



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:65/LM/Oct10

In the matter between:

**Atterbury Investment Holdings Limited**

Acquiring Firm

And

**Abacus Property Holdings (Pty) Ltd**

Target Firm

Panel : Yasmin Carrim (Presiding Member),  
Andreas Wessels (Tribunal Member)  
and Medi Mokuena (Tribunal Member)  
Heard on : 03 November 2010  
Order issued on : 03 November 2010  
Reasons issued on : 10 November 2010

### Reasons for Decision

#### Approval

[1] On 3 November 2010 the Competition Tribunal ("Tribunal") approved the merger between Atterbury Investment Holdings Limited and Abacus Property Holdings (Pty) Ltd. The reasons for approval follow below.

## **The Transaction**

[2] The primary acquiring firm is Atterbury Investment Holdings Ltd (“AIH”), AIH’s four largest shareholders are Waterfall Development Company (Pty) Ltd, Sanlam Life Insurance Ltd, Mergon Foundation and BNF Investments. AIH is a company which functions as an investment vehicle responsible for the development of various properties in the commercial, retail, industrial and residential sectors throughout South Africa.

[3] The primary target firm is Abacus Property Holdings (Pty) Ltd (“APH”). APH is controlled by the Abacus Trust. The Trustees who control the Trust are Willem Jacobus Odendaal, Cornelius Naude Howard, and Gary Vogelmann. The Trust is involved in investment and development of various properties, in particular regional retail shopping centres. APH is a dormant entity which is currently wholly owned by the Trust.

[4] In terms of the proposed transaction, AIH and the trustees of the Abacus Trust will both contribute certain retail properties and / or shares to APH, in exchange for shares in APH. AIH and the Trust will ultimately enjoy joint control over APH. AIH will hold approximately 66.9% and the Trust will (indirectly) hold approximately 33.1% of the shares in APH. Post merger the transaction will create a joint venture property fund. The assets controlled by the joint venture will be Mooiriver Mall, Skybird (an undeveloped property in Stellenbosch), Eikestad Mall, Design Square, AIH and Attfund shares.

## **The Rationale**

[5] AIH is active in the property investment market, however its key focus is the investment, management and provision of rentable office space in South Africa. Design Square (in Brooklyn, Pretoria) is one of the retail properties currently owned / controlled by AIH. The motivation for the merger for AIH was that Design Square would be better managed

by an investment fund focusing specifically on large retail developments available for rent.

[6] The intention of the Trust has always been to develop its position as an entity responsible for the holding of fully developed and rentable property on a long term basis. APH was subsequently incorporated to give effect to this intention. The parties submit that the proposed transaction will enable the Trust to succeed in consolidating its position as a holder of fully developed and trading assets on a long term basis, notwithstanding that it will only be a minority shareholder in APH. Furthermore the implementation of the proposed transaction will give rise to economies of scale, cost efficiencies, as well as the improvement of APH's asset management skills with a view to enhance the yield attained by the assets to be held by APH.

### **The parties and their activities**

#### Acquiring Firm

[7] AIH is an investment vehicle responsible for the management of various assets and properties in the commercial, retail, industrial and residential sectors of South Africa. As stated above AIH focuses predominantly on its investment and asset management functions as regard to rentable office space. AIH is active in the property investment market and is inter alia responsible for the provision of rental services in this market.

#### The Trust

[8] The Trust Holds and manages various rentable retail properties in different geographic markets.

#### The Primary Target Firm

[9] APH is a dormant entity which had been incorporated to give purpose to the proposed transaction. Pursuant to the implementation of the transaction, APH will also act as an investment vehicle responsible for

managing the transferred properties which entails inter alia the leasing of retail space to various suitable tenants.

### **The relevant market and the impact on competition**

[10] Both the Commission and the merging parties defined the market as the market for the holding of and the management of rentable retail properties.

[11] There is an overlap in the activities of the merging firms in the market for the holding of and the management of rentable retail properties as all the properties that are to be transferred to APH constitute retail properties which APH will hold and manage. AIH on the other hand (although its key focus is on rentable office space) currently holds and manages two retail properties, namely Design Square in Brooklyn, Gauteng and the De Ville Shopping Centre in Durbanville, Western Cape.

[12] The properties that will be transferred to APH pursuant to the implementation of the merger are:

- a. Mooirivier Mall – which will be transferred to APH by the Trust, is situated in Potchefstroom, in the North West Province and has a primary catchment area of Potchefstroom, and a secondary catchment area of the towns and cities surrounding same;
- b. Eikestad Mall and Skybird<sup>1</sup>, both of which will be transferred to APH by the Trust. Both of these properties are situated in Stellenbosch in the Western Cape.
- c. Design Square, which is owned by AIH and will be transferred by AIH to APH. This property is situated in the Brooklyn node, and provides services to customers within a primary catchment area of the surrounding neighbourhood.

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<sup>1</sup> Skybird is a vacant piece of land adjacent to the Eikestad Mall – both of these properties are currently being refurbished.

[13] It is accepted that rental space is not considered to be transportable and thus cannot be imported from one geographic area to another. The properties to be transferred to APH by the Trust and AIH do not compete with one another in any geographic nodes. Therefore there is no geographic overlap in the activities of the merging firms. No market share accretion occurs as a result of this transaction.

[14] In light of the above, we find that the transaction would not substantially prevent or lessen competition the relevant markets.

## **CONCLUSION**

[15] There are no significant public interest issues and we accordingly approve the transaction.

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**Yasmin Carrim**

10 November 2010  
**DATE**

Andreas Wessels and Medi Mokuena concurring.

Tribunal Researcher: Thandi Lamprecht

For the merging parties: Edward Nathan Sonnenbergs Inc

For the Commission: Mogalane Matsimela