

SOUTH AFRICA / JUDGMENT

TP Hentiq 6159 (Pty) Ltd v Xeedan Property Portfolio (45/LM/Jun11) [2011] ZACT 75 (3 October 2011) [2011] ZACT 75

COURT

Competition Tribunal

BEFORE

Norman Manoim, Andreas Wessels, Yasmin Carrim

CASE / FILE NUMBER

45/LM/Jun11

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 45/LM/Jun11

In the matter between:

TP Hentiq 6159 (Pty) LtdAcquiring Firm

And

Xeedan Property PortfolioTarget Firm

Panel : Norman Manoim (Presiding Member) Andreas Wessels (Tribunal Member) Yasmin Carrim (Tribunal Member)

Heard on : 07/09/2011

Order issued on : 07/09/2011

Reasons

issued on : 03/10/2011

Reasons for Decision

APPROVAL

On 7 September 2011 the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving TP Hentiq and Xeedan Property Portfolio. The reasons for approval of the proposed transaction follow below.

THE TRANSACTION AND RATIONALE

The proposed deal is a property merger in terms of which TP Hentiq 6159 (Pty) Ltd ("TP Hentiq") intends to acquire the Xeeden Property Portfolio ("Xeedan"), comprising of Xeeden Properties.

TP Hentiq, the acquirer in this transaction, was established for the purpose of this deal and is controlled by Investec Bank Limited

("Investec") which provides a range of financial products and services solutions, including properties. Xeeden is a property portfolio comprising residential, vacant land, commercial office, as well as golf estate, agriculture/farm and industrial properties.

The rationale for the proposed transaction is essentially commercially driven as it arises from financial transactions between the merging parties in terms of which Investec advanced monies to Xeedan in relation to Xeeden property portfolio and acquired security rights in respect of the Xeedan property portfolio. Xeeden fell into default with the repayment obligation and Investec exercised its security rights in respect of the Xeeden properties so that it can sell these properties to discharge the debts due to it.

Post merger, Hentiq will take transfer of the Xeedan property portfolio and retain ownership thereof for the purpose of later selling the properties in order to recover the indebtedness due to it.

COMPETITION ASSESSMENT

The Commission in its assessment of the proposed transaction found that the proposed transaction gives rise to horizontal product and geographic overlaps in rentable light or heavy industrial space in Wynberg node and grade A office space in Sandton and Environs node. However at the hearing the merging parties submitted that the Wynberg Property space has since been sold to third parties, which means that there is no overlap in that market. The Wynberg node therefore no longer becomes relevant for the purpose of competition assessment in this proposed deal, and the relevant market is the Grade A office Space in Sandon and Environs node.

There are no competition concerns in the relevant market as the post merger combined market share of the merging parties in this property space is low. The Commission calculated the post merger combined market share in this market to be 3.98%, whereas the merging parties submitted that the post merger combined market share in this market is 3.98% if you take into account grade A and B, but that if you only take into account grade A, the post merger combined market share drops to 1.22%.

In addition, it was submitted that there are a large number of competitors in this relevant property space, and that customers have countervailing power as they are able to negotiate the rent payable and are also able to switch to other office spaces within the nearest surroundings fairly easily, which further eliminates any potential competition concerns which may arise.

PUBLIC INTEREST

This deal does not give rise to any public interest issues.

CONCLUSION

The proposed transaction is unlikely to substantially prevent or lessen competition in any property market, and is accordingly approved without conditions.

03/10/2011

N Manoim Date

Y Carrim and A Wessels concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Werksmans Attorneys

For the Commission: Zanele Hadebe

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