

SOUTH AFRICA / JUDGMENT

Macsteel Services Centres SA (Pty) Ltd v Samson Property Investments SA (Pty) Ltd (52/LM/May12) [2012] ZACT 50 (9 July 2012) [2012] ZACT 50

COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Andiswa Ndoni

CASE / FILE NUMBER

52/LM/May12

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 52/LM/May12

015040

Macsteel Services Centres SA (Pty) LtdAcquiring Firm

And

Samson Property Investments SA (Pty) LtdTarget Firm

Panel : Norman Manoim (Presiding Member)

Yasmin Carrim (Tribunal Member)

Andiswa Ndoni(Tribunal Member)

Heard on : 04/07/2012

Order issued on : 04/07/2012

Reasons

issued on : 09/07/2012

Reasons for Decision

APPROVAL

On 4 July 2012 the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction between Macsteel

Services Centres SA (Pty) Ltd and Samson Property Investments SA (Pty) Ltd. The reasons for approval of the proposed transaction

follow below.

THE TRANSACTION

This is a horizontal and vertical property transaction. The proposed transaction involves the acquisition by Macsteel Services Centres SA (Pty) Ltd (“MSCSA”) of Samson Property Investments SA (Pty) Ltd property (“SPISA”).

In term of the proposed transaction MSCSA intends to acquire 100% of the issued share capital of SPISA property assets. That way, post merger, MSCSA will have sole control over SPISA’s properties.

MSCSA currently rents out SPISA’s properties for the purposes of conducting its business activities and is the only tenant as SPISA does not rent out its properties to any other third parties.

THE RATIONALE FOR THE TRANSACTION

MSCSA considers this transaction as a good investment for its business as it will further enhance its ability to secure property for its business operations. For SPISA this is an opportunity to realise its property investments, and it considers it a logical step to sell to its existing and only tenant.

COMPETITION ASSESSMENT

Activities of the merging parties

MSCSA’s key business activities are in the steel market. Though property is not its main business, it does own several office and light industrial properties, some of which are leased to third parties. MSCSA also rents light industrial property from third parties for the purpose of conducting its business. MSCSA’s properties are located across the country, but the ones relevant for the purpose of this transaction, are those located within the Germiston and Boksburg nodes.

SPISA is primarily a property investor and derives its income from rentals received from tenants. It holds various properties, mainly industrial properties, in various locations including within the Germiston and Boksburg nodes. MSCSA is currently SPISA’s only tenant.

Horizontal

Analysis

The activities of the merging parties overlap horizontally in respect of the provision of rentable light industrial properties in the Germiston and Boksburg nodes.

In the market for rentable light industrial property in the Germiston node, premerger MSCSA has 1.39%, and SPISA has 2.40% market share, and the merged entity will have a combined market share of 3.79% post merger.

In the market for rentable light industrial property in the Boksburg node, premerger MSCSA currently has 1.22% and SPISA has 1.37% market share. Post merger, the merged entity will have a combined market share of 2.59% in that market.

However it is artificial to view these properties as forming part of the competitive market for light industrial property. Prior to the merger the properties were used solely by MSCSA and this will continue post merger. The merger does no more than re-house the properties from one controlled entity of the Samson family to another.

Vertical

Analysis

There is a vertical relationship between the merging parties' activities in that MSCSA currently rents SPISA's properties.

However this does not raise any foreclosure concerns as SPISA does not rent its properties to any other third parties as MSCSA is its only existing tenant.

PUBLIC INTEREST

There are no public interest issues.

CONCLUSION

We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the property market as it does not raise any horizontal competition concerns or any foreclosure concerns.

09 July 2012

N Manoim Date

Yasmin Carrim and Andiswa Ndoni concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Webber Wentzel

For the Commission: Lerato Monareng

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