

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case no: LM148Jan25**

In the large merger between:

**FPG Holdings (Pty) Ltd**

Primary Acquiring Firm

And

**Shoprite Checkers Proprietary Limited in respect  
of the immovable property known as Sitari  
Village Centre**

Primary Target Firm

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Panel:	I Valodia (Presiding Member) A Ndoni (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	04 March 2025
Order issued on:	05 March 2025
Reasons Issued on:	17 March 2025

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### REASONS FOR DECISION

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#### Introduction

- [1] On 05 March 2025, the Competition Tribunal ("Tribunal") unconditionally approved the large merger whereby FPG Holdings (Pty) Ltd ("FPG Holdings") intends to acquire an immovable property and shopping centre from Shoprite Checkers (Pty) Ltd ("Shoprite") known as the Sitari Village Centre (the "Target Property").
- [2] Post implementation, FPG Holdings will exercise sole control over the Target Property.

## **Parties to the transaction and their activities**

### *Primary acquiring firm*

- [3] The primary acquiring firm is FPG Holdings, ultimately controlled by [REDACTED].
- [4] Apart from FPG Holdings, [REDACTED] also controls [REDACTED].
- [5] FPG Holdings wholly owns [REDACTED].
- [6] FPG Holdings, all its controlling entities, the firms controlled by its controlling entities and the firm it controls will collectively be referred to as the “FPG Group”.
- [7] The FPG Group invests in and owns office, retail and industrial properties in the Western Cape, Northern Cape, Gauteng and North West provinces. Relevant to the proposed merger are the FPG Group’s retail properties located in the Western Cape Province.

### *Primary target firm*

- [8] The primary target firm is the immovable property known as the Sitari Village Centre (the “Target Property”). The Target Property is wholly controlled by Shoprite Checkers (Pty) Ltd (“Shoprite”) and does not control any firms.
- [9] The Target Property is a retail neighbourhood shopping centre with a gross lettable area (“GLA”) of 8 870 m<sup>2</sup>, situated at Corner Sundarbans Drive and Old Main Road, Croydon, Cape Town. Shoprite Checkers is the anchor tenant of the Target Property. The tenant stores of the centre also include Woolworths Food, Dis-Chem Pharmacy, Vida e Caffè, Pick n Pay Clothing, the Sitari Health Shop and Medical Centre, as well as a variety of other clothing, health, beauty and household goods stores, along with a few restaurants.

## **Description of the transaction and rationale**

[10] In terms of the proposed merger, FPG Holdings intends to acquire the Target Property from Shoprite. Post implementation, FPG Holdings will exercise sole control over the Target Property

[11] In relation to the rationale, the FPG Group states that the acquisition of the Target Property falls within its growth strategy and is further aligned with the overall goals of FPG Holdings. From Shoprite's perspective, the proposed merger presents an opportunity to realise its investment.

### **Competition assessment**

*The market for the provision of rentable retail space in convenience centres within a 15 km of the Target Property.*

[12] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed merger results in a horizontal overlap in the market for the provision of rentable retail space in convenience centres within a 15 km radius of the Target Property.

[13] The Commission found that in the market for the provision of rentable space in convenience centres, the merged entity will have an estimated combined post-merger market share of approximately 12.07%, with an accretion of 2.70%. These market shares are based on the merging parties' estimates of the total GLA in the relevant market. Other convenience centres located within a 15 km radius of the Target Property include the Heldervue Shopping Centre, the Sanbury Square Shopping Centre, the Waterstone Village Shopping Centre, the Helderberg Centre, the Vineyard Shopping Centre, amongst others.

[14] Based on the above, Commission found that the proposed merger is unlikely to lead to a substantial prevention or lessening of competition in the market for the provision of rentable retail space in convenience centres within a 15 km radius of the Target Property.

*Lease agreement between FPG Holdings and Shoprite (i.e. the seller) in respect of the Target Property*

[15] The Commission noted that FPG Holdings entered into a lease agreement with Shoprite in August 2024 (the “Lease Agreement”) for a period of 10 years (which may be renewed for 4 further periods of 5 years, per renewal).

[16] The Commission identified three clauses in the Lease Agreement which, in its view, have the effect of creating exclusive lease provisions in favour of Shoprite, not enjoyed by other tenants in the Target Property. The clauses identified relate to the following:

*16.1. Tenant mix and the required tenancy levels clauses* – The clauses identified require the landlord [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

*16.2. Future alterations and additions* – This clause requires the Lessor to [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[17] In this regard, the Commission requested the merging parties to amend the identified clauses in the Lease Agreement such that there are no provisions which have the effect of affording Shoprite exclusivity protections.

[18] The merging parties indicated that they do not agree that the clauses identified by the Commission are akin to exclusivity protections. The merging parties submit that Shoprite engaged extensively with the Commission during the Grocery Retail Market Inquiry (“GRMI”), particularly with regard to the specific clauses contained within its leases. The merging parties submit that the clauses disputed by the Commission are compliant with the conclusions arrived at by the GRMI, and that these clauses do not constitute exclusivity provisions and are required by Shoprite in order to protect its operations as the anchor grocery retail tenant in the Target Property.

- [19] The Commission accepted the arguments advanced by the merging parties as to why clauses 13.4 and 14.1 do not constitute exclusive lease provisions, however, was of the view that clause 13.5 is exclusionary in nature. In the Commission's view, clause 13.5 has the effect of restricting the size and location of other tenants within the Target Property as Shoprite may withhold its consent in order to prevent and/or restrict the entry and/or expansion of competing grocery retailers and/or competing speciality or limited line stores within the Target Property.
- [20] Shoprite agreed to amend the wording of clause 13.5 of the Lease Agreement which reflects that Shoprite's consent shall not be unreasonably withheld. Furthermore, Shoprite agreed to include an additional clause which states that the clauses should not be construed to mean that Shoprite is able to restrict or prevent the Lessor from letting the premises to competing grocery retailers who compete with Shoprite.
- [21] The Commission was of the view that the proposed amendments sufficiently address the concerns relating to the Lease Agreement. The Commission viewed the unequivocal undertaking provided by Shoprite to amend the Lease Agreement as sufficient and did not deem it necessary to impose a condition in this regard.
- [22] On 04 March 2025, we requested the merging parties and the Commission to elaborate on the reasons why the undertaking did not necessitate the imposition of a condition.<sup>1</sup> In response, the merging parties and Commission submitted that the Lease Agreement was amended and re-signed on 19 February 2025 in accordance with the Commission's requests and therefore, there is no need for any merger condition to be imposed as the Commission's concerns have been adequately addressed.<sup>2</sup>

## **Public interest**

### *Employment*

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<sup>1</sup> Email correspondence from the Tribunal to the parties dated 04 March 2025.

<sup>2</sup> Email correspondence from the merging parties dated 04 March 2025. Further see email from the Commission dated 04 March 2025.

[23] The merging parties submitted that “*the proposed transaction will not have an adverse impact on employment. There are currently no employees in respect of the transferred firm.*” The Commission further engaged the relevant employee representatives, and no employee related concerns were raised.

[24] The Commission also considered the effect of the proposed merger on third-party property management firm/s. In this regard, the Commission found that the Target Property is currently being managed by Shoprite. Post-merger, Shoprite will cease management of the Target Property and FPG Holdings will take over the management of the Target Property. Therefore, the proposed merger will not result in the displacement of any third-party property management firm.

[25] 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*

[26] The Commission found that FPG Holdings has a shareholding by historically disadvantaged persons (“HDPs”) of 97.47%. On the other hand, the Target Property has an indirect HDP shareholding of 18.57%. Post-merger, the Target Property will remain significantly empowered.

[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: Imraan Valodia  
Signed at: 2025-03-17 12:26:40 +02:00  
Reason: Witnessing Imraan Valodia

*Imraan Valodia*

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**Prof. Imraan Valodia**  
**Ms Andiswa Ndoni and Adv. Geoff Budlender**

**17 March 2025**

**Date**

Tribunal Case Manager:	Tarryn Sampson
For the Merging Parties:	Vani Chetty of Vani Chetty Competition Law representing the acquiring firm and Graeme Wickins of Werksmans Attorneys representing the target firm
For the Commission:	Reabetswe Molotsi and Betty Mkhathshwa