

SOUTH AFRICA / JUDGMENT

## Pinnacle Holdings (Pty) Ltd and Four Others v Acc-Ross Holdings Ltd (86/LM/Aug08) [2008] ZACT 98 (24 November 2008) [2008] ZACT 98

COURT  
Competition Tribunal

BEFORE  
D Lewis, N Manoim, M Mokuena

CASE / FILE NUMBER  
86/LM/Aug08

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### COMPETITION TRIBUNAL OF SOUTH AFRICA

Case NO: 86/LM/Aug08

In the matter between

Pinnacle Holdings (Pty) Ltd and Four Others Primary Acquiring firms

And

Acc-Ross Holdings Ltd Primary Target Firm

Panel : D Lewis (Tribunal member); N Manoim (Tribunal member) and M Mokuena (Tribunal member)

Heard on : 15 October 2008

Decided on : 15 October 2008

### Reasons

Issued : 24 November 2008

### Reasons

for decision

Approval

- [1] On 15 October 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Pinnacle Point Holdings (Pty) Ltd and Four Others and Acc-Ross Holdings Ltd unconditionally. The reasons for the approval appear below.

#### Parties

- [2] The primary acquiring firms are Pinnacle Point Holdings (Pty) Ltd (“Pinnacle Point”), New Port Finance Company (Pty) Ltd (“New Point”), Property Promotions and Management (Pty) Ltd (“Property Promotions”), Goldman Asset Management Ltd (“Goldman Asset Management”) and Rakeen Development PJSc (“Rakeen”), hereinafter referred to as “the primary acquiring firms”.
- [3] The primary target firm is Acc-Ross Holdings Ltd (“Acc-Ross”). Acc-Ross controls Acc-Ross Networks (Pty) Ltd (“Acc-Ross

Networks”), Gardener Ross Holdings Ltd (“Gardener Ross”) and Accretio Holdings (Pty) Ltd (“Accretio”).

#### Transaction

- [4] In terms of the structure of the transaction, the primary acquiring firms will collectively acquire 60% share in Acc-Ross. A voting pool agreement will then be entered into by the primary acquiring firms in terms of which they will each have joint control in Acc-Ross.

#### Rationale

- [5] The merging parties submit that through this transaction, they will be able to exploit the benefits of the substantial synergies that exist and cost saving that will be achieved, thereby increasing shareholder value. Further, the merging parties submit that this transaction will give the critical mass to finance new projects on more favourable terms and will provide easier access to large development opportunities in South Africa and beyond.

#### Parties Activities

- [6] The merging parties are involved in property development. The primary acquiring firms focus is on developing land residential stands (which often have golf courses) and resorts. Currently, the primary acquiring firm are engaged in developing properties in the Free State, Western Cape and Eastern Cape.
- [7] The property development activities of Acc-Ross are focused on developing residential units as well as leisure and resort developments.

Acc-Ross is currently involved in developing property in Gauteng, the Free State, Eastern and Western Cape.

#### Competition analyses

- [8] There is an overlap in the activities of the merging parties in respect of the development of residential estates and golf courses. The merging parties' residential estate developments are situated in Cape Town. However, the Commission submits that there is no geographic overlap as the merging parties respective development projects are not aimed at the same market.
- [9] In this regard, the Commission states that the primary acquiring firms' development project (i.e. Project Pluto) is low density aimed at the "super rich" and the stands will sell for between R7 000 000 and R10 000 000. Acc-Ross' project, (i.e. Welvergenoege Development) on the other hand, is a suburban high density residential development aimed at the middle income primary residential market and will sell for between R500 000 and R1000 000.
- [10] Both merging parties also develop golf estate in the Free State. The primary acquiring firms' golf estate is situated in Clarens and the primary target firm golf estate in Orangeville. The Commission investigated the potential geographic overlap of these estates and found that they do not serve the same geographic area as they are approximately 250 km apart.
- [11] The transaction also results in a potential vertical integration. This potential integration occurs in that the Pinnacle Group has developed in-house marketing capacities which might be used to market the target firm's residential developments. However, this integration is unlikely to raise any significant foreclosure concerns as Acc-Ross's market share for residential development is less than 1%.
- [12] In addition, the merging parties envisage that they will, post-merger, continue using the services of estate agents and marketing companies to sell stands on their developments and is accordingly not anticipated that this merger will result in the foreclosure of such service providers.

#### Public interest

- [13] The transaction does not give rise to any public interest issues and is accordingly approved without conditions.

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24 November 2008

D Lewis Date

Tribunal Member

Concurring: N Manoim and M Mokuena

Tribunal Researcher : I Selaledi

For the merging parties : Cliffe Dekker Hofmeyr Inc

For the Commission : Thabelo Ravhugoni (Mergers and Acquisitions)

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