



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM0139Oct20

In the matter between

Fortyyellow (Pty) Ltd (t/a Fortwood)

Primary Acquiring Firm

and

DSV Real Estate Johannesburg (Pty) Ltd

Primary Target Firm

Panel	: M Mazwai (Presiding Member)
	: E Daniels (Tribunal Member)
	: A Ndoni (Tribunal Member)
Heard on	: 25 November 2020
Order Issued on	: 25 November 2020
Reasons Issued on	: 30 November 2020

REASONS FOR DECISION

Introduction

[1] On 25 November 2020, the Competition Tribunal (“Tribunal”) approved a transaction in terms of which Fortyyellow (Pty) Ltd (“Fortwood”) acquired the entire issued share capital of DSV Real Estate Johannesburg (Pty) Ltd (“DSV”), without conditions.

[2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Fortwood is 51% controlled by Capital Propfund (Pty) Ltd ("Capital Propfund").
- [4] The remaining non-controlling 49% shareholding is held by YW Investments (Pty) Ltd t/a YW Capital.
- [5] Capital Propfund is ultimately controlled by Fortress REIT Limited ("Fortress").
- [6] Fortress is not directly or indirectly controlled by any firm.
- [7] Fortwood does not control any firm.
- [8] Fortwood and all the firms controlling it will be collectively referred to as the "Acquiring Group".
- [9] Fortwood is a special broad-based black economic empowerment ("B-BBEE") vehicle established for the purpose of this transaction.
- [10] The Acquiring Group is constituted of property ownership firms, with a portfolio of approximately 292 immovable properties and rental enterprises in all nine provinces of South Africa.
- [11] The Acquiring Group's diversified portfolio is spread across the logistics, industrial, retail and office sectors.

Primary Target Firm

- [12] DSV is wholly owned by DSV Africa Holding (Pty) Ltd ("DSV Africa") which is in turn ultimately wholly owned by DSV Panalpina A/S ("DSV Panalpina"). These firms are collectively referred to as the "DSV Group".

- [13] In addition to DSV, DSV Panalpina controls a number of firms.
- [14] DSV wholly owns the immovable property to be developed into a rental enterprise which will be known as “DSV Park”.
- [15] DSV's business comprises its sole underlying asset namely, the immovable property situated at Serengeti Boulevard, Kempton Park, Gauteng. This property will be developed into a separate and distinct rental enterprise which will be known as ‘DSV Park’ once complete, (“Target Property”).
- [16] DSV Group's intention is to develop the Target Property into lettable industrial and office space, with a subsequent sale to realise developmental profits.
- [17] The sale will be subject to a long-term lease in the DSV Group's favour.
- [18] DSV is currently undertaking the development of the Target Property and, on completion, intends to on-sell the property to the Acquiring Group.

Proposed transaction and rationale

- [19] The Acquiring Group intends to acquire the entire issued share capital of DSV, for a purchase consideration of [REDACTED]
- [20] Fortwood has a long-term plan for integrated transformation across several facets, which also has several benefits for the DSV Group. The Acquiring Group's capabilities and track record create the potential for a fruitful long-term partnership with DSV Group. Fortwood also sees the scale and tenant quality of the Target Property as an attractive proposition for an inaugural acquisition.
- [21] Due to the fact that the DSV Group has no single suitable facility available for its current requirements and planned growth for the next 10 years in Gauteng, the Target Firm decided to develop a facility for this purpose. The intention is that, once complete, the facility would be sold to a specialist property company as it would constitute a non-core asset of DSV Group. In addition, the DSV

Group determined the empowerment of black investors as a key criterion for sale, which was a primary consideration in the selection of Fortwood as the acquiring firm for purposes of the proposed transaction.

Relevant market and impact on competition

Rental office space:

- [22] The Acquiring Group owns a number of Grade A and B office properties, while the target Property is classified as a Grade P office property.¹
- [23] Following its investigation, the Commission was of the view that the proposed transaction would not result in a horizontal overlap in the market for the provision of rentable office space, as the Acquiring Group only owns Grade A and B office properties which cannot be considered as a substitute for the Grade P office space of the Target Property. We agree with this finding.
- [24] In addition, the Commission noted that a geographic horizontal overlap was unlikely as the Acquiring Group's Gauteng office properties are not located close enough to the Target Property to reasonably exert a competitive constraint, with the closest property situated approximately 27.4km away from the Target Property.

Rentable Industrial Space

- [25] The merging parties both own light industrial properties.
- [26] The Commission did not conclude on a relevant market for purposes of the proposed transaction, but assessed the market for the provision of rentable light industrial property within Kempton Park, Elandsfontein, Spartan, Sebenza/Germiston Jet Park, Meadowdale, Isando and Pomona.

¹ Grade P is top quality property.

Market shares and level of concentration

- [27] The Commission found that the merged entity would have a combined post-merger market share of approximately 11.09%, with an accretion of 1.75%.
- [28] Given the minimal market share accretion, the Commission was of the view that the transaction is unlikely to significantly alter the structure of the relevant market. The merged entity will continue to be constrained by the remaining players who account for a combined 88.91% of the market namely, *inter alia*, Redefine Properties Limited, Arrowhead Property Limited, Growthpoint and Plumbago Business Park.
- [29] Furthermore, the Commission engaged with market participants who estimated that the Acquiring Group's market shares range between 5-15% and that there are other players in the market who will continue to compete with the merged entity.
- [30] The Commission was therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable light industrial properties within a broader geographic node encompassing Kempton Park, Elandsfontein, Spartan, Isando, Jet Park, Meadowdale, Sebenza/Germiston and Pomona. We found no reason to disagree with the Commission's assessment.

Public interest considerations

- [31] The merging parties submitted that the proposed transaction raised no public interest concerns and, specifically, would not have any negative effect on employment as DSV has no employees. Consequently there will be no retrenchments as a result of the proposed transaction.

Conclusion

[32] 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 public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.


Ms Mondo Mazwai

30 November 2020
Date

Mr E Daniels and Ms A Ndoni concurring.

Tribunal Case Managers : Camilla Mathonsi; Alistair Dey-van Heerden