

SOUTH AFRICA / JUDGMENT

Nedbank Limited v Emling Properties Proprietary Limited (LM163Dec22) [2023] ZACT 10 (30 March 2023)

[2023] ZACT 10

COURT

Competition Tribunal

BEFORE

A Wessels, T Vilakazi, A Ndoni

CASE / FILE NUMBER

LM163Dec22

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Source record

COMPETITION TRIBUNAL
OF SOUTH AFRICA

Case

no: LM163Dec22

In

the large merger
between:

Nedbank
Limited, Acting Through its Nedbank Corporate And Investment Banking
Division, Nedbank Property
Partners Primary
Acquiring Firm
And
Emling
Properties Proprietary Limited Primary
Target Firm
Panel: A
Wessels (Presiding Member)
T Vilakazi (Tribunal
Member)
A Ndoni (Tribunal Member)
Heard
on: 13
March 2023
Order
issued on: 13
March 2023
Reasons
Issued on: 30
March 2023

REASONS FOR DECISION

Introduction

- [1] On 13 March 2023, the Competition Tribunal (“the Tribunal”) unconditionally approved the merger whereby Nedbank Limited (“Nedbank”) intends to subscribe for 30% of the shares and acquire 30% of the claims in Emling Properties Proprietary Limited (“Emling Properties”) from Capstone Assets Proprietary Limited (“Capstone Assets”) and Mr Hylton David Herring (“Mr Herring”).
- [2] Upon the implementation of the proposed transaction, Emling Properties will be jointly controlled by Nedbank, Capstone Assets and Mr Herring.

Primary acquiring firm

- [3] The principal services offered by Nedbank comprises business, corporate and retail banking, securities trading, investment banking, private banking, foreign exchange, wealth management and property financing.
- [4] Relevant to the competition assessment is that Nedbank holds properties through its Nedbank Group Properties Division, Nedbank Property Finance (“NPP”) and more broadly across the group where properties have been acquired through the perfection of security (properties in possession). The activities of Nedbank which are most relevant are those of NPP through which, from time to time (as an aside to Nedbank’s main business focus), it partners with Nedbank’s property clients (which clients invest in property development projects). As such, NPP’s activities sometimes include taking minority stakes in individual property projects.

Primary target firm

- [5] Emling Properties is a South African property investment firm, currently owned 50% each by Capstone Assets and Mr Herring. Emling Properties has three property subsidiaries. Emling Properties and all of the firms it controls shall collectively be referred to as “Emling Property Group.” Emling Property Group holds retail property in the Gauteng province.

Competition assessment

- [6] The Competition Commission (“the Commission”) considered the activities of the merging parties and found that they overlap in relation to the provision of rentable retail property in Gauteng.

- [7] From a relevant product and geographic market perspective, the Commission assessed the effects of the proposed transaction in a 5 – 10 km radius from the following convenience centres owned by Emling Properties: (i) Shoprite Boksburg; (ii) Voltex Ferndale; (iii) Voltex Pretoria; and (iv) Voltex Villieria. In these respective markets, the Commission found that the merging parties have combined market shares of below 15%, based on the Gross Lettable Areas (“GLAs”) of the properties in the respective areas.
- [8] In addition, the retail properties of the merging parties will continue to be constrained by a number of other convenience centres in each of the geographic markets.
- [9] We conclude that the proposed transaction is unlikely to lead to any substantial prevention or lessening of competition in any relevant market due to the low market shares and the existence of other competitors in the relevant markets.

Public interest

Employment

- [10] The merging parties submitted that there will be no negative effect on employment as a result of the proposed transaction.[1] The employee representatives for Nedbank and Emling Properties did not raise any concerns with the proposed transaction.
- [11] The Commission found that Emling Properties will continue to be an independent entity and will not be integrated into Nedbank, as such, the proposed transaction is unlikely to lead to duplications and subsequent retrenchments.

Spread of ownership

- [12] The Nedbank Group has 40.07% black ownership which includes 17.75% black female ownership whereas pre-merger Emling Properties is not owned or controlled by any historically disadvantaged persons. The merging parties submit that post-merger, Nedbank will hold 30% of the shares in Emling Properties and as such the overall Black Economic Empowerment shareholding in Emling Properties will be 12%.[2]
- [13] The proposed transaction raises no other public interest concerns.

Conclusion

- [14] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not raise any public interest concerns.

Date: 30 March 2023

Mr Andreas Wessels

Ms Andiswa Ndoni and Dr Thando Vilakazi concurring

Tribunal Case Managers: Juliana Munyembate and Theodora Michaletos

For the Merging Parties: Vani Chetty of Vani Chetty Attorneys

For the Commission: Nolubabalo Myoli and Grashum Mutizwa

[1] See Merger record inter alia pages 8-9.

[2] (40.07% x 30%).

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Prepared on 10 October 2026 · Esheria