

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM142Dec23

In the matter between:

Sasol Pension Fund, Luvon Investments (Pty) Ltd, and Litapro (Pty) Ltd

Primary Acquiring Firms

And

Eden Meander C/O Accelerate Property Fund Ltd

Primary Target

Firm Panel:

A Kessery (Presiding Member)

A Ndoni (Tribunal Member)

L Mncube (Tribunal Member)

Heard on:

28 February 2024

Order issued on:

28 February 2024

Reasons Issued on:

25 March 2024

REASONS FOR DECISION

Introduction

[1] On 28 February 2024, the Competition Tribunal (“the Tribunal”) conditionally approved a large merger involving Sasol Pension Fund (“Sasol Fund”), Luvon Investments (Pty) Ltd (“Luvon”), Litapro (Pty) Ltd (“Litapro”) (collectively referred to as the “Acquiring Firms”) and Accelerate Property Fund Ltd (“Accelerate”) in respect of the property known as Eden Meander. Post-merger, the Acquiring Firms will exercise joint control over Eden Meander.

Parties to the transaction and their activities

Primary acquiring firms

[2] Sasol Fund is the official pension fund for the employees of Sasol Limited ("Sasol Ltd"). It is not controlled by an individual firm and is managed by a Board of Trustees. Sasol Fund holds a 50% controlling interest in Formprops 87 (Pty) Ltd ("Formprops"). Formprops does not control any firm. Sasol Fund's assets are invested in a variety of asset classes. Direct property is one of the sanctioned asset classes within Sasol Fund's portfolio. Sasol Fund owns office, industrial, and retail properties.

[3] Luvon is a property investment company, which controls several firms and is controlled by East and West Investments (Pty) Ltd ("East & West"), a property holding company. East & West has four family trusts as shareholders, each holding an equal interest in East & West. Outside of Luvon, East & West controls several firms.¹

[4] Litapro is a property investment company which controls several firms and a diversified property portfolio comprised of retail, office, and industrial properties. Litapro is wholly owned and controlled by Falcatus (Pty) Ltd ("Falcatus") which is wholly owned and controlled by the JCF Trust. The JCF Trust is controlled by its trustee, Baker Tilly IOM Trustees Limited. Neither Falcatus nor the JCF Trust control any other firms.

[5] The Acquiring Firms and all the firms that they control, as well as all the firms controlling them, will collectively be referred to as "the Acquiring Group."

Primary target firm

[6] The primary target firm is Eden Meander, a shopping centre, situated at Knysna Road, George, Western Cape with a gross lettable area ("GLA") of 31 136m². Eden Meander is wholly owned by Accelerate.

¹ East and West is a property holding company with various subsidiaries ("the Moolman Group"). The Moolman Group (which includes Litapro, another Acquiring Firm in the proposed transaction) controls a diversified property portfolio (directly and indirectly through its subsidiaries) comprised of retail, office, and industrial properties throughout South Africa.

Proposed transaction and rationale

Transaction

[7] In terms of the Sale of Letting Enterprise Agreement, the Acquiring Firms intend to purchase Eden Meander as a going concern from Accelerate. Sasol Fund will acquire a 50% undivided share in Eden Meander. Luvon and Litapro will each acquire a 25% undivided share in Eden Meander.

Rationale

[8] Eden Meander falls within the Acquiring Firms' direct property investment strategy. It is located within a growing node and presents the Acquiring Firms with an opportunity to acquire property within the George area.

[9] From Accelerate's perspective, the proposed transaction is in line with its intention of strengthening its financial position by improving its interest cover ratio, partly through the disposal of assets such as Eden Meander.

Competition Assessment

Product market

[10] The Tribunal has previously, in *Redefine Properties Limited and Rowmoor Investments*² accepted the property classifications provided by the Investment Property Databank South Africa (Pty) Ltd ("IPD"). IPD subdivides the main categories of commercial property into different grades. The IPD also distinguishes between the types of shopping centres based on the GLA.

[11] The merging parties overlap in the market for the supply of rentable retail properties classified as minor regional centres.

² *Redefine Properties Limited and Rowmoor Investments* 567 Proprietary Limited, case number: 41LMMay11

[12] In the current case we considered the impact of the proposed transaction on the market for the supply of rentable retail properties classified as minor regional centres.

Geographic market

[13] Regarding the supply of rentable retail properties classified as minor regional centres, the Tribunal has previously considered the relevant geographic market for the supply of rentable retail properties classified as minor regional centres as a 15 km radius surrounding the target property.³ The Tribunal did not receive any evidence suggesting a departure from the above approach.

[14] The Acquiring Group does not own any rentable retail properties situated within a 15 km radius of Eden Meander. The Commission found that there was no geographical overlap.

Impact on competition

[15] Although the proposed transaction results in a product overlap, it does not result in a geographic overlap. The Commission also found that the proposed transaction was unlikely to create a platform which could result in the exchange of competitively sensitive information.

[16] On this basis, we are of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public interest assessment

Employment

[17] The merging parties submitted that there will be no job losses nor changes to employment conditions as a result of the proposed transaction.

³ See Growthpoint Properties Limited and Redefine Properties Limited Case No: LM078Jun17; Vukile Property Fund Limited and Flanagan & Gerard Investments (Pty) Ltd and East & West Investments (Pty) Ltd Case No: LM080Jul15

[18] We are of the view that the proposed transaction is unlikely to raise any employment concerns post-merger.

Spread of ownership

[19] Eden Meander does not have any shareholding held by historically disadvantaged persons (“HDPs”).

[20] According to the Commission, Sasol Fund does not have any HDP ownership credentials because it is a pension fund established for the benefit of the employees of Sasol Ltd and has no shareholders. The Commission concluded that the facts of this case do not require further intervention regarding HDP ownership.

[21] Nevertheless, the merging parties submitted that the Acquiring Firms, through Sasol Fund, have an HDP shareholding of 33.83% because of Sasol Ltd’s 33.83% HDP shareholding and the Commission considered that the HDP shareholding of Sasol Ltd could potentially flow to the Sasol Fund, within this context.

[22] We do not need to conclude on this given that the merging parties have agreed to a condition that they will, within 18 months from the implementation date, outsource cleaning and security services to HDP firms for a period of 3 years.

Conclusion on public interest

[23] We are not aware of any other public interest concerns arising in this case.

Third party views

[24] No third parties, whether customers or competitors, expressed concerns about the proposed merger to the Tribunal.

Conclusion

[25] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any significant public interest concerns.

[26] We therefore approve the proposed transaction subject to the conditions annexed hereto as **Annexure A**.

Signed by: Anisa Kessery

Signed at: 2024-03-25 11:22:55 +02:00

Reason: Witnessing Anisa Kessery

25 March 2024

Adv. Anisa Kessery

Date

Ms. Andiswa Ndoni and Prof. Liberty Mncube concurring.

Tribunal Case Manager:

Bobedi Seleke

For the Merging Parties:

Misha van Niekerk of Adams & Adams

For the Commission:

Nomthandazo Mndaweni and Themba Mahlangu