

SOUTH AFRICA / JUDGMENT

Delta Property Fund Limited v Orthotouch Limited (LM073Jul15) [2015] ZACT 95 (25 November 2015) [2015] ZACT 95

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Andiswa Ndoni, Anton Roskam

CASE / FILE NUMBER

LM073Jul15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM073Jul15

In the matter between:

Delta Property Fund Limited

Primary Acquiring Firm

and

Orthotouch Limited

Primary Target Firm

Panel

: Yasmin Carrim (Presiding Member)

: Andiswa Ndoni (Tribunal Member)

: Anton Roskam (Tribunal Member)

Heard on

: 28 October 2015

Order Issued on

: 28 October 2015

Reasons

Issued on : 25 November 2015

Reasons

for Decision

Approval

[1] On 28 October 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Delta Property Fund

Limited ("Delta") and Orthotouch Limited ("Orthotouch")

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm, Delta is a property fund which is publically listed on the Johannesburg Stock Exchange. It has controlling interests in various office, retail and industrial properties.

Primary target firm

[4] The primary target firm, Orthotouch is a property management company which focuses on the development of commercial property assets which includes retail centres and corporate developments.

Proposed transaction and rationale

[5] In the proposed transaction Delta would acquire fifteen properties ("Target Properties") from Orthotouch. The properties

consist of twelve properties in Bloemfontein and three properties in Nelspruit, Welkom and Kroonstad respectively. As a result of the implementation of the proposed transaction Delta would wholly own and control the Target Properties.

[6] Delta submitted that it has identified the Target Properties as an attractive investment opportunity which is in line with its overall growth strategy. Orthotouch submitted that the proposed transaction is an opportunity for it to realise sale proceeds.

Impact on competition

[7] The Commission, in its investigation identified a horizontal overlap in respect of office property. The overlap identified by the Commission is only in relation to Grade B and C office properties in Bloemfontein and Nelspruit as Delta owns office properties in these two areas.

- [8] In analysing the impact of the proposed transaction on the market for Grade B and C office properties in Bloemfontein, the Commission found that the merged entity would have a post-merger market share of between 40-45% with an accretion ranging between 35-38%. The Commission was of the view that, despite the high accretion rate, the proposed transaction did not present competition concerns. The Commission came to this view on the basis that none of the tenants raised any concerns about the proposed transaction and many of the larger tenants had medium to long terms leases. Furthermore regard had to be given to the fact that government was one of the biggest tenants with substantial countervailing power and that a new development of 8600m2 was expected to be developed by 2017 which would act as constraints on the acquiring firm post- merger.
- [9] When evaluating the effect of the proposed transaction for Grade B and C properties in Nelspruit, the Commission found that the post-merger market share would be between 15-20% with a minimal accretion falling under 5%. The Commission was of the view that as both the market share and accretion was minimal that the proposed transaction was unlikely to raise concerns in this market. In this market the Commission found mitigating factors such as that tenants would be protected by their existing lease agreements and that there were suitable alternative vacant spaces.
- [10] On the evidence presented before us we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [11] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment. [1] The proposed transaction further raises no other public interest concerns.

Conclusion

- [12] In light of the above, we approve the proposed transaction unconditionally.

25 November 2015

DATE

Ms Yasmin Carrim

Ms Andiswa Ndoni and Mr Anton Roskam concurring

Tribunal Researcher: Aneesa Raval

For the merging parties: Kitso Tlhabanelo of Cliffe Dekker Hofmeyr

For the Commission: Relebohile Thabane and Nompucuko Nontombana

- [1] Inter alia merger record page 9.

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Prepared on 10 October 2026 · Esheria