competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM071JUL24

In the matter between:

K2012150042 (South Africa) Proprietary Limited	Primary Acquiring Firm
and	
Big Box Retail Fund Proprietary Limited	Primary Target Firm

Panel:	:	A Kessery (Presiding Member)
	:	G Budlender SC (Tribunal Member)
	:	I Valodia (Tribunal Member)
Heard on	:	23 August 2024
Order issued on	:	23 August 2024
Reasons issued on	:	20 September 2024

REASONS FOR DECISION

Introduction

[1] On 23 August 2024, the Competition Tribunal ("Tribunal") unconditionally approved a large merger in terms of which K2012150042 (South Africa) Proprietary Limited ("K2012") intends to acquire a 50% shareholding in Big Box Retail Fund Proprietary Limited ("Big Box").

Parties to the transaction and their activities

Primary Acquiring Firm

[2] The primary acquiring firm is K2012. K2012 is ultimately controlled by Old Mutual Limited ("Old Mutual"), a public company listed on the Johannesburg Stock Exchange. Old Mutual is not controlled by any firm. Old Mutual and all the firms that it controls shall collectively be referred to as the "Acquiring Group".

[3] The Acquiring Group is primarily involved in financial services, including insurance, asset management and private equity. Of relevance to the assessment of the proposed transaction, is the Acquiring Group's activities in retail property, namely its ownership of the retail properties known as Diepsloot Mall (a neighbourhood centre situated in Midrand in Gauteng) and Vincent Park Shopping Centre (a small regional centre situated in East London in Eastern Cape).

Primary Target Firm

[4] The Primary Target Firm is Big Box. Big Box is not controlled by a single firm and has four "founding shareholders". Big Box wholly owns IPMFGD Developments JV Proprietary Limited ("IPMFGD").

[5] Big Box and IPMFGD are property-holding companies which hold a portfolio of 9 retail warehouse enterprises and 1 piece of land.

Proposed transaction and rationale

[6] In terms of the proposed transaction, K2012 intends to acquire a 50% shareholding in Big Box.

[7] Big Box wholly and directly controls the following properties (the "Big Box Target Properties"):

7.1. Builders Warehouse Bloemfontein, comprising 9,298m rentable retail warehouse space situated in Bloemfontein in the Free State;

7.2. Builders Warehouse Polokwane, comprising 8,829m rentable retail warehouse space situated in Bloemfontein in the Free State;

7.3. Builders Warehouse Witbank, comprising 5,512m rentable retail warehouse space situated in Emalahleni, in Mpumalanga;

7.4. Makro Gonubie land, comprising land which is in the process of being developed into retail warehouse space, in East London, in the Eastern Cape;

7.5. Montana Portion 2, comprising 1,132m rentable retail warehouse space situated in Pretoria, in Gauteng; and

7.6. Flora Farm, comprising 23,529m rentable retail warehouse space situated in Boksburg, in Gauteng.

[8] Big Box jointly controls the following properties together with Dolsid Investment (Pty) Ltd) (“Dolsid”), (the “Dolsid Target Properties”):

8.1. IPM-Dol Allen’s Nek – Portion 1, comprising 2,935m rentable retail warehouse space situated in situated in Roodepoort, Gauteng and operated as part of a Builders’ Warehouse, Strubens Vally;

8.2. IPM-Dol Allen’s nek, comprising 21,545m split into rentable retail warehouse space (9,526m) and a retail centre (12,019m) situated in situated in Roodepoort, Gauteng and operated as part of a Builders’ Warehouse, Strubens Vally;

8.3. Builders Warehouse Fourways ("BW Fourways"), comprising 7,931m rentable retail warehouse space situated in Sandton, in Gauteng; and

8.4. Gezina Lifestyle Centre, comprising 9,810m rentable retail warehouse space situated in Allen’s Nek, Roodepoort a rentable retail warehouse space, situated in Pretoria, Gauteng.

[9] Big Box, the Big Box Target Properties and the Dolsid Target Properties shall collectively be referred to as the “Target Firms”.

Proposed transaction and rationale

Transaction

[10] The proposed transaction will occur in the following interrelated and indivisible steps:

10.1. Step 1: Big Box will acquire Dolsid's 50% undivided share in each of the Dolsid Target Properties. Consequently, the Dolsid Target Properties will be wholly owned by Big Box through IPMFGD.

10.2. Step 2: Upon completion of Step 1, the Acquiring Group will acquire 50% of the issued shares in Big Box. After Step 2, the Big Box will be jointly controlled by the Acquiring Group and the Founding Shareholders.

[11] Steps 1 and 2 constitute interrelated and indivisible transactions in that Step 2 is dependent on Step 1 being implemented first and Big Box will not acquire the Dolsid Properties absent Step 2.

[12] Big Box requires capital to further develop the Big Box Target Properties and the Dolsid Target Properties. The Acquiring Group will provide the capital through its acquisition of a 50% interest in Big Box.

Rationale

[13] K2012 submits that the proposed transaction is part of its strategic objectives which includes nvesting as a new entrant in the Big Box retail space sector.

[14] Big Box submits that it has been searching for a strategic capital investor to invest equity in the firm in order to unlock a development pipeline of its retail assets. K2012's proposed equity investment will allow Big Box to achieve this. According to Big Box, retail is a niche, defensive market segment which has strong growth underpinned by the strategic nature of the asset in the context of national retailers. The long WALE (Weighted Average Lease Expiry) and limited vacancy risk makes it an attractive asset class with strong returns.

[15] For its part, Dolsid submits that it is desirous of diversifying its portfolio by liquidating a portion of its immovable properties. The sale of Dolsid's 50% in the Dolsid Target Properties is aligned with this strategy.

Competition Assessment

[16] The Commission considered the activities of the merging parties and found that the proposed transaction will not result in any horizontal or vertical overlaps.

[17] The Target Firm comprises of a portfolio of retail warehouses which are typically leased to single tenants such as Massmart Holdings, Builders Warehouse and Makro.

[18] In assessing the merger, the Commission considered retail warehousing as a separate market.

[19] In the present transaction, the Acquiring Firm does not conduct any retail warehousing. Moreover, whilst the Target Firm includes a retail centre which is adjacent to its retail warehouse in Roodepoort Gauteng, the Acquiring Group does not conduct any retail activities in or within the vicinity surrounding Roodepoort.

[20] Based on the above, we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest assessment

Effect on employment

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

[22] The employee representative of the merger parties did not raise any concerns regarding the proposed transaction.

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

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

Spread of ownership

[25] The Commission found that Old Mutual is currently owned 34.28% by Historically Disadvantaged Persons ("HDP"), whereas the Target Firm has no HDP ownership. Post-merger OML will own 50% shareholding in Big Box. Therefore, the proposed transaction is likely to increase HDP ownership at the Target Firm by approximately 17.14 percentage points.

[26] Accordingly, the proposed transaction will result in an increase in the target firms' levels of ownership by HDPs.

Other public interest factors

[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 customers or competitors, expressed concerns about this aspect of the proposed transaction.

Conclusion

[29] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any significant public interest concerns.

[30] We therefore approve the proposed transaction without conditions.

Signed by:Anisa Kessery
Signed at:2024-09-20 13:02:19 +02:00
Reason:Witnessing Anisa Kessery

Anisa Kessery

20 September 2024

Advocate Anisa Kessery **Date**

Professor Imraan Valodia and Advocate Geoff Budlender SC concurring.

Tribunal case manager : Ofentse Motshudi

For the merging parties	:	Roxanne Ker of Walkers Inc.
For the Commission	:	Horisani Mhlari and Wiri Gumbie