

SOUTH AFRICA / JUDGMENT

Redefine Properties Limited and Others v Cirano 300 Investments Proprietary Limited in respect of a 75% undivided in Erf 221, Rosebank known as Galleria (LM168Oct15) [2016] ZACT 24 (9 March 2016)

[2016] ZACT 24

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Medi Mokuena, Fiona Tregenna

CASE / FILE NUMBER

LM168Oct15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM168Oct15

In the matter between:

Redefine Properties Limited The Pivotal Fund Limited

Absshelf 04 Proprietary Limited

Primary Acquiring Firms

and

Cirano 300 Investments Proprietary Limited

in respect of a 75% undivided share in Erf 221,

Rosebank known as the Galleria

Primary Target Firm

Panel

: Yasmin Carrim (Presiding Member)

: Medi Mokuena (Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard on

: 10 February 2016

Order Issued on

: 10 February 2016

Reasons

Issued on : 9 March 2016

Reasons

for Decision

Approval

- [1] On 10 February 2016, the Competition Tribunal ("Tribunal") unconditionally approved the merger between the acquiring firms; Redefine Properties Limited ("Redefine Properties"), The Pivotal Fund Limited ("The Pivotal Fund") and Absshelf 04 Proprietary Limited ("Absshelf") and the target firm Cirano 300 Investments Proprietary Limited in respect of a 75% share in Erf 221, Rosebank known as the Galleria ("Cirano").
- [2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firms

- [3] The primary acquiring firms Redefine Properties and The Pivotal Fund are public companies listed on the Johannesburg Securities Exchange and are not controlled by any firm. Redefine properties comprises a number of property investment and management firms which have a diverse property portfolio consisting of office, retail, residential and industrial properties. The Pivotal Fund is a property investment and development fund which has a property portfolio comprising office, retail, industrial and vacant land. Absshelf is a wholly owned subsidiary of Abland Proprietary Limited ("Abland"). Abland primarily develops retail, commercial and industrial properties in South Africa. Abland also owns a small property portfolio comprising retail and office space. Redefine Properties, The Pivotal Fund and Absshelf will hereinafter be referred to as the Primary Acquiring Firms

Primary target firm

- [4] The primary target firm, Cirano is controlled by Genesis Properties (Pty) Ltd and is engaged in property investment with its operations based primarily in South Africa. For purposes of the proposed transaction Cirano's ownership of the Galleria is relevant. The Galleria, situated in Rosebank is a property comprising of Grade B office space and rentable retail space.

Proposed transaction and rationale

- [5] The proposed transaction involves the Primary Acquiring Firms acquiring a 75% share in the Galleria and effectively creating a joint venture. Post-implementation, the Galleria will jointly be controlled by the Acquiring Firms with Cirano retaining a 25%

undivided share in the co-ownership. The parties to the transaction intend to potentially redevelop the Galleria into rentable Grade P office space, retail space and residential space.

- [6] Redefine properties submitted that the proposed transaction is in line with its redevelopment strategy, with the target firm being a prime redevelopment site. The Pivotal Fund submitted that the proposed transaction is in line with its growth strategy to enhance future capital growth. Abland, through Abshelf submitted that the proposed transaction is an ideal property investment which is in line with its investment strategy. Cirano submitted that the proposed transaction has allowed it to select suitable firms to work with in the redevelopment of the Galleria.

Impact on competition

- [7] The Competition Commission ("the Commission"), in their investigation of the proposed merger, found that a horizontal overlap existed in the provision of rentable office, retail and residential space.
- [8] In terms of the provision of rentable office space the Commission evaluated the impact of the proposed transaction within the markets of rentable Grade B office space within the Rosebank node and rentable Grade A and P office space within the Rosebank node. The Commission found that there were existing alterna Grade B office properties located within the Rosebank node as well as new

developments in progress. In terms of rentable Grade A and P office space the accretion in market share, falling below 1%, was low and would not alter the structure of the market. Basing their recommendation on these findings, the Commission was of the view that the proposed transaction would not result in a substantial lessening of competition.

- [9] In their investigation of the overlap in retail property the Commission investigated the proposed transaction in the market for the provision of rentable space in convenience centers within a broader node encompassing Rosebank, Morningside, Randburg and

surrounding nodes within a 10km radius of the Galleria. The Commission found that the post-merger market share fell under 10% with an accretion falling under 1% and found that the merged entity would continue to face competition from other convenience centers.

The Commission therefore found that the proposed transaction would unlikely result in the substantial lessening or prevention in

competition.

[10] In their investigation of residential properties the Commission found that the acquiring group, specifically Redefine, owns rentable residential properties used for student accommodation whereas the planned redevelopment of the Galleria intends to redevelop the property to include rentable high-end residential space. The Commission was of the view that student accommodation and luxury

accommodation were not suitable alternatives due to the discrepancy in price. It was therefore of the view that the proposed transaction

would not result in a substantial lessening or prevention of competition in the residential property market.

[11] During the hearing of the matter the Tribunal raised a concern regarding the appointment of board members to the board of the joint-venture as it may result in information sharing. As appointments of board members had not taken place at the time of the hearing the merging parties undertook to be alive to this issue when appointing members to the board. They further undertook to inform the Tribunal of the appointments once they were finalized to ensure that the directors on the board would not be able to transfer competitively sensitive information.

[12] The Commission cumulatively found that the proposed transaction would be unlikely to substantially lessen or prevent competition. In the absence of facts to the contrary we concur with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition in the residential, office and retail markets, as defined by the Commission

in their assessment.

Public interest

[13] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment. [1] The proposed transaction further 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 transactions. Accordingly, we approve the proposed transaction unconditionally.

09 March 2016

DATE

Ms Yasmin Carrim

Ms Medi Mokuena and Prof Fiona Tregenna concurring

Tribunal Researcher: Aneesa Raval

For the merging parties: Vani Chetty of Baker & McKenzie

For the Commission: Rebetswe Molotsi, Seema Nunkoo and Xolela Nokele

[1] Inter alia merger record page 16.

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