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SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM148Jan20

In the matter between

LUVON INVESTMENTS (PTY) LTD	Primary Acquiring Firm
And	
INVESTEC PROPERTY FUND LTD IN RESPECT OF THE LETTING ENTERPRISE KNOWN AS BOITEKONG MALL (PTY) LTD	Primary Target Firm

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Panel	: Ms M Mazwai (Presiding Member)
	: Prof. F Tregenna (Tribunal Member)
	: Prof. I Valodia (Tribunal Member)
Heard on	: 11 March 2020
Order Issued on	: 11 March 2020
Reasons Issued on	: 8 April 2020

REASONS FOR DECISION

APPROVAL

[1] On 11 March 2020, the Competition Tribunal ("Tribunal") unconditionally approved a large merger between Luvon Investments (Pty) Ltd and Investec Property Fund Ltd in respect of the letting enterprise known as Boitekong Mall (Pty) Ltd.

[2] The reasons for the approval of the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

[3] The primary acquiring firm is Luvon Investments (Pty) Ltd ("Luvon"). Luvon is ultimately jointly controlled by the FS Moolman Family Trust and the JZ Moolman Family Trust (the "Moolman Group").

[4] Luvon controls seven firms.[1] Luvon and the Moolman Group as well as all of the firms that they control will jointly be referred to as the "acquiring group".

[5] Luvon is a property investment and development company, investing in various retail and commercial assets in South Africa. The acquiring group is involved in the development, management and letting of commercial and retail properties.

Primary target firm

[6] The primary target firm is Investec Property Fund Ltd ("IPF") in respect of the letting enterprise known as Boitekong Mall (Pty) Ltd (the "target property"). IPF is a JSE-listed private company.

[7] IPF is a real estate investment trust. IPF holds a 70% undivided share in the target property located in Rustenburg, South Africa.

PROPOSED TRANSACTION AND RATIONALE

[8] Luvon currently holds a 30% shareholding in the target property. Luvon intends to purchase IPF's 70% undivided share in the target property. Post-merger, Luvon will have sole control of the target property.

[9] Luvon and IPF have a co-ownership agreement which governs the management of the target property. After IPF decided to dispose of its shares

[1] Westpac Trade & Investment (Pty) Ltd; Orion Properties 104 (Pty) Ltd; Dream World Investments 511 (Pty) Ltd; Luvon Europe Ltd; Banocol (Pty) Ltd; Speciset (Pty) Ltd; PEB Properties (Pty) Ltd.

in the target property, Luvon elected to exercise its right of first refusal to IPF's shares stemming from the co-ownership agreement.

RELEVANT MARKET AND IMPACT ON COMPETITION

[10] The Competition Commission ("Commission") found a horizontal overlap in the activities of the merging parties as both operate convenience centres in Rustenburg. The target property, classified as a community centre,[2] is co-owned by the parties; while the acquiring group owns Magalies View, classified as a neighbourhood centre.[3] Although the Commission did not conclude on a relevant market, it assessed the impact of the proposed transaction in the market for the provision of rentable retail space in convenience centres within a 15km radius of the target property.[4]

[11] During the hearing, the Tribunal sought clarity on why the Commission had chosen 15km as the radius of their geographic market assessment. The Commission submitted that although a 15km radius from the target property was in excess of case precedent for convenience centres, it had assessed this radius for two reasons.[5]

[12] The Commission's first reason was that it had interviewed an anchor tenant in the target property who indicated that its customers generally come from a radius of up to 15km. The Commission's second reason was that if it had assessed the normative 10km radius, then the competitive impact of the acquiring group's centre (located 12kms away from the target property) would result in no geographic overlap between the merging parties. The Commission

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[2] Community centres are convenience centres with a gross leasable area of 12000 – 25000m^2.

[3] Neighbourhood centres are convenience centres with a gross leasable area of 5000 –12000m^2.

[4] Convenience centres include community centres, neighbourhood centres etc., which may competitively constrain each other.

[5] Pages 4-5 of the Transcript.

therefore decided that a conservative approach was necessary in order to effectively assess the proposed transaction's impact on competition.[6]

[13] When analysing market shares on a geographic market of a 15 km radius, the Commission found that the merging parties would have a low market share accretion below 5% and that the merged entity would have a post-merger market share below 20%.

[14] The Commission further found that the merged entity would continue facing competitive constraints from numerous convenience centres within a 15km radius of the target property. Additionally, the target property's tenants and competitors contacted by the Commission raised no concerns about the merger.

[15] Due to the above, the Commission concluded that the proposed transaction was unlikely to substantially lessen or prevent competition in any market. We found no reason to disagree.

PUBLIC INTEREST

[16] The Commission contacted the employee representatives of the acquiring group who raised no concerns regarding the proposed transaction. IPF has no employees. The Commission also found no evidence of planned retrenchments by the merging parties. Furthermore, the acquiring group (which currently manages the target property and its labour activities) submitted that it would continue to manage the target property as per past practice post-merger.

[17] The Commission found that the proposed transaction was unlikely to raise any other public interests concerns.

[6] The Commission's papers provided an additional reason, being that the merging parties had also recommended assessing a 15km radius from the target property, as their assessment found that customers there were willing to travel longer distances to access retailers.

CONCLUSION

[18] In light of the above, we concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market. In addition, we are of the view that no public interest concerns arise from the proposed transaction.

[19] Accordingly, we approved the transaction without conditions.

Ms Mondo Mazwai	**8 April 2020**
	Date

Prof. F Tregenna and Prof. I Valodia concurring

Tribunal Case Manager:	P Kumbirai
For the Merging Parties:	J Marais of Adams & Adams
For the Commission:	R Maphwanya