



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no.: LM075Jul24

Luvon Investments (Pty) Ltd

Primary Acquiring Firm

And

Makro Carnival C/O Rilarex (Pty) Ltd

Primary Target Firm

Panel	:	Thando Vilakazi (Presiding Member)
	:	Imraan Valodia (Tribunal Member)
	:	Anisa Kessery (Tribunal Member)
Heard on	:	26 September 2024
Order issued on	:	26 September 2024
Reasons Issued on	:	24 October 2024

REASONS FOR DECISION

- [1] On 26 September 2024, the Competition Tribunal conditionally approved a large merger whereby Luvon Investments (Pty) Ltd (“Luvon”) intends to acquire a further 50% undivided share in respect of the immovable retail property and the letting enterprise carried out thereon known as Makro Carnival (“Target Property”).
- [2] On completion of the proposed transaction, Luvon and the Acquiring Group will control 100% of the undivided share of the Target Property.

The parties and their activities

Primary acquiring firms

- [3] The primary acquiring firm is Luvon, a company incorporated in accordance with the laws of the Republic of South Africa. Luvon is controlled by East and West Investments (Pty) Ltd (“East & West”).¹ East & West controls more than 10 firms apart from Luvon. Relevant to the proposed transaction, East & West also controls Morbei Investments (Pty) Ltd (“Morbei”).
- [4] Luvon, its controlling entities and all firms controlled by its controlling entities will collectively be referred to as the “Acquiring Group”.
- [5] The Acquiring Group owns properties in various sectors of the property market in South Africa.

Primary target firm

- [6] The primary target firm is the immovable property known as Makro Carnival, situated at 16 Beechwood Street, Brakpan, Boksburg, Gauteng, with a GLA of 21 669 m².
- [7] The Target Property is jointly controlled by Rilarex (Pty) Ltd (“Rilarex”)² and the Acquiring Group, through Morbei.³
- [8] Rilarex is wholly controlled by Makro Carnival City *En Commandite* Partnership, which is in turn wholly controlled by MPOF Investments GP1 (Pty) Ltd (“MPOF

² As to 50% undivided share.

³ As to 50% undivided share.

Investments”). MPOF Investments is controlled by Momentum Metropolitan Holdings Ltd (“MMH”).⁴ MMH is listed on the Johannesburg Stock Exchange and is not controlled by any firm.⁵

Transaction

- [9] In terms of the proposed transaction, Luvon will acquire a 50% undivided share in the Target Property which is presently held by Rilarex. Upon implementation of the proposed transaction, the Acquiring Group will control 100% of the undivided share of the Target Property. Therefore, the transaction presents a change from joint to sole control of the Target Property.
- [10] The merging parties submit that in 2014 when Rilarex and the Acquiring Group entered into a joint venture to buy the Target Property, the transaction was structured in such a manner that ultimately one of the parties would hold 100% of the Target Property.
- [11] In light of the above, the merging parties submit that the proposed transaction is merely the exercise by the Acquiring Group of its right of first refusal premised on the parties’ initial intention when the joint venture was established in 2014.

Competition assessment

- [12] The Competition Commission (“Commission”) considered the activities of the merging parties and identified a horizontal overlap in the market for rentable retail property.
- [13] Based on Independent Property Databank of South Africa (Pty) Ltd (“IPD”) classifications of retail properties and case precedent, the Target Property is classified as a value hyper centre as it has one hyper store (Makro) which covers over 70% of its gross lettable area (GLA).

⁵ The following shareholders hold more than 5% of the issued share capital of MMH: (i) Government Employees Pension Fund as to 14.7%, (ii) Allan Gray as to 10%, (iii) Remgro Ltd as to 8.8% and (iv) Kagiso Tiso Holdings as to 6.1%.

- [14] We find that the proposed transaction does not raise competition concerns in any market in light of the fact that the Acquiring Group already has joint control over the Target Property by virtue of its interest in Morbei (which holds a 50% undivided share in the Target Property). By extension, the market share of the Target Property is already attributable to the Acquiring Group pre-merger.
- [15] Having regard to the above, we concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market.

Public interest assessment

Effect on employment

- [16] The Target Property has no employees. The property management functions of the Target Property are currently outsourced to Eris Property Group (Pty) Ltd ("Eris"). Post-merger, the Acquiring Group will perform the management functions at the Target Property.
- [17] All employees currently involved in the management of the Target Property will remain with Eris, post-transaction, as it manages a number of other properties. Therefore, the proposed transaction will not result in any retrenchments.
- [18] The Commission contacted the employee representatives of the Acquiring Group and obtained confirmation that no employment concerns were raised in relation to the proposed transaction. Furthermore, we take into account the unequivocal statement of the merging parties that the transaction will not lead to any merger-specific job losses or retrenchments.
- [19] In light of the above, we conclude that the proposed merger does not raise employment concerns.

Effect on the promotion of a greater spread of ownership.

[20] The Commission found that Target Property currently has an effective shareholding by historically disadvantaged persons (“HDPs”) of approximately [REDACTED]. This is because Rilarex, which controls 50% of the undivided share of the Target Property, is ultimately controlled as to [REDACTED] by MMH, which has an HDP shareholding of [REDACTED].

[21] The Acquiring Group does not have any ownership by HDPs.

[22] In light of the above, the Commission requested the merging parties to propose remedies to address the [REDACTED] dilution in HDP ownership arising from the merger.

[23] The merging parties raised various factors, specific to the nature of this transaction, that meant an HDP ownership or procurement remedy, amongst others, would not be feasible in the circumstances. Furthermore, the primary tenant (Makro), which is not a party to this transaction, is primarily responsible for directly procuring various services provided at the Target Property such that the procurement of important services is not within the direct control of the merging parties.

[24] The merging parties tendered to conduct renovations to the value of [REDACTED] at (i) Loti Primary School based in Mpumalanga, and (ii) the offices of the Matsamo Traditional Council also based in Mpumalanga, within a year from the implementation of the proposed merger.

[25] In the circumstances, and having considered the dilution in HDP ownership and factors raised by the Commission and the merging parties, we are satisfied that the condition that has been tendered advances the public interest.

Conclusion on public interest

[26] We are satisfied that the proposed transaction does not raise any other public interest issues.

Third party views

[27] No third party expressed concerns about the proposed transaction.

Conclusion

[28] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

[29] Furthermore, the proposed merger does not raise any public interest concerns.

[30] In order to give effect to the above, we approved the proposed transaction subject to the above conditions which are attached hereto as **Annexure "A"**.

Signed by: Prof Thando Vilakazi
Signed at: 2024-10-24 16:38:23 +02:00
Reason: Witnessing Prof Thando Vilakazi

Thando Vilakazi 

24/10/24

Prof Thando Vilakazi
Presiding member

Date

Prof Imraan Valodia and Adv Anisa Kessery concurring.

Tribunal Case Manager:

Nomkhosi Mthethwa-Motsa

For the Merging Parties:

Misha Van Niekerk of Adams and Adams Inc

For the Commission:

Tumiso Loate and Grashum Mutizwa