

SOUTH AFRICA / JUDGMENT

Investec Property Fund Ltd v Bethlehem Property Development (Pty) Ltd (018978) [2014] ZACT 48 (13 August 2014) [2014] ZACT 48

COURT
Competition Tribunal

BEFORE
N Manoim, T Madima, A Roskam

CASE / FILE NUMBER
018978

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018978

In the matter between:

INVESTEC PROPERTY FUND LTD

Primary Acquiring Firm

And

BETHLEHEM PROPERTY DEVELOPMENT

(PTY) LTD

Primary Target Firm

Panel

: Mr N Manoim (Presiding Member)

: Dr T Madima (Tribunal Member)

: Mr A Roskam (Tribunal Member)

Heard on : 24 July 2014

Order Issued on : 24 July 2014

Reasons

Issued on : 13 August 2014

Reasons

for Decision

Approval

- [1] On 24 July, The Competition Tribunal (“Tirbunal”) unconditionally approved the acquisition by Investec Property Fund Ltd (“Investec Fund”) to acquire 50% of the issued share capital in Bethlehem Property Development (Pty) Ltd (“Bethlem Property”)
- [2] The reasons for approving the proposed transaction follow.

Parties to the transaction

- [3] The primary acquiring firm is Investec Fund, a company listed on the Johannesburg Securities Exchange. Investec Fund is 45% controlled by Investec Limited and the remaining shares are held by private individuals. Investec wholly owns Investec Bank Limited, Investec Securities Limited, Investec Asset Management Limited and Investec Property Group Holdings (Pty) (“Investec Holdings”). Investec Holdings wholly owns Investec Property (Pty) Ltd (“Investec Property”), which in turn holds a 50% share in Bethlehem Property.
- [4] The primary target firm is Bethlehem Property, a company controlled by Investec Fund, Investec Property and Betheas Properties (Pty) Ltd (“Betheas Properties”).

Proposed Transaction

- [5] The Investec Fund intends to acquire the 50% shares held by Investec Property and Betheas Properties in Bethlehem Property in terms of a sale of equity agreement. Post-merger Investec will have increased its shareholding in Bethlehem Property from 50% to 100% and it will become the sole controller.

Rationale

- [6] The Investec Fund is in the process of growing and enhancing its property portfolio on behalf of its investors. This is the primary reason for the Bethlehem Property acquisition from the vendors. The vendors on the other hand wish to realise their investment in Bethlehem Property.

Relevant Market and Impact on Competition

- [7] The Investec Fund is a property investment company which carries Real Estate Investment Trust status on the Johannesburg Securities Exchange. The Investec Group is an international specialist bank and asset manager that provides a diverse range of financial products and services mainly in the United Kingdom, South Africa and Australia. Investec Group’s core focus is asset management, wealth and investment and specialist banking.
- [8] Bethlehem Property is a property owning company, with Dihlabeng Mall a regional shopping centre in Bethlehem in the Free State being its only interest.

- [9] The Investec Group also owns another comparable retail centre in the Free State Province called Fleurdal Properties. This property is located in Bloemfontein 284 km away from Dihlabeng Mall. Given the distance the Commission is of the view that Fleurdal Properties does not pose a competitive constraint to Dihlabeng Mall. For this reason Dihlabeng Mall and Fleurdal are in different markets and there is no overlap in the activities of the parties.
- [10] In addition the Commission noted that there are several other regional centres that are closer to Dihlabeng than Fleurdal. These are owned by competitors of the acquiring firm and hence more likely to impose constraints on Dihlabeng than Fleurdal.
- [11] The proposed transaction is unlikely to raise employment concerns as the acquiring groups interest in Dihlabeng Mall existed pre-merger. There will be no effect on small businesses and there are no exclusivity clauses in the lease agreement between Betheas Properties and Shoprite Checkers (Pty) Ltd, the anchor tenant at Dihlabeng Mall. There are also no significant barriers to entry.

Conclusion

- [12] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

13 August 2014

DATE

Mr N Manoim

Dr T Madima and Mr A Roskam concurring

Tribunal Researcher:

Moleboheng Moleko

For the merging parties:

Andile Nikani - Fluxmans Attorneys

For the Commission:

Hardin Ratshisusu, Seema Nunkoo and Relebohile

Thabane.

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