

SOUTH AFRICA / JUDGMENT

Investec Property Ltd v Edgardale Properties (20/LM/Mar11) [2011] ZACT 38 (21 June 2011)

[2011] ZACT 38

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Medi Mokuena, Andiswa Ndoni

CASE / FILE NUMBER

20/LM/Mar11

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 20/LM/Mar11

In the matter between:

Investec Property LtdAcquiring Firm

And

The Edgardale PropertiesTarget Firms

Panel : Andreas Wessels (Presiding Member) Medi Mokuena (Tribunal Member) and

Andiswa Ndoni (Tribunal Member)

Heard on : 26 May 2011

Order issued on : 26 May 2011

Reasons

issued on : 21 June 2011

Reasons for Decision

APPROVAL

On 26 May 2011 the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Investec

Property Ltd and The Edgardale Properties. The reasons for the approval of this transaction follow below.

PARTIES TO THE TRANSACTION

The primary acquiring firm is Investec Property Ltd (“IPL”), a public company registered in accordance with the company laws of South Africa. IPL is a wholly owned subsidiary of Investec Ltd (“Investec”), a public company listed on the JSE. Investec and IPL have various subsidiaries.¹

IPL specialises in property and land acquisitions which involve sourcing buildings and land opportunities as well as in the development and refurbishment of buildings within the commercial, retail, industrial and residential sectors.

The primary target firms are certain properties currently owned by Edcon (Pty) Ltd (“Edcon”), collectively referred to hereinafter as “The Edgardale Properties”.² These properties comprise of two “Grade B” office blocks and a warehouse situated in Crown Mines, Gauteng. The relevant properties are occupied by Edcon which utilises the properties as its head office and warehousing distribution centre. According to the merging parties’ submissions certain portions of these properties are sub-leased to other firms.

DESCRIPTION OF THE TRANSACTION

In terms of the proposed transaction, IPL intends to acquire The Edgardale Properties from Edcon as going concerns which will result in IPL post merger owning and having sole control of The Edgardale Properties. As part of the proposed transaction Edcon will, on the date of the transfer of The Edgardale Properties to IPL, sign a lease agreement with IPL, in terms of which Edcon will lease The Edgardale Properties from IPL.

RATIONALE FOR THE TRANSACTION

The merging parties submitted that prior to this proposed transaction Sanlam Ltd (“Sanlam”) owned The Edgardale Properties and leased the properties to Edcon. Edcon had a pre-emptive right to purchase the properties from Sanlam and wished to give value to that pre-emptive right by purchasing the properties from Sanlam and on-selling them to IPL.³

From IPL’s perspective, The Edgardale Properties fit its investment portfolio and have a good long standing tenant in Edcon, which creates an enhanced value.

COMPETITION ANALYSIS

As indicated above, The Edgardale Properties comprise of (i) Grade B office blocks; and (ii) a warehouse, i.e. a light industrial

property. The South African Property Owners Association (“SAPOA”) has no defined node that specifically deals with the Crown Mines area, but has assigned a geographical node titled the “South West Industrial – Main Reef corridor included”. Investec does not own or control any office property in the South West Industrial node or any Grade B office blocks in the Johannesburg CBD node. It does however own a distribution warehouse situated in the Theta

Township Extension 1 which is approximately 4 to 5 km from Crown Mines. There is therefore an overlap in the activities of the merging parties in respect of light industrial property in the South West Industrial node, alternatively in the larger Johannesburg CBD node.

The merged entity's post merger market share in a potential market for light industrial property in the South West Industrial node will be approximately 27%. However, according to Commission's market investigation this market share is significantly overstated since it does not take into account all the light industrial properties in this node. This was confirmed by SAPOA4; the 2010 SAPOA survey on which the above-mentioned market share is based includes only 13 buildings. Market participants however

advised the Commission that there are currently approximately 50 industrial buildings in the Crown Mines area.

Furthermore, Edcon advised the Commission that the sub-leases in regard to certain portions of the properties that are sub-leased to other firms, in terms of duration will be renewed on the same terms and indicated that it anticipates that such sub-leases will remain in place for as long as Edcon leases The Edgardale Properties (subject to the rights of both parties to terminate in accordance with the terms of the sub-lease agreements).⁵

Based on the above, we conclude that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in any relevant market.

PUBLIC INTEREST

The merging parties submitted that no retrenchments will result from the proposed transaction.⁶ The proposed deal raises no other public interest issues.

CONCLUSION

We conclude that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant

market. Furthermore, no public interest concerns arise from this deal. Accordingly the proposed transaction is approved unconditionally.

21 June 2011

Andreas Wessels DATE

Medi Mokuena and Andiswa Ndoni concurring

Tribunal Researcher: Ipeleng Selaledi

For the merging parties: Werksmans Inc.

For the Commission: Lerato Monareng

1Refer to “Annexure A” to Form CC 4(1) for an organogram of the Investec Group.

2See inter alia page 49 of the record for a list of these properties.

3According to the merging parties, Edcon’s acquisition of The Edgardale Properties from Sanlam was not a notifiable merger since it did not meet the relevant thresholds for notification.

4See page 8 of the Commission’s recommendation.

5See page 8 of the Commission’s recommendation, as well as page 647 of the record.

6See inter alia page 10 of the record.

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Prepared on 14 October 2026 · Esheria