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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM195Oct18

In the matter between:

EQUITES PROPERTY FUND LIMITED	Acquiring Firm
and	
INVESTEC PROPERTY FUND LIMITED	Target Firm

Panel	:	Norman Manoim (Presiding Member)
	:	Andiswa Ndoni (Tribunal Member)
	:	Fiona Tregenna (Tribunal Member
Heard on	:	28 November 2018
Order issued on	:	28 November 2018
Reasons issued on	:	11 December 2018

REASONS FOR DECISION

APPROVAL

[1] On 28 November 2018, the Competition Tribunal approved a property transaction between Equites Property Fund Limited ("Equites") and Investec Property Fund Limited ("IPF").

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

[3] Equites is a public company incorporated in accordance with the laws of the Republic of South Africa and not controlled by any one firm. It owns and controls various entities including Equites Investments 1 (Pty) ltd, Galt Property One (Pty) Ltd, and Chamber Lane Properties 3 (Pty) Ltd. Collectively these firms will be referred to as the 'Equites Group'.

[4] The Equites Group is a property company with a portfolio consisting of office and industrial properties as well as vacant land, all of which are situated in the Gauteng and Western Cape Provinces.

Primary Target Firm

[5] The Primary Target property is the rental enterprise known as 17 Greenhills ("target property"). The target property is a light industrial property comprised of 40 428m^2 of lettable area and is wholly owned by IPF.

[6] The target property is situated in Elandsfontein, Germiston, Gauteng Province and is exclusively leased, in terms of a 10-year triple net lease,[1] to Simba (Pty) Ltd.[2]

PROPOSED TRANSACTION AND RATIONALE

[7] In terms of the proposed transaction, the Equites Group will acquire 100% of the issued share capital in the target Property from IPF. Post-merger, the

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[1]**Competition Tribunal Transcript of Proceedings LM195Oct18 ("Transcript") p4, line 10**. *See also* **Transcript p12 lines 3-18** where Mr Riaan Gouws ("Gouws") of the Equites Group described a triple net lease as one in which a single tenant is responsible for all costs in respect of the warehouse except for the structure.

[2]**Transcript p5 lines 5-6:** The merger parties submitted that the lease is still in place for a further 9 years.

Equites Group will acquire sole control over the target property. The consideration payable for the proposed merger is R456 737 238.70.[3]

[8] In terms of rationale, The Equites Group the acquisition of the property is consistent with the group's stated growth and investment strategy. IPF submitted that the sale of the property is in line with its strategy to optimise long-term shareholder returns.

[9] The Commission was of the view that proposed transaction presented an opportunity for Equites to acquire a logistics property in Germiston which was one of the key logistics nodes in the Gauteng Province.

RELEVANT MARKETS AND IMPACT ON COMPETITION

[10] The Commission considered the activities of the parties to the transaction and found that the proposed transaction resulted in a horizontal product overlap as both parties owned light industrial properties. The Commission established the relevant market as the market for the for the provision of rentable light industrial space in the Germiston, Isando, Spartan, Kempton Park, Jet Park, Meadowdale, Sebenza and surrounding nodes.

[11] At the merger hearing, the Tribunal queried whether the more bespoke market referred to the merging parties in their merging notification, namely the market for the provision of specialised logistics property, was not a more suitable market definition to assess the transaction by.[4]

[12] The Commission submitted that many of the likely styled properties in the area where used for various other purposes other than as a logistics warehouse.[5] In support of the Commission's defined product market, the merging parties submitted that a logistics facility could be used as a number of other uses

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[3] **Transcript p4 lines 7-18**: When questioned on the purchase consideration, Gouws submitted that the price was driven by the quality and commercial adaptability of the building, the nature of the tenant and its financial stability, as well as the size of the property's yard and its location.

[4] **Transcript p5 lines 15-21.**

[5] **Transcript p7 lines 2-8.**

without the need for much capital investment. Mr. Hutchinson for the merger parties submitted that the splitting of sectors from the merger parties' perspective was merely for the benefit of shareholders.[6]

[13] We thus accepted, for the purposes of assessing this merger, the Commission's product market.

[14] The Commission concluded that the merged entity would post-merger have approximately 2.5% of the market with an accretion of approximately 0.5% in the market for rentable light industrial space in the Germiston, Isando, Spartan, Kempton Park, Jet Park, Meadowdale, Sebenza and surrounding nodes.

[15] The Commission concluded that the low market share combined with the fact that the merged entity would continue to face strong competition from numerous light industrial properties in the area, resulted in the transaction being unlikely to substantially prevent or lessen competition in the relevant market.

[16] We found no reason to disagree.

[6] **Transcript p9 line 20- p10 line 5.**

CONCLUSION

[17] Although presenting horizontal overlaps, the post-merger market shares in such markets as well as the presence of strong competitors will render such overlaps nugatory.

[18] The merging parties confirmed that no retrenchments were envisaged as a result of the transaction and the proposed transaction did not raise any public interest concerns.

[19] Accordingly, we approved the transaction without conditions.

Mr Norman Manoim — **<u>11 December 2018</u>** **Date**

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring

Tribunal Researcher:	Aneesa Ravat
For the merging parties:	Vani Chetty of Vani Chetty Competition Law
For the Commission:	Innocent Mhlongo assisted by Wiri Gumbi