COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM095Sep24

In the large merger between:

K2016336084 (SOUTH AFRICA) (PTY) (LTD)	Primary Acquiring Firm
and	
ACCELERATE PROPERTY FUND LTD	Primary Target Firm

Panel:	I Valodia (Presiding Member) A Ndoni (Tribunal Member) T Vilakazi (Tribunal Member)
Heard on:	23 October 2024
Decided on:	25 October 2024
Reasons Issued on:	18 November 2024

REASONS FOR DECISION

Approval

[1] On 25 October 2024, the Competition Tribunal ("Tribunal") conditionally approved the large merger whereby K2016336084 (South Africa) (Pty) Ltd ("K084") intends to acquire over 50% of the issued share capital of Accelerate Property Fund Ltd ("Accelerate"). Post-merger, K084 will have sole control over Accelerate.

Parties to the transaction and their activities

Primary acquiring firm

[2] The primary acquiring firm is K084. [redacted]

[3] K084 and all the firms controlling it are collectively known as the "Acquiring Group".

[4] The Acquiring Group is a consortium made up of private equity funds that invest in firms across a wide range of industries, [redacted]

[5] Of relevance to the proposed transaction are the Acquiring Group's property activities. The Acquiring Group currently holds a non-controlling interest in Accelerate and submits that its property activities are limited to its interest in Accelerate. Through this interest, the Acquiring Group is involved in the development, management and letting of retail (including community and neighbourhood centres), commercial and industrial properties throughout South Africa.

Primary target firm

[6] The primary target firm is Accelerate, a Real Estate Investment Trust listed on the Johannesburg Stock Exchange.

[7] APF controls 4 firms and has a portfolio of 23 properties across South Africa in the retail and commercial / office sectors.

[8] Its focus is on (i) acquiring properties in key strategic nodes; (ii) redeveloping and upgrading properties to enhance their value; (iii) delivering on tenants' expectations; and (iv) delivering value to its shareholders.

[9] It is noteworthy that the Acquiring Group simultaneously filed with this proposed transaction, another proposed transaction in terms of which the Acquiring Group, *inter alia*, intends to acquire indirect control over Castleview Property Fund Limited (the "Castleview transaction"). The Castleview transaction will culminate in the Acquiring Group acquiring control over Castleview which has interests in office, residential and retail property in South Africa and certain international locations.

Description of the transaction and rationale

[10] In terms of the proposed transaction, K084 intends to acquire over 50% of the issued share capital of Accelerate. Post-merger, K084 will have sole control over Accelerate.

[11] In terms of the rationale, the merging parties submit that the proposed transaction presents an opportunity for the Acquiring Group to grow its property portfolio and will alleviate the severe financial pressures Accelerate is currently facing and presents an opportunity for Accelerate to turn its business around.

Competition Assessment

[12] The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal or vertical overlap. This is because the Acquiring Group's only property activity is through its non-controlling interest in Accelerate and was at the time of approving this proposed transaction yet to acquire control over Castleview through the Castleview transaction.

[13] However, given the Castleview transaction, the Commission assessed the proposed transaction on a forward-looking basis, to assess increased concentration that would arise from the Acquiring Group having control over both Accelerate and Castleview

[14] Both Accelerate and Castleview hold retail (comparative, neighbourhood and local convenience centres) and office (A-grade) properties in South Africa. Specifically, both Accelerate and Castleview's property portfolio includes comparative centres, and neighbourhood and local convenience centres.

[15] In previous decisions, the Tribunal found that free standing, convenience centres, community centres, neighbourhood centres and local convenience centres may provide a direct competitive constraint to each other as to fall within the same market for merger assessment purposes especially if within a 15km radius of each other.[1]

[16] In addition, both Accelerate and Castleview's property portfolios include A-Grade office properties. The Tribunal previously held that,[2] office properties must be sub-divided into different grades, namely, grades A, B, C or P office properties. The geographic radius used by the Commission for the purposes of its assessment was 5km.

[17] In terms of geographic scope, the Commission found that the comparative centres owned by Accelerate are Fourways Mall, Cedar Shopping Centre and the Buzz, and Castleview owns Randridge Mall which are located in the Fourways, Randburg and Sandton areas in Gauteng. As such, the Commission found that the merged entity will have a market share of 13.6%, with an accretion of 1.2% in the provision of rentable retail space in comparative centres within a 15 km radius. The Commission also found that there are ample comparative centres within 15km from the relevant shopping centres that will constrain the merged entity.

[18] The Commission engaged various tenants and no concerns were raised.

[19] The neighbourhood and local convenience centres owned by Accelerate are Waterford, Valleyview Centre, and Beacon Isle, and Castleview owns the Boskruin Shopping Centre. These neighbourhood and local convenience centres are in the Randburg, Cresta and Roodepoort areas in Gauteng. The

[1] Luvon / Sam Ntuli Mall (LM180Feb23) and Vukile / Batho Plaza and Moruleng Mall ("Vukile") (LM197Feb15).

[2] K2012150042 South Africa (Pty) Ltd / Wanooka Properties (LM267Mar19).

Commission found that the merged entity (including Accelerate and Castleview) will have a market share of 15.9%, with an accretion of 7.7% in the provision of rentable retail space in neighbourhood and local convenience centres within a 15 km radius from Waterford and Valleyview Centre. The Commission also found that there are ample neighbourhood and local convenience centres within 15km that will constrain the merged entity.

[20] In addition, APF owns the CITI Bank office building in Sandton, whereas CVW owns the Hyde Park Lane office building in Hyde Pak. These buildings are both A-grade offices. The Commission found that the merged entity will have a market share of [redacted], with an accretion of [redacted] in the provision of A-grade office property in the Sandton node. The Commission also found that there are a few A-grade office properties within 5km from the relevant office properties that will constrain the merged entity. No tenants raised concerns.

[21] On this basis, we are of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant market in South Africa.

Public interest assessment

Effect on employment

[22] The merging parties provided an unequivocal undertaking that the proposed transaction will not have any negative effects on employment.

[23] In light of the above, there are no employment concerns arising from the proposed transaction.

Effect of the merger on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by HDPs and workers in firms in the market

[24] The merging partis submit that the proposed transaction will result in the promotion of a greater spread of ownership by Historically Disadvantaged

Person's ("HDP's"). This is because Accelerate has no HDP shareholding, however, one of the acquiring firm's largest investors [redacted] whose members in turn include individuals who are HDPs. However, the merging parties are unable to quantify the HDP shareholding.

[25] In addition to this, the Commission and the merging parties agreed to a set of conditions [redacted]

[26] We agree with the Commission's views.

Other public interest considerations

[27] We received no evidence or submissions that the proposed transaction raises other public interest concerns and are satisfied that the merger will not have any negative effect on the factors set out in section 12A(3) of the Competition Act.

Third Party Concerns

[28] No third-parties, whether tenants or competitors, expressed concerns about the proposed transaction.

Conclusion

[29] Considering the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the imposed conditions address the public interest concerns raised. No other public interest issues arise.

[30] We accordingly approved the merger on the basis of the conditions in **Annexure A** to our order dated 25 October 2024.

Signed by:Imraan Valodia
Signed at:2024-11-18 16:36:35 +02:00
Reason:Witnessing Imraan Valodia

Imraan Valodia

18 November 2024

Prof. Imraan Valodia **Date**

Prof. Thando Vilakazi and Adv Andiswa Ndoni concurring

Tribunal Case Managers:	Karabo Orekeng and Ofentse Motshudi
For the Merging Parties:	Lameez Mayet and Lizel Blignaut of ENS Africa
For the Commission:	Kgothatso Kobe and Wiri Gumbe