

SOUTH AFRICA / JUDGMENT

Acucap Properties Ltd v Parkdev (Pty) Ltd (21/LM/May10) [2010] ZACT 55 (24 August 2010)

[2010] ZACT 55

COURT

Competition Tribunal

BEFORE

Norman Manoim, Andreas Wessels, Medi Mokuena

CASE / FILE NUMBER

21/LM/May10

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 21/LM/May10

In the matter between:

Acucap Properties LtdAcquiring Firm

And

Parkdev (Pty) LtdTarget 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

On 21 July 2010 the Competition Tribunal (“Tribunal”) unconditionally approved the acquisition between Acucap Properties

Ltd and Parkdev (Pty) Ltd. The reasons for approval follow below.

PARTIES TO THE TRANSACTION

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.

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.

The primary target firm is Parkdev (Pty) Ltd (“Parkdev”) in respect of the 50% Asset Management Business, which includes the right to manage Sycom Fund and 50% shares in Sycom Managers. Parkdev is controlled by Village Trust.

DESCRIPTION OF THE TRANSACTION

The merging parties have entered into two different but interrelated agreements i.e. the Sale of Undivided Shares Agreement and the Sale of Shares Agreement. In terms of the Sale of Undivided Shares Agreement, Acucap intends to acquire the remaining 50% undivided share of all its rights and obligations under the asset management with Sycom Managers. In terms of the Sale of Shares Agreement, Acucap intends to acquire the remaining 50% of the issued share capital in Sycom Managers from Parkdev. On completion of the transaction, Acucap will have sole control of the management of Sycom Fund’s Portfolio as well as sole control over Sycom Managers.

ACTIVITIES OF THE PARTIES

Acucap is a property loan stock company which invests in retail property situated in major urban centres and retains the character of a diversified fund investment in quality office nodes and in industrial parks. 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.¹

Parkdev is active in the provision of asset management services, which primarily consists of the right to manage Sycom Fund. Parkdev also manages the unlisted property fund for Attfund Ltd (“Attfund”).

RATIONALE FOR THE TRANSACTION

Acucap sees this transaction as an opportunity to fulfil its long-term interest of having full ownership of Sycom Managers, with the aim of advancing its strategic objective of bringing the two businesses together in an appropriate form. Parkdev, on the other hand, has decided to focus its attention on the management of Attfund's assets and properties in order to maximize Attfund shareholders value. This is also in light of the fact that Parkdev doesn't participate in the daily decision making of the Sycom Fund portfolio.

COMPETITION ANALYSIS

The activities of the merging parties overlap in respect of the provision of asset management. The Commission defined the geographic

market for these services as national. The combined post merger market share of the merging parties for asset management is approximately 7%. There are many firms competing in this market including Growthpoint, Old Mutual Group, Sanlam Properties,

Pangbourne Properties, RMB Properties, Resilient Group, ABSA, Nedbank, etc.

There is also a vertical dimension to this transaction in that Acucap owns properties which could be managed by asset managers. However, this will not result in any foreclosure concerns as the value of Acucap's properties amounts to approximately 4%.

In light of the above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets.

CONCLUSION

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

24 August 2010

Norman Manoim 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

¹According to the parties, Acucap outsources these property management functions when it does not have the required infrastructure to effectively conduct such functions.

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