



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:77/LM/Sep11**

In the matter between:

**RESILIENT PROPERTIES (PTY) LTD**

Acquiring Firm

And

**PANGBOURNE PROPERTIES LTD**

Target Firm

Panel : Norman Manoim (Presiding Member),  
Yasmin Carrim (Tribunal Member)  
Andreas Wessels (Tribunal Member)  
Heard on : 12 October 2011  
Order issued on : 12 October 2011  
Reasons issued on : 26 October 2011

### **Reasons for Decision**

#### **Approval**

- 1] On 12 October 2011 the Competition Tribunal ("Tribunal") approved the large merger between Resilient Properties (Pty) Ltd and Pangbourne Properties Limited in respect of the property known as Boardwalk Shopping Centre. The reasons for approving the proposed transaction follow below.

#### **The Parties to the transaction**

- 2] The primary acquiring firm is Resilient Properties (Pty) Ltd ("Resilient"), which is a private company incorporated in terms of the laws of the Republic of South Africa. Resilient is a wholly owned subsidiary of Resilient Property Income Fund Limited, a property income fund which is listed on the Johannesburg Securities Exchange. The Resilient Group conducts business in the rental of properties in the retail space sector of the rental property market throughout the Republic of

South Africa.

- 3] The primary target firm is Pangbourne Properties Limited (“Pangbourne”) in respect of the property known as Boardwalk Shopping Centre. Pangbourne is a wholly owned subsidiary of Capital Property Fund (“Capital”). Boardwalk is a shopping centre situated in Richards Bay in the province of KwaZulu Natal and categorised as a major regional centre comprising 65 814 square metre of rentable retail space.

### **The Rationale**

- 4] In terms of the Draft Sale Agreement, Resilient is acquiring from Pangbourne the entire business enterprise known as Boardwalk and described as portions 4, 5, 38, 40 and 41 of 11161 Richards Bay, province of KwaZulu Natal. Following the implementation of the proposed transaction, Resilient will have sole control of Boardwalk.

### **The relevant market and the impact on competition**

- 5] The Commission found that there is an overlap in the market for major regional centres. Boardwalk comprises 65 814 square metre of rentable retail space, in the Richards Bay node. The Commission found that Resilient does not own major regional centres around the Richards Bay node. In its findings the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for retail space in the Richards Bay node as there is no geographic overlap in the activities of the merging parties.
- 6] The Commission submitted that there is also a vertical relationship between the merging parties because Resilient Fund holds a 19.1% interest in Capital and in turn PFM which is a wholly owned subsidiary of Resilient Fund is the management company of Capital. Furthermore, PFM has outsourced the asset management function it has in respect of Capital to Resilient. The Commission found that the vertical relationship is minimal to result in foreclosure. Furthermore the Commission submitted that this transaction raises no public interest concerns and accordingly recommends that the transaction be approved without conditions.
- 7] We agreed with the Commission’s conclusions and accordingly, the merger was approved without conditions.

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**YASMIN CARRIM**

26 October 2011  
**DATE**

**N Manoim and A Wessels concurring.**

Tribunal Researcher: Thabo Ngilande

For the merging parties: Vani Chetty Competition Law

For the Commission: Mr Bheki Masilela

