



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018242

In the matter between:

**Acucap Investments (Pty) Ltd and  
Sycom Property Fund Collective Investment  
Scheme in Property**

Acquiring Firms

And

**Liberty Group Ltd, in respect of the  
Property letting enterprise known as  
Greenacres**

Target Firm

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Panel	:	Norman Manoim (Presiding Member) Takalani Madima (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	05 February 2014
Order issued on	:	05 February 2014
Reasons issued on	:	05 March 2014

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### Reasons for Decision

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#### Approval

1. On 05 February 2014 the Competition Tribunal (the "Tribunal") unconditionally approved an acquisition by Acucap Investments (Pty) Ltd ("Acucap Investments") and Sycom Property Fund Collective Investment Scheme in Property ("Sycom") of Liberty Group Ltd ("Liberty"), in respect of the property letting enterprise known as Greenacres.
2. The reasons for the approval of the proposed transaction follow.

## **The Parties and their activities**

3. The primary acquiring firms are Acucap Investments, a property loan stock company listed on the Johannesburg Securities Exchange ("JSE") in the Diversified REITS sector and Sycom, a collective investment scheme in property listed on the JSE and classified as a Real Estate Investment Trust. Acucap Investments is a wholly owned subsidiary of Acucap Properties Ltd ("Acucap").
4. Acucap exercises control over Sycom in its capacity as the management company, namely Sycom Property Fund Managers Ltd ("SPFM"). Acucap Investments and Sycom are hereinafter referred to as the "Acucap Group". The Acucap Group's six largest shareholders as of 27 September 2013 are: the Government Employee Pension Fund (12.2%), Investec Asset Management (6.6%), Directors and Employees (9.1), Stanlib (5.4%), Old Mutual Asset Management (5.4%) and Nedbank (5.0%). Acucap also has a 27.56% interest in a property called The Bridge, situated at the Nelson Mandela Bay Municipality, Port Elizabeth (Eastern Cape Province).
5. The Acucap Group's property portfolio consists of office, retail and industrial properties throughout South Africa. The Bridge is a minor regional retail centre measuring 43 969m<sup>2</sup> and is situated adjacent the primary target firm.
6. The primary target firm is the Greenacres Shopping Centre ("Greenacres"), a property letting enterprise comprising of 38 863m<sup>2</sup> of rentable retail space and 1 814m<sup>2</sup> of rentable Grade B office space. Greenacres is situated at the Nelson Mandela Bay Municipality, Port Elizabeth (Eastern Cape Province), and is classified as a minor regional retail shopping centre. Greenacres is controlled by Liberty, a long term insurance company. Liberty is a wholly owned subsidiary of Liberty Holdings Ltd.

### **Proposed transaction and rationale**

7. The Acucap Group intends to acquire equal undivided shares in Greenacres. Following the implementation of the proposed transaction, the Acucap Group will jointly control Greenacres.
8. The Acucap Group submitted that its objective is to grow the size of its portfolio with large individually owned, low risk acquisitions and this transaction provides it with an attractive investment opportunity.
9. Liberty submitted that its strategy is to invest in current assets that will continue to grow and the sale of Greenacres will realise capital which will be reinvested into younger assets, with high growth potential.

### **Competition Analysis**

10. The Commission identified a horizontal overlap in the activities of the merging parties in respect of rentable retail space and Grade B office space. In respect of rentable retail space, the Commission found that Acucap's 27.56% shareholding in The Bridge does not entitle it to any control or minority protection rights that would grant it control in terms of the Act. The Commission therefore concluded that there is no geographic overlap in respect of rentable retail space in Port Elizabeth. In respect of grade B office space the Commission also found that there is no geographic overlap as the Acucap Group does not own any grade B offices in Port Elizabeth.
11. As the Acucap Group is entitled to board representation on the management committee of the Bridge by virtue of its 27.56% shareholding, the likelihood of the proposed transaction resulting in coordinated effects was also assessed. The merging parties indicated at the hearing that the other shareholders at the Bridge are the Johannesburg Municipal Pension Fund with 52% and Employees Municipal Pension Fund with 17% and that each shareholder is entitled to one member on the board per 10%

shareholding. Accordingly, the Johannesburg Municipal Pension Fund has five members on the board, the Employees Municipal Pension Fund has one member and the Acucap Group has two members as already indicated.

12. The Acucap Group further submitted that it cannot make any decision regarding the Bridge or vote without the other shareholders being present, and specifically, whatever decision is taken needs to be supported by the major shareholder, i.e. Johannesburg Municipal Pension Fund. Furthermore, the merging parties submitted that the manager of the Bridge, namely, Broll Property Management ("Broll") is (i) entirely independent with no links to any of the shareholders, (ii) no communication may be sent from one shareholder to a tenant and anyone who wishes to rent the property must go through Broll and (iii) even though the Acucap Group may know of the rentals at the Bridge it would not know the details surrounding the rental negotiations.

13. However, even if competitively sensitive information would be shared between Greenacres and the Bridge, there are a number of alternative players within a 25km radius of Greenacres and a new development, namely Baywest Mall, which will add to the available rentable retail space in Greenacres.

### **Public interest**

14. The merging parties confirmed that the proposed transaction will have no adverse effect on employment and will not result in any retrenchments in South Africa.<sup>1</sup> The proposed transaction raises no other public interest concerns.

### **Conclusion**

15. For the reasons mentioned above, we approve the proposed transaction unconditionally.

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<sup>1</sup> See merger record, pages 27. Also see paragraph 7 of the Commission's merger report.



**Mr. Norman Manoim**

**05 March 2014**

**Date**

**Dr. Takalani Madima and Mr. Imraan Valodia concurring**

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Vani Chetty of Vani Chetty Competition Law

For the Commission: Jatheen Bhima