



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 22/LM/May10

In the matter between:

Acucap Properties Ltd

Acquiring Firm

And

Attfund Ltd

Target Firm

Panel : Norman Manoim (Presiding Member),
Andreas Wessels (Tribunal Member) and
Medi Mokuena (Tribunal Member)
Heard on : 15 July 2010
Order issued on : 15 July 2010
Reasons issued on : 24 August 2010

Reasons for Decision

APPROVAL

[1] On 15 July 2010 the Competition Tribunal (the "Tribunal") unconditionally approved the acquisition between Acucap Properties Ltd and Attfund Ltd. The reasons for approval follow below.

PARTIES TO THE TRANSACTION

- [2] The primary acquiring firm is Acucap Properties Limited (“Acucap”), a company incorporated in accordance with the laws of the Republic of South Africa. Acucap’s major shareholders are Nedbank Ltd (6.58%), Thesele Group (5.32%) and Government Employee Pension Fund (14.02%). Acucap directly controls Acucap Investments (Pty) Ltd, Acucap Property Management (Pty) Ltd, Sycom Property Fund Managers Ltd (“Sycom Managers”) and Atlas Properties Ltd.
- [3] Through Atlas, Acucap controls Advent Properties (Pty) Ltd, Acucap Management Services (Pty) Ltd and Atlas Property Developments (Pty) Ltd. Through Sycom Property Fund Managers Acucap controls Sycom Property Fund Collective Investment Scheme in the Property Portfolio (“Sycom Fund”), FC Property Management Company (Pty) Ltd, Somerset Mall Property Management Company (Pty) Ltd, Woodlands Office Park Property Management Company (Pty) Ltd, Tyger Hills Office Park (Pty) Ltd and CCG097 Share Block Company (Pty) Ltd.
- [4] The primary target firm is Tyger Hills Office Investments (Pty) Ltd (“Tyger Hills”), which is owned by Attfund Ltd (“Attfund”). Attfund is a public company listed on the JSE and as such is not controlled by any individual shareholders. Attfund controls Tyger Hills, SA Value Marts (Pty) Ltd, Glenwood Office Investments (Pty) Ltd, Fullimput 160 (Pty) Ltd, Atterbury Deco Centre Ltd, Formprops 1 (Pty) Ltd, Glenfield Property (Pty) Ltd, Movies at Woodlands (Pty) Ltd and Pubus One Share Block Company (Pty) Ltd.

DESCRIPTION OF THE TRANSACTION

- [5] In terms of the sale of shares agreement entered into by the merging parties, Acucap intends to acquire the entire issued share capital of Tyger Hills, which includes the immovable property known as Phase 3, Phase 5 and Phase 6. On completion, Tyger Hills will be solely controlled by Acucap.

ACTIVITIES OF THE PARTIES

- [6] Acucap is a property loan stock company listed on the JSE Ltd in the “Real Estate-Real Estate Holdings & Development” sector. Acucap Group’s Property Portfolio, which includes the Sycom Fund¹ Property Portfolio, comprises investments in properties in the retail, commercial office and industrial space sectors of the property market. These properties are located in various areas throughout South Africa including Gauteng, Kwazulu Natal, the Eastern Cape and the Western Cape Provinces. Acucap, through Sycom Fund, owns a grade “A” office property situated in Parow, Western Cape.
- [7] Acucap also performs asset management functions for its own properties. The parties further indicated that Acucap outsources certain other property management functions to third parties on an arm’s length basis.²
- [8] Attfund is also involved in the property market. It owns a portfolio of commercial property in the rentable office space and rentable retail space in Gauteng and Western Cape. The primary target firm, Tyger Hills Office Park, comprises of a rentable “A” grade office properties located in Parow, Western Cape Provinces.

RATIONALE FOR THE TRANSACTION

- [9] Acucap submitted that this transaction presents it with an opportunity to bring good quality office space in Cape Town to the Acucap property portfolio. The rationale for Attfund is that it wishes to focus on a more retail oriented portfolio and is therefore disposing its office park, which is no longer its core business.

¹ The merging parties have submitted that Sycom Fund purchased all the shares and claims in Tyger Hill Office Park which included the immovable property known as Phase, 1, 2 and 4. This transaction was approved by the Tribunal on 08 March 2010.

² According to the parties, Acucap outsources these property management functions when it does not have the required infrastructure to effectively conduct such functions.

COMPETITION ANALYSIS

[10] There is an overlap in the activities of the merging parties in respect of rentable grade “A” office space in Cape Town, Western Cape. The Commission noted that the South African Property Owners Association’s (“SAPOA”) report does not define Parow as a node. Further, the Commission noted that Parow is 3 km away from the Bellville node and that these two areas are located on the same road, namely Voortrekker Road. The Commission therefore concluded that for the purposes of the present transaction, Parow forms part of the Bellville node. The merging parties’ combined post merger market share in the Bellville node is approximately 9%.

[11] There is also a vertical relationship between the activities of the merging parties in that Acucap acquired the property management business relating to Tyger Hills from Parkdev, an asset manager of Attfund. The Commission found that the parties would have a combined post merger market share of approximately 7% for the provision of asset management services. Competitors in this market include Growthpoint, Old Mutual Group, Redefine, Pangbourne Properties, Sanlam Properties Resilient and many others.

[12] The Commission’s investigations also found that the property market is characterised by cross shareholdings and cross directorships. The Commission further found that property managers or asset managers manage different properties owned by competing firms. In the instant transaction, the cross directorship is between Sycom and Attfund i.e. three executive directors sit on both Attfund and Sycom boards. The merging parties submitted that post merger, these executive directors will resign from the Sycom board, with the exception of one non-executive director who will still remain on both boards.

[13] The merging parties further submitted that in the event of a conflict of interest arising, i.e. where the non-executive director becomes aware of strategies which may overlap with their own firms’, that director would in such a situation note their interest and either recuse themselves or not vote on the matter at hand.

[14] In light of the above, we agree with the Commission that the proposed transaction is unlikely to result in or enhance coordination in the relevant markets. Further, the proposed transaction is unlikely to result in a substantial lessening or prevention of competition as the merging parties' post merger market shares remain low.

CONCLUSION

[15] There are no significant public interest issues and we accordingly approve the transaction.

Norman Manoim

24 August 2010
DATE

Andreas Wessels and Medi Mokuena concurring.

Tribunal Researcher: Ipeleng Selaledi

For the merging parties: Vani Chetty Competition Law (Pty) Ltd

For the Commission: Themba Mahlangu