



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017806

In the matter between:

Fortress Income 2 (Pty) Ltd

Primary Acquiring Firm

and

**The property letting enterprises trading as
"Arbour Crossing" and "Galleria Shopping Centre"**

Primary Target Firm

Panel	:	Takalani Madima (Presiding Member) Mondo Mazwai (Tribunal Member) Anton Roskam (Tribunal Member)
Heard on	:	16 October 2013
Order issued on	:	16 October 2013
Reasons issued	:	20 November 2013

DECISION

Unconditional approval

[1] On 16 October 2013, the Competition Tribunal ("Tribunal") unconditionally approved the proposed acquisition by Fortress Income 2 (Pty) Ltd of the property letting enterprises trading as "Arbour Town" and "Galleria Shopping (Pty) Ltd".

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

Parties to transaction

[3] The primary acquiring firm is Fortress Income 2 (Pty) Ltd ("Fortress"). Fortress Income Fund is a property loan stock group which owns 109 investment properties in South Africa comprising rentable retail, industrial and commercial

properties. Fortress is a wholly-owned subsidiary of JSE-listed Fortress Income Fund Limited.

- [4] The primary target properties comprise rentable retail properties classified as a major regional centre and a lifestyle centre. Arbour Crossing is classified as a lifestyle shopping centre, whilst Galleria Shopping Centre is classified as a regional shopping centre. Both the target properties are located in Amanzimtoti, KwaZulu-Natal. At the time of filing, the primary target firms were owned by Arbour Town (Pty) Ltd whose only business activities related to its investment in Arbour Crossing and Galleria Shopping Centre.

Proposed transaction and rationale

- [5] This transaction follows a transaction which was unconditionally approved by the Tribunal on 01 October 2013. Resilient Properties (Pty) Ltd ("Resilient Properties") acquired the remaining 90% which it did not already own in Arbour Town from Louis Peens and the other shareholders.¹

- [6] In terms of the proposed transaction, Fortress will acquire 25% undivided shares in the target properties. Fortress is not acquiring any direct or indirect interest in Arbour Town. The remaining 75% will be held by Arbour Town and Resilient Properties (with 65% and 10% respectively).² Post-merger, Arbour Town will exercise sole control over the target properties, while Fortress and Resilient Properties will exercise joint control.³

- [7] The proposed acquisition is consistent with Fortress' strategy of increasing its exposure to retail properties.⁴

Competition assessment

Overlaps

- [8] The Commission found that the proposed transaction will result in a product overlap in the market for the provision of rentable retail property. However, the

¹ See Resilient Properties (Pty) Ltd and Arbour Town (Pty) Ltd – Tribunal case number 017772.

² See page 6 of the Commission's recommendations.

³ Telephone conversation between the Commission and the merging parties' legal representative on 04 October 2013.

⁴ SENS Announcement – 15 August 2013.

retail properties which form part of the Fortress property portfolio are predominantly classified as convenience and neighbourhood centres.⁵

[9] Apart from one property of the acquiring firm, which bears a different classification to the target properties, all the acquiring firm's rentable retail properties are located more than 25 kilometres from the target properties. Due to this distance between the two centres, no geographic overlap will arise from this transaction.

Conclusion

[10] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[11] The merging parties confirmed that the proposed transaction will not have any adverse impact on employment and that no retrenchments will result from the proposed transaction.⁶ No other public interest issues arise as a result of this transaction.

⁵ See page 46 of the merger record.

⁶ See page 2 of the merger record.

CONCLUSION

[12] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest concerns arise as a result of the proposed transaction. Accordingly, we approve the proposed merger unconditionally.


TAKALANI MADIMA

20 November 2013
DATE

Mondo Mazwai and Anton Roskam concurring

Tribunal Researcher: Nicola Ilgner
For the Commission: Reabetswe Molotsi and Grashum Mutizwa
For the merging parties: Susan Meyer of Cliffe Dekker Hofmeyr Inc.