

SOUTH AFRICA / JUDGMENT

# EA Waterfall Logistics JV Proprietary Limited v Truzen 116 Trust (LM058Jul20) [2020] ZACT 29; [2020] 2 CPLR 745 (CT) (3 September 2020) [2020] ZACT 29

## COURT

Competition Tribunal

## BEFORE

E Daniels, AW Wessels, H Cheadle

## CASE / FILE NUMBER

LM058Jul20

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## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM058Jul20 In the matter between EA Waterfall Logistics JV Proprietary Limited Primary Acquiring Firm And Truzen 116 Trust in respect of an undivided half share of the property letting enterprise known as Cummins Primary Target Firm Panel : Mr E Daniels (Presiding Member) : Mr AW Wessels (Tribunal Member) : Prof. H Cheadle (Tribunal Member)  
Heard on : 5 August 2020 Order Issued on : 5 August 2020

**Reasons**

Issued on : 3 September 2020

**REASONS**

## FOR DECISION

## APPROVAL

[1] On 5 August 2020, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger between EA Waterfall

Logistics JV Proprietary Limited and Truzen 116 Trust in respect of an undivided half share of the property letting enterprise known as Cummins.

[2] The reasons for the approval of the proposed transaction follow.

## PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

- [3] The primary acquiring firm is EA Waterfall Logistics JV Proprietary Limited (“EA Waterfall Logistics”). EA Waterfall

Logistics does not control any firm.[1] EA Waterfall Logistics is controlled by Equites Property Fund Ltd (“Equites”). Equites controls numerous firms, and is itself not controlled by any single firm.

- [4] Equites is a listed real estate investment trust with a focus on owning and developing modern logistics properties for the purposes of letting. EA Waterfall Logistics and Equites, together with all the firms controlled by Equites, will jointly be referred to as the “acquiring group”.

- [5] The acquiring group has a large property portfolio in South Africa. The acquiring group’s rentable light industrial property

portfolio is relevant for the purposes of the proposed transaction.

Primary target firm

- [6] The primary target firm is Truzen 116 Trust (“Truzen Trust”) in respect of an undivided half share of the property letting

enterprise known as Cummins (the “target property”).[2] The Truzen Trust is not controlled by any single firm. The Truzen Trust only controls the target property, which it jointly controls with EA Waterfall Logistics.

- [7] The target property is situated in Woodmead, Gauteng and comprises approximately 21,044 m<sup>2</sup> of rentable light industrial space. The current tenant in the target property is Cummins South Africa (Pty) Ltd (“Cummins”).

#### PROPOSED TRANSACTION AND RATIONALE

- [8] EA Waterfall Logistics, who currently owns an undivided 50% share of the target property, intends to acquire the remaining 50% of the target property from the trustees of the Truzen Trust. Post-merger, EA Waterfall Logistics will exercise sole control over the target property.
- [9] Equites’ acquisition of the remaining shares in the target property is part of its growth strategy. For Truzen Trust, the proposed transaction affords it the opportunity to realise its share of the value in the target property in favour of its beneficiaries.

#### RELEVANT MARKET AND IMPACT ON COMPETITION

- [10] The Competition Commission (“Commission”) considered the activities of the merging parties and found that the proposed

transaction results in a horizontal overlap in the provision of rentable light industrial properties. This is because the target

property is a rentable light industrial property, and the acquiring group controls numerous rentable light industrial properties.

[11] The Commission concluded that the relevant product market was the provision of rentable light industrial property, and that the

relevant geographic market comprised of industrial nodes within a 15km radius of the target property. As a result, the Commission

assessed the effects of the proposed transaction on rentable light industrial property located within a 15km radius of the target

property.[3]

[12] The Commission estimated that the merged entity would have a combined market share of 26% following an accretion of 1%.[4] Competitors of the merging parties also informed the Commission that there are numerous rentable light industrial properties within a 15km radius of the target property. The Commission also found that the acquiring group already jointly owns the target property. In light of these findings, the Commission found that the proposed transaction was unlikely to alter the structure of the relevant market.

[13] The Commission assessed any potential changes in incentives that could arise since the merger would result in a change from dual to sole control. In this regard, the Commission interviewed Cummins, being the only tenant in the target property. Cummins submitted that there are no other properties available that are suitable for its needs, and that it does not have any concerns regarding the proposed transaction.

[14] In light of the above, the Commission concluded that the proposed transaction was unlikely to substantially lessen or prevent

competition in the market for the provision of rentable light industrial property within a 15 km radius of the target property. We found no reason to disagree.

## PUBLIC INTEREST

[15] The Commission contacted the employee representative of the acquiring group who submitted that no employees raised any concerns regarding the proposed transaction.[5] The Commission also found no evidence of planned retrenchments by the merging parties. Furthermore, the merging parties submitted that the proposed transaction would not have any adverse effects on employment, and that no retrenchments or job losses would occur as a result of the merger.

[16] The Commission also considered whether the proposed transaction would have any impact on third party services providers. The merging parties submitted that the acquiring group is responsible for managing the target property and would continue to do so post-merger.

[17] The Commission found that the proposed transaction was unlikely to raise any other public interests concerns.

## CONCLUSION

[18] In light of the above, we concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in the market for the provision of rentable light industrial property within a 15 km radius of the target property. In addition, we are of the view that no public interest concerns arise from the proposed transaction.

[19] Accordingly, we approved the transaction without conditions.

3 September 2020

Date

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Mr Enver Daniels

Mr Andreas Wessels and Prof. Halton Cheadle concurring

Tribunal Case Manager: P Kumbirai For the Merging Parties: V Chetty of Vani Chetty Competition Law For the Commission: B Chomela and G Mutizwa

[1] EA Waterfall Logistics' joint control of the target property is discussed later.

[2] The target property includes the property, the enterprise assets, the leasehold rights and the lease agreements.

[3] Situated in Beatty Street, Woodmead, Gauteng Province.

[4] The Commission attributed 50% of the target property to each of the merging parties for the purposes of estimating the market shares

[5] Neither Truzen Trust nor the target property had any employees.

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