

SOUTH AFRICA / JUDGMENT

Amdec Investments (Pty) Ltd v Culemborg Investment Properties (Pty) Ltd (LM184Dec16) [2017] ZACT 5; [2017] 1 CPLR 206 (CT) (26 January 2017) [2017] ZACT 5

COURT

Competition Tribunal

BEFORE

Norman Manoim, AW Wessels, Andiswa Ndoni

CASE / FILE NUMBER

LM184Dec16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM184Dec16

In the matter between:

AMDEC INVESTMENTS (PTY) LTD

Primary Acquiring Firm

and

CULEMBORG INVESTMENT PROPERTIES (PTY) LTD Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: AW Wessels (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on

: 18 January 2017

Order Issued on : 18 January 2017

Reasons

Issued on : 26 January 2017

Reasons

for Decision

Approval

[1] On 18 January 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction between Amdec Investments (Pty) Ltd and Culemborg Investment Properties (Pty) Ltd.

[2] The

reasons

for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Amdec Investments (Pty) Ltd ("Amdec"), a company incorporated in accordance with the laws of the Republic of South Africa.

[4] Amdec is jointly controlled in equal share by the Rowe Family Trust and the Baker Family Trust. Amdec controls a number of firms including: Amdec Property Investments, Amdec Residential Developments, Arch Property Fund Limited, Belle Woode Retirement Village Property Development, Dormell Properties 193, Evergreen Lifestyle Villages, Evergreen Property Investments, and Fisherman's Village Holiday Accommodation.

[5] The Rowe Family Trust, the Baker Family Trust and all their subsidiaries, including Amdec will be referred to as the "Amdec Group".

[6] The Amdec Group is a privately owned property development and investment business that owns a portfolio of properties and property letting enterprises which are active in the property development sphere in South Africa.

Primary target firm

[7] The primary target firm is Culemborg Investment Properties (Pty) Ltd ("Culemborg"), a company incorporated in accordance with the laws of the Republic of South Africa.

[8] Culemborg is jointly controlled by Absa Bank Limited (67%) and Amdec (33%). Further¹ Culemborg does not control any firm.

[9] Culemborg is a speciality retail property letting enterprise. This speciality retail property is let to several tenants who operate motor dealerships.

Proposed transaction

- [10] In terms of the proposed transaction, Amdec intends to increase its shareholding in Culemborg from 33% to 100% by acquiring an additional 67% shareholding held by Absa. Upon the implementation of the transaction, Amdec will control Culemborg.

Rationale

Primary acquiring firm

- [11] Amdec intends to develop the site into a mixed usage development. Amdec currently owns the Melrose Arch property in Johannesburg which is a mixed use development.

Primary target firm

- [12] The Barclays Africa Group wishes to reduce its exposure to property investments. In 2015 it had acquired an increased stake in Culemborg. Asked at the hearing why it was reducing this stake only a year later, we were informed that the Group had planned to use the site for its head office in the Cape but had since decided on another site so the property no longer had strategic value for it.

Impact on competition

- [13] The Commission considered the activities of the merging parties and found that there was no overlap in the activities of the merging parties. The transaction does not change the structure of any market as there will be no accretion in market shares.
- [14] The Commission was therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
- [15] The only properties that Amdec has leased to motor dealerships are located at Melrose Arch in Johannesburg. They therefore cannot be considered to be competitive with those of Culemborg. Amdec further confirmed that while it had other property interests in the Western Cape, none of those interests were leased to motor dealerships.[1]

Public interest

- [16] The merging parties submitted that the proposed transaction will have no adverse effect on employment as the target firm does not have any employees.[2]
- [17] The Commission was of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

Conclusion

- [18] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.

26 January 2017

DATE

Mr Norman Manoim

Mr AW Wessels and Ms Andiswa Ndoni concurring

Case Manager: Kameel Pancham

For the merging parties: Vani Chetty of Baker McKenzie

For the Commission: Zintle Siyo

[1] This was confirmed at the hearing. See transcript page 3, lines 19 - 21; page 4, lines 1-14.

[2] Inter alia Commission's Recommendation page 9.

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