



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM112Jul18

In the matter between

Khumonetix (Pty) Ltd

Primary Acquiring Firm

And

Auckland Investments 22 (Pty) Ltd, Blane & Company Sales (Pty) Ltd, Wideprops 97 (Pty) Ltd, Red Gold Investments (Pty) Ltd and Dreamfair Properties 11 (Pty) Ltd in respect of industrial properties

Primary Target Firms

Panel	: Ms Andiswa Ndoni (Presiding Member)
	: Prof. Fiona Tregenna (Tribunal Member)
	: Prof. Imraan Valodia (Tribunal Member)
Heard on	: 01 August 2018
Order Issued on	: 01 August 2018
Reasons Issued on	: 24 August 2018

REASONS FOR DECISION

Approval

- [1] On 01 August 2018, the Competition Tribunal ("Tribunal") unconditionally approved the larger merger between Khumonetix (Pty) Ltd ("Khumonetix") and Auckland Investments 22 (Pty) Ltd, Blane & Company Sales (Pty) Ltd, Wideprops 97 (Pty) Ltd, Red Gold Investments (Pty) Ltd and Dreamfair Properties 11 (Pty) Ltd ("Target firms") in respect of nine industrial properties ("Target properties"), hereunder collectively referred to as the merging parties.
- [2] The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Khumonetix is an entity that has been established and incorporated solely for the purpose of the proposed transaction and is wholly owned and controlled by the Michael Family Trust ("Michael Trust"). Khumonetix and the Michael Trust are collectively referred to as the 'Khumonetix group'.
- [4] The Michael Trust is a commercial property developer with a diverse property portfolio including rentable office space, retail, residential, industrial space and vacant land.
- [5] Of relevance to the proposed transaction is the Khumonetix group's rentable light and heavy industrial properties located in various parts of South Africa such as Bloemfontein, Cape Town, Port Elizabeth and Johannesburg.

Primary Target Firms

- [6] The Target firms are the owners of the Target properties. The shareholding in the Target firms is ultimately held by a number of common shareholders.
- [7] The Target properties are classified as rentable light industrial properties and are located in Jet Park in Boksburg, Glen Marais and Silverton in Pretoria.

Proposed transaction and rationale

- [8] In terms of the Sale of Letting Enterprise Agreements entered into between Khumonetix and the Target firms, Khumonetix intends to acquire the Target properties. Post-acquisition, Khumonetix will gain sole control and ownership of the Target properties.
- [9] In the merger filing, the merging parties submitted that even though each sale of the Target properties was envisaged under a separate agreement, the proposed

transaction is indivisible in nature as all the sale agreements of the Target properties stipulate that the properties are to be sold as one indivisible transaction.

- [10] At the hearing, the Commission shared the same views stating that the nature of the Target properties are interrelated, the transactional agreements were concluded simultaneously which indicates Target firms' intention to dispose of the properties concurrently. The Commission was further guided by the Tribunal's previous decisions in determining the nature of indivisible transactions.
- [11] We had no reason to differ with the merging parties and the Commission in this regard.

Competition analysis

- [12] The Commission considered the activities of the merging parties and found a horizontal overlap in the market for light industrial property as the Michael Family Trust and the Target firms hold light industrial property amongst other categories of property. However, the Commission found that the proposed transaction does not result in a geographical overlap as the Khumonetix Group does not own any light industrial properties within a 12 kilometre ("km") radius of the Target properties. The closest light industrial property owned by the Michael Family Trust is located within a 20km radius from the closest Target property (situated in Jet Park). The other light industrial properties of the Michael Family Trust are located in Bloemfontein, Virginia, Cape Town, Port Elizabeth, Diep River, Johannesburg, Sandton and Edenvale.
- [13] The Commission consulted third party real estate agents and they confirmed that if there was a 5-10% increase in the rental of light industrial property, tenants would seek rentable light industrial properties within a 5 – 10km radius from their current location.
- [14] In view of the above the Commission is of the view that the proposed transaction does not result in any substantial lessening or prevention of competition in any market. Accordingly, we were satisfied with the abovementioned submissions.

Public interest

- [15] The merging parties submitted that the proposed transaction will not result in any job duplications or retrenchments. The Commission contacted the employee representative of Khumonetix and no concerns were raised regarding the proposed transaction. In addition, the Target firms do not have any employees therefore the proposed transaction will not have detrimental effects on employment. No other public interest issues were raised as a point of concern.

Conclusion

- [16] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no other public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.



Ms Andiswa Ndoni

24 August 2018

Date

Prof. Fiona Tregenna and Prof. Imraan Valodia concurring.

Tribunal Case Manager : Ndumiso Ndlovu

For the Merging Parties : V Chetty for Vani Chetty Competition Law

For the Commission : T Loate and W Gumbie