

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM139Oct22

In the large merger between:

Great Westerford Holdings (Pty) Ltd

Primary Acquiring Firm

And

**The Rental Enterprise including the property
known as “Great Westerford”**

Primary Target Firm

REASONS FOR DECISION

Introduction

- [1] On 31 January 2023, the Competition Tribunal (“the Tribunal”) unconditionally approved the merger whereby Great Westerford Holdings (Pty) Ltd (“Great Westerford”) intends to acquire sole control of the rental enterprise including the property known as “Great Westerford” (“the Target Property”) from Ingenuity Property Investments (Pty) Ltd.
- [2] Post-implementation of the proposed transaction, Great Westerford will exercise sole control over the Target Property.

Primary acquiring firm

- [3] The primary acquiring firm is Great Westerford. Great Westerford is 100% controlled by Spring Investco 2014 (RF) (Pty) Ltd (“Spring Investco”).¹ Spring

¹ Spring Investco 90% controls Teraco Data Environments (Pty) Ltd (“Teraco Data Environments”) with the 10% balance held by Teraco Connect Holdco (RF) (Pty) Ltd (“Teraco Connect”). Teraco Data Environments 100% controls NAP Africa Exchange (Pty) Ltd (“NAP Africa”) and Teraco Properties (Pty) Ltd (“Teraco Properties”). [REDACTED] is [REDACTED] % controlled by [REDACTED] with the [REDACTED] being [REDACTED] and [REDACTED]

Investco is 100% controlled by TDE Investments (Pty) Ltd (“TDE Investments”). TDE Investments is in turn 100% controlled by Digital Titan (Pty) Ltd (“Digital Titan”). Digital Titan is, in turn, ultimately controlled by Digital Realty Trust Inc.

- [4] Great Westerford, Spring Investco, TDE Investments, Digital Titan and all the firms that they control shall be referred to as the “the Acquiring Group.”
- [5] The Acquiring Group provides vendor neutral data centres, which entails the secure housing of information systems and networking equipment within the premises of the Acquiring Group. The data centre solutions rendered by the Acquiring Group are targeted at cloud providers, network and telecoms providers, managed services providers, enterprises, financial services, and content providers. These services are rendered specifically through Teraco Data Environments.

Primary target firms

- [6] The primary target firm is Ingenuity Property Investments (Pty) Ltd (“Ingenuity Property”), in respect of the rental enterprise including the property known as “Great Westerford” (“the Target Property”). The Target property is located at 240-221, M4, Rondeboschd, Cape Town.
- [7] The Target Property comprises of a Gross Lettable Area (GLA) of 29,353m² of Grade P office space in the Rondebosch node in Cape Town, Western Cape. For completeness, it is noted that two of the current tenants of the Target Property operate retail businesses, namely a personal training studio and a coffee shop (with a combined GLA of 313m²).
- [8] It is noted that some of the tenants such as the acquiring group have converted some of their office space into controlled environment used for electronic data storage. Due to the power and cooling requirements of a data centre the tenants, who have set up a data centre space, have installed several backup generators and specialised cooling systems.
- [9] The Target Property also comprise of the balcony, storerooms area and parking.

Competition assessment

- [10] The Competition Commission (“the Commission”) did not conclude on the relevant product market. However, the Commission, assessed the effects of the proposed transaction in the upstream market for the provision of lettable data centre space within the Cape Town metropolitan area and the downstream market for the provision of colocation/off-site or outsourced data centre services nationally. The Commission considered the activities of the merging parties and found that the proposed transaction results in a vertical overlap given that the Acquiring Group currently leases data centre space from the Target Property. The Acquiring Group uses the data centre space leased from the Target Property to operates its data centre solutions.
- [11] In assessing input foreclosure, the Commission assessed if the merging parties will have the ability and incentive to foreclosure their rivals from accessing the data centre space at the Target Property. The Commission found that the competitors of the Acquiring Group within the Target Group are [REDACTED] and [REDACTED] who currently have lease agreements raging between [REDACTED] and [REDACTED] years.
- [12] In assessing the proposed transaction, the Tribunal considered written submissions by the merging parties on whether the merging parties will have the ability to foreclose their rivals. In doing so, the Tribunal concluded that the proposed transaction will not lead to any substantial prevention or lessening of competition as the leases in place with competitors provide a sufficient time to grant their competitors certainty.
- [13] Based on the merging parties’ market share estimates, the Acquiring Group has approximately [REDACTED]% in the national market for the provision of data centre services. Based on the merging parties’ estimates, the Acquiring Group will face competition from other firms such as ADC ([REDACTED]%), Internet Solutions ([REDACTED]%), Telkom ([REDACTED]%), Vodacom ([REDACTED]%) and MTN ([REDACTED]%) in the market for the provision of data centre services.

Public interest

Employment

[14] The merging parties submitted that there will be no retrenchments as a result of the proposed transaction. The Commission concluded after investigation that there will be no negative effect on employment as a result of this merger.

[15] The Commission engaged the employee representative of the Acquiring Group, who confirmed receipt of the merger notification. Furthermore, the Target Property does not have any employees; however, the property is managed Rabie Property Administrators (Pty) Ltd (“Rabie Administrators”). The Commission sought to understand the impact of the proposed merger on Rabie Administrators. According to Rabie Administrators they manage multiple properties and that in the event that the merging parties do not retain their property management contract they will have other alternatives and the said employees will be allocated to their various property management portfolios. In addition, the merging parties have indicated that they intend on retaining the services of Rabie Administrators.

[16] We concluded based on the above, that the proposed transaction is unlikely to raise any employment concerns post-merger.

Spread of ownership

[17] The Commission found that the Target Property does not have any HDP shareholders. The merging parties submitted that the Acquiring Group has made commitments in a recent Tribunal merger between Digital Titan/TDE (approved in July 2022) which included public interest conditions aimed at increasing the greater spread of ownership by HDPs in the Acquiring Group. The merging parties stated that as a result of the Digital Titan/TDE conditions, the Acquiring Group has increased the HDP shareholding in Teraco Data Environments and will retain a ████████ HDP shareholding in Teraco Data Environments and will also introduce ████████ Employee share ownership program (“ESOP”) 2 years from date of implementation.

[18] The merging parties submitted that the introduction of an HDP shareholder in the Target Property is likely to jeopardise the proposed merger as they have already agreed to purchase the Target Property in its entirety at a [REDACTED]. The Acquiring Group submitted that [REDACTED]

[19] The Commission found that the merger does not raise any other public interest concerns.

Conclusion

[20] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and the proposed transaction does not raise any other public interest concerns.

Signed by: Imraan Valodia
Signed at: 2023-02-08 05:52:20 +02:00
Reason: Witnessing Imraan Valodia



08 February 2023

Prof Imraan Valodia

Date

Ms Andiswa Ndoni and Ms Sha'ista Goga concurring

Tribunal Case Managers: Theodora Michaletos

For the Merging Parties: Tamara Dini and Kyla Abrams of Bowmans
Attorneys

For the Commission: Tumiso Loate and Themba Mahlangu