COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020115

In the matter between:

AFHCO Holdings (Pty) Ltd Primary Acquiring Firm

And

Morulat Property Investments 4 (Pty) Ltd Primary Target Firm

Panel	:	Norman Manoim (Presiding Member), Anton Roskam (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	12 December 2014
Order issued on	:	12 December 2014
Reasons issued on	:	14 January 2015

Reasons for Decision

Approval

[1] On 12 December 2014 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between AFHCO Holdings (Pty) Limited ("AFHCO") and Morulat Property Investments 4 (Pty) Ltd ("Morulat"). The reasons for approving the proposed transaction follow.

Parties to transaction

[2] The primary acquiring firm is AFHCO, a wholly-owned subsidiary of SA Corporate Real Estate Fund ("SA Corporate") listed on the Johannesburg Securities Exchange ("JSE"). SA Corporate is a diversified real estate investment fund invested in industrial, office, residential and retail property primarily in the major

metropolitan centres of South Africa. AFHCO's property portfolio is inner city based.

[3] The primary target firm is Morulat, a firm incorporated in terms of the laws of the Republic of South Africa. Morulat owns five residential properties with retail space (mixed use properties) located within the Johannesburg Central Business District ("CBD").

Proposed transaction and rationale

[4] The prosed transaction follows on from a previous transaction that the Tribunal unconditionally approved, in terms of which SA Corporate acquired all of the issued shares of AFHCO ("original transaction").[1] Morulat which was a subsidiary of AFHCO prior to the original transaction was excluded from it as the seller and purchaser could not reach agreement on terms. Matters have changed since then and hence the present merger. In terms of the current proposed transaction AFHCO intends to acquire 100% issued share capital of Morulat, through a Sale of Shares and Claims Agreement. Post-merger, AFHCO will exercise sole control over Morulat.

[5] AFHCO submits that the prosed transaction is part of its larger intention to acquire the entire AFHCO property portfolio. The Morulat platform is an attractive Johannesburg CBD residential portfolio offering scale, quality and diversity. Morulat on the other hand submits that the proposed transaction provides its shareholders with an opportunity to realise their investment in the Morulat portfolio.

[1] See SA Retail Properties (Pty) Ltd and AFHCO Holdings, Case no: 018762.

Competition assessment

[6] The Commission submitted that the proposed transaction gives rise to a horizontal overlap in the market for the provision of residential property and retail space as both merging parties own residential properties with retail space.

[7] In relation to the overlap in the provision of rental space in convenience centres within a six kilometre ("km") radius of the Johannesburg CBD, the Commission found that the merged entity will have a market share of less than 17%. During the hearing, Mr Plit, who is a Director of the acquiring firm, submitted that the nature of the AFHCO portfolio is in fact affordable housing and that the retail component is incidental to the residential component. As such, AFHCO has almost nothing in the commercial market.[2]

[8] In relation to the overlap in the provision of residential properties, the Commission could not find readily available information to determine the market shares of firms that provide residential space in the identified market. However the Commission's analysis revealed that there are approximately thirty competitors within the Johannesburg CBD that will continue to constrain the merged entity. The Commission thus came to the conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified markets.

[9] In addition to this, Mr Plit re-assured us during the hearing that the small operators who rent out retail space have a wide choice of landlords as the acquiring firm is almost irrelevant as there are more than forty buildings that small operators have as choice, post-merger.[3]

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[2] See page 5 of the Transcript of hearing.
[3] See page 9 of the Transcript of hearing.

Public Interest

[10] The Commission submitted that the proposed transaction results in no public interest concerns.

CONCLUSION

[11] We agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition and thus approve the transaction without conditions.

Mr Norman Manoim 14 January 2015
DATE

Mr Anton Roskam and Ms Yasmin Carrim concurring.

Tribunal Researcher: Caroline Sserufusa
For the merging parties: Desmond Rudman of Webber Wentzel
For the Commission: Dineo Mashego