

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 67/LM/AUG06

In the matter between:

Pangbourne Properties (Pty) Ltd

Acquiring Firm

And

Calulo Property Fund Ltd and Others

Target Firm

Panel : DH Lewis (Presiding Member), N Manoim (Tribunal Member), and Y Carrim (Tribunal Member)

Heard on : 11 October 2006

Decided on : 11 October 2006

REASONS FOR DECISION

Approval

[1]. On 11 October 2006, the Tribunal unconditionally approved the proposed merger between the abovementioned parties. The reasons for the decision follow.

Parties

[2]. The acquiring firm is Pangbourne Properties Limited ("Pangbourne"), a company listed under the real estate sector of the JSE. Pangbourne is not directly or indirectly controlled by any firm. It also submitted by the parties that Pangbourne is not controlled by any single entity. Pangbourne has 43% interest in Siyathenga Property Fund Ltd (Siyathenga) and it also has 37% interest in iFour Properties Ltd (iFour)¹.

[3]. The primary target firms are Calulo Property Fund Ltd ("Calulo"), Calulo Asset Management (Pty) Ltd ("CAM")² and Calulo Property Management (Pty) Ltd ("CPM")³. No entity directly or indirectly controls Calulo. The shareholders of Calulo are Micawber 398 (Pty) Ltd ("Micawber 398")⁴, which holds 18%,

¹ Siyathenga's subsidiaries are as follows: Siyathenga Properties One (Pty) Ltd; Siyathenga Properties Two (Pty) Ltd and Siyathenga Properties Three (Pty) Ltd. iFour controls the following firms: Sipan 1 (Pty) Ltd; iFour Properties SA (Pty) Ltd; iFour Properties Two (Pty) Ltd and iFour Properties Three (Pty) Ltd

² The shareholders of CAM are: Calulo Properties (Pty) Ltd 37.5%, Adam Lee Morze 50% and Richard John Harman 12%

³ The shareholders of CPM are: Calulo Properties (Pty) Ltd 50% and Bornfree Investment 207 (Pty) Ltd 50%

⁴ Micawber 398 is a wholly owned subsidiary of Calulo Properties (Pty) Ltd

and Matemuka Property Acquisitions 104 (Pty) Ltd (“ Matemuka”), which holds 40.6% interest. It is submitted by the parties that individual members of the public who are all minority shareholders hold the remaining interest, being 41.4%.

The Proposed Transaction

[4]. This transaction involves the acquisition by Pangbourne of a 40.6% interest in Calulo comprising of a unit holding 36 641 418 linked units⁵ held in Calulo from Matemuka. As part of an indivisible component of the transaction, Pangbourne is also acquiring 100% of the issued share capital in CAM and as part of a further component of the transaction, Pangbourne is acquiring 100% of the enterprise (comprising the property management of the property portfolio of Calulo) of Calulo from the controlling firms of CPM.⁶

The Rationale of the Transaction

[5]. The Calulo acquisition is in line with Pangbourne’s strategy to invest in specialised funds and, more particularly, in this instance to establish a specialised office fund. The size of the transaction will allow Pangbourne to achieve the critical mass required to take advantage of its PROPS Commercial Mortgage Backed Securitisation Programme and enable Pangbourne to reduce its cost of capital in line with its strategy of growth distributions.

Parties’ Activities

[6]. The acquiring firms are property loan stock companies listed on the JSE limited under the Financial-Real Estate category. Pangbourne, iFour and Siyathenga have a portfolio of industrial, commercial and retail properties. Calulo is a variable loan stock company listed on the JSE under Financial Real estate category, which owns investments in properties through its wholly owned subsidiary, Calulo Property Investments (Pty) Ltd.

[7]. Calulo is a variable loan stock company listed on the JSE under the Financial Real Estate category, which owns investments in properties through its wholly owned subsidiary, Calulo Property Investment (Pty) Ltd and its property portfolio comprises of the following; light industrial property, office property and retail property. CAM is a property asset management company and CPM is a property is a property management company. According to the parties both the asset management services of CPM are provided in-house only in respect of Calulo Property Portfolio⁷.

⁵ A linked unit is made up of an ordinary share of one cent and one debenture of 199 cents and the two components must be traded as an individual share. See page 144 of the record.

⁶ For a list of properties Pangbourne will control as a result of this transaction see page 3-4 of the Commission’s Report.

⁷ For a list of properties owned by Calulo see page 6 of the Commission’s Report.

Relevant Product and Geographic Market

[8]. The relevant product market is the market for Grade A and B office properties as well as light industrial properties. The Commission also found that there is a geographic overlap between the merging parties in respect of Grade A offices in the Bryanston node; Grade A offices in the Sunninghill node and Grade B offices in the Bloemfontein node. It was submitted by the parties in their filing⁸ that the acquiring firm does not have any light industrial properties in the areas where the target firm's light industrial properties are situated and as a result the Commission did not consider light industrial properties any further as there is no geographic overlap in the activities of the merging parties.

Competition Analysis of the Merger

[9]. The Commission's investigation revealed that the merging parties would enjoy a combined post merger market share of 6.6% in the market for Grade A office space in Sunninghill node. The Commission's investigation further found that the merging parties would enjoy a combined post merger market share of 3.1% in the market for Grade A office space in the Bryanston node and a market share of 9.23% for Grade B office space in the Bloemfontein node. The Commission also found that there are other property owning companies⁹ in the relevant nodes that compete with the merging firms. The market share remains low and is unlikely to raise any competition concerns.

Public interest

[10]. No public interests issues arise from the merger.

Conclusion

[11]. Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

Y Carrim
Tribunal Member

11 October 2006
Date

D Lewis and N Manoim concurring.

⁸ See page 26 and 39 of the record.

⁹ These property-owning companies include players such as ApexHi Properties, Acucap Properties, Capital Property Fund, Growthpoint properties, Hyprop Investment, Paramount Property Fund and others.

Tribunal Researcher : J Ngobeni
For the merging parties : Vani Chetty (Edward Nathan Corporate Law
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For the Commission : Mogale Mohlala and Kwena Mahlakoana
Mergers and Acquisitions