

SOUTH AFRICA / JUDGMENT

Setso Holdco Proprietary Limited v Setso Property Fund Proprietary Limited (LM185Dec16) [2017] ZACT 3 (11 January 2017)

[2017] ZACT 3

COURT

Competition Tribunal

BEFORE

Norman Manoim, AW Wessels, Yasmin Carrim

CASE / FILE NUMBER

LM185Dec16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM185Dec16

In the matter between:

SETSO HOLDCO PROPRIETARY LIMITED

Primary Acquiring Firm

and

SETSO PROPERTY FUND PROPRIETARY LIMITED Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: AW Wessels (Tribunal Member)

: Yasmin Carrim (Tribunal Member)

Heard on

: 15 December 2016

Order Issued on

: 15 December 2016

Reasons

Issued on : 11 January 2017

Reasons

for Decision

Approval

[1] On 15 December 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between Setso Holdco Proprietary

Limited and Setso Property Fund Proprietary Limited.

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Setso Holdco (Pty) Ltd ("Setso Holdco"), a company incorporated in accordance with the laws of the Republic of South Africa.

[4] Setso Holdco is a newly established firm and does not provide any products or services. It is controlled by African Rainbow Capital (Pty) Ltd ("ARC"), with 51.5% of the shareholding, with the remaining shareholding being held by Signature Investment Holdings (Pty) Ltd ("Signature"). Setso Holdco does not control any firm.

[5] ARC is a wholly-owned subsidiary of Ubuntu-Botho Investments (Pty) Ltd ("UBI"). UBI's shareholding is held by Sizanani-Thusanang-Helpmekaar (Pty) Ltd ("Sizanani") with 68.8% and various individuals. Sizanani is a wholly owned subsidiary of Ubuntu- Ubuntu Commercial Enterprises (Pty) Ltd ("Ubuntu-Ubuntu"). Ubuntu-Ubuntu is ultimately controlled by the various Motsepe Family Trusts.

[6] Signature is an investment holding business aimed at generating long term returns from stable investments in the real estate and private equity space markets. Signature holds no other investments at present and the current transaction represents its first investment.

[7] ARC, UBI and all their shareholders and subsidiaries will collectively be referred to as the Acquiring Group.

Primary target firm

[8] The primary target firm is Setso Property Fund (Pty) Ltd ("Setso Property"), a company incorporated in accordance with the laws of the Republic of South Africa. Setso Property is controlled by the Pivotal Fund Limited ("Pivotal").

[9] Setso Property does not have any business activities as it is a newly established firm created for the purposes of this transaction.

Proposed transaction and rationale

Primary acquiring firm

[10] Setso Property's portfolio fits in with ARC's investment into real estate.

[11] In a separate but related transaction Redefine Properties Limited ("Redefine") acquired Pivotal Fund Limited ("Pivotal").

Redefine was not interested in acquiring all of Pivotal's properties. The properties in question ("the Target Properties") were excluded from that particular transaction but are to be sold in accordance with the present transaction.

[12] In terms of the proposed transaction, Setso Holdco intends to acquire the entire share capital of Setso Property. Post-merger, Setso Holdco will control Setso Property. Further, Pivotal will transfer Target Properties to Setso Property.

Impact on competition

[13] The Commission considered the activities of the merging parties and found that there was no overlap, as the Acquiring Group is not active in the provision of office and retail properties in South Africa. Hence, in its view, the transaction raises no competition concerns.

Public interest

[14] The Target Properties are managed by Abreal (Pty) Ltd and this will continue to be the case post-merger. Because of this the merging parties submitted that the merger will have no adverse effect on employment, a view the Commission agreed with.

[15] The proposed transaction does not raise any other public interest concerns.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

[17] In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction

unconditionally.

11 January 2017

DATE

Mr Norman Manoim

Mr AW Wessels and Ms Yasmin Carrim concurring

Case Manager:

Kameel Pancham

For the merging parties: Lizel Blignaut of ENSafrica and Albert Aukema of Cliffe
Dekker Hofmeyr Inc.

For the Commission: Zintle Siyo

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