



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM216Oct17

In the matter between:

**VESTFUND (PTY) LTD**

Acquiring Firm

And

**DIVERCITY URBAN RENEWAL FUND (PTY) LTD;  
STERLAND PROPERTY DEVELOPMENT (PTY) LTD;  
THE PROPERTY LETTING ENTERPRISE KNOWN AS THE  
SITUATION EAST BUILDING OWNED BY PROPERTUITY  
DEVELOPMENT (PTY) LTD;  
BUFFPROP 1 (PTY) LTD;  
PAN AFRICA DEVELOPMENTS (PTY) LTD; AND  
VESTFUND RESI (PTY) LTD**

Target Firms

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Panel	: AW Wessels (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 29 November 2017
Order Issued on	: 29 November 2017
Reasons Issued on	: 20 December 2017

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### Reasons for Decision

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#### APPROVAL

- [1] On 29 November 2017, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Vestfund (Pty) Ltd ("Vestfund") and *inter alia* DiverCity Urban Renewal Fund (Pty) Ltd ("DiverCity"). The other target firms are listed below.
- [2] The reasons for the approval follow.

## **PARTIES TO THE PROPOSED TRANSACTION AND THEIR ACTIVITIES**

### *Acquiring Firms*

- [3] The primary acquiring firm is Vestfund, a company incorporated in accordance with the laws of the Republic of South Africa. Vestfund is jointly controlled by Circlevest Property Holdings (Pty) Ltd ("Circlevest") and Old Mutual Life Assurance Company (South Africa) (Pty) Ltd ("OMLACSA").
- [4] Circlevest is a property holding and investment firm.
- [5] OMLACSA is part of the Old Mutual Group of entities which are engaged in a variety of businesses, including asset management, life insurance, banking and investment products as well as short-term insurance.
- [6] Vestfund is a diversified investment company with a specific focus on property holdings and investments.

### *Target Firms*

- [7] The primary target firm is DiverCity, a property investment and holding company incorporated in accordance with the laws of the Republic of South Africa. Pre-transaction DiverCity is wholly owned by Atterbury Property Fund (Pty) Ltd.
- [8] The secondary target firms are:
- Sterland Property Development (Pty) Ltd ("Sterland");
  - Pan Africa Developments (Pty) Ltd ("Pan Africa");
  - The property letting enterprise known as the Situation East Building operated by Propertuity Development (Pty) Ltd ("Situation East");
  - Buffprop 1 (Pty) Ltd ("Buffprop"); and
  - Vestfund Resi (Pty) Ltd ("Vestfund Resi").

- [9] Sterland is jointly controlled by DiverCity<sup>1</sup> and Genesis Properties (Pty) Ltd. It is a property holding special purpose vehicle which owns the property letting enterprise known as the Sterland Centre situated in Arcadia, Pretoria.
- [10] Pan Africa is a property holding special purpose vehicle which holds the property letting enterprise known as the PAN Africa Mall situated in Wynberg, Johannesburg.
- [11] Situation East is a multi-storey residential building located in the Johannesburg CBD and is currently controlled by the Artisans Trust.
- [12] Buffprop is a property holding special purpose vehicle which owns the property letting enterprise known as Pixley House situated in the Durban CBD.
- [13] Vestfund Resi is a property holding and development company which is controlled by Vestfund.

#### **PROPOSED TRANSACTION AND RATIONALE**

- [14] The proposed transaction involves the establishment of a mixed-use private property holding, investment and development fund by Atterbury Property Holdings (Pty) Ltd ("Atterbury"), Genesis Properties (Pty) Ltd ("Genesis"), Propertuity Development (Pty) Ltd ("Propertuity") and Vestfund (collectively referred to as the "Seed Partners").
- [15] The fund will have a specific focus on inner city developments and will hold a portfolio of properties situated in the central business districts (CBDs) of major South African cities including Johannesburg, Pretoria and Durban.
- [16] The first stage of the proposed transaction will entail Vestfund acquiring sole control over DiverCity, i.e. DiverCity will control Vestfund with the remaining Seed Partners possessing minority shareholdings.<sup>2</sup>

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<sup>1</sup> Pre-transaction DiverCity holds 50% of the issued share capital in Sterland.

- [17] Upon implementation of the proposed transaction DiverCity will have sole control Sterland, Buffprop 1, Situation East and Vestfund Resi. It will additionally have joint control of Pan Africa with a 49% shareholding.
- [18] In terms of rationale, the Seed Partners indicated that the proposed transaction presents an opportunity to combine their respective assets located within the inner cities of South Africa's major cities with the intent to attract strategic investors who also wish to renew and uplift inner cities.

#### **RELEVANT MARKETS AND IMPACT ON COMPETITION**

- [19] The Competition Commission ("Commission") found that the proposed transaction results in horizontal overlaps between the activities of the merging parties in two product markets: (i) the provision of rentable retail space in comparative centres; (ii) the provision of rentable residential property.

##### *Comparative centres*

- [20] The Commission found that the Old Mutual group of companies controls the Bedford Centre and Bedford Square, consisting of office as well as retail space. The target properties include PAN Africa Mall, which can be classified as a minor regional centre. According to the Commission's findings, the above-mentioned shopping centres of the acquiring group are situated within a 10 km radius from the mentioned target centre to be acquired.
- [21] The Commission found that the merging parties will have a combined market share of less than 20% in the market for the provision of rentable retail space in comparative centres in the Bedfordview/Wynberg/Marlboro and surrounding area, i.e. within a 15 km radius of the to be acquired target shopping centre. Furthermore, the Commission found that there are other competing centres in the area such as Meadowvale Shopping Centre, Golden Walk Shopping Centre, Balfour

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<sup>2</sup> Post transaction Vestfund will hold 60.33% of the issued share capital of DiverCity, with Atterbury holding 20.17%, Propertuity 10.34% and Genesis 9.16%.

Park Shopping Centre, amongst others, that will constrain the merging parties post merger.

[22] Based on the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

[23] We have no reason to disagree with the Commission's conclusion.

#### *Residential property*

[24] The Commission found that the acquiring group owns lettable residential property in the Johannesburg CBD and intends to acquire the Situation East building, which currently comprises of 55 units of rentable residential space in Fox Street, Johannesburg.

[25] On the basis of a very broad product market delineation consisting of all types of residential property, the Commission found that the merging parties will have a combined market share of less than 1% of all lettable residential property within the Johannesburg CBD. Based on this the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition.

[26] We however take no view on the appropriate delineation of either the product or geographic market for residential property. The Tribunal advised the Commission to in future cases specifically consider whether, from a demand-side perspective, there are potentially narrower product markets for lettable residential property given that properties of different quality / grades attract different property rents.

[27] We however find no reason to differ with the Commission's ultimate conclusion in this case given the merging parties' relatively small size and the presence of a number of competitors in the identified area of overlapping activities. In future transactions involving residential property we would however expect a more detailed analysis of the relevant product market,

specifically from a demand-side perspective, as well as of market concentration in the potentially narrower product markets.

## **PUBLIC INTEREST**

[28] The merging parties confirmed that the proposed transaction will not have any adverse effect on employment.<sup>3</sup>

[29] The proposed transaction raises no other public interest concerns.

## **CONCLUSION**

[30] 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 transaction. Accordingly we approve the proposed transaction unconditionally.



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**Mr. AW Wessels**

**20 December 2017**

**Date**

**Ms. Andiswa Ndoni and Mrs. Medi Mokuena concurring**

Tribunal Case Manager: Alistair Dey-Van Heerden

For the merging parties: Lerisha Naidu and Angelo Tzarevski of Baker McKenzie

For the Commission: Simphiwe Gumede

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<sup>3</sup> Merger Record, pages 10 and 94.