

COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 40/LM/Apr09

In the matter between:

Redefine Income Fund Ltd

Acquiring Firm

And

Apexhi Properties Ltd and Madison

Property Fund Managers Holdings Ltd

Target Firm

Panel : D Lewis (Presiding Member); M Mokuena (Tribunal Member) and N Manoim (Tribunal Member)

Heard on : 29 July 2009

Decided on : 29 July 2009

Reasons Issued on : 30 September 2009

Reasons for Decision

Approval

[1] On 29 July 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Redefine Income Fund Ltd and Apexhi Properties Ltd and Madison Property Fund Managers Holdings Ltd. The reasons appear below.

Parties

[2] The primary acquiring firm is Redefine Income Fund ("Redifine") a public company listed in the JSE Securities Exchange.¹

[3] The primary target firm is ApexHi Properties Limited ("ApexHi"); a public company incorporated under the company laws of the Republic of South Africa and is listed on the JSE Securities Exchange.²

¹ Redefine controls the following entities: Outward Investments (Pty)Ltd; Portion 68 Rivonia Ext 3 (Pty)Ltd; Portion 65 Rivonia Ext 3 (Pty)Ltd; Terminus Klerksdorp (Pty)Ltd; Dipula Property Fund; Mergence Africa Property Fund (Pty)Ltd; Mergence Africa Property Investment Trust (Pty)Ltd; Spearhead Property Holdings and Other firms outside the Republic of South Africa. Redefine is not controlled by any single shareholder. Its major shareholders and their respective shareholding are as follows: Old Mutual 11.8%; Cape Gannet Properties 8.9%; Stanlib Property Funds 7.7%; Standard Bank Group Retirement Fund 7.5% and Investec 5.7%.

² ApexHi is not controlled by any single shareholder but controls ApexHi Charitable Trust; Business Venture Investments No 1232 (Pty) Ltd and Ambit Properties Limited. The major shareholders in ApexHi are Old Mutual Group Limited (with 8.18% A Units; 12.42% B Units; and 11.38% C Units); Outward Investment (Pty) Ltd (with 7.21% A Units; 17.86% B Units; and 3.51% C Units); Coronation (with 6.50% A Units); Investec Limited (with 5.48% A Units; 5.47% B Units; and 6.15% C Units); and Clearwater Property Holdings (Pty) Ltd (with 23.62% C

[4] The second target firm is Madison Property Fund Managers Ltd (“Madison Holdings”). Madison Holdings wholly owns Madison Property Fund Managers Ltd (“Madison Ltd”)³ an asset management company. Madison Holdings controls the following entities: Madison Property Fund Managers Ltd (“Madison Fund”) and Hyprop Management Company (Pty) Ltd (“Hyprop”).

Transaction

[5] In terms of the proposed transaction, Redefine intends to acquire all of ApexHi linked units (other than those already held by Redefine’s subsidiaries) and all of Madison’s linked unit. The proposed transaction will be implemented by way of a scheme of arrangement in terms of section 311 of the Companies Act No.61 of 1973.

Parties Activities

[6] Redefine is a property loan stock company, which owns a portfolio of properties comprising offices, retail and industrial properties throughout South Africa.

[7] ApexHi is also a property loan stock company which owns a portfolio of properties comprising offices, retail and industrial properties throughout South Africa. Madison is a property asset management company, whose activities involve property asset management of differentiated loan stocks and provision of diversified expertise in property control including property development management services and leasing services. The properties under management of Madison comprise retail and commercial real estate properties.

Rationale for the Transaction

[8] The parties submit that Redefine will attract interest from a wider group of investors such as tracker funds and international investors and that the Redefine Group will have more access to capital markets for funding at competitive rates based on moderate debt and secure cash funds.

[9] From ApexHi’s view the merger will result in reduction of expenses and extraction of synergies and funding efficiencies. For Madison, the merger with Madison will internalise the

³ Madison Ltd controls the following entities: ApexHi Manco Trust (ApexHi Trust”); A Million Up Investments 158 (Pty) Ltd (“A Million Up Investments”); Canal Walk Management Company (Pty) Ltd (“Canal Walk”) and Prima Property Trust Managers Ltd (“Prima Trust”).

asset management skills, intellectual capital and expertise of Madison in conformity with international trends.

Market Definition

[10] The Commission found that the proposed transaction results in both horizontal and vertical overlaps. With regard to the horizontal overlap the Commission found that there is an overlap in the activities of the merging firms in respect of rentable grade A and B office properties; rentable “mixed” used properties; rentable light industrial properties and rentable local Convenience Centre retail properties.

[11] With regard to the geographic market, the Commission considered the geographic market on a narrowly defined area based on Investment Property Databank (“IPD”) data. According to the Commission the geographic overlaps between the merging parties are limited to the following areas: Grade A Office Property in Hyde Park; Grade B Office Property in Rosebank, Randburg and Durban City Area; light industrial area in Kelvin/Alexandra/Wynberg Node, Rocherville Node, Isando Node, Midrand/Olifantsfontein Node and Jet Park Node; Retail Local Convenience space in Johannesburg CBD Node, Centurion/Lytelton Node, Randburg Node, Benoni Node, Boksburg Node and East London CBD Node.

Competition Analysis

Horizontal Analysis

[12] In its competition analysis the Commission analysed both the broader property industry and the narrow markets in which the parties compete. Given the fact that Redefine and ApexHi are listed property loan stock companies, the Commission firstly analysed the effect of the proposed transaction in the listed stock property market. As indicated in Table 1 below, the Commission’s investigation found that the merged entity would hold a relatively small share of the greater office, industrial and retail property markets as compared to other listed entities.

Market Shares

Table1. Market share estimates of office, industrial and retail for the listed property owners in South Africa as at December 2008

Property Fund	owner/	Office market share %	Industrial market share %	Retail market share %

Growthpoint	8.36	9.35	5.67
Fountainhead	n/a	1.10	2.08
Pangbourne	1.54	10.78	2.68
Hyprop	2.30	1.17	1.54
Vukile	1.45	1.76	1.54
Resilient	2.17	1.69	0.80
SA Corporate	3.04	1.97	1.38
Emira	3.29	3.03	2.26
ApexHi/Ambit	4.27	2.08	1.91

Source: Competition Commission

[13] According to the Commission, Table 2 below represents approximately 99% of the listed property loan stock companies in South Africa. In its analysis the Commission found that Redefine's and ApexHi's property portfolios are approximately 8% and 6% respectively. The Commission found that Growthpoint is the largest listed property loan stock company with an estimated market share of approximately 23% market share, followed by Pangbourne with 16% market share and Emira with 8%.

Table 2: Market share estimates of listed loan stock companies in South Africa

Property owner/Fund listed	National market share % of commercial property assets
Growthpoint	23
Fountainhead	3
Pangbourne	16
Hyprop	5
Vukile	4
Resilient	4
SA Corporate	6
Emira	8
ApexHi/Ambit	8
Redefine	6
Combined Entity	14
Others	16

Source: Best estimates from industry players

[14] The Commission also analysed the narrow markets in which the parties compete. The Commission found, as it can be seen in the table 3 below, that the merging parties would hold reasonably low market shares in the various nodes and in markets in which they compete. According to the Commission the merging parties would be competing in most if not all the markets with both listed and unlisted property funds as well as with banks and pension funds.

Table 3: Narrow node analysis

Classification	Geographic Node	Estimated Total RA(m ²)	Merged entity's estimated RA (m ²)	Combined market shares %
Grade A	Hyde Park	28 952	6 371	22
Grade B	Rosebank	182 158	10 281	5
	Randburg	260 216	16 015	6
	Durban City Area	500 000	60 914	12
Light Industrial	Alexandra/Wynberg	350 000	26 745	7
	Prolecon/Rosherville	750 000	38 927	5
	Isando	500 000	93 790	18
	Midrand/Olifantsfontein	500 000	36 198	7
	Jet Park	586 864	90 487	15
Retail Local Convenience	Johannesburg CBD	198 634	12 360	6
	Centurion/Lyttelton	300 000	5 958	1.9
	Randburg	203 000	11 188	5
	Benoni	100 000	13 523	13
	Boksburg	200 000	6 085	3
	East London	300 000	8 278	3

[15] The Commission also considered barriers to entry and it found that although barriers to entry are high in the property sector and asset management market, the barriers are not prohibitive because they relate mainly to cost of capital, which in the Commission's view can

be obtained by way of loans.⁴ The Commission is also of the view that Madison is not a leading player in the market for asset management services. We agree with the Commission's conclusion that although Madison's market share in the market for asset management services is 17%, the combined firm would continue to face a number of strong, effective competitors notably Growthpoint having 18% market share; Old Mutual with 16% and Liberty having 11% market share.

[16] In respect of the vertical effects, the Commission found that the proposed transaction does not give rise to any customer foreclosure concerns as Madison is the sole provider of asset management services to Redefine and ApexHi. This relationship existed pre-merger and will continue to exist post merger with the difference that Ambit's portfolio as incorporated under ApexHi will also be under the management of Madison and that all asset management of the merged entity will be on an in-house basis.

[17] With regard to input foreclosure, the Commission's analysis revealed that the only party that may be potentially foreclosed as a result of the transaction is Hyprop. The Commission contacted Hyprop and it expressed no concern and it indicated that it has given notice to Madison to terminate their asset management agreement when it comes to an end in December 2009. There are alternative suppliers of asset management services including Growthpoint, Pangbourne, RMB; Sanlam, Acucap, and Resilient. We are therefore of the view that the proposed transaction will not give rise to any input foreclosure.

Conclusion

[18] Although the merger will lead to some overlaps in certain property nodes they are not sufficient to raise concerns. Vertical integration issues are minor. There are no public interest issues and accordingly the transaction is unconditionally approved.

N Manoim

Tribunal Member

M Mokuena and D Lewis concurring

Tribunal Researcher : Jabulani Ngobeni

30 September 2009

Date

⁴ Additionally the Commission's telephonic discussion with major players in the industry (players such as Liberty, Growthpoint, Standard Bank, Acucap, Retail Africa, Hyprop, Emira, Momentum, Absa Bank and Amdec) revealed that barriers to entry into the property industry are immaterial due to the market's competitive nature. Please see the Commission's report on page 25.

For the merging parties : Vani Chetty Competition Law
For the Commission : Lorrain Madihlaba (Mergers and Acquisitions)