

SOUTH AFRICA / JUDGMENT

Sasol Pension Fund v An undivided half share in property owned by the Elixir Trust (017103) [2013] ZACT 87 (8 August 2013)

[2013] ZACT 87

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Andiswa Ndoni, Anton Roskam

CASE / FILE NUMBER

017103

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017103

In the matter between:

Sasol Pension Fund Primary Acquiring Firm

and

An undivided half share in property owned

by the Elixir Trust Primary Target Firm

Panel

Andreas Wessels (Presiding Member)

Andiswa Ndoni (Tribunal Member)

Anton Roskam (Tribunal Member)

Heard on

31 July 2013

Order issued on

31 July 2013

Reasons

issued

08 August 2013

DECISION

Panel

Andreas Wessels (Presiding Member)

Andiswa Ndoni (Tribunal Member)

Anton Roskam (Tribunal Member)

Heard on

31 July 2013

Order issued on

31 July 2013

Reasons

issued

08 August 2013 DECISION

Approval

[1] On 31 July 2013, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed acquisition by Sasol Pension Fund of an undivided half share in property owned by the Elixir Trust.

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

[3] The primary acquiring firm is Sasol Pension Fund (“SPF”). SPF is a registered pension fund in terms of the Pension Funds Act,

1956. It holds interests in various firms as passive investments. It does not control any firm.

[4] The members of SPF comprise of staff of Sasol Limited (“Sasol”) and its associates. SPF invests its contributing members’ savings and pensioners’ retirement capital to generate returns for its contributing members and income to pay benefits to retired members. It also invests in and develops property to generate rental income. SPF leases property to third parties, as well as to Sasol.

[5] The primary target firm is the Elixir Trust (“Elixir”) in respect of one undivided half share in vacant immovable land situated in Sandton and zoned for office property development (“the target property”).¹

- [6] In terms of the proposed transaction the target property consists of land2 in the Sandton node that will be developed into 67 000 m² of P-Grade office space³ in order to lease the property to Sasol Group Services (Pty) Ltd as its new corporate offices.⁴
- [7] Elixir invests in and develops property to benefit its beneficiaries. Of relevance to the competition assessment of this transaction is that Elixir owns inter alia two B-grade office properties in the Sandton node.

Proposed transaction and rationale

- [8] In terms of the proposed transaction SPF intends to acquire 50% undivided shares in the target property from Elixir. Following the implementation of the proposed transaction, the target property will be jointly controlled by SPF and Elixir.
- [9] In addition to the sale of properties agreement, SPF and Elixir have concluded a co-ownership agreement, a development agreement and a property management agreement.⁵
- [10] The proposed transaction is in line with SPF's mandate to invest the savings of its contributing members and pensioners'

retirement capital and the Sandton node offers exposure to premier office property for investment purposes.⁶

- [11] According to Elixir this transaction provides the opportunity to develop the target property and to create a long-term relationship

with a blue chip tenant such as Sasol.

Competition assessment

- [12] In relation to vacant property or rentable P-grade office property (see paragraph 6 above), the Commission found no overlap in the activities of SPF and the target property, since SPF does not own any vacant property or any rentable P-grade office property within the Sandton node.
- [13] In relation to a potential product market including both A- and P-grade office property, the Commission found that SPF's

A-grade property is located in the Rose bank node whilst the target property is located in the Sandton node. However, even if the

Rosebank and Sandton nodes are considered as one geographic market, the merging parties' combined post-merger market share remains relatively small.

- [14] In addition, given the fact that the target property will be leased out to Sasol for a period of [...] years, the transaction does not significantly alter the structure of the market since the property will not be available for lease to third parties during that period.

- [15] The Commission further identified a product overlap in the activities of SPF and Elixir in the market for rentable B-grade office space. However, SPF's B-grade office properties are located within the Centurion and Rosebank nodes, whereas the B-grade office properties owned by Elixir are located in the Sandton node. However, even if the Rosebank and Sandton nodes are considered as one geographic market, the proposed merger has no substantial effect on competition in the market.
- [16] Furthermore, the Commission found no likelihood of the proposed merger creating a platform for SPF and Elixir to post-merger share sensitive information and facilitate coordination. We have no reason to doubt this finding.
- [17] Therefore we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [18] The merging parties confirmed that the proposed transaction will not have any negative impact on employment and that no retrenchments will result from the proposed transaction.⁷ No other public interest issues arise as a result of this transaction.

CONCLUSION

- [19] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest concerns arise as a result of the proposed transaction. Accordingly, we approve the proposed merger unconditionally.

ANDREAS WESSELS

08 August 2013

DATE

Andiswa Ndoni and Anton Roskam concurring

Tribunal Researcher: Nicola Ilgner

For the Commission: Dineo Mashego and Themba Mahlangu

For the merging parties: Cliffe Dekker Hofmeyr Inc.¹

¹ For a full description of this property, see inter alia pages 7 and 8 of the merger record. Also see page 9 of the Commission's Report.

² The target property previously held office properties, but these properties have been demolished. It now comprises various portions of vacant land zoned for office property development.

3 SAPOA defines Grade P property as top-quality, generally modern space which is a pacesetter in establishing rentals and which includes the latest or a recent generation of building services, ample parking, a prestige lobby and good views, or a good environment.

4 See inter alia pages 35 and 39 of the merger record.

5 See pages 36 and 37 of the merger record.

6 See page 36 of the merger record.

7 See pages 9 and 43 of the merger record, as well as page 5 of the transcript.

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