

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 77/LM/DEC03

In The Large Merger Between:

Investec Property Group Limited

And

Nestlé (South Africa) (Pty) Ltd

Reasons for Decision

Approval

1. On 28 January 2004 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Investec Property Group Limited and Nestlé (South Africa) (Pty) Ltd. The reasons for this decision follow.

The Parties

2. The primary acquiring firm is Investec Property Group Limited ("Investec Property"), a wholly owned subsidiary of Investec Property Group Holdings Limited which is ultimately owned by Investec Limited, a company listed on the Johannesburg Stock Exchange.
3. The primary target firm is Nestlé (South Africa) (Pty) Ltd ("Nestlé"), a wholly owned subsidiary of the Swiss confectionary company, Nestlé S.A Company, which is listed on the Swiss stock exchange.

The transaction

4. The transaction, which is a sale and lease-back arrangement, involves Nestlé selling industrial warehouse space on which its regional head office is located in the Longmeadows Business Estate in Modderfontein, Johannesburg. In terms of the merger agreement Investec Property will then lease the property back to Nestlé in its capacity as landlord for a period of ten years.

The Parties' Activities

5. Nestlé is engaged in the manufacture, sale and distribution of a broad array of food products ranging from confectionary (chocolates) to pet foods to instant foods to infant foods. However it is Nestlé's immovable property, which is the subject of this transaction. This

property is used as a warehouse and distribution facility exclusively by Nestlé.

6. Investec Property is a property holding company, involved in property management, property trading and development and property fund management. Investec property owns, manages and develops properties. Investec Property currently owns two industrial warehouse properties.
7. The Investec Group provides a wide range of financial products and services, viz. Investment banking, Treasury and Specialized finance, Private banking and Client portfolio management and Asset management.

Impact on competition

8. In the Commission's view, although the properties of Investec Property and Nestlé are both industrial warehouse facilities, they do not compete in the market for letting industrial warehouse space. This is because Nestlé's property was owned and used for its own purposes.
9. However, as a result of the transaction, Nestlé's property will now become part of this broader rentable industrial warehouse property market. Investec's market share in this market is currently less than 1%, and with the addition of Nestlé's property will remain less than 1%.
10. The Parties submit that this market is very competitive, and tenants will generally tend to migrate to those premises in any particular area in respect of which they are offered the most attractive terms. Tenants therefore exercise significant countervailing power.
11. There are no significant barriers to entry other than the need for capital investment. The Parties further submit that there isn't any shortage of vacant land available for development as industrial warehousing space in the market.

Conclusion

12. Having regard to the above, we conclude that the merger will not lead to a substantial lessening of competition and there are no significant public interest concerns. Accordingly, we agree with the Commission's recommendation that the transaction be unconditionally approved.

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2 February 2004
Date

Concurring: P Maponya and M Holden

For the merging parties: Pieter Steyn (Werksmans Attorneys)

For the Commission: Maarten Van Hoven (Mergers and Acquisitions)