COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM033May24

In the matter between:

Masimo Ventures (Pty) Ltd and Mr Conrad Dana Kgwadi	Acquiring Firms
and	
CBD Residency 2 (Pty) Ltd and CBD Residency (Pty) Ltd	Target Firms

Panel:	Andreas Wessels (Presiding Member) Geoff Budlender (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on:	04 July 2024
Last submission on:	04 July 2024
Order issued on:	04 July 2024
Reasons issued on:	26 July 2024

REASONS FOR DECISION

Approval

[1] On 4 July 2024, the Competition Tribunal ("Tribunal") unconditionally approved the large merger in terms of which Masimo Ventures (Pty) Ltd ("Masimo") and Mr Conrad Dana Kgwadi ("Mr Kgwadi") intend to acquire seven residential properties ("the Target Properties") currently controlled by CBD Residency 2 (Pty) Ltd ("CBD2") and CBD Residency (Pty) Ltd ("CBD").

Parties to the proposed transaction and their activities

Primary acquiring firms

[2] The primary acquiring firms are Masimo, a private company incorporated in South Africa and Mr Kgwadi, a natural person (collectively referred to as “the Acquiring Firms”).

[3] Masimo is owned and controlled by Ngavaite Kugotsi (as to 30%) and Posterity Holdings (Pty) Ltd (as to 70%) (“Posterity”). Posterity is 100% owned by the Posterity Investment Trust (“Posterity Trust”).[1]

[4] Mr Kgwadi holds a 25% share in CBD. Mr Kgwadi is also a trustee of the Kgwadi & Sons Trust[2] (“K&S Trust”), the current 25% owner of CBD2.

[5] Masimo primarily provides residential and student accommodation in Pretoria and Johannesburg. It also provides property management services at certain buildings. Relevant to the competition assessment of the proposed transaction is Masimo’s three properties used for student accommodation and residential property for the general public in Pretoria—

Table 1: Masimo’s relevant properties

Property	Number of beds	Physical address
Muzinda Residence	605	194 Quagga Road, Proclamation Hill, Pretoria West
Madeira Isles	2027	262 Klitsgras Street, Danville, Pretoria
Casa JJ	15	410 Servaas Street, Pretoria West
Total (beds)	**2692**	

[1] The trustees of Posterity Trust are [redacted] and [redacted]

[2] The K&S Trust’s trustees are [redacted] and [redacted]

Primary target firms

[6] The primary target firms are seven residential properties used for student and residential accommodation. The Target Properties are controlled by CBD and CBD2.

[7] CBD is owned by Mr. Petrus Feenstra ("Mr. Feenstra") (as to 75%) and Mr. Kgwadi (as to 25%). CBD2 is owned by Feenstra Group (Pty) Ltd ("Feenstra Group") (as to 75%) and K&S Trust (as to 25%).

[8] Feenstra Group is a property development and property holding company. It has an interest in purpose-built student accommodation in Gauteng.

[9] The Target Properties are used for student accommodation and, to a limited extent, private residential accommodation. Approximately [redacted]% of the tenants in the Target Properties and the Acquiring Firms' relevant properties are students, with the remaining [redacted]% of the occupants being families and other persons. The Target Properties offer 4 350 beds in the Pretoria CBD, as set out below:

Table 2: The Target Properties

Property	Number of beds	Physical address
CBD		
AJO Building	728	235 Visagie Street, Pretoria
Boikhutsong Building	357	139 Francis Baard Street, Pretoria
Celliers Building	191	42 Celliers Street, Sunnyside, Pretoria
Foundation Building	775	129 Madiba Street, Pretoria
Minnaar Street Building	180	235 Minnaar Street, Pretoria
Thabo Sehume Building	859	235 Visagie Street, Pretoria
CBD2		

Riverside Building	1260	3145 Steve Biko Street, Pretoria
Total (beds)	**4350**	

Proposed transaction and rationale

[10] In terms of the proposed transaction, CBD2 will acquire a 100% undivided share in CBD1 and CBD1 will subsequently be de-registered and its property portfolio absorbed by CBD2. Upon implementation of the proposed transaction, the ownership structure of CBD2 will be as follows: Masimo will have a 50% undivided share in CBD2; Mr Kgwadi will have a 38% undivided share in CBD2; and K&S Trust's current 25% shareholding in CBD2 will reduce to 12%.

[11] According to Masimo, it wishes to acquire a share in CBD2 in order to extend its current business model. It intends to diversify its business operations by owning more buildings and engaging in the direct letting of student accommodation.[3]

[12] Mr Feenstra and Feenstra Group submitted that the proposed transaction allows for a disposal of their interests in the target firms [redacted].[4]

Competition assessment

[13] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap since the parties are both active in the provision of rentable space in (i) residential properties; and (ii) rentable space used for student accommodation.

[14] Regarding the provision of residential rentable space, the Commission found that a relatively small percentage (approximately [redacted]%) of the merging parties' properties in the area of overlap are rented to families and other persons, with the remaining [redacted]% of the space occupied by students. The Commission therefore concluded that the relevant residential rentable properties is not

[3] Merging parties' Joint Competitiveness Report at para 6.2.3. (Merger Record page 65).
[4] Merging parties' Joint Competitiveness Report at para 6.1.2. (Merger Record page 64).

substantial, and that the merging parties' post-merger market share would likely remain low in the market(s) for the provision of rentable residential property in the area(s) of overlap. We do not deal with this aspect any further in these reasons.

Product market

[15] As regards the relevant product market, the Commission considered *Respublica*[5] wherein a narrow market for the provision of rentable residential property used for student accommodation was defined. The Commission also considered the distinction made by the Tribunal in *Growthpoint*[6], where the Tribunal questioned whether private student housing and university residences are inherently part of the same relevant market.

[16] In relation to the extent of the overlap between the relevant student accommodation properties of the merging parties, the Commission found that Masimo provides private student accommodation to students at the Tshwane University of Technology ("TUT") and the Sefako Makgatho University in the Pretoria CBD. The Target Properties provide private student accommodation to students at TUT, Rosebank College, Richfield College, Damelin College, the University of Pretoria ("UP") and Boston College in the Pretoria CBD. As such, the parties both provide private student accommodation for TUT in the Pretoria CBD.[7]

[17] The Commission submitted that the above suggests that the merging parties are not necessarily close competitors pre-merger. The Commission however noted that the merging parties may compete to provide student accommodation at the same tertiary institutions in future.

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[5] *Respublica Student Living (Pty) Ltd & Midrand Varsity Lodge (Pty) Ltd, Masingita Estates (Pty) Ltd, Sam King Investments Holdings (Pty) Ltd re target properties Midrand Student Village & White House Lodge* ("*Respublica*") (Tribunal Case No.: LM245Mar16).

[6] *Growthpoint Student Accommodation Holdings (RF) Ltd and Feenstra Group Developments (Pty) Ltd in respect of the immovable property and letting enterprise known as Brooklyn Studios* ("*Growthpoint")* (Tribunal Case No.: LM174Jan23).

[7] Letter from the Commission to the Tribunal dated 4 July 2024.

[18] Taking the above factors into account, the Commission assessed the effects of the proposed transaction in the market for the provision of residential property used for student accommodation, excluding tertiary institution (internal) residences.

Geographic market

[19] The Commission assessed the abovementioned product market within an 8km radius of the Target Properties.

[20] The Tribunal enquired with the Commission and the merging parties as to the basis for considering an 8km radius for the purposes of assessing the geographic scope of the product market. The Commission in its response noted that universities require that private accommodation providers be close to the campus to which they provide accommodation to. For example, the TUT policy requires that an accredited private student provider be within a 20km radius of the campus.[8]. However, evidence shows that accredited private accommodation providers of TUT are located (on average) within a 5km radius of the campus, with one outlier located more than 8km of the campus.[9] Similarly, accredited private accommodation providers of UP are located (on average) within a 3km radius of the university, with one outlier property located 3.5km of the campus.[10]

[21] We leave the exact parameters of the relevant geographic market open. It does not alter our conclusion on the competition effects in this case.

Impact on competition

[22] Given that approximately [redacted]% of the merging parties' relevant beds are used by public universities, the Commission calculated the merging parties' combined market share based on accredited providers of student accommodation at the relevant public institutions. The Commission, on this basis, found that the

[8] See page 527 of the Merger Record.
[9] See pages 506-535 of the Merger Record.
[10] See pages 501-505 of the Merger Record.

merging parties will have a post-merger market share of approximately [10-20][redacted]% in the market it defined.

[23] Responding to questions raised by the Tribunal regarding the geographic market and concentration, the merging parties submitted that the Target Properties are somewhat scattered, but all located with Pretoria Central (i.e., the Pretoria CBD) whereas the relevant Masimo properties are located on the outskirts of Pretoria.

[24] Regarding concentration levels, the merging parties submitted that overall there are approximately 70 000 beds within an 8km radius of the Target Properties used for student accommodation based on publicly available information as well as additional research conducted by them. The Target Firms control 4 350 beds in Pretoria CBD, whereas Masimo (as 50% part of the Acquiring Group) controls 2 692 beds. The acquiring firm will therefore control approximately 7 042 beds post-merger, equating to approximately [10-20][redacted]% of the market, according to the merging parties.

[25] The Tribunal also requested that the merging parties identify the student accommodation properties that compete with their properties and to indicate their distance from the Target Properties. Noting that the Target Properties are at seven different locations in and around Pretoria CBD, the merging parties listed accommodation belonging to their main competitors within an 8km radius from the Pretoria CBD. These competitors include Growthpoint Student Accommodation Holdings; Respublica; Varsity Lodge/JJP Group; Apartments on William; Eris; First Property Trust; City Property/The Fields; and South Point.

[26] Given the relatively low market shares of the merging parties in the provision of residential property used for student accommodation, excluding tertiary institution (internal) residences in the relevant geographic area of overlap, and the presence of a number of alternative providers of accredited student accommodation (as per the Commission’s findings), we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

Employment

[27] The merging parties submitted that the proposed transaction will not result in any merger-specific retrenchments. We note that the acquiring firm does not have any employees. Furthermore, no employment issues were raised on the target side.

[28] Based on the above, we conclude that the proposed transaction is unlikely to have a negative impact on employment.

Spread of ownership

[29] The Commission found that, prior to the proposed transaction, the acquiring firm has a historically disadvantaged person ("HDP") shareholding of 56%, held by Masimo; whilst the Target Properties have a 25% HDP shareholding.

[30] As mentioned above, post-implementation of the proposed transaction, the Target Properties' shareholding will be as follows: Masimo (50%); Mr Kgwadi (38%); and K&S Trust (12%). Mr Kgwadi and K&S Trust are 100% HDPs, whilst Masimo has a 56% HDP shareholding. The Commission found that the Target Properties will thus hold a 78%[11] HDP shareholding post-merger. The proposed transaction will therefore increase HDP shareholding in the Target Properties, according to the Commission's findings.

Other public interest issues

[31] The proposed transaction raises no other public interest issues.

[11] 38% + 12% + (50%*56%=28%).

Conclusion

[32] Considering the above, the Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any public interest issues. Accordingly, we approve the proposed transaction unconditionally.

26 July 2024

Mr Andreas Wessels **Date**

Concurring: Adv Geoff Budlender SC and Prof Imraan Valodia

Tribunal case manager:	Leila Raffee
For the merging parties:	Mia de Jager of Adams & Adams
For the Commission:	Horisani Mhlari and Ratshidaho Maphwanya