

SOUTH AFRICA / JUDGMENT

Ellerine Bros (Pty) Ltd and Another v FHP Managers (Pty) Ltd (019430) [2014] ZACT 69 (31 October 2014) [2014] ZACT 69

COURT
Competition Tribunal

BEFORE
Yasmin Carrim, Anton Roskam, Andiswa Ndoni

CASE / FILE NUMBER
019430

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019430

In the matter between:

ELLERINE BROS. (PTY) LTD

and

ELLWAIN INVESTMENTS (PTY) LTD.....Primary Acquiring Firms

And

FHP MANAGERS (PTY) LTD

in respect of its 25% interest in

NEWPARK TOWERS (PTY) LTD.....Primary Target Firm

Panel: Yasmin Carrim (Presiding Member)

: Anton Roskam (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on: 15 October 2014

Order Issued on: 15 October 2014

Reasons Issued on: 31 October 2014

Reasons for Decision

Approval

- [1] On 15 October 2014, the Competition Tribunal unconditionally approved the acquisition by Ellerine Bros. (Pty) Ltd and Ellwain Investments (Pty) Ltd of FHP Managers (Pty) Ltd.'s 25 % Interest in Newpark Towers (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

- [3] The primary acquiring firms are Ellerine Bros. (Pty) Ltd ("Ellerine Bros") and Ellwain Investments (Pty) Ltd ("Ellwain") (collectively referred to as the "Acquiring Firms"). The Acquiring firms are investment companies with property portfolios comprising of Retail and Office space in Gauteng. Ellerine Bros is jointly controlled by the Eric Ellerine Trust and the Sidney Ellerine Trust. Ellwain is jointly controlled by the following firms:
- Oxiana Limited ("Oxiana");
 - Argon Holdings Limited ("Argon Holdings");
 - Eric Ellerine Family Trust;
 - Sidney Ellerine Family Trust; and
 - Drawood Trust.

Oxiana, Argon Holdings and Drawood Trust do not own any firms in South Africa. Ellerine Bros and Ellwain jointly control Newpark Towers (Pty) Ltd ("Newpark") together with FHP Managers (Pty) Ltd, Mr B D Van Wyk and Renlia Developments (Pty) Ltd.

Primary target firm

- [4] The primary target firm is FHP Managers, in respect of its 25% interest in Newpark. Newpark is a property investment company that currently owns two office properties, classified as Grade A and B, situated in the Sandton and Johannesburg CBDs, as well as a specialist entertainment centre located in the Sandton CBD. FHP Managers is 100% controlled by the Standard Bank Group Limited. FHP Managers and Newpark do not control any other firms.

Proposed Transaction and Rationale

- [5] The Acquiring Firms each own 23.86% of the shares and claims in Newpark. In terms of the Sale of Shares Agreement, the Acquiring Firms shall each acquire 12.5% of the shares and claims in Newpark from FHP Managers. Following the implementation of the proposed transaction, the Acquiring Firms will each hold 36.36% in Newpark.

- [6] The Acquiring Firms submit, as a rationale for the transaction, that they seek to enhance their respective property portfolios.

Relevant Market and Impact on Competition

- [7] An assessment of the merging parties' activities found that the proposed transaction results in a horizontal overlap in respect of Grade A office properties and retail properties. With respect to Grade A office property, the merging parties will have a combined post-merger market share of between 1.5% and 3.5% in the Sandton and Environs node with an accretion of between 0.5% and 2%. The merged entity will still face competition from other large property groups such as Growthpoint, Annuity, Investec, Redefine as well as many other players in the market. Furthermore, there is a considerable amount of vacant Grade A office space in this node. The Tribunal further accepts that nothing will change in this market as the Acquiring Firms already have a pre-merger shareholding in Newpark, and through this transaction, are merely seeking to increase their respective shareholding in this regard.
- [8] With respect to retail property, we find that there is no overlap between the retail properties owned by the merging parties outside of Newpark, as none of the Acquiring Firm's retail properties are classified as speciality entertainment centres. Therefore the proposed transaction is unlikely to change the market structure of the market for the provision of speciality entertainment centres.

Conclusion

- [11] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets. In addition, no public interest issues arise from the proposed transactions. Accordingly we approve the proposed transaction unconditionally.

31 October 2014

DATE

Ms Yasmin Carrim

Andiswa Ndoni and Anton Roskam concurring

Tribunal Researcher: Derrick Bowles

For the merging parties: Vani Chetty - Baker & McKenzie

For the Commission: Seema Nunkoo assisted by Xolela Nokele

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