



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM013Apr24

In the matter between:

**Community Property Company (Pty) Ltd**

Acquiring Firm

and

**Boitekong Mall C/O Luvon Investments (Pty) Ltd**

Target Firm

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Panel:	M Mazwai (Presiding Member) I Valodia (Tribunal Member) A Ndoni (Tribunal Member)
Heard on:	5 June 2024
An order issued on:	5 June 2024
Reasons issued on:	28 June 2024

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### REASONS FOR DECISION

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#### Approval

[1] On 5 June 2024, the Competition Tribunal (“Tribunal”) approved the large merger wherein Community Property Company (Pty) Ltd (“CPC”) intends to acquire Boitekong Mall and the associated letting enterprise (“Target Property”) from Luvon Investments (Pty) Ltd (“Luvon”). Post-merger, CPC will solely control the Target Property.

## **Parties to the transaction and their activities**

### *Primary acquiring firm*

- [2] CPC is ultimately controlled by Old Mutual Limited, a public company listed on the Johannesburg Stock Exchange. CPC is a property holding and investment company specialising in acquiring new and existing shopping centres that cater to the needs of underserved communities throughout South Africa. All firms directly and indirectly controlled by CPC and Old Mutual Limited are called the “Acquiring Group”.

### *Primary target firm*

- [3] The Target Property is wholly owned by Luvon, which is ultimately controlled by the Moolman Group. The Target Property is a convenience shopping centre situated at the corner of R510 and Lalabhai Dudhia Drive, Boitekong, Rustenburg, North-West Province.

## **Relevant market and impact on competition**

- [4] The Competition Commission (“Commission”) found that the proposed merger raises a horizontal overlap as the parties are both active in the provision of rentable convenience shopping centres. The convenience shopping centre owned by the Acquiring Group is Gateway Mall in Carletonville, Gauteng with a Gross Lettable Area (“GLA”) of 9080m<sup>2</sup>. The convenience shopping centre of the Target Property has a GLA of 17649 m<sup>2</sup>. However, the Commission found no geographical overlap in the market of rentable convenience shopping centres since the Acquiring Group’s nearest rentable convenience shopping centre is located in Carletonville, Gauteng Province, approximately 104 km away.
- [5] Given that, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition as there is no geographic overlap between the rentable convenience shopping centres of the merging parties.

## **Creeping Mergers**

[6] Section 12A(2)(k) requires the Commission to assess any other mergers engaged in by a party to a merger for a stipulated time period. The property sector appears to consistently have relatively higher levels of merger activity. In the current transaction, the Tribunal noted that CPC notified three transactions in the previous three years but this was not disclosed in the proposed transaction.<sup>1</sup> In light of merger activity in the sector, the Commission should in future consider potential concentration through creeping mergers.

## **Public interest**

### *Employment*

[7] According to the merging parties, the proposed transaction will not negatively impact employment, as there will be no job losses or changes to employment conditions. The employee representatives of both the Target Firm and the Acquiring Group have confirmed that they were notified of the proposed transaction, and no employees have raised any concerns.

### *Spread of ownership*

[8] The Target Property currently has no Historically Disadvantaged Persons (“HDPs”). CPC has a 28.64% HDP ownership. As a result of the proposed transaction, the Target Property will have HDP ownership. The transaction therefore contributes towards the promotion of a greater spread of ownership by HDPs.

[9] We conclude that the proposed transaction does not raise any public interest concerns.

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<sup>1</sup> Community Property Company (Pty) Ltd and Luvon Investments (Pty) Ltd and Twin City (Pty) Ltd in respect of Sam Ntuli Mall LM180Feb23, Community Property Company (Pty) Ltd and Luvon Investments (Pty) Ltd, Shoprite Checkers (Pty) Ltd and Falcon Forest Trading 89 (Pty) Ltd in respect of Property situated at the corner of the N4 and Matthews Phosa Street, Emalahleni Mpumalanga (known as KG Mall) LM101180Feb23 and Community Property Company (Pty) Ltd Ulundi King Senzangakona currently owned by Vukile Property Fund Limited LM026May21.

## Conclusion

[10] For the reasons above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market, or to have a negative impact on the public interest.



**Ms Mondo Mazwai**

**27 June 2024**

**Date**

**Concurring: Ms Andiswa Ndoni and Prof Imraan Valodia**

Tribunal case manager:

Moleboheng Mhlati

For the merging parties:

Misha Van Niekerk of Adams & Adams

For the Commission:

Beverley Chomela and Raksha Darji