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SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM076Aug23

In the large merger between:

K2012150042 (South Africa) (Pty) Ltd	Primary Acquiring Firm
And	
Old Mint (Pty) Ltd in respect of its ownership and direct control of the Target Property, Old Mint Industrial Park	Primary Target Firm

Panel:	L Mncube (Presiding Member) I Valodia (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	27 September 2023
Order issued on:	27 September 2023
Reasons Issued on:	16 October 2023

REASONS FOR DECISION

Introduction

[1] On 27 September 2023, the Competition Tribunal ("the Tribunal") unconditionally approved the merger whereby K2012150042 (South Africa) (Pty) Ltd ("K2012") will acquire Old Mint (Pty) Ltd ("Old Mint") in respect of its ownership and direct control of the target property, Old Mint Industrial Park ("Target Property"), as a going concern.

Primary acquiring firm

[2] K2012 is controlled by Old Mutual Real Estate Holdings Company (Pty) Ltd ("OMREHC"). OMREHC is ultimately controlled by Old Mutual Limited ("OML"). K2012 controls a number of firms which include [redacted], Old Mint (the Target Firm), [redacted] and [redacted] amongst others. K2012 and all the firms directly and

indirectly controlling it and all the firms directly and indirectly controlled by it will hereinafter collectively be referred to as the “Acquiring Group”.

[3] The Acquiring Group, through its subsidiaries, is involved in the financial and insurance markets internationally and in South Africa. Relevant to the proposed transaction are the industrial properties owned by the Acquiring Group. The Acquiring Group, through K2012, already has indirect and joint (50%) control of the Target Property.

Primary target firm

[4] The primary target firm is Old Mint in respect of the Target Property. Old Mint is jointly controlled by K2012 (50%) and Atterbury Property Fund (Pty) Ltd (“Atterbury”) (50%). Atterbury and K2012 exercise joint direct control of Old Mint and joint indirect control of the Target Property.

[5] Old Mint is a property-owning company that owns and operates the Target Property, which is an industrial park with a Gross Lettable Area (“GLA”) of 40,655 m^2 situated at Mint St, Louwlardia, Centurion.

Rationale

[6] The Acquiring Group submitted that its rationale for the proposed transaction is that it has a strategic intent to grow its underweight industrial portfolio. This is aligned to the long-term strategic asset allocation and asset mix.

[7] Atterbury submitted that its rationale for the proposed transaction is that Atterbury is a private property developer whose business functions to identify property development opportunities (i.e. vacant land and a tenant looking for space), develop out the opportunities, and then once mature to sell the developed asset and recycle the proceeds into the next development opportunity.

Overlaps

[8] The business activities of the merging parties overlap in the provision of rentable light industrial property, as they both own industrial properties.

Product Market

[9] The Tribunal has previously decided that the market for rentable industrial properties can be divided into two categories: light industrial property and heavy industrial property.[1]

[10] In the current case, we did not receive any evidence suggesting a departure from this approach and therefore considered the impact of the merger on the market for the provision of rentable light industrial properties.

Geographic Market

[11] The Tribunal has previously considered the competitive effects for rentable light industrial property within a radius of up to 15 km from the Target Property.[2] In the current case, we did not receive any evidence suggesting a departure from this approach.

[12] Apart from the Acquiring Group's 50% interest in the Target Property, which is in Industrial Park, Midrand, the Acquiring Group does not control any other industrial properties that are located within 15kms of the Target Property and/or in the same geographic node as the Target Property. The closest industrial property owned by the Acquiring Group is located 24kms away from the Target Property.

[13] Therefore, there is no geographic overlap between the active light industrial properties of the merging parties.

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[1] Tribunal Case Number 020115

[2] *Equites Property Fund Ltd and Retail Logistics Fund (Pty) Ltd* (LM038Jun20) and *EA Waterfall Logistics JV Proprietary Limited and Truzen 116 Trust in respect of an undivided half* (LM058Jul20).

Competition Assessment

[14] Having considered the above, we do not consider it likely that the proposed merger will result in a substantial prevention or lessening of competition in the relevant market.

Public interest

Employment

[15] The merging parties submitted that there will be no retrenchments or job losses arising from the proposed transaction and no adverse effect on employment.

[16] The property management functions of the Target Property are currently provided internally by Atterbury employees who are shared resources across the Atterbury Group's property portfolio. Upon implementation of the proposed transaction, it is likely that post-merger the Target Property will be managed by Broll or JHI on behalf of K2012. The employees involved in the management of the Target Property will continue to be employed by the Atterbury Group in the management of other properties within the Atterbury Group's property portfolio.

[17] Both K2012 and Old Mint do not have any employees. The employees of Atterbury are represented by employee representatives. The Commission engaged the relevant employee representatives who confirmed there are no concerns with the proposed transaction.

Spread of ownership and other public interest issues

[18] Pre-merger, Old Mint has a 26.5% historically disadvantage persons ("HDPs") shareholding, and the Acquiring Group has a 33.11% HDP shareholding. Therefore, the Commission is of the view that the proposed transaction will result in a positive impact on the greater spread of ownership by HDPs in line with section 12A(3)(e) of the Competition Act 89 of 1998, as amended.

[19] The Commission found that, taken as a whole, the proposed transaction will not have a negative effect on public interest issues, and therefore recommended that the proposed transaction be approved without conditions.

[20] Based on the above, we conclude that the proposed transaction does not raise any other public interest concerns.

Conclusion

[21] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or to have a substantial negative public interest effect.

[22] In the circumstances, we unconditionally approve the proposed transaction.

Signed by:Liberty Mncube
Signed at:2023-10-16 14:22:16 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

16 October 2023

Prof Liberty Mncube **Date**

Prof Imraan Valodia and Adv Geoff Budlender SC

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For the Merging Parties:	Roxanne Ker of Walkers Inc.
For the Commission:	Rethabile Ncheche and Ratshi Maphwanya