COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 34/LM/Jul03

In the large merger between:

Momentum Property Investments (Pty) Ltd

and

Bonatla Property Holdings Limited

Reasons for Decision

Approval

1. On 20 August 2003, the Competition Tribunal issued a Merger Clearance Certificate approving, in terms of section 16(2)(a)[1], the merger between Momentum Property Investments (Pty) Ltd ("MPI") and Bonatla Property Holdings Limited ("Bonatla"). The reasons for our decision follow.

The parties

2. The primary acquiring firm is MPI, which consists of the property portfolio of the Momentum Group Limited.

3. The primary target firm is Bonatla, a listed property holding company. As a result of this transaction Bonatla will dispose of a property portfolio consisting of 34 office, industrial and retail properties to MPI.

The structure and rationale for the merger transaction

4. In terms of the merger agreement MPI will acquire 34 properties ("target properties") owned by Bonatla and its subsidiaries.

5. The transaction will result in the establishment of a listed collective investment scheme in property ("**the CIS Trust**"), which is regulated in terms of the Collective Investment Schemes Control Act 45 of 2002 ("**CIS Act**").

6. The CIS Trust will be listed and will be managed by a management company appointed in terms of the CIS Act. The initial trustees will be appointed by MPI and approved by the Financial Services Board ("**FSB**"). The parties stated further that the management company overseeing the properties would make decisions in the best interests of the members of the fund and not in coordination with the FirstRand group, which owns Momentum Group. On the other hand, the trustees' role will be to oversee the management of the trust in accordance with the CIS Act.

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[1] This is an unconditional approval in terms of the Competition Act 89 of 1998, as amended.

7. The target properties will however be acquired by MPI or the CIS Trust (as MPI's nominee), of which MPI will initially be the holder of the majority of the participatory interests and be entitled to appoint the trustees. According to the parties the effect of the transaction will not result in the FirstRand group ultimately being able to exercise unfettered control over the target properties, which will be managed on their behalf (as a holder of participatory interests in the CIS Trust) and on behalf of the other investors by the management company in terms of the CIS Act.

Activities of the parties

The FirstRand Group

8. FirstRand is a holding company with two wholly owned subsidiaries, which are Momentum Group (whose subsidiaries operate in the insurance and asset management businesses) and FirstRand Bank Holdings (whose subsidiaries are involved in retail, corporate and investment banking activities).

9. The FirstRand Group's activities are divided mainly into corporate, retail, health, wealth and international clusters.

10. The retail cluster embraces retail banking, installment finance, mortgage lending and short-term insurance. The corporate cluster provides a comprehensive range of investment and corporate banking, asset management and employee benefits services. The wealth cluster provides products and services to the middle and upper income groups regarding investment and risk products that create and preserve wealth. The health cluster caters for the health and medical services.

11. Momentum Group Limited owns a property portfolio, MPI, managed by RMB Properties. Although other divisions within FNB own properties there is no geographic overlaps in respect of these properties and those within the Bonatla and Momentum portfolios.

Bonatla

12. As indicted earlier Bonatla Property Holdings Limited is a property holding company. It is disposing of a property portfolio consisting of 34 office, industrial and retail properties to MPI[2].

Product overlap

13. It is therefore clear from the above that the only overlap exists in the property market. For our purposes, although FNB owns properties the only overlap occurs in respect of the Momentum property portfolio.

[2] The target properties are situated in Durban, Johannesburg, Midrand, Pretoria, Sandton, Randburg, Kempton Park and Mafikeng. All the target properties differ in grades, e.g. Grade A, B, C, etc.

Relevant product market

14. It is worthwhile to note that distinct markets can be identified when dealing with different types of properties. The distinctions are made on product characteristics.

15. Thus the markets in which an overlap between the businesses of the parties occurs are the markets for the letting of the industrial properties in certain areas and offices in certain areas. It is for this reason that our assessment focuses on these two types of property since the overlap exists in office space and industrial properties.

16. According to the South African Property Owners Association's ("SAPOA") office vacancy survey office buildings are divided into the following grades: P, A, B, and C.[3]

- Grade P: refers to top quality, modern space, ample parking, a prestige lobby finish and good environment;
- Grade A: represents generally not older than fifteen years or which has had a major renovation, air conditioning, adequate on-site parking;
- Grade B: means generally older buildings, but accommodation and finishes are close to modern standards as a result of refurbishments and renovation from time to time; and
- Grade C: refers mainly to buildings with older style finishes, services and building systems. It may or may not be air-conditioned or have on-site parking.

17. We therefore limit ourselves, for the purposes of this transaction, to the third category, i.e. the Grade B office blocks. The evident differences in quality, age and finishing of the categories of property described above are reflected in the distinct rentals charged for office blocks in the various categories.

18. Subsequent to its investigation the Commission concluded that the different grade office blocks constitute distinct products markets.

19. Insofar as industrial property is concerned, the parties submit that there are also Grade A, B and C properties in the market place, similar to classifications done for office blocks. They contend further that there is also a "Rode classification", which differentiates between prime and secondary industrial properties[4]. However, the parties have not used this method to determine overlaps.

20. The Commission's view is that the different sub classifications fall within different product markets. Industry participants, SAPOA and Investment Property Databank South Africa (Pty) Limited ("IPD SA")[5] share this view.

21. In this merger if this approach to the classification of the markets is correct overlaps occur in the market for Grade B office blocks and light industrial properties.

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[3] SAPOA's March 2003 Survey.
[4] Prime space satisfies requisites such as the facilities are in good condition, access is easy and there is proper loading facilities.
[5] Investment Property Databank South Africa (Pty) Limited, a company responsible for research and maintaining a property databases, more specifically industrial property.

Geographic market

22. Market participants tend to group areas together into nodes and all the areas in that node compete with each other. These nodes have been developed by the industry association and are followed by the participants in the market in assessing rentals. Although rentals per class of building vary to some degree within a node they are sufficiently close to justify the conclusion that they should be treated as relevant geographic markets for our purposes. Both the merging parties and the Commission follow this approach. The Commission states that this is consistent with the manner in which it has evaluated property markets previously. [6]

23. The relevant nodes where product overlaps exist for the purposes of this transaction have been identified in the office market as Midrand and in the industrial property market as: North West, North and East Gauteng; South Gauteng and M2 Strip; Pretoria Environs; and certain areas in Kwazulu Natal.

Evaluating the merger

24. In the instant case, there is an overlap in Grade B office blocks in Midrand and light industrial property in certain areas[7].

25. In the Midrand area Bonatla has a 15,63% market share while MPI holds 18,32%, which results in a combined market share of 33,95%. Although the post merger market share is significant we are persuaded by the parties' argument that the Midrand area is subject to competitive pressures from the two surrounding office nodes of Centurion and Kyalami.

26. Insofar as light industrial property is concerned the Commission indicated that the overlapping properties in the identified geographic areas have combined market shares ranging between 0.6% and 11.2%[8]. None of these concentrations is sufficiently high to raise concerns. In addition, the merged entity also faces tough competition from major competitors in the property market in those areas[9].

Effect on competition

27. We accordingly conclude that this transaction is not likely to result in a substantial lessening of competition. Although the market share of the merged entity in the Midrand area is significant we are satisfied that it will encounter considerable competition from neighbouring areas.

[6] The Commission avers in its report that it has undertaken several property investigations over the past couple of years as well as research into the property market. It has debated the relevant geographic markets with SAPOA and market participants.

[7] For the purposes of this transaction the identified overlapping properties with regard to the light industrial property includes geographic areas such as South Gauteng and M2 Strip; East, North and North West Gauteng; Midrand, Pretoria & Environs; and certain Kwazulu Natal areas.

[8] See, footnote 7 above.

[9] According to the parties this includes other property funds such as Pangbourne, Allan Gray, iProp, etc.

Public interest considerations

28. The parties averred that there would be no effect on employment as a result of this transaction[10]. MPI's properties are being managed by RMB Properties and therefore MPI engages no employees to manage its portfolio of properties. In addition, Bonatla has no employees.

Conclusion

29. We therefore agree with the Commission's findings that the transaction will not have a material effect on competition in the relevant markets in which the parties operate. No other public interest considerations militate against the approval of this merger. Accordingly, this transaction is unconditionally approved.

______________ 25 September 2003

D. Lewis **DATE**

Concurring: N. Manoim, T. Orleyn

For the merging parties:	Mr. A le Grange & Ms. M Botha, Hofmeyr Herbstein & Gihwala Inc.
For the Commission:	Mr. L Oliphant assisted by Mr. J Liebenberg & Ms. R Ahmed, Competition Commission

[10] Refer to page 7 of the merged entity's competitiveness report.