



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 47/LM/Aug10

In the matter between:

Attfund Retail Limited

Acquiring Firm

And

Parkdev (Pty) Ltd; and

**The business enterprise know as
Willowbridge South Shopping Centre**

Target Firms

Panel : Andreas Wessels (Presiding Member)
Merle Holden (Tribunal Member)
Medi Mokuena (Tribunal Member)
Heard on : 29 September 2010
Order issued on : 29 September 2010
Reasons issued on : 12 October 2010

Reasons for Decision

Approval

[1] On 29 September 2010, the Competition Tribunal (“Tribunal”) approved the acquisition by Attfund Retail Limited (“Attfund Retail”) of (i) the asset management business of Parkdev (Pty) Ltd (“Parkdev”) and (ii) the business enterprise know as Willowbridge South Shopping Centre from Siyathenga Properties Two (Pty) Ltd (“Siyathenga”) and Mini-Cape Property Holdings (Pty) Ltd (“MCP”). The reasons for approval follow below.

The parties and their activities

[2] The primary acquiring firm is Attfund Retail¹, a newly formed company and wholly owned subsidiary of Attfund Limited (“Attfund”). Attfund is currently an unlisted property fund. No single shareholder will control Attfund Retail; its largest shareholders will be Atterbury Investment Holding Limited, The Village Trust, Clidet No 683 (Pty) Ltd, De Katwijk Trust and Y3K Investments (Pty) Ltd.² The newly formed Attfund Retail does not have any directly held subsidiaries.

[3] Post merger Attfund Retail, by virtue of an internal restructuring with Attfund (see paragraph [7] below), will have an investment holding of 12 properties in the retail and office space sectors of the South African property market. These properties are located in Gauteng and the Western Cape provinces. Attfund Retail will carry on the business of a property investment company through the ownership of the transferred property portfolio from Attfund.

[4] The target businesses are (i) Parkdev and (ii) the business enterprise known as Willowbridge South Shopping Centre, co-owned by Siyathenga and MCP.

Parkdev

[5] Parkdev is not directly or indirectly controlled by any specific firm³. Premerger Parkdev provides asset management services exclusively in respect of Attfund’s property portfolio. Post merger Attfund Retail will conduct its own asset management functions, as previously conducted by Parkdev, on an in-house basis (see paragraph [7] below).

¹ Currently named Femtoworx Limited. It is in the process of having its name changed to Attfund Retail Limited.

² See page 4 of the record for details of individual shareholdings.

³ Parkdev’s shares are held by a variety of shareholders of which the five largest shareholders owning more than 5% of its share capital are: The Village Trust, De Katwijk Trust, Pereno Investments (Pty) Ltd, MVP Earth Trust and Rameros Investments (Pty) Ltd. See pages 5 and 6 of the record for details of individual shareholdings.

Willowbridge South

[6] The Willowbridge South Shopping Centre is a business categorised as a minor regional centre, comprising 31,069 m² of rentable retail space, located in Bellville in the Western Cape.

The proposed transaction

[7] The proposed transaction consists of three parts, which collectively are referred to as the merger. They are:

- (i) Attfund Retail, as part of an internal restructuring, will acquire the South African property assets of Attfund;
- (ii) Attfund Retail proposes to acquire, as a going concern, the asset management business from its current asset manager Parkdev; and
- (iii) Attfund Retail intends to acquire, as a going concern, the business enterprise known as Willowbridge South Shopping Centre from Siyathenga and MCD.

[8] According to the merging parties, the collective transactions will be implemented simultaneously and are conditional upon one another.⁴ Upon completion of the collective transactions, Attfund Retail will have sole control over Parkdev and the Willowbridge South Shopping Centre. In addition, through said internal restructuring, Attfund Retail will own Attfund's South African property portfolio.

The rationale for the proposed transaction

[9] The merging parties are of the opinion that it would be mutually beneficial to merge their respective assets and conduct their respective operations through a consolidated and amalgamated investment vehicle.

⁴ This conditionality is confirmed in the relevant concluded sale agreements.

The relevant markets and impact on competition

[10] The proposed merger has both vertical and horizontal dimensions, as explained below:

Horizontal analysis

[11] In regard to the proposed acquisition of the Willowbridge South Shopping Centre, the merging parties' activities from a horizontal perspective overlap broadly in respect of retail space in the Western Cape.

[12] Attfund Retail will, after the aforementioned internal restructuring, own one property in the Goodwood/Parow/Bellville Node, which is known as Willowbridge North. Willowbridge North is classified as a community centre. Thus, the activities of the merging parties do not overlap on a narrow delineation of the relevant product market since the Willowbridge South Shopping Centre is classified as a minor regional centre (see paragraph [6] above).

[13] If a potential broader delineation of the relevant product/geographic market is adopted, namely either rentable retail space in the Goodwood/Parow/Bellville Node, or shopping centres in the Greater Bellville Node, the merged entity's relatively low post merger market share does not raise likely competition concerns.

Vertical assessment

[14] The proposed transaction in regard to the Parkdev asset management business has a vertical element since Parkdev premerger, manages Attfund's property portfolio. Parkdev, prior to the transaction notified herein, administers asset management services in the upstream market of which the only receiver of such services in South Africa is Attfund. As stated in respectively paragraphs [3] and [5] above, Attfund Retail will post merger house the assets formerly owned by Attfund and will take over the asset management services previously conducted by Parkdev.

[15] According to the merging parties Parkdev has an estimated market share of less than 5% in a national market for the provision of asset management services. Large competitors in this market include Growthpoint, Old Mutual Group, Redefine and Liberty.

[16] Given the relatively small market share of Parkdev in the provision of asset management services in South Africa as well as by virtue of said pre-existing exclusive relationship, input or customer foreclosure is unlikely given that Parkdev premerger was the sole provider of asset management services to Attfund.

[17] In light of the above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any potential relevant market.

Public interest

[18] The merging parties have confirmed that the proposed deal will have no effect on employment since no employees would be retrenched as a result thereof. In addition, the proposed transaction raises no other public interest concerns.

CONCLUSION

[19] The proposed transaction does not result in a likely substantial prevention or lessening of competition in any potential relevant market. Furthermore, no public interest issues arise from the proposed deal. We accordingly approve the proposed transaction unconditionally.

Andreas Wessels

12 October 2010
DATE

Merle Holden and Medi Mokuena concurring

Tribunal Researcher: Thandi Lamprecht
For the merging parties: Vani Chetty Competition Law
For the Commission: Alex Constantinou