

SOUTH AFRICA / JUDGMENT

Arrowhead Properties Limited v Vividend Income Fund Limited (018929) [2014] ZACT 105 (24 July 2014) [2014] ZACT 105

COURT
Competition Tribunal

BEFORE
T Madima, F Tregenna, A Ndoni

CASE / FILE NUMBER
018929

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018929

In the matter between:

ARROWHEAD PROPERTIES LIMITED

Primary Acquiring Firm

And

VIVIDEND INCOME FUND LIMITED

Primary Target Firm

Panel : Dr T Madima (Presiding Member)

: Prof. F Tregenna (Tribunal Member)

: Ms A Ndoni (Tribunal Member)

Heard on : 2 July 2014

Order Issued on : 2 July 2014

Reasons

Issued on : 24 July 2014

Reasons

for Decision

Approval

- [1] On 2 July 2014, The Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Arrowhead Properties Limited ("Arrowhead") to increase its linked units to 100% in Vividend Income Fund Limited ("Vividend").
- [2] The reasons for approving the proposed transaction follow hereunder.

Parties to the transaction

- [3] The primary acquiring firm is Arrowhead, a company listed under the Real Estate - Real Estate Holdings and Development sector of the Johannesburg Securities Exchange ("JSE") and not controlled by any firm. The top beneficial unit-holders of Arrowhead which hold a greater than 5% of the combined A and B linked units are; Coronation Fund Managers, Investec Asset Management and Ford Asset Management. Arrowhead controls Vividend Management Group and Arrowhead Residential (Pty) Ltd and it holds 31.7% of the units in Vividend Income Fund Limited.
- [4] The primary target firm is Vividend, a company listed on the JSE and not controlled by any firm. Its beneficial unit-holders holding more than 5% of the linked units in Vividend are; Arrowhead, Stanlib Asset Management and Nedcor Bank Nominees. Vividend controls Clearwater Crossing (Pty) Ltd, Fluxrab Investments No 196 (Pty) Ltd and holds a 90% interest in Southern Value Consortium.

Proposed Transaction and Rationale

- [5] Arrowhead intends to increase its linked units in Vividend to 100% by way of a Scheme of Arrangements.
- [6] Arrowhead's acquisition is in line with its strategy of making distribution- enhancing acquisitions, increasing critical mass, asset quality and diversification that will drive its performance for the benefit of its investors. The acquisition will provide Arrowhead with a strategic stake in Vividend's R2 billion commercial and retail portfolios.
- [7] For Vividend the disposal of its linked units to Arrowhead would be in the best interests of Vividend's linked unit-holders.

Relevant Market and Impact on Competition

- [8] Arrowhead is an investment firm which primarily invests in property. It is listed under the Real Estate- Real Estate Holdings and Development sector on the JSE. Its property portfolio comprises of retail, residential, industrial and office properties located throughout South Africa.

- [9] Vividend is also an investment firm which primarily investment in property. Its property portfolio comprises of retail, residential, industrial and office properties locate in Gauteng, Western Cape, Free State, Mpumalanga and Kwa-Zulu Natal.
- [10] The proposed transaction does result in a horizontal overlap arising in relation to the market for the provision of rental space in B-Grade office property in the Randburg node, the market for the provision of rental space in B-Grade office property in the Durban CBD node and the market for the provision of rental space in a convenience centre within a Vividend retail properties within the 10km radius of the respective following Rossettenville/Selby, Benoni/Boksburg, Montclair/Durban; and Pietermaritzburg.
- [11] The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition as the merging parties' post- merger shares will remain low. Furthermore, there is no geographic overlap in the activities of the merging parties in retail properties in the Western Cape, Mpumalanga and the Eastern Cape.
- [12] The transaction does however raise public interest concerns. The Commission found that the proposed transaction raises employment concerns and in its view would likely result in retrenchments of 21 out of the 22 current employees of Vividend. The Commission is of the view that there is likelihood that Arrowhead might retrenchment the employees within 6 to 12 months post-merger. This will be part of the business model that it does not directly employ any employees. Arrowhead outsources its property management services as well as any other employment functions to firms such as JHI Properties (Pty) Ltd, Citiq Property Services and Mafadi Property Management (Pty) Ltd.
- [13] The Commission is of the view that the retrenchment of the 21 unskilled employees is significant. Following much deliberation between the merging parties and the Commission, the merging parties initially agreed to retain all the employees for a 12 month period except for the one white collar employee. The merging parties were unable to concede to extending of the retention period from 12 months to 36 months but they did agree to employ the affected employees on a permanent basis as a measure to alleviate the Commission's concerns. The Commission has therefore recommended that the proposed transaction be approved subject to the condition that the merged entity shall not retrench the 21 employees for a period of three years from the effective date as a result of the proposed transaction.

Conclusion

- [19] In light of the above I conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rental space in B-Grade office property in the Randburg node; the market for the provision of rental space in B-Grade office property in the Durban CBD node; and the market for the provision of rental space in a convenience centre within a 10km radius of the respective Vividend retail properties. In addition, the public interest issues do raise concerns accordingly I approve the proposed transaction subject to the condition that the merged entity shall not retrench

the 21 employees for a period of three years from the effective date as a result of the proposed transaction.

Dr T Madima

Prof. F Tregenna and Mr A Roskam concurring

24 July 2014

DATE

Tribunal Researcher: Moleboheng Moleko

For the merging parties: Vani Chetty - Vani Chetty Competition Law

For the Commission: Hardin Ratshisusu, Seema Nunkoo, Xolela Nokele
and Dineo Mashego.

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