

SOUTH AFRICA / JUDGMENT

Capitec Bank Ltd v Spear Reit Ltd and Another (LM011Apr23) [2023] ZACT 27; [2023] 3 CPLR 37 (CT) (13 July 2023)

[2023] ZACT 27

COURT

Competition Tribunal

BEFORE

Liberty Mncube, Andiswa Ndoni, Shaista Goga

CASE / FILE NUMBER

LM011Apr23

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COMPETITION TRIBUNAL OF
SOUTH AFRICA

Case

No: LM011Apr23

In

the matter between:

Capitec
Bank Limited Acquiring
Firm
and
SPEAR
REIT Limited on behalf of the immovable property and rental
enterprise known as the "Liberty Life Office
Building" Target
Firm
Panel: Liberty
Mncube (Presiding Member)
Andiswa Ndoni (Tribunal
Panel Member)
Shaista Goga (Tribunal
Panel Member)
Heard
on: 20
June 2023
Order
issued on: 20
June
2023
Reasons

issued on: 13
July 2023

REASONS FOR DECISION

Approval

- [1] On 20 June 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein Capitec Bank Limited (“Capitec”) intends to acquire the office rental enterprise known as the Liberty Life Office Building (“Target Property”) from Spear Real Estate Investment Trust Limited (“Spear REIT”). Upon implementation of the proposed transaction, the Target Property will be controlled by Capitec.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Capitec which is a public company incorporated in accordance with the laws of the South Africa. Capitec is wholly owned by Capitec Holdings Limited (“Capitec Holdings”). Capitec Holdings is listed on the Johannesburg Securities Exchange Limited (“JSE”), and as such Capitec Holdings is not controlled by any single firm.
- [3] Capitec Holdings directly and indirectly controls numerous firms in South Africa, including Capitec Ins (Pty) Ltd; Capitec Properties (Pty) Ltd; Capitec Insurance Holdings (Pty) Ltd; Capitec Life Ltd and Praelexis (Pty) Ltd.
- [4] Capitec controls Mercantile Rental Finance Proprietary Limited. All firms directly and indirectly controlled by Capitec Holdings are hereinafter referred to as the “Acquiring Group”.
- [5] The Acquiring Group is active in the banking industry focusing on personal and business banking services. It also offers other financial services such as insurance. In addition, the Acquiring Group holds a property portfolio which consists of grade P, A and B office spaces in the Western Cape and Gauteng. Relevant to the assessment of the proposed transaction is the Acquiring Group’s property portfolio.

Primary target firm

- [6] The primary target firm is the office rental enterprise known as “Liberty Life Office Building” (“Target Property”) which consist of a grade P office space situated in Western Cape, Century City with a gross lettable area of 18 244m².
- [7] The Target Property is wholly owned by Spear REIT, a public company incorporated in accordance with the laws of South Africa. Spear REIT is listed on the JSE and is not controlled by any firm.

Proposed transaction and rationale

Transaction

- [8] In terms of the Sale of Rental Enterprise Agreement, Capitec will acquire the Target Property as a going concern from Spear REIT. Upon implementation of the proposed transaction, Capitec will exercise sole control of the Target Property.

Rationale

- [9] [....].

- [10] [....].

Relationship between the parties

- [11] There is a horizontal overlap in the activities of the merging parties as both the Acquiring Group and the target firm are active in the provision of rentable office space.

Relevant markets

- [12] The Commission submitted that rental property may be broadly grouped into retail property, industrial property, office property and other properties such as residential, motor related outlets, hotels and leisure properties. Relevant to the proposed transaction is office property.
- [13] In the proposed transaction, the Acquiring Group's property portfolio consists of grade A, B and P offices and the Target Property is classified as a grade P office.
- [14] The Tribunal has previously decided (i.e., Redefine Properties Limited and Pivotal Fund Limited[1] and Redefine Properties Limited, the Pivotal Fund Limited, Absshelf Proprietary Limited and Cirano 300 Investments Proprietary Limited[2]) that office property can be defined according to grades, namely Grade P, A, B or C.
- [15] In the current case, we did not receive any evidence suggesting a departure from this approach and therefore considered the market for the provision of grade P office space.
- [16] As regards the relevant geographic markets, the merger parties submitted that the geographic market for office property is defined by regional nodes. The Tribunal has previously decided (i.e., Momentum and Bonatla[3]) that the geographic market for office properties can be defined in terms of nodes.
- [17] Given that the Target Property is situated in Century City and the Acquiring Group does not own any grade P office space in Century City node, the Acquiring Group owns grade P office space situated in Stellenbosch (which is 47km away from the Target Property), the Commission concluded that there is no geographic overlap between the grade P office space owned by the merging parties.
- [18] We did not receive any evidence suggesting departure from the above approach and therefore considered the Century City node as the geographic market.

Competition assessment

- [19] The merger parties and the Commission submitted that the proposed merger is unlikely to substantially prevent or lessen competition as there is no geographic overlap between the Grade P office space owned by the merging parties.
- [20] The Commission contacted the two tenants of the Target Property namely Digital Outsource Proprietary Limited (“Digital Outsource”) and Liberty Group Limited (“Liberty Group”).
- [21] Digital Outsource did not raise any concerns about the proposed transaction while no response was received from Liberty Group.
- [22] Having regard to the above, we received no evidence suggesting that the proposed merger will likely result in a substantial prevention or lessening of competition in the relevant markets.

Public interest assessment

Effect on employment

- [23] The merging parties submitted that the proposed transaction will not have any detrimental or negative effects on employment. The employees of the Acquiring Group are represented by SASBO - The Finance Union (“SASBO”). The Target Property does not have any employees. The Commission contacted SASBO and did not receive a response despite follow-up attempts.
- [24] The Commission noted that the Target Property is managed by Spear REIT and will be managed by Capitec, post-merger. The employees that were employed by Spear REIT to manage the Target Property will continue to be employed by Spear REIT.
- [25] Considering the above, the Commission concluded that the proposed transaction is unlikely to have a negative effect on employment.

Effect on the spread of ownership

- [26] The merging parties submitted that the proposed transaction will not give rise to any dilution in the spread of ownership by HDPs in South Africa and will have no negative effect on HDP ownership in South Africa.
- [27] Capitec is a level three B-BBEE contributor with 28.66% shareholding by HDPs while Spear has 9.18% shareholding held by HDPs.
- [28] The Commission submitted, on this basis, that the proposed merger does not raise any concerns with regard to the spread of ownership.
- [29] Based on the above, we conclude that the proposed transaction is unlikely to have a negative effect on the spread of ownership.

Conclusion

[30] For the reasons set out above, the Tribunal approves the proposed transaction unconditionally.

Date: 13 July 2023

Prof. Liberty Mncube

Concurring: Ms. Andiswa Ndoni and Ms. Shaista Goga

Tribunal case manager: Baneng Naape

For the merging parties: Susan Meyer of Cliffe Dekker Hofmeyr

For the Commission: Nonhlanhla

Msiza and Themba Mahlangu

- [1] Redefine Properties Ltd And Pivotal Fund Ltd, Case No: LM099Sep16, CTZA
- [2] Redefine Properties Ltd, The Pivotal Fund Ltd, Absshelf 04 (Pty) Ltd and Cirano 300 Investments (Pty) Ltd in Respect of a 75 per cent Undivided Share in Erf 221, Rosebank, Known as The Galleria, Case No: LM168Oct15, CTZA
- [3] Momentum Property Investments (Pty) Ltd and Bonatla Property Holdings Ltd, Case No: LM020Jul03, CTZA

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