

SOUTH AFRICA / JUDGMENT

## Vukile Property Fund Limited and Others v Protea Glen Shopping Centre (Pty) Limited (LM10APR16) [2016] ZACT 60 (17 September 2016) [2016] ZACT 60

COURT

Competition Tribunal

BEFORE

Norman Manoim, Medi Mokuena, Andiswa Ndoni

CASE / FILE NUMBER

LM010Apr16

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### COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM010Apr16

In the matter between:

VUKILE PROPERTY FUND LIMITED & DICEL TRADE Primary Acquiring Firm

& INVEST (PTY) LTD

and

PROTEA GLEN SHOPPING CENTRE (PTY) LIMITED

Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: Medi Mokuena (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on

: 20 July 2016

Order Issued on

: 20 July 2016

## Reasons

Issued on

: 17 August 2016

## Reasons

for Decision

Approval

[1] On 20 July 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction with conditions between Vukile

Property Fund Limited & Diecel Trade & Invest (Pty) Ltd and Protea Glen Shopping Centre (Pty) Ltd.

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firms are Vukile Property Fund Limited ("Vukile") and Diecel Trade & Invest (Pty) Ltd ("DTI").

[4] Vukile is a public company registered in accordance with the laws of the republic of South Africa. Vukile is listed on the Johannesburg

Stock Exchange ("JSE") and is not controlled by any firm.

[5] Vukile is a property owning company whose property portfolio is diversified across sectors of the rental property market, including

office property, retail property, industrial property, as well as land under development and other speciality properties, such as motor related outlets, hotels and leisure properties throughout South Africa.

[6] DTI is a private company incorporated in accordance with the laws of the Republic of South Africa. DTI is a wholly-owned subsidiary of Operation Network Enterprise Property Holdings (Pty) Ltd ("One Property Holdings"), a company registered in terms of the laws of the Republic of South Africa. DTI, ONE Property Holdings and all companies controlled by ONE Property Holdings will collectively be referred to as ONE Property Holdings Group.

[7] One Property Holdings Group holds a diverse portfolio of properties comprising of rentable retail, special retail, industrial and office properties in the Free State, Gauteng and Mpumalanga Provinces.

[8] Vukile and DTI will hereon collectively be referred to as the Acquiring Firms.

- [9] Relevant to the analysis of this transaction are the Acquiring Firms' retail properties that are located in the Gauteng Province.

#### Primary target firm

- [10] The primary target firm is Protea Glen Shopping Centre (Ply) Ltd ("PGSC (Ply)" Ltd), in respect of a letting enterprise known as Protea Glen Shopping Centre ("the Target Property"). PGSC (Ply) Ltd is a private

company incorporated in accordance with the laws of the Republic of South Africa[1]. The Target Property does not control any firm.

#### Proposed transaction and rationale

- [11] The Acquiring Firms submits that in terms of a series of inter-related transactions, Vukile intends to acquire 60% undivided

share in the Target Property which will give it control and DTI will acquire 40% undivided share in the Target Property and will exercise control by virtue of veto rights over strategic decisions.

- [12] Post-transaction, the Acquiring Firms will have joint control over the Target Property.

#### Impact on competition

- [13] The Commission considered the activities of the merging parties and found that there is a horizontal overlap in the provision of rentable space in comparable centres within a 15km radius

- [14] The Commission ("Commission") found that the merged entity will have an estimated combined post-merger market share of 7.2% with an accretion of 4.1% in the provision of rentable space in comparative centres within a 15km radius of the Target Property. Furthermore the Commission found that the merged entity will continue to face competition from several retail shopping centres. The Commission submits that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for provision of retail space in comparative centres within a 15km radius of the Target Property as the merged entity will continue to be constrained by other players.

- [15] Upon analysis of the proposed transaction, the Commission identified a competition concern relating to potential information exchange of competitively sensitive information arising from Co-Ownership Agreement between the Acquiring Firms in respect of the Target Property. The Commission found that the Acquiring Firms compete with each other in the provision of rentable retail space in the markets outside the Target Property.

- [16] The Agreement provides for the creation of a Management Committee which will be responsible for the budget the overall strategy, the monthly management of accounts, marketing activities maintenance agreement and/or lease agreements entered into with entered into with tenants, contractors and suppliers, as well as discussions relating to future improvements, redevelopments or refurbishments of the Target Property.
- [17] In order to allay the abovementioned concern the Commission recommended that the proposed transaction to be approved subject to conditions that would prevent sharing of competitively sensitive information.
- [18] We concur with the Commission's conclusion.

#### Public interest

- [19] The merging parties confirmed that the proposed transaction will have no negative effect on employment.
- [20] The proposed transaction further raises no other public interest concerns.

#### Conclusion

- [21] 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, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction with conditions attached as Annexure "A".

17 August 2016

DATE

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Mr. Norman Manoim

Ms Medi Mokuena and Ms Andiswa Ndoni concurring

Tribunal Researcher: Busisiwe Masina

For the merging parties: Andries Le Grange of Cliffe Dekker Hofmeyr Inc.

For the Commission: Maanda Lambani

- [1] PGSC (Pty) Ltd is controlled as to 67% by Masingitha Property Investments Holdings ("Masingitha"). The remaining 33% is held by Gold Bid Properties (Pty) Ltd (Gold Bid Properties).

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