



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018556

In the matter between:

PARETO LIMITED

Primary Acquiring Firm

And

**FOUNTAINHEAD PROPERTY TRUST COLLECTIVE INVESTMENT SCHEME IN
PROPERTY**

Primary Target Firms

| | |
|-------------------|------------------------------------|
| Panel | : Norman Manoim (Presiding Member) |
| | : Yasmin Carrim (Tribunal Member) |
| | : Medi Mokuena (Tribunal Member) |
| Heard on | : 09 April 2014 |
| Order Issued on | : 09 April 2014 |
| Reasons Issued on | : 12 May 2014 |

Reasons for Decision

Approval

- [1] On 09 April 2014 the Competition Tribunal (“**the Tribunal**”) unconditionally approved an acquisition by Pareto Limited of Fountainhead Property Trust Collective Investment Scheme in Property’s holding in Westgate Mall.

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

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 firm is the shares in the Westgate Mall ("**Westgate**") held by Fountainhead Property Trust Collective Investment Scheme in Property ("**Fountainhead**"). Westgate is a super-regional retail centre located in Roodepoort, Johannesburg.¹

[6] Fountainhead, represented by FirstRand Bank Limited ("**FirstRand**") in its capacity as Trustee, is a collective investment scheme in property. Fountainhead is managed and controlled by Fountainhead Property Trust

¹ Super-regional centres are those with a gross lettable area of greater than 100 000m²

Management Limited which is in turn wholly owned by Redefine Properties Limited ("**Redefine**"). Redefine is listed on the Johannesburg Securities Exchange and is not directly or indirectly controlled by any firm.

Proposed Transaction

- [7] In terms of an Agreement of Sale between Pareto and FirstRand, in its capacity as trustee of Fountainhead, the proposed transaction results in Pareto acquiring the remaining 41% in Westgate such that it acquires sole control.
- [8] The proposed transaction essentially involves Pareto changing its holding in Westgate from joint to sole control and Fountainhead exiting Westgate entirely.

Rationale

- [9] Pareto seeks to implement certain upgrades to Westgate. However, pre-merger, Westgate is jointly controlled by Pareto and Fountainhead such that the upgrades cannot commence without Fountainhead's approval. Whilst Pareto is interested in making this investment it seems that Fountainhead is not. In light of this, Pareto seeks to acquire sole control and implement the upgrades.
- [10] From Fountainhead's perspective, the transaction is in line with its strategy of reconsidering its investment in certain co-owned assets and aiming to reduce borrowing in the short-term.

Relevant Market and Impact on Competition

- [11] The relevant product market identified by the Commission was the market for the provision of rentable retail space in comparative centres.²
- [12] In determining the appropriate geographic market, the Commission conducted consultations with tenants of Westgate and other third parties. Pursuant to these consultations, it concluded that the likely effect of the proposed transaction should be assessed within a 15km radius of Southgate since it was believed that any retail space outside this area would not exert a competitive constraint on Westgate.
- [13] While Pareto controls numerous retail spaces in South Africa, Pareto's only interest within the identified market is its sole ownership of Cresta Shopping Centre ("**Cresta**"). According to the Commission, pre-merger, Westgate enjoyed between 10% and 15% market share (based on Gross Lettable Area ("**GLA**")) while Cresta accounted for between 6% and 12%.
- [14] In light of the fact that pre-merger Pareto exercises joint control over Westgate, the proposed transaction in fact results in no market share accretion. Post-merger then, Pareto will continue to hold between 16% and 27% market share. If regard is had to Pareto's proportionate ownership in Westgate pre and post-merger, the transaction will result in accretion of roughly 5%, which in the circumstances is not significant enough to have an appreciable effect on market.
- [15] With the proposed transaction resulting in no market share accretion in the true sense, the Commission analysed whether the shift from joint to sole control was likely to incentivise Pareto acting anti-competitively. The Commission found that pre-merger rental rates were determined jointly by Pareto and Fountainhead while post-merger these would be determined

² The Commission acknowledged that Westgate is a super-regional centre in terms of size but found that size (in terms of Gross Lettable Area) alone does not determine substitutability accurately. The Commission concluded that a more nuanced understanding of the market reveals that centres of vastly different sizes do in fact constrain one another and it thus elected to define the market as the market for comparative centres.

solely by Pareto. To ascertain whether this was likely to cause rentals to increase, the Commission contacted numerous tenants, the vast majority of whom informed the Commission that they already had or were in the process of renewing their lease agreements which would extend well into Pareto's tenure as sole controller.

- [16] The Commission was further comforted by the fact that post-merger, Pareto would not be in a position to exercise market power as it would remain constrained by numerous comparative centres including Key West, Northgate Mall, Retail Crossing and Cradlestone Mall.
- [17] Accordingly, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable retail space in comparative centres.

Public Interest

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

Conclusion

- [19] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market nor does the merger raise any public interest concerns that would alter that conclusion. Accordingly, we approve the transaction unconditionally.



Norman Manoim

12 May 2014

DATE

Yasmin Carrim and Medi Mokuena concurring

Tribunal Researcher: Shannon Quinn

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

For the Commission: Portia Bele and Grace Mohamed