



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM031May24

In the matter between:

LUVON INVESTMENTS PROPRIETARY LIMITED

Acquiring Firm

and

**VERGELEGEN PROPERTY INVESTMENTS
PROPRIETARY LIMITED**

Target Firm

Panel:	L Mncube (Presiding Member) G Budlender (Tribunal Member) T Vilakazi (Tribunal Member)
Heard on:	27 June 2024
Order issued on:	27 June 2024
Reasons issued on:	25 July 2024

REASONS FOR DECISION

Approval

- [1] On 27 June 2024, the Competition Tribunal (“Tribunal”) conditionally approved the large merger whereby Luvon Investments (Pty) Ltd (“Luvon”), will acquire 50% issued share capital in Vergelegen Property Investment (Pty) Ltd (“VPI”). Post merger Luvon will exercise joint control over VPI.

Parties to the transaction and their activities

Primary acquiring firm

- [2] Luvon is controlled 60% by East & West Investments Proprietary Limited (“E&W”). E&W shareholders include Friederich Sönke Moolman Family Trust (25%), Friederich and Louise Moolman Family Trust (25%), Johannes Zacharias Moolman Junior Family Trust (25%) and the Jannie and Annette Moolman Family Trust (25%). The remaining 40% is held by Coma Beleggings (Pty) Ltd

(7%); Aeterno Investments 169 (Pty) Ltd (5%), Henosys (Pty) Ltd (5%); Mestoclox (Pty) Ltd (14%) and FS Moolman Investments (Pty Ltd) (9%). Both E&W and Luvon control multiple firms. All firms directly and indirectly controlled by E&W are called the “Acquiring Group”.

- [3] The Acquiring Group participates in various commercial, residential, and agricultural sectors throughout South Africa. Relevant to this proposed transaction, are the Acquiring Group’s services in the property sector, specifically, in the provision of rentable retail. The Acquiring Group's property portfolio in the Western Cape includes Meltz Centre and Philwest, both local retail convenience centres located within an 8.6km radius of VPI.

Primary target firm

- [4] The primary target firm, VPI is controlled by Collins Property Group Limited (“Collins”). Collins is listed on the Johannesburg Stock Exchange.
- [5] VPI is an investment holding company that is active in the investment and development of retail properties. VPI’s property portfolio includes Vergelegen Plein, a neighbourhood centre located in Somerset West (“Target Property”).

Proposed transaction and rationale

Transaction

- [6] According to the Sale of Shares and Claims agreement concluded between the parties, Luvon intends to acquire 50% of the issued share capital in VPI. Post-merger, VPI will be jointly controlled by Luvon and Collins.

Rationale

- [7] The Acquiring Group sees VPI as a low-risk investment with the potential for high returns due to its prime location, anchor tenants, and strong foot traffic. This allows the Acquiring Group to share in future revenue generated or in a future return on capital if the rental enterprise is sold. The sale allows Collins to partially

gain a return on investment, benefit from Luvon's expertise with VPI, and keep a stake in VPI.

Competition Assessment

- [8] Having considered the activities of the merging parties, we note that the proposed transaction raises a horizontal overlap, in that the merging parties overlap in the provision of rentable retail.
- [9] In *Hyprop/Attfund*¹, the Tribunal accepted that various shopping centres compete with each other from the tenant's perspective. The shopping centres can be segmented into types, including convenience centres. Convenience centres comprise standalone, convenience, neighbourhood, and to some extent, smaller community-sized centres.
- [10] In *Vukile Property Fund/Encha Properties*², the Tribunal accepted that the geographic market for convenience centres is narrower within the other categories, and convenience centres are likely to compete within an approximate radius of 5 km - 10 km. Further, *Fortress Income Fund/Capital Property Fund*³, the Tribunal accepted that a 10 km radius could be considered in assessing competition between convenience centres.
- [11] The Commission did not conclude on a relevant market but assessed the effects of the provision of convenience centres within a 10km radius of Vergelegen Plein, the Target Property in Somerset West.
- [12] We also do not conclude on the relevant market, but instead assess the impact of the merger following the guidance developed in previous decisions. This is the market for providing convenience centres within a 10km radius of Vergelegen Plein in Somerset West.

¹Hyprop Investments Limited, Atterbury Investment Limited, Attfund Retail Limited and Mantrablox Proprietary Limited Case No: 05/LM/Jan11

²Vukile Property Fund Limited and 5 properties owned by Encha Properties (Pty) Ltd Case No: 016873

³Fortress Income Fund Limited and Capital Property Fund Limited Case No: LM064Jul15

[13] The Commission identified the competing convenience centres within a 10km radius of VPI. Accordingly, the merged entity will continue to face competition from alternative convenience centres such as the Pines, Strand Square, Circle Centre, Somerset Square, Broadway Square, Paardevlei Sentrum and Heldervue Shopping Centre.

[14] Based on the above, the Commission submitted that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

[15] No third parties, whether customers or competitors,

[16] raised any competition concerns about this aspect of the proposed merger.

Conclusion

[17] 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

[18] The merging parties have committed that the proposed transaction will not have a negative impact on employment and that there will be no job losses or retrenchments. The merging parties confirmed that neither Luvon nor VPI have employees.

[19] 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

[20] The Acquiring Group and the Target Firm have no HDP ownership. The Commission requested the merging parties tender a condition to address the lack of HDP ownership. The merging parties could not reach an agreement to relinquish even 5% ownership. Doing so would hinder one or more of the parties from jointly controlling the Target Property, which is the primary objective of the proposed transaction.

[21] Instead, the merging parties have agreed to subcontract ancillary services such as security, gardening, maintenance, and cleaning for the operation of Vergelegen Plein to firms with a majority HDP ownership. This commitment will last for five years and has a value of R6,000,000. In the previous financial year of 2023, VPI's spending on HDP service providers was R881,406.

Other public interest considerations

[22] We received no submissions or evidence that the proposed merger raises issues concerning other public interest considerations.

[23] No third parties expressed any public interest issues about the proposed merger.

Conclusion

[24] We conclude that the proposed transaction does not raise any other public interest issues.

Conclusion

[25] In light of the reasons outlined above, we conclude that the proposed transaction does not substantially lessen or prevent competition or raise public interest issues. We therefore approve the proposed transaction, conditionally.

Presiding Member

Prof. Liberty Mncube

25 July 2024

Date

Concurring: Adv. Geoff Budlender SC and Prof. Thando Vilakazi

Tribunal case manager: Moleboheng Mhlati

For the merging parties: Anneri Moolman and Conrad Dormehl

For the Commission: Nonhlanhla Msiza, Themba Mahlangu and Billy Mabatamela