

SOUTH AFRICA / JUDGMENT

Winter Robin Investment 26 Proprietary Limited v Development Rights (LM215Jan16) [2016] ZACT 13 (16 March 2016)

[2016] ZACT 13

COURT

Competition Tribunal

BEFORE

Norman Manoim, Imraan Valodia, Fiona Tregenna

CASE / FILE NUMBER

LM215Jan16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM215Jan16

In the matter between:

WINTER ROBIN INVESTMENT 26 PROPRIETARY LIMITED Primary Acquiring Firm

and

THE DEVELOPMENT RIGHTS SITUATED AT POCKET 24 Primary Target Firm

POCKET 3 OF THE WATERFALL BUSINESS ESTATE

Panel

: Norman Manoim (Presiding Member)

: Imraan Valodia (Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard

: 17 February 2016

Order Issued on

: 17 February 2016

Reasons

Issued on : 16 March 2016

Reasons

for Decision

Approval

[1] On 17 February 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between Winter Robin Investment 26 (Pty) Ltd and the Waterfall Business Estate without conditions.

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is, Winter Robin Investment 26 (Pty) Ltd.

[4] The merging parties submit that JVCO does not control any firm as it has been specifically incorporated for the purpose of the proposed transaction. JVCO is controlled by Sanlam Properties (Pty) Ltd (Sanlam Properties). Sanlam is ultimately controlled by Sanlam Limited, a public company listed on the Johannesburg Stock Exchange ("JSE") and the Namibian Stock Exchange ("NSE").

[5] JVCO, Sanlam Properties, Sanlam and all its subsidiaries will collectively be referred to as the Acquiring Group. Within South

Africa, the Acquiring Group provides Life insurance, short term insurance, commercial banking, securities trading, retirement annuities, unit-trust, health insurance and employment benefits. The Acquiring Group is active in the property market and also in the provision of investment and risk management to group funds.

Primary target firm

[6] The primary target firm consists of two properties in the Waterfall Estate Business district which are currently vacant but which the merging parties seek to develop. [1]

[7] In respect of the activities of the Development Rights, the Pocket 24 Development Rights entitles the holder to conduct a warehouse and distribution centre and the Pocket 3 Development Right is a piece of land currently zoned for agricultural purposes.

[8] Pocket 24 Development Rights and Pocket 3 Development Rights will from hereon be collectively referred to as the Development Rights[2]

Proposed transaction and rationale

[9] Through a number of interrelated steps the proposed transaction will result in the acquiring company JVCO acquiring the Development Rights from the Sellers[3]. Post- merger, JVCO will have sole control over the Development Rights.

- [10] According to the merging parties the proposed transaction provides an opportunity to sell the Development Rights in order to share the risk and profits of any future industrial or commercial development.

Impact on competition

- [11] The Commission considered the activities of the merging parties and found that there is a horizontal overlap in the market for the provision of rentable space in industrial warehouse property within a broader node encompassing Brakfontein/ Midrand/ Cosmosdal/ Lombardi.
- [12] The merged entity will have a combined post-merger market share of between 20 - 30% within this node.[4] The Commission found that the merged entity will continue to be constrained by other industrial warehouse properties within the market. Other players in this market are, inter alia, Fortress Income Fund, 40 Brakfontein, HPB Industrial Unit, One Highveld, Twenty One, Bell Crescent and Redefine Properties.
- [13] The Commission also considered whether there are vacancies in Brakfontein/ Midrand/ Cosmosdal/ Lombardi. Through a desktop search, the Commission found that there are at least 59 209m2 (approximately 8.59%) property vacancies for industrial warehouse properties in the identified nodes. The Commission obtained this vacancy data from a property broker website. Further, there are new developments within the identified market.
- [14] Given the availability of alternatives competing properties within each of the identified markets, the Commission is of the view that the proposed transaction is unlikely to prevent or lessen competition in the relevant market.
- [15] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or

lessen competition in any relevant market. It should be pointed out that in this transaction existing market shares overstate the

position, as the merger leads to an increase in capacity by developing assets not yet in the market and thus it grows the market

rather than leading to an increase in concentration.

Public interest

- [16] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment.
- [17] The proposed transaction further raises no other public interest concerns.

Conclusion

[18] 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 unconditionally.

16 March 2016

DATE

Mr Norman Manoim

Prof Imraan Valodia and Prof Fiona Tregenna concurring

Tribunal Researcher: Busisiwe Masina

For the merging parties: Edward Nathan Sonnerbergs Inc

For the Commission: Reabetswe Molotsi

[1] The properties are situated at Pocket 24 of the Waterfall Business Estate ("Pocket 24 Development Rights") and the development

right situated on a portion of Pocket 3 of the Waterfall Business Estate ("Pocket 3 Development Rights"). Pocket 24

Development Rights is controlled by Attacq Waterfall Investment Company (Pty) Ltd and Pocket 3 Development Rights by Portmix (Pty) Ltd.

[2] The merging parties submit that an application has been made for this portion of the Pocket 3 Development Right to be zoned for commercial use.

[3] The Pocket 24 Development Rights is controlled by Attacq Waterfall Investment Company Proprietary Limited ("AWIC"). "AWIC" is controlled by Attacq, a public company listed on the JSE. The Pocket 3 Development Rights is controlled by Portrnix Proprietary Limited ("Portmix"). Attacq and Portmix will collectively be referred to as the "Sellers".

[4] Confidential information.

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