



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM126Oct19

In the matter between:

SKG Towers Proprietary Limited

Primary Acquiring Firm

And

**The Immovable Property and Rental Enterprise Know
As Portion 1 of Erf 2909 Pretoria Township**

Primary Target Firm

Panel	: Y Carrim (Presiding Member)
	: A Ndoni (Tribunal Member)
	: H Cheadle (Tribunal Member)
Heard on	: 15 January 2020
Order issued on	: 15 January 2020
Reasons issued on	: 05 February 2020

REASONS FOR DECISION

APPROVAL

[1] On 15 January 2020, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between SKG Towers Proprietary Limited and Portion 1 of Erf 2909, Pretoria Township.

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION

Primary Acquiring Firm

[3] The primary acquiring firm is SKG Towers Proprietary Limited ("SKG"), a wholly owned subsidiary of Structured Mezzanine Investment Proprietary Limited ("SMI"). SMI is ultimately controlled by the trustees for the time being of the JP du Plessis Family Trust ("JDP Trust"). SKG, JDP Trust, its controllers and all firms controlled by JDP Trust are collectively referred to as the Acquiring Group.

[4] The Acquiring Group specialises in the development and leasing of commercial, industrial and retail investment properties and owns a portfolio of 207 properties.

Primary Target Firm

[5] The primary target firm is the immovable property and rental enterprise known as "Portion 1 Erf 2909, Pretoria Township" ("Target Property"). The Target Property is wholly owned by Somnipoint Proprietary Limited ("Somnipoint").

[6] The Target Property is situated at 310 Pretorius Street, Pretoria Central, Pretoria.

PROPOSED TRANSACTION

Transaction background

[7] On or about 20 April 2014, Somnipoint and Vantage Mezzanine Fund II Partnership, an *en commandite* partnership, acting through its ultimate general partner Vantage Mezzanine Fund II Proprietary Limited ("Vantage") entered into a Facilities Agreement. In accordance to the Facilities Agreement, Vantage agreed to make certain loan facilities available to Somnipoint and as security for the credit provided by Vantage, Somnipoint registered mortgage bonds over the Target Property in favour of Vantage.

[8] Somnipoint subsequently defaulted under the Facilities Agreement. On 16 May 2019, Vantage obtained a High Court order against Somnipoint which, inter alia, declared the Target Property specially executable, in favour of Vantage, and specifically granted Vantage the right to freely sell the Target Property by way of

private treaty sale and/or public auction. Pursuant to the court order, Vantage is acting on behalf of the Target Property in this merger.

Proposed transaction

- [9] In terms of the proposed transaction, Vantage is selling the Target Property as a going concern to SKG by way of private treaty sale. Ultimately, SKG will have sole control over the Target Property.

COMPETITON ANALYSIS

- [10] The Commission considered the activities of the merging parties and found that the transaction presents a horizontal overlap in the market for rentable office space in the Pretoria CBD. Post-merger, the Commission found that the merged entity will have a low market share of less than 25% and a minimal accretion of just about 4%. Further, the merging parties will continue to face competition from competing office properties owned by Citi Property, Redefined Properties, and Recoin Properties, amongst others.
- [11] Subsequent to the low market share and minimal accretion, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

PUBLIC INTEREST

- [12] The merging parties submitted that the proposed transaction will not have any adverse effect on employment and no retrenchments are anticipated as a result of its implementation as the acquiring firm does not have any employees. Moreover, no employees were employed in relation to the Target Property.
- [13] In relation to the maintenance of the property post-merger, SKG will be responsible for the management of the property.

CONCLUSION

[14] In light of the above, we concluded that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in any relevant market. The merger transaction did not raise any employment concerns. Accordingly, we unconditionally approved the proposed transaction.



Ms Yasmin Carrim

05 February 2020
Date

Ms Andiswa Ndoni and Mr Halton Cheadle

Tribunal Case Managers	: Lumkisa Jordaan
For the merging parties	: Lara Granville for Cliffe Dekker Hofmeyr
For the Commission	: Busisiwe Ntshingila and Thabelo Masithulela