



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM183Mar24

In the matter between:

**RMB Investments and Advisory Proprietary
Limited and Investec Bank Limited**

Primary Acquiring Firms

And

Azrapart Proprietary Limited

Primary Target Firm

Panel:	T Vilakazi (Presiding Member) G Budlender (Panel Member) A Ndoni (Panel Member)
Heard on:	17 April 2024
Order issued on:	17 April 2024
Reasons issued on:	07 May 2024

REASONS FOR DECISION

Introduction

[1] On 17 April 2024, the Competition Tribunal (“Tribunal”) conditionally approved the large merger whereby Rand Merchant Bank and Investments Advisory (Pty) Ltd (“RMBIA”) and Investec Bank Limited (“Investec Bank”) intend to acquire control of Azrapart (Pty) Ltd (“Azrapart”) and its controlled entities. The merger is intended to facilitate the restructuring of debts originating from loans made to Azrapart by the acquiring firms in relation to Fourways Mall Shopping Centre (“Fourways Mall”). Post-merger, Azrapart will be jointly controlled by RMBIA and Investec Bank.

The Parties

Primary Acquiring Firms

- [2] RMBIA is a company duly incorporated under the laws of the Republic of South Africa. RMBIA is controlled by FirstRand Investment Holdings (Pty) Ltd (“FRIHL”), a private company also duly incorporated under the laws of the Republic of South Africa. FRIHL is controlled by FirstRand Limited (“FRL”) which is publicly listed on the Johannesburg Stock Exchange (“JSE”).
- [3] RMBIA is an investment company whose main business activity is the acquisition and holding of assets for investment purposes. Of relevance to the proposed transaction, RMBIA has a portfolio of retail properties within the Johannesburg area where the property jointly owned by the target firm is also located.
- [4] Investec Bank is a company duly incorporated under the laws of the Republic of South Africa. Investec Bank is controlled by Investec Limited (“Investec”) which is listed on the JSE. Investec holds interests in various industries including the financial and property sectors. Of relevance to the proposed transaction, Investec holds a retail property portfolio within the Johannesburg area where the property owned by the target firm is also located.
- [5] RMBIA and Investec Bank will henceforth be referred to as the “Acquiring Firms”.

Primary Target Firm

- [6] Azrapart is a company duly incorporated under the laws of the Republic of South Africa. Azrapart is controlled by Eriologix (Pty) Ltd (“Eriologix”) which is in turn controlled by the Michael Family Trust (“MFT”).
- [7] Azrapart’s sole business activity relates to the joint ownership and management of Fourways Mall, a super-regional shopping centre in Fourways, Johannesburg. Fourways Mall is owned in equal undivided (50/50) shares by Azrapart and Accelerate Property Fund Ltd (“Accelerate”).

Transaction and rationale

Transaction

- [8] In terms of the draft transaction agreements, the proposed transaction contemplates the restructuring of Azrapart’s debt which will result in the acquisition of control by RMBIA and Investec Bank over Azrapart and its controlled entities. Specifically, as part of the proposed restructure, RMBIA and Investec Bank will each subscribe for 50% of the A Shares of Azrapart which A Shares shall collectively carry that number of votes which would entitle RMBIA and Investec Bank to exercise, in aggregate, 90% of the total votes exercisable by the shareholders of Azrapart at a general meeting of Azrapart.

Rationale

[9]

[REDACTED]

Relationship between the parties

[10] The proposed transaction raises a horizontal overlap in the provision of rentable retail space as the Acquiring Firms and the Target Firm are active in the provision of rentable retail property within the same area as Fourways Mall in which Azrapart owns 50% undivided shares with Accelerate owning the other 50%.

Relevant market

Product market

- [11] We have previously accepted that retail properties may be classified according to the Investment Property Database (“IPD”). Furthermore, in the matter between *Hyprop/Attfund*¹ we found that minor regional, regional and super-regional shopping centres fall within comparative centres.
- [12] Based on the classification of the retail properties of the merging parties, and without necessarily concluding on the precise boundaries of the market, we considered the proposed transaction in the market for the provision of retail space within comparative centres.

Geographic market

- [13] As regards the geographic market, we have previously considered the relevant geographic market for comparative centres within a radius of approximately 15 km from the target shopping centre². For the purposes of assessing this merger and without necessarily concluding on the definitive relevant geographic market, we considered the proposed transaction within a geographic scope at least 15 km from the targeted comparative centre in Fourways Mall.

Competition assessment

Market shares and levels of concentration

¹ Hyprop Investments Limited and Attfund Retail Limited [LM092Jan11] CTZA.

² Pareto Limited and Fountainhead Property Trust Scheme [LM199Feb14] CTZA.

- [14] The Competition Commission (“Commission”) estimated that the merged entity will account for a market share of less than ■■■■, with a limited market share accretion. The merged entity will continue to face competition from other comparative centres, including Sandton City, Mall of Africa, North-Gate Mall, Fourways Crossing and Woodmead Retail, Hyde Park, Rosebank Mall and Clearwater Mall, among others.
- [15] No third parties, whether customers or competitors, expressed concerns about the proposed merger.

Information sharing

- [16] As Fourways Mall will be jointly owned by 3 (three) shareholders namely, Accelerate, RMBIA and Investec Bank, the Commission considered whether the proposed transaction will result in Fourways Mall becoming a conduit for the exchange of competitively sensitive information as these shareholders compete through other shopping centres. The Commission noted that RMBIA, Investec Bank and Accelerate own centres of varying sizes within the affected area of the market. Therefore, there is a likelihood that the 3 (three) shareholders may share competitively sensitive information which may be detrimental to competition within the area.
- [17] To prevent the exchange of competitively sensitive information, the Acquiring Firms appointed ■■■■■■■■■■, a third-party representative who is not related or formally employed by each of them, to represent them on the board of Fourways Mall. Further, the other directors appointed by the 2 other shareholders to the Executive Committee of Fourways Mall do not hold board positions within the centres around the Fourways Precinct.
- [18] However, as the Acquiring Firms may possibly discontinue the use of a third-party nominee to be appointed as a board representative at Fourways Mall post-merger, the Tribunal found it necessary to impose conditions to address any future changes that may result in the sharing of competitively sensitive information.

Conclusion on competition assessment

- [19] In these circumstances, we consider it unlikely that the proposed transaction will substantially prevent or lessen competition in any relevant market.

Public interest assessment

Effect on employment

[20] The merging parties submitted that the proposed transaction will not give rise to any negative employment effects as it will not result in job losses. The employee representatives of the merging parties did not raise any concerns.

[21] Considering the above, we consider it unlikely that the proposed transaction will have a negative effect on employment.

Effect on the spread of ownership

[22] The merging parties submitted that each of FRL and Investec Bank have shareholdings held by Historically Disadvantaged Persons (HDPs). FRL has a shareholding of 28.96% that is held by HDPs, and Investec Bank has HDP shareholding of 20.37%. On the other hand, none of the shares of Azrapart are held by HDPs.

[23] Therefore, the transaction gives rise to an increase in the HDP shareholding of the Target Firm.

Conclusion on the public interest assessment

[24] The proposed transaction raises no public interest concerns.

Conclusion

[25] We conclude that the proposed transaction is unlikely to lead to significant prevention or lessening of competition in any market, and that any potential concerns relating to information exchange are adequately addressed by the Conditions, marked **Annexure A**. Furthermore, there are no public interest concerns.

Signed by: Thando Vilakazi
Signed at: 2024-05-07 17:46:17 +02:00
Reason: Witnessing Thando Vilakazi

Thando Vilakazi

07/05/24

Prof. Thando Vilakazi

Date

Concurring: Adv. Geoff Budlender and Ms. Andiswa Ndoni

Tribunal Economist : Baneng Naape

For the merging parties : Jocelyn Katz and Sphiwe Dlamini on behalf of
ENS Africa Attorneys

For the Commission : Rakgole Mokolo and Grashum Mutizwa

