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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM064Jul15

In the matter between:

Fortress Income Fund Limited Primary Acquiring Firm

and

Capital Property Fund Limited Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Medi Mokuena(Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 7 October 2015
Order Issued on	: 7 October 2015
Reasons Issued on	: 2 November 2015

Reasons for Decision

Approval

[1] On 7 October 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Fortress Income Fund Limited ("Fortress") and Capital Property Fund Limited ("Capital")

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm, Fortress is a publically listed Real Estate Investment Trust, listed on the JSE, and which is not controlled by any firm.

[4] Fortress together with its wholly-owned subsidiaries owns a portfolio of ninety seven investment properties in South Africa comprising industrial, retail, office and residential properties.

Primary target firm

[5] Capital is also a publically listed Real Estate Investment Trust and is listed on the JSE. Capital wholly-owns thirty firms within South Africa.

[6] Cumulatively Capital and the firms it controls own a property investment portfolio comprising industrial, retail, office, development and miscellaneous properties.

Proposed transaction and rationale

[7] The proposed transaction involves Fortress acquiring the entire issued share capital of Capital. Upon implementation of the merger, Capital's listed shares will be terminated on the JSE and Capital will become a wholly-owned subsidiary of Fortress. Fortress will exercise sole control as a result.

[8] Fortress submits that the proposed transaction will present a growth opportunity and diversify its portfolio while a larger fund will also increase its chances of attracting international investors. Capital submits that the proposed transaction will be beneficial to its shareholders due to the attractive offer it received.

Impact on competition

[9] The Commission identified that both firms own properties in retail, industrial and office divisions and these properties were evaluated further by the Commission. As

both firms own properties falling under these sectors the Commission found that that the proposed transaction resulted in a horizontal overlap.

[10] The Commission identified nine markets wherein the merging party's activities overlap. The overlaps are as follows;

i. four overlaps in respect of the provision of rentable light industrial property,

ii. three overlaps in relation to the provision of rentable convenience centers

iii. one overlap in relation to the provision of rentable grade B office property

iv. one overlap in relation to the provision of rentable grade B and C office property

[11] In their investigation, the Commission found that the market share in six of the nine identified markets remained low. However the Commission did find that in three of the markets the market shares of the merged entity would be high. High market shares were identified for the following nodes,

i. In the market for the provision of rentable light industrial property within a broader node encompassing the Kempton Park/Spartan, Isando, Elandsfontein, Meadowdale, Linbro ParK, Germiston and Pomona nodes

ii. In the market for the provision of rentable light industrial space within a broader node encompassing Brakfontein/ Midrand/ Cosmosdal/ Lombardi.

iii. In the market for the provision of rentable Grade B office property within the Bryanston node

[12] The merging parties submitted that in most cases, the Commission's calculation of market share was higher than theirs. The explanation for this was that the Commission had relied on listed companies to calculate market shares but according to Mr Stevens of Fortress in the three markets concerned, unlisted companies owned property and if their market shares were taken into account this would dilute the high market shares for Fortress post-merger shown on the Commission's figures.

[13] In order to determine whether high market shares in the three markets would have a negative impact on competition the Commission considered whether there was an availability of vacant rentable space and/or whether there were prospective new developments. In the three markets where a high market share was identified, the Commission found that there was sufficient vacant space to serve as an alternative

which would offset any concerns of the combined high market shares. The Commission was therefore satisfied that the proposed transaction would not result in a substantial lessening of competition.

[14] We concur with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market either because the high market shares appear over stated because of the potential competition arising from the ownership of vacant land by other firms or if the merging parties are correct that these figures are in any event over-stated.

Public interest

[15] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.[1] The proposed transaction further raises no other public interest concerns.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transactions. Accordingly, we approve the proposed transaction unconditionally.

Mr Norman Manoim

02 November 2015
DATE

Ms Medi Mokuena and Prof Imraan Valodia concurring

Tribunal Researcher:	Aneesa Ravat
For the merging parties:	Susan Meyer of Cliffe Dekker Hofmeyr Inc
For the Commission:	Reabetswe Molotsi and Xolela Nokele

[1] *Inter alia* merger record page 9.