**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: LM126Nov23**

In the matter between:

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| **FPG HOLDINGS (PTY) LTD** | Acquiring Firm |
| and | |
| **PICK N PAY RETAILERS (PTY) LTD IN RESPECT OF THE RENTAL ENTERPRISES KNOWN AS PLATTEKLOOF SHOPPING CENTRE AND TABLE VIEW SHOPPING CENTRE** | Target Firm |

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| Panel: | T Vilakazi (Presiding Member)<br>A Ndoni (Tribunal Member)<br>G Budlender (Tribunal Member) |
| Heard on: | 21 December 2023 |
| Order issued on: | 21 December 2023 |
| Reasons issued on: | 19 January 2024 |

**REASONS FOR DECISION**

## Approval

[1] On 21 December 2023, the Competition Tribunal ("Tribunal") approved the large merger wherein FPG Holdings (Pty) Ltd ("FPG Holdings") will acquire from Pick n Pay Retailers (Pty) Ltd ("Pick n Pay"), the rental enterprises known as Plattekloof Shopping Centre and Table View Shopping Centre ("Target Properties"). Post-merger, FPG Holdings will exercise sole control of the Target Properties.

**Parties to the transaction and their activities**

*Primary acquiring firm*

[2] The primary acquiring firm is FPG Holdings. FPG Holdings is a wholly owned subsidiary of FPG Property Fund (Pty) Ltd ("FPG Property Fund"). FPG Property Fund is majority owned by FPG Investments (Pty) Ltd ("FPG Investments").

[3] FPG Investments' shareholders include Southern Spirit Properties 97 Proprietary Limited, the I S Abduraham Family Trust, Abarisi Proprietary Limited, Dathomir Investments Proprietary Limited and the Ilyas Allie Parker Family Trust. FPG Investments controls FPG Property Fund, Foodprop Epping Proprietary Limited, FPG Holdings, Insight Property Developers Proprietary Limited, FPG (UK) Limited, New Line Investments 7 Proprietary Limited; and FPG Foods Proprietary Limited.

[4] For assessing the proposed transition, FPG Holdings, the firms it controls, and its controllers will be referred to as the "FPG Group" or "Acquiring Group".

[5] FPG Holdings is a private investment fund that purchases, invests and constructs commercial and residential properties. The FPG Group invests in properties in the profitable office, retail, and industrial sectors in various provinces in the Western Cape, Northern Cape, Gauteng and North-West.

*Primary target firm*

[6] The primary target firm is Pick n Pay Retailers (Pty) Ltd ("Pick n Pay") in respect of each target property, namely, Plattekloof Shopping Centre and Table View Shopping Centre, collectively referred to as the "Target Properties".

[7] Pick n Pay is a wholly owned subsidiary of Pick n Pay Stores Ltd ("Pick n Pay Stores"), a company listed on the Johannesburg Stock Exchange. Pick n Pay Stores is not controlled by any firm.

[8] Pick n Pay is primarily a retailer in the fast-moving consumer goods industry and it is also involved in purchasing commercial properties.

## Proposed transaction and rationale

*Transaction*

[9] The merging parties have concluded a sale and enterprise agreement for each target property. The sale and enterprise agreements of the Target Properties are interlinked and cross-conditional upon each other. Upon the implementation of the proposed transaction, FPG Holdings will exercise sole control over the Target Properties.

[10] The transaction constitutes a single indivisible transaction because the Target Properties are subject to common ownership and the Target Properties participate in the same line of business, being the operation of retail shopping centres.

*Rationale*

[11] According to the Acquiring Group, the current strategy is to acquire and operate profitable properties in South Africa to become a strong unlisted property fund. The Target Properties are strategically located retail developments aligned with the overall goals of FPG Group.

[12] From the seller's perspective, it has made the decision to sell the Target Properties to generate cash for utilisation in the Pick n Pay business. The Target firm will continue to trade from the Target Properties as a tenant to the FPG Group.

## Relevant market and impact on competition

[13] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed merger raises a horizontal overlap as the parties are both active in the provision of rentable retail property within a 15km radius of the Target Properties.

***Horizontal assessment***

*Product market*

[14] The merging parties relied on data from the Independent Property Databank of South Africa (Pty) Ltd ("IPD") in defining the relevant product market. IPD classifies rentable retail space as follows[1]:

| **Property Type - Retail** | **Gross Lettable Area ("GLA")** |
|---|---|
| Super Regional | >100 000m$^2$ |
| Major Regional | 50 000m$^2$ – 100 000m$^2$ |
| Minor Regional | 25 000m$^2$ – 50 000m$^2$ |
| Community | 12 000m$^2$ – 25 000m$^2$ |
| Neighbourhood Centre | 5 000m$^2$ – 12 000m$^2$ |
| Local Convenience | 1 000m$^2$ – 5 000m$^2$ |
| Small Free-Standing Centre | 500m$^2$ – 1 000m$^2$ |
| Stand Alone Retail Unit | Individual retail unit, not categorised elsewhere |
| Specialist/ entertainment / theme / lifestyle | Specialist traders /entertainment /theme centres |
| Value Centre | Emphasis on big-box retailers, specialist retailers, home improvements, limited groceries, fast food, banks (10 000m$^2$ – 45 000m$^2$) |
| Hyper Centre | One hyper store (70% of GLA), convenience line stores, services |

[15] Plattekloof Shopping Centre has a GLA of 11 455m$^2$ and Table View Shopping Centre has a GLA of 10 707m$^2$. According to the IPD classification, both properties are classified as Neighbourhood Centres.

[16] The Commission submitted that it has consistently accepted the approach by merging parties of relying on the shopping centre classification data which

[1] Table from merging parties Joint Competitiveness Report para 5.1.1., Merger Record, p. 11.

indicates the classification of shopping centres based on the GLA of the centres. While the size of retail properties is relevant for determining substitutability between centres, other factors may also determine substitutability between centres such as tenant mix, proximity and space required by tenants among other factors. The Tribunal in *Hyprop / Attfund Retail Limited*[2] accepted the use of the other factors in determining the substitutability of centres.

[17] In *Vukile Property Fund / Four Arrows*[3], the Tribunal accepted the Commission's finding where it considered the relevant product market to broadly be the market for the provision of rentable retail property which could be further sub-segmented into narrow submarkets comprising, *inter alia*, comparative and convenience centres. Convenience centres include free-standing convenience, neighbourhood and to a certain extent smaller community-sized centres.

[18] The Commission did not conclude on the relevant product market. However, it assessed the impact of the proposed transaction in the provision of retail space in convenience centres.

*Geographic market*

[19] The merging parties submit that the relevant geographic market for purposes of assessing the proposed transaction is the market for retail space within a 15km radius of the Target Properties, namely the Plattekloof and Table View nodes.

[20] In the matter between *Community Property Centre and Luvon Investments and others*[4], the Tribunal acknowledged that based on its precedent, the appropriate scope of assessment for the provision of rentable retail properties involving similar centres was a geographic radius of 15km.

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[2] *Hyprop Investment Limited and Atterbury Investment Limited / Attfund Retail Limited and Mentrablox (Pty) Ltd*, Case No.: 05/LM/Jan11.
[3] *Vukile Property Fund Limited / Four Arrows Investments 46 (Pty) Ltd in respect of Nonesi Mall,* Case No.: LM240Mar15.
[4] *Community Property Centre and Luvon Investments and others*, Case No.: LM101Aug22.

[21] The Commission submitted that the relevant geographic market is the market for the provision of rentable retail space in convenience centres within a 15km radius of the Target Properties.

*Horizontal impact*

[22] The Commission found there is a horizontal overlap between the activities of the merging parties as both provide rentable retail space within a 15km radius of the Target Properties.

[23] The Commission found that the combined market share of the merged entity in the market for the provision of rentable retail space within a 15km radius of the Plattekloof node will be approximately 7.82% (with a market accretion of less than 1%); and approximately 6.68% (with a market accretion of less than 2%) in the Table View node.

[24] Based on the market share estimates above and the minimal accretion of market shares in both markets, the Commission found that the transaction was not likely to raise significant competition concerns in the affected markets. The merging parties provided data on the distances between the centres of the merging parties in the two nodes.[5] The Tribunal considered[6] that there is no likelihood of a lessening of competition in any narrower market as the distances between the centres of the acquiring and target firms are generally significant, and in most cases more than 5kms. Moreover, there are several centres in the relevant nodes that will continue to compete with those of the merged entity post-merger.

[25] The Commission also noted that Pick n Pay is a tenant of FPG Group in several retail centres. This landlord-lessee relationship between the parties will continue post-merger.

[26] Therefore, we concluded that the proposed transaction is unlikely to result in the substantial prevention or lessening of competition in any relevant market.

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[5] Joint Competitiveness Report, Merger Record, p. 48-51.
[6] In line with the Tribunal's findings in *AFHCO Holdings (Pty) Ltd and Indluplace (Pty) Ltd*, Case No.: LM002Apr23, para 28 and 29.

**Public interest**

*Employment*

[27] According to the merging parties, there will be no retrenchments or negative effects on employment as a result of the proposed transaction, namely because; when the Target Properties are transferred, FPG Holdings will manage the property management functions. Pick n Pay's employee responsible for the management will remain employed by FPG Holdings and will manage other Pick n Pay properties as well.

[28] The Commission contacted the merging parties’ respective employee representatives who confirmed that no employment concerns had been raised regarding the proposed transaction.

[29] Therefore, we find that the proposed transaction is unlikely to have a negative effect on employment.

*Spread of ownership*

[30] FPG Holdings is 98.40% owned by Historically Disadvantaged Persons (“HDPs”) (with 12.44% comprising black women shareholders). The Target Properties have 20.27% HDP ownership by virtue of Pick n Pay’s 20.27% HDP shareholding (with 8.12% comprising black women shareholders).

[31] In view of this, the proposed transaction will result in the promotion of a greater spread of ownership by increasing the shareholding of HDPs in the Target Properties from 20.27% to 98.40%, post-merger.

[32] We conclude that the proposed transaction does not raise any public interest concerns.

## Conclusion

[33] In light of the above, the Tribunal found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any public interest concerns. We approve the proposed transaction unconditionally.

Signed by:Thando Vilakazi
Signed at:2024-01-19 12:45:31 +02:00
Reason:Witnessing Thando Vilakazi

Thando Vilakazi

**19 January 2024**

**Prof Thando Vilakazi** **Date**

**Concurring: Ms Andiswa Ndoni and Adv Geoff Budlender SC**

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| Tribunal case manager: | Moleboheng Mhlati |
| For the merging parties: | Vani Chetty of Vani Chetty Competition Law |
| For the Commission: | Kgothatso Kgobe, Zanele Hadebe and Wiri Gumbie |