

SOUTH AFRICA / JUDGMENT

Community Property Company (Pty) Ltd v Eyethu Orange Farm Mall (LM267Jan18) [2018] ZACT 20; [2018] 1 CPLR 250 (CT) (9 March 2018) [2018] ZACT 20

COURT

Competition Tribunal

BEFORE

Norman Manoim, Enver Daniels, Prof. Imraan Valodia

CASE / FILE NUMBER

LM267Jan18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM267Jan18

In the matter between

Community Property Company (Pty) Ltd

Primary Acquiring Firm

And

Eyethu Orange Farm Mall

Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: Enver Daniels (Tribunal Member)

: Prof. Imraan Valodia (Tribunal Member)

Heard on

: 16 February 2018

Order Issued on : 16 February 2018

Reasons

Issued on : 9 March 2018

REASONS

FOR DECISION

Approval

- [1] On 16 February 2018, the Tribunal unconditionally approved the large merger in terms of which the Community Property Company (Pty) Ltd ("CPC") is acquiring a 90% interest and joint control of a community shopping centre known as the Eyethu Orange Farm Mall ("target property").
- [2] The reasons for approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] CPC is a property holding and investment company that primarily specialises in the acquisition of new and existing shopping centres which cater to the needs of underserved communities throughout South Africa. CPC is wholly-owned by Community Property Holdings (Pty) Ltd ("CPH"), which is in turn ultimately controlled by Old Mutual Group Holdings (SA) (Pty) Ltd ("OMSA"). CPC and its controllers are collectively referred to as the Acquiring group.
- [4] The Acquiring group owns a number of retail letting properties throughout South Africa. Relevant to this transaction are its properties situated in the Gauteng province.

Primary Target Firm

- [5] The target property is a 26818m² regional shopping centre that comprises of retail letting and storage space. It is situated in Orange Farm, Johannesburg (Gauteng).
- [6] The target property is jointly owned and controlled by four entities (two private companies and two trusts),[1] three of which are selling their undivided share in the target property. They will be collectively referred to as "the sellers".

Proposed transaction and rationale

- [7] In terms of the Sale Agreements, CPC will acquire each of the sellers' undivided shareholding (accounting for 90% of the issued share capital) in the target property. Post-merger, CPC will jointly own and control the target property with the remaining shareholder the Orange Farm Community Trust which retains a 10% stake and enjoys sufficient minority protection for the merging parties to describe this as joint control.[2]

Relevant market and impact on competition

- [8] The Commission considered the activities of the merging parties and found a horizontal overlap in the product market for the provision of rentable retail space in comparative centres. The horizontal overlap arises as a result of CPC owning a number of comparative centres in Gauteng, which include the Gateway Mall in Carltonville, Heidelberg Mall in Heidelberg, and Cradock Square in Rosebank.
- [9] The Commission found that there is no geographic overlap between the activities of the merging parties as CPC's nearest comparative centre in Gauteng is located approximately 46km from the target property and thus is unlikely to impose a competitive constraint on it.
- [10] Due to the lack of geographic overlap, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. We found no reason to disagree with the Commission.

Public interest

- [11] The merging parties submitted that the proposed transaction will not have a negative impact on jobs as the target property's employees will be transferred to CPC as contemplated in section 197 of the Labour Relations Act 66 of 1995. The Commission concluded that the proposed transaction will not negatively affect employment. We agreed with the Commission's

findings.

Conclusion

- [12] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no adverse public interest issues arise from the proposed transaction. Accordingly, we unconditionally approved the proposed transaction.

Mr Norman Manoim.

Mr Enver Daniels and Prof. Imraan Valodia concurring.

9 March 2018 Date

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : J van Dijk of Norton Rose Fulbright

For the Commission : N Msiza

- [1] Flanagan and Gerard Investments; Mergence Africa Property Investments Trust; Stretford Land Development (Pty) Ltd; and Orange

Farm Community Trust.

- [2] See Paragraph 4.1(5) of the Merging Parties Competitiveness report, Record page 33.

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