

SOUTH AFRICA / JUDGMENT

Acucap Properties Ltd v Parkdev (Pty) Ltd (79/LM/Jul08) [2008] ZACT 86 (6 October 2008) [2008] ZACT 86

COURT

Competition Tribunal

BEFORE

D Lewis, N Manoim, Y Carrim

CASE / FILE NUMBER

79/LM/Jul08

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 79/LM/Jul08

In the matter between:

Acucap Properties Ltd Acquiring Firm

And

Parkdev (Pty) Ltd Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal
Member) and Y Carrim (Tribunal Member)

Heard on : 10 September 2008

Order issued on : 17 September 2008

Reasons

issued on : 6 October 2008

Reasons

for Decision

Approval

On 17 September 2008, the Tribunal approved the acquisition by Acucap Properties Ltd (“Acucap”) of certain assets and shares in Sycom Fund

from Parkdev Pty Ltd (“Parkdev”). The reasons follow below.

The Transaction

The proposed transaction comprises a series of inter-related steps whereby Acucap will acquire certain interests and assets in Sycom

Fund from Parkdev.¹ The various steps are:

An asset management transaction whereby Acucap is acquiring 50% of the rights and obligations in Sycom Property Fund Managers (“SPFM”),

A property management transaction whereby Acucap is acquiring all the properties owned or co-owned by the Sycom Property Fund,

The sale of shares transaction whereby Acucap is acquiring 50% of the issued share capital in SPFM.

Following the implementation of the proposed transaction Acucap will acquire sole control of the property management business of the Sycom Fund. Acucap and Parkdev will also share joint control of the asset management business as well as of SPFM. Going forward SPFM will contract certain of the asset management functions to Parkdev and the property management to Acucap. (See annexure A for a diagram of the structure post the transaction.)

During the hearing the merging parties acknowledged that whoever controls SPFM also controls the Sycom Fund because there is a separation between ownership and control due to the regulatory environment within which they function.² Thus, as a result of the purchase of the shares in SPFM Acucap will acquire the ability to exercise joint control over the Sycom Property Fund.³

Acucap is a property loan stock company listed on the JSE Securities Exchange. Acucap is not controlled by any single firm. Its largest shareholder is the Public Investment Corporation.

The primary target firms are all controlled by Parkdev. Parkdev in turn is controlled by Village Trust.

Rationale for the transaction

The Boards of Acucap and Sycom have identified certain synergies between the two funds that would, by merging the two funds, realize substantial

benefits to unitholders.

The relevant market and the impact on competition

Acucap owns retail properties, office buildings and industrial properties in Gauteng, Western Cape, Eastern Cape and Kwazulu Natal provinces. Sycom owns retail and office properties in Gauteng and the Western Cape province. The Commission found that the parties' activities overlapped with regard to grade A office properties in the Sandton and Environs node, the Bryanston node and the Greater Woodmead node.

Both parties also offer property and asset management services⁴,

however, Acucap only offers its property and asset management services in-house while Sycom, in addition to its own properties,

also provide these services to third parties. In light of the fact that Acucap does not offer these services to third parties, the Commission did not regard them as competitors in this market.⁵ We agree.

The merged entity's market share in the Grade A office property market will be:

Sandton and Environs node 4.78%

Bryanston node 7.4%

Greater Woodmead node 14.66%

In light of the fact that the merged entity's market shares remain low in the overlapping Grade A property markets we find that the transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.

CONCLUSION

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

_____ 6 October 2008

N Manoim Date

D Lewis and Y Carrim concurring

Tribunal Researcher: R Badenhorst

For the merging parties: Vani Chetty

For the Commission: Xolela Nokela

Annexure A

P

SYCOM PROPERTY FUND MANAGERS LIMITED OST THE TRANSACTION

50%

50%

18.3%

ACUCAP PROPERTIES LIMITED

Subsidiaries

Acucap Investments (Pty) Ltd

Acucap Investments 2 (Pty) Ltd

Acucap Investments 3 (Pty) Ltd

Acucap Investments 4 (Pty) Ltd

Intabrink Investments (Pty) Ltd

Illovo Boulevard Piazzas (Pty) Ltd

Atlas Properties Limited

Advent Properties (Pty) Ltd

Atlas Property Developments (Pty) Ltd

Atlas Management Services (Pty) Ltd

PROPERTY PORTFOLIO

- Retail Assets R3.5b
- Offices R1.5b
- Total R5b

SYCOM PROPERTY FUND

PROPERTY PORTFOLIO

- Retail Assets R2.6b
- Offices R1.8b
- Total R4.4b

100% Fund Manager in terms of Trust Deed

PARKDEV (PTY) LIMITED

50% Undivided Share in Asset Management Agreement

50% Undivided Share in Asset Management Agreement

100%

100%

100% Property Management Agreement

1 Acucap also has an 18% stake in the Sycom Fund which was acquired during the first quarter of 2008. This was not disclosed to the Commission during its investigation into the transaction. Note that in paragraphs 3 and 4 below we discuss the fact that due to the legislation governing property trusts the party that controls the managing company also controls the underlying fund.

2 See transcript page 8.

3 This change in control over Sycom Fund from single to joint control triggers the notification of the large merger.

4 Property management services concerns services such as collecting the rent, paying all bills and day to day maintenance of the property. Asset management services concerns financial functions on a fund level.

5 The merged entity's market share in the asset management market will be 10.8% and the property management services market 7.1%.

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