COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM084AUG24

In the large merger between:

Circlevest Securitisation (RF) (Pty) Ltd	Primary Acquiring Firm
And	
Standshelf 183 (Pty) Ltd	Primary Target Firm

Panel:	A Kessery (Presiding Member) T Vilakazi (Tribunal Member) I Valodia (Tribunal Member)
Heard on:	25 September 2024
Order issued on:	26 September 2024
Reasons Issued on:	08 October 2024

REASONS FOR DECISION

Introduction

[1] On 26 September 2024, the Competition Tribunal ("Tribunal") unconditionally approved the large merger whereby Circlevest Securitisation (RF) (Pty) Ltd ("Circlevest") intends to acquire 100% of the ordinary share capital of Standshelf 183 (Pty) Ltd ("Standshelf 183").

[2] Upon conclusion of the proposed merger, Circlevest will exercise sole control over Standshelf 183.

Parties to the transaction and their activities

Primary acquiring firm

[3] Circlevest is controlled by Urban Impact Properties Limited ("Urban Impact Properties"). Urban Impact Properties is in turn controlled by the Housing Impact

Fund South Africa ("HIFSA"). HIFSA is ultimately controlled by Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA"), as well as Old Mutual Alternative Investments (Pty) Ltd ("OMAI"), in its capacity as a fund manager.

[4] Circlevest wholly owns and controls Clidet No. 950 (Pty) Ltd, Clidet No. 100 (RF) (Pty) Ltd and Tortello Investments 143 (Pty) Ltd. Circlevest and its subsidiaries are hereinafter referred to as the "Circlevest Group".

[5] Circlevest, the entities controlling Circlevest, and the entities controlled by Circlevest are hereinafter also collectively referred to as the "Acquiring Group".

[6] Circlevest operates as a property investment and holding company which earns income through its investments in residential private property. The Circlevest Group owns various residential properties located in the Johannesburg CBD.[1]

[7] The Acquiring Group, through Urban Impact Properties, HIFSA and OMLACSA also own rentable residential property in Riverside View as well as A-grade and B-grade rentable office properties in Parktown, Johannesburg.

Primary target firm

[8] Standshelf 183 is controlled by Loradex (Pty) Ltd, which is in turn controlled by Africrest Properties (Pty) Ltd ("Africrest").

[9] Standshelf 183 is a shelf company which has not previously traded. Standshelf 183 owns three assets namely; The Appollo (residential property), The Atlas (residential property) and The Alpha (residential and B-grade office property), which are all located in Sandton, Johannesburg. Apart from the aforementioned, Standshelf 183 does not own any other assets.[2]

[10] The Appollo, The Atlas and The Alpha are hereinafter referred to as the "Target Properties".

Description of the transaction and rationale

[1] The Circlevest Group does not own any rentable office properties. See the Merger Record, page 6.
[2] See the Competitiveness Report in the Merger Record at para 4.2, page 46 to 48.

[11] In terms of the proposed merger, Circlevest will acquire 100% of the shares and claims in Standshelf 183. Upon conclusion of the proposed merger, Circlevest will acquire sole control over Standshelf 183.

[12] With regards to the rationale for the proposed merger, the proposed merger presents an opportunity for Circlevest to further diversify its geographic footprint into new locations such as Sunninghill, Sandton. From the perspective of the seller, Africrest, the proposed merger presents an opportunity to obtain liquidity to pursue its investment strategy to acquire high quality, income producing property assets.

Competition assessment

[13] The Competition Commission ("Commission") considered the activities of the merging parties and concluded that the proposed merger results in a horizontal overlap in the market for rentable residential properties. This is because the Circlevest Group and Standshelf 183 both own rentable residential properties. The Commission however found that the proposed merger does not result in a geographic overlap because the residential properties owned by the Circlevest Group are more than eight kilometres ("km") away from the Target Properties.[3]

[14] The Tribunal queried whether the Commission's assessment in relation to the horizontal overlap in the market for rentable residential properties accounted for the residential properties owned by the Acquiring Group, which includes the residential properties owned by Urban Impact Properties, HIFSA and OMLACSA who are controlling shareholders of Circlevest. In this regard, the Commission submitted that the residential properties owned by the Acquiring Group and Standshelf 183 do not result in a geographic overlap given that the rentable residential properties owned by the Acquiring Group are located more than 15 kms away from the Target Properties.[4]

[3] The Acquiring Group's residential properties are located in the Johannesburg CBD whereas the Target Properties are located approximately 16 to 19 kms away in Sunninghill, Sandton. See the Commission's letter dated 23 September 2024, Table 1. The Commission and Tribunal have previously accepted the geographic market as a radius of 8 km. See for example *AFHCO Holdings (Pty) Ltd and Indluplace Properties Limited* (LM002Apr23) and *Emira Property Fund (Pty) Ltd and Transcend Residential Property Fund Limited* (LM088Aug22).
[4] See the Commission's letter dated 23 September 2024, para 4.

[15] We further queried whether the Commission considered the horizontal overlap in the market for rentable B-grade office space properties given that the property portfolios of the Acquiring Group and Standshelf 183 comprise of rentable B-grade office properties. In response, the Commission submitted that there is no geographical overlap in this market because the B-grade office property owned by the Acquiring Group is located approximately more than 20 km away from the B-grade office space property that forms part of the Target Properties, The Alpha.[5]

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

[17] 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.

Cross-directorship

[18] We queried whether the Commission considered cross-directorship in property owning firms in their analysis. In response, the Commission submitted that they did not consider any cross-directorship between Circlevest and the Old Mutual appointed directors of Urban Impact Properties on the basis that any such cross-directorship would have pre-existed the proposed merger.[6]

[19] We considered the entities in which Circlevest and Urban Impact Properties have directorships and are of the view that the proposed merger is unlikely to raise any cross-directorship concerns.

Public interest

Employment

[5] See the Commission's letter dated 23 September 2024, para 6. The Tribunal has previously considered a geographic market in terms of nodes. See for example *Momentum Property Investments (Pty) Ltd and Bonatla Property Holdings Limited* (34/LM/Jul03). In this regard, Johannesburg CBD and Sunninghill CBD constitute separate nodes.

[6] See the Commission's letter dated 25 September 2024, para 4.

[20] The merging parties submit that there will be no job losses as a result of the proposed merger.[7]

[21] The property management functions of the Target Properties are currently performed by Africrest and will continue to be performed by Africest for a period of six months following the implementation of the proposed merger. Thereafter, the property management functions of the Target Properties will be performed by Ithemba Property Management (Pty) Ltd.

[22] Additionally, following the six-month period, the employees employed by Africrest may be transferred and employed by Circlevest.[8] The merging parties confirm that any employees who are transferred will be transferred on the same terms and conditions under which they are currently employed.

[23] The employees of Circlevest and Africrest were duly notified of the proposed merger and did not raise any employment related concerns.

[24] 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

[25] Circlevest, through its controlling shareholders, has a shareholding by historically disadvantaged persons (“HDPs”) of 27%, whereas Standshelf 183 does not have any shareholding by HDPs.

[26] The Commission found that the proposed merger results in an increase in HDP shareholding in the target firm of approximately 27% and therefore in a greater spread of ownership.

[7] See the Schedules to Form CC4(1) in the Merger Record, page 10. The merging parties also confirm that there have been no retrenchments at Circlevest and Africrest in the last 12 months. See the letter from the Commission dated 25 September 2024, paras 6 to 8.

[8] The number of employees to be transferred is not yet determined by the merging parties. See email correspondence between the Commission and the merging parties in the Merger Record page 400. Further see the Commission’s letter dated 23 September 2024, para 15.

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

Conclusion

[28] 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 and the proposed merger does not raise public interest concerns.

[29] In the circumstances, we unconditionally approve the proposed merger.

Signed by:Thando Vilakazi
Signed at:2024-10-08 16:11:35 +02:00
Reason:Witnessing Thando Vilakazi

Thando Vilakazi

	08 October 2024
Prof. Thando Vilakazi	**Date**

Adv. Anisa Kessery and Prof. Imraan Valodia concurring

Tribunal Case Manager:	Tarryn Sampson
For the Merging Parties:	Vani Chetty of Vani Chetty Competition Law (Pty) Ltd
For the Commission:	Keitiretse Moota and Ratshi Maphwanya