

SOUTH AFRICA / JUDGMENT

Setso Property Fund Proprietary Limited v Sanlam Life Insurance Limited; In re: Ansteys Woolworths (LM125Aug17) [2017] ZACT 57 (22 August 2017)

[2017] ZACT 57

COURT

Competition Tribunal

BEFORE

Andiswa Ndoni, Fiona Tregenna, Imraan Valodia

CASE / FILE NUMBER

LM125Aug17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM125Aug17

In the matter between:

Setso Property Fund Proprietary Limited

Primary Acquiring Firm

And

Sanlam Life Insurance Limited in respect of the Primary

Target Firm

letting enterprise known as Ansteys Woolworths

Panel

: Ms Andiswa Ndoni (Presiding Member)

: Prof. Fiona Tregenna (Tribunal Member)

: Prof. Imraan Valodia (Tribunal Member)

Heard on

: 16 August 2017

Order Issued on : 16 August 2017

Reasons

Issued on : 22 August 2017

REASONS

FOR DECISION

Approval

[1] On 16 August 2017, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger between Setso Property Fund Proprietary Limited ("Setso") and Sanlam Life Insurance Limited ("Sanlam Life Insurance") in respect of the letting enterprise known as Anstey's Woolworths, hereinafter referred to as the merging parties.

[2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

[3] Setso is a firm that holds a portfolio of office and retail properties in areas such as Roodepoort, Sandton, Sunninghill, Benoni and Hyde Park.

[4] Setso is incorporated in accordance with the laws of the Republic of South Africa ("RSA") and does not control any other entity.

Primary Target Firm

[5] The Ansteys Woolworths letting enterprise ("Target property") is a 9 147 metres squared rentable retail space that is located in the Johannesburg Central Business District ("CBD"). The Target property is classified as a convenience centre and is wholly owned by Sanlam Life Insurance.

[6] Sanlam Life Insurance is wholly owned by Sanlam Limited ("Sanlam"). Sanlam controls a number of entities in the RSA.

Proposed transaction and rationale

[7] The proposed transaction entails a sale of an asset as a going concern. In terms of the Agreement of Sale, Setso will acquire the Target property from Sanlam. Upon completion of the proposed transaction, Setso will wholly own and control the Target property.

Relevant market and impact on competition

[8] The Commission considered the activities of the merging parties and found that the proposed transaction presents a horizontal overlap in the market for the provision of rentable retail space. When determining whether there is a geographic overlap between the retail properties owned by the merging parties, the Commission was of the view that properties located over 10 kilometres ("km") apart do not pose a competitive constraint on each other. The Commission considered the location of Setso's retail

properties as well as the location of the Target property and found that there is no geographic overlap as the retail properties owned by Setso are located 20km from the Target property. As such, the merging parties' properties do not pose a competitive constrain on each other. We concur with the Commission's findings.

Public interest

[9] The merging parties submitted that the proposed transaction will have no effect on employment as no retrenchments or job losses will occur as a result of the proposed transaction. Furthermore, the merging parties submitted that the Target property does not employ any employees. The Commission noted that no concerns were raised by employees and therefore of the view that the proposed transaction does not raise any employment concerns or any other public interest concerns.

Conclusion

[10] 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,

arise from the proposed transaction. Accordingly, ed transaction unconditionally.

22 August 2017

Date

Prof. Fiona Tregenna

Ms Andiswa Ndoni and Prof. Imraan Valodia concurring

Tribunal Researcher : Mr Ndumiso Ndlovu

For the Merging Parties : Mr Albert Aukema of Cliffe Dekker Hofmeyr

For the Commission : Mr Innocent Mhlongo

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