

SOUTH AFRICA / JUDGMENT

SA Retail Properties (Pty) Ltd v AFHCO Holdings (018762) [2014] ZACT 11 (16 July 2014) [2014] ZACT 11

COURT

Competition Tribunal

BEFORE

A Roskam, I Valodia, F Tregenna

CASE / FILE NUMBER

018762

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018762

DATE: 16 JULY 2014

In the matter between:

SA RETAIL PROPERTIES (PTY) LTD.....Primary Acquiring Firm

And

AFHCO HOLDINGS.....Primary Target Firm

Panel : Mr A Roskam (Presiding Member)

: Prof. I Valodia (Tribunal Member)

: Prof. F Tregenna (Tribunal Member)

Heard on : 18 June 2014

Order Issued on : 18 June 2014

Reasons Issued on : 16 July 2014

Reasons

for Decision

Approval

[1] On 18 June 2014, The Competition Tribunal ("Tribunal") unconditionally approved the acquisition by SA Retail (Pty) Ltd ("SA Retail") to acquire the entire issued share capital in AFHCO Holdings (Pty) Ltd ("AFHCO"). Post-

merger SA Corporate Real Estate Fund ("SA Corp") will have sole indirect control over AFHCO.

[2] The reasons for approving the proposed transaction follow

Parties to the transaction

[3] The primary acquiring firm is SA Retail, a wholly owned subsidiary of SA Corporate Real Estate Fund Nominee ("SACN"). SACN is controlled by SA Corp, a company listed on the Johannesburg Securities Exchange. SA Corp's shareholders with an interest of more than 5% include; Government Employment Pension Fund, Coronation Fund Managers and Stanlib Asset Management. SACN holds 100% shares in Blue Heron (Pty) Ltd, Dune Lark Investments, Erf 84-85-86 Shakes Head (Pty) Ltd, Wood Ibis Investments (Pty) Ltd, Grey Heron Investments (Pty) Ltd, Whirlprops 25 (Pty) Ltd, Rock Kestel Investments (Pty) Ltd and Stonedell Investments (Pty) Ltd. SACN holds 75% shares in Umlazi Mega City (Pty) Ltd,

[4] The primary target firms is AFHCO, its shareholders include; IDEA Managed Fund, Mr Wayne Plit and Ms Renney Plit. AFHCO holds 100% interest in various companies including AFHCO (Pty) Ltd ("AFHCO Sub"), AFHCO Property (Pty) Ltd, Urban Housing Finance (Pty) Ltd and Protea Glen Housing (Pty) Ltd. AFHCO Sub controls more than 11 companies.

Proposed Transaction

[5] SA Corp through its subsidiary SA Retail intends to acquire the entire issued share capital in AFHCO. Post-merger SA Corp will have sole Indirect control over AFHCO.

Rationale

[6] The proposed transaction offers SA Corp the opportunity to acquire an established and experienced management team in the residential sector. For

2 AFHCO shareholders the sale provides an opportunity to realise their investment at an appropriate time in their careers.

Relevant Market and Impact on Competition

[7] SA Retail group is a collective investment scheme which invests in property (also known as a property unit trust). It has a total of 134 properties that comprises of 26 retail properties, 89 industrial properties and 19 office properties and they are all located in the Gauteng Province. Relevant for this transaction are the 124 properties.

[8] AFHCO is a property investment company that has a total of 62 properties comprising of 27 residential properties, 31 retail properties, 1 light industrial property and 4 office properties mostly located within the Johannesburg Central Business District ("CBD") and Newtown.

- [9] The proposed transaction does result in horizontal overlap arising in relation to provision of B-Grade and C-Grade office space, the market for provision of rentable retail space in convenience centres and the market for provision of rentable space in light industrial property.
- [10] In the market for Grade B and C office properties 7 properties were identified as overlapping post the transaction. However, the Competition Commission found that there is no geographic overlap in the areas of rentable office space in B-Grade and C-Grade and the market for the provision of rentable space in light industrial property. The B-Grade and C-Grade properties are not within the same node as AFCHO, the B-Grade is within a 26km distance and the C- Grade office properties are within a 5km distance.
- [11] The Commission also considered the market for provision of rentable space in retail property within the 6km distance of the Johannesburg CBD node. In this node SA Corp has a total GLA of 5506m² and a market share of 2.2% and AFHCO has a total GLA of 40926 and a market share of 14.4%. SA Corp will have a post -merger market share of 16.6%, The Commission found that the parties post-merger estimated market shares were not significant to raise competition concerns and competitors in the market still have a market share of 83.4% and a GLA of 246 213m². Competitors include; Bel Air shopping centre (7.3%), Centro Continental (6.0%), Thrupps Centre (5.4%) and Bfamley shopping centre.
- [12] In the market of provision of rentable space in light industrial property, the Commission found that none of the SA Corp properties are located within the South-West Industrial node where AFHCO's one property is located therefore there is no geographic overlap.

Conclusion

- [12] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for provision of rentable of B-Grade and C-Grade office space, the market for provision of rentable retail space in convenience centre and the market for provision of rentable space in light industrial property. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

July 2014

Prof. F Tregenna DATE Prof. I Valodia and Mr A Roskam concurring

Tribunal Researcher: Moleboheng Moleko

For the merging parties: Desmond Rudman - Webber Wentzel

For the Commission: Hardin Ratshisusu, Xolela Nokele, Seema Nunkoo
and Dineo Mashego.

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Prepared on 14 October 2026 · Esheria