

SOUTH AFRICA / JUDGMENT

Luvon Investments (Pty) Ltd and Others v Investec Property Fund Limited and Others (LM149Jan20) [2020] ZACT 87 (20 March 2020) [2020] ZACT 87

COURT

Competition Tribunal

BEFORE

Enver Daniels, Yasmin Carrim, Andreas Wessels

CASE / FILE NUMBER

LM149Jan20

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM149Jan20

In the matter between:

Luvon Investments (Pty) Ltd and Changing Primary Acquiring Firm(s)

Tides 91 (Pty) Ltd

And

Investec Property Fund Limited in respect of the Primary Properties

Target Properties Musina Mall & Great North Plaza.

Panel : Enver Daniels (Presiding Member)

Yasmin Carrim (Tribunal Member)

Andreas Wessels (Tribunal Member)

Heard on : 04 March 2020

Order Issued on : 04 March 2020

Reasons

Issued on : 20 March 2020

Reasons

for Decision

Approval

[1] On 04 March 2020, the Competition Tribunal (“Tribunal”) unconditionally approved the transaction involving Luvon Investments (Pty) Ltd and Changing Tides 91 (Pty) Ltd and Investec Property Fund Limited in respect of the Target Properties Musina Mall & Great North Plaza.

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

Parties to the proposed transaction

Primary acquiring firms

[3] The primary acquiring firms are Luvon Investments (Pty) Ltd (Luvon) and Changing Tides 91 (Pty) Ltd (Changing Tides 91).

[4] Luvon is a property investment and development company with a diversified portfolio of commercial and retail assets throughout South Africa.

[5] Luvon is controlled by East & West Investments (Pty) Ltd and forms part of the Moolman Group, which is involved in the management and letting of commercial and retail properties and the development of such properties.

[6] Changing Tides 91 is a property holding company which forms part of the group controlled by Flanagan & Gerard Group (Pty) Ltd (the Flanagan & Gerard Group).

[7] The Flanagan & Gerard Group controls a diversified retail property portfolio (directly or indirectly through its subsidiaries) situated in Gauteng, Mpumalanga and KwaZulu-Natal.

Primary Target Properties

[8] The primary Target Properties are Musina Mall & Great North Plaza. The Target Properties are small regional shopping centres situated in Musina Limpopo.

[9] The seller of the Target Properties is Investec Property Fund Limited. Investec Property Fund is a real estate investment trust, listed on the Johannesburg Stock Exchange. Investec Property Fund invests in a diversified portfolio of commercial, industrial and retail assets in major South African metropolitan areas.

Proposed transaction and rationale

[10] Prior to the approval of this transaction, Investec Property Fund and Luvon Investment each held 66.7% and 33.3% shareholding in the Target Properties.

- [11] In terms of the proposed transaction Investec Property Fund intends to sell its 66.7% interest in the Target Properties to Luvon Investments and Changing Tides 91 who will acquire 16.7% and 50% respectively, in the Target Properties.
- [12] Upon the implementation of the proposed transaction, Luvon Investments and Changing Tides 91 will each have 50% shareholding in the Target Property.
- [13] The Moolman Group submitted that following a consideration of the value of the proposed transaction as well as the risk profile of the letting enterprise and the geographic area, it elected to acquire an additional 16.7% share in order to have a total interest of 50%.
- [15] Investec Property Fund submitted that the proposed transaction is line with its stated objective of value creation through the efficient recycling of capital into platforms which generate superior risk adjusted returns.

Impact on competition

- [16] The Commission considered the activities of the merging parties and found that there is a horizontal overlap in their business activities in that they are all involved in the holding and management of rentable retail properties.
- [17] In relation to the geographic overlap, the Commission found that the proposed transaction does not result in a geographic overlap because Changing Tides 91 does not own properties in Musina. Luvon Investments also does not own properties in Musina. The Commission submits that the closest retail property from the Target Properties in which either (or both) Luvon Investments and Changing Tides 91 hold an interest in, is Thavhani Mall which is located approximately 138 km from the Target Property.
- [18] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen

competition in any relevant market in South Africa.

Public interest

- [19] The merging parties confirmed that the proposed transaction will have no adverse effect on employment in South Africa and raises no other public interest concerns.[1]

Conclusion

- [20] In light of the above, we concluded 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 approved the proposed transaction unconditionally.

Signed by: Enver Daniels Signed at: 2020-04-22 10:54:22

Reason: Witnessing Enver

DATE: 20 March 2020

Mr Enver Daniels

Ms Yasmin Carrim and Mr Andreas Wessels concurring

Tribunal Case Manager: Ms Busisiwe Masina

For the merging parties: Ms Misha van Niekerk of Adams

& Adams Attorneys

For the Commission : Ms Sewela Moshoma

[1] Merger Record, pages 14.

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