IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CASE NO.:65/LM/JUN08

In the large merger between:

Resilient Property Income Fund Ltd	Primary Acquiring Firm
and	
Diversified Property Fund Ltd	Primary Target Firm

Panel	: Y Carrim (Presiding Member), N Manoim (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on	: 11 June 2008
Order issued on	: 11 June 2008
Reasons issued on	: 26 June 2008

REASONS FOR DECISION

Introduction

[1] On 11 June 2008 the Tribunal unconditionally approved the merger between the aforementioned parties. The reasons for the approval are as follows:

The merging parties

[2] The primary acquiring firm is Resilient Property Income Fund Limited ("Resilient")[1]. The primary target firm is Diversified Property Fund Limited ("Diversified")[2]. There is a pre-existing relationship between the merging parties. Resilient owns 17.84% of shares in Diversified and

[1] Resilient is not controlled by any firm. Its major shareholders include: Stanlib (18.14%, Old Mutual (12.4%), Investec (9.6%), Eagle's Eye Investments (Pty) Ltd (6.3%), Desmond de Beer (5.5%), and Diversified Property Fund Ltd (5.44%).

[2] Diversified is also not controlled by any firm. Its major shareholders are; Resilient (17.84%), Desmond de Beer (8.47%), Investec (7.33%), BL Stuhler (6.85%), RCG Trade & Finance (Pty) Ltd (5.78%), and PA Gillespie (5.70%).

Diversified owns 5.44% of the shares in Resilient and some directors sit on both Resilient and Diversified Board. The property portfolios of the merging parties are also currently managed by the same team on an outsourced basis. In addition an asset management agreement exists between them in terms of which the asset management of Diversified is performed by Resilient at an annual fee of 0.5% of the sum of market capitalization and loans contracted by the Diversified Group, for a 3 year non renewable period which commenced in October 2005, and which will terminate at the end of October 2008[3]. Resilient currently rents offices from Diversified.

The Transaction and Rationale

[3] In terms of the proposed transaction Resilient will acquire all the linked units in Diversified including its subsidiaries by way of a scheme of arrangement. The transaction is subject to the sanctioning of a scheme of arrangement by the High Court in terms of which Resilient will buy out all the shares held by the minority shareholders in Diversified. Post merger, Resilient will have sole control of Diversified and manage its assets.

[4] According to the merging parties this transaction will create opportunities to increase market capitalization, enhance liquidity in trading of Resilient units and, since there has been a convergence in their strategies, the proposed merger will extract cost-savings, unlock synergies and funding efficiencies in the enlarged Resilient.

Relevant Market

[5] The relevant properties to this transaction consist of the retail space sector in the Polokwane CBD Node. Resilient owns a mall classified as a Large Community Centre, and Diversified owns a Taxi Centre classified as a Convenience Centre in this node. Mr Zidel from Resilient explained that the two centres differ in size, shape, purpose and profile because they target different LSM groups. The Large Community Centre is a large closed mall consisting of an upper end scenario with Pick 'n Pay, and a large parking area, whereas the taxi centre is a smaller u-shaped open centre consisting of lower end clothing outlets and a Boxer retail store. Mr Zidel further submitted that the two centres are within a walking distance from each other, and complement each other but do not directly compete with each other. Furthermore, that Polokwane is a large CBD area, and there will be ample other choices for rental within the area not owned by the merging parties.

[3] Refer to pgs. 26-45 of the merger record.

Competition analysis

[6] The proposed merger will result in very insignificant change in market share. The merged entity will continue to be a small player with an aggregate market share of 5.4% with a market share increase of approximately 1.2% of the retail space in the Polokwane CBD Node.

Conclusion

[7] Based on the foregoing, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. There are no significant public interest issues, and no negative impact on employment.

________________	Date
Y Carrim	26 June 2008

N Manoim and M Mokuena concurring

For the Commission:	T. Masithulela
	(Mergers and Acquisitions)
For the merging parties:	Vani Chetty
Tribunal Researcher:	L Xaba