Estate Development (“Meletse Development”). Meletse Development is currently owned and controlled by the following three companies: Meletse Golf Estate (Pty) Ltd²; Thaba Ekgolo (Pty) Ltd³ and Lynx

¹ Scarlet Sky is jointly controlled by the following shareholders namely: Atterbury Property Developments (“APD”) 25% shares; Attacq Property Fund Ltd 25% shares; MJ Raath Family Trust 25% shares; RMB Property Holdco 1 (Pty)Ltd with 25% shares.

² Meleste Golf Estate (Pty) Ltd is owned by the following shareholders: RMB Property Holdco1 (Pty) Ltd 25%; MJ Raath Family Trust 37.5% and LPG Trust 37.5%.

³ Thaba Ekgolo (Pty) Ltd is owned by the following shareholders: RMB Property Holdco1 (Pty) Ltd 25%; MJ Raath Family Trust 37.5% and LPG Trust 37.5%.

Golf Estate (Pty) Ltd⁴ collectively referred to as “the sellers”. The Meletse Development does not control any firm.

Transaction

[4] In terms of the proposed transaction, Scarlet Sky intends to acquire Meletse Development which consists of various farms, wildlife, plant and equipment, development rights and projects. On completion Scarlet Sky will control Meletse Development consisting of various farms, wildlife, plant and equipment, development rights and projects.

Rationale

[5] The parties submit that considering the size of Meletse Development the sellers are not able to develop the properties to their full potential on their own and accordingly approached APD to partner with them in developing the properties.

Parties' Activities

[6] Scarlet Sky is a newly formed company specifically created for the purposes of this transaction and has not traded before. APD and the Atterbury Property Group are involved in the development of various properties country wide. In addition to property development the Atterbury Property Group is involved in property asset management through Atterbury Asset Managers (Pty) Ltd, which manages the assets and administers the property portfolio of Attaqc and the Atterbury Group.⁵ Attaqc is a property fund, which owns a property portfolio comprising of offices, retail and industrial property.⁶ RMB Property forms part of the investment banking arm of the financial services group FirstRand Ltd. The investment banking arm of FirstRand Ltd is a full service investment bank which delivers the whole range of services from debt-raising, management buyouts and privatisation to public private partnerships, mergers and acquisitions and the trading of the complex financial instruments. The MJ Raath Family Trust is an *inter vivos* trust which is a shareholder of the sellers and will post merger remain to hold a minority shareholding in Scarlet Sky.

[7] Meletse Development is located 70 km west of Bela Bela and upon completion it will comprise of: 413 full title golf course stands ranging from 5000m and 10000 m; 74 full title

⁴ Lynx Golf Estate (Pty) Ltd is owned by the following shareholders: MJ Raath Family Trust 50% and LPG Trust 50%.

⁵ The parties' submit that other property development projects of APD include wide range of property developments including retail, residential, industrial and office developments.

⁶ Attaqc manages and administers its property portfolio; it is also involved in property development. It recently acquired developments rights in respect of Waterfall development.

golf lodges; 24 bush lodges; wildlife, equipment, development rights and projects and 19 exclusive 5000 ha managed private game farms within the 16 000 ha reserve.

Competition Analysis

[8] According to the Commission there is a potential overlap in the activities of the merging firms in respect of residential property. The Commission submits that the overlap occurs in that the acquiring firm is currently developing residential properties in Nelspruit, Pretoria, Cape Town and Mpumalanga and they will post merger develop the primary target firm's residential property in Limpopo. According to the Commission there is no geographic overlap in the activities of the merging parties as the acquiring firm is not involved in the development of residential property in Limpopo. We agree with the Commission's view that the proposed transaction is unlikely to raise any competition concerns.

[9] The Commission also analysed the vertical relationship between the merging firms as the acquiring firm is involved in the development of properties and is acquiring developmental rights of the target firm and will post-merger own and sell the residential properties to be developed. We agree with the Commission that this vertical integration is unlikely to give rise to any foreclosure, as there are other developers such as Investec Property Group, Zenprop, Old Mutual Properties, WBHO, Liberty Properties, Spearhead Properties and others, which will be available to develop properties in the unlikely event that the acquiring firm is foreclosed. We therefore conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Conclusion

[10] There are no public interest issues. Accordingly the transaction is unconditionally approved.

N. Manoim

Tribunal Member

Y Carrim and M Moerane concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Glyn Marais

For the Commission : Xolela Nokele (Mergers and Acquisitions)

27 November 2008

Date