

SOUTH AFRICA / JUDGMENT

Indluplace Properties Limited v Diluculo Properties Proprietary Limited (LM023Apr17) [2017] ZACT 14 (26 June 2017) [2017] ZACT 14

COURT
Competition Tribunal

BEFORE
AW Wessels, M Mazwai, I Valodia

CASE / FILE NUMBER
LM023Apr17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM023Apr17

In the matter between

Indluplace Properties Limited

Primary Acquiring Firm

And

Diluculo Properties Proprietary Limited

Primary Target Firm

Panel

: Mr AW Wessels (Presiding Member)

: Ms M Mazwai (Tribunal Member)

: Prof. I Valodia (Tribunal Member)

Heard on

: 14 June 2017

Order Issued on : 14 June 2017

Reasons

Issued on : 26 June 2017

REASONS

FOR DECISION

APPROVAL

[1] On 14 June 2017, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Indluplace

Properties Limited ("Indluplace Properties") and Diluculo Properties Proprietary Limited ("Diluculo Properties"),

herein collectively referred to as the merging parties.

[2] The reasons for the approval follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary Acquiring Firm

[3] The primary acquiring firm is Indluplace Properties, a company incorporated in accordance with the laws of the Republic of South

Africa. Indluplace Properties is controlled by Arrowhead Properties Limited. Indluplace Properties controls a number of firms.

[4] Indluplace Properties is a property investment company which holds a large residential property portfolio. It invests in residential

properties with a focus on affordable housing generally in large urban centres.

Primary Target Firm

[5] The primary target firm is Diluculo Properties, a company incorporated in accordance with the laws of the Republic of South

Africa. Pre-merger Diluculo Properties is a wholly owned subsidiary of Diluculo Investments Proprietary Limited ("Diluculo

Investments"), which is in turn wholly owned by Barclays Africa Group Limited. Diluculo Properties does not control any firm.

[6] Diluculo Properties invests in income producing residential properties. It owns eight residential property letting enterprises in the Free State and in Gauteng.

PROPOSED TRANSACTION AND RATIONALE

[7] Indluplace Properties intends to acquire the entire issued share capital of Diluculo Properties from Diluculo Investments. Post-merger

Indluplace Properties will therefore exercise sole control over Diluculo Properties.

- [8] According to Indluplace Properties, Diluculo Properties' property portfolio comprises yield enhancing properties and complements its own property portfolio.
- [9] Diluculo Investments and its controllers no longer view Diluculo Properties as a core asset and thus they have resolved to sell it.

COMPETITION

ANALYSIS

- [10] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed

transaction presents a horizontal overlap since both the merging parties are active in the market for the provision of rentable space in affordable housing property. From a geographic market perspective, the Commission assessed the properties of the merging parties in the Johannesburg CBD and surrounding nodes, Pretoria CBD and surrounding nodes, Centurion and Region A, Ekurhuleni.

- [11] For the purposes of the market concentration assessment, the Commission relied on the market share estimates of the merging

parties since there are limited available data. The Commission also contacted competitors of the merging parties to ascertain their views on the size of the market(s) and the competitive climate.

- [12] The Tribunal questioned the Commission and the merging parties regarding the scope of the geographic market and the estimation of market shares. The merging parties indicated that they used a geographic radius of approximately eight kilometres to estimate

their combined market share in each affected

geographic area.[1] Based on this, the merging parties have a combined market

share of less than 10% in the market for the provision of rentable space in affordable housing property in each affected geographic area.

- [13] We take no view in this case on the exact scope of the relevant geographic market and note that Indluplace Properties is acquiring

only a single property from Dilucuto Properties in each of the following areas: Pretoria CBD, Centurion, Kempton Park, Germiston,

Pretoria West and Bloemfontein; and is acquiring two properties, Jozi House and Frederick House, in the Johannesburg CBD. There appears to be a small market share increment in each market as a result of the proposed transaction and, furthermore, sufficient alternative rentable affordable housing property in each affected geographic area post-merger.

- [14] We concur with the Commission's ultimate conclusion that the proposed transaction is unlikely to substantially prevent or lessen

competition in any relevant market.

PUBLIC INTEREST

[15] The merging parties confirmed that the proposed transaction will have no adverse effect on employment. In particular, there will be no retrenchments or job losses as a result of the proposed transaction.[2]

[16] Furthermore, the proposed transaction raises no other public interest concerns.

CONCLUSION

[17] 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 other public interest issues arise as a result of the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

26 June 2017

Date

Mr AW Wessels

Ms M Mazwai and Prof. I Valodia concurring

Tribunal Researcher : Mr Ndumiso Ndlovu

For the merging parties : Ms Vani Chetty of Baker McKenzie Attorneys

For the Commission : Ms Zanele Hadebe

[1] Transcript, pages 3 to 5;

[2] Merger Record, pages 9 and 82.

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