

SOUTH AFRICA / JUDGMENT

Dipula Property Fund (Pty) Ltd v Asakhe Realty Investment (42/LM/May11) [2011] ZACT 46 (7 July 2011)

[2011] ZACT 46

COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Merle Holden

CASE / FILE NUMBER

42/LM/May11

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 42/LM/May11

In the matter between:

Dipula Property Fund (Pty) LtdAcquiring Firm

And

Asakhe Realty InvestmentTarget Firm

Panel : Norman Manoim (Presiding Member)

YasminCarrim (Tribunal Member)

Merle Holden(Tribunal Member)

Heard on : 22/06/2011

Order issued on : 22/06/2011

Reasons

issued on : 07/07/2011

Reasons for Decision

Approval

On 22 June2011 the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Dipula

Property Fund (Pty) Ltd and Asakhe Realty Investment. The reasons for approval of the proposed transaction follow below.

Parties to transaction

The primary acquiring firm is Dipula Property Fund (Pty) Ltd (“Dipula fund”), a private company incorporated in terms of the laws of the Republic of South Africa. Dipula Fund is controlled by Redefine Properties Ltd (“Redefine”), a private company incorporated in terms of the laws of the Republic of South Africa. Dipula Fund wholly owns Dipula Property Investment Trust (“Dipula Trust”) and Mergence Africa Property Fund (Pty) Ltd (“MAP Fund”). The acquiring firm will be referred to as “Dipula-Redefine Group.” Redefine is a property loan stock company which is listed on JSE. Its property portfolio includes rental property, office property, retail property and industrial property.

The primary target firm is Asakhe Realty Investment Fund (Pty) Ltd, a company incorporated in terms of the laws of the Republic of South Africa. Asakhe is jointly held by Standard Bank Properties (Pty) Ltd (“SBP”) and Safika Holdings (Pty) Ltd (“Safika”). Asakhe wholly owns Emerald Fire, which is a property investment company formed to hold the properties of Asakhe as an Investment.

Proposed transaction and rationale

In terms of the draft Sale Agreement entered into between SBP, Safika and Dipula Fund, Dipula Fund is acquiring from SBP and Safika 100% of the linked units of Asakhe and all claims of whatsoever nature, which SBP and Safika may have against Asakhe. Simultaneously with the Asakhe transaction, certain transactions have also been concluded, all of which are interlinked and cross-conditional upon each other.¹

The Mergence-Dipula Sale includes the structure of the Mergence portfolio into that of Dipula Fund. The Mergence-Redefine sale

comprises a linked transaction in which Redefine will sell a portfolio of properties to MAP Trust. Since the Mergence-Dipula Sale and Mergence-Redefine Sale comprise an internal restructuring of the Redefine property portfolio and Mergence’s and Dipula Fund’s properties fall within Redefine’s control, there is no ultimate change in control and thus no impact on competition.

Merging parties’ activities

Redefine is a property loan stock company with a diversified portfolio in the rental property market including office, retail, and industrial sectors throughout South Africa. Redefine is also active in asset management as an in-house function within the Redefine group. The Dipula-Redefine Group controls in excess of five hundred and seventy three (573) properties in 9 provinces. The property portfolio of the Dipula-Redefine Group includes the properties of Dipula Trust, Redefine, MAP Trust, Hyprop, Attfund and Vunani.

Asakhe is an investment fund active in the realty sector. Asakhe wholly owns Emerald Fire, which is a property investment company formed to hold the properties of Asakhe as an investment. Emerald's portfolio ranges from industrial to office property.

Competitive assessment

The Commission concluded that there is an overlap with regards to three relevant product markets namely; office space, retail space and industrial space in eight geographical areas².

The Commission concluded that the proposed transaction is unlikely to prevent or lessen competition in the relevant markets, as their post-merger market shares in the respective markets remain too low to have a substantial effect on competition³.

Public interest

The parties submitted that the proposed transaction will have no impact on employment nor negatively impact any other public interest concern.

Conclusion

Based on the above we conclude that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. Furthermore, no public interest concerns arise from this deal. Accordingly the proposed transaction is approved unconditionally.

07/07/2011

N Manoim Date

Y Carrim and M Holden concurring

Tribunal Researcher: Thabani Ngilande

For the merging parties: Vani Chetty Competition Law

For the Commission: Bheki Masilela

¹These transactions are the following: In terms of a draft Sale Agreement entered into between the parties to the agreement, Dipula Fund is acquiring from Redefine and Mergence, 100% of the issued share capital of MAP Fund and all claims of whatsoever nature and from whatsoever cause arising, which Redefine and Mergence have against the MAP Fund, and In terms of a draft Sale Agreement entered into between Redefine, MAP Fund and MAP Trust, MAP Trust is acquiring from Redefine fifteen (15) property letting enterprises.

¹These transactions are the following:

In terms of a draft Sale Agreement entered into between the parties to the agreement, Dipula Fund is acquiring from Redefine and Mergence, 100% of the issued share capital of MAP Fund and all claims of whatsoever nature and from whatsoever cause arising, which Redefine and Mergence have against the MAP Fund, and

In terms of a draft Sale Agreement entered into between Redefine, MAP Fund and MAP Trust, MAP Trust is acquiring from Redefine fifteen (15) property letting enterprises.

2Rentable C-Grade office space in the Benoni node (Pre-merger: 7.82% and post-merger: 10.22%); Rentable retail space (neighbourhood and local convenience stores) in the Benoni/Boksburg node (Pre-merger: 6.91% and post-merger: 9.92%); Rentable retail space (substitutable retail centres) in the Ivory Park node (Pre-merger: 0.91% and post-merger: 3.35%); Rentable retail space (neighbourhood and local convenience centres) in the Doornfontein. Johannesburg CBD node (Pre-merger: 4.1% and post-merger: 4.3%); Rentable retail space (community, neighbourhood and local convenience centres) in the Pretoria CBD node (Pre-merger: 12.7% and post-merger: 18%); Light industrial space in the Kelvin/ Wynberg/ Alexandra node (Pre-merger: 2.23% and post-merger: 2.6%); Light industrial space in the Robertville node (Pre-merger: 1.98% and post-merger: 3.21%); Light industrial space in the Roodepoort node (Pre-merger: 0.7% and post-merger: 1.33%)

3Ibid.

3

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