



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:** LM135Sep15

In the matter between:

**Vukile Property Fund Limited**

Acquiring Firm

And

**Thavhani Property Investments (Proprietary) Limited  
in respect of a 1/3 undivided interest in the Thavhani Mall  
Letting Enterprise**

Target Firm

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Panel	: Andreas Wessels (Presiding Member)
	: Imraan Valodia (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 25 November 2015
Order Issued on	: 25 November 2015
Reasons Issued on	: 03 December 2016

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### Reasons for Decision

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#### Approval

- [1] On 25 November 2015, the Competition Tribunal ("Tribunal") conditionally approved the acquisition by Vukile Property Fund Limited ("Vukile") of a 1/3 (one third) undivided interest in the Thavhani Mall Letting Enterprise ("Thavhani Mall").
- [2] The reasons for approving the proposed transaction follow.

## **Parties to transaction and their activities**

### *Primary acquiring firm*

- [3] The primary acquiring firm is Vukile. Vukile is listed on the Johannesburg Securities Exchange and accordingly is not controlled by any single firm. Vukile controls a number of firms.<sup>1</sup>
- [4] Vukile is a property fund with a property portfolio comprising retail space, office space and land under development. Relevant to the current analysis is Vukile's interest in retail properties located in the Limpopo province.

### *Primary target firm*

- [5] The primary target firm is Thavhani Property Investments (Pty) Ltd ("Thavhani") in respect of 1/3 undivided interest in the Thavhani Mall. Thavhani does not control any firm.
- [6] The Thavhani Mall is a development located in the Limpopo province that is currently under construction.

## **Proposed transaction and rationale**

- [7] In terms of the proposed transaction, Vukile intends to purchase an interest equivalent to a 1/3 undivided share of the Thavhani Mall. Upon completion of the proposed transaction, Vukile and Thavhani will have joint control over the Thavhani Mall.
- [8] Vukile submitted that this investment is in line with its strategy to maintain a strong retail property portfolio.
- [9] The Competition Commission ("Commission") however noted that an agreement will be concluded between Vukile, Thavhani and the lender funding the development of the Thavhani Mall. This agreement confers step-in rights on Vukile should certain events occur in future. Should these step-in rights be exercised to acquire the remaining undivided share in the Thavhani Mall, there will be a change in the (type

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<sup>1</sup> See pages 18 and 19 of the merger record.

of) control of the Thavhani Mall which would trigger notification to the Commission. Thus the Commission recommended that the proposed transaction be approved subject to certain conditions and the merging parties agreed to those conditions. We have therefore approved the proposed transaction subject to the following conditions as agreed to between the Commission and the merging parties:

- a. Should Vukile elect to exercise the step-in rights within a period of 18 months from the date of approval of the proposed transaction by the Tribunal, it shall inform the Commission of its decision within 20 business days of exercising its step-in rights. Vukile shall notify the Commission of this election by submitting an affidavit attested to by a senior official to the following email address: mergerconditions@compcom.co.za.
- b. Should Vukile elect to exercise the step-in rights after a period of 18 months from the date of approval of the proposed transaction by the Tribunal, it shall notify the exercise of its step-in rights as a merger in terms of section 13A of the Competition Act of 1998 (Act No. 89 of 1998, as amended).

### **Impact on competition**

- [10] The Commission found that the Thavhani Mall can be classified as a comparative centre. The Commission further found that there is currently no geographic overlap between the activities of the merging parties. The Commission accordingly concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We concur with this conclusion.

### **Public interest**

- [11] The merging parties confirmed that the proposed transaction will not have any adverse effect on employment.<sup>2</sup>
- [12] The proposed transaction further raises no other public interest concerns.

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<sup>2</sup> See *inter alia* page 10 of the merger record.

## Conclusion

[13] 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. As explained above, we have however approved the proposed transaction conditionally given certain future events that may occur which would trigger notification obligations. The full set of conditions that we have imposed is attached hereto as "**Annexure A**".



**Andreas Wessels**

03 December 2015

**DATE**

**Medi Mokuena and Imraan Valodia concurring**

Tribunal Researcher: Ammara Cachalia

For the merging parties: Andries Le Grange of Cliffe Dekker Hofmeyr

For the Commission: Prishani Maheeph

## ANNEXURE A

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**Vukile Property Fund Limited**

**And**

**Thavhani Property Investments Proprietary Limited in respect of a 1/3 interest in the  
Thavhani Mall Letting Enterprise**

**Case number: 2015Sep0520**

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### CONDITIONS

#### 1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **“Acquiring Firm”** means Vukile Property Fund Limited;
- 1.2. **“Approval Date”** means the date reflected on the Tribunal's Merger Clearance Certificate, Notice CT 10;
- 1.3. **“Commission”** means the Competition Commission of South Africa;
- 1.4. **“Competition Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.5. **“Conditions”** mean these conditions;
- 1.6. **“Lender”** means FirstRand Bank Limited (acting through its Rand Merchant Bank division);
- 1.7. **“Merger”** means Vukile Property Fund Limited's acquisition of a 1/3 interest in the Thavhani Mall Letting Enterprise from Thavhani Property Investments (Proprietary) Limited;
- 1.8. **“Merging Parties”** mean the Acquiring Firm and the Target Firm;

- 1.9. **“Step-in Rights”** mean the rights referred to in clause 1.66 of the Sale of Letting Enterprise Agreement;
- 1.10. **“Target Firm”** means Thavhani Property Investments Proprietary Limited in respect of a 1/3 interest in the Thavhani Mall Letting Enterprise;
- 1.11. **“Thavhani Mall”** means Erf 233 Thohoyandou - JK Extension 1 Township, Registration Division MT, Limpopo Province, measuring 12,7231 and Erf 236 Thohoyandou - JK Extension 1 Township, Registration Division M.T, Limpopo Province, measuring 1.0204 (one comma zero two zero four hectares).
- 1.12. **“Tribunal”** means the Competition Tribunal of South Africa; and
- 1.13. **“Tripartite Agreement”** means the agreement between the Merging Parties and the Lender in terms of clause 1.66 of the Sale of Letting Enterprise Agreement.

## **2. RECORDAL**

- 2.1. On 10 September 2015, the Commission received a notice of a large merger whereby the Acquiring Firm intends to acquire an interest in the Target Firm. Following its investigation of the Merger, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
- 2.2. However, in terms of a Tripartite Agreement to be concluded between the Merging Parties and the Lender, the latter funding the development of the Thavhani Mall, the Acquiring Firm may be entitled to exercise Step-in Rights in terms of which it may acquire the remaining undivided share in the Thavhani Mall. The possible exercise of the Step-in Rights may require merger notification.
- 2.3. The Commission notes that once the Acquiring Firm exercises the Step-in Rights, it will result in a change in control in the Thavhani Mall and therefore trigger notification in terms of section of 13A of the Competition Act. Considering that it is not clear when the Merging Parties will exercise the Step-in Rights, the Commission

recommends that the proposed transaction be approved subject to the Conditions proposed below:

### **3. CONDITIONS TO THE APPROVAL OF THE MERGER**

- 3.1. Should the Acquiring Firm elect to exercise the Step-in Rights within a period of 18 months from the Approval Date, the Acquiring Firm shall inform the Commission of its decision within 20 business days of exercising its Step-in Rights. The Acquiring Firm shall notify the Commission of this election by submitting an affidavit attested to by a senior official to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).
- 3.2. Should the Acquiring Firm elect to exercise the Step-in Rights after a period of 18 months from the Approval Date, it shall notify the exercise of its Step-in Rights as a merger in terms of section 13A of the Competition Act.