



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case no: LM092Aug24**

In the large merger between:

**PLETT MARKET SQUARE PROPERTIES (PTY) LTD**

Primary Acquiring Firm

and

**MARKET SQUARE C/O EMIRA PROPERTY FUND  
LTD**

Primary Target Firm

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Panel:	T Vilakazi (Presiding Member) I Valodia (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	15 October 2024
Date of last submission:	28 October 2024
Order issued on:	28 October 2024
Reasons Issued on:	20 November 2024

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### REASONS FOR DECISION

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#### Approval

[1] On 28 October 2024, the Competition Tribunal (“Tribunal”) conditionally approved the large merger whereby Plett Market Square Properties (Pty) Ltd (“PMSP”) intends to acquire a 100% interest in the immovable property and letting enterprise known as Market Square (“Target Property”).

[2] Post-merger, PMSP will have sole control over the Target Property.

## Parties to the transaction and their activities

### *Primary acquiring firm*

- [3] The primary acquiring firm, PMSP, is jointly controlled by its two shareholders, namely Ivlyn Consolidated Holdings (Pty) Ltd (“Ivlyn”) (90%) and Lynx Real Estate Holdings (Pty) Ltd (“Lynx RE”) (10%).
- [4] Ivlyn is controlled by the [REDACTED] % of the shareholding in Ivlyn.<sup>1</sup> Lynx RE is not directly or indirectly controlled by any other firm. Ivlyn and Lynx RE control numerous entities active in, *inter alia*, property letting markets. Lynx RE is not directly or indirectly controlled by any other firm.
- [5] PMSP is a special purpose vehicle, incorporated for purposes of the proposed transaction. Ivlyn is involved in several activities, however, of relevance to the proposed transaction are those relating to the management and letting of retail, commercial and industrial properties throughout South Africa. Lynx RE and its subsidiaries are all involved in the development, management and letting of retail (including community and neighbourhood centres), commercial and industrial properties throughout South Africa.
- [6] PMSP, Ivlyn and Lynx RE are collectively known as the “Acquiring Group”.

### *Primary target firm*

- [7] The Target Property is wholly owned by Emira Property Fund Ltd (“Emira”), a real estate investment trust listed on the JSE. Emira is controlled by Castlevue Property Fund Ltd which holds 59.26% of the shareholding in Emira.
- [8] The Target Property can be classified as a community shopping centre, situated in Plettenberg Bay, in the Western Cape, with a gross lettable area (“GLA”) of 14 848m<sup>2</sup>.

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<sup>1</sup> [REDACTED]

## **Competition assessment**

- [9] The Competition Commission (“Commission”) assessed the impact of the merger in the market for the provision of rentable retail properties within a 15km radius from the Target Property.
- [10] The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the market for the provision of rentable retail properties, as the Acquiring Group’s property portfolio includes community shopping centres whilst the Target Property is a community shopping centre.
- [11] For our purposes, it is not necessary to conclude on a precise delineation of the relevant market as the transaction does not raise competition concerns. There is no geographic overlap in the activities of the merging parties because the Acquiring Group has no retail property activities within the Western Cape. In addition, Emira does not have an interest in any other retail properties situated within a 15km radius of the Target Property.
- [12] In addition, the proposed transaction does not raise any vertical overlaps.

### *Exclusivity*

- [13] The Commission noted that the lease agreement between Woolworths and Emira concerning the Target Property, contains an exclusivity clause. The clause operates to preclude any tenant from conducting any restaurant or food business or there being any refuse area within 100m of Woolworths’ shopfront, rear entrance and/or delivery yard.
- [14] The Commission assessed whether the exclusivity had been enforced to the exclusion of any rivals of Woolworths as regards restaurant or food business. The merging parties submitted that the exclusivity has never been enforced to exclude food or restaurant businesses from access to the Target Property.

- [15] The Commission found that the exclusivity has not been used to preclude rivals of Woolworths obtaining tenancy at the Target Property. It further appears that the rationale behind the exclusivity is to prevent traffic which may inhibit customers' ability to access Woolworths' storefront.
- [16] Considering the above, the Commission requested the merging parties to consider removing the exclusivity clause and the Acquiring Group undertook to use its best efforts to negotiate the removal of the exclusivity with Woolworths, when the lease agreement is up for renewal. The Commission found that this outcome adequately addressed any concerns and recommended approval of the proposed transaction without a condition to this effect.
- [17] The Tribunal took the view that as the above outcome was a good faith commitment and not included in the proposed conditions, it was too open-ended and not enforceable. The merging parties proposed a condition that PMSP undertakes to use reasonable commercial endeavours to negotiate with Woolworths, in the utmost good faith, when renewing the lease agreement to remove the exclusivity provisions set out in the lease agreement.
- [18] Furthermore, the Tribunal requested that this undertaking be monitored by the Commission by way of a report detailing compliance with this condition.
- [19] Following further deliberation of the above proposed condition by the Panel, the condition was accepted and imposed.
- [20] Given the above, we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

## **Public interest assessment**

### *Employment*

[21] The merging parties submitted that the proposed transaction will have no negative effect on employment. Specifically, no job losses or retrenchments will occur because of the merger.

[22] We find that the proposed transaction is unlikely to raise employment concerns.

### *Effect of the merger on the promotion of a greater spread of ownership by HDPs and workers in firms in the market*

[23] The merging parties confirmed that the Acquiring Group has no HDP ownership. The merging parties submitted that the proposed transaction will therefore result in an indirect decrease in the ownership held by historically disadvantaged persons (“HDPs”) in the Target Property from 48.04% (based on Emira’s latest B-BBEE certificate) to 0%.

[24] The Commission queried the precise level of HDP ownership of Emira, in light of the fact that B-BBEE certificates do not necessarily indicate HDP ownership levels as envisaged in the Act. The merging parties submitted that it was difficult for them to definitively indicate individual HDP ownership at Emira (other than that reflected in the B-BBEE certificate) as its shares are widely held. However, the merging parties submitted that Emira’s two largest HDP shareholders hold 2.5% each in Emira. Therefore, the Commission concluded that there is at least 5% indirect HDP ownership at the Target Property pre-merger, by virtue of the confirmed HDP ownership levels at Emira. Although, the level of HDP shareholding at Emira is likely to be higher given that same is a publicly listed firm whose shareholders may include individual HDPs.

[25] Considering the above, the Commission engaged the merging parties to indicate how the proposed transaction promotes a greater spread of ownership as contemplated by section 12A(3)(e) of the Act or alternatively indicate any other

public interest outcomes in terms of section 12A(3) of the Act that outweigh the lack of promotion of HDP or worker ownership.

[26] The merging parties initially tendered conditions to procure at least 20 computers for Formosa Primary School, as well as renovating the school's existing ablution facilities. All procurement would be undertaken through majority HDP-owned service providers. The procurement spend for the computers will be no less than R [REDACTED] (excluding VAT), and ablution renovations of at least R [REDACTED] (excluding VAT).

[27] These commitments were recommended by the Commission to the Tribunal, however, the Panel took the view that the proposed conditions have no real bearing on HDP ownership and that if there is to be a remedy to meaningfully offset the dilution in HDP ownership, it should be one that creates proper and sustainable opportunities for small HDP-owned businesses.

[28] Therefore, the merging parties and Commission were requested to reconsider the proposed procurement spend conditions, in particular whether the decrease in HDP ownership is remedied by the proposed procurement spend.

[29] The imposed conditions are dealt with below.

*The ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market*

[30] The merging parties had submitted that the Acquiring Group did not find it necessary to commit to the procurement of services at the Target Property by HDP firms (other than those already providing services at the Target Property) owing to the fact that a number of existing service providers at the Target Property are HDP-owned (and the possible lack of alternative HDP service providers with the necessary capabilities within the area). For its part, the Commission submitted that on a holistic basis, the initial remedy tendered by the merging parties renders the proposed transaction justifiable on public interest grounds and that no further interventions were warranted in the circumstances.

[31] Ultimately, in response to queries from the Tribunal, and to adequately facilitate the ability of firms owned by HDPs to participate in the economy as envisaged by section 12A(3)(c) of the Act, the merging parties tendered updated proposed conditions which stated that in [REDACTED], upon expiry of the existing contract in respect of the provision of security services at the Target Property, PMSP undertakes to outsource security services at the Target Property to HDP-owned service providers for a period of three years. Furthermore, upon expiration of the three-year period indicated above, PMSP shall endeavour to give preference to HDP-owned service providers when sourcing security service providers at the Target Property.

[32] In addition to the above, the merging parties retained their initial commitment to procure at least 20 computers for Formosa Primary School as well as their initially tendered condition to renovate the school's existing ablution facilities, and that all procurement will be undertaken through majority HDP-owned service providers.

[33] The Tribunal considered that the above proposed remedies more meaningfully address the decrease in HDP ownership and facilitate the ability of firms owned by HDPs to participate in the economy, as envisaged by section 12A(3)(c) of the Act.

#### *Other public interest considerations*

[34] The proposed transaction raised no other public interest concerns.

#### **Third party views**

[35] No third party expressed concerns about the proposed transaction.

## Conclusion

[36] Considering the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the imposed conditions address exclusivity concerns at the Target Property and the public interest concerns raised. No other public interest issues arise.

[37] We accordingly approved the merger on the basis of the conditions in **Annexure A** to our order dated 28 October 2024.

Signed by: Thando  
Signed at: 2024-11-20 10:22:38 +02:00  
Reason: Witnessing Thando

*Thando Vilakazi*

**20 November 2024**

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**Prof. Thando Vilakazi**

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**Date**

**Prof. Imraan Valodia and Adv. Geoff Budlender SC concurring**

Tribunal Case Manager:	Juliana Munyembate
For the Merging Parties:	Misha van Niekerk of Adams & Adams
For the Commission:	Kgothatso Kgobe and Wiri Gumbie