

SOUTH AFRICA / JUDGMENT

Attacq Waterfall Investment Company (Pty) Ltd v Pocket 3 and Pocket 24 on Portion 1 of the Waterfall Farm 5 (LM090Sep23) [2023] ZACT 79 (4 December 2023)

[2023] ZACT 79

COURT

Competition Tribunal

BEFORE

AW Wessels, T Vilakazi, G Budlender

CASE / FILE NUMBER

LM090Sep23

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

COMPETITION

TRIBUNAL OF SOUTH AFRICA

Case no: LM090Sep23

In

the large merger
between:

Attacq
Waterfall Investment Company (Pty) Ltd
Primary
Acquiring Firm
And
Pocket
3 and Pocket 24 on Portion 1 of the
Waterfall
Farm 5
Primary
Target Firm

Panel:

AW
Wessels (Presiding Member)
T
Vilakazi (Tribunal Member)
G
Budlender (Tribunal Member)
Heard

on:	09 November 2023 Order
issued on:	10 November 2023 Reasons
Issued on:	04 December 2023

REASONS FOR DECISION

Introduction

- [1] On 10 November 2023, the Competition Tribunal (“the Tribunal”) unconditionally approved the merger whereby Attacq Waterfall Investment Company Proprietary Limited (“AWIC”) will increase its share in the development rights in respect of two land parcels known as Pocket 3 and Pocket 24 on portion 1 of the Waterfall Farm 5 (“the Development Rights”).

Primary acquiring firm

- [2] AWIC is wholly owned and controlled by Attacq Limited (“Attacq”). AWIC holds and controls various real estate portfolios and development and leasehold rights in Waterfall City. AWIC also holds a 23.57% indirect interest in Waterfall JVCO 115 (Pty) Ltd (“JVCO”). Attacq, which operates as a Real Estate Investment Trust (“REIT”), is listed on the Johannesburg Stock Exchange Limited (“the JSE”) and is not controlled by any single shareholder. Attacq controls the following firms: Attacq Management Services Proprietary Limited (“AMS”), AWIC, Attacq Ellipse (Pty) Ltd and Attacq the Mix (Pty) Ltd. Attacq, its subsidiaries and all the firms directly and indirectly controlling it, will hereinafter be collectively referred to as the “Acquiring Group”.

Primary target firm

- [3] The primary target firm comprises a 50% share in the Development Rights. The Development Rights are currently held by JVCO, a private company registered in accordance with the laws of South Africa. JVCO is currently controlled by Sanlam Life Insurance Limited (“Sanlam Life”), a public company registered in accordance with the laws of South Africa, which holds a 76.43% stake in JVCO. AWIC, the Acquiring Firm, holds the remaining 23.57% in JVCO.
- [4] Sanlam Life is listed on the JSE and is not directly or indirectly owned by any firm. JVCO wholly owns and controls the Development Rights. The Development Rights do not control any firms. The Development Rights will hereinafter be collectively referred to as the “Target Firm”.

Proposed transaction and rationale

- [5] In terms of the proposed transaction AWIC will increase its share in the Target Firm from 23.57% to 50%.
- [6] The Acquiring Group submitted that its rationale for the proposed transaction is that the shareholders agreement provides for the opportunity for AWIC to increase its shareholding in JVCO (and hence in respect of the Development Rights) to 50% (“the Option”). AWIC exercised the Option on 29 June 2022.
- [7] The Target Firm submitted that the proposed transaction is a consequence of the exercise of a call option by AWIC.

Competition assessment

- [8] The Competition Commission (“Commission”) found that proposed transaction gives rise to a horizontal overlap as the Acquiring Group owns a portfolio of light industrial properties and the Development Rights will be developed into industrial properties.
- [9] Further, the merger parties have a pre-existing vertical relationship. AMS, the Acquiring Group’s subsidiary, has been appointed to conduct development management services and once the developments on Waterfall Farm are completed, AMS will perform asset management and property management services. According to the Commission’s assessment, it is unlikely that any substantial foreclosure concerns will arise from this relationship as AMS will continue to provide its development management, asset management and property management services to other developing properties. Therefore, we do not deal with this issue any further in these reasons.
- [10] The Commission assessed the horizontal competition effects of the proposed transaction in the market for rentable light industrial property within a 15 km radius of the Target Firm’s rentable light industrial properties in Midrand.
- [11] The Commission found that the merger parties will have a combined market share of less than 15% in the abovementioned market.
- [12] Having considered the above, and that there are viable alternatives, such as two additional large industrial property developments (Simmer & Jack and Randport), in the relevant market, we do not consider it likely that the proposed merger will result in a substantial prevention or lessening of competition in the relevant market.

Public interest

Employment

- [13] The merging parties submitted that there will be no adverse effect on employment.

[14] The Target Firm does not have any employees, it comprises Development Rights which have not yet been developed. JVCO, the seller, also does not have any employees. The Commission engaged the employee representatives of the Acquiring Group, who confirmed that there were no concerns raised by the employees regarding the proposed transaction.

[15] Considering the above, we are of the view that the proposed transaction does not raise any employment concerns.

Spread of ownership

[16] The merger parties submitted that the Acquiring Group has a 28.63% shareholding by historically disadvantaged persons (“HDPs”) using a normal flow-through principle and 33.47% based on the modified flow-through principle. The shareholding is held by Attacq and is based on Attacq’s black economic empowerment (“BEE”) certificate dated 29 September 2023 which expires on 28 September 2024.

[17] The Target Firm’s pre-merger HDP shareholding is 29.76%,^[1] based on the HDP shareholding of the two shareholders pre-mergers, AWIC,^[2] and Sanlam.^[3]

[18] The overall HDP shareholding in the Target Firm will increase to 30.73% post- merger. The post-merger HDP shareholding is calculated as follows:

18.1.

AWIC currently has a HDPs shareholding of 33.47% and AWIC will hold 50% of the shares in the Target Firm which means the HDP share in the Target Firm attributable to AWIC is 16.73%, and

18.2.

Sanlam Limited currently has a HDP shareholding of 28% and Sanlam will hold 50% of the shares in the Target Firm which means the HDP shareholding in the Target Firm attributable to 14%.

Other public interest issues

[19] The proposed transaction raises no other public interest issues.

Conclusion

[20] Given the above, we unconditionally approve the proposed transaction.

04 December 2023

Mr Andreas Wessels Date

Prof Thando Vilakazi and Adv Geoff Budlender SC

Tribunal Case Manager: Theodora Michaletos For the Merging Parties: Justin Balkin and Preanka Gounden of ENSAfrica For the Commission: Tamara Paremoer, Makati Seekane and Ratshi Maphwanya

-
- [1] K2018366052 (South Africa) (Pty) Ltd and Castlevew Property Fund Ltd (LM065Jul22.).
- [2] Attacq wholly owns AWIC, which in turn holds a 23.57% of the issued share capital of the seller, JVCO.
- [3] Sanlam holds 76.4% of the issued share capital of the seller, JVCO. Based on Sanlam's BEE certificate dated 9 March 2023, which expires 9 March 2024.
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZACT/2023/79.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/attacq-waterfall-investment-company-pty-ltd-v-pocket-unknown-topic-act-2023>

Prepared on 12 October 2026 · Esheria