

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM065Jul22

In the large merger between:

**K2018366052 (South Africa) (Pty) Ltd;
K2018366028 (South Africa) (Pty) Ltd;
K2018365994 (South Africa) (Pty) Ltd;
K2018365955 (South Africa) (Pty) Ltd;
K2018365895 (South Africa) (Pty) Ltd; and
K2019451018 (South Africa) (Pty) Ltd**

Primary Acquiring Firms

And

Castleview Property Fund Ltd

Primary Target Firm

Panel : T Vilakazi (Presiding Member)
: Y Carrim (Tribunal Member)
: F Tregenna (Tribunal Member)

Heard on : 07 September 2022

Reasons issued on : 15 September 2022

REASONS FOR DECISION

- [1] On 7 September 2022, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between K2018366052 (South Africa) (Pty) Ltd; K2018366028 (South Africa) (Pty) Ltd; K2018365994 (South Africa) (Pty) Ltd; K2018365955 (South Africa) (Pty) Ltd; K2018365895 (South Africa) (Pty) Ltd; and K2019451018 (South Africa) (Pty) Ltd (collectively the "Acquiring Firms") and Castleview Property Fund Limited ("Castleview").

Primary acquiring firms

- [2] The Acquiring Firms are all wholly owned by K2021910222 (South Africa) (Pty) Ltd which is in turn wholly owned by I Group Investments (Pty) Ltd ("IGI"). IGI is in turn wholly controlled by the [REDACTED] its trustees and all the firms controlled directly and indirectly by them, are collectively referred to as the "Acquiring Group".

- [3] The Acquiring Group is a property investment firm with a diversified property portfolio comprising of retail, industrial, office, and residential properties throughout South Africa.

Primary target firm

- [4] Castlevue Property Fund Limited ("Castlevue") is a firm incorporated in accordance with the laws of South Africa. Castlevue is controlled by Urban Retail Property Investments 1 (Pty) Ltd ("URPI"), which is in turn wholly controlled by Investment Property Equity En Commandite partnership ("IP Equity").
- [5] Castlevue wholly controls FEC Prop (Pty) Ltd ("FEC"). FEC owns the immovable properties and rental enterprises known as "Pier 14" situated in the Nelson Mandela Metropolitan Municipality¹ and "Cravenby" situated in the City of Cape Town Metropolitan Municipality² (collectively, the "Target Properties"). Castlevue and all firms currently controlled by it (including the Target Properties) are collectively referred to as the "Target Group".
- [6] The Target Group is a property investment firm that owns properties, classified as residential, small region centres, and local convenience centres.

Description of the proposed transaction

- [7] The proposed transaction involves a reverse take-over by the Acquiring Group of Castlevue and is structured as follows:
- 7.1. Castlevue will acquire various properties and shares held by the Acquiring Group through six separate, but inter-related transaction steps for an aggregated purchase consideration to be settled by the issue of Castlevue consideration shares to the Acquiring Firms ("Consideration Shares").
- 7.2. Once the Consideration Shares have been issued, the Acquiring Firms intend to acquire 88% of the issued share capital of Castlevue. Post-merger, Castlevue will be solely controlled by the Acquiring Firms.

Competition assessment

- [8] The Competition Commission ("Commission") considered the activities of the merging parties and found horizontal overlaps in respect of rentable residential property and rentable retail property. Accordingly, the Commission assessed the effects of the proposed transaction in the market for rentable residential property within an 8km radius of the Target Group's Pier 14 residential property; and the

¹ Which consists of erven no. 3801 and 3536 held under title deed no. T19792/2007 and T20268/1994.

² Which consists of erven no. 33262 held under title deed no. T24660/2021.

market for local convenience centres within a 10km radius of the Target Group's Cravenby shopping centre.

- [9] In the market for rentable residential property within an 8km radius of the Target Group's Pier 14 residential property, the Commission found that the merging parties will have a post-merger market share of 9.77%. Furthermore, the merging parties will continue to face competition within the 8km radius from various players. These include Remax, Pam Golding, Sotheby, and Beachfront Properties.
- [10] With respect to the market for local convenience centres within a 10km radius of the Target Group's Cravenby shopping centre, the Commission found a post-merger market share of 6.47%, and that the merged entity will be constrained by alternatives such as Howard Centre, Bothasig Shopping Centre, Platteklouf Village Shopping Centre, Delft Mall, and Nyanga Junction.
- [11] Agents and competitors raised no concerns.
- [12] On this basis, we found that the proposed transaction will not lead to substantial prevention or lessening of competition in any relevant market.

Public interest

Employment

- [13] The merging parties provided an unequivocal statement that the proposed transaction will not result in any merger-specific retrenchments or job losses. In addition, the merging parties submitted that the employees within the Target Group will continue to be employed as per the terms of their current employment contracts.
- [14] The employee representatives of the Acquiring Group and the Target Properties were contacted by the Commission. Both employee representatives confirmed that their respective employees were notified of the proposed transaction and no concerns were raised.

Spread of ownership

- [15] The Acquiring Group and the Target Group do not have any historically disadvantaged person ("HDP") shareholdings. As such, the proposed transaction does not result in any dilution of HDP shareholdings.
- [16] The merging parties indicated to the Commission that they would find a Black Economic Empowerment ("BEE") partner for the merged entity within 24 months from the approval date of the proposed transaction. While discussions with potential BEE partners are on-going, potential BEE partners have exited talks because of failing to secure funding. However, the merging parties stated that

Castlevew has raised investment capital from [REDACTED] for an effective 4% shareholding into Castlevew. [REDACTED] indicated that it will use its best reasonable endeavours to find a BEE partner for itself within the next 24 months, subject to funding of said shareholding.

- [17] Upon the Tribunal's request, the merging parties provided a letter in which they undertake to provide an update to the Commission in relation to the status and details of [REDACTED] proposed BEE partner within 24 months of the approval date of the proposed transaction.
- [18] In light of the above, the proposed transaction is unlikely to have any negative effects on employment or raise any other public interest concerns.

Conclusion

- [19] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on public interest.

Signed by: Thando Vilakazi
Signed at: 2022-09-15 10:53:14 +02:00
Reason: Witnessing Thando Vilakazi

Thando Vilakazi

15 September 2022

Dr Thando Vilakazi

Date

Ms Yasmin Carrim and Prof Fiona Tregenna concurring

Tribunal Case Manager:	Leila Raffee
For the Merging Parties:	Susan Meyer and Luyolo Mfithi of Cliffe Dekker Hofmeyr Inc
For the Commission:	Tumiso Loate and Themba Mahlangu