

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM105Sep22

In the matter between:

Retail Logistics Fund (RF) (Pty) Ltd

Primary Acquiring Firm

and

Shoprite Checkers (Pty) Ltd in respect of the rental enterprises known as Canelands and Wells Estate

Primary Target Firms

Panel	:	S Goga (Presiding Member)
	:	M Mazwai (Tribunal Member)
	:	F Tregenna (Tribunal Member)
Heard on	:	02 November 2022
Order issued on	:	02 November 2022
Reasons issued on	:	25 November 2022

REASONS FOR DECISION

Introduction

- [1] On 2 November 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger in which Retail Logistics Fund (RF) Proprietary Limited (“Retail Logistics Fund”) intends to acquire rental enterprises known as Canelands and Wells Estate (“Target Properties”) from Shoprite Checkers Proprietary Limited (“Shoprite Checkers”).

Primary acquiring firm

- [2] Retail Logistics Fund is a South African firm and does not directly or indirectly control any firm. However, Retail Logistics Fund is controlled by Equites Property Fund Limited (“Equites”), a Real Estate Investment Trust (“REIT”) listed on the Johannesburg Stock Exchange (“JSE”) which has a focus on owning and developing modern, well-located logistics properties which are let to A-grade

tenants and has established itself as an owner and developer of high-quality logistics assets in South Africa and the United Kingdom.

- [3] Retail Logistics Fund is a joint venture between Equites and Shoprite Checkers established for the purposes of holding certain distribution warehouses and undeveloped bulk land used by Shoprite Checkers.

Primary target firms

- [4] The primary target firm is Shoprite Checkers in respect of the rental enterprises known as Canelands and Wells Estate.

- [5] Canelands currently comprises of rentable light industrial warehouse space, situated at 224 New Glasgow Road, Canelands, Verulam, KwaZulu-Natal, together with the land upon which the rental enterprise is constructed.

- [6] Wells Estate comprises of rentable light industrial warehouse space, situated at the corner of Old Grahamstown and St George's Roads, Wells Estate, Gqeberha, Eastern Cape, together with the land upon which the rental enterprise is constructed.

Competition Assessment

Relevant product market

- [7] In defining the relevant product market, the Commission considered the Tribunal's decisions¹ whereby the Tribunal segmented rentable industrial property into two distinct markets, namely the market for the provision of rentable light industrial property and a market for the provision of rentable heavy industrial property.

- [8] The Commission assessed the activities of the merging parties and found that the proposed transaction will give rise to a horizontal overlap in the market for the provision of rentable light industrial space.

¹ *Imbali Props 21 Proprietary Limited and Dimopoint Proprietary Limited* Tribunal Case No: LM021May15 and *Investec Property Fund Limited and certain property-owning companies and properties controlled by Investec Property (Pty) Ltd* Tribunal Case No: 020214.

Relevant geographic market

- [9] In previous transactions, the Tribunal has accepted that the nodes, which are municipality zoned industrial areas, may be used as a starting point in identifying geographic markets in property transactions. The properties located within the same node are considered substitutable.
- [10] In addition, the Commission and the Tribunal have recently also considered competitive effects within neighbouring nodes, where neighbouring nodes may encompass a radius of up to 15km from the target property.
- [11] In this proposed transaction, Equites and the firms controlled by Equites (“Equities Group”) does not have industrial property in Eastern Cape that would compete with Wells Estate, however, it does have industrial property in KwaZulu-Natal competing with the Canelands property in the Canelands node.
- [12] Therefore, the Commission assessed the effects of this current transaction on rentable light industrial property located within a 15km radius of the Canelands.

Market shares

- [13] The Commission noted that Shoprite Checkers occupies the Target Properties, known as Canelands and Wells Estate, for its own internal use. There is a minor tenant occupying space within Wells Estate with Shoprite Checkers occupying the remaining space.
- [14] The merged entity will have a combined post-merger market share of 3.22% with an accretion of 3,09% within a 15km radius of the Canelands node, in KwaZulu-Natal. Therefore, the proposed transaction is unlikely to significantly alter the structure of the relevant market and the Commission’s investigation found that there are alternative rentable light industrial properties within the relevant market.
- [15] As the primary acquiring firm is a joint venture between the seller, Shoprite Checkers and Equities for the distribution warehouses of Shoprite Checkers, in terms of the proposed transaction, the Target Properties will be moved from the ownership of Shoprite Checkers to the acquiring firm. The Commission found that

post the implementation of the proposed transaction, Shoprite Checkers will continue to be the tenant at the Target Properties, as such the Commission was of the view that that the proposed transaction is unlikely to change the structure of industrial property market.

[16] Having considered the above, the Tribunal concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest

Effect on employment

[17] Retail Logistics Fund does not have any employees and Shoprite Checkers does not have any employees that are dedicated only to the Target Properties. As such, the merging parties submitted that there will be no retrenchments or job losses as a result of this transaction² because it is unlikely that the transfer of the property management activities of the target firm will lead to retrenchments.

[18] In addition, Shoprite Checkers confirmed that the employees currently managing these properties in-house will focus on managing other properties within Shoprite Checkers' property portfolio.³

[19] Accordingly, the proposed transaction is unlikely to raise employment concerns.

Effect on the spread of ownership

[20] The merging parties submitted that Shoprite Holdings Limited's latest broad-based black economic empowerment ("B-BBEE") certificate shows that it achieved a Level 7 certification with a verified 13.45% black ownership with a proportion of 6.93% comprising black woman shareholders. Equites Group's latest B-BBEE certificate reflects that it achieved a Level 3 certification under the property sector B-BBEE scorecard with verified 66.12% black ownership with a significant proportion of 33.60% comprising black woman shareholders.

² Page 76 of Merger Record.

³ Page 298 of Merger Record.

[21] The Tribunal queried the how the merging parties and the Commission measured the spread of ownership and whether consideration was given to the dispersion of ownership across different individuals or groups.

[22] The merging parties submitted that based on their initial submission, the overall effective B-BBEE shareholding in Retail Logistics Fund is 39.71%, which is significantly more than the 13.45% B-BBEE ownership in the Target Properties pre-merger. The merging parties were therefore of the view that the proposed transaction has a positive impact on the empowerment of historically disadvantaged persons (“HDPs”) and will promote a greater spread of ownership by HDPs.

[23] The Tribunal therefore concluded that the proposed transaction is unlikely to have a negative impact on the promotion of greater spread of ownership.

Other public interest issues

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

Third Party Views

[25] No third party raised any concerns.

Conclusion

[26] Having considered the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not have a negative impact on the public interest.

Ms Sha'ista Goga

Ms Mondo Mazwai and Professor Fiona Tregenna concurring

25 November 2022

Date

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Vani Chetty of Vani Chetty Competition Law (Pty)
Limited

For the Commission: Nolubabalo Myoli and Grashum Mutizwa