



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:61/LM/Jun12
(015180)

In the matter between:

Redefine Properties Limited

Acquiring Firm

And

**Fountainhead Property Trust Management Limited,
and Evening Star Trading 768 (Proprietary) Limited**

Target Firm

Panel : Yasmin Carrim (Presiding Member),
Andreas Wessels (Tribunal Member),
Andiswa Ndoni (Tribunal Member)
Heard on : 25 July 2012
Order issued on : 25 July 2012
Reasons issued on : 13 August 2012

Reasons for Decision

Approval

[1] On 25 July 2012 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Redefine Properties Limited and Fountainhead Property Trust Management Limited and Evening Star Trading 768 (Proprietary) Limited. The reasons for approving the proposed transaction follow below.

Parties to transaction

[2] The primary acquiring firm is Redefine Properties Limited ("Redefine"), a public company incorporated in terms of the laws of the Republic of South Africa. Redefine is listed on the Johannesburg Stock Exchange and is not controlled by another firm.

[3] The primary target firms are Fountainhead Property Trust Management Limited ("Fountainhead Manco") and Evening Star Trading 768 (Proprietary) Limited ("Evening Star"). Standard Bank Properties (Pty) Ltd ("Standard Bank") and Liberty Holdings Limited ("Liberty") each have a 50% shareholding in both of the target firms.

Activities of merging parties

[4] Redefine is a property loan stock company with a diversified portfolio of office, retail and industrial properties which are located throughout South Africa. It also conducts its own internal asset management services.

[5] Fountainhead Manco manages Fountainhead Property Trust ("Fountainhead"), a property unit trust. Fountainhead is a closed-end fund listed on the JSE. Its portfolio consists of retail, industrial and office properties throughout South Africa. Evening Star is contracted to perform asset management functions for Fountainhead's properties and to provide investment advice to Fountainhead.

Proposed transaction and rationale for transaction

[6] The proposed transaction entails Redefine acquiring all the shares in, and claims against, Fountainhead Manco and Evening Star from Standard Bank Properties and Liberty. Post-transaction, Redefine will be able to exercise control over Fountainhead Property Trust's property portfolio through its capacity as Fountainhead Manco's owner.

[7] According to Redefine, the proposed transaction is in line with its investment strategy to improve the quality of its property portfolio, to

enhance earnings and to improve long term capital appreciation by acquiring high quality, well located properties.

[8] Standard Bank and Liberty do not wish to continue conducting asset management services in relation to Fountainhead.

Relevant markets and impact on competition

Horizontal Analysis

[9] In determining the relevant product markets, the Commission took into account previous Tribunal decisions,¹ and property classifications by industry bodies SAPOA and Rodes where properties within each main property category are divided into different grades. There is very limited substitutability between the different grades.

[10] The Commission found that there is a horizontal overlap in the activities of the merging parties with regard to the provision of rentable grade A and grade B office space, and rentable light industrial space.

[11] The Commission defined the relevant markets as follows:

- The market for the provision of rentable grade A office space in the Bryanston/Epson Down node, the Sandton and Environs node, the Durban and Environs node, and the Rosebank and Surrounds node.
- The market for the provision of rentable grade B office space in the Rosebank and Surrounds node, the Randburg node, the Durban and Environs node, the Pretoria CBD node and the Centurion node.
- The market for the provision of rentable light industrial space in the Midrand node.

[12] The Commission found that, although there is a horizontal overlap in the activities of the merging parties in the relevant markets, the combined

¹ *Hyprop Investment Limited and Atterbury Investment Limited and Attfund Retail Limited and Mantrablox (Pty) Ltd*, case number 29/LM/Jun03, and other Tribunal cases including 34/LM/Jul03

post-merger market shares are too low to raise any competition concerns. The merged entity's combined, post-merger market shares in all the relevant nodes in the markets for the provision of rentable grade A office space, grade B office space and light industrial space is below 10%. The only exception is the Centurion node in the market for grade B office space where the combined post-merger market share is 16.2%. However, the merged entity will continue to face competition from Growthpoint Properties Limited, Abland (Pty) Ltd, Hyprop Properties Limited, Atterbury Property and others. The merging parties' tenants also have a degree of countervailing power due to the availability of alternative sources of rentable grade B office space in the area. We thus agree with the Commission's conclusion that the proposed transaction will not substantially prevent or less competition in the relevant market.

Public Interest

[13] The merging parties submitted that the proposed transaction will have no adverse effects on employment since they do not foresee any retrenchments as a result of the merger.² Although six white-collar workers currently employed by Standard Bank for managing Fountainhead Manco will be affected by the proposed transaction, the terms of sale provide these employees with the option to transfer their employment to Redefine. Employees selecting this option will be protected from retrenchment for 12 months.³ The merging parties submitted that if the employees elect not to transfer to Redefine, they will be redeployed within the Standard Bank Group.⁴ The Commission thus concluded that the proposed transaction does not raise any employment concerns.

[14] No other public interest issues arise due to this transaction.

²See page 146 of the Record

³ibid

⁴ibid

Conclusion

[15] Having regard to the facts above, we find that the proposed merger is unlikely to substantially lessen or prevent competition in any relevant markets. Furthermore, the proposed transaction raises no public interest concerns. Accordingly, we approve the merger unconditionally.



Yasmin Carrim

13 August 2012

DATE

A Wessels and A Ndoni concurring

Tribunal Researcher: Elizabeth Preston-Whyte

For the merging parties: Vani Chetty of Vani Chetty Competition Law

For the Commission: Zanele Hadebe and Lindiwe Khumalo