



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016527

In the matter between:

**Presmooi (Pty) Ltd, Savyon Building (Pty) Ltd and
IPS Investments (Pty) Ltd** Acquiring Firm

And

**Drystone Investments (Pty) Ltd, Odeon Investments
(Pty) Ltd and Adamax Property Projects, Persequor (Pty) Ltd** Target Firm

Panel : Norman Manoim (Presiding Member),
Mondo Mazwai (Tribunal Member)
and Andiswa Ndoni (Tribunal Member)
Heard on : 05 June 2013
Order issued on : 05 June 2013
Reasons issued on : 14 June 2013

Reasons for Decision

Approval

On 05 June 2013, the Competition Tribunal (“Tribunal”) conditionally approved the merger between Presmooi (Pty) Ltd (“Presmooi”), Savyon Building (Pty) Ltd (“Savyon”), IPS Investments (Pty) Ltd (“IPS”) (“Acquiring Firms”) and Drystone Investments (Pty) Ltd (“Drystone”), Prophold Ltd (“Prophold”), Odeon Investments (Pty) Ltd (“Odeon”) and Adamax Property Projects (“Adamax”), Persequor Park (Pty) Ltd (“Persequor”) (“Target Firms”). Our reasons follow.

Parties to the transaction

[1] The Acquiring firms all form part of the Octodec Premium Group. Octodec is a property loan stock company listed on the Johannesburg Stock Exchange (“JSE”), with property investments diversified across all sectors of the rental property market, including the retail office, residential and industrial sectors in Gauteng.

[2] The Target firms are part of the Prophold Group which is a property investment consortium, active in the letting of commercial and residential properties.

Proposed transaction

[3] The transaction involves the purchase of seven properties namely: Prime Cure Hanger, Lenchen Industrial Retail Park, Odeon Forum, Dynamech Office Park, De Havilland Forum and Planburo Consilium (“Target Properties”). These properties have been disposed of in five separate agreements which have been negotiated and concluded as the disposal of a single property portfolio. Despite the number of involved in the transactions, both the acquiring firms and target firms respectively, are controlled centrally, by a unitary controlling interest which viewed the transactions as inseparable.¹

Relevant markets and impact on competition

[4] The Commission when assessing the competitive effects of the proposed transaction, made a comparison between the Target Properties and the properties owned by the Acquiring Firms, having regard to substitutability in terms of product classification and geographic location. However only those properties owned by the Octodec Premium Group that fall within the same product classification and geographic area as that of the target

¹ Mr Anthony Stein, the Director of Octodec Premium Group, testified and explained why the transactions were notified as a single transaction instead of multiple transactions. See para 20, page 5 of Transcript of hearing.

properties were considered. In respect of all the classes of property the Commission applied a 10 km radius, considering that this was sufficiently narrow to accommodate any concerns about the exercise of market power.

[5] Based on this, the Commission found overlaps in respect of the following:

- Rentable light industrial space

[6] In respect of the Centurion node in Gauteng, the Acquiring Firms own one property (Lenchen Centre) which is within the 5km to 10km radius of Lenchen Industrial Retail Park, the Target Property. The market share accretion will be from 1.15% to 3.75%.

- Rentable retail space

[7] In respect of the same properties as above, within the same geographic area the market share accretion will be from 1.75% to 3.3%.

[8] The Commission's conclusion in respect of these properties was that post merger market shares remained low and market accretions were minimal. This is a conclusion that we agree with and no further analysis was required.

Public Interest

[9] The Commission was concerned that information submitted about post merger job losses had been inconsistent. The merging parties were however willing to give an undertaking in this respect and agreed to have it made as a condition for the approval for the merger.²

² See Transcript of hearing para 15, page 4.

CONCLUSION

[10] The proposed transaction is unlikely to substantially lessen or prevent competition and we therefore approve it with the conditions set out in the Annexure.

Norman Manoim

14 June 2013
DATE

M. Mazwai and A Ndoni.

Tribunal Researcher: **Caroline Sserufusa**

For the merging parties: Vani Chetty of Vani Chetty Competition Law

For the Commission: Jatheen Bhima

ANNEXURE “A”
Conditions imposed to the Merger between
Presmooi (Pty) Ltd & Others and Drystone
Investments (Pty) Ltd & Others

1. No employees of the target firms shall be retrenched as a result of this Merger within two (2) years after the approval date. For the sake of clarity, retrenchments do not include voluntary separation agreement or voluntary early retirement packages, and reasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended.

2. Should the Acquiring firms wish to retrench within the period mentioned in 1 above, the Acquiring firms shall notify the Commission of such contemplated retrenchments and motivate as to why these retrenchments are not merger specific or merger related.