



COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 106/LM/Dec11
[013730]**

In the matter between:

Nedbank Ltd

Acquiring Firm

And

Emergent Investments (Pty) Ltd

Target Firm

Panel : Andreas Wessels (Presiding Member)
Medi Mokuena (Tribunal Member)
Merle Holden (Tribunal Member)
Heard on : 22 February 2012
Order issued on : 22 February 2012
Reasons issued on : 16 April 2012

Reasons for Decision

Approval

- 1] On 22 February 2012 the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Nedbank Ltd of Emergent Investments (Pty) Ltd. The reasons for the approval follow below.

Parties and their activities

- 2] The primary acquiring firm is Nedbank Ltd (“Nedbank”), a public company incorporated in terms of the laws of the Republic of South Africa. Nedbank is controlled by the Nedbank Group Ltd (“Nedbank Group”), which is in turn controlled by Old Mutual (South Africa) Ltd (“OMSA”). OMSA is indirectly controlled by Old Mutual plc. Nedbank has a number of subsidiaries.
- 3] Nedbank is involved in *inter alia* corporate and retail banking, investment banking, private banking, securities trading, foreign exchange and property financing. For purposes of the competition assessment of this transaction only the property activities of Nedbank Group and OMSA are relevant. Nedbank, through OMSA, holds various properties for *inter alia* investment purposes.
- 4] The primary target firm is Emergent Investments (Pty) Ltd (“Emergent”), a private company incorporated in terms of the laws of the Republic of South Africa. Emergent is a property investment company which holds a portfolio of industrial, retail and office properties.
- 5] The current shareholders in Emergent include Nedbank, Emergent Properties Ltd and Globus Investments (Pty) Ltd. Nedbank acquired in excess of 50% of Emergent’s issued share capital on 17 March 2010; its current shareholding in Emergent is in excess of 80%. Nedbank thus currently has control over Emergent (also see paragraphs 6 and 7 below).

Transaction

- 6] According to the merging parties Nedbank technically acquired sole control over Emergent on 17 March 2010 and currently holds in excess of 80% of Emergent’s entire issued share capital.¹

¹ For full details of the transaction see *inter alia* record pages 52 to 54: Commission’s report pages 7 to 9.

- 7] The Competition Commission (“Commission”), in terms of its Risk Mitigation Practice Note and Update, granted Nedbank an extension until 25 November 2011 either to dispose of its controlling stake in Emergent or to notify the transaction to the competition authorities. On 24 November 2011 the Commission granted Nedbank a further extension until 02 December 2011. However, Nedbank was not successful in disposing of the assets within the stipulated time frame and thus filed this transaction.

Relevant markets and impact on competition

- 8] The Commission identified an overlap in the activities of Nedbank Group/OMSA and Emergent in respect of (i) rentable Grade B offices in the Berea node in KwaZulu-Natal; and (ii) rentable industrial warehousing in the Pinetown node in KwaZulu-Natal.
- 9] In regard to rentable Grade B offices in the Berea node, the combined post-merger market share of the merging parties in this market is below 20%. There are numerous other providers of Grade B office space in the Berea node. Furthermore, the Commission’s market investigation revealed that customers of the merging parties do not see the properties of OMSA² and Emergent³ as substitutable due to *inter alia* large price differentials between the two properties in question.
- 10] In regard to rentable warehouse property in the Pinetown node, although the merging parties’ combined post-market market share is high in this market, they will still face competition from players such as Capital Property Fund, Growthpoint Properties and Emira Property Fund. The latter players own a number of warehouses in the Pinetown node. In addition, none of the customers of the merging parties contacted by the Commission raised any objections to the transaction.

² Property known as the *Fassifern* building.

³ Property known as the *Price City* building.

Public interest

11]The merging parties submitted that the transaction will not have any effect on employment.⁴ Furthermore, the deal raises no other public interest concerns.

Conclusion

12]In light of the above, we conclude that the transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the transaction raises no public interest concerns. Accordingly we approve the transaction unconditionally.

Andreas Wessels

16 April 2012
Date

Medi Mokuena and Merle Holden concurring

Tribunal researcher: Ipeleng Selaledi
For the merging parties: Edward Nathan Sonnenbergs Inc.
For the Commission: Lerato Monareng

⁴ Merger record, page 68.