

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 76/LM/Sep06

In the matter between:

Redefine Income Fund Limited

Acquiring Firm

And

Spearhead Property Holdings

Target Firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and N Manoim (Tribunal Member)
Heard on : 09 November 2006
Order issued on : 09 November 2006
Reasons issued on : 08 January 2007

Reasons for Decision

APPROVAL

[1] On 09 November 2006, the Tribunal approved the merger between Redefine Income Fund Limited (“Redefine”) and Spearhead Property Holdings (“Spearhead”). The reasons for approval follow.

THE TRANSACTION

[2] Pursuant to the implementation of the proposed transaction, Redefine will acquire direct control over the whole of the business of Spearhead.¹ Post merger, Spearhead will be a wholly owned subsidiary of Redefine.

[3] The transaction will *inter alia* allow Redefine to grow its direct property portfolio and will increase its exposure to the Western Cape. Benefits to

¹ Redefine will acquire the entire share capital of Spearhead by way of a scheme of arrangement in terms of section 311 of the Companies Act and/or an offer in terms of section 440 of the Companies Act.

Spearhead include the reduction of risk as a result of Redefine's larger, more diverse portfolio and its national presence.²

THE PARTIES AND THEIR ACTIVITIES

- [4] Both Redefine and Spearhead are listed on the JSE in the 'Real Estate' sector and according to the parties, neither is directly or indirectly controlled by any single firm.³
- [5] Redefine and its wholly owned subsidiary Outward Investments (Pty) Ltd are active in the business of owning and managing a portfolio of commercial properties which consists of retail, office and industrial properties.
- [6] Spearhead's main business is to hold, develop and invest in immovable commercial, industrial and retail properties in South Africa. Its wholly owned subsidiaries are active in property management (SPHD Properties (Pty) Ltd), Investment (Rapid Dawn (Pty) Ltd)⁴ and property development (Kovacs Investments 201 (Pty) Ltd).⁵

THE RELEVANT MARKET

- [7] Both parties are active in the broad commercial property markets. The Commission found that the transaction resulted in overlaps in the following sub markets:
- [7.1] The letting of Grade A office space in the Cape Town CBD node;
- [7.2] The letting of local convenience retail space in the Cape Town CBD node; and
- [7.3] The letting of light industrial space in the Epping node.

² Where risk of exposure to any single property is minimised. See page 213 of the Commission's record.

³ A list of the merging parties' major shareholders can be found on pages 195 (Redefine) and page 203 (Spearhead) of the Commission's record.

⁴ Currently, Rapid Dawn's only investment is a number of linked units in Spearhead.

⁵ Spearhead has one other wholly owned subsidiary, Marble Gold 168 (Pty) Ltd, which is dormant.

Impact on Competition

- [8] In respect of the markets for the letting of retail space in the Cape Town CBD and the letting of light industrial space in the Epping node, the merged entity will account for approximately 3% and 9% respectively. We agree with the Commission that these markets do not raise any serious competition concerns.
- [9] In the market for the letting of Grade A office space in the Cape Town CBD node, an examination of the market share information provided by the Commission, reveals that the parties will have approximately 20% of Grade A office space in the Cape Town CBD.⁶ Redefine's portion of the 20% comprises an approximately 53 000 m² large skyscraper - Standard Bank Centre - of which Standard Bank accounts for almost half the office space (approximately 24000 m²).⁷
- [10] During the hearing, the Tribunal heard evidence from Mr Brian Azizollahoff of Redefine.⁸ According to Mr Azizollahoff, the Standard Bank Centre is "arguably not true A grade,"⁹ as it does not conform strictly to A grade standards. For example, the parking ratio is lower than what one would expect for a true A grade building. He argues that it is "probably a B + grade."¹⁰ If one removes this property from the A grade market, the merging parties market share will dilute significantly.
- [11] According to the Commission, the merged entity faces competition from large rivals such as RMB properties, Momentum Life, Gensec, Investec, Old Mutual Properties and Metropolitan Life; Secondly, the tenants of the target properties are large corporations such as Standard Bank, Telkom, Chevron and Murray & Roberts, who possess significant countervailing power and usually negotiate long term leases. Rental prices are also negotiated and the merging parties have indicated that the merger will not alter this.

⁶ The market share figures were sourced from SAPOA. We have previously found that SAPOA's figures are not necessarily a true reflection of the market.

⁷ Telkom is the other major tenant.

⁸ The Tribunal found Mr Azizollahoff to be an impressively candid witness.

⁹ See page 2 of the transcript.

¹⁰ Ibidem.

[12] According to Mr Azizollahoff, if tenants did not receive attractive rentals, there would be several landlords who they could turn to, such as redeveloped blocks in the CBD or in Salt River.¹¹ Furthermore, Mr Azizollahoff was of the view that at least 20% more space would be “coming on stream fairly soon,” with the developments around the Cape Town Convention Centre, Sable Square and Knowledge Park in Century City as well as Dagrover in Paarl.

[13] Based on the above, we agree with the Commission and Merging parties that the transaction will lead alter the competitive landscape in the relevant markets.

CONCLUSION

[14] There are no significant public interest issues and we accordingly approve the transaction without conditions.

D Lewis

08 January 2007
Date

N Manoim and Y Carrim concurring.

Tribunal Researcher: M Murugan-Modise

For the merging parties: A Kariem (Hofmeyr Herbststein & Gihwala)
V Chetty (Edward Nathan Sonnenbergs)

For the Commission: M Ngobese and H Ratshisusu (Mergers & Acquisitions)

¹¹ Mr Azizollahoff was aware of at least 4 redevelopments taking place in and around the Cape Town CBD.