



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM111Sep16

In the matter between:

LIBERTY TWO DEGREES

Primary Acquiring Firm

and

**LIBERTY GROUP LIMITED IN RESPECT OF
THE UNDIVIDED SHARES IN CERTAIN PROPERTIES**

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 23 November 2016
Order Issued on	: 23 November 2016
Reasons Issued on	: 09 December 2016

Reasons for Decision

Approval

- [1] On 23 November 2016, the Competition Tribunal ("Tribunal") approved the large merger between Liberty Two Degrees and Liberty Group Limited in respect of the undivided shares in certain properties.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Liberty Two Degrees, a newly formed real estate investment trust established in terms of section 47 of the Collective Investment Schemes Control Act 45 of 2002 ("Collective Investment Schemes Act"). Liberty Two Degrees will be listed in the REIT's sector on the Johannesburg Stock Exchange ("JSE"). FirstRand Bank Limited ("First Rand") has been appointed as a trustee of Liberty Two Degrees in terms of the Collective Investment Schemes Act¹.
- [4] Liberty Two Degrees is controlled by STANLIB REIT Fund Managers (Pty) Ltd RF ("STANLIB REIT"), a newly formed company that is wholly owned by Liberty Group Limited ("LGL").
- [5] Liberty Two Degrees has been established for the purposes of the proposed transaction and does not have any activities. Liberty Two Degrees will conduct its business through the Target Business.

Primary target firm

- [6] The primary target firm is Liberty Group Limited in respect of retail properties that will be transferred to Liberty Two Degrees. The retail properties to be transferred are collectively referred to as the target business.
- [7] The target business currently forms part of LGL's property portfolio, which is primarily held for the benefit of LGL's existing policyholders. The target business comprises super regional shopping centres, regional shopping centres, a community shopping centre, rentable office space, commercial developments, hotel space, a gymnasium and residential rental space located in the Free State, Gauteng and KwaZulu Natal provinces.

Proposed transaction and rationale

¹ The trustee has a fiduciary duty to require STANLIB REIT to report and obtain written consent from FirstRand in certain instances including: making investments, borrowing money acquiring property or services from a related party, as well as issuing, consolidating or sub-dividing the participatory units.

- [8] In terms of the proposed transaction, Liberty Two Degrees intends to acquire approximately 22% of the undivided share currently held by LGL in the target business. Upon completion of the proposed transaction, Liberty Two Degrees will directly control the Target Business by virtue of the rights it will hold. However, there is no change in indirect control in respect of the target business as Liberty Two Degrees is also under the ultimate control of LGL.
- [9] The merging parties submit that the proposed transaction is an internal restructuring whereby LGL will ultimately own the Target Business through its newly established subsidiary, Liberty two degrees post-merger. According to the merging parties, the target business is pre-merger under the control of LGL, whilst Liberty Two Degrees will directly control the target business post-merger.
- [10] The merging parties submit that the listing of Liberty Two Degrees will augment the value proposition to LGL's existing policyholders and enable greater opportunities for enhancing the returns profile of premier properties. The listing will also support expansion of and enhancements to LGL's existing property assets and broaden their accessibility to a wider investment community.

Impact on competition

- [11] The Commission considered the activities of the merging parties' and found that there is a horizontal overlap in so far as LGL controls the target business. Post-merger, the target business will still be ultimately controlled by LGL. Therefore there is no change in the structure of the market. In addition, the Commission notes that there will be no accretion in market shares in any market.
- [12] In light of the above, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.
- [13] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [14] The merging parties submit that neither Liberty two Degrees nor the target business has employees. In particular, the proposed transaction will not result in any retrenchments or job losses as the target business does not have any employees and

the implementation of the proposed transaction will not bring about any duplication in employment positions.

- [15] In its assessment, the Commission found that some employees of LGL will be transferred to STANLIB REIT, a newly created company which will be appointed to act as an asset manager of Liberty Two Degrees. In this regard, the merging parties confirmed that 10 employees will be transferred from LGL to STANLIB REIT in terms of section 197 of the Labour Relations Act.
- [16] The Commission also found that JHI Retail Division ("JHL Retail")² is currently responsible for the day to day management of Liberty's existing property portfolio and has been appointed to render property management services for 10 years which expires in 2025. In this regard, the merging parties confirmed that STANLIB REIT will continue to make use of the JHI Retail services in respect of the properties that will be transferred to Liberty Two Degrees.
- [17] Based on the above, the Commission was of the view that the proposed transaction is unlikely to have a negative effect on employment.
- [18] The proposed transaction further did not raise any other public interest concerns.

Conclusion

- [19] 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 other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.


Mr Norman Manoim

09 December 2016
DATE

Ms Mondo Mazwai and Ms Medi Mokuena concurring

Tribunal Researcher: Karissa Moothoo Padayachie
For the merging parties: Webber Wentzel
For the Commission: Maanda Lambani and Xolela Nokele

² A joint venture formed in 2015 between LGL and JHI Properties (Pty) Ltd