

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 50/LM/Jun06

In the matter between:

Attfund Limited

Acquiring Firm

And

CapeGate Regional (Pty) Ltd

CapeGate Lifestyle (Pty) Ltd

CapeGate Wholesale (Pty) Ltd

Boness Development Phase 3 (Pty) Ltd

Target Firms

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member) and U Bhoola (Tribunal Member)

Heard on : 12 July 2006

Decided on : 13 July 2006

Reasons for Decision

APPROVAL

[1] On 13 July 2006, the Tribunal approved the merger between Attfund Limited and CapeGate Regional (Pty) Ltd and others. The reasons for approval follow.

THE TRANSACTION

[2] The acquiring firm is Attfund Ltd, a property investment vehicle for three property development companies, viz. Atterbury Properties, Parkdev and Gryphon, which form part of the Attfund group.¹ The target firms are CapeGate Wholesale (Pty) Ltd, CapeGate Lifestyle (Pty) Ltd and a joint venture consisting of CapeGate Regional (Pty) Ltd (60%) and Boness Development Phase 3 (Pty) Ltd (40%).

¹ Attfund's major shareholders are Village Trust (20.62%), Mergon Trust (18.50%), BNF Trust (10.88%), Interactive Trading (9.96%), Y3K Investments (9.05%) and others (30.99%).

[3] In terms of the proposed transaction, Attfund will purchase the assets, meaning the properties and business, of the target firms (all being rental enterprises). According to the parties, the merger will improve the quality of Attfund's property portfolio and will also strengthen its foothold in the Western cape.

IMPACT ON COMPETITION

[4] Attfund's current property portfolio consists of retail, industrial and office property, primarily in Gauteng and the Western Cape. The target firms' properties are retail properties and are situated in Brackenfell in the Cape Peninsula, Western Cape Province.

[5] Attfund has two retail properties in the Western Cape - neither of which is situated in the Cape Peninsula. The first is situated in George - the Garden Route Mall; the second in Somerset West - Somerset Value Mart. Since the property situated in George is some 435km from the CapeGate properties, it does not raise any concerns.

[6] With regard to Attfund's Somerset West property, the parties argued during the hearing that the Somerset Value Mart is a value mart and therefore does not compete with or constrain the CapeGate properties, which they submit are primarily regional shopping centres. Since these properties are geographically situated 40-50km apart, we do not need to make a definitive finding on the relevant product market, as we are satisfied that it is not likely that they compete based on geographic location. However, even if we had to define a broad market for retail property in the western cape, we are satisfied that the acquisition does not raise any concerns.

[7] The change in market share of the broader Western Cape market is nevertheless reflected in the table below:

		Gross Letting Area	% Market share
Total GLA for commercial retail property in the Western Cape		1 244 893 m ²	100 %
Attfund	Garden Route Mall (George)	53 135 m ²	5.28 %
	Somerset Value Mart (Somerset West)	12 566 m ²	
Cape Gate		88 500 m ²	7.11 %
Post merger		154 201 m ²	12.39 %

CONCLUSION

[8] There are no public interest issues and we accordingly approve this transaction without conditions.

N Manoim

D Lewis and U Bhoola concurring.

Tribunal Researcher: M Murugan-Modise

For the merging parties: Advocate A Coetzee instructed by Roestoff Venter & Kruse Attorneys

For the Commission : HB Senekal (Mergers and Acquisitions)