



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM264Mar19

In the matter between:

Balwin Rentals (Pty) Ltd

Primary Acquiring Firm

and

**1056 Residential Units in the Greenpark
Development, 1728 Residential Units in
the Greenlee Development and
1760 Residential Units in the Greencreek
Development**

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Medi M. Mokuena (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 10 April 2019
Order Issued on	: 10 April 2019
Reasons Issued on	: 13 May 2019

Reasons for Decision

Approval

[1] On 10 April 2019, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction between Balwin Rentals (Pty) Ltd (“Balwin Rentals”) and 1056 Residential Units in the Greenpark Development, 1728 Residential Units in the Greenlee Development and 1760 Residential Units in the Greencreek Development (“the Target Properties”).

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

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Balwin Rentals, a private company incorporated in accordance with the laws of South Africa. Balwin Rentals is jointly controlled by Yieldex Trading 2 (Pty) Ltd (“Yieldex”) and Balwin Properties Ltd (“Balwin Properties”). Balwin Rentals does not, itself, control any firm.
- [4] Apart from Balwin Rentals, Yieldex controls no other firm and is, itself, not controlled by any single firm or individual as none of its shareholders have a controlling share in its issued share capital.
- [5] Balwin Properties is a public company listed on the Johannesburg Securities Exchange (“JSE”) and is not controlled by any firm or individual. In addition to Balwin Rentals, Balwin Properties controls Balwin Fibre (Pty) Ltd, Waltiq (Pty) Ltd, Unlocked Properties 16 (Pty) Ltd and Balwin Properties (UK) Ltd.
- [6] Balwin Properties is a residential property developer whose model entails building residential properties for the purposes of selling same to investors. Balwin Properties has developed and sold residential property developments across South Africa. These residential properties are initially owned by Balwin Properties until each phase is registered into the name of third-party purchasers.
- [7] Yieldex is a newly established entity and does not currently conduct any business activities.
- [8] Balwin Rentals exclusively purchases newly developed residential properties from Balwin Properties with the intention of leasing same to individual tenants.

[9] Balwin Properties, Yieldex and Balwin Rentals are, hereafter, collectively referred to as the Acquiring Group.

Primary target firm

[10] The primary Target Properties are residential rental property units that are yet to be developed. The details of these properties are provided in the table below:

Table 1: Balwin Properties' residential property units

Development	Number of Rental Apartments	Location	Expected completion date
Greenpark	1056	Boksburg	1 December 2021
Greenlee	1728	Linbro Park, Sandton	1 March 2024
Greencreek	1760	Riverwalk Estate	1 March 2025

Source: Stock Exchange News Service (SENS)

[11] On completion, the Target Properties will be wholly owned by Balwin Properties.

[12] The Target Properties are residential rental property units that will be located in Gauteng and developed by Balwin Properties.

Proposed transaction and rationale

[13] In terms of the proposed transaction, Balwin Properties intends to enter into a Right of First Refusal Agreement ("ROFR") with Balwin Rentals. In terms of the ROFR, Balwin Rentals will be granted the right to acquire the Target Properties on certain land parcels owned by Balwin Properties as and when each batch of units¹ has been developed in terms of the agreed specifications. The scope of the ROFR is limited to residential rental units.

¹ In terms of the ROFR, a batch of units means, at the election of Balwin Properties and as such units are developed in phases by Balwin Properties and let in terms of a lease agreement, each batch of not less than 25 units and not exceeding the total number of units in a particular phase in respect of the properties or such other number of units which may be agreed between the parties in writing.

- [14] Subsequent to the implementation of the proposed transaction, Balwin Rentals will have the ROFR to acquire the Target Properties in batches upon successful exercise of the ROFR for each batch. If Balwin Rentals acquires all the Target Properties, it will have control over the Target Properties. Balwin Properties will, however, retain indirect control over the Target Properties by virtue of its 25% equity interest in Balwin Rentals.
- [15] In terms of the rationale, Balwin Properties had, at the time of its listing, indicated that its objective was to develop and retain a rental portfolio by 2020. It ultimately aims to grow Balwin Rentals to the point where it complies with the requirements of a Real Estate Trust (REIT) and then list it as such on the Johannesburg Stock Exchange, or any other recognized exchange.
- [16] The Commission was of the view that, in light of the current economic climate in which fewer individuals are able or willing to purchase residential property, the proposed transaction will allow Balwin Properties to reduce its exposure to the “build to sell model” whilst increasing its exposure to the residential rentals.

Relevant markets and impact on competition

- [17] The Commission considered the activities of the parties to the transaction and found that the proposed transaction did not result in a horizontal overlap since Balwin Rentals conducts the leasing of residential property and the Target Properties do not conduct any such activities.
- [18] Additionally, the Commission found that the Acquiring Group, through Balwin Properties, will indirectly control the Target Properties and so the activities of the Target Group are attributable to the Acquiring Group.
- [19] In light of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

[20] We found no reason to disagree.

Public interest analysis

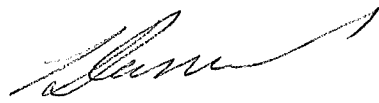
[21] The merging parties provided an unequivocal statement stipulating that the proposed transaction will not result in any retrenchments or job losses. This statement is supported by the fact that the Target Properties comprise of rental residential apartments which are yet to be developed and do not have any employees.

[22] Furthermore, the Commission contacted an employee representative from Balwin Rentals who raised no concerns in relation to any employment related issues.

[23] The Commission further noted that the proposed transaction is unlikely to result in any job duplications that may result in retrenchments since there is no horizontal overlap between the activities of the parties.

Conclusion

[24] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and raised no public interest concerns. Accordingly, we approved the proposed transaction unconditionally.



Mr Enver Daniels

13 May 2019

DATE

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring

Case Manager: Helena Graham
For the merging parties: Derushka Chetty and Tyron Willey
For the Commission: Zukile Sokapase and Wiri Gumbie