

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 41/ LM/Apr07

In the matter between

Mergence Africa Property Investment Trust **Acquiring firm**

And

Capital Property Fund Ltd **Target Firm**

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on : 06 June 2007

Decided on : 06 June 2007

Reasons Issued : 04 September 2007

REASONS FOR DECISION

Approval

[1]. On 06 June 2007 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Mergence Africa Property Investment Trust and Capital Property Fund Ltd unconditionally. The reasons appear below.

Parties

[2]. The acquiring firm is Mergence Africa Property Investment Trust ("MAP Investment Trust"), a company incorporated in terms of the law of the Republic of South Africa.¹ The target firm is Capital Property Fund Ltd ("Capital Property Fund").²

Transaction

[3]. In terms of the proposed transaction the MAP Investment Trust intends to acquire six retail properties, seven industrial properties, situated in the Western Cape and Gauteng as well as one grade B office property situated in the Midrand, Gauteng.

Rationale

[4]. It has been submitted in the filing that the intention of the merging parties is to create an unlisted black economic empowerment private property loan stock company (which is intended ultimately to be listed on the JSE Ltd) with the objective to acquire and hold investment properties, whether directly or indirectly, from which letting businesses will be conducted.

¹ MAP Investment Trust is controlled by Mergence Africa Property Fund (Pty) Ltd ("MAPF"). MAPF is jointly controlled by Mergence Africa Properties (Pty) Ltd ("MAP") and Outward Investment (Pty) Ltd ("Outward"). MAP is a special purpose vehicle established for the purposes of the proposed transaction.

² Capital Property Fund is controlled by Capital Property Fund Ltd

[5]. The target firm wishes to dispose of the property portfolio, as the properties no longer meet its investment criteria.

Parties' Activities

[6]. The acquiring firm is involved in asset and fund management and property investment and finance. The target firm has a portfolio of industrial, commercial and retail properties throughout the Republic of South Africa.

Competition Analysis

[7]. The Commission's investigation revealed that the only area of overlap between the activities of the merging parties is in respect of a stand-alone retail property situated in the Goodwood/Parow/Bellville node and light industrial property in the Epping/Airport/Langa node. In its analysis the Commission found that the merging parties would have a combined post merger market share of 0.56% in respect of stand alone retail properties in the Goodwood/Parow/Bellville node and a 0.88% post-merger market share in respect of light industrial property in the Epping/Airport/Langa node. We therefore agree with the Commission's conclusion that the transaction is unlikely to substantially prevent or lessen competition as the combined post-merger market share remains low. In addition, the transaction does not raise any public interest concerns.

Conclusion

[8]. Based on the above, the transaction is approved unconditionally.

Y Carrim
Tribunal Member

04 September 2007
Date

D. Lewis and M Mokuena concurring.

Tribunal Researcher : Jabulani Ngobeni
For the merging parties : Justin Balkin (Edward Nathan Sonnenbergs)
For the Commission : Ipeleng Selaledi and Makgale Mohlala (Mergers and Acquisitions)