



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM099Sep24

In the matter between:

Exemplar Retail Ltd

Primary Acquiring Firm

And

ERF 1824 Rivier (Pty) Ltd

Primary Target Firm

Panel	:	Imraan Valodia (Presiding Member)
	:	Geoff Budlender (Tribunal Member)
	:	Andiswa Ndoni (Tribunal Member)
Heard on	:	03 October 2024
Order issued on	:	03 October 2024
Reasons issued on	:	14 October 2024

REASONS FOR DECISION

Introduction

- [1] On 3 October 2024 the Tribunal approved the large merger wherein Exemplar REIT Limited (“Exemplar”) intends to acquire Eersterivier Mall (“Target Property”) from Eerste River (Pty) Ltd (“the Seller”).

Parties and their activities

Primary Acquiring Firm

- [2] The primary acquiring firm Exemplar is solely controlled by McCormick Property Development (Pty) Ltd (“Mc Cormick”) as to 57%. Exemplar, Mc Cormick and any

firms directly or indirectly controlled by these firms are hereinafter referred to as the 'Acquiring Group'.

- [3] In terms of the proposed transaction, the Acquiring Group intends to acquire a 100% share in the Target Property. The primary acquiring firm is Exemplar, a company listed on the Johannesburg Stock Exchange ("JSE") as a real estate investment trust ("REIT").
- [4] The Acquiring Group's activities include owning, internally managing and growing a portfolio of shopping centres and malls located typically in under-served, peri-urban township and rural areas of Eastern Cape, Gauteng, Limpopo, Kwa-Zulu Natal and Mpumalanga. The Acquiring Group has ownership by at least 35 historically disadvantaged person ("HDP").

Primary Target Firm

- [5] The primary target firm is the Target Property. The Target Property is classified as a community centre according to the IPD classifications as it has a gross lettable area ("GLA") of approximately 16 599m². The Target Property is wholly owned by the Seller. The Seller is wholly owned by the Klein Welmoed Trust. The Klein Welmoed Trust has neither trustees nor beneficiaries who are HDPs.

Competition analysis

- [6] In assessing the transaction, the Commission found the merging parties activities overlap horizontally as the Acquiring Group's activities include community centres whilst the Target Property is community centre. Regarding the geographic market assessment, relying on the Tribunal's decisions in the *Hyprop* and *Fortress Income*¹ mergers, the Commission found that the Acquiring Group's closest retail

¹ *Hyprop Investments Limited, Atterbury Investment Limited, Attfund Retail Limited and Mantrablox Proprietary Limited* (05/LM/Jan11); and *Fortress Income Fund Limited and Lodestone REIT Limited* (LM103SEP16).

property to the Target Property is in Lusikisiki, Eastern Cape. The target property is 1 200 kilometres away. We agree with the Commission's assessment that the merging parties' activities are unlikely to fall within the same relevant geographic market.

[7] In addition, we received no evidence that this transaction raises vertical overlaps.

Conclusion on the competition assessment

[8] We do not believe that the merger is likely to result in a substantial lessening of competition within any of the relevant markets in South Africa.

Public interest

Effect on Employment

[9] The merging parties confirmed that there would be no retrenchments as a result of this merger.

[10] The Commission noted that the Target Property has no employees. It was submitted that 3 employees from Cenprop Real Estate (Pty) Ltd would transfer to manage the Target Property on their current employment terms and conditions. No concerns relating to employment were raised by the employees who were consulted.

Effect on a greater spread of ownership

[11] The Commission considered that the Target Property has no HDP ownership pre-merger. The parties submit that through Exemplar, the Acquiring Group has at least 35 HDP individuals as shareholders from Exemplar's share register.

[12] Considering the above submissions, Commission concluded that the merger does not raise any public interest concerns that require intervention. We are satisfied with that assessment.

Other public interest considerations

[13] We received no evidence or submissions that the proposed transaction raises other public interest considerations.

Conclusion on the public interest assessment

[14] No third parties, whether customers or competitors, expressed concerns about this aspect of the proposed merger.

[15] We conclude that the proposed transaction is justifiable on public interest grounds.

Conclusion

[16] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and is justifiable on public interest grounds.

[17] We therefore approve the proposed transaction without conditions.



**Presiding Member
Prof. Imraan Valodia**

14 October 2024

Date

Concurring: Mr G Budlender SC and Ms A Ndoni

Tribunal Case Manager: Princess Ka-Siboto

For the Merger Parties: Ahmore Burger-Smidt and Lwazi-Lwandile
Simelane of Werksmans Attorneys

For the Commission: Horisani Mhlari and Phillipine Mpane