

SOUTH AFRICA / JUDGMENT

Housing Impact Fund South Africa Trust v Mettle Property Solutions Securitisation (RF) Proprietary Limited (LM025MAY16) [2016] ZACT 54 (20 July 2016)

[2016] ZACT 54

COURT

Competition Tribunal

BEFORE

AW Wessels, Andiswa Ndoni, Fiona Tregenna

CASE / FILE NUMBER

LM025MAY16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM025May16

In the matter between:

THE HOUSING IMPACT FUND SOUTHAFRICA TRUST Primary Acquiring Firm

and

METILE PROPERTY SOLUTIONS

SECURITISATION (RF) PROPRIETARY LIMITED Primary

Target Firm

Panel

:AW Wessels (Presiding Member)

:Andiswa Ndoni(Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard on

: 29 June 2016

Order Issued on

: 29 June 2016

Reasons

Issued on : 20 July 2016

Reasons

for Decision

Approval

- [1] On 29 June 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between The Housing Impact Fund South Africa Trust ("HIFSA") and Mettle Property Solutions Securitisation (RF) (Pty) Ltd ("Mettle").
- [2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is HIFSA. HIFSA is a trust registered in terms of the laws of the Republic of South Africa. It is controlled by its trustees, Old Mutual Alternative Investments Proprietary Limited ("OMAI") in its capacity as Fund Manager and Old Mutual Investment Group Proprietary Limited ("OMIG") as a founding trustee. OMAI is a wholly-owned subsidiary of OMIG.
- [4] HIFSA is a "development impact fund" which provides investments into the low- income housing sector. HIFSA undertakes two types of investments:
- (i) it

invests in funds or companies that lend money to project companies which undertake property development projects; or (ii) it forms a project company with a property developer.

Primary target firm

- [5] The primary target firm is Mettle, a private company incorporated in accordance with the company laws of the Republic of South Africa. Mettle is a special purpose vehicle established and owned by HIFSA as to 50%, Mettle Property Solutions ("MPS") as to 25% and Metropolitan Capital Economic Fund (Pty) Ltd ("MCEF") as to 25%.
- [6] Mettle is a fund similar to HIFSA, invested in various residential low-income property development projects across South Africa. It originates and finances low-income property development projects.

Proposed transaction and rationale

- [7] HIFSA intends to acquire the remaining issued share capital of Mettle by increasing its shareholding in Mettle from 50% to 100%. This will result in HIFSA having sole control over Mettle post-transaction.

- [8] According to the merging parties, the proposed transaction will inter a/ia enable HIFSA to continue supporting the developments in which Mettle is invested.

Impact on competition

- [9] The Competition Commission ("Commission") identified a horizontal overlap between the activities of the merging parties in the market for the provision of finance to project companies in South Africa.
- [10] The Commission found that HIFSA pre-merger already has de facto control over Mettle and furthermore that both these firms are managed by OMAI. Thus the status quo remains post-merger and the proposed transaction therefore is unlikely to change the structure of the relevant market.
- [11] The Commission also identified a vertical relationship between the merging parties since HIFSA provides finance to Mettle for onwards lending to project companies. The Commission however found that this vertical overlap is unlikely to result in any foreclosure concerns since HIFSA is a small player in the provision of finance in South Africa. The Commission also found that customer foreclosure is unlikely since Mettle pre-merger sourced financing only from HIFSA.
- [12] Accordingly, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We concur with this finding.

Public interest

- [13] The merging parties confirmed that the proposed transaction will have no adverse effects on employment and that no retrenchments are expected as a consequence of the transaction.
- [1]
- [14] No other public interest concerns arise from the proposed transaction.

Conclusion

- [15] 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

issues

arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

20 July 2016

DATE

Mr AW Wessels

Prof Fiona Tregenna and Ms Andiswa Ndoni concurring

Case Manager : Hayley Lyle

For the merging parties: Xolani Nyali of Bowman Gilfillan

For the Commission: Billy Mabatamela

[1] Merger Record, inter alia page 17.

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