



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM116sep16**

In the matter between:

**Capital Popfund Proprietary Limited**

Primary Acquiring Firm

and

**JR209 Investments Proprietary Limited, in respect of  
the vacant land and immovable property and  
letting enterprise to be constructed on Portion 61  
(a portion of Portion 8) of the farm Witfontein 16,  
in the City of Ekurhuleni, Gauteng**

Primary Target Firm

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|-------------------|------------------------------------|
| 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 | : 1 December 2016                  |

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### **Reasons for Decision**

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#### **Approval**

[ 1 ] On 10 November 2016, the Competition Tribunal ("**Tribunal**") unconditionally approved the merger between Capital Propfund Proprietary Limited ("**Capital**") and JR209 Investments Proprietary Limited, in respect of the vacant land and immovable

property and letting enterprise to be constructed on Portion 61 (a portion of Portion 8) of the farm Witfontein 16, in the City of Ekurhuleni, Gauteng.

[ 2 ] The reasons for approving the proposed transaction follow.

### **Parties to transaction**

#### *Primary acquiring firm*

[ 3 ] The primary acquiring firm is Capital, a wholly-owned subsidiary of Capital Property Fund Limited, which in turn is wholly-owned by Fortress Income Fund Limited ("**Fortress**"). Fortress is publically listed on the JSE Limited as a Real Estate Investment Trust and is not controlled by any firm. Fortress and its subsidiaries will hereinafter be referred to as the "**Acquiring Group**."

[ 4 ] The Acquiring Group is a property ownership group which holds various properties such as industrial, office, retail and development in the Kwazulu-Natal, Gauteng, Mpumalanga, Western Cape, Limpopo, North West, Eastern Cape and Free State Provinces.

#### *Primary target firm*

[ 5 ] The primary target firm owns vacant land in the City of Ekurhuleni, Gauteng "**the Target Property**." The Target Property is situated at the intersection of R21 freeway and Link Road in Kempton Park in the Gauteng Province.<sup>1</sup> The Target Property is owned by JR209 Investments Proprietary Limited ("**JR209**") which is a wholly-owned subsidiary of M&T Holdings which in turn is wholly-owned by the Tsai Trust.

[ 6 ] The merging parties intend to develop the Target Property into lettable light industrial property.

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<sup>1</sup> The land is described as Portion 62, a portion of Portion 8 of the farm Witfontein 16.

## **Proposed transaction and rationale**

- [ 7 ] The proposed transaction involves the Acquiring Group acquiring 65% undivided shares in the Target Property.<sup>2</sup> This will result in Capital enjoying the majority vote at a Management Committee level with JR209 retaining a veto right in respect of approving and amending the business plan.
- [ 8 ] The Acquiring Group submitted that the proposed transaction is in line with its strategy to invest and develop A-grade logistics facilities.

## **Impact on competition**

- [ 9 ] According to the Competition Commission's ("**the Commission**") findings the proposed transaction does not result in a substantial lessening of competition for reasons which follow. Their investigation found that once the Target Property is developed, a horizontal overlap would arise between the Acquiring Group as it owns light industrial properties in the Gauteng Province. In the market for rentable light industrial property within the Elandsfontein, Spartan/Kempton Park, Jet Park, Meadowdale, Sebenza/Germiton and Pomona nodes the market accretion would be less than 5% with an overall market share of less than 20%. The Commission's analysis also yielded that the merged entity will continue to be constrained by other competitors in this market such as Growthpoint Properties Limited, Redefine Properties Limited and Black Pepper Properties Proprietary Limited.
- [ 10 ] In the absence of facts to the contrary, we concur with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

## **Public interest**

- [ 11 ] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.<sup>3</sup> The proposed transaction further raises no other public interest concerns.

## **Conclusion**

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<sup>2</sup> In the initial notification, Capital intended to acquire 50%.

<sup>3</sup> *Inter alia* merger record page 2.

## Conclusion

[ 12 ] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally

  

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**Mr Norman Manoim**

01 December 2016  
**DATE**

**Ms Yasmin Carrim and Ms Medi Mokuena concurring**

Tribunal Researcher: Aneesa Ravat

For the merging parties: Susan Meyer of Cliffe Dekker Hofmeyr

For the Commission: Nolubabbalo Myoli and Xolela Nokele