



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018481

In the matter between:

PARETO LIMITED

Primary Acquiring Firm

And

SYCOM PROPERTY FUND COLLECTIVE INVESTMENT SCHEME IN PROPERTY

And

FOUNTAINHEAD PROPERTY TRUST COLLECTIVE INVESTMENT SCHEME IN PROPERTY

Primary Target Firms

Panel : Mondo Mazwai (Presiding Member)
: Medi Mokuena (Tribunal Member)
: Andiswa Ndoni (Tribunal Member)
Heard on : 12 March 2014
Order Issued on : 12 March 2014
Reasons Issued on : 10 April 2014

Reasons for Decision

Approval

[1] On 12 March 2014 the Competition Tribunal (“**the Tribunal**”) unconditionally approved an acquisition by Pareto Limited of Sycom Property Fund Collective

Investment Scheme in Property and Fountainhead Property Trust Collective Investment Scheme in Property.

[2] The reasons for unconditionally approving the proposed transaction follow.

Parties to the Transaction

Primary acquiring firm

[3] The primary acquiring firm is Pareto Limited ("**Pareto**"). Pareto is an unlisted property loan stock company in the business of acquiring and enhancing shopping centres in South Africa. Pareto is wholly owned by the Government Employees Pension Fund ("**GEPF**") which is a juristic entity governed by the Government Employees Pension Law of 1996 as amended. GEPF is represented by the Public Investment Corporation (SOC) Limited ("**PIC**") which is wholly owned by the South African Government.

[4] Pareto does not control any other firms but GEPF controls the following firms:

1. Pareto;
2. Business Venture Investment No. 1360 (Pty) Ltd;
3. ADR International Airports South Africa (Pty) Ltd;
4. Lexshell 44 General Trading (Pty) Ltd; and
5. CBS Property Portfolio (Pty) Ltd.

Primary target firm

[5] The primary target firms are the remaining shares in the Southgate Mall and Southgate Value Mart ("**the Malls**") held by Sycom Property Fund Collective Investment Scheme in Property ("**Sycom**") and Fountainhead Property Trust Collective Investment Scheme in Property ("**Fountainhead**").

[6] Sycom, represented by FirstRand Bank Limited ("**FirstRand**") in its capacity as Trustee, is a collective investment scheme in property. Sycom holds Real

Estate Investment Trust status and is listed on the Johannesburg Securities Exchange (“**JSE**”). Sycom’s major unit holders are as follows:

- Acucap (33.5%);
- Stanlib (8.9%); and
- GEPF (6.7%).

[7] Sycom is managed and controlled by Sycom Property Fund Managers Limited (“**SPFM**”) which is in turn wholly owned by Acucap.

[8] Fountainhead, similarly represented by FirstRand in its capacity as Trustee, is managed and controlled by Fountainhead Property Trust Management Limited which is in turn wholly owned by Redefine Properties Limited (“**Redefine**”). Redefine is listed on the JSE and is not controlled by any firm.

Proposed Transaction

[9] In terms of two contemporaneous and indivisibly linked Agreements of Sale; the first between FirstRand, in its capacity as trustee of Fountainhead, and Pareto and the second between FirstRand, in its capacity as trustee of Sycom, and Pareto, the proposed transaction results in Pareto acquiring the remaining:

- 15.973124% and 19.014331% in the Southgate Mall and Southgate Value Mart from Fountainhead respectively; and
- 16.607874% in the Southgate Mall and 16.006781% in Southgate Value Mart from Sycom respectively.

[10] The proposed transaction essentially involves Pareto changing its holding in the Malls from joint to sole control, and Sycom and Fountainhead respectively exiting the Malls.

Rationale

- [11] Pre-merger, the Malls are jointly controlled by Pareto, Sycom and Fountainhead in terms of a co-ownership agreement. This agreement contains certain minority protection clauses which confer joint control over the Malls. According to Pareto, its strategic views differ markedly from those of Fountainhead and Sycom and this difference, coupled with the minority protection rights enjoyed by Sycom and Fountainhead, is preventing Pareto from implementing certain initiatives. Pareto thus seeks sole control such that it can implement the aforesaid initiatives unhindered.
- [12] From Fountainhead's perspective, it is in the process of reconsidering its investment in certain co-owned assets and aims to reduce borrowing in the short-term.
- [13] Sycom is of the view that its holding in the Malls is too minor to influence the performance of the fund and it thus has elected to dispose of its interest in the Malls.

Relevant Market and Impact on Competition

- [14] The relevant product markets identified by the Commission were:
- the market for the provision of rentable retail space in regional centres;
and
 - the market for the provision of rentable retail space in value centres.
- [15] Since Pareto controls no rentable retail space in value centres prior to the proposed transaction, the Commission focused its investigation solely on the market for the provision of rentable retail space in regional centres.

- [16] In terms of the geographic market (for the provision of rentable retail space in regional centres), the Commission assessed the likely effect of the proposed transaction within a 10-15km radius of the Malls.¹
- [17] According to the Commission, pre-merger, the Southgate Mall enjoyed approximately 12%² market shares (based on Gross Lettable Area) in the relevant geographic market as defined by the Commission. Pareto also owns the Cresta Shopping Centre ("Cresta") in the same geographic market, which enjoys a market share of approximately 24%. According to the Commission, Pareto's market share in the Southgate Mall will increase from approximately 12% to 17.8%³ thereby increasing Pareto's market share in the relevant geographic market (where it owns the Southgate Mall and Cresta) from approximately 36% to 41%. In contrast, the merging parties submitted that there would in fact be no market share accretion as it is the actual shareholding in the Malls that is being altered, not the Malls' market share.
- [18] Either way, we find that the proposed transaction is unlikely to alter the competitive structure of the market as pre-merger, Pareto already controlled the Southgate Mall.
- [19] In any event, according to the Commission, it is unlikely that Pareto would be able to exercise market power as there are numerous reputable competitors including the Carlton, Maponya Mall, The Glen and Southdale which will continue to constrain the merged entity post-merger. The Commission concluded therefore that the transaction was unlikely to substantially prevent or lessen competition in the relevant market.

¹ The merging parties contend that in light of previous Tribunal decisions, a larger (a 25km radius from the Malls) geographic market is more appropriate.

² According to the Commission, this 12% market share is proportionate to Pareto's ownership in the Southgate Mall (which is an approximate 67% shareholding).

³ Post-merger, Pareto will own 100% of the shares in the Southgate Mall and according to the Commission will therefore increase its market share from 12% to 17.8% (which is the market share attributable to the entire Gross Lettable Area of the Southgate Mall).

Public Interest


[20] The Commission identified no public interest concerns likely to arise from the proposed transaction.

Conclusion

[21] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. Accordingly, we approve the transaction unconditionally.

10 April 2014

DATE



MONDO MAZWAI

Medi Mokuena and Andiswa Ndoni concurring

Tribunal Researcher: Shannon Quinn

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

For the Commission: Clementine Mahlangu and Grashum Mutizwa