

SOUTH AFRICA / JUDGMENT

Emira Property Fund Ltd v Transcend Residential Property Fund Ltd (LM088Aug22) [2022] ZACT 35; [2024] 1 CPLR 6 (CT) (4 November 2022) [2022] ZACT 35

COURT

Competition Tribunal

BEFORE

M Mazwai, A Wessels, L Mncube

CASE / FILE NUMBER

LM088Aug22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM088Aug22

In the matter between:

Emira Property Fund Ltd Primary

Acquiring Firm

and

Transcend Residential Property Fund Ltd Primary Target Firm

Panel M

Mazwai (Presiding Member)

A Wessels (Tribunal Member)

L Mncube (Tribunal Member)

Heard on

: 07 October 2022

Order issued on : 07 October 2022

Reasons

issued on : 04 November 2022

REASONS

FOR DECISION

Introduction

- [1] On 7 October 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger in which Emira Property Fund Ltd (“Emira”) intends to acquire all of the remaining shares in Transcend Residential Property Fund (“Transcend”).

Primary acquiring firm

- [2] Emira, a property investment fund which is listed on the Johannesburg Stock Exchange (“JSE”), is controlled by I Group Financial Holdings (Pty) Ltd (“I Group Financial”)[1].
- [3] Emira invests in a diversified portfolio of commercial and retail assets in major South African metropolitan areas and also holds a controlling interest in a rural retail portfolio through its interest in Enyuka Prop Holdings (Pty) Ltd.
- [4] Emira is controlled by the I Group, which controls a diversified property portfolio comprised of retail, office, industrial and residential properties throughout South Africa.

Primary target firm

- [5] Transcend is a JSE-listed entity and is not directly or indirectly controlled by another firm.
- [6] Transcend's primary business is the letting of residential property developments situated within the Western Cape and Gauteng and owns a portfolio of high- quality residential properties, servicing the low-to-middle income market.

Competition Assessment

Relevant product market

- [7] There is an overlap between in the activities of the merging parties in residential properties in the Western Cape.
- [8] The Commission assessed the activities of the merging parties in the market for the provision of residential properties. It defined the market in line with the Tribunal’s decisions in Arrowhead Residential Limited and Jika Properties (Pty) Ltd[2] and Government Employees Pension Fund and Another v Lexshell 44 General Trading (Pty) Ltd[3] whereby the Tribunal accepted the Commission’s definition of the market as the market for residential properties.

Relevant geographic market

- [9] The Commission, relying on the geographic market definition in Presmooi (Pty) Ltd,[4] found that residential properties located 8 kms apart do not pose a competitive constraint on each other, suggesting that the geographic

market could be narrow, encompassing a radius of less than 8 kms.[5]

[10] The Commission analysed the distance between the merging parties' rentable space in residential properties and found that they have an overlap in Western Cape as the merging parties' properties in Eerste River, Western Cape and De Velde, Western Cape had a distance of 5.7 kms and 5.6 kms respectively.

Market shares

[11] The Commission found that post-merger the merging parties will own two properties within an 8 kms radius, in Eerste River, Western Cape, with 185 residential units available.[6] It found that, according to online searches on Property24, there are about 600 residential properties available in Eerste River. Further, it found the property held by the acquiring firm in Eerste River is still under construction and this property will consist of 85 houses with two bedrooms, and ten houses with one bedroom. In contrast, the property held by the target firm, namely Alpine Mews (90 units) are all apartments, and all are 2 bedroomed units. [7]

[12] In De Velde, Western Cape; post-merger the merging parties will also own two properties within an 8 kms radius with 79 units available.

Property24 has listings for approximately 900 residential properties in De Velde and the surrounding areas. Further, the target firm's property, De Velde (59 units), is held for sale, by contrast the acquiring group's properties are all held for rent.[8] This indicates that there is likely to be minimal competition between the parties in De Velde.

[13] The Commission did not conclude on the market shares and accretion.

[14] Having considered the above, the Tribunal concluded that it is unlikely that the proposed merger will result in a substantial prevention or lessening of competition in any relevant market.

Public Interest

Effect on employment

[15] The merging parties submit that the implementation of the proposed transaction will not have any negative impact on employment and there will be no job losses nor changes to employment conditions, as a result of the proposed transaction.

[16] The Commission found that the employees of Emira are not unionised. The employee representative[9] of Emira confirmed that all the employees that they represent were notified of the proposed transaction and that they did not raise any objections or concerns in connection with the proposed transaction. Transcend has no employees as it is an investment holding company which is operated through an outsourced management agreement with International Housing Solutions (RF) (Pty) Ltd.

[17] Accordingly, the proposed transaction is unlikely to raise employment concerns.

Effect on the spread of ownership

[18] The merging parties submitted that the proposed transaction will result in the promotion of broad-based black economic empowerment (“B-BBEE”) as Emira has a B-BBEE rating of Level 2 Contributor with black ownership percentage of 71.15% and a black woman ownership percentage of 7.41%. Transcend does not currently have a B-BBEE rating.

[19] The Commission concluded that the proposed transaction is unlikely to have a negative impact on the promotion of greater spread of ownership.

Other public interest issues

[20] The proposed transaction raised no other public interest concerns.

Third Party Views

[21] No third party raised any concerns.

Conclusion

[22] Having considered the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not have a negative impact on the public interest.

Date: 04 November 2022

Ms Mondo Mazwai

Mr Andreas Wessels and Professor Liberty Mncube concurring

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Misha van Niekerk of Adams & Adams

For the Commission: Horisani

Mhlari and Ratshidaho Maphwanya

[1] [...].

[2] Tribunal Case No: 020198.

[3] Tribunal Case No: 16/LM/Mar11.

[4] Presmooi (Pty) Ltd, Savyon Building (Pty) Ltd and IPS Investments (Pty) Ltd and Drystone Investments (Pty) Ltd, Prophold Ltd, Odeon Investments (Pty) Ltd and Adamax Property Projects, Persequor Park (Pty) Ltd Tribunal Case No: 016527.

[5] The merging parties submitted that although a radius of 8 kilometres (“kms”) is commonly attributed to the relevant

geographic market in respect of the letting of residential properties, they expanded this to 10 kms to account for properties

which would otherwise fall just outside of the radius, as per the Tribunal's decision in AFHCO Holdings (Pty) Ltd and Calgro M3 JCO Holdings (Pty) Ltd.

[6] The Commission could not find any confirmed and/or published information on gross lettable area ("GLA") or the number of units for residential properties which could assist in determining the merging parties' estimated market shares. The Commission relied on the merging parties' submissions and also supplemented the information with online searches.

[7] Page 502 of Merger Record. [8] Page 502 of Merger Record.

[7] Page 502 of Merger Record.

[8] Page 502 of Merger Record.

[9] Page 500 of Merger Record.

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