



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM084Aug20**

In the matter between

**AFHCO Holdings (Pty) Ltd**

Primary Acquiring Firm

And

**Calgro M3 JCO Holdings (Pty) Ltd**

Primary Target Firm

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Panel : Mr AW Wessels (Presiding Member)  
: Mr E Daniels (Tribunal Member)  
: Prof. F Tregenna (Tribunal Member)

Additional submission received on : 10 September 2020

Heard on : 14 September 2020

Order issued on : 14 September 2020

Reasons issued on : 4 November 2020

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### REASONS FOR DECISION

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#### UNCONDITIONAL APPROVAL

[1] On 14 September 2020, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction between AFHCO Holdings (Pty) Ltd (“AFHCO”) and Calgro M3 JCO Holdings (Pty) Ltd (“Calgro JV Co”).

[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 AFHCO. It controls several firms. AFHCO is a wholly owned subsidiary of SA Corporate Real Estate Limited (“SACREL”). SACREL is not controlled by any one firm. AFHCO and SACREL and all the firms controlled by them shall be jointly referred to as the “acquiring group”.
- [4] The acquiring group owns residential properties in Gauteng. Of specific relevance to the competition assessment of the proposed transaction is the acquiring group’s activities relating to its ownership of 382 residential sectional title units located in Northriding, Randburg.<sup>1</sup> These units are leased or sold to private customers.

### *Primary target firm*

- [5] The primary target firm is Calgro JV Co, a joint venture between Calgro M3 Real Estate (Pty) Ltd (“Calgro”) (holding 80% of the issued share capital) and HJC Holding (Pty) Ltd (“HJC Holdings”) (holding 20% of the issued share capital). Calgro is a wholly owned subsidiary of Calgro M3 Holdings Limited.
- [6] Calgro JV Co was established for purposes of the development and acquisition of residential sectional title units known as The Falls Lifestyle Estate Sectional Title Scheme (“The Falls Lifestyle Estate”). The Falls Lifestyle Estate situated in Wilgeheuwel, Roodepoort in Gauteng consists of 480 residential sectional title units. 160 of these units have been completed and transferred into the name of The Falls Rental Company (Pty) Ltd (“The Falls Rental”), a wholly owned subsidiary of Calgro JV Co, with the remaining 320 units still in various stages of construction. This property will be referred to in these reasons as “the target property”.

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<sup>1</sup> These units form part of two residential sectional title schemes: Northgate Heights (comprising 226 residential sectional title units) and 252 Montrose (comprising 156 residential sectional title units).

## **PROPOSED TRANSACTION AND RATIONALE**

- [7] The proposed transaction involves two steps. Firstly, AFHCO intends to acquire Calgro's 80% of the issued share capital in Calgro JV Co. Secondly, AFHCO exercising an option to acquire HJC Holdings' interest in Calgro JV Co in the immediate future.
- [8] Upon completion of the proposed transaction, AFHCO will own and control Calgro JV Co and effectively control the residential letting enterprise known as The Falls Lifestyle Estate through The Falls Rental.
- [9] The acquiring group submitted that the rationale for the proposed transaction is consistent with its growth strategies relating to the development and expansion of high-quality residential portfolios. Calgro, as the party exiting from Calgro JV Co, seeks to divest some of its assets.

## **IMPACT ON COMPETITION**

- [10] The Competition Commission ("Commission") considered the activities of the merging parties and found an overlap in the product market for rentable residential properties.
- [11] With regards to the relevant geographic market, the Commission found that there is no geographic overlap between the merging parties' rentable residential properties. This the Commission argued was because the acquiring group's relevant residential properties in Northriding, Randburg are more than 8 km away from the target property situated in Wilgeheuwel, Roodepoort (i.e. the relevant properties are approximately 10 km apart). However, no reasons and / or evidence were provided for why consumers would not, in response to a hypothetical post-merger SSNIP,<sup>2</sup> consider the merging parties' relevant properties in the potential overlapping geographic area as substitutes.
- [12] We requested further submissions from the merging parties on the effects of the proposed transaction on competition if one assumes a geographic overlap

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<sup>2</sup> A small but significant non-transitory increase in price.

between their relevant residential properties situated in Northriding, Randburg and Wilgeheuwel, Roodepoort respectively.

- [13] The merging parties submitted that on the assumption that consumers may consider their two developments to be reasonably interchangeable, the proposed transaction is nonetheless unlikely to substantially prevent or lessen competition in the market for rentable residential property because (i) there is a prevalence of closer competing space in respect of each of the implicated properties, and they provided details of these properties i.e. their size and where they are located; and (ii) the market is growing with substantial new developments (including components of the implicated properties which are still under development or newly developed).<sup>3</sup> Based on this additional information that shows that there will be a number of properties that could post merger constrain the merging parties' properties in the overlapping area, we conclude that, from a horizontal perspective, the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [14] Given the above, there is no reason for us in this matter to determine the exact scope of the relevant geographic market since our conclusion remains the same regardless of the precise geographic market delineation i.e. we leave the geographic market definition open.
- [15] The Commission furthermore assessed whether the proposed transaction results in a potential vertical overlap since the acquiring group provides property management services and intends to take over the management of the target property after the proposed transaction. The Commission however found that the acquiring group only provides property management services for its own properties (i.e. in-house) and does not provide such services to any third parties. Furthermore, the current provider of property management services to the target property indicated that it had no concerns with the proposed transaction. Accordingly, the Commission found that the proposed transaction would not give rise to any vertical concerns. We concur with this finding.

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<sup>3</sup> Letter from Cliffe Dekker Hofmeyr Inc dated 10 September 2020.

## **PUBLIC INTEREST**

[16] The merger parties confirmed that the proposed transaction will not have any adverse effect on employment. Particularly, no retrenchments or job losses will arise as a result of the proposed transaction.<sup>4</sup>

[17] The proposed transaction does not raise any other public interest concerns.

## **CONCLUSION**

[18] 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 concerns arise from the proposed transaction.

[19] Accordingly, we approve the proposed transaction without conditions.

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**Mr Andreas Wessels**

**4 November 2020**

**Date**

**Mr Enver Daniels and Prof. Fiona Tregenna concurring**

Tribunal Case Manager: P Kumbirai

For the Merging Parties: A Aukema and D Mogapi of Cliffe Dekker  
Hofmeyr Inc

For the Commission: T Loate and W Gumbie

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<sup>4</sup> Merger Record, pages 6 and 45.