COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case no.: 130/LM/NOV07
131/LM/NOV 07

In the large merger between:

Mergence Africa Property Investment Trust
Dipula Property Investment Trust — Primary Acquiring Firms

and

38 Property Letting Enterprises held by
ApexHi Properties Limited
66 Property Letting Enterprises held by
ApexHi Properties Limited — Primary Target Firms

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), U Bhoola (Tribunal Member)
Heard on : 6 February 2008
Order issued on : 15 February 2008
Reasons issued on : 19 February 2008

Reasons [Non- Confidential]

Introduction

1. On February 2008 the Competition Tribunal simultaneously dealt with and approved two mergers; the first one between Mergence Africa Property Investment Trust and 38 Property letting enterprises held by ApexHi Properties Limited ("the Mergence transaction"), and the second one between Dipula Property Investment Trust and 66 Property Letting Enterprises ("the Dipula transaction") held by ApexHi Properties Limited . The reasons for approving both mergers are set out below.[1]

1 As the mergers raise similar issues we have dealt with them in the same decision

The parties and the transaction

2. In the "Mergence transaction, Mergence Africa Property Investment Trust ("MAP Trust") which is controlled by Mergence Africa Property Fund (Pty) Ltd ("MAPF")[2], is acquiring 38 Property Letting Enterprises which comprise of 24 retail properties, 9 offices and 5 Industrial properties ("Target Property Portfolio") which are held by ApexHi Properties Limited ("ApexHi"), a variable rate property loan stock company listed on the JSE in the real estate sector. Redefine, a listed property loan stock company with various subsidiaries among which is Outward, and which through these subsidiaries, participates in the rental of commercial properties in the retail, office and industrial space sectors of the property market in South Africa, is a major shareholder of ApexHi.

3. In the Dipula transaction, Dipula trust, which is ultimately controlled by Dijalo Property Service (Pty) Ltd and Redefine Income Fund Ltd, is acquiring a portfolio of 66 properties comprising 54 retail properties, 10 offices and 2 industrial properties from ApexHi.

4. Prior to both transactions in casu, Redefine reached agreement with Dijalo Property Services (Pty) Ltd ("Dijalo"), a black owned company, and formed Dipula Property Investment Trust ("Dipula") which is 51% owned by Dijalo, and 49% by Redefine. The transaction between Redefine and Dijalo was approved by this Tribunal in December 2006.[3]

5. Thus Redefine is the key player in both the Mergence transaction and the Dipula transaction, both in regard to its relationship with Mergence, Dipula, and ApexHi.

6. Redefine's overall structure in relation to the transactions in casu is as follows:

7. Mergence is a small, new entrant black empowerment company in the property market which currently holds predominantly industrial portfolio. According to the submissions made at the hearing, the relationship between Mergence and Redefine is one of an enterprise development nature, and Redefine is a strategic equity partner which facilitates funding for Mergence.

8. Dipula is also a black empowerment company which according to the submissions made at the hearing, though partly owned by Redefine, exists

2 Outward holds 49% shares in MAPF
3 Case No. CT 78/LM/SEP06

and operates distinctly from Redefine. Both Mergence and Dipula have one representative from Redefine on their boards.

Rationale for the transaction

9. The rationale for Mergence is to add and inject as many retail properties as possible, whilst growing and at the same time diversifying their property portfolios.

10. Dipula regards its transaction as an opportunity to meet its strategy to acquire more commercial properties in order to grow its property fund, which is currently relatively small. The properties that Dipula holds are mainly in Gauteng, and this transaction gives it a national footprint to have properties in other provinces.

11. For ApexHi, both transactions are a strategy to dispose of properties with smaller value which do not fit ApexHi's overall core portfolio which is of larger value. The properties in these transactions were previously acquired from Prima, an acquisition which was approved by this Tribunal in November 2005.[4] At the hearing, Mr Elliot for ApexHi submitted that the current two transactions are in line with ApexHi's new strategy which seeks to focus on the management of property portfolio with larger value, rather than dispersing that and diversifying that with small properties. ApexHi divided these small property portfolios into two so that one goes to Mergence, and the other one to Dipula. We were informed that there was no particular rationale for how the properties were divided and allocated.

12. Redefine sees the mergers as an opportunity towards complying with the empowerment requirements for the property sector.

Relevant Market

13. In the Mergence transaction, ApexHi's target property portfolio in the retail, commercial (office), and industrial sectors, is geographically located in various provinces throughout South Africa. Mergence's current property portfolio is predominantly industrial with some retail properties and commercial properties, which are geographically located in Gauteng, KwaZulu-Natal, Cape Town, Free State, Mpumalanga, Limpopo and Western Cape provinces.

4 ApexHi Properties Limited and Prima Property Trust 68/LM/JUL05

14. The properties currently held by Mergence which fall within ApexHi's product classification and geographic area are: (a) rentable retail space in Alberton area (local convenience retail shopping centre), Gauteng; (b) rentable industrial space in Alrode, Alberton (light industrial), Gauteng; and (c) rentable industrial space in Wynberg area, (light industrial) Gauteng.

15. In the Dipula Merger the product overlap is in respect of grade A and B offices, light industrial properties as well as stand alone retail shopping centres and local convenience retail shopping centres. However there is no geographic overlap in these product markets between the merging parties.

16. In light of the fact that Redefine is a shareholder in each of the acquiring firms, we also considered whether there is an overlap in the product markets defined in the two transactions. Although it was found that the product markets of the two transactions overlap in respect of convenience retail shopping centres and light industrial property it was found that they are not situated in the same geographic areas.

17. There is no need to consider the Dipula transaction any further. There is also no overlap between the properties transferred to Dipula and Mergence. In the circumstances, we will only consider the effect that the Mergence transaction will have on competition.

Competition Evaluation

18. In the Mergence transaction, the Commission submitted that the merging parties would have a 3.11% combined post merger market share for local convenience shopping centre in Alberton, 0.9% for light industrial property in Alberton, and 1.97% for light industrial property in Wynberg. The market share accretion is clearly insignificant to raise any competition issues. There appears to be a co-operative rather than a competitive relationship between Redefine and ApexHi. This is not surprising having regard to the fact that Redefine owns 27.96% shares in ApexHi, and that two of Redefine's executive board members are non executive board members in ApexHi's Board. One of the issues we had to consider in these transactions is whether Redefine, ApexHi and the newly created Dipula and Mergence, are engaged in dividing property markets between themselves to avoid competition with one another.[5]

5 This is not the first time that we have queried the inter-relationships between Redefine and ApexHi, See our decision in the Prima merger Case no. 68/LM/JUL05

19. This may suggest that even though these firms have never formally merged as a single economic entity they may be run as one and the Commission may want to investigate this further in any further merger between these firms. In mergers involving only one of these firms, the Commission may want to have regard to whether the combined assets of the other three firms should be taken into account in assessing the concentration levels that result from the merger.

Effects on Competition

20. These transactions are unlikely to have any anticompetitive effects, particularly when having regard to the insignificant change in the market structure post these transactions.

Public interest

21. The transactions do not raise any public interest issues.

Conclusion

22. Accordingly, these mergers must be approved without conditions.

_____________ **<u>19 February 2008</u>**

N Manoim **Date**

Concurring: Y Carrim, U Bhoola

Tribunal Researchers: L Xaba and R Badenhorst

For the Merging Parties : Vani Chetty Competition Law (Pty) Ltd

For the Commission : Makgale Mohlala and William Kganare (Mergers and Acquisitions)