competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM097SEP24

In the large merger between:

Urban Retail Property Investments 1 (Pty) Ltd Primary Acquiring Firm

And

K2018365955 (Pty) Ltd Primary Target Firm

Panel:	I Valodia (Presiding Member) A Ndoni (Tribunal Member) T Vilakazi
Heard on:	23 October 2024
Order issued on:	24 October 2024
Reasons Issued on:	15 November 2024

REASONS FOR DECISION

Introduction

[1] On 24 October 2024, the Competition Tribunal ("Tribunal") conditionally approved the large merger whereby Urban Retail Property Investments 1 (Pty) Ltd ("URP1") intends to acquire 100% of the issued share capital of K2018365955 (SA) (Pty) Ltd ("K955"). The proposed merger will occur through a series of inter-related steps that will result in URP1 acquiring, respectively, direct and indirect control over K2019451018 (SA) (Pty) Ltd ("K018") and Castleview Property Fund Limited ("CVW").

[2] Post-merger, URP1 will control K955, K018 and CVW. K955, K018 and CVW, which are collectively referred to as the "Target Group".

Parties to the transaction and their activities

Primary acquiring firm

[3] [redacted][1]

[4] URP1 does not control any firm. However, of relevance to the proposed merger is the fact that URP1 holds a 4.17% minority, non-controlling interest in CVW.

[5] URP1 and all the firms controlling it are collectively referred to as the "Acquiring Group".

[6] The Acquiring Group constitutes a set of investment funds and their various portfolio companies that invest in firms across a wide range of industries, [redacted] In respect of property assets, the Acquiring Group does not currently control any properties but has a 46.8% non-controlling interest in Accelerate Property Fund Limited ("APF"), as well as a 4.17% minority non-controlling interest of in CVW, which both have property portfolios in South Africa in the retail, commercial and office property markets.[2]

[7] Notably, the Acquiring Group has simultaneously filed a merger in terms of which it will acquire sole control over APF (the "APF Transaction").[3]

Primary target firm

[8] K955 [redacted] does not currently control any firm.

[9] Although the target firm in the proposed merger is K955, the proposed merger ultimately contemplates an internal restructuring involving K955 and its

---

[1] [redacted]

[2] See the Joint Competitiveness Report in the Meger record para 4.1.3, page 63.

[3] Tribunal Case No. LM095Sep24.

associates that will result in K955 controlling K018 and CVW.[4]

[10] CVW wholly owns and controls numerous firms. Of relevance to the proposed merger is CVW's strategic investments which include interest in the following firms active in the property market: Emira Property Fund Limited ("Emira")[5] as to 58.9%; Collins Property Group Limited ("CPG")[6] as to 22.9%; and EPP Community Property JV B.V ("EPP")[7] as to 50.2%.

[11] K955 and K018 are investment holding companies that do not conduct any activities of their own.

[12] CVW is a public property investment company listed as a Real estate Investment Trust ("REIT") on the AltX of the Johannesburg Stock Exchange ("JSE"). CVW's directly held property portfolio (through local subsidiaries) includes: a retail property portfolio consisting of 6 community retail centres; a residential development portfolio consisting of 6 different development opportunities including in Clifton, Camps Bay and Higgovale; and a residential property portfolio.

Description of the transaction and rationale

[13] In terms of the proposed merger, URP1 intends to acquire 100% of the interest in K955. Through a series of inter-conditional and inter-related transaction steps the proposed merger will also result in URP1 acquiring indirect control overK018 and CVW.

[14] Post-merger, URP1 will wholly own and control K955 and directly and indirectly, hold 89.8% of the shares in CVW.

[15] [redacted]

---

[4] See the Joint Competitiveness Report in the Merger Record para 4.2, page 45.
[5] Emira Property Fund Limited, a diversified real estate investment trust listed on the JSE. Its portfolio spans multiple property sectors, including office, retail, residential and industrial properties. See the Joint Competitiveness Report in the Merger Record para 4.2.3, page 64.
[6] Collins Property Group Limited operates a property portfolio in Southern Africa and Europe.
[7] EPP operates a portfolio of twelve community retail centres and three office properties in Poland.

[redacted]

Competition assessment

[16] The Competition Commission ("Commission") considered the activities of the merging parties and concluded that at the time of filing, there was no horizontal overlap between the merging parties' activities. That is because the Acquiring Group's only property activity is through its non-controlling interest in APF.

[17] The Commission however conducted its assessment on a forward-looking basis, to consider the increased concentration that would arise from the Acquiring Group having control over both APF in terms of the APF Transaction and the Target Group in terms of the instant merger ("CVW Transaction").[8] The Commission considered the market for the provision of rentable retail properties and office (A-grade) properties, because both APF and the Target Group hold retail (comparative, neighbourhood and local convenience centres) and office (A-grade) properties in South Africa.

The market for the provision of rentable retail space properties

[18] As regards the product market, the Commission relied on the matters between *Community Property Company (Pty) Ltd and Luvon Investments (Pty) Ltd and Twin City (Pty) Ltd in respect of Sam Ntuli Mall ("Luvon and Sam Ntuli Mall Merger")*[9] and *Vukile Property Fund Limited and NAD Property Income Fund (Pty) Ltd, in respect of Batho Plaza and Moruleng Mall, ("Vukile and Batho Plaza Merger")*[10] to define the product market as the market for the provision of rentable retail property namely free standing, convenience centres, community centres, neighbourhood centres and local convenience centres.[11]

[8] See the Commission's Recommendation in the Merger Record para 18, page 15.
[9] Tribunal Case No. LM0180Feb23.
[10] Tribunal Case No. LM197Feb15.
[11] See the Commission's Recommendation in the Merger Record para 18, page 15.

[19] In relation to the geographic market, the Commission relied on the *Luvon and Sam Ntuli Mall Merger* and the *Vukile and Batho Plaza Merger* to define the geographic market as a radius of 15 kilometres (kms) from retail properties owned by APF; being Fourways Mall, Cedar Shopping Centre and The Buzz (comparative centres); Waterford and Valleyview Centre (neighbourhood and local convenience centres) and Beacon Isle (neighbourhood and local convenience centres).

[20] The Commission assessed the following geographic markets: (i) the market for the provision of rentable retail space in comparative centres within a 15 km radius from Fourways Mall, Cedar Shopping Centre and The Buzz; (ii) the market for the provision of rentable retail space in neighbourhood and local convenience centres within a 15 km radius from Waterford and Valleyview Centre; and (iii) the market for the provision of rentable retail space in neighbourhood and local convenience centres within a 15 km radius from Beacon Isle.

[21] We noted, however that the merging parties adopted the following geographic markets: (i) the market for the provision of rentable retail space in comparative centres within a 15 km radius from Fourways Mall, Cedar Shopping Centre and The Buzz, (ii) the market for the provision of rentable retail space in neighbourhood and local convenience centres within a 10 km radius from Waterford and Valleyview Centre; and (iii) the market for the provision of rentable retail space in neighbourhood and local convenience centres within a 10 km radius from Beacon Isle.[12]

[22] Given the different views adopted by the Commission and the merging parties in relation to the geographic radius in the market for the provision of rentable retail space in neighbourhoods and local convenience centres (the Commission adopted a radius of 15 km, whereas the merging parties adopted a radius of 10 km), we requested the Commission and merging parties to provide their views on the appropriate geographic radius of be applied in the aforementioned market.

[23] The Commission indicated that it relied on the *Luvon and Sam Ntuli Mall Merger* and the *Vukile and Batho Plaza Merger* to define the geographic market as a radius of 15 km. Furthermore, the Commission does not consider any

[12] See the Joint Competitiveness Repot in the Merger Record para 5, page 65.

discrepancy between the radius applied by the Commission and the merging parties as consequential since the assessment shows that there are many credible alternatives (on either radius applied).[13]

[24] The merging parties disagreed with the Commission and stated that in respect of neighbourhood centres and local convenience centres, the appropriate area of consideration is 5 to 10 kms. In this regard, the merging parties relied on the matter between *Nedbank Limited v Emling Properties (Pty) Ltd ("Nedbank and Emling Merger").*[14]

[25] We leave the exact extent of the geographic market open as it does not alter our conclusion on the competition effects in the proposed merger.

The market for rentable A-grade office space properties

[26] In respect of the market for rentable A-grade office property, the Commission relied on the matter *K2012150042 South Africa (Pty) Ltd and Wanooka Properties (Pty) Ltd ("Wanooka Merger")*[15] to define the product and geographic market as the market for rentable A-grade office property within a radius of 5 km.

Market shares and concentration

[27] The Commission's found that the merged entity (including the Target Group and APF) will have a market share of approximately 13.6%, with an accretion of 1.2% in the market for the provision of rentable retail space in comparative centres within a 15 km radius from Fourways Mall, Cedar Shopping Centre and The Buzz. The Commission further found that there are numerous comparative centres within 15 km from the relevant shopping centres that will constrain the merged entity, namely, Clearwater Mall, Fourways Crossing and Sandton City Mall.

[28] The Commission's found that the merged entity (including APF and the Target Group) will have a market share of 15.9%, with an accretion of 7.7% in the market

[13] See email correspondence from the Commission dated 22 October 2024.
[14] Tribunal Case No. LM163Dec22. See the letter from the merging parties dated 22 October 2024 para, 3.1.3, page 3.
[15] Tribunal Case No. LM267Mar19.

for the provision of rentable retail space in neighbourhood and local convenience centres within a 15 km radius from Waterford and Valleyview Centre. The Commission further found that there are numerous neighbourhood and local convenience centres within 15 km from the relevant shopping centres that will constrain the merged entity, namely, Riverside Shopping Centre, Bryanston Shopping Centre and Kyalami Downs.

[29] The Commission's investigation found that the merged entity (including APF and CVW) will have a market share of 16.6%, with an accretion of 12.9% in the market for the provision of rentable retail space in neighbourhood and local convenience centres within a 15 km radius from Beacon Isle. The Commission further found that there are numerous competitors within 15 km from the relevant shopping centre that will constrain the merged entity, namely, Cresta Crossing, Mountain View Shopping Centre and Northcliff Piazza.

[30] In the market for the provision of rentable A-grade office space properties, the Commission found that the merged entity will have a market share of [redacted], with an accretion of [redacted]. The Commission further found that there are numerous A-grade office properties within 5 km from the relevant office properties that will constrain the merged entity, namely, Grayston Office Park, GreenPark Corner and The Place.

[31] We requested the Commission and the merging parties to explain how the assessment of the market shares and market share accretions, with respect to the 3 identified markets for the provision of rentable retail property would change if the relevant radius were applied from the properties owned by CVW (being Randridge Mall in Pretoria and Boskruin Shopping Centres in Randburg) as opposed to the properties owned by APF.

[32] In response, the merging parties provided the following market shares:[16]

32.1. *The market for the provision of rentable retail space in comparative shopping centres within a 15 km radius of Randridge Mall* - The proposed merger will result in the merged entity having a combined market share of approximately 15.6%.

[16] See letter from the merging parties dated 22 October para 3.2, pages 3 - 8.

32.2. *The market for the provision of rentable retail space in neighbourhood centres and local convenience centres with a 10 km radius of Boskruin Shopping Centre* - The proposed merger will result in the merged entity having a combined market share of approximately 11.4%.

Information exchange assessment

[33] The Commission considered whether the proposed merger will result in structural links that that may facilitate the exchange of competitively sensitive information. This is because the implementation of the proposed merger and the APF Transaction the Acquiring Group will control or have interests in competing property firms, namely, APF (sole control) and the Target Group (including, CVW, Emira, CPG and the EPP).

[34] The Commission's findings are summarised below.

34.1. Post-implementation of the proposed merger and the APF Transaction, the Acquiring Group will have sole, unfettered control over each APF and the Target Group. Furthermore, the Commission notes that within the Target Group, CVW already has sole, unfettered control over Emira. Therefore, following the implementation of the CVW and APF Transactions, the Acquiring Group will have sole, unfettered control over CVW, APF and Emira, who will all be constituent firms within a single-economic entity (controlled by a single mind).

34.2. Regarding CPG, the Commission found that CVW already jointly controls CPG. In addition, the Commission notes that the CPG transaction was considered by the Tribunal[17] and a restriction on cross-directorships was not required by the Tribunal.

34.3. The Commission further found that EPP only holds properties in Poland and thus does not compete with the relevant property firms mentioned above.[18]

[17] Tribunal Case No. LM098Oct23.
[18] See the Commission's Recommendation in the Merger Record para 33, page 18.

[35] Considering the above, the Commission found that no further intervention is required as regards any cross-directorship concerns.

Creeping merger assessment

[36] Given the fact that the Acquiring Group is simultaneously acquiring 2 property firms (through the proposed instant merger as well as the APF Transaction) and the extensive shareholdings it will have in other firms owned by CVW and APF, the Commission conducted a creeping mergers assessment. The Commission considered previous transactions by the Acquiring Group in the past 3 years and found that other than the proposed merger (and the APF Transaction), the Acquiring Group has not acquired any property companies in the last 3 years.

[37] [redacted][19] In this regard, we requested the Commission to clarify whether it considered any acquisitions of property companies by CVW in the last 3 years given that the Acquiring Group previously held a majority interest in CVW, and to explain whether or not there is likely to be a creeping merger concern arising from the assessment.

[38] In response, the Commission stated that it assessed creeping mergers from the perspective of the Acquiring Group, not from CVW's perspective. Furthermore, that the Commission typically approaches a creeping merger assessment from the perspective of the acquirer, albeit the fact that section12A(2)(k) suggests that creeping mergers by any other party to the merger can be considered. The Commission further submits that the creeping merger assessment in the proposed merger was academic, since neither of the acquisitions being made by the Acquiring Group, raise any market power concerns.

[39] The proposed merger does not give rise to any vertical concerns.

[19] See the Joint Competitiveness Report in the Merger Record para 3, pages 62 – 63.

[40] Based on the above, we are of the view that the proposed merger is unlikely to result in the substantial prevention or lessening of competition in any relevant market.

Public interest

Employment

[41] The merging parties have provided an unequivocal undertaking that the proposed merger will have no negative effect on employment in South Africa and no retrenchments.[20] This was corroborated by the Commission's team with the respective employee representatives.

[42] We are of the view that the proposed merger is unlikely to have a negative impact on employment.

Promotion of a greater spread of ownership

[43] [redacted]

[44] The Commission queried the HDP credentials of the merging parties [redacted] This is because "ownership" in terms of the Act does not envisage "control", and therefore, economic interest in firms by HDPs (through mandated investments) should suffice in determining the promotion of a greater spread of ownership in mergers.[22] [redacted]

[20] See the Joint Competitiveness Report in the Merger Record para 7.2, page 67.
[21] See the Joint Competitiveness Report in the Merger Record para 7.5.2, page 68.
[22] See letter from the merging parties in the Merger Record para 9, page 309.

[redacted][23]

[45] Since the merging parties tendered the commitments above, the Commission did not reach a definitive view on the merging parties' submissions, but did find that the commitments address the requirements in section 12A3(c) and (e) of the Act[24]

[46] We are of the view that the proposed merger raises no substantial issues regarding the promotion of a greater spread of ownership.

Conclusion

[47] For the reasons set out above, we are satisfied that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market. [redacted]

[48] We accordingly approved the merger on the basis of the conditions in **Annexure A** to our order dated 24 October 2024.

Signed by:Imraan Valodia
Signed at:2024-11-15 11:07:26 +02:00
Reason:Witnessing Imraan Valodia

Prof. Imraan Valodia	**15 November 2024**
Ms Andiswa Ndoni and Prof. Thando Vilakazi	**Date**

Tribunal Case Manager:	Tarryn Sampson
For the Merging Parties:	Lameez Mayet and Lizel Blignaut of ENS Africa
For the Commission:	Kgothatso Kgobe and Wiri Gumbie

[23] See the Commission's Recommendation in the Merger Record para 45, page 21.
[24] See the Commission's Recommendation in the Merger Record para 46, page 21.