



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018572

In the matter between:

FRIEDSHELF 1497 (PTY) LTD

Primary Acquiring Firm

And

**CAPITAL PROPERTY FUND LTD AND
PROPERTY FUND MANAGERS LTD**

Primary Target Firm

Panel	: Y Carrim (Presiding Member)
	: M Mazwai (Tribunal Member)
	: A Ndoni (Tribunal Member)
Heard on	: 23 April 2014
Order Issued on	: 24 April 2014
Reasons Issued on	: 21 May 2014

Reasons for Decision

Approval

[1] On 23 April 2014, The Competition Tribunal ("**Tribunal**") unconditionally approved the acquisition by Friedshelf 1497 (Pty) Ltd of Capital Property Fund Limited and Property Fund Managers Limited.

[2] The reasons for approving the proposed transaction follow.

Parties to the transaction

- [3] The primary acquiring firm is Friedshelf 1497 (Pty) ("**Friedshelf**") Ltd which is a shelf company solely incorporated for the purpose of this transaction and currently does not provide any services or products. Upon implementation Friedshelf will be referred to as Capital Property Fund Limited ("**New Capital**")
- [4] The primary target firm is comprised of the existing wholly owned subsidiaries of Capital Property Fund Limited ("**Capital**"), a portfolio in the Capital Property Scheme, a Collective Investment Scheme ("**CIS**") in property, managed by Property Fund Managers Limited and listed on the Johannesburg Securities Exchange ("**JSE**"). Capital controls and wholly owns the following subsidiaries; Pangbourne (Pty) Ltd, Monyetla Property Holdings (Pty) Ltd, Bands Properties (Pty) Ltd and Capital Propfund (Pty) Ltd.
- [5] The second primary target firm is Property Fund Managers Limited ("**PFM**") which is an asset management company. PFM is a wholly-owned subsidiary of Resilient Property Income Fund Limited ("**RES**"). RES does not directly and or indirectly control any other firm and it controls various firms, some of its main shareholders include Stanlib, Des de Beer, Investec and Capital.

Proposed Transaction and Rationale

- [6] The merging parties wish to convert Capital from its current form as an externally managed Collective Investment Scheme¹ in property to an internally-managed corporate Real Estate Investment Trust ("**REIT**"). The conversion will be done through a three stage transaction of internal restructuring, disposing of assets and shares.

¹established under the Collective Investment Schemes Act of 2002

- [7] Post transaction Capital will not hold any assets and liabilities, its listing on the JSE will be terminated and it will be wound up. New Capital will be a corporate REIT and it will be a JSE listed company. New Capital will house its asset management functions internally and will not be controlled by any single shareholder.
- [8] According to the merging parties, institutional investors have a preference for corporate REIT's rather than a CIS structure it is for this reason that Capital is being restructured as a corporate REIT. PFM's board is of the view that Capital is now at a stage where it is preferable to internalise its asset management function.

Relevant Market and Impact on Competition

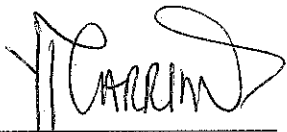
- [9] Friedshelf does not currently provide any services and/or products services and has solely been established to facilitate the proposed transaction. Capital and PFM participate in the market of real estate activities with their own or leased property. Capital owns a diverse portfolio of 252 properties that range from logistics, industrial, office and other properties from which rental income is derived. It also has listed property securities. PFM currently manages these properties on Capital's behalf and will remain the manager upon implementation of the transaction, although the employees providing asset management services to Capital will be employed by Profound.
- [10] The relevant market is real estate activities with their own property or leased property nationally.
- [11] The proposed transaction will not result in any market accretion to New Capital as it will remain with the exact same assets which it owned prior to the transaction. Nor will the result in any horizontal overlap and or additional consolidation of new properties into the portfolio of New Capital.
- [12] There is a vertical overlap in the activities of PFM and Capital as PFM currently provides asset management services to Capital. The proposed

transaction will result in a new consolidation of PFM by New Capital. The Commission found that the proposed transaction will not result in foreclosure concerns given that PFM has only provided asset management services to Capital. The Commission also found that the proposed transaction is unlikely to substantially prevent or lessen competition in any affected markets.

- [13] During the Tribunal hearing the Panel Members asked what mechanism would be used to transfer the employees from PFM to New Capital. They also noted their concern regarding clause 8 of the Sale of Properties and Letting Enterprise Agreement and clause 16 of the Sale of Enterprise Agreement. Mr Rual Bornman the employee representative at Capital Property Fund confirmed that, *"All staff that currently work on the Capital portfolio and employed by Resilient will be employed by a subsidiary of Newco and will continue to work on the property portfolio in NEWCO. The staff will be employed by the subsidiary of NEWCO from the date of listing of NEWCO. There will be no staff relocations or staff redundancies as a result of the internalisation of Capital"*. The Tribunal was satisfied with the assurance.

Conclusion

- [14] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for real estate activities with their own property or leased property. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



Yasmin Carrim

21 May 2014
DATE

Mondo Mazwai and Andiswa Ndoni concurring

Tribunal Researcher:

Moleboheng Moleko

For the merging parties:

Susan Meyer - Cliffe Dekker Hofmeyr

For the Commission:

Hardin Ratshisusu