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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 017145

In the matter between:

SA Corporate Real Estate Fund	Acquiring Firm
And	
A portfolio of commercial property of Lushaka Investments (Pty) Ltd	Target Firm

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Panel	:	Andreas Wessels (Presiding Member) Anton Roskam (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	11 September 2013
Order issued on	:	11 September 2013
Reasons issued on	:	18 September 2013

Decision

Approval

[1] On 11 September 2013, the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by SA Corporate Real Estate Fund (hereafter "SA Corp") of certain commercial property of Lushaka Investments (Pty) Ltd (hereafter "Lushaka").

[2] The reasons for approval follow below.

Merging parties

[3] The primary acquiring firm is SA Corp, a diversified real estate investment fund. The fund is listed on the Johannesburg Stock Exchange Limited (JSE). SA Corp's property portfolio includes rentable retail space, rentable office space and industrial properties.

[4] We note that SA Corp's largest unit holders include the Government Employee Pension Fund ("the GEPF") (holds 27.33% of the total units). We however further note that the Competition Commission ("Commission") found that the Public Investment Corporation ("the PIC"), through the GEPF, does not exercise an element of control over SA Corp.[1]

[5] The primary target firm is certain commercial property of Lushaka. Lushaka is a property investment holding company and is a family run business. More specifically, the target property is the World Trade Centre Johannesburg (hereafter "the WTC") which is a high rise mix-use property located in Sandton, with a combination of rentable Grade P office space and rentable retail space. The WTC was developed by Lushaka and is located within the Sandton property node.

Proposed transaction and rationale

[6] In terms of the *Sale of Letting Enterprise Agreement*, SA Corp will acquire Sections 1 to 24 in the Scheme, being the office tower known as the WTC together with the "*Exclusive Use Areas*" from Lushaka ("the Property"). SA Corp wishes to purchase the Enterprise comprising of the Property together with the leases ("the Target Property") as a going concern.[2] As a result of the proposed transaction, SA Corp will directly acquire control over the Target Property.

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[1] Commission's Report, pages 9 and 10.
[2] For a full description of the proposed transaction see *inter alia* pages 12 to 15 of the merger record.

[7] The WTC is the first phase of a three phase development by Lushaka. The proposed transaction is limited to the first phase of the development.

[8] SA Corp's rationale for the proposed transaction is to generate an attractive income and appreciation with long term sustainability growth from investments in quality real estate assets.

[9] Lushaka no longer wishes to hold the letting enterprise portfolio to be sold.

Competition analysis

[10] Two general product markets are affected by this merger, namely (i) rentable office space; and (ii) rentable retail space.

Office space

[11] With regards to office space, the target property can be classified as premium grade, i.e. Grade P, office property. According to the Commission's analysis, SA Corp owns two Grade A office properties that are located within a 5 km radius of the target property, namely (i) 21 Flicker Road in Illovo; and (ii) 36 Wierda Road West.

[12] There are various grades of rentable office space with Grade P being the premium grade and Grade A being the next best grade. There is however in this case no need for us to take a definitive view on the exact product market delineation for office space since it does not alter our ultimate conclusion.

[13] SA Corp does not own any Grade P office space in or adjacent to the Sandton node, or indeed in the entire Gauteng. Thus if the market is that for Grade P office space then there is no overlap between the activities of the merging parties. If the product market were to include

both Grade P and Grade A office space, then the merged entity's market share in the Sandton node would be small.[3]

[14] Thus, irrespective of the market definition, we conclude that there is no substantial prevention or lessening of competition likely to result from this merger in any potential office space market.

Retail space

[15] Again, given the facts of this merger, we have not found it necessary to conclude on a strict market definition for retail space.

[16] SA Corp owns one retail property within the Sandton node, namely Cambridge Crossing Shopping Centre. The Commission was of the view that the nature of the retail space available at the WTC was significantly different to that at Cambridge Crossing Shopping Centre limiting the degree of substitutability between these two retail properties. Furthermore, it found that there were more than 50 shopping centres within a 5 km radius of the WTC.

[17] We conclude that there is no substantial prevention or lessening of competition likely to result from this merger in any potential retail property market.

Coordinated effects

[18] The Commission also investigated the likelihood of information exchange that may be facilitated through the PIC's (through the GEPF, see paragraph 4 above) appointment of one member to the board of SA Corp and two board members to the board of Growthpoint Properties Ltd ("Growthpoint"), a competitor of SA Corp. The concern was that, because the PIC has interests in Grade P office properties, and Growthpoint also owns Grade P office space, the proposed transaction may facilitate information exchange between the PIC and owners of competing Grade P properties. The Commission noted that

[3] See pages 128 to 130 of the merger record for estimates of the merged entity's market shares in the Sandton node.

the same person concurrently serves on the boards of both SA Corp and the PIC. The Commission however found that the role of the board member in question within SA Corp extends as far as being Chairman of the "*Social, Ethics and Environmental Committee*" of SA Corp and that this does not afford him access to pricing (rentals), leasing (for example identities of tenants) or any other competitively sensitive information. Furthermore, the PIC's appointees to the boards of respectively SA Corp and Growthpoint are different individuals. The Commission therefore concluded that it is not likely that the proposed transaction would increase the likelihood of coordination. We have no reason to doubt the Commission's conclusion regarding coordination in the context of the proposed merger.

Public interest

[19] The merging parties confirmed that the proposed transaction will not have any negative effect on employment.[4] Furthermore, the proposed transaction raises no other public interest concerns.

CONCLUSION

[20] For the reasons above, we approve the proposed merger without conditions.

Andreas Wessels

18 September 2013
DATE

Anton Roskam and Imraan Valodia concurring

Tribunal Researcher: Andrew Sylvester
For the merging parties: Ahmore Burger-Smidt of Werksmans Attorneys
For the Commission: Jatheen Bhima

[4] See merger record, pages 17, 117 and 136.