

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 19/LM/Feb07

In the matter between:

SA Corporate Real Estate Fund

Acquiring Firm

And

SA Retail Properties Ltd

Target Firm

Panel : Y Carrim (Presiding Member), N Manoim (Tribunal
Member) and M Madlanga (Tribunal Member)
Heard on : 18 April 2007
Order issued on : 19 April 2007
Reasons issued on : 14 May 2007

Reasons for Decision

Approval

1]On 19 April 2007, the Tribunal conditionally approved the merger between SA Corporate Real Estate Fund (“SA Corporate”) and SA Retail Properties Ltd (“SA Retail”). The reasons follow below.

The Transaction

2]SA Corporate will, in terms of section 440K of the Companies Act, acquire all the linked units in SA Retail. Pursuant to the implementation of the proposed transaction SA Corporate will control the SA Retail property portfolio which includes retail properties situated in Gauteng, Kwa-Zulu Natal, Mpumalanga, Northern Cape and Western Cape Province.

3]The merging parties have indicated that the proposed transaction will not only increase SA Corporate's market capitalisation value, it will also raise its profile and position it to attract future domestic and international investment capital. Post the transaction SA Retail Linked Unit Holders will be invested in one of the largest property funds listed on the JSE with the immediate benefit of improved tradeability as well as diversification of risk.

The parties and their activities

4]Both SA Corporate, an investment property scheme, and SA Retail, a variable rate property loan stock company, are companies listed on the JSE. Neither party is controlled by a single shareholder. While SA Corporate controls various companies SA Retail does not control any firm.

5]SA Corporate's largest shareholders are :

Old Mutual Asset Management	18.27%
Marriot Asset Management	9.29%
Outward Investments (Pty) Ltd	5.35%

6]SA Retail's largest shareholders are:

Hyprop Investments Ltd	46.15%
Whirlprops 33 (Pty) Ltd	27.49%
Public Investment Corporation	9.83%
Marriot Asset Management	6.04%

7]The merging parties' property portfolios are complementary. SA Corporate mostly owns industrial properties in the various provinces listed above, the majority of which is located in Kwa-Zulu Natal, while SA Retail mainly owns

retail properties located in the major metropolitan areas of the country. SA Corporate does own some retail property while SA Retail doesn't own any industrial properties.

The relevant market and the impact on competition

8]The overlap between the parties' property portfolios are in retail property. Although SA Corporate and SA Retail both own retail property in Gauteng, Mpumalanga, Kwa-Zulu Natal and Western Cape, it is only the latter that raises competition concerns.

9]In the Western Cape both SA Corporate and SA Retail own retail properties in Brackenfell, Stellenbosch and Tokai. Since the merging parties jointly own the retail property in Tokai there will be no change in concentration in this geographic market post the transaction. In Brackenfell the merging parties' market share will only be 7% post the transaction. The transaction will thus not substantially prevent or lessen competition in these two markets.

10]In Stellenbosch SA Retail's market share and SA Corporate's market share are approximately 45% and 16% respectively. The merged entity's market shares will be 60%. Although this high market share would ordinarily warrant further enquiry into the effect of the transaction on competition this was obviated by the parties indicating during the hearing that SA Retail has reached an agreement to sell its property in Stellenbosch, the Eikestad Mall, to a third party which would lower the merged entity's market share in the Stellenbosch area considerably, its post merger gross rentable area will decrease from 38 832 m² to 10 401 m².¹ SA Corporate's market share, post the transaction, will thus remain at 16% if the Eikestad Mall property is sold.

11]Since the sale of the Eikestad Mall had not been concluded at the time of our hearing, the merging parties agreed that, in case the deal for some reason ultimately fails, the sale of the property be made a condition for the approval of the present transaction. For this reason we need not further enquire into

¹ The transaction is subject to approval by the Competition Commission.

the effects of the merger on competition in this market.

12]In light of the above divestiture, we find that the transaction would not substantially prevent or lessen competition the relevant markets.

CONCLUSION

13]There are no significant public interest issues and we accordingly approve the transaction on the condition that the merging parties divest all right, title and interest in the business comprising the letting enterprise and property known as Erven 4282, 7365 and 6083 Stellenbosch on which the Eikestad Mall is situated.²

N Manoim

14 May 2007

Date

Y Carrim and M Madlanga concurring.

Tribunal Researcher: R Badenhorst

For the merging parties: I Gaigher (Jowell Glyn & Marais)

For the Commission: G Mudzanani and M Van Hoven (Mergers & Acquisitions)

² The Tribunal's order was sent to the parties on 19 April 2007 and the non-confidential order is attached as Annexure A.