

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM159Dec23

In the large merger between:

Redefine Properties Limited

Primary Acquiring Firm

And

Mall of the South (Pty) Ltd

Primary Target Firm

Panel:	I Valodia (Presiding Member) T Vilakazi (Tribunal Member) A Ndoni (Tribunal Member)
Heard on:	7 February 2024
Order issued on:	7 February 2024
Reasons Issued on:	12 February 2024

REASONS FOR DECISION

Introduction

[1] On 7 February 2024, the Competition Tribunal (“the Tribunal”) unconditionally approved the merger whereby Redefine Properties Limited (“Redefine”) intends to acquire the remaining 80% of the issued share capital of Mall of the South (Pty) Ltd (“Mall of the South”).

Primary acquiring firm

[2] The primary acquiring firm is Redefine, a company incorporated under the laws of South Africa. Redefine is not controlled by any single shareholder.

[3] Redefine controls various firms, which includes its joint control (20%) of the Mall of the South, the Target Firm. Redefine and all the firms directly and indirectly

controlled by it will hereinafter collectively be referred to as the “Acquiring Group”.

- [4] The Acquiring Group is active in the property sector, with a property portfolio comprising a diverse range of properties including office, retail, residential and industrial space situated throughout South Africa.

Primary target firm

- [5] The primary target firm is Mall of the South, a company incorporated under the laws of South Africa. Mall of the South is jointly controlled by RMB Investments and Advisory (Pty) Ltd (“RMBIA”) (80%) and Redefine (the Acquiring Firm) (20%). RMBIA is wholly owned by FirstRand Limited (“FirstRand”).

- [6] Mall of the South is a super-regional centre situated at the corner of Swartkoppies Road and Klipriver Drive, Aspen Lakes Extension 12, Gauteng and comprises approximately 68 168 m² of rentable retail space.

Proposed transaction

- [7] In terms of the sale of shares and claims agreement, Redefine intends to acquire the remaining 80% of the issued share capital of Mall of the South, as it already holds 20%. Upon the implementation of the proposed transaction, Redefine will exercise sole control over Mall of the South as envisaged by section 12(2) of the Competition Act No. 89 of 1998, as amended (“the Act”).

- [8] This proposed transaction follows an earlier transaction filed with the Competition Commission (“the Commission”) in October 2020, in which Redefine acquired 20% of the shares in Mall of the South. The merging parties then concluded a put option agreement which enables RMBIA to exercise its rights to request Redefine to acquire RMBIA’s 80% share in Mall of the South. The proposed transaction is a culmination of the put option agreement.

Competition assessment

- [9] The Commission considered the business activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the market for the provision of rentable retail space. We note that the Acquiring Group pre-merger jointly controls Mall of the South, and the purpose of the proposed transaction is the change in control of the Acquiring Group from joint to sole control. However, for sake of completeness, the Commission continued to assess the impact of the proposed transaction on the respective market.
- [10] The market for rentable retail space can be divided into four categories: convenience centres, comparative centres, lifestyle centres and value centres.¹ In the current transaction, the Acquiring Group has 6 retail properties. Specifically, its comparative retail centres (including the Target Firm) are Benmore Centre, Chris Hani Crossing, East Rand Mall, Golden Walk, Maponya Mall and Mall of the South. Mall of the South is a Major Regional Centre, which is considered as part of the comparative retail centres category.
- [11] Based on previous matters, the Commission considered the relevant geographic market for comparative retail centres as a 15km radius surrounding the target centre.² In the instant transaction, the Commission noted that Redefine's retail properties are not located within a 15km radius of Mall of the South. Specifically, Benmore Centre is 33.6km away; Chris Hani Crossing is 17.2km away; East Rand Mall is 37.6km away; Golden Walk is 23.9km away and Maponya Mall is 21km away from Mall of the South. Based on the above, the proposed transaction does not result in a geographic overlap.
- [12] However, in the previous matter between the merging parties (*Redefine and Mall of the South* merger),³ the Commission enquired with tenants of the merging parties, and they confirmed that comparative centres located within a 25km radius compete with each other. Given the views from tenants of the merging parties, the Commission was of the view in that transaction that a 25km radius

¹ Tribunal Case Number 41/LM/May11.

² CT Case No. 018556, CC Case No.: 2020Oct0013 and CT Case No: LM145Oct20.

³ CC Case No. 2020Oct0013.

was more practical and could be used in assessing competition between various comparative retail centres. In the current transaction, the Commission did not conclude on the exact geographic market but followed the same approach as it did in the *Redefine and Mall of the South* merger by assessing the proposed transaction based on a geographic market encompassing competing centres within a 25km radius of Mall of the South.

- [13] Redefine's market share in the market for rentable retail space in comparative centres will remain the same. This is because Redefine already holds a 20% shareholding and has joint control over the Target Firm and does not acquire any further market share through this transaction. The transaction is merely a shift from joint to sole control and does not change the structure of the relevant market in anyway.
- [14] The Commission noted that the merged entity will continue to face competition from other comparative retail centres such as Trade Route Mall, Southgate Mall, Newtown Junction, The Zone @ Rosebank, Maponya Mall and Carlton Centre, amongst many others.
- [15] In light of the above, the Commission is of the view that the proposed transaction will not result in any market share accretion, as Mall of the South already forms part of the property portfolio of the Acquiring Group.
- [16] The Commission noted that a property management agreement exists between Redefine and Mall of the South in terms of which Redefine provides property management services to Mall of the South. Redefine receives a market-related fee for these property management services. Given that Redefine already jointly controls Mall of the South and solely provides property management services pre-merger, the Commission is of the view that the proposed transaction is unlikely to result in any competition concerns.
- [17] Having considered the above, we do not consider it likely that the proposed merger will result in a substantial prevention or lessening of competition in any market.

Public interest

Employment

[18] The merging parties submitted that the proposed transaction will not give rise to employment concerns. The Commission engaged with the respective employee representatives and no concerns were raised.

The promotion of a greater spread of ownership

[19] The Commission noted that pre-merger, the Acquiring Group has a 38.37% shareholding held by historically disadvantaged persons (“HDPs”), while RMBIA through its controlling shareholder FirstRand, has 28.96% shareholding held by HDPs according to its latest BEE certificate.

[20] The Target Firm’s pre-merger HDP shareholding is 30.84% based on the pre-merger HDP shareholding of its two shareholders. Post-merger, this increases to 38.37%.

[21] The Commission is of the view that the proposed transaction will result in a positive impact on the greater spread of ownership, in particular an increased ownership by HDPs.

Conclusion on public interest

[22] For the above reasons, we find that the proposed transaction does not raise any public interest concerns overall.

Conclusion

[23] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or to have a substantial negative effect on the public interest.

[24] In the circumstances, the Tribunal unconditionally approves the proposed transaction.

12 February 2024

Prof Imraan Valodia

Date

Prof Thando Vilakazi and Ms Andiswa Ndoni

Tribunal Case Manager: Theodora Michaletos

For the Merging Parties: Vani Chetty

For the Commission: Wiri Gumbie, Ratshi Maphwanya and Rethabile Ncheche