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SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM096Oct21

SKG Properties Fund I (Pty) Ltd (Primary Acquiring Firm)
And
Tocolog (Pty) Ltd (Primary Target Firm)

Heard on:	13 December 2021
Order Issued on:	13 December 2021

REASONS FOR DECISION

[1] On 13 December 2021, the Competition Tribunal unconditionally approved a large merger whereby SKG Properties Fund I (Pty) Ltd ("SKG I") will acquire 80% of the shares in Tocolog (Pty) Ltd ("Tocolog").

[2] The acquiring firm, SKG I does not control any firm but is controlled by SKG Property Holdings (Pty) Ltd ("SKG Property Holdings"), which is in turn controlled by SKG Properties (Pty) Ltd ("SKG Properties"). SKG Property Holdings is ultimately controlled by the JP du Plessis Family Trust ("JDP Trust").[1]

[3] Tocolog is wholly owned by Elegant Property Trust ("EPT"). The trustees of EPT are Historically Disadvantaged Persons ("HDPs"). As part of the proposed transaction, EPT will transfer the following immovable properties (the "Target Properties") to Tocolog, being:

3.1. The immovable properties and rental enterprises known as Portion 168 (of 27) of the farm Uitkomst and Doornrug No 852 (Cato Ridge Property) in KwaZulu-Natal; and

3.2. Portion 1 of Erf 5437, Kosmosdal Extension 88" (Centurion Property") in Gauteng.[2]

[4] Tocolog is a special purpose vehicle shelf company with no prior history of trading.

[5] Post-merger, Tocolog will wholly own the Target Properties. SKG I will establish a new form of direct control over Tocolog (through its 80% shareholding) and indirect control over the Target Properties. EPT will retain a form of negative control over Tocolog through its 20% shareholding in Tocolog.

[1] JDP Trust and all firms that it controls shall be referred to as the "Acquiring Group".
[2] Tocolog and the Target Properties will be referred to as "Target Group".

Competition Assessment

[6] When considering the merging parties' activities, the Competition Commission ("Commission") found that the proposed transaction will give rise to two horizontal overlaps:

6.1. The provision of light industrial property, and
6.2. The provision of grade P office property.

[7] Based on the above, the Commission assessed the following markets:

7.1. The market for the provision of light industrial property in the greater Centurion area; and
7.2. The market for the provision of rentable Grade P office properties in the greater Centurion area which include areas that are 15km within the Target Properties in Centurion.

The market for the provision of light industrial property in greater Centurion area

[8] The Commission found that the merged entity will have a combined post-merger market share of less than 10% with a negligible market share accretion in Centurion and surrounds. Further, there are several alternative rentable light industrial properties within 15km of the Target Group in Centurion and surrounding areas including in Gateway Industrial Park and Samrand Business Park, located 1.1km and 6.6km from the Target Property, respectively.

The market for the provision of rentable Grade P office properties in the greater Centurion area which include areas that are 15km within the Target Properties in Centurion

[9] The merged entity's market share will be between 30-40% with a market share accretion of less than 2% in relation to lettable P grade office space in the Centurion node. The Commission was of the view that the proposed transaction is unlikely to have a significant effect on the structure of the market in the Centurion node as the market share accretion is less than 2%. Furthermore, there are several office properties which will continue to compete with the merged entity post-merger, including commercial properties located at 90 Samrand Road, Byls Bridge, 186 Witch Hazel Street and Witch-Hazel Avenue amongst others.

[10] No third parties raised any concerns relating to the proposed merger.

[11] Based on the above, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Public Interest

Employment

[12] The merging parties submitted that the Target Group does not have employees and the Acquiring Group's employee representative indicated that the employees of the Acquiring Group have no concerns regarding the proposed transaction. The merging parties provided an unequivocal statement that the proposed transaction will not result in any detrimental effect on employment. Specifically, no merger-related retrenchments or job losses will occur.

Spread of ownership

[13] Pre-merger, the Acquiring Group has no BEE shareholders or employee share scheme. The Target Properties are ultimately controlled by EPT, a firm that is 100% owned by HDPs.

[14] The Commission found that post-merger, the shareholdings by HDPs in the Target Properties will decrease from 100% to 20%. This is because EPT will only retain 20% shareholdings in the Target Properties and will have negative control over the Target Properties.

[15] The merging parties, however, submitted that the proposed transaction would assist the trustees of EPT who are HDPs to extinguish their debt and still remain joint controllers of Target Properties. In this regard, the internal board documents of Tocolog indicated that Tocolog will assume the debt of EPT in relation to the Cato Ridge property and Tocolog will assume existing debt in respect of the Centurion property. The proposed transaction will therefore enable EPT to settle the existing debt of the Target Properties.

[16] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, on balance, it raises no substantial public interest concerns.

MMazwai

13 December 2021

Ms Mondo Mazwai **Date**

Ms Yasmin Carrim and Mr Andreas Wessels concurring

Tribunal Case Manager:	Camilla Mathonsi
For the Merging Parties:	Susan Meyer and Charissa Barden of Cliffe Dekker Hofmeyr Inc
For the Commission:	Yolanda Okharedia and Themba Mahlangu