



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: LM124Nov24

In the matter between:

Imperial Red Properties (Pty) Ltd

Primary Acquiring Firm

and

**Immovable Properties and Shopping Centre
Known as The Brookside Mall owned by
Shoprite Checkers Proprietary Limited**

Primary Target Firm

Panel	:	I Valodia (Presiding Member)
	:	A Ndoni (Tribunal Member)
	:	G Budlender (Tribunal Member)
Heard on	:	30 January 2025
Order issued on	:	30 January 2025
Reasons issued on	:	17 February 2025

REASONS FOR DECISION

Introduction

- [1] On 30 January 2025, the Competition Tribunal (“Tribunal”) conditionally approved a large merger wherein Imperial Red Properties Pty Ltd (“Imperial Red”) intends to acquire 100% of the shares in certain immovable properties and shopping centre known as Brookside Mall (“Brookside Mall”) from Shoprite Checkers (Pty) Ltd (“Shoprite”). Post-merger, Imperial Red will have sole control of Brookside Mall.

The parties and their activities

Primary Acquiring Firm

- [2] The primary acquiring firm is Imperial Red, a South African registered company, jointly controlled by Shanbar Property Development CC (“Shanbar”) and Ivlyn Consolidated Holdings Proprietary Limited (“Ivlyn”).¹ Shanbar is wholly owned by the Barnes Family Trust (“BFT”) and Ivlyn is wholly owned by the Saltzman Family Trust (“SFT”).
- [3] Shanbar and Ivlyn jointly own Woodburn Square Shopping Centre (“Woodburn”) and Arbour Arch Shopping Centre (“Arbour Arch”), which are retail property enterprises providing rentable space in Pietermaritzburg, KwaZulu Natal.² Imperial Red wholly owns Woodburn and Arbour Arch. Imperial Red, its controllers and subsidiaries are collectively referred to as the “Acquiring Group”.
- [4] Imperial Red, originally a shelf company, was acquired to develop and operate rental properties. Imperial Red recently acquired Woodburn, a single mixed-use neighbourhood shopping centre and specialist office, and Arbour Arch, which is under development.

Primary Target Firm

- [5] The primary target firm is Brookside Mall, comprising certain immovable and shopping centres, wholly owned by Shoprite Checkers (Pty) Ltd (“Shoprite”). Shoprite is wholly owned by Shoprite Holdings Limited (“Shoprite Holdings”).
- [6] Shoprite Holdings is a company listed on the Johannesburg Security Exchange Limited (“JSE”), with no direct or indirect ownership. Brookside Mall is referred to as the “Target Property” while Shoprite Holdings is referred to as the “Seller”.

¹ [REDACTED].

² Despite the JV, Shanbar owns a residential property, Cashmere Trade 39 (Pty) Ltd (“Cashmere”), and assets in the form of vacant lands in Pietermaritzburg, whereas Ivlyn owns none in the region.

- [7] The Target Property is a retail shopping centre in Pietermaritzburg, KwaZulu Natal, with a gross lettable area (GLA) of about 15,888m².

Description

- [8] The Commission assessed the proposed transaction and found that the Acquiring Group will acquire these specific parts of the Target Property:

- 8.1. portion 12 (of 3) of Erf 201 Pietermaritzburg, Registration Division FT, Province of KwaZulu Natal measuring in extent 568m² held under deed of transfer 2756/2019;
- 8.2. portion 3 of Erf 199 Pietermaritzburg, Registration Division FT, Province of KwaZulu Natal, measuring in extent 89m², held under deed of transfer 27565/2019; and
- 8.3. Erf 9926 Pietermaritzburg, Registration Division FT, Province of KwaZulu Natal, measuring in extent 6,6415 hectares, held under deed of transfer 27884/2010.

- [9] The Commission considered the Acquiring Group's initial intermediate step, whereby Shanbar would immediately re-sell the Target Property in a back-to-back indivisible transaction to Imperial Red in terms of which the latter will ultimately acquire the Target Property.

- [10] The Commission determined that Shanbar and Ivlyn share a common rationale for acquiring the Target Property. Since the Seller is a single common shareholder of the Target Property, the Commission considers both transactions to constitute a single indivisible transaction.³

- [11] Furthermore, the Commission found that as a consequence of the proposed transaction, both Ivlyn and Shanbar will be issued shares in Imperial Red to [REDACTED] % shareholders of the Target Property.

³ The main reason Shanbar is acquiring the transferred firm first is because Imperial Red could not secure loan guarantees in time during negotiations and Shanbar was able to.

Competitive assessment

- [12] The Commission assessed the activities of the merging parties and found that there is a horizontal overlap in that both parties provide rentable retail space within the same node in Pietermaritzburg.
- [13] The Commission also identified a vertical overlap, as Shanbar currently provides property management services to the Target Property. Following the merger, the Acquiring Group will continue offering these services. As a result, the Commission did not conduct any further assessment.
- [14] The Commission assessed the product market and classified the Acquiring Group's retail properties as (i) Local Convenience Centre and (ii) Neighbourhood Centre.⁴ The Target Property is classified under Community Centres with a GLA between 12000m² and 25000m².
- [15] Due to the lack of concerns, the Commission reached no definitive view but assessed the impact of the merger in the market for the provision of retail comparative centres.
- [16] The Commission considered the relevant geographic market for comparative centres to approximate a 16km radius.⁵ Further, the Commission found a geographic overlap for the merging parties' retail properties within Brookside Mall and Woodburn (2.75 km), and Brookside Mall and Arbour Arch (3.43 km).

Market share and concentration level

- [17] We are satisfied with the assessment that the Acquiring Group will account for approximately 16.89% of the market for the provision of retail space in comparative centres within a 16km radius of the Target Property, with a market share of 9.58%.

⁴ The GLA of (i) is between 1000m² and 5000m², whereas for (ii) is between 5000m² and 12000m².

⁵ In light of the radius test for comparative centres, the Commission considered the matter between Fountainhead Propety Trust Scheme and Pareto Limited, Case no. 018556.

- [18] Thus, we accept that the Acquiring Group will continue to face substantial competition from several players in the market. And that the GLA difference between the merging parties is unlikely to constitute the closest or strong competition due to the presence of community and convenience centres.
- [19] Based on the above, we consider the merged entity unlikely to raise concerns within the defined markets.

Public interest

Effect on employment

- [20] The merging parties noted that the transaction does not raise employment concerns since they do not have any employees.
- [21] Considering the above, we anticipate that the merger will unlikely raise negative employment effects.

Effect of the promotion of greater spread of ownership to increase the levels of ownership by historically disadvantaged persons (HDPs) and workers in firms in the market.

- [22] The merging parties indicated that the Acquiring Group holds no HDP shares, while the Target Property holds 20.50%. The Commission found that the transaction would result in a 20.50% dilution of HDP ownership and requested the merging parties to establish an HDP transaction or an employee share ownership programme (“ESOP”).
- [23] In response, the merging parties submitted that the transaction is debt-financed, therefore they are unable to establish an HDP transaction.⁶

⁶ The shareholders of the acquiring firm have invested substantial sums of money in order to fund this transaction, as well as sought a debt facility of over [REDACTED] million from Investec. The acquiring firm requires proceeds from the operation of the Target Property to service its debt facility and meet its financial covenants.

Furthermore, the merging parties submitted that it is impossible to establish an ESOP since they do not have any employees.

Equally weighty public interest remedies

- [24] In its assessment, the Commission requested the merging parties to consider equally weighty public interest remedies and found that the Acquiring Group already uses HDP service providers at its properties and has committed likewise at the Target Property.
- [25] In response, the Acquiring Group committed to utilising HDP service providers including but not limited to cleaning, meter reading, hygiene, landscaping, pest control, security and refuse collection, with an estimated total spend of R14 021 255 at the Target Property.
- [26] The merging parties also submitted that all but two services (i.e., refuse collection and meter reading) are HDP service providers.
- [27] The merging parties' proposed commitment will have effect over a period not less than five years.⁷
- [28] We find that the proposed conditions address the public interest concerns raised and therefore justify the merger on public interest grounds.

Other Public interest concerns

- [29] The proposed transaction does not raise any other public interest concerns.

Conclusion

- [30] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the defined market and does not raise any significant public interest concerns.

⁷ The parties further submit that this will ensure a long-term commitment to HDP-owned businesses, in line with the spirit and purpose of section 12A (3)(e) of the Act.

[31] We therefore approve the proposed transaction subject to the conditions attached as Annexure "A" of the order.

Signed by Imraan Valodia

Reason: Witnessing Imraan Valodia



Prof. Imraan Valodia

Date

Ms Andiswa Ndoni and Adv. Geoff Budlender SC concurring.

Tribunal Case Manager: Thresho Galane

For the Merger Parties: Graeme Wickins of Werksmans Attorneys

For the Commission Rakgole Mokolo and Grashum Mutizwa