

SOUTH AFRICA / JUDGMENT

Vukile Property Fund Limited v Pan Africa Shopping Centre (LM112Sep22) [2022] ZACT 88 (12 December 2022) [2022] ZACT 88

COURT

Competition Tribunal

BEFORE

Shaista Goga, Fiona Tregenna, Mondo Mazwai

CASE / FILE NUMBER

LM112Sep22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM112Sep22

In the matter between:

Vukile Property Fund Limited

Acquiring Firm

and

Pan Africa Shopping Centre

Target Firm

Panel:

Shaista Goga (Presiding Member)

Fiona Tregenna (Tribunal Panel Member)

Mondo Mazwai (Tribunal Panel Member)

Heard on:

02 November 2022

Order issued on: 09 November 2022

Reasons

issued on: 12 December 2022

REASONS

FOR DECISION

Approval

- [1] On 09 November 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein Vukile Property Fund Limited (“Vukile”) intends to acquire the rental enterprise known as Pan Africa Shopping Centre (“Pan Africa”) as well as its future expansion. Upon the implementation of the proposed transaction, Vukile will have sole control over Pan Africa.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Vukile Property Fund Limited (“Vukile”). Vukile is listed on the Johannesburg Securities Exchange and the Namibian Stock Exchange.
- [3] Vukile is not controlled by any single firm.
- [4] Vukile controls several firms including MICC Properties (Pty) Ltd, Clidet No. 1011 (Pty) Ltd, MICC Property Income Fund and Vukile Investment Property Securitization (Pty) Ltd.
- [5] All firms directly and indirectly controlled by Vukile are collectively referred to as the “Acquiring Group”.
- [6] The Acquiring Group’s property portfolio comprises of retail and office space as well as land under development.

Primary target firm

- [7] The primary target firm is the letting enterprise known as the Pan Africa Shopping Centre (“Pan Africa”) located at Third St, Wynberg, Alexandra, Johannesburg, 2000.
- [8] The Target Firm is owned by Pan African Development Company (Pty) Ltd (“PanDev”).
- [9] The Target Firm and all its subsidiaries will henceforth be referred to as the “Target Property”.
- [10] The Target Property is a lettable retail shopping centre with a Gross Lettable Area (GLA) of 15 767m² situated in Alexandra.

Proposed transaction and rationale

Transaction

- [11] In terms of the Share Sale Agreement, the Acquiring Group intends to acquire the Target Property from PanDev. Upon the implementation of the proposed transaction, the Acquiring Group will have sole control over the Target Property.

Rationale

- [12] The Acquiring Group submits that the proposed acquisition is consistent with Vukile's strategy of being a high-quality, low-risk JSE listed retail focused real estate investment trust operating in South Africa and in Spain, with a focus in South Africa on mid to low LSM shopping centres located in South African townships, rural areas and commuter nodes.
- [13] The Target Firm submits that the shareholders in PanDev consider the proposed transaction to be an attractive opportunity to realise their original investment in the Pan Africa business through PanDev.

Relevant market and impact on competition

- [14] The Competition Commission ("the Commission") assessed the possible effects of the proposed transaction in the market for the provision of rentable community shopping centres within 10 km of Pan Africa.
- [15] The Commission found that the proposed transaction results in a horizontal overlap.
- [16] The Acquiring Group will have an estimated post-merger market share of approximately 4.5% with an accretion of 1.3% in the market for the provision of rentable community shopping centers
- [17] However, the Commission notes that the merged entity will continue to be constrained by other competing community shopping centres in the relevant geographic market such as Alexandra Plaza, Midways Mall, Alex Mall, Sandton City Shopping Centre, Bramley Gardens Shopping Centre, Balfour Mall, and Greenstone Shopping Centre, amongst others.
- [18] The Commission found that there is no pre-existing relationship or vertical overlap arising as a result of the proposed transaction.
- [19] Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
- [20] The Tribunal concurs with this assessment.
- [21] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [22] The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

Effect on employment

[23] The merging parties submitted that the proposed transaction will not give rise to any retrenchments in South Africa. Instead, the expansion of Pan Africa will create job opportunities in the community close to Pan Africa. No concerns were raised by employee representatives.

[24] The Commission thus concluded that the proposed transaction will not have adverse effects on employment.

Effect on the spread of ownership

[25] The merging parties submit that Vukile has 21% HDP shareholding and the Target Property has 51% HDP shareholding.

[26] This transaction means that the HDP shareholding in the Target Property will decrease from 51% to 21%. However, the merging parties submit that the transaction allows an HDP shareholding to realise the benefit of their initial investment.

[27] The Commission notes that the new owners have 21% shareholding by HDPs and that the HDP sellers of the Target Property will continue to have a substantial shareholding in Pan Africa.

[28] The Commission finds that, on the facts of this case, the transaction is unlikely to raise substantial concerns from a public interest perspective.

Conclusion

[29] Considering the above, The Tribunal conclude that the proposed transaction is unlikely to substantially prevent or lessen

competition in any relevant market. Accordingly, we approve the proposed transaction unconditionally.

Signed by: Sha'ista Goga

Signed at: 2022-12-12 16:39:04 +02:00

Reason: Witnessing Sha'ista Goga

Date: 12 December 2022

Ms Shaista Goga

Concurring: Prof Fiona Tregenna and Ms Mondo Mazwai

Tribunal case manager: Baneng Naape

For the merging parties: Albert Aukema of Cliffe Dekker Hofmeyr

For the Commission:

Innocent Mhlongo and Themba Mahlangu

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