



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM101Aug22

In the matter between:

Community Property Company (Pty) Ltd

Primary Acquiring Firms

and

Luvon Investments (Pty) Ltd, Shoprite Checkers (Pty) Ltd and Falcon Forest Trading 89 (Pty) Ltd in Respect of Property Situated at the Corner of the N4 and Matthews Phosa Street, Emalahleni, Mpumalanga (Known as KG Mall)

Primary Target Firm

Panel : S Goga (Presiding Member)
: A Ndoni (Tribunal Member)
: F Tregenna (Tribunal Member)

Heard on : 03 October 2022
Order issued on : 03 October 2022
Reasons issued on : 19 October 2022

REASONS FOR DECISION

- [1] On 03 October 2022, the Tribunal unconditionally approved the large merger whereby Community Property Company (Pty) Ltd (“CPC or Acquiring Group”)¹ intends to acquire the rental enterprise known as KG Mall (“Target Property”) from Luvon Investments (Pty) Ltd (“Luvon”)², Shoprite Checkers (Pty) Ltd

¹CPC is ultimately controlled by Old Mutual Limited through its various subsidiaries, which include Community Property Holdings (Pty) Ltd, Old Mutual Life Assurance Company Limited, Old Mutual Emerging Markets (Pty) Ltd, and Old Mutual Group Holdings (SA) (Pty) Ltd. CPC and all the firms controlled by Old Mutual Limited are referred to as “Acquiring Group”.

²Luvon forms part of The Moolman Group which controls a diversified property portfolio (directly and indirectly through its subsidiaries) comprised of retail, office, and industrial properties throughout South Africa.

(“Shoprite Checkers”)³, and Falcon Forest Trading 89 (Pty) Ltd (“Falcon Forest”)⁴. Post-merger, the Target Property will be controlled by CPC.

The parties

- [2] CPC is a property holding and investment firm that specialises in the acquisition of new and existing shopping centres that serve underserved communities throughout South Africa.⁵ CPC is ultimately controlled by Old Mutual Limited through various subsidiaries.
- [3] The Target Property is the immovable property and letting enterprise described as Erf 11250 Kwa-Guqa, Extension 15, Witbank, Mpumalanga, known as KG Mall, consisting of rentable shopping centre with a total Gross Lettable Area of 21 091m².

The transaction

- [4] The proposed transaction entails CPC acquiring 100% of the Target Property from Luvon, Shoprite Checkers, and Falcon Forest. The proposed transaction will thus result in a change of control, with CPC acquiring sole control of the Target Property.⁶
- [5] The rationale for the transaction is that CPC wishes to grow its investment portfolio and this transaction provides it with an opportunity to acquire a retail property in the Emalahleni area. The sellers wish to liquidate their stakes to use the capital for other purposes.

Competition Assessment

- [6] The Commission assessed the merging parties’ activities and found that there is a horizontal overlap as the parties are both active in the provision of rentable retail space.

³ Shoprite Checkers is ultimately controlled by Shoprite Holdings Ltd (“the Shoprite Group”). The Shoprite Group is a fast-moving consumer goods retailer, with its core business being food retailing, complemented by furniture, pharmaceuticals, hospitality, ticketing, digital commerce, financial and cellular services. The Shoprite Group also holds several properties which are primarily utilised for its own retail stores. The Shoprite Group does not have an interest in any other properties situated within a 15 km (fifteen kilometre) radius of the Target Property.

⁴ Falcon Forest is a property holding company, involved in the management, and letting of retail property. It does not have an interest in any other properties situated within a 15 km (fifteen kilometre) radius of the Target Property.

⁵ Merger Recommendation, p9 of 16, para [14]. CPC invests in retail properties in both township and rural locations throughout South Africa.

⁶ Merger Record, p64 of 379, para [2.3].

Market Definition

- [7] When defining the relevant market, the Commission considered the Competition Tribunal's previously decided case law. In *Redefine Properties Limited and Fountainhead Property Trust Management Limited, Evening Star Trading 768 (Proprietary) Limited*,⁷ the Tribunal accepted use of the property classifications provided by the Investment Property Databank South Africa (Pty) Ltd ("IPD") when defining property markets, which classifies properties based on gross lettable area. In *Hyprop Investment Limited, Atterbury Investment Limited, and Attfund Retail Limited and Mantrablox (Pty) Ltd*,⁸ the Tribunal accepted that minor regional, regional, and super regional shopping centres fall into the category of comparative centres and are therefore likely to compete with each other. However, comparative centres are not likely to be constrained by centres which fall within other categories, such as convenience centres.⁹
- [8] The Commission found that based on its gross lettable area, the Target Property falls in the category of community centres. However, it did not reach a conclusion on the relevant product market.¹⁰
- [9] According to the merging parties, although the Target Property's retail space falls into the category of community shopping centres, it falls to be considered under the broader product market for the holding and management of rentable retail properties given the specifics of the market conditions in Emalaheni¹¹
- [10] Based on Tribunal precedent which used a 15km radius for assessing competition between rentable retail properties the Commission and the merging parties considered a 15km radius for assessing competition.

Competition Assessment

- [11] The Commission assessed the effect of the proposed transaction on the provision of rentable retail space classified as community shopping centres. The Commission concluded that there is no geographic overlap between the merging parties' as the Acquiring Group does not own rentable retail centres in a 15km radius. The closest property is 81km away
- [12] The parties further submitted that the Target Property will continue to encounter competition from a number of other participants in the relevant geographic market.¹²

⁷ *Redefine Properties Limited and Fountainhead Property Trust Management Limited, Evening Star Trading 768 (Proprietary) Limited*, Tribunal case number 61/LM/Jun12.

⁸ *Hyprop Investment Limited, Atterbury Investment Limited, and Attfund Retail Limited and Mantrablox (Pty) Ltd*, Tribunal case number: 05/LM/Jan11.

⁹ Merger Recommendation, p11 of 16, para [19].

¹⁰ Merger Recommendation, p11 of 16, para [20].

¹¹ Merger Record, p70 of 379, para [6.2.5].

¹² Merger Record, p71 of 379, para [6.3.3].

[13] The Commission therefore concluded that the proposed transaction raises no competition concerns.

[14] No third-party concerns were raised regarding the transaction.

[15] Having considered the above, the Tribunal is of the view that the proposed transaction is unlikely to result in substantial prevention or lessening of competition in any relevant market.

Public Interest

Effect on employment

[16] The Commission considered whether the proposed transaction would have an adverse effect on employment. According to the merging parties, the proposed transaction will have no adverse impact on employment. Specifically, no retrenchments will occur because of the proposed merger.¹³ Furthermore, the current employee will be taken over by CPC following the proposed merger's implementation.¹⁴

[17] The Commission engaged with Ms Nicole Matthews as the Acquiring Group's employee representative and Ms Lucille Kotze as the Target Property's employee representative. No concerns were raised by the respective employee representatives.¹⁵

[18] The Commission concluded that proposed transaction is unlikely to raise employment concerns.

Effect on the spread of ownership

[19] The Acquiring Group has approximately 39.47% shareholding by historically disadvantaged individuals ("HDPs") while the Target Property does not have any HDP shareholders. According to the merging parties, the proposed merger will result in the Target Property being a part of a company in which HDPs owns 39.47% of the shares.¹⁶ The Commission concluded that the proposed transaction does not raise any other public interest concerns.

Conclusion on public interest

[20] In light of the above, the Tribunal concludes that the proposed transaction is unlikely to have an adverse effect on public interest.

¹³ Merger Recommendation, p12 of 16, para [25].

¹⁴ Merger Recommendation, p12 of 16, para [26].

¹⁵ Merger Recommendation, p13 of 16, para [27].

¹⁶ Merger Record, p73 of 379, para [9.3]

Conclusion

[21] Having considered the evidence before it, the Tribunal found that the proposed transaction is unlikely to lead to substantial prevention or lessening of competition in any relevant market. Furthermore, the transaction raises no public interest concerns.

19 October 2022

**Presiding Member
Ms Sha'ista Goga**

Date

Concurring: Mrs Andiswa Ndoni and Professor Fiona Tregenna

Tribunal Case Managers: Sinethemba Mbeki

For the Merging Parties: Misha Van Niekerk of Adams and Adams
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For the Competition: Innocent Mhlongo and Themba Mahlangu