



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM018May23**

In the matter between:

**Sun Valley Investments Proprietary Limited**

Acquiring Firm

And

**The property and shopping centre known as the Sun Valley Mall**

Target Firm

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Panel: Jerome Wilson SC (Presiding Member)  
Andreas Wessels (Tribunal Panel Member)  
Imraan I. Valodia (Tribunal Panel Member)

Heard on: 11 July 2023  
Order issued on: 11 July 2023  
Reasons issued on: 18 July 2023

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### REASONS FOR DECISION

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#### Approval

- [1] On 11 July 2023, the Competition Tribunal (“Tribunal”) conditionally approved the large merger in terms of which Sun Valley Investments Proprietary Limited (“Sun Valley Investments”) intends to acquire the property, and all the buildings and structures erected on the property and all its constituent parts (including all the line shops, tenant leases and service contracts), known as Sun Valley Mall (“Sun Valley Mall”) from Shoprite Checkers Proprietary Limited (“Shoprite”) (the “proposed transaction”). On completion of the proposed transaction, Sun Valley Mall will be wholly-owned and controlled by Sun Valley Investments.

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

### *Primary acquiring firm*

- [2] The primary acquiring firm is Sun Valley Investments, a wholly-owned subsidiary of Heriot Investments Proprietary Limited (“Heriot Investments”). Heriot Investments is, in turn, a subsidiary of the Gusi Trust.
- [3] Sun Valley Investments, Heriot Investments, the Gusi Trust and all the firms it controls will be referred to as the “Acquiring Group”.
- [4] The Acquiring Group is a property holding and investment company that owns a diversified portfolio of retail, industrial, commercial and specialised properties in South Africa.

### *Primary target firm*

- [5] The primary target firm is the property and shopping centre known as Sun Valley Mall. Sun Valley Mall is wholly-owned and controlled by Shoprite, which is a wholly-owned subsidiary of Shoprite Holdings Limited (“Shoprite Holdings”). Shoprite Holdings is listed on the Johannesburg Securities Exchange and is not controlled by any firm.
- [6] Sun Valley Mall is a community shopping centre located at the corner of Noordhoek Main Road and Buller Louw Boulevard, Sunnyside, Cape Town, in the Western Cape. Sun Valley Mall has a Gross Lettable Area (“GLA”) of 16,137m<sup>2</sup> and contains various retail shops including a Checkers Hyper, Dischem Pharmacy, Virgin Active, Tiger Wheel and Tyre, among others.

## **Proposed transaction and rationale**

### *Transaction*

- [7] In terms of the proposed transaction, Sun Valley Investments intends to acquire the property, and all the buildings and structures erected on the property and all its constituent parts (including all the line shops, tenant leases and service contracts) known as Sun Valley Mall from Shoprite.

### *Rationale*

- [8] The Acquiring Group submitted that it regards Sun Valley Mall as a lucrative and viable asset, and that its acquisition thereof is consistent with Heriot Investment’s long-term growth strategy.

- [9] Shoprite submitted that its core business is that of a large retailer. Shoprite does not wish to retain Sun Valley Mall as a property development and would rather focus on managing its retail operations. The sale of the Sun Valley Mall will also give Shoprite access to more capital for business purposes.

### **Competition analysis**

- [10] The Competition Commission (“the Commission”) found that there is a horizontal overlap in the activities of the merging parties in that the Acquiring Group and target firm are both engaged in the provision of rental retail space, in particular in the form of community shopping centres.
- [11] However, the Commission found that there is no geographic overlap between the Acquiring Group and the target firm as the Acquiring Group does not own any community shopping centres within a 15km radius of Sun Valley Mall (which, as indicated above, is located in Sunnydale, Cape Town). The Commission found that the only community shopping centre that the Acquiring Group owns in the Western Cape is the Helderberg Centre, which is located in Somerset West, over 40km away from Sun Valley Mall.
- [12] The Commission found that the Acquiring Group also owns Shoprite Fish Hoek, a local convenience shopping centre with a 3 497m<sup>2</sup> GLA that is located 4.8 km away from Sun Valley Mall. However, the Commission found that, given the distinct characteristics of Shoprite Fish Hoek as a local convenience shopping centre that is significantly smaller than Sun Valley Mall, it does not compete directly with it.
- [13] In the light of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [14] Based on the above facts, the Tribunal agrees with this conclusion. Even if the relevant product market is defined narrowly to include only community shopping centres, the transaction involves the acquisition of a single shopping centre which is located over 40 km away from the Acquiring Group’s closest community shopping centre. It is therefore unnecessary to make a finding on the precise scope of the relevant market for the purposes of the present transaction.

### **Public interest assessment**

#### *Effect on employment*

- [15] The merging parties submitted that the proposed transaction will not have a negative effect on employment. They explained further that no employees will

be transferred from Shoprite to the Acquiring Group as a result of the proposed transaction, and that the property management functions at Sun Valley Mall are outsourced to third party service providers.

- [16] The Commission confirmed with the employee representative of the Acquiring Group that its employees had been notified of the proposed transaction and had not raised any concerns.
- [17] On this basis, the Commission concluded that the merger will not give rise to any negative employment effects.
- [18] The Tribunal requested the merging parties to clarify whether there will be any job losses at third-party service providers as a result of the merger. The Acquiring Group confirmed that this will not be the case. It also explained that the target firm is being sold subject to the purchaser taking over all relevant service contracts with effect from the transfer date.
- [19] Based on the above, the Tribunal is satisfied that the proposed transaction will not have any adverse effect on employment.

*Effect on the spread of ownership*

- [20] The Commission found that Shoprite has an indirect 6.87% shareholding by historically disadvantaged persons (“HDPs”) through Shoprite Holdings, whereas Sun Valley Investments does not have any direct or indirect HDP shareholding. The Commission therefore invited the merger parties to implement an HDP transaction and/or an employee share ownership plan to address this dilution in HDP ownership.
- [21] The merger parties submitted that the remedies requested by the Commission were unwarranted in this case because the shareholding structure in Shoprite Holdings and Shoprite will remain unchanged as a result of the transaction, and the transaction involves the sale of a single property accounting for approximately 0.33% of Shoprite Holdings’ total asset value.
- [22] The Acquiring Group also stated that it intended to increase the pre-merger spend on HDP suppliers at Sun Valley Mall by █% for a period of five years from the implementation of the proposed transaction, in particular for the provision of property maintenance services such as cleaning, meter reading, hygiene, landscaping, pest control, security and refuse collection.
- [23] Based on this stated intention, which the Acquiring Firm agreed to commit to in the form of the merger condition attached hereto marked “A”, the Commission

concluded that the transaction did not raise any public concerns and should be approved subject to such condition.

[24] In terms of the merger condition, the Acquiring Firm commits to procuring property maintenance services for Sun Valley Mall, including (without limitation) cleaning, meter reading, hygiene, landscaping, pest control, security and refuse collection requirements, from HDP suppliers based in Cape Town for approximately R [REDACTED] per year, for a period of five years from the implementation date of the transaction, subject to the availability of HDP suppliers to service Sun Valley Mall on reasonable commercial terms.

[25] Having regard to the facts set out above, and the abovementioned commitment by the Acquiring Firm to procure property maintenance services from HDP suppliers over a five year period, the Tribunal agrees that the proposed transaction does not raise any public interest concerns.

## Conclusion

[26] For the reasons set out above, the Tribunal approves the proposed transaction subject to the condition attached hereto marked "A".

Signed by: Jerome Wilson  
Signed at: 2023-07-18 10:40:48 +02:00  
Reason: Witnessing Jerome Wilson

*Jerome Wilson*

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**Adv. Jerome Wilson SC**

**18 July 2023**

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**Date**

## Concurring: Prof. Imraan Valodia and Mr. Andreas Wessels

Tribunal case manager : Baneng Naape

For the merging parties : Graeme Wickins of Werksmans Attorneys and  
Vani Chetty of Vani Chetty Competition Law

For the Commission : Inga Macingwane and Makati Seekane