



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM166Dec20**

In the matter between:

**Orviscene Proprietary Limited**

Primary Acquiring Firm

And

**Makrogate Limited**

Primary Target Firm

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Panel:	Ms M Mazwai (Presiding Member) Mr E Daniels (Tribunal Member) Mr A Wessels (Tribunal Member)
Heard on:	18 December 2020
Order Issued on:	21 December 2020
Reasons Issued on:	06 January 2021

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### REASONS FOR DECISION

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#### Approval

- [1] On 18 December 2020, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction in which Orviscene Proprietary Limited ("Orviscene") intends to acquire, as a going concern, the rental enterprise property of Makrogate Limited ("Makrogate").
- [2] The reasons for the approval of the proposed transaction follow.

## Parties to the transaction

### *Primary acquiring firm*

- [3] The primary acquiring firm is Orviscene, a private company incorporated in accordance with the laws of the Republic of South Africa, controlled by Emerging African Property Partners Proprietary Limited ("EAPP") [REDACTED] [REDACTED] [REDACTED]. EAPP is in turn controlled by the Government Employee Pension Fund ("GEPP") [REDACTED] and Emerging African Property Holdings Proprietary Limited ("EAPH") [REDACTED]. GEPP is controlled by its Board of Trustees in terms of section 6(2) of the Government Employees Pension Law 21 of 1996 and is duly represented by the Public Investment Corporation SOC Limited. The shareholders in EAPH are individual shareholders, none of whom have a controlling interest in EAPH.
- [4] The GEPP holds interests in various firms. Apart from EAPP, EAPH controls Enigma Empowerment Holdings 1 Proprietary Limited. Orviscene currently does not control any firms. EAPP holds interests in industrial properties situated in Gauteng and KwaZulu-Natal.

### *Primary target firm*

- [5] The primary target firm is Makrogate, a rental enterprise conducted on Erf 22354 Brackenfell, City of Cape Town ("Target Property"). Makrogate is a property holding company, in respect of the retail warehouse situated at 14 Belami Avenue, Brackenfell in the Western Cape province. Makrogate operates as a landlord, holding a single property in the Cape Gate Centre in the northern suburbs of Cape Town, being the Target Property.
- [6] The Target Property is subject to a long-term lease in favour of Makro and was purpose-built for Makro's needs as a large retailer that operates with high volumes and quick turnover of stock.

## **Proposed transaction**

### *Transaction*

- [7] According to the Sale of Enterprise Agreement, Orviscene will acquire, as a going concern, the rental enterprise, which includes the Target Property and the seller's rights and obligations in terms of the leases and contracts as defined in the agreement.
- [8] Post transaction, the Target Property will be owned by the Acquiring Group.

### *Rationale*

- [9] The Acquiring Group submits that this transaction aligns with its strategic objectives and presents an opportunity for it to invest and gain exposure in the retail property market.
- [10] For the target firm, this proposed transaction presents an opportunity for it to divest of the property in order to realise profits from the entity.

## **Competition Analysis**

- [11] The Commission found that there is a product overlap in the provision of rentable retail property in the Western Cape. The target property is situated in Brackenfell. The GEPP has three industrial properties in Brackenfell and surrounding areas. The Commission considered the market shares held by the merging parties in the market for the provision of rentable light industrial property in Brackenfell and surrounding nodes within a 15km radius. It found that the merged entity will have a market share below 10%. The Commission submitted that there are ample alternatives in the market.
- [12] Therefore, the proposed transaction does not result in any substantial lessening or prevention of competition in the market under consideration.

## Public Interest

[13] The merging parties submitted that the proposed transaction will not result in any retrenchments and will not have any negative impact on employment as neither the acquiring or target firm has any employees.

[14] As such, the proposed transaction did not raise any public interest concerns.

## Conclusion

[15] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. Furthermore, the proposed transaction does not raise any public interest concerns. Consequently, we approved the transaction unconditionally.

  
Ms Mondo Mazwa

06 January 2021

Date

**Mr Enver Daniels and Mr Andreas Wessels**

Tribunal Case Managers: Lumkisa Jordaan and Mpumi Tshabalala

For the Merging Parties: Duduetsang Mogapi and Albert Aukema of Cliffe Dekker Hofmeyr Inc

For the Commission: Nolubabalo Myoli and Wiri Gumbie