



COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 47/LM/Apr12
(014993)**

In the matter between:

Redefine Properties Limited

Acquiring firm

And

**Hyprop Investments Limited in respect
of a 50%undivided share of the business
enterprise known as South Coast Mall**

Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on	:	04 July 2012
Order issued on	:	04 July 2012
Reasons issued on	:	24 July 2012

Reasons for Decision

Conditional approval

[1] On 04 June 2012 the Competition Tribunal (“Tribunal”) approved the merger between Redefine Properties Limited and Hyprop Investments in respect of a 50% undivided share in the business enterprise known as South Coast Mall. The reasons for conditionally approving the proposed transaction follow below.

Parties to the transaction

- [2] The primary acquiring firm is Redefine Properties Limited (“Redefine”), a listed property investment holding company. Redefine is involved in the retail, office, industrial and retail property sectors in South Africa.
- [3] The primary target firm is the business enterprise known as South Coast Mall. Hyprop Investments Limited (“Hyprop”) holds a 50% undivided share in this business enterprise. South Coast Mall is categorised as a minor regional centre and is situated in Shelly Beach, Kwa-Zulu Natal Province.
- [4] South Coast Mall is jointly owned and jointly managed, thus all major decisions, including rentals must be decided unanimously.

Proposed transaction

- [5] Redefine and Hyprop are currently joint owners of South Coast Mall. In terms of the proposed transaction, Redefine will acquire from Hyprop its 50% interest in South Coast Mall. Redefine currently holds the other 50% interest in South Coast Mall.
- [6] Upon implementation of the transaction, Redefine will have a 100% interest in and as such sole control over South Coast Mall.

Rationale for the transaction

- [7] This transaction represents a change from joint to sole control over South Coast Mall. Redefine wishes to expand their property portfolio into the small retail property market. Therefore, Redefine regards wholly owning, as opposed to jointly controlling, South Coast Mall as the most ideal method to align their property portfolio with their strategic plan.
- [8] Hyprop’s objective is to rather invest in large regional shopping centres.

Relevant markets and impact on competition

[9] There is an overlap present between the activities of the merging parties, as they are both involved in the provision of rentable retail space in South Africa. There is no geographical overlap between the merging parties, as the nearest Redefine centre is situated 120 kilometres from the target property.¹

[10] There are more than ten various shopping centres within a 10 kilometre radius of South Coast Mall which will compete with this centre, none of which are owned by Redefine.

[11] The Commission, however, raised a concern pertaining to an exclusivity clause in the lease agreement between the anchor tenant, namely Shoprite Checkers, and the landlord. This ten year lease agreement has three years remaining until renewal is due to take place. The Commission was concerned that this exclusivity clause could have the effect of preventing small businesses from gaining access to rentable retail space in South Coast Mall.

[12] In order to address this concern, the merging parties undertook that certain conditions be attached to the approval of this transaction.

[13] Given that this undertaking has been offered by the merging parties we are not required to decide the matter. The Tribunal has therefore decided to approve the transaction, subject to the following conditions undertaken by the merging parties:

1. Redefine shall negotiate with Checkers in the utmost good faith to have the exclusivity clause in the lease agreement removed within thirty days of the Tribunal order.
2. Redefine shall within sixty days after entering into a new lease agreement with Checkers, provide the Commission with a report setting out in detail the extent to which they have complied with the condition of removing the exclusivity clause.

¹ See page 4 of the transcript.

Public interest

[14] The merging parties confirmed that there will be no adverse effect on employment as a result of the proposed transaction². No other public interest issues arise as a result of this transaction.

CONCLUSION

[15] We approve the proposed merger subject to the conditions attached hereto as “Annexure A”.

NORMAN MANOIM

24 July 2012
DATE

Yasmin Carrim and Andiswa Ndoni concurring.

Tribunal Researcher: Nicola Ilgner
For the merging parties: Vani Chetty Competition Law
For the Commission: Zanele Hadebe

² See page 92 of the record.