



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017772

In the matter between:

Resilient Properties (Pty) Ltd

Primary Acquiring Firm

and

Arbour Town (Pty) Ltd

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	01 October 2013
Order issued on	:	01 October 2013
Reasons issued	:	29 October 2013

DECISION

Unconditional approval

[1] On 01 October 2013, the Competition Tribunal ("Tribunal") unconditionally approved the proposed acquisition by Resilient Properties (Pty) Ltd of Arbour Town (Pty) Ltd.

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

Parties to transaction

[3] The primary acquiring firm is Resilient Properties (Pty) Ltd ("Resilient"). Resilient is controlled by the Resilient Property Income Fund, a listed property loan stock company which owns 29 properties in 8 provinces, except the Western Cape.

- [4] The primary target firm is Arbour Town (Pty) Ltd ("Arbour Town"). Arbour Town is controlled by Louis Peens, who holds a 53% shareholding (32% thereof is directly controlled whilst the remaining 21% interest is held indirectly through Marketcorp Holdings). The remaining shares are held by Julie Peens, Anke Beauregard, Roy Parbhoo, Silke Peens and Resilient. Resilient currently holds a 10% interest in Arbour Town.
- [5] The only business which Arbour Town conducts relates to its investment in two retail properties located in Amanzimtoti, Kwa-Zulu Natal, namely Arbour Crossing and Galleria Shopping Centre.
- [6] Arbour Crossing is classified as a lifestyle shopping centre, whilst Galleria Shopping Centre is classified as a regional shopping centre.
- [7] Of relevance to this transaction is that Resilient currently owns a 10% interest in Arbour Town, as well two other centres in the Kwa-Zulu Natal region. One of these other two centres is a regional centre located in Richards Bay and the other is a community shopping centre located in Ladysmith.

Proposed transaction and rationale

- [8] In terms of the proposed transaction, Resilient will acquire the remaining 90% interest in Arbour Town which it does not already own. Post-implementation of the proposed transaction, Resilient will have sole control over Arbour Town. During the course of the merger hearing, it was indicated that Arbour Town will be dissolved, resulting in Resilient holding a direct interest in the two retail properties.¹
- [9] Resilient submitted that the proposed transaction is aligned with its strategy of investing in retail properties.
- [10] The Sellers are natural persons who view the transaction as an attractive opportunity to reduce their financial exposure to a single business, thereby facilitating the diversification of their business interests.

¹ See page 3 of the transcript.

Competition assessment

Overlaps

[11] The Commission found that the proposed transaction will result in a product overlap in the market for the provision of rentable retail property, more specifically relating to regional shopping centres. The acquiring firm's holding company, Resilient Property Income Fund, owns the Boardwalk Shopping Centre in Richards Bay, Kwa-Zulu Natal. The Boardwalk Shopping Centre is also a regional shopping centre, however, it is located more than 190 kilometres from the target property which has the same classification, being the Galleria Shopping Centre in Amanzimtoti, Kwa-Zulu Natal. Due to this distance between the two centres, no geographic overlap will arise from this transaction.

Conclusion

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

Public interest

[13] 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.² No other public interest issues arise as a result of this transaction.

² See pages 40 and 51 of the merger record.

CONCLUSION

[14] 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.


NORMAN MANOIM

29 October 2013
DATE

Yasmin Carrim and Andreas Wessels concurring

Tribunal Researcher:	Nicola Ilgner
For the Commission:	Gilberto Biacuana
For the merging parties:	Susan Meyer of Cliffe Dekker Hofmeyr Inc.