

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM121Nov24

In the matter between:

Waterview Close Properties Proprietary Limited

Primary Acquiring Firm

and

Erven 6[...], 6[...]² and 6[...]³ Montague Gardens

Primary Target Firm

Panel:	A Ndoni (Presiding Member)
	I Valodia (Tribunal Member)
	G Budlender (Tribunal Member)
Heard on:	21 January 2025
Decided on:	21 January 2025
Reasons issued on:	18 February 2025

REASONS FOR DECISION

Introduction

[1] On 21 January 2025, the Competition Tribunal ("Tribunal") conditionally approved a large merger in which Waterview Close Properties Proprietary Limited ("**Waterview**") will acquire Erven 6[...], 6[...]² and 6[...]³ Montague Gardens (the "**Target Properties**") from Smerelda Property Investments Proprietary Limited ("**Smerelda**" or the "**Seller**") (the "**Proposed Transaction**").

Parties to the transaction and their activities

[2] The primary acquiring firm is Waterview, a newly incorporated company in accordance with the laws of South Africa, which does not currently provide any products and /or services. Waterview is ultimately controlled by Super Group ("SGHC") Limited ("Super Group"). Super Group controls numerous other firms in South Africa, including Digital Outsource Services (Pty) Ltd ("DOS"), Osiris Trading (Pty) Ltd and Raichu Investments (Pty) Ltd.

[3] Super Group is an NYSE-listed holding company of global Sports and iGaming brands.

[4] Super Group's interactive gaming brands, such as Jackpot City, Spin Casino, Dream Bingo and Amazon Slots, provide online casino entertainment. Its brand, Betway, is an online global sportsbook that provides betting and casino entertainment. Waterview and the firms it controls are collectively referred to as the "Acquiring Group".

[5] The Acquiring Group currently leases the Target Properties from Smerelda.

[6] The Target Properties consist of three separate erven on which four A-grade office buildings have been erected (i.e., Waterview Park in Century City, Cape Town).¹

[7] The Target Properties are currently owned by Smerelda, a property investment firm. Smerelda is controlled by Cape Prop Limited.

[8] The Target Properties are managed by DOS. DOS sub-leases space to various entities in the Acquiring Group. Post-merger, DOS plans to continue managing the Target Properties.

Proposed transaction

¹ The primary target firms comprise of the following properties: Erf 6[...] Montague Gardens, Cape Town, Western Cape; Erf 6[...]2 Montague Gardens, Cape Town, Western Cape; and Erf 6[...]3 Montague Gardens, Cape Town, Western Cape.

Transaction

[9] In terms of the proposed transaction, Waterview intends to acquire the Target Properties from Smerelda. Post-merger, Waterview will exercise sole control over the Target Properties.

Competition assessment

[10] The Competition Commission ("Commission") found that the Proposed Transaction does not result in a horizontal overlap between the merging parties. This is because the Acquiring Group is not in the market for the provision of rentable office property. In addition, no vertical concerns arise as a result of the Proposed Transaction.

[11] The Commission's investigation reveals that the Target Properties are currently leased to the Acquiring Group excluding a portion of the roof area of the Waterview Park 2 building, which is let separately by Smerelda to [.....]

[12] The merging parties have indicated that [...] rights related to the rooftop space on the Waterview Park 2 building will persist post-merger.

[13] In line with the Commission's recommendation and having considered the activities of the merging parties' submission, we find that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in any market in South Africa.

Public interest assessment

Employment

[14] The merging parties submitted to the Commission that the proposed transaction does not result in any retrenchments or job losses. Both Waterview and the Target Properties do not have any employees.

[15] The Commission found that the Target Properties are currently managed by the Acquiring Group which currently holds the head lease for the Target Properties.

[16] In light of the above, there are no employment concerns arising from the proposed transaction.

Promotion of a greater spread of ownership

[17] In assessing the effect of the proposed transaction on the promotion of a greater spread of ownership, the Commission noted that neither Waterview nor Smerelda (the target properties) have shareholding held by historically disadvantaged persons ("HDPs"). In light of this, the Commission requested the merging parties to indicate how the proposed transaction would promote a greater spread of ownership, as envisaged by section 12A(3)(e) of the Act.

[18] The merging parties submitted that no remedies to address a greater spread of ownership were warranted in this merger. However, they proposed a condition to procure [.....]

[19] The Commission accepted this commitment as satisfactory. Consequently, it recommended the approval of the proposed transaction, subject to the agreed conditions set out in **Annexure A**.

[20] After considering the submissions from both the Commission and the merging parties, along with the tendered condition, we conclude that the proposed transaction does not raise public interest concerns that warrants further intervention, as envisaged by section 12A(3)(e) of the Act.

[21] For these reasons, we find that the proposed transaction does not raise any public interest concerns.

Other public interest considerations

[22] No evidence or submissions were presented indicating that the proposed transaction raises public interest concerns. We are satisfied that the merger will not negatively impact the factors outlined in section 12A(3) of the Act.

Conclusion

[23] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. No other public interest issues arise.

[24] We, accordingly, approved the proposed transaction on the basis of the condition in **Annexure A** attached to our order dated 21 January 2025.

Ms Andiswa Ndoni

Date: 18 February 2025

Professor Imraan Valodia and Advocate Geoff Budlender SC concurring.

Tribunal Case Manager: Sinethemba Mbeki

For the Merging Parties: Martin Versfeld, Sarah Manley, Bianca Viljoen of
Webber Wentzel

For the Commission: Reabetswe Molotsi and Themba Mahlangu

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Panel: A Ndoni (Presiding Member)
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 G Budlender (Tribunal Member)

Heard on: 21 January 2025

Decided on: 21 January 2025

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Presiding Member
Ms Andiswa Ndoni

Date: 21 January 2025

Concurring: Professor Imraan Valodia and Advocate Geoff Budlender SC

Merger Clearance Certificate

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Date : 21 January 2025

To Webber Wentzel Attorneys

Case Number: LM121Nov24

Waterview Close Properties (Pty) Ltd And Erven 6[...], 6[...]² and 6[...]³ Montague Gardens

You applied to the Competition Commission on **08 November 2024** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

☐ no conditions.

☒ the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

This form is prescribed by the Minister of Trade and Industry in terms of section 27 (2) of the Competition Act 1998 (Act No. 89 of 1998).

CONFIDENTIAL
ANNEXURE A
WATERVIEW CLOSE PROPERTIES PROPRIETARY LIMITED
AND
ERVEN 6[...], 6[...]² AND 6[...]³ MONTAGUE GARDENS
CT CASE NUMBER: LM121Nov24

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below, and related expressions bear corresponding meanings –

1.1 **"Acquiring Firm"** means Waterview Close Properties Proprietary Limited;

1.2 **"Approval Date"** means the date referred to on the Tribunal's Merger Clearance Certificate (Notice CT 10), being the date on which the Merger is approved in terms of the Competition Act;

1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.4 **"Competition Rules"** means the Rules for the Conduct of Proceedings in the Commission;

1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;

1.6 **"Conditions"** means these conditions set out herein;

1.7 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.8 **"HDP"** means a historically disadvantaged person as defined in section 3(2) of the Competition Act;

1.9 **"HDP-Owned"** means owned as to, at least, 50% plus 1 share by HDP(s);

1.10 **"HDP Service Providers"** means service providers which are HOP-Owned;

1.11 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;

1.12 **"Merger"** means the transaction in terms of which the Acquiring Firm will acquire the Target Properties;

1.13 **"Merger Parties"** means the Acquiring Firm and the Target Properties;

1.14 **"Target Properties"** means Erven 6[...], 6[...]2 and 6[...]3 Montague Gardens;

1.15 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and

1.16 **"Tribunal Rules"** mean the Rules for the Conduct of Proceedings in the Tribunal.

2. PROCUREMENT CONDITIONS

2.1 [.....]

2.2 For the avoidance of doubt –

2.2.1 [.....]

2.2.2 [.....]

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1 The Merger Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.

3.2 For the duration of the Conditions, being three years after the expiry of the last contract referred to in clause 2 above, the Merger Parties shall, within 10 Days of each anniversary of the Implementation Date, provide the Commission with an affidavit attested to by a senior official of the Acquiring Firm, confirming compliance with the Conditions.

3.3 The Commission may at any time request any other documentation or information it deems necessary to monitor compliance with the Conditions.

4. APPARENT BREACH

4.1 Should the Commission determine or receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

5. VARIATION OF CONDITIONS

5.1 The Merger Parties and/or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

6. GENERAL

6.1 All correspondence concerning these Conditions must be submitted to the following email address: m[...] and m[...].