



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018168

In the matter between:

<b>Acucap Properties Ltd</b>	Acquiring Firm
And	
<b>Sycom Property Fund Collective Investment Scheme in Property, Represented by FirstRand Bank Ltd as Trustee</b>	Target Firm

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Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Takalani Madima (Tribunal Member)
Heard on	:	29 January 2014
Order issued on	:	29 January 2014
Reasons issued on	:	27 February 2014

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### Reasons for Decision

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#### Approval

1. On 29 January 2014 the Competition Tribunal (the "Tribunal") unconditionally approved an acquisition by Acucap Properties Ltd ("Acucap") of Sycom Property Fund Collective Investment Scheme in Property ("Sycom"), represented by FirstRand Bank Ltd ("FirstRand").
2. The reasons for the approval of the proposed transaction follow.

#### The Parties and their activities

3. The primary acquiring firm is Acucap, a property loan stock company listed on the Johannesburg Stock Exchange. Acucap is a public listed company

and accordingly is not controlled by any single entity. Acucap's six largest shareholders are: the Government Employee Pension Fund (12.2%), Directors and Employees (9.1%), Investec Asset Management (6.6%), Stanlib (8.9%), Old Mutual Asset Management (5.4%) and Nedbank (5.0%). Acucap has a 33.33% interest in Roeland Street Investments (Pty) Ltd, a company involved in the letting of self-storage space. Acucap also has a 33.5% interest in Sycom and wholly owns Sycom's management company, namely, Sycom Property Fund Management (Pty) Ltd ("SPFM").

4. Acucap owns numerous office, retail and industrial properties throughout South Africa. Further, Acucap performs Sycom's asset management services and retains day to day control of Sycom's Assets.
5. The primary target firm is Sycom, a collective investment scheme in property. Sycom is listed on the Johannesburg Stock Exchange and is classified as a Real Estate Investment Trust. FirstRand has been appointed as trustee of Sycom in terms of the provisions of the Collective Investment Schemes Control Act 45 of 2002.<sup>1</sup> Sycom's major shareholding, as at the date of the merger filing, that hold more than 5% of its shares are: Acucap (33.5%), Stanlib (8.9%), the Government Employee Pension Fund (6.7%) and Old Mutual Asset Management (5.6%). Sycom's shareholding largely overlaps with that of Acucap.

#### **Proposed transaction and rationale**

6. Acucap intends to acquire 100% of the shareholding in Sycom. According to the merging parties, this will be achieved through one or more different transactions, including once-off transactions with individual sellers, the underwriting of Sycom's rights in issue, open market transactions and general offers to all Sycom shareholders and/or a scheme of arrangement. These transactions will inevitably lead to Acucap owning more than 50% of the shareholding in Sycom, thus granting Acucap sole control over Sycom.

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<sup>1</sup> The merging parties indicated that this appointment does not confer any form of control to FirstRand for the purposes of the Act.

7. Acucap submitted that since acquiring a shareholding in Sycom its intention has always been to combine the two firms into a single investment entity. Acucap further submitted that the size of combined entity will offer investors benefits such as *inter alia*, (i) an increased free float in Acucap units that will move the fund up the property index and thus improve the funds ratings and (ii) a stronger balance sheet that will give Acucap a greater acquisition capacity.
8. The rationale for Sycom is that it has similar portfolios with Acucap and from a management perspective, the two firms are already effectively managed as one entity.

### **Competition Analysis**

9. The Commission identified a horizontal overlap between the activities of the merging parties in respect of the market for rentable retail space and rentable Grade A office space.
10. Although both firms own retail properties in the Gauteng and Western Cape that may be considered substitutes, the distance between them was such the Commission did not consider them to be in the same geographic market for competition purposes applying a standard norm for the industry. Of the properties concerned, the nearest was 37 kilometers from the similar property of the other party to the merger.
11. In the market for rentable Grade A office space the Commission identified horizontal overlaps within the following nodes: Bryanston, Sandton/Illovo, Waterfront/Cape Town CBD and Bellville. The Commission found that the merging parties' post-merger markets shares in all these nodes are between 4% and 10%. The Commission, however, noted that as Acucap already effectively controls Sycom, any market share accretion is purely academic. The Commission therefore concluded that the proposed merger

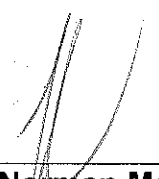
is unlikely to substantially prevent or lessen competition within the relevant markets. We agree with this approach.

### **Public interest**

12. 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>2</sup> The proposed transaction raises no other public interest concerns.

### **Conclusion**

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

  
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**Mr. Norman Manoim**

27 February 2014  
**Date**

**Ms. Yasmin Carrim and Mr. Takalani Madima concurring**

Tribunal researcher: Ipeleng Selaledi

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

For the Commission: Jatheen Bhima

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<sup>2</sup> See merger record, pages 20. Also see paragraph 7 of the Commission's merger report.