

SOUTH AFRICA / JUDGMENT

Fortress Income Fund Limited v Lodestone Reit Limited (LM103Sep16) [2016] ZACT 97; [2017] 1 CPLR 271 (CT) (7 December 2016) [2016] ZACT 97

COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Medi Mokuena

CASE / FILE NUMBER

LM103SEP16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM103SEP16

In the matter between:

FORTRESS INCOME FUND LIMITED

Acquiring Firm

And

LODESTONE REIT LIMITED

Target Firm

Panel

: Norman Manoim (Presiding Member)

: Yasmin Carrim (Tribunal Member)

: Medi Mokuena (Tribunal Member)

Heard on

: 10 November 2016

Order Issued on

: 10 November 2016

Reasons

Issued on : 7 December 2016

Reasons

for Decision

APPROVAL

[1] On 10 November 2016, the Competition Tribunal approved a large merger between Fortress Income Fund Limited ("Fortress") and Lodestone Reit Limited ("Lodestone").

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

[3] Fortress is a public company listed on the Johannesburg Securities Exchange, not controlled by any firm. Fortress controls six other firms which, as a group, own a property portfolio comprising industrial, retail and office properties in the Gauteng, Western

Cape, Kwa-Zulu Natal, Mpumalanga, Eastern Cape, Limpopo, Free State and North West provinces.

Primary Target Firm

[4] Lodestone is a public company listed as a Real Estate Investment Trust on the Alternative Exchange Index of the JSE and is not controlled by any firm. Lodestone controls four subsidiaries which, as a group, own a property portfolio comprising industrial, retail and residential properties in the Gauteng, North West, Kwa-Zulu Natal, Limpopo, Western Cape, Northern Cape and Mpumalanga provinces.

PROPOSED TRANSACTION AND RATIONALE

[5] The proposed transaction involves an acquisition by Fortress of the entire issued share capital of Lodestone, after which Fortress will have sole control over Lodestone.

[6] In terms of rationale, Fortress submitted that the acquisition of Lodestone's assets presents a beneficial long term investment and that the supplementing of its human capital with a highly regarded and competent management team was also a motivating factor.

[7] Lodestone submitted that the transaction provides an opportunity for Lodestone shareholders to dispose of their shares at a premium and enhance their liquidity, thereby enhancing their ability to retain the investment exposure of their choice.

RELEVANT MARKETS AND IMPACT ON COMPETITION

[8] Fortress and Lodestone both provide rentable space in light industrial property and retail convenience centres in various geographic nodes in the KZN, Gauteng, Limpopo and North West provinces.

[9] In the market for the provision of retail space in convenience centres, the Commission identified four geographic nodes within which there was an overlap. In all but one of the nodes, the post-transaction market share of the merged entity does not exceed

6.5% nor does the market share accretion exceed 5%. In the outlier, namely the provision of rentable space in convenience centres within a 10km radius of Lodestone's Makhado Square convenience centre, located in the Limpopo province, the merged entity would have a post-transaction market share of 15.88% with market share accretion of 5.05%.

[10] In the market for the provision of rentable space in light industrial property, the Commission identified nine nodes within which there was horizontal overlap. In none of the nine nodes does the post-transaction market share exceed 23%, nor does market share accretion exceed 3%.

[11] In both sub-markets and the corresponding geographic nodes, the Commission found that the merged entity will continue to face strong competition from numerous competitors, constraining its ability to prevent or lessen competition.

[12] The proposed merger thus does not create any competition concerns.

CONCLUSION

[13] Although presenting horizontal overlaps, the low post-merger market shares in such markets as well as the presence of strong competitors will render such overlaps nugatory.

[14] The proposed transaction does not raise any public interest concerns.

[15] Accordingly, the transaction was approved without conditions.

7 December 2016

Date

Norman Manoim

Yasmin Carrim and Medi Mokuena concurring.

Tribunal Researcher: Alistair Dey-Van Heerden

For the merging parties: Nazeera Mia of Cliffe Dekker Hofmeyr

For the Commission: Raebetswe Molotsi

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