

SOUTH AFRICA / JUDGMENT

Unico Property Partners (Pty) Ltd v Khumonetix (Pty) Ltd in Respect of 6 Industrial Properties (LM154Dec22) [2023] ZACT 12 (22 March 2023) [2023] ZACT 12

COURT

Competition Tribunal

BEFORE

Jerome Wilson, Tregenna Fiona, Imraan Valodia

CASE / FILE NUMBER

LM154Dec22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM154Dec22

In the matter between:

Unico Property Partners Proprietary Limited Acquiring Firm

and

Khumonetix Proprietary Limited in Respect of 6 Target Firm

Industrial Properties

Panel: Jerome Wilson (Presiding Member)

Tregenna Fiona (Tribunal Panel Member)

Imraan Valodia (Tribunal Panel Member)

Heard on: 22

February 2023

Order issued on: 22 February 2023

Reasons

issued on: 22 March 2023

REASONS

FOR DECISION

Approval

- [1] On 22 February 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein Unico Property Partners Proprietary Limited (Unico Property Partners) intends to acquire 6 (six) industrial properties (Target Properties) from Khumonetix Proprietary Limited (Khumonetix). On completion of the proposed transaction, Unico Property Partners will own and control the Target Properties. Five of the Target Properties are located in Jet Park, and the other one is located in Glen Marais, Gauteng.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Unico Property Partners Proprietary Limited (Unico Property Partners).
- [3] Unico Property Partners will be 100% controlled by an investment vehicle [...].
- [4] Investment SPV will, in turn, be jointly controlled by Shareholder SPV, RMB Investments and Advisory Proprietary Limited (RMBIA) and Nedbank Limited (Nedbank).
- [5] Unico Property Partners does not control any firm.
- [6] Unico Property Partners, its shareholders and their respective corporate groups
- [7] Unico Property Partners is a newly established property investment company and does not currently own any properties. The primary activity of Unico Property Partners is to hold the Target Properties.

Primary target firm

- [8] The primary target firm is Khumonetix Proprietary Limited (Khumonetix) in respect of 6 (six) industrial properties (Target Properties).
- [9] The Target Properties are owned and controlled by Khumonetix.
- [10] Khumonetix is owned and controlled by the Michael Family Trust.
- [11] The Target Properties are involved in the letting of light industrial property.

Proposed transaction and rationale

Transaction

- [12] In terms of the proposed transaction, Unico Property Partners intends to acquire the Target Properties from Khumonetix. Post-merger, Unico Property Partners will own and control the Target Properties.

Rationale

- [13] The Acquiring Group submits that the proposed transaction provides an opportunity for Unico Property Partners to acquire a portfolio of quality industrial buildings in Gauteng from a single seller. The intention is to grow the portfolio over time and to expand the footprint of the company within South Africa utilising the combined experience and know-how of the shareholders.
- [14] Khumonetix submits that it wishes to realise the best value for the 6 (six) industrial properties being disposed of. Khumonetix views this transaction as an attractive business opportunity especially after the challenging Covid-19 pandemic and it is hoping that the proceeds from the current transaction will boost its cash flow.

Relevant market and impact on competition

- [15] The Commission considered the activities of the merging parties and found that the proposed transaction will result in a horizontal overlap in the market for the provision of rentable light industrial property.
- [16] Based on Commission and Tribunal precedent,[1] the Commission considered the competitive effects of the merger in rentable light industrial property within a 15km radius of the Target Properties, and whether there are alternative light industrial properties in the area.
- [17] The Commission found that the Target Properties have an estimated market share in the range of [1-5]% in the relevant market, and that there are approximately 176 alternative light industrial properties in the relevant geographic area.
- [18] The Commission found that the only potential overlap in the relevant market is vacant land known as Rand Airport Commercial Park, which is owned by Nedbank. This land is zoned as light industrial property and is located approximately 9.93km from the Target Properties located in Jet Park, and approximately 18.78km from the Target Property located in Glen Marais. The development of this vacant land will commence in early 2023 with an estimated tenant occupation date of August 2023.
- [19] Given the low estimated market share of the Target Properties, the Commission found that it is unlikely that the development of the Nedbank vacant land will give rise to any horizontal concerns in the relevant market.

Assessment of possible information exchange

- [20] The Commission also noted that some shareholders of the Acquiring Group ([...]) are also directors in Vukile Property Fund Limited (Vukile), a company that focuses mainly on rentable retail property.

- [21] The Commission found that Vukile currently owns one light industrial property that competes with the Target Properties, namely Midrand Sanitary City, which is located approximately between 7.32km and 15.93km from the Target Properties.
- [22] The Commission therefore assessed whether the merger is likely to result in the sharing of competitively sensitive information between competitors in the relevant market.
- [23] The merging parties submitted, in this regard, that Vukile intends to convert Midrand Sanitary City for occupation by a big box retailer, and that it accordingly will not be utilised as an industrial space. As such, the merging parties submit industrial space, and that this is consistent to dispose of non-retail properties.
- [24] In light of the above, the merging parties submit that, since Vukile and Unico Property Partners are not competitors in the relevant market, there is no risk of competitively sensitive information being shared between them as a result of the merger.
- [25] [...] its non-retail properties and established that Midrand Sanitary City already has a retail tenant. The merging parties also confirmed that Mr Rapp and Cohen would not be directors of Unico post-merger.
- [26] Considering the above submissions, the Commission concluded that the proposed transaction is unlikely to result in the exchange of competitive sensitive information between competitors and, more generally, that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.
- [27] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [28] Having regard to the above the Tribunal agrees with the Commissions assessment that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Public interest

Effect on employment

- [29] The merging parties submitted that there will be no retrenchments or job losses arising from the proposed merger, and no adverse effect on employment.
- [30] The merging parties stated in this regard that the property management functions of the Target Properties are currently provided internally by Michael Family Trust and will be managed by Unico Property Group Proprietary Limited (Unico Property Group) post-merger. Unico Property Group is a newly established property management company, the primary activity of which will be to manage the Target Properties going forward. The merging parties highlighted that the employees currently involved in the management of the Target Properties will continue to be employed by Michael Family Trust in the Michael Family Trust's portfolio management of other properties within.

- [31] The Commission also established that no concerns were raised by employees regarding the effects of the proposed transaction.
- [32] The Commission therefore concluded that the proposed transaction will not have an adverse effect on employment.
- [33] We agree that the proposed transaction is unlikely to have a negative impact on employment in South Africa.

Effect on the spread of ownership

- [34] The Commission engaged the merging parties on the question of whether the proposed transaction promotes a greater spread of ownership, in particular, by increasing the levels of ownership by historically disadvantaged persons and workers in firms in the market, within the meaning of section 12A(3)(e) of the Competition Act.
- [35] The Commission found that the Target Properties are not currently controlled by historically disadvantaged persons and have no Black Economic Empowerment credentials. Post-merger, however, RMBIA and Nedbank will collectively hold [...] of the shares in Unico Property Partners and will contribute to the promotion of Black Economic Empowerment in relation to the Target Properties due to their existing empowerment credentials.
- [36] The Commission found in this regard that -BBEE certificate reflects that it achieved a Level 1 certification under the Financial Sector Charter scorecard with verified 28.80% black ownership with a significant proportion of 13.59% comprising black woman shareholders. In addition, Nedbank is a Level 1 BEE contributor. Nedbank and its subsidiaries have 40.07% black ownership with 17.75% black female ownership.
- [37] Based on the above, the merging parties submit that the proposed transaction will promote a greater spread of ownership of firms with shareholders from historically disadvantaged backgrounds.

Conclusion

- [38] Considering the above, the Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market and is not likely to give rise to any negative public interest effects. Accordingly, we approve the proposed transaction unconditionally.

Date: 22 March 2023

Adv. Jerome Wilson

Concurring: Prof. Tregenna Fiona and Prof. Imraan Valodia

Tribunal case manager: Baneng Naape

For the merging parties: Vani Chetty of Vani Chetty Competition Law (Pty) Ltd

For the Commission: Billy

Mabatamela and Themba Mahlangu

[1] Equites Property Fund Ltd/ Retail Logistics Fund (Pty) Ltd (Case No. LM038Jun20); EA Waterfall Logistics JV (Pty) Ltd/ Truzen 116 Trust (Case No. LM058Jul200).

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