

SOUTH AFRICA / JUDGMENT

Grindrod Property Private Equity (Pty) Ltd v Dunrose Investments 82 (Pty) Ltd (LM169Sep18) [2018] ZACT 47 (29 October 2018) [2018] ZACT 47

COURT

Competition Tribunal

BEFORE

Norman Manoim, Andiswa Ndoni, Halton Cheadle

CASE / FILE NUMBER

LM169Sep18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM169Sep18

In the matter between

Grindrod Property Private Equity (Pty) Ltd

Primary Acquiring Firm

And

Dunrose Investments 82 (Pty) Ltd

Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: Andiswa Ndoni (Tribunal Member)

: Halton Cheadle (Tribunal Member)

Heard on

: 10 October 2018

Order Issued on : 10 October 2018

Reasons

Issued on : 29 October 2018

REASONS

FOR DECISION

Approval

- [1] On 10 October 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Grindrod Property Private Equity (Pty) Ltd ("GPPE") and Dunrose Investments 82 (Pty) Ltd ("Dunrose"), hereinafter

collectively referred to as the merging parties.

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

Parties to the transaction

Primary Acquiring Firm

- [3] GPPE is ultimately controlled by Grindrod Limited ("Grindrod"), a company listed on the Johannesburg Stock Exchange. The shares in Grindrod are widely dispersed and as such no single shareholder controls Grindrod. In addition to GPPE, Grindrod controls numerous firms. Grindrod and all its subsidiaries are hereinafter collectively referred to as the 'Grindrod Group'.
- [4] The Grindrod Group is active in the freight and logistics industry as well as the financial services industry. Due to their activities, the group has split their operations into two divisions, the Grindrod Freight Services Division ("Freight Division") and the Grindrod Financial Services Division ("Financial Division").
- [5] Of relevance is the Financial Division which GPPE falls under. The Financial Division has banking, private equity, asset management and exchange trade fund services. GPPE is a private equity company which invests in properties directly or indirectly through property owning companies.

Primary Target Firm

- [6] Dunrose is a wholly-owned subsidiary of Griffin Holdings (Pty) Ltd ("Griffin Holdings"). Griffin Holdings controls numerous firms in South Africa. Dunrose jointly controls Kingsgate Shopping Centre (Pty) Ltd ("Kingsgate"). Griffin Holdings and Dunrose and all firms directly and indirectly controlled by them are hereinafter collectively referred to as the 'Griffin Group'.
- [7] The Griffin Group is active in the property sector. The Griffin Group has an investment property portfolio comprised of industrial and commercial property. Dunrose owns one light industrial property located in Anderbolt, Germiston.

Proposed transaction

- [8] In terms of the Subscription Agreement, GPPE will acquire 40% of the issued share capital in Dunrose and will therefore exercise joint control over Dunrose post-merger.

Impact on competition

- [9] The Competition Commission ("Commission") considered the activities of the merging parties and identified a horizontal overlap in the product market for the provision of rentable light industrial properties.
- [10] The Commission found no geographical overlap between the light industrial properties owned by the merging parties. The Commission found that light industrial properties would be constrained by competing light industrial properties within a 10km radius. However, in this case, the closest light industrial property owned by the Grindrod Group is located approximately 20km away from Dunrose's property in Germiston. Therefore, the merging parties are not competitors.
- [11] In light of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.
- [12] At the hearing, the Tribunal queried about what exactly is being acquired in the proposed transaction. The Commission's report only

spoke to the property in Germiston and skipped over Dunrose's 50% share capital in Kingsgate. Any firm acquiring Dunrose would in fact be acquiring two properties in the Tribunal's view. In response, the merging parties broke down the structure of Kingsgate and its activities. Kingsgate owns 30% of Kingsgate Value Mall ("Kingsgate Mall") which in turn, owns a vacant stand in Klipriviersoog,

Soweto.[1] Meaning Dunrose owns 15% of that asset.[2] This vacant stand was acquired 8 years ago with a view to developing it into a shopping centre.[3] Such a development has not taken place and due to the current climate, it is highly unlikely that it will take place in the future.[4] GPPE is therefore acquiring one active property and 15% of undeveloped land.

- [13] Given that the merging parties provided clarity on what exactly is being acquired and considering the nature of the proposed transaction, we have no reason to doubt the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen

competition in the relevant market.

Public interest

- [14] The merging parties confirmed that the proposed transaction will not have any negative effects on employment in South Africa.
- [15] The proposed transaction raises no other public interest concerns.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any

relevant market. In addition, no public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed

transaction unconditionally.

Mr Norman Manoim

Ms Adiswa Ndoni and Mr Halton Cheadle concurring.

29 October 2018

Date

Tribunal Researcher:

Hlumelo Vazi

For the merging parties: V Chetty of Vani Chetty Competition Law

For the Commission

I Mhlongo and W Gumbie

[1] Transcript, pg 3.

[2] Transcript, pg 4.

[3] Transcript, pg 3.

[4] Transcript, pg 3.

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