



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM022May24

In the matter between:

Directors Adventures Trust

Primary Acquiring Firm

And

Columbia Falls Properties 7 (Pty) Ltd

Primary Target Firm

And

The ANB Trust and SMB Trust

Primary Acquiring Firms

And

Various Target Retail Property Firms

Primary Target Firms

Panel:	L Mncube (Presiding Member) A. Ndoni (Tribunal Member) I Valodia (Tribunal Member)
Heard on:	23 July 2024
Order issued on:	23 July 2024
Reasons issued on:	21 August 2024

REASONS FOR DECISION

Approval

- [1] On 23 July 2024, the Competition Tribunal (“Tribunal”) conditionally approved two indivisible transactions that form part of one merger, part one is whereby Directors Adventures Trust will acquire the remaining 50% of the Columbia Falls

Properties 7 Proprietary Limited from the Bentel Group. Post-merger Director Adventures Trust will wholly own Columbia Falls.

- [2] Part two, the ANB Trust and SMB Trust intends to acquire Aubsel Investments (Pty) Ltd, City Square Trading 43 (Pty), Dusty Moon Investments 193 (Pty) Ltd and XTLS Investments 143 (Pty) Ltd, collectively referred to as the “Target Retail Properties” from Saltzman Group. Post-merger, the ANB and SMB Trust will solely control the Target Warehouse and Saltzman Group. will solely control the Target Retail Properties.

Parties to the transaction and their activities (Part One)

Primary acquiring firm

- [3] The primary acquiring firm is Directors Adventures Trust, which is controlled by the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] in turn, controls [REDACTED], which in turn holds non-controlling interests in several retail properties.
- [4] Directors Adventures Trust controls [REDACTED] and jointly controls Columbia Falls Properties 7 (Pty) Ltd (“the Target Warehouse”) (50%)¹. Saltzman Family Trust, Ivlyn, Directors Adventures Trust and their subsidiaries will be collectively called the “Saltzman Group”.
- [5] The Saltzman Group further holds shares in several other property holding companies including a non-controlling 29% interest in the Dis-Chem pharmacy business and a 50% interest in Target Retail Properties. The Target Retail Properties hold shares in retail properties active within Gauteng.

¹ The remaining 50% is held by the Bentel Group

Primary target firm

- [6] The primary target firm is Columbia Falls Properties 7 (Pty) Ltd (“Target Warehouse”). The Target Warehouse is jointly controlled by the Saltzman Group (50%), the ANB Trust (25%) and the SMB Trust (25%).
- [7] The Target Warehouse is used by Dis-Chem Pharmacies (“Dis-Chem”) as a warehouse, distribution centre and as head office, in Midrand.

Parties to the transaction and their activities (Part Two)

Primary acquiring firm

- [8] The primary acquiring firms are the ANB Trust and the SMB Trust. [REDACTED]
[REDACTED]. The ANB Trust and the SMB Trust collectively and separately control [REDACTED] and [REDACTED] [REDACTED] respectively. ANB and SMB also control the [REDACTED] and the [REDACTED] and [REDACTED] collectively control several firms, most of which are retail properties.
- [9] The ANB Trust, the SMB Trust, the [REDACTED] and their subsidiaries and all their ultimate controllers [REDACTED] will be collectively referred to as the “Bentel Group”.
- [10] The Bentel Group is a property group specialising in property development, investment and leasing. The Bentel Group has a joint controlling interest in the Target Warehouse and the Target Retail Properties. The Bentel Group further owns a portfolio of properties mainly focused on the provision of lettable retail space. The Bentel Group has a portfolio of several quality retail assets as well as top-end commercial buildings. The Bentel Group owns several retail centres in the West and East Rand of Gauteng, Midrand, Johannesburg, Centurion, Durban and Vereeniging. Furthermore, the Bentel Group is also responsible for managing Target Retail Properties and these retail centres.

Primary target firm

[11] The primary target firms are the Target Retail Properties. The Saltzman Group also holds shares in several other property holding companies which are not relevant to the proposed transaction.

Proposed transaction and rationale

Part one

[12] This involves the proposed acquisition by the Saltzman Group using Directors Adventures Trust for the remaining 50% of the issued share capital of the Target Warehouse from the Bentel Group.

Part two

[13] This involves the Bentel Group acquiring the remaining shares in the Target Retail Properties from the ANB Trust and SMB Trust.

[14] The first and second parts of the proposed transaction constitute a single indivisible transaction because they are legally and factually indivisible². Post-merger, the Saltzman Group will solely control the Target Warehouse and the Bentel Group will solely control the Target Retail Properties.

Rationale

[15] After 17 years of business relationship, the Bentel Group and the Saltzman Group have now decided to separate their business interests, with the Bentel Group taking sole control of the shopping centre portfolio, its main focus, and the Saltzman Group taking sole control of the Target Warehouse.

² See The Crown Gold Recoveries (Pty) Ltd, the Industrial Development Corporation of SA Ltd and Khumo Bathong Holdings (Pty) Ltd, Case Number. 31/LM/May02 and Sandown Motor Holdings (Pty) Ltd and McCarthy Ltd and Others, Case Number. LM070Jul19

[16] Both transactions take place between two common owners (the Saltzman Group and the Bentel Group). Both target firms are in the same line of business. This is an internal restructuring of the jointly owned entities so that, post-merger, each target firm will be solely owned by the Saltzman Group and the Bentel Group.

Overlaps

[17] In part one, there is no horizontal overlap as the merging parties do not offer interchangeable products or services. There is a vertical overlap in that the Saltzman Group holds 29% of the Dis-Chem business, while also intending to solely own the Target Warehouse.

[18] In part two, there is a horizontal overlap in the activities of the merging parties in that the Bentel Group already owns other retail shopping centres apart from the Target Retail Properties. There is also a notional vertical overlap as the Bentel Group is the property manager concerning the Target Retail Properties. These services are only provided to properties in which it has a shareholding, and the Target Retail Properties are currently serviced entirely by the Bentel Group.

[19] Since the Bentel Group will continue to manage Target Retail Properties, which will become wholly owned subsidiaries of the Bentel Group, no third-party property management firm will likely be foreclosed. Given that no competitor is likely to be foreclosed by the proposed transaction, we will not consider an assessment of this vertical dimension of the merger any further.

[20] We consider below the competition assessment raised by the horizontal overlap between the activities of the Target Retail Properties and the retail properties owned by the Bentel Group.

Relevant markets

- [21] In *Pareto Limited/Fountainhead Property*³, the Tribunal accepted that neighbourhood centres of vastly different gross lettable area sizes may compete against each other.
- [22] The Commission found that President Square Fochville, Northmead Square, Raslow Lifestyle Centre and Victory Park Centre are community centres. Additionally, the Commission found that Palms Place Centre and River Walk Centre are neighbourhood centres.
- [23] The Commission found that there are two geographic overlaps around the Vaal Triangle and Roodepoort areas. In the Vaal Triangle area, one of Bentel Group-owned shopping centres, namely, President Square Vaal, is located within a 16km radius of one of the target retail centres known as River Walk Shopping Centre. In the Roodepoort area, one of the Bentel Group-owned shopping centres, Cosmo Mall, is located within a 16km radius of two of the target retail centres in Lifestyle Crossing and Retail Crossing.
- [24] The Commission concluded and assessed the market for the provision of retail space in comparative centres within (i) a 16km radius of River Walk Centre (Three Rivers, Vaal Triangle) and within (ii) a 16km radius of Lifestyle Crossing and Retail Crossing (Wilgeheuwel, Roodepoort).
- [25] We do not conclude on the relevant markets, but instead assess the impact of the merger on the markets for providing retail space in the comparative centres within a 16km radius of River Walk Centre (Three Rivers, Vaal Triangle) and a 16km radius of Lifestyle Crossing and Retail Crossing (Wilgeheuwel, Roodepoort). We did not receive evidence or submission to suggest that we should depart from this way of framing the product and geographic market.

³ Pareto Limited and Fountainhead Property Collective Investment Scheme in Property, Case Number. 018556

Competition Assessment

Comparative centres within a 16km radius of River Walk Shopping Centre

- [26] The Bentel Group will account for approximately [10–15] % of the market for the provision of retail space in comparative centres within a 16km radius of River Walk Centre, with a market share accretion of below 12%.
- [27] The Bentel Group will continue to face competition from Growthpoint (Vaalgate and Riversquare), Vukile Properties and several others.
- [28] No third-party concerns were raised concerning the market for the provision of retail space in comparative centres within a 16km radius of River Walk Shopping Centre.
- [29] Based on the above, we did not identify any competition concerns in relation to the defined markets.

Comparative centres within a 16km radius of Lifestyle Crossing

- [30] The Bentel Group will account for approximately [10–15]% of the market for the provision of retail space in comparative centres within a 16km radius of Lifestyle Crossing and Retail Crossing (Roodepoort), with a market share accretion of less than 10%.
- [31] The Bentel Group will continue to face competition from Hyprop (Clearwater), Pareto (Cresta), Liberty (Westgate) and several others.
- [32] No third-party concerns were raised concerning the market for the provision of retail space in comparative centres within a 16km radius of Lifestyle Crossing and Retail Crossing.
- [33] Based on the above, we did not identify any competition concerns in relation to the defined markets.

Conclusion

[34] In light of the above, we conclude that this proposed transaction is unlikely to result in a substantial prevention or lessening of competition.

Public interest

Employment

[35] The proposed transaction does not raise employment issues because there will be no adverse effect on employment as it will not lead to job losses. The Commission contacted one of their employee representatives who did not raise any issues.

[36] Based on the above, the Commission is of the view the proposed transaction is unlikely to have a negative effect on jobs as it is a corporate restructuring of their jointly owned entities into sole ownership.

[37] Based on the above, we conclude that the proposed transaction is unlikely to have any adverse impact on employment.

Effect on the promotion of a greater spread of ownership to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market

[38] None of the merger parties' shares are held by historically disadvantaged persons ("HDPs"). The Commission requested the merging parties introduce HDP shareholding or an employee share ownership plan. Merging parties indicated that it is not feasible, as the Saltzman Group plans to sell the entire issued share capital of the Target Warehouse to Dis-Chem after the proposed transaction as an intermediate step.

[39] The Bentel Group proposed conditions to increase its procurement spend from small enterprises, micro-enterprises, HDPs, and suppliers with substantial ownership by women as set out in Schedule 1, which the Commission accepted.

Schedule 1: Category of expense and percentage increase

Category of expense	% Increase
Administrative costs	17
Cleaning/pest control and consumables	12
Fuel	18
Insurance	7
Security	10
Repairs & Maintenance	24

Other public interest considerations

[40] We received no evidence or submissions that the proposed transaction raises other public interest considerations.

Conclusion

[41] No third parties, whether customers or competitors, expressed any public interest issues about the proposed transaction.

[42] We conclude that the proposed transaction is justifiable on public interest grounds.

Conclusion

[43] In light of the above, we conclude that the proposed transaction does not substantially prevent or lessen competition and is justifiable on public interest grounds.

[44] We therefore approve the proposed transaction with conditions.



Presiding Member

Prof. Liberty Mncube

21 August 2024

Date

Concurring: Ms Andiswa Ndoni and Prof. Imraan Valodia

Tribunal case manager: Moleboheng Mhlati

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For the Commission: Rakgole Mokolo and Grashum Mutizwa