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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM021May15

In the matter between:

Imbali Props 21 Proprietary Limited Primary Acquiring Firm

and

Dimopoint Proprietary Limited Primary Target Firm

Panel : Ms Yasmin Carrim (Presiding Member)
: Ms Medi Mokuena (Tribunal Member)
: Prof Imraan I Valodia (Tribunal Member)
Heard on : 12 August 2015
Order Issued on : 12 August 2015
Reasons Issued on : 7 September 2015

Reasons for Decision

Approval

[1] On 12 August 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Imbali Props 21 Proprietary Limited ("Imbali") and Dimopoint Proprietary Limited ("Dimopoint").

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

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm Imbali is jointly controlled by Teez Away Trading (Pty) Ltd and Redbill Holdings (Pty) Ltd.

[4] Imbali forms part of the Collins Group ("the Aquiring Group") of companies which is active in the business of investing and developing immoveable property in South Africa for the purposes of earning rental income.

Primary target firm

[5] The primary target firm, Dimopoint is a firm incorporated for purposes of the proposed transaction. Dimopoint is a wholly owned subsidiary of Aveng Africa (Pty) Ltd ("Aveng Africa") which in turn is controlled by Aveng Limited ("Aveng"). Aveng controls a number of firms but relevant to this transaction is Aveng's control of Grinaker-LTA Properties (Pty) Ltd ("Grinaker- LTA Properties").

[6] Upon implementation of the transaction Aveng Africa and Grinaker- LTA Properties will transfer 35 properties ("the Target Properties"), consisting of light and heavy industrial property space, to Dimopoint.

Proposed transaction and rationale

[7] The proposed transaction involved the establishment of a joint venture between Aveng Africa, Grinaker- LTA Properties and Imbali. In order to give effect to the joint venture Aveng Africa and Grinaker- LTA Properties will transfer properties to Dimopoint in return for shares in the company. Imbali will subscribe to a certain percentage of the issued share capital. These agreements will result in Imbali, Aveng Africa and Grinaker- LTA Properties jointly controlling Dimopoint.

[8] Imbali submits that the proposed transaction will enable it to expand and diversify its property portfolio in the industrial property segment. For Aveng, the proposed transaction is in line with its strategy to take advantage of growth opportunities.

Impact on competition

Horizontal overlap

[9] The Competition Commission ("the Commission") identified a horizontal overlap in the activities of the merging parties in the provision of rentable industrial properties as the Acquiring Group owns industrial properties and the Target Properties comprises rental industrial properties. The Commission assessed the competitive effects of the proposed transaction in the markets for rental space in light industrial properties and heavy industrial properties separately. The Commission utilized municipality zoned industrial areas, to identify the relevant geographic markets.

[10] For the provision of heavy industrial properties the Commission found no geographical overlap as the merging parties' heavy industrial properties do not fall under the same node. The proposed transaction is unlikely to substantially prevent or lesson competition in the provision of heavy industrial properties.

[11] In the analysis of light industrial properties, the Commission identified overlaps in Gauteng and Kwazulu-natal. In Gauteng the Commission identified an overlap in the Germiston Node. For Kwazulu-Natal the Commission identified overlaps in Isipingo/Propecton/Mobeni, Pinetown/New Germany and Richards Bay Nodes.

[12] The Commission in its analysis found that market shares of the acquiring group post-merger per node of between 0.5% and 6% as well as the market share accretion per node was low. The Commission also found that the presence of other competitors within each node presented a constraint on the merging parties. Based on these factors the Commission is of the view that the proposed transaction would not result in a substantial lessening of competition.

[13] The Tribunal finds that the low market shares, minimal accretion and the presence of competitors within the nodes would unlikely result in a substantial lessening of competition.

Concerns raised by tenants of the merging parties

[14] A tenant of Imbali submitted that the proposed transaction would incentivise Imbali to conclude rental agreements in favour of Aveng subsidiaries to the detriment of the competitors of those subsidiaries.

[15] The Commission considered whether Imbali had the incentive to terminate lease agreements with competitors of Aveng in order to favour Aveng and found that no incentive existed as the proposed transaction did not result in a change of control over properties controlled by Imbali. Accordingly Aveng had no ability to influence the rental terms. The Commission is therefore of the view that the concern raised is not merger specific.

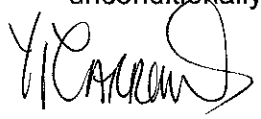
[16] The Tribunal in order to evaluate whether the submissions had any basis questioned the merging parties on the procedure of setting rentals and terms and conditions. The Tribunal was satisfied that the procedure would remain the same post-merger and therefore concluded that the concern was not merger specific.

Public interest

[17] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.[1] 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 transactions. Accordingly, we approve the proposed transaction unconditionally.



07 September 2015

Ms Yasmin Carrim **DATE**

Ms Medi Mokuena and Prof Imraan I Valodia concurring

Tribunal Researcher: Aneesa Ravat
For the merging parties: Vani Chetty of Baker & McKenzie
For the Commission: Prishani Maheeph, Seema Nunkoo and Xolela Nokele

[1] *Inter alia* merger record page 19.