

SOUTH AFRICA / JUDGMENT

Housing Impact Fund South Africa v Stay at Southpoint Properties Proprietary Limited (LM148Oct15) [2015] ZACT 71 (7 December 2015)

[2015] ZACT 71

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Imraan Valodia, Fiona Tregenna

CASE / FILE NUMBER

LM148Oct15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM148Oct15

In the matter between:

Housing Impact Fund South Africa

Primary Acquiring Firm

and

Stay at Southpoint Properties Proprietary Limited

Primary Target Firm

Panel

: Yasmin Carrim (Presiding Member)

: Imraan Valodia (Tribunal Member)

: Fiona Tregenna {Tribunal Member}

Heard on :

2 December 2015

Order Issued on

: 2 December 2015

Reasons

Issued on :

7 December 2015

Reasons

for Decision

Approval

[1] On 2 December 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Housing Impact Fund South Africa ("HIFSA") and Stay at Southpoint Properties Proprietary Limited ("SASP").

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm HIFSA is a trust registered in terms of the laws of South Africa. Participants in the Trust include; Old Mutual Life Assurance Company (South Africa) Limited, Development Bank of Southern Africa Limited, Government Employees Pension Fund represented by the Public Investment Corporation Limited and Eskom Pension and Provident Fund. The fund manager of HIFSA is Old Mutual Investments Proprietary Limited which is tasked with, amongst others, the day to day management of HIFSA. In South Africa HIFSA is ultimately controlled by Old Mutual Group Holdings (South Africa) Proprietary Limited ("OMSA").

[4] HIFSA is a "Development Impact Fund" involved in the finance of development projects for the construction of homes in urban and underdeveloped areas in South Africa. One of its subsidiaries, Rand Lease Securitization Proprietary Limited is also

involved in property development for low to middle income earners. OMSA is an investment holding company in respect of a variety of businesses including asset management, life insurance, banking, investment products and services and short term insurance.

Primary target firm

[5] The primary target firm, SASP is a private company which is controlled by South Point Management Services Proprietary Limited

("South Point Management Services"). Prior to the proposed transaction HIFSA owned a non controlling interest in SASP through its 15% shareholding of ordinary issued share capital.

[6] SASP is a property ownership business whose primary focus is student accommodation. Additionally, SASP owns a single office building which it lets out to commercial tenants.

- [7] The proposed transaction involves a share restructuring of the target firm which would result in HIFSA acquiring 50% of the voting rights and 35% of the ordinary issued share capital of SASP. [1] As a result of the proposed transaction HIFSA and South Point Management Services will exercise joint control over SASP.
- [8] The merging parties submitted that the proposed transaction was essentially a debt restructuring arrangement.

Impact on competition

- [9] The Competition Commission ("Commission") in its investigation found that no horizontal overlap exists in respect to the provision of student accommodation as the Acquiring Group does not own any student accommodation. The Commission found a horizontal overlap with respect to the provision of Grace C office property as the merging parties both own office properties. In their assessment the Commission found that the Acquiring Groups Grade C office property is currently mothballed and not operational in the market. Considering this evidence the Commission was of the view that it was unnecessary to investigate further as they submitted that the grade of the office property may change once it is redeveloped. The Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
- [10] Although the Tribunal was interested to see further analysis of the Grade C office space by way of a comparison of its hypothetical

operation against the Target Firms existing office property, the Tribunal is comforted by the fact that the primary business of the target firm is student accommodation with office accommodation accounting for less than 10% of its sales. Additionally the Acquiring Firm's Grade C office property would not be redeveloped or restored unless a tenant was available and at the time of the hearing no such tenant existed. Based on the facts presented to us the Tribunal is also of the view that no overlap is present in terms of the provision of student accommodation. We therefore concur with the Commission's competition assessment that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

- [11] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment and raises no other public interest concerns.[2]

Conclusion

on[12] 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.

Ms Yasmin Carrim

07 December 2015

DATE

Prof Imraan Valodia and Prof Fiona Tregenna concurring

Tribunal Researcher: Aneesa Ravat

For the merging parties: Susan Meyer and Nazeera Mia of Cliffe Dekker Hofmeyr Inc

For the Commission: Thato Mkhize, Seema Nunkoo and Xolela Nokele

[1] HIFSA will posttransaction own 50% of the ordinary issued share capital of SASP.

[2] Inter alia merger record page 11.

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