

SOUTH AFRICA / JUDGMENT

Rebosis Property Fund Limited v Ascension Properties Limited (LM223Mar15) [2015] ZACT 46; Wessels J (4 June 2015) [2015] ZACT 46

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Fiona Tregenna, Medi Mokuena

CASE / FILE NUMBER

LM223Mar15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM223Mar15

DATE: 04 JUNE 2015

In the matter between:

REBOSIS PROPERTY FUND LIMITED.....Primary Acquiring Firm

And

ASCENSION PROPERTIES LIMITED.....Primary Target Firm

Panel : Andreas Wessels (Presiding Member)

: Prof Fiona Tregenna (Tribunal Member)

: Medi Mokuena (Tribunal Member)

Heard on : 27 May 2015

Order Issued on : 27 May 2015

Reasons

Issued on : 04 June 2015

Reasons

for Decision

Approval

- [1] On 27 May 2015, the Competition Tribunal (“Tribunal”) unconditionally approved the merger between Rebosis Property Fund Limited (“Rebosis”) and Ascension Properties Limited (“Ascension”).
- [2] The reasons for approving the proposed transaction follow.

Parties to transaction and their activities

Primary acquiring firm

- [3] The primary acquiring firm is Rebosis, Rebosis is a real estate investment trust listed on the Johannesburg Securities Exchange Limited (“JSE”) and is not controlled by any individual entity.
- [4] Rebosis provides rentable retail space, office property and industrial property. Relevant to the competition assessment of the proposed transaction are Rebosis’s office properties in Pretoria and Johannesburg.

Primary target firm

- [5] The primary target firm is Ascension, a property fund listed on the JSE. Ascension is not controlled by any single entity.
- [6] Ascension is a property investment company approved as a Real Estate Investment Trust. It provides rental space in office and industrial property. Relevant to the competition assessment of the proposed transaction are Ascension’s office properties located in Pretoria and Johannesburg.

Proposed transaction and rationale

- [7] In terms of the proposed transaction, Rebosis will acquire the remaining 70.94% of the B linked unit capital and 100% of the A linked unit capital of Ascension.[1] Postmerger Rebosis will hold 100% of the A and B linked unit capital of Ascension.
- [8] The merging parties submitted that the proposed transaction will enable them to inter alia be a significant listed BEE property fund and attract a wider investor base.

Impact on competition

- [9] The Competition Commission (“Commission”) identified the following two relevant markets:
- The market for the provision of rentable space in Grade B and C office property in the Pretoria CBD and surrounding nodes (including Arcadia and Sunnyside); and
 - The market for the provision of rentable space in Grade A and B office property in the Johannesburg and surrounding nodes (including

Braamfontein).

[10]The Commission found that the merged entity will have postmerger market shares of less than 15% in the abovementioned markets.

[11]It is however not necessary for us to take a definitive view in this case on the exact parameters of the relevant product or geographic

markets. The proposed transaction is unlikely to substantially prevent or lessen competition in any (potential) relevant market,

whether broadly defined (i.e. more than one grade of office property, as considered by the Commission in this case (see paragraph 9 above)) or narrowly defined (i.e. each grade of office property considered separately), given the sizes of the (potential) relevant markets in question and the current players active in these (potential) markets.

Public interest

[12]The merging parties confirmed that the proposed transaction will not have a negative impact on employment and that no retrenchments will result from the transaction.[2]

[13]The proposed merger raises no other public interest concerns.

Conclusion

[14]In light of the above, we conclude 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 approve the proposed

transaction unconditionally.

04 June 2015

DATE

Andreas Wessels

Prof Fiona Tregenna and Medi Mokuena concurring

Tribunal Researcher: Ammara Cachalia

For the merging parties: Albert Aukema of Cliffe Dekker Hofmeyr

For the Commission: Nokuphiwa Kunene, Seema Nunkoo and Xolela Nokele

[1] Premerger Rebosis has 29.06% of the B linked unit capital of Ascension, but does not hold any A linked unit capital.

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linked unit capital.

[2] Merger record, pages 8 and 47.

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