



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 38/LM/Jul10

In the matter between:

Brodsky Investments (Pty) Ltd
Capital Property Fund Ltd
Resilient Properties (Pty) Ltd
Fortress Income 2 (Pty) Ltd

Acquiring Firms

And

Murray and Roberts (Pty) Ltd

Target Firm

Panel : Norman Manoim (Presiding Member),
Yasmin Carrim (Tribunal Member)
and Andreas Wessels (Tribunal Member)

Heard on : 29 July 2010

Order issued on : 29 July 2010

Reasons issued on : 04 August 2010

Reasons for Decision

Approval

[1] On 29 July 2010, the Competition Tribunal (“Tribunal”) unconditionally approved a merger between the above mentioned parties. The reasons for approving the transaction follow.

The transaction

[2] The proposed merger transaction is for Murray and Roberts (Pty) Ltd (“Murray and Roberts”) to sell 24 of its properties to the acquiring firms, namely Brodsky Investments (Pty) Ltd (“Brodsky”), Capital Property Fund Ltd (“Capital”), Resilient Properties (Pty) Ltd (“Resilient”) and Fortress Income 2 (Pty) Ltd (“Fortress”), as a single indivisible transaction.

[3] For notification purposes, the Tribunal viewed the transaction as one. In reality however, the Transaction comprises of four separate purchase agreements. The acquiring firms formed a consortium in order to make an offer of purchase to Murray and Roberts and then upon acceptance of this offer, to divide up the properties amongst themselves accordingly.

The parties and their activities

[4] The primary acquiring firms are Brodsky, Capital, Resilient and Fortress, companies incorporated under the company law of the Republic of South Africa.

[5] All the acquiring firms own properties and lease space to tenants to generate income.

[6] Brodsky is controlled by Spiros Noussis and neither it nor its controlling firm control any other firm.

[7] Capital controls in excess of sixteen subsidiaries and is managed by Property Fund Managers Ltd.

[8] Resilient, a company that does not control any firm, is a wholly owned subsidiary of Resilient Property Income Fund Ltd (“RES Listco”), a public entity listed on the JSE and with numerous shareholders. RES Listco controls in excess sixteen subsidiaries. All these entities will be referred to as the Resilient group.

[9] Fortress is a wholly owned subsidiary of Fortress Income Fund Ltd (“FOR Listco”) which is not controlled by any single shareholder and which itself controlled 5 subsidiaries.¹ All these entities will be referred to as the Fortress Group.

[10] The primary target firms are 24 properties owned by Murray and Roberts. Murray and Roberts is a wholly-owned subsidiary part of the Murray and Roberts Group.

[11] The primary target firm is involved in engineering, construction and properties for the purpose of generating rental income.

The relevant market and the impact on competition

[12] There is an overlap in properties that Capital owns and those which it will acquire in respect of the provision of letting light industrial space in the Epping/Airport/Langa node, Western Cape. The combined market share post the merger transaction is less than 25% with a very low increment. Further, the merged entities will be faced with effective competition from competitors such as Old mutual, Apexhi, Growthpoint, Sanlam, Investec, Emira Property Fund and Public Investment Corporation.

[13] There is also an overlap in B grade office space in the Randburg node, Gauteng, with regards to property Fortress owns and that which it will acquire from Murray and Roberts. The combined market share post the merger transaction is below 5%. This is unlikely to neither give Fortress any form of market power nor affect competition negatively.

[14] The overlaps therefore raise no concerns.

¹ Fortress Income 1 (Pty) Ltd, Fortress Income 2 (Pty) Ltd, Fortress Income 3 (Pty) Ltd, Fortress Income 4 (Pty) Ltd, Fortress Income 5 (Pty) Ltd.

Public interest

[15] Initially, the merger would have resulted in the target firms retrenching 20 employees. 11 of these employees are skilled employees, 7 are semi-skilled employees and 2 are unskilled employees.

[16] After the Commission communicated their concerns in this regard, the acquiring firms indicated that they will employ the 20 affected individuals on new employment contracts.

Conclusion

[17] The merger therefore does not raise any public interest concerns and is unlikely to substantially prevent or lessen competition.

Norman Manoim

04 August 2010

DATE

Yasmin Carrim and Andreas Wessels concurred.

Tribunal Researcher : Mahashane Shabangu
For the Merging parties : Cliffe Dekker Hofmeyr
For the Commission : Mogalane Matsimela