



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM003Apr24

In the matter between:

Bankenveld District City (Pty) Ltd

Primary Acquiring Firm

And

Portion 5 of the Farm Bergvallei 37 C/O University of
The Witwatersrand, Johannesburg

Primary Target Firm

Panel	:	L Mncube (Presiding Member)
	:	G Budlender (Tribunal Member)
	:	A Ndoni (Tribunal Member)
Heard on	:	05 June 2024
Order issued on	:	05 June 2024
Reasons issued on	:	28 June 2024

REASONS FOR DECISION

Introduction

[1] Bankenveld District City (Pty) Ltd (“Bankenveld”) intends to acquire a 100% undivided share in Portion 5 of the Farm Bergvallei 37, Registration Division IR, Gauteng, measuring 290.70 hectares, known as the Frankenwald site (“Target Property”). After implementation of the proposed merger, Bankenveld will exercise sole control over the Target Property.

The parties and their activities

Acquiring Firm

- [2] The primary acquiring firm is “Bankenveld”, a private, property development company incorporated in South Africa for the purpose of acquiring the target property and improving it through township establishment and the installation of municipal services. Bankenveld is jointly controlled by Eris Property Group (Pty) Ltd (“Eris”) and Calgro M3 Land (Pty) Ltd (“Calgro M3”), each holding 50% of the issued share capital in Bankenveld.
- [3] Eris is a property investment holding company which provides various property related services. Eris’ activities include the provision of office, industrial, residential, student accommodation and retail property spaces. Eris is controlled by Momentum Metropolitan Holdings Ltd (“Momentum”) [REDACTED]%. The remaining [REDACTED]% in Eris is held by an Employee Trust and Management.
- [4] Calgro M3 is a wholly owned subsidiary of Calgro M3 Developments (Pty) Ltd which in turn is a wholly owned subsidiary of Calgro M3 Holdings Ltd (“Calgro M3 Holdings”). Calgro M3 is a property and property-related investment company that specialises in the development of integrated residential developments and the development and management of memorial parks.
- [5] Of relevance to this transaction are the Acquiring Group’s activities in the provision of rentable office property.
- [6] Bankenveld, all the firms controlling it and all firms controlled by those controlling firms are collectively referred to as the “Acquiring Group”.

Target Firm

- [7] The target firm is the Target Property located at Portion 5 of the Farm Bergvallei 37 situated in Sandton, Gauteng (known as Frankenwald site). The Target Property is wholly owned by the University of the Witwatersrand (“Wits”), a higher education institution established in terms of the Higher Education Act, No. 101 of 1997, (as amended). Wits is not directly or indirectly controlled by any firm/s.
- [8] The Target Property consists of land known as the Frankenwald site, which is situated in Sandton, Gauteng. There are currently 4 (four) buildings situated at the

Target Property, namely: a Grade C office property and 3 (three) warehouses which are classified as light industrial property.

- [9] The buildings at the Target Property are currently leased to the following tenants, namely [REDACTED]. The merging parties submit that the Target Property will be developed through township establishment and the installation of municipal services. The 4 (four) buildings situated at the Target Property will be demolished post-merger, relatively early in the development process. Approximately, 20 000 (twenty thousand) residential units will be developed and between 450 000 m² – 500 000 m² of land will be available for retail, office, commercial warehousing, educational and healthcare development purposes.

Rationale

- [10] The merger parties submit that the rationale for the transaction on the part of Wits is that it wishes to maximise the Target Property's value for the long-term benefit of the university as well as to maximise the revenue received from the Target Property in support of its long-term objectives to enable access to education for students from poor and underprivileged settings.
- [11] On the part of The Eris Property Group (one of the joint controlling shareholders of Bankenveld) the rationale for the transaction is that it aims to, as one of its business strategies, secure well-located, strategic and large-scale precinct development land that would provide long-term sustainable growth to its business.
- [12] The acquisition of the Target Property by Bankenveld provides the Eris Property Group with a potential pipeline which is aligned with the Group's core business operations being the investment in and the development and management of commercial, retail, industrial and potentially educational and healthcare facilities (with the residential properties being developed by its partner in Bankenveld – the Calgro M3 Group).

[13] Insofar as Bankenveld's other joint controlling shareholder, the Calgro M3 Group is concerned, it is submitted that it has traditionally undertaken residential integrated developments in highly populated areas where access to places of work exist through different modes of transport and where there is a significant need for affordable, quality housing opportunities. The Target Property is located next to Alexandra and is the last remaining large-scale property in the greater Sandton area. The addition of the Target Property development, which should contribute in excess of 20 000 residential opportunities to the Calgro M3 Group pipeline, also ensures the continued sustainability of the Calgro M3 Group.

Competition Assessment

Relevant market

[14] The Commission considered the horizontal overlap between the activities of the merging parties in relation to the provision of lettable office property, retail property, industrial property, as well as the sale of residential property.

Lettable office property

[15] The Tribunal has previously found that "*office properties are sub-divided into different classes, for example, Grade P, A, B or C office properties*".¹ This means that office properties of different Grades (i.e. Grade A & Grade C) may not be substitutable from a tenant's perspective.

[16] The merging parties submitted that they intended to develop office property with a GLA of approximately [REDACTED] at the Target Property. The merging parties submitted further that it is not yet clear which office Grade/s will be developed/built at the Target Property. Given this submission, the Commission assessed the effects of the proposed merger, on a broad market for the provision of lettable office property.

¹*Momentum Property Investments (Pty) Ltd and Bonatla Property Holdings Limited (34/LM/Jul03) [2003] ZACT 50 (25 September 2003).*

[17] In line with *SKG Properties Fund I (Pty) Ltd v Tocolog (Pty) Ltd*,² the Commission assessed the post-development market for the provision of office property within a 15km radius from the Target Property.

[18] We did not receive any evidence suggesting a departure from this approach and therefore considered the impact of the merger (without concluding on the relevant market) on a broad market for the provision of lettable office property within a 15km radius from the Target Property.

Residential market

[19] In *Amdec Investments (Pty) Ltd and Westbrook Residential Property Development*,³ the Tribunal accepted the holding and management of residential properties for sale and letting as separate and distinct product markets. The Commission noted that the merging parties are both (or will be in the case of the Target Property) involved in the sale of residential properties and assessed the effects of the proposed merger, on the market for the sale of residential properties in the low- to middle-income housing market.

[20] In *AFHCO Holdings (Pty) Ltd / Indluplace Properties Ltd*⁴, the Tribunal found that residential properties situated more than 8km apart are unlikely to constitute part of the same geographic market. The Commission found that the Acquiring Group does not own any residential properties situated within an 8km radius from the Target Property and that there is no geographic overlap in the activities of the merging parties.

[21] We did not receive any evidence suggesting a departure from this approach and therefore considered it not necessary to assess this market any further.

Retail market

²*SKG Properties Fund I (Pty) Ltd v Tocolog (Pty) Ltd* (LM096Oct21) [2021] ZACT 69 (13 December 2021).

³*Amdec Investments Proprietary Limited v Westbrook Residential Development Proprietary Limited* (LM165Mar20) [2020] ZACT 14; [2020] 1 CPLR 342 (CT); [2020] HIPR 139 (CT) (8 April 2020).

⁴*AFHCO Holdings Proprietary Limited v Indluplace Properties Limited* (LM002Apr23) [2023] ZACT 30 (26 July 2023).

[22] The Tribunal has previously considered a product market for the provision of rentable retail property.⁵ In light of this guidance, the Commission assessed the effects of the merger on the broad market for the provision of retail property.

[23] The Tribunal has previously considered the relevant geographic market for retail property as a 15km radius surrounding the Target Property⁶. Based on this guidance, the Commission found that there is no geographic overlap between the activities of the merging parties since the Acquiring Group does not own any retail property within a 15km radius from the Target Property.

[24] We did not receive any evidence suggesting a departure from this approach and therefore considered it not necessary to assess this market any further.

Industrial Property

[25] The Tribunal has previously considered a product market for the provision of industrial property.⁷ In light of this guidance, the Commission assessed the effects of the merger on the broad market for the provision of industrial property.

[26] The Tribunal has previously decided that the relevant geographic market for the provision of industrial property is within a 12km or 15km radius from the Target Property.⁸ In light of this guidance, the Commission found no geographic overlap arises (or will arise) between the activities of the merging parties.

[27] We did not receive any evidence suggesting a departure from this approach and therefore considered it not necessary to assess this market any further.

Horizontal issues

⁵ *Atterbury Investment Holdings Ltd v Abacus Property Holdings (Pty) Ltd* (65/LM/Oct10) [2010] ZACT 78 (10 November 2010).

⁶ *Redifine Retail Property Limited and Pan Africa Development Proprietary Limited and a retail property development owned by Pan Africa Phase 2 Proprietary Limited* (Tribunal Case No.: LM154Dec23).

⁷ *Barkophor Investments (Pty) Ltd and Izandla Property Fund (Pty) Ltd in respect of the letting enterprise known as Sasol DC* (Case No.: LM138Dec23); *Attacq Waterfall Investment Company (Pty) Ltd v Pocket 3 and Pocket 24 on Portion 1 of the Waterfall Farm 5* (LM090Sep23) [2023] ZACT 79 (4 December 2023).

⁸ *Ibid.*

[28] In assessing the competition effects of the proposed transaction in the post-development broad market for the provision of lettable office property in Frankenwald and immediately surrounding nodes within a 15km radius, we note that the Commission relied on the South African Property Owners Association's ("SAPOA") Office Vacancy Report for the third quarter of 2023 ("SAPOA Report") to estimate the market shares of the merging parties in the relevant market and found that the merging parties combined post development market shares for the provision of office property in Frankenwald is approximately [REDACTED] % with a minimal increment of less than [REDACTED] %. This suggests to us that the merged entity will face significant competitive constraints which would not be removed as a result of the merger.

[29] No third party raised any competition concerns about this aspect of the proposed merger.

[30] Therefore, we do not consider it likely that the merger will result in a substantial lessening of competition.

Public Interest

[31] The merging parties provided an unequivocal statement that there will be no job losses because of the proposed transaction. None of the employee representatives raised employment concerns regarding the proposed transaction.

[32] We also note that Wits does not have any ownership /shareholding held by HDPs. On the other hand, Bankenveld is [REDACTED] % owned by HDPs. Therefore, the merger will result in an increase in HDP ownership at the Target Property.

[33] Further, we did not receive any evidence suggesting that the proposed merger would not be justifiable on the other public interest considerations.

Conclusion

[34] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any public interest concerns.

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

Signed by:Liberty Mncube
Signed at:2024-06-28 14:43:34 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

28/06/24

Presiding Member
Prof Liberty Mncube

Date

Concurring: Ms Andiswa Ndoni and Adv. Geoff Budlender

Tribunal Case Manager: Princess Ka-Siboto
For the Merger Parties: Misha Van Niekerk of Adams & Adams.
For the Competition
Commission: Raksha Darji and Nhlakanipho Mbense