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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM218Oct17

In the matter between:

SA Retail Properties (Pty) Ltd	Primary Acquiring Firm
And	
Silver Crown Trading 27 (Pty) Ltd, Storage Genie (Pty) Ltd and related parties in respect of six storage unit properties	Primary Target Firms

Panel	: Mr Andreas Wessels (Presiding Member)
	: Mrs Medi Mokuena (Tribunal Member)
	: Ms Andiswa Ndoni (Tribunal Member)
Heard on	: 1 March 2018
Order Issued on	: 1 March 2018
Reasons Issued on	: 23 March 2018

REASONS FOR DECISION

APPROVAL

[1] On 1 March 2018 the Competition Tribunal ("Tribunal") conditionally approved the transaction involving SA Retail Properties (Pty) Ltd ("SAR") and Silver Crown Trading 27 (Pty) Ltd ("Silver Crown"), Storage Genie (Pty) Ltd ("Storage Genie") and related parties in respect of six storage unit properties.

[2] The reasons for the conditional approval of the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary Acquiring Firm

[3] The primary acquiring firm is SAR. SAR is a wholly-owned subsidiary of SA Corporate Real Estate Limited ("SACREL"), a JSE listed real estate investment trust. SACREL controls over 30 firms. SACREL and its subsidiaries will be referred to as the "acquiring group".

[4] The acquiring group owns commercial properties and various storage units throughout South Africa.

Primary Target Firms

[5] The primary target firms are Silver Crown, Storage Genie and related parties in respect of six storage unit properties. Silver Crown directly and indirectly controls Storage Genie, Vigasat (Pty) Ltd ("Vigasat"), SAC Storage (Pty) Ltd ("SAC Storage"), Aztitone (Pty) Ltd ("Aztitone") and Lykoi (Pty) Ltd ("Lykoi").

[6] Of relevance to the competition assessment of the proposed transaction is the six storage facilities directly and indirectly controlled by the abovementioned firms. These six storage facilities are located in the following geographic areas: Atlas Road (Ekurhuleni); Sebenza (Ekurhuleni); Cresta (Randburg); Erand; Fairlands; and Milnerton. The six storage facilities will be referred to as the "target properties".

[7] In addition, SAR will in terms of the proposed transaction have the right to purchase future storage sites which may be developed by Storage Genie in terms of a "partnership" arrangement. The merging parties however do not at this stage know where these future self-storage sites will be developed or their capacities.

PROPOSED TRANSACTION AND RATIONALE

[8] In terms of a *Heads of Terms agreement*, the proposed transaction entails SAR acquiring six storage facilities from Storage Genie and the

abovementioned related entities. Furthermore, SAR will have the right to purchase storage units which may in future be developed by Storage Genie in terms of a "partnership" agreement.

[9] SACREL submitted that it wishes to diversify its property exposure and expand its national footprint.

[10] The proposed transaction will enable Storage Genie to dispose of its current storage property portfolio and focus on the development and construction side of its business.

IMPACT ON COMPETITION

[11] The Competition Commission ("Commission") found a horizontal overlap between the activities of the merging parties in the provision of self-storage facilities.

[12] The facilities to be acquired at Erand, Milnerton and Fairlands consist of vacant land with no tenants. For the existing storage facilities at Atlas Road (Ekurhuleni), Sebenza (Ekurhuleni) and Cresta (Randburg) the Commission, from a geographic market delineation perspective, considered an area with a 10 km radius around the target storage facilities. On this basis a geographic overlap was found in relation only to the facilities situated at Cresta and Sebenza. We discuss each of these areas below and then discuss the abovementioned future self-storage sites (see paragraphs 7 and 8 above).

Sebenza

[13] For the Sebenza storage facility the Commission found that the merged entity will have a post-transaction market share of less than 20% in the provision of self-storage facilities within a 10 km radius. Competitors in this geographic area include Stor-age (Giloolsy and Kempton Park) and Xtraspace (Edenvale and Kempton Park). The Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in this relevant market. We concur with this finding.

Cresta

[14] For the Cresta storage facility the Commission found that the merged entity will have a post-transaction market share of approximately 34% in the provision of self-storage facilities within a 10 km radius. The Commission however found a substantial prevention or lessening of competition in this market unlikely because of the existence of competitors such as Storage RSA, Stor-age Constantia Kloof and Kwik-Storage Gordon Road within the 10 km radius. In addition, a number of other competitors were identified within a 20 km radius of the Cresta storage facility. Furthermore, the Commission stated that a previous customer of the Cresta storage facility indicated that it was able to switch to a competing storage facility in close vicinity to the Cresta facility.

[15] The Tribunal notes that, given the relatively high market share, it would have expected the Commission to include more customers of the Cresta facility in its market investigation. The Commission was also not able to explain a relatively high vacancy rate at one of the competitors of the merging parties in this area. Be that as it may, we have no reason to believe that the proposed transaction is likely to substantially prevent or lessen competition in this relevant market given the presence of the above identified competitors.

Future Storage Sites

[16] The Commission highlighted the uncertainty associated with the abovementioned partnership agreement entered into between the merging parties (see paragraphs 7 and 8 above). As noted above, SAR will have a right to purchase future storage sites which may be developed by Storage Genie in terms of a "partnership" arrangement. Given that the merging parties do not at this stage know where these future self-storage sites will be developed or what the size of each facility will be, the Commission was unable to assess the competitive effects of this.

[17] In order to address this the Commission and the merging parties agreed that the merging parties will notify all (intermediate and large) mergers which

involve the acquisition by SAR of storage sites from Storage Genie and its related parties, and that in the case of a small merger[1], the merging parties will write to the Commission to advise it of any sale of a future storage site, in which event the Commission may call for a full merger notification in terms of the small merger provisions of the Competition Act, No 89 of 1998, as amended ("the Act"). This will apply for a period of 7 (seven) years envisaged by the agreement between the merging parties.

[18] Given the above concern, we have conditionally approved the proposed transaction. The imposed conditions in essence require the following:

a. The merging parties shall, for a period of 7 (seven) years from the implementation date of the proposed transaction, inform the Commission in writing of any sale of a Future Storage Site[2] between the merging parties, which involves the acquisition by SAR of a Future Storage Site from Storage Genie and its related parties, that is defined as a small merger in terms of the Act, within 10 (ten) days of concluding any sale agreement in respect of such small merger. Upon receipt of such notice, the Commission may require the merging parties to notify the small merger in terms of the Act.

b. Further, the merging parties shall, for a period of 7 (seven) years from the implementation date of the proposed transaction, notify any merger of any sale of a Future Storage Site between the merging parties, which involves the acquisition by SAR of a Future Storage Site from Storage Genie and its related parties, that requires notification in terms of the Act.

[19] We are satisfied that the above conditions remedy the Commission's concern related to the notification of transactions involving any Future Storage Sites that the acquiring group may in future acquire from Storage Genie.

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[1] "Small merger" means a merger or proposed merger with a value at or below the lower threshold established in terms of section 11(1)(a) of the Act.

[2] SAR will have a right to purchase self-storage sites which may be developed in future by Storage Genie in terms of a "partnership" arrangement ("Future Storage Sites").

PUBLIC INTEREST

[20] The merging parties confirmed that the proposed transaction will not result in any adverse effects on employment.[3]

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

CONCLUSION

[22] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market relating to the identified existing storage sites. As described above, a notification remedy has been imposed relating to any Future Storage Sites that the acquiring group may in future acquire from Storage Genie. The imposed set of conditions is attached hereto marked as "Annexure A".

[23] No public interest issues arise from the proposed transaction.

Mr Andreas Wessels

23 March 2018
Date

Mrs Medi Mokuena and Ms Andiswa Ndoni concurring

Tribunal Case Manager	: Kgothatso Kgobe
For the Merging Parties	: A Le Grange of Cliffe Dekker Hofmeyr
For the Commission	: N Myoli and T Masithulela

[3] Merger Record, pages 9 and 54.