



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM142Aug17

In the matter between:

Cubisol Investments 2 (Pty) Ltd

Primary Acquiring Firm

And

**Bel Air Shopping Centre owned by Bel Air
Shopping Centre (Pty) Ltd and Carlswald
Shopping Centre owned by Fairway
Enterprises CC**

Primary Target Firms

Panel	: Mr Enver Daniels (Presiding Member)
	: Mrs Medi Mokuena (Tribunal Member)
	: Prof. Fiona Tregenna (Tribunal Member)
Heard on	: 11 October 2017
Order Issued on	: 12 October 2017
Reasons Issued on	: 18 October 2017

REASONS FOR DECISION

Approval

- [1] On 12 October 2017, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger between Cubisol Investments 2 (Pty) Ltd ("Cubisol 2") and Bel Air Shopping Centre owned by Bel Air Shopping Centre (Pty) Ltd ("Bel Air") and Carlswald Shopping Centre owned by Fairway Enterprises CC ("Fairway Enterprises"), hereinafter collectively referred to as the merging parties.
- [2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Cubisol 2 is wholly controlled by Cubisol Holdings (Pty) Ltd ("Cubisol Holdings"). Cubisol 2's subsidiaries and controllers are collectively referred to as the 'Cubisol Group'.
- [4] The Cubisol Group conducts business through the ownership and rental of community shopping centres. Of relevance to the proposed transaction is its Lonehill Shopping Centre situated in Lonehill, Sandton.

Primary Target Firm

- [5] Bel Air is jointly controlled by Fairway Enterprises and Century Property Developments. Both Bel Air and Fairway Enterprises, hereinafter referred to as the target properties, are jointly controlled by the same parties and such form part of the same Target group.
- [6] On the one hand, Bel Air conducts a letting enterprise known as the Bel Air Shopping Centre situated in North Riding, Johannesburg and on the other hand, Fairway Enterprise conducts a letting enterprise known as Carlswald Shopping Centre, situated in Halfway Gardens, Midrand.

Proposed transaction and rationale

- [7] In terms of the Sale of Letting Enterprise Agreement, Cubisol 2 intends to acquire sole control of the target properties. Upon implementation of the transaction, Cubisol 2 will own Bel Air Shopping Centre and Carlswald Shopping Centre.

Relevant market and impact on competition

- [8] The Commission considered the activities of the merging parties and found the existence of a horizontal overlap in the market for the provision of rentable retail space in convenience centres within a 10 kilometre ("km") radius. From its investigation, the Commission found that the target properties fall outside the 10k radius from the Lonehill Shopping Centre.
- [9] In relation to the Carlswald Shopping Centre, the Commission found that the Lonehill Shopping Centre is approximately 12.3km away from the Carlswald Shopping Centre. In addition, the Lonehill and Carlswald suburbs are separated by the R55 provincial road which does not make the two shopping centres easily accessible to customers from each suburb.
- [10] In relation to the Bel Air Shopping Centre, the Commission found that the Lonehill Shopping Centre is approximately 12.0km away from the Bel Air Shopping Centre. Furthermore, there are other convenience centres that may act as a competitive constraint on the merged entity.
- [11] In view of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. We accordingly agreed with the Commission's analysis.

Public interest

- [12] The merging parties submitted that they do not have any employees and thus the proposed transaction shall not raise any employment concerns.
- [13] At the hearing, however, we noted that Tintswalo Property Group (Pty) Ltd ("Tintswalo") is currently the property manager of the Bel Air Shopping Centre and the Carlswald Shopping Centre. Upon implementation of the proposed transaction, Propertysmith (Pty) Ltd ("Propertysmith") will take over the management of both shopping centres from Tintswalo. As such, we enquired as to whether or not there are going to be retrenchments within Tintswalo.

[14] Ms Ker, appearing for the merging parties submitted that there are not going to be any retrenchments in this regard as there are a number of other assets and properties that are managed by Tintswalo and that those employees will be absorbed and deployed post-merger. This was also confirmed by Mr Lombard, from the target firms, who stated that the Tintswalo employees currently managing the shopping centres are also managing lodges throughout South Africa. Post-merger, they will continue their employment in Tintswalo and therefore there will not be any job losses. Both Ms Ker and Mr Lombard gave us an assurance that none of the jobs of the employees of Tintswalo are at risk as a result of the proposed transaction. We were satisfied with and accepted the assurance given.

Conclusion

[15] 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 Enver Daniels

18 October 2017
Date

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring

Case Manager : Mr Ndumiso Ndlovu.

For the Merging Parties : Ms Roxanne Ker of Walkers Inc.

For the Commission : Mr Innocent Mhlongo and Ms Lindiwe Mazibuko.