

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 78/LM/Sep06

In the matter between:

Dipula Property Investment Trust

Acquiring Firm

And

Outward Investment (Pty) Ltd

Target Firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on : 8 December 2006
Decided on : 8 December 2006
Reasons Issued: 18 December 2006

Reasons for Decision

Approval

[1] On 8 December 2006 the Tribunal issued a merger clearance certificate unconditionally approving the merger between Dipula Property Investment Trust and Outward Investment (Pty) Ltd. The reasons for approving the transaction follow.

The Parties

[2] The primary acquiring firm is Dipula Property Investment Trust ('Dipula Trust'), a trust formed in accordance with the laws of South Africa. Dipula Trust is a newly formed entity that is controlled by its trustee, Dipula Property Fund ('Dipula Fund'), also a newly formed entity. Both Dipula Trust and Dipula Fund are currently not trading. Dipula Fund is jointly controlled by Dijalo Property Services (Pty) Ltd ('Dijalo') and Redefine Income Fund Limited ('Redefine') with

51% and 49% respective interests in Dipula Fund. No single firm controls Redefine.¹

- [3] The primary target firm comprises the immovable properties and property letting enterprises conducted in respect of such properties owned by Outward Investment (Pty) Ltd ('Outward'), a wholly owned subsidiary of Redefine.

Rationale for the transaction

- [4] Both Redefine and Dijalo view the proposed transaction as an opportunity to create a black majority owned property fund.

The Transaction

- [5] This transaction involves the acquisition as a going concern by Dipula Trust of various properties owned by Outward. Dijalo and Redefine will initially form the Dipula Trust, which will be used as a special purpose vehicle for the acquisition of the acquired properties.² The properties are acquired in one indivisible transaction.³

- [6] The end result of the transaction is that Dipula Trust will own and control the acquired properties. Dijalo and Redefine will have 51% and 49% respective interests in Dipula Fund, the ultimate controller of Dipula Trust. The following are the pre and post-merger structures:

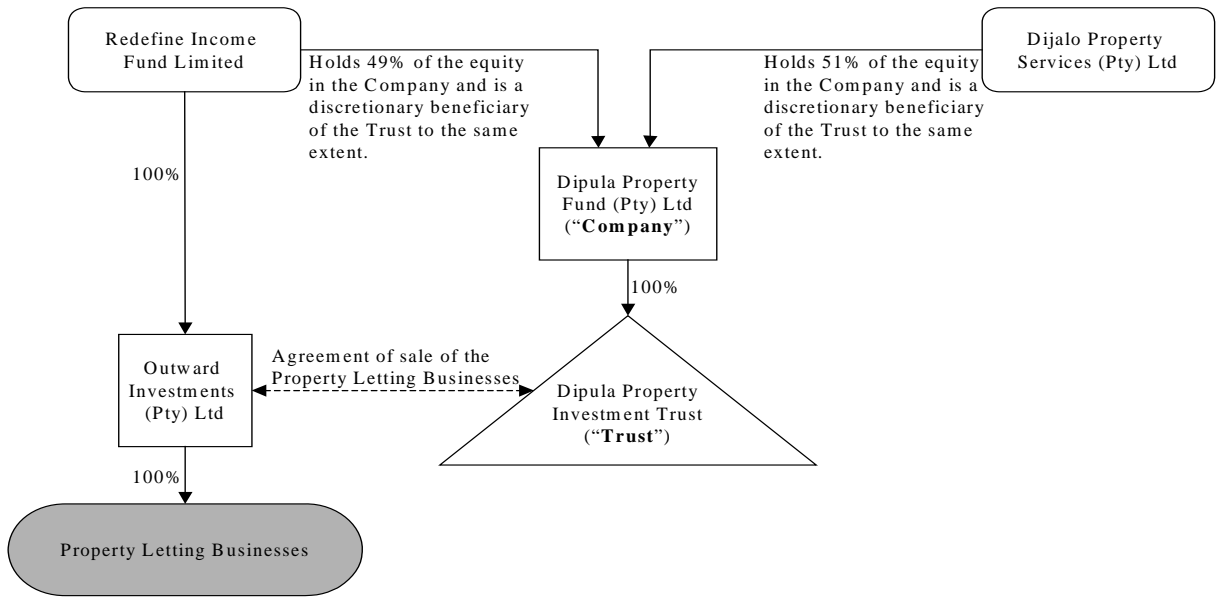
¹ The major stakeholders in Redefine are Stanlib Property Fund with 18% shareholding, The Standard Bank of South Africa Limited with 8% shareholding, Old Mutual with 13% shareholding and Investec Property funds with 6% shareholding in Redefine.

² See record p18 for a complete list of the properties being acquired by Dipula Trust.

³ Record p16.

Structure – Pre Acquisition

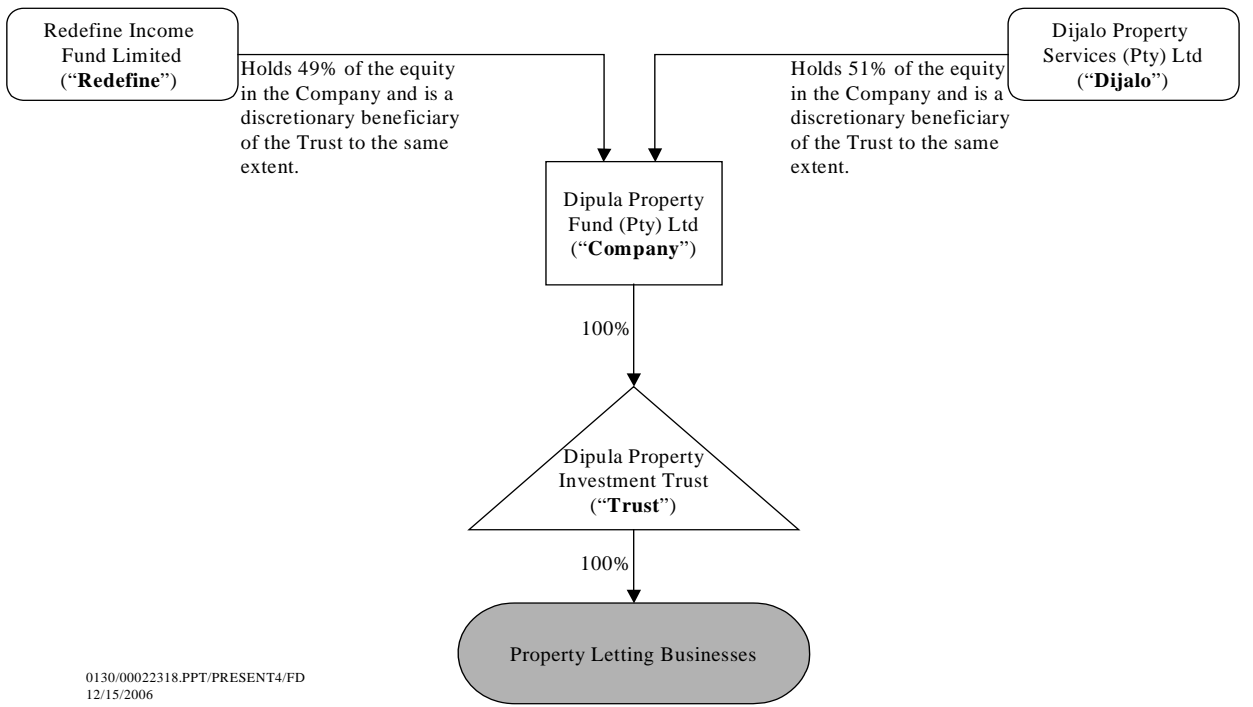
The property letting businesses are owned by Outward Investments (Pty) Ltd.



0130/00022318.PPT/PRESENT4/FD
12/15/2006

Structure – Post Acquisition

The property letting businesses will be owned by the Trust.



0130/00022318.PPT/PRESENT4/FD
12/15/2006

The parties' activities

The Primary Acquiring Firm

Dipula Trust

- [7] Dipula Trust is a newly incorporated entity that, together with its newly incorporated trustee, Dipula Fund, has not commenced trading.

Dijalo

- [8] Dijalo, one of the ultimate controllers of Dipula Trust in terms of this merger, is involved in property management services but does not own any properties.

Redefine

- [9] Redefine, one of the ultimate controllers of Dipula Trust in terms of this merger, is a major property investment fund that owns and lets office, retail and industrial properties.

The primary target firm

- [10] Outward, a wholly owned subsidiary of Redefine, is involved in the provision rentable grade A office space, retail space and industrial space.

Overlapping activities

- [11] In their papers, the parties submitted that there is an overlap in the activities of the merging parties. However, at the hearing they conceded that there is no real overlap since Redefine owns 100% of the properties prior to this transaction and is now selling them and will consequently own 49% via Dipula Trust.⁴ Indeed, a careful analysis of the current transaction leaves one with the inescapable conclusion that there is no overlap because this transaction involves the introduction of two new entities namely Dipula Fund and Dipula Trust in certain commercial property letting business of the Redefine Group owned by Outward. These entities do not own or control any property owning and letting enterprises. Dijalo, one of the ultimate owners of Dipula Trust, is involved in property management and does not own or control the properties it administers. The only property portfolio that is of essence for the purposes of

⁴ Transcript p3.

the current transaction is the one housed in and being acquired from Outward. As a result there is no horizontal product overlap in the activities of the parties.

[12] This transaction gives rise to vertical integration in that Dijalo is involved in the property management business and Dipula Trust will be involved in the upstream activity of ownership and letting of properties. The Commission defined the market as the national market for the provision of property management services. It is not necessary to analyse the market in this instance since Dijalo has less than 1% market share. This percentage is small and does not raise competition concerns. Furthermore, there are other major property management services companies that will continue competing with the merging firms post-merger. These include, among others, Broll Property services, Gensec, JH Isaacs, Colliers, RMB Properties

Public Interest Issues

[13] There are no public interest issues.

Conclusion

[14] The transaction will not lead to a substantial prevention or lessening of competition and is accordingly approved. Moreover, there are no public interest concerns that may affect this conclusion.

N Manoim
Tribunal Member

18 December 2006

DATE

Y Carrim and M Mokuena concur in the judgment of N Manoim.

Tribunal Researcher: R Kariga

For the merging parties: J Katz, Edward Nathan Sonnenbergs Attorneys

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