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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM291Feb18

In the matter between

Dipula Income Fund Limited	Primary Acquiring Firm
And	
Luxanio Trading 181 (Pty) Ltd	Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 14 March 2018
Order Issued on	: 14 March 2018
Reasons Issued on	: 28 March 2018

REASONS FOR DECISION

Approval

[1] On 14 March 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Dipula Income Fund Limited ("Dipula") and Luxanio Trading 181 (Pty) Ltd ("Luxanio"), hereinafter collectively referred to as the merging parties.

[2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

[3] Dipula is a real estate investment trust ("REIT") listed on the Johannesburg Stock Exchange. Its shares are widely dispersed and as such no single shareholder controls Dipula. Dipula controls nine entities in South Africa.

[4] Through the firms under its control, Dipula owns a diversified portfolio of retail, office and industrial properties.

Primary Target Firm

[5] Luxanio was established for purposes of the proposed transaction. It was wholly owned by Setso Holdco (Pty) Ltd ("Setso"), which is ultimately controlled by the Patrice Motsepe Family Trust. In addition to Luxanio, Setso wholly owns Setso Property Fund (Pty) Ltd ("Setso Propco")

[6] Luxanio did not control any property. However, immediately prior to the implementation of the merger and in terms of a restructuring plan with the aim of divesting property to Dipula, Luxanio acquired nine immovable properties and letting enterprises controlled by Setso Propco, hereinafter referred to as the 'Target Properties'.

[7] The Target Properties comprise of retail properties in Gauteng, office properties in Gauteng and Western Cape and a property utilised as a motor dealership in Gauteng.

Proposed transaction

[8] In terms of the proposed transaction, Dipula would acquire 100% of the issued capital in Luxanio. Post-merger, Dipula would own and operate Luxanio.

Relevant market and impact on competition

[9] The Competition Commission ("Commission") found a horizontal overlap between the activities of the merging parties in the following markets: (i) the market for the provision of convenience centres within a 10km radius from the merging parties' properties in the Sandton and Environs node; (ii) the market for the provision of convenience centres within a 10km radius from the merging parties' properties in the Johannesburg CBD node; and (iii) the market for the provision of rentable Grade A office properties in the Hyde Park node.

[10] Data on various property nodes throughout the country are published by the South African Property Owners Association ("SAPOA"). Relying on this source of information and on the distance between the properties, the Commission found that the merging parties would have a combined post-merger market shares of less than 5%, 6% and 1% in each respective relevant market.

[11] The Commission stated that the market shares of the merged entity were relatively low in each relevant market. Furthermore, in each relevant market the merged entity would continue to face competition from a number of well-established retail centres and office properties.

[12] The Commission thus concluded that the proposed transaction was unlikely to substantially prevent or lessen competition within the relevant markets.

[13] At the hearing, the merging parties' representatives raised concerns about the geographical market delineation for the Grade A office properties. Only Luxanio has office property in Hyde Park, Dipula does not own any property in that area. Hence, in their view it was incorrect to arrive at the conclusion that there was an overlap in that node.[1]

[14] The Tribunal noted this fact and concluded that on either approach the transaction was unlikely to substantially prevent or lessen competition.

[1] Transcript, page 3.

Public interest

[15] The merging parties confirmed that the proposed transaction would not result in any retrenchments or job losses.[2]

[16] The proposed transaction raised no other public interest concerns.

Conclusion

[17] In light of the above, we concluded that the proposed transaction was unlikely to prevent or lessen competition in any relevant market. In addition, no other public interest concerns arose from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

	28 March 2018
Ms Yasmin Carrim	**Date**

Mrs Medi Mokuena and Fiona Tregenna concurring.

Tribunal Researcher:	Hlumelo Vazi
For the Merging Parties:	N Mia of Cliffe Dekker Hofmeyr Inc.
For the Commission:	R Ncheche

[2] Merger Record, pages 8 and 85.