

SOUTH AFRICA / JUDGMENT

Capital Propfund (Pty) Ltd and Another v Knoxco 10 Properties (Pty) Ltd (LM091Oct21) [2022] ZACT 6 (17 March 2022) [2022] ZACT 6

COURT

Competition Tribunal

BEFORE

Mondo Mazwai, Yasmin Carrim, Andreas Wessels

CASE / FILE NUMBER

LM091Oct21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM091Oct21

Capital Propfund (Pty) Ltd and Inospace (Pty) Ltd (Primary Acquiring Firm)

and

Knoxco 10 Properties (Pty) Ltd (Primary Target Firm)

Heard on: 18

February 2022

Order Issued on: 18

February 2022

Reasons

Issued on: 17

March 2022

REASONS

FOR DECISION

- [1] On 18 February 2022, the Competition Tribunal conditionally approved a large merger between Capital Propfund Proprietary Limited ("Capital"), Inospace Proprietary Limited ("Inospace") and Knoxco 10 Properties Proprietary Limited.

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- [2] The primary acquiring firms are Capital and Inospace. The primary acquiring firms are ultimately controlled by Fortress REIT Limited (“Fortress”) and The Taurus Trust (“Taurus”), respectively.
- [3] The Fortress Group is constituted of property ownership firms, with a portfolio of immovable properties and rental enterprises in all nine provinces of South Africa. Fortress' portfolio is spread across the logistics/industrial, retail and office sectors. The Taurus Group owns industrial, storage and office space in Gauteng through Inospace.
- [4] The primary target firm is Knoxco 10 Properties Proprietary Limited (which is to be known as "Inofort").
- [5] Inofort is a private joint venture company formed for purposes of this proposed transaction and as such currently does not have any activities. Currently, Knoxco is wholly owned by Mr Mark Antony Fox.
- [6] In terms of this transaction, the Fortress group of companies (through Capital, Capital Propfund 2 Proprietary Limited and Lodestone Investments Proprietary Limited) will transfer 12 immovable properties and letting enterprises to Inofort. The Taurus group of companies (through Inospace, Inospace 3 and Phepha Prop 004 Proprietary Limited) will transfer 8 immovable properties and letting enterprises to Inofort. The properties transferred by the acquiring firms into Inofort shall be referred to as “the Target Properties”.
- [7] The Competition Commission (“the Commission”) found that the activities of the merging parties overlap with regard to the provision of industrial property within a broader node encompassing the adjacent Sandton/Randburg and Roodepoort nodes. In this market, the Commission found that the Inospace Target Properties have a market share of approximately 5,62% while the Fortress Target Properties have a market share of approximately 21,04%. As such, the merged entity will have a post- merger market share of approximately 26.66%, based on gross lettable area.
- [8] The Commission found the market share of the merged entity may nevertheless be overstated as some properties were not included due to a lack of information. Regardless, the Commission is of the view that the merging parties will continue to be constrained by other industrial properties in the market.
- [9] The Commission raised a concern about potential information exchange that may arise as a result of the proposed merger, as the two joint venture partners (being the Taurus Group and Fortress Group) still operate competing light industrial properties outside the joint venture.

- [10] In order to remedy this potential concern, the merging parties have accepted not to appoint directors to the joint venture who are also involved in the operations of Fortress Group and Taurus's light industrial businesses; as well as providing non-disclosure undertakings preventing the sharing of competitively sensitive information between the joint venture partners Fortress Group and Taurus Group. The merging parties have agreed to impose these "Chinese wall" limitations as a condition to the approval of the merger.
- [11] The transaction does not have any effect on employment.
- [12] With regard to the promotion the greater spread of ownership, the Commission noted that currently Inofort does not have any black ownership. Fortress is listed on the JSE, and its investors include HDI shareholders. At present, Fortress has approximately 15.43% black ownership and is a level 4 B-BBEE contributor. Inospace currently has approximately 11.91% black ownership. As such post-merger the merging parties estimate that Inofort will be 12.31% black owned.
- [13] There are no other public interest concerns.
- [14] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest for the reasons mentioned. In order to remedy the potential information exchange concern, the proposed transaction is approved subject to the conditions annexed hereto as Annexure "A".

17 March 2022

Ms Mondo Mazwai

Ms Yasmin Carrim and Mr Andreas Wessels concurring

Tribunal Case Manager:

Kameel Pancham

For the Merging Parties:

Susan Meyer of Cliffe Dekker Hofmeyr Inc.

For the Commission:

Nolubabalo Myoli and Grashum Mutizwa

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