



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: 016873**

In the matter between

**Vukile Property Fund Limited**

**Acquiring Firm**

And

**5 Properties owned by Encha Properties (Pty) Ltd**

**Target Firm**

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Panel : Andreas Wessels (Presiding Member)  
Anton Roskam (Tribunal Member)  
Andiswa Ndoni (Tribunal Member)  
Heard on : 31 July 2013  
Order issued on : 31 July 2013  
Reasons issued on : 16 August 2013

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### **Decision**

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#### **Approval**

[1] On 31 July 2013, the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Vukile Property Fund Limited ("Vukile") of five properties owned by Encha Properties (Pty) Ltd ("Encha").

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

## **Parties to transaction**

[3] The primary acquiring firm is Vukile, a firm incorporated in terms of the laws of the Republic of South Africa. Vukile is a listed property fund with controlling interests in various properties located throughout South Africa. Of relevance to the competition assessment of this transaction is Vukile's ownership of office and retail properties in the Pretoria Central Business District ("Pretoria CBD") and in Bloemfontein.

[4] The primary target firm is five properties currently owned by Encha, namely the following buildings: (i) De Bruyn Park; (ii) Pretoria Momentum; (iii) Navarre Wachthuis; (iv) Koedoe Arcade; and (iv) Fedsure (hereinafter collectively referred to as "the Target Properties"). The Target Properties consist of rentable office space with limited retail space. Four of the Target Properties are located in the Pretoria CBD with the Fedsure building located in the Bloemfontein CBD.

## **Proposed transaction and rationale**

[5] In terms of the proposed transaction Vukile will acquire the Target Properties from subsidiaries of Encha.

[6] Vukile stated that it considers the proposed transaction to be in line with its stated long-term strategy of building and maintaining a quality portfolio of properties in order to achieve returns for its investors.

[7] Encha submitted that the proposed transaction will allow it to realise its investment in the Target Properties.

## **Relevant market and impact on competition**

[8] There is a horizontal overlap in the activities of the merging parties since they both provide lettable office and retail space in Pretoria and Bloemfontein. More specifically, this overlap occurs in relation to rentable Grade B office space and Grade C office space in the Pretoria CBD/Arcadia/Sunnyside and Bloemfontein areas.

*Office space in Pretoria CBD and immediate surrounds*

[9] In relation to rentable *Grade B* office space in the Pretoria CBD, Arcadia and Sunnyside ("the Pretoria CBD/Arcadia/Sunnyside node"), the Commission found that the merged entity will have a post-merger market share of approximately 22%. The Commission further found that Vukile will continue to face competition in this area from market participants such as Delta Property Fund, Redefine Properties, Fountainhead Properties and Premium Properties.

[10] In relation to rentable *Grade C* office space in the Pretoria CBD/Arcadia/Sunnyside node, the Commission found that the merged entity will have a post-merger market share of below 15%. The Commission further found that Vukile will continue to face competition in this area from competitors such as Delta Property Fund, Arrowhead Properties, Momentum Property Investment, Rebosis Properties and Premium Properties.

[11] In a potential product market including both rentable *Grade B* and *Grade C* office space in the Pretoria CBD/Arcadia/Sunnyside node, the merged entity will have a post-merger market share of less than 20%.<sup>1</sup> As already noted above, Vukile will continue to face competition from a number of larger as well as smaller competitors in such a potential broader relevant product market.

*Office space in Bloemfontein CBD*

[12] With regards to the Bloemfontein CBD, the Commission found that the property owned by Vukile is used for *Grade C* office space, whereas the target property (i.e. the Fedsure building) is used for *Grade B* offices. There is thus no overlap between the activities of the merging parties based on a narrow approach to product market delineation.

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<sup>1</sup> Merger record, page 47.

- [13] In a potential product market including both rentable *Grade B* and *Grade C* office space in the Bloemfontein CBD, the merging parties submitted that the merged entity will have a post-merger market share of below 15%.<sup>2</sup>

#### *Retail centres in Pretoria CBD*

- [14] Vukile owns the Sancardia building in Pretoria, which is classified as community retail space. The Commission also found that Vukile owns another relevant property in the Pretoria CBD (i.e. High Court Chambers) which contains a coffee shop. On the target side, the Navarre Wachthuis, Koedoe Arcade and Pretoria Momentum buildings are all classified as local convenience space and the De Bruyn building is classified as neighbourhood space.

- [15] The Commission considered a potential convenience centre product market. It found that the merged entity will have a market share of less than 10% in a retail convenience centre product market within a 10 km radius around the relevant Target Properties.

- [16] However, regardless of the exact product market delineation, we find that the proposed transaction will not substantially prevent or lessen competition in any potential market for lettable retail space in the affected geographic area given the remaining competitors in the area.

#### *Retail centres in Bloemfontein CBD*

- [17] In relation to retail centres in the Bloemfontein CBD, Vukile owns a minor regional centre, namely Bloemfontein Plaza. The Fedsure building (to be acquired by Vukile) is classified as local convenience retail space. The Commission thus found that there is no product overlap between the retail activities of the merging parties in the Bloemfontein CBD. However, even if these different types of shopping centres constituted a single relevant product market, the merged entity's post-merger market position in the Bloemfontein CBD would not raise substantial competition concerns.

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<sup>2</sup> Merger record, page 48.

## *Conclusion*

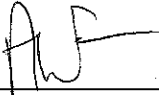
[18] We conclude that that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant market.

## **Public interest**

[19] The merging parties confirmed that the proposed transaction will have no adverse effect on employment and that it will not result in any retrenchments.<sup>3</sup> Furthermore, the proposed merger raises no other public interest concerns.

## **CONCLUSION**

[20] We approve the merger unconditionally.

  
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**Andreas Wessels**

16 August 2013  
**DATE**

**Anton Roskam and Andiswa Ndoni concurring**

Tribunal Researcher: Caroline Sserufusa  
For the merging parties: Albert Aukema of Cliffe Dekker Hofmeyr Inc  
For the Commission: Portia Bele

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<sup>3</sup> See merger record, page 52, as well as page 8 of the transcript.