



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM026May24

In the matter between:

Attacq Waterfall Investment Company (Pty) Ltd

Primary Acquiring Firm

and

The 20% undivided share held by ATT MOA 20 (Pty) Ltd in Mall of Africa

Primary Target Firm

Panel:	L Mncube (Presiding Member) G Budlender (Tribunal Member) T Vilakazi (Tribunal Member)
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Heard on:	25 June 2024
Order issued on:	25 June 2024
Reasons issued on:	28 June 2024

REASONS FOR DECISION

Approval

- [1] On 25 June 2024, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger whereby Attacq Waterfall Investment Company (Pty) Ltd (“AWIC”) intends to acquire a 20% undivided share in Mall of Africa (“Mall of Africa”) from Att MOA (Pty) Ltd (“Att MOA 20”). Upon implementation of the proposed transaction, AWIC will exercise sole unfettered control over Mall of Africa.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is AWIC, a private company incorporated in South Africa. AWIC is directly controlled by Attacq Limited (“Attacq”) (as to 70%) and the Government Employees Pension Fund (“GEPF”) (as to 30%).
- [3] Attacq is listed on the Johannesburg Stock Exchange (“JSE”) and is not owned or controlled by any firm.¹
- [4] Firms controlled by AWIC include Waterfall JVCO 115 (Pty) Ltd (as to 50%), AWIC Waterfall TM JVCO (Pty) Ltd (as to 50%), and Attacq Ellipse (Pty) Ltd (as to 100%).
- [5] AWIC, Attacq and all firms controlling and controlled by these firms collectively referred to as the “Acquiring Group”.
- [6] The Acquiring Group, through Attacq, operates as a Real Estate Investment Trust (“REIT”), based in South Africa and listed on the JSE, which invests in, manages and develops a portfolio of real estate assets. Its property portfolio comprises of several retail centres, shopping malls, offices, hotels, logistics and distribution centres, as well as minor holdings in residential property.
- [7] Relevant to this instant transaction is AWIC’s existing shareholding (80%) and sole fettered control over the target business, Mall of Africa.

Primary target firm

- [8] The primary target firm comprises of a 20% undivided share in Mall of Africa held by Att MOA 20.
- [9] Mall of Africa is a shopping mall located in Waterfall City, Midrand, Gauteng. Mall of Africa has a gross lettable area of 131 038m² and is classified as a super-regional retail property according to Investment Property Databank Index (“IPD”) classification criteria. The proposed transaction includes the improvements, leases and leasehold rights of the Mall

¹ The three major shareholders of Attacq as at 31 December 2023 include Coronation Fund Managers Ltd (as to 20.13%), GEPF represented by Public Investment Corporation SOC Ltd (as to 11.58%), and The Old mutual Group (as to 6.14%).

of Africa. Mall of Africa is owned and controlled by AWIC as to 80% and by Att MOA 20 as to 20%.

- [10] Att MOA 20, previously known as Atterbury Property Fund (Pty) Ltd, is a private company incorporated in South Africa. Att MOA 20 is owned by Atterbury Property Holdings (Pty) Ltd (“Atterbury Property Holdings”) as to 50.1% and Atterbury Property Fund (Pty) Ltd as to 49.9%. Atterbury Property Holdings is ultimately controlled by Atterbury ManFou (Pty) Ltd.

Proposed transaction and rationale

Transaction

- [11] As indicated above, AWIC already owns and controls Mall of Africa and as such, prior to the implementation of the Proposed Transaction, exercised sole fettered control over the shopping centre.
- [12] In terms of the proposed transaction, ATT MOA 20 will cede and assign the 20% undivided share of improvements, leases and leasehold rights of the Mall of Africa to the Acquiring Group.²
- [13] Upon implementation of the proposed transaction, AWIC will hold both the AWIC undivided share and the MOA undivided share (100%), allowing it to exercise sole unfettered control over the Mall of Africa.

Rationale

- [14] From the Acquiring Group’s perspective, the shift to exercise sole unfettered control will allow AWIC to benefit from the increased densification of the greater Waterfall node, which over time is expected to translate into a continued improvement in the Mall of Africa’s trading. The proposed transaction is also expected to improve the speed of management decision-making as AWIC will not have to defer to the Att MOA 20 on key decisions.
- [15] From the target firm’s perspective, the proposed transaction [REDACTED]
[REDACTED]

² Clause 4 of Cession and Assignment of Leasehold Rights Agreement between Att Moa 20 (Pty) Ltd and Attacq Waterfall Investment Company (Pty) Ltd (Merger Record at p85-87).

Competition assessment

- [16] The Competition Commission (“Commission”) considered the activities of the merging parties and found that that the proposed transaction gives rise to a notional horizontal overlap as the Acquiring Group owns retail properties and the Target Business comprises a 20% undivided in Mall of Africa, a retail property.
- [17] However, the Acquiring Group currently controls Mall of Africa, and as mentioned above, the proposed transaction is a move from sole fettered control to sole unfettered control in the Mall of Africa. The proposed transaction will therefore not lead to any market share accretion or change the structure of any relevant market.
- [18] Having regard to the above, we are satisfied that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest assessment

Employment

- [19] The merging parties submitted that there will be no retrenchments or redundancies as a result of the proposed transaction.
- [20] The Acquiring Group’s subsidiary, AWIC does not have any employees.
- [21] The Acquiring Group operates through Attacq Management Services (Pty) Ltd (“AMS”), a wholly owned subsidiary of Attacq, which has been appointed to perform asset management and property management services in respect of Mall of Africa.
- [22] The target firm does not have any employees and it also operates through AMS.
- [23] The Commission engaged the employee representative of AMS which carries out the property management services at Mall of Africa, who confirmed that there were no concerns raised by the employees regarding the proposed transaction.

Spread of ownership

- [24] The Acquiring Group has an historically disadvantaged person (“HDP”) shareholding of 33.47%.³
- [25] The Atterbury group of companies does not have any verification certificates or empowerment rating. However, Talis Investment Partners (Pty) (“Talis Investment”) holds 8.39% of the shares in Atterbury Property (Pty) Ltd (“Atterbury Property”) and Talis Property Fund (Pty) Ltd (“Talis Property”) holds 1.67% of the shareholding in Atterbury Property. Talis Investment and Talis Property are ultimately controlled by the Mogashoa Family Trust and are wholly owned by HDP shareholders.
- [26] The merging parties submitted that by virtue of Attacq’s quantum of black equity ownership being higher than Atterbury’s, the proposed transaction will lead to an improvement in the spread of ownership by HDPs.

Other public interest considerations

- [27] We received no evidence that the proposed merger raises concerns relating to other public interest considerations.

Conclusion

- [28] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any public interest concerns.
- [29] We therefore approve the proposed merger unconditionally.

Signed by:Liberty Mncube
Signed at:2024-06-28 13:18:59 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

Prof Liberty Mncube

Adv Geoff Budlender SC and Prof Thando Vilakazi concurring.

28 June 2024

Date

³ Applying the modified flow-through principle, according to Attacq’s Broad-Based Black Economic Empowerment Verification Certificate dated 29 September 2023.

Tribunal case manager:

Leila Raffee

For the merging parties:

Justin Balkin and Aziza Mdee of Edward Nathan
Sonnenbergs Inc.

For the Commission:

Ratshidaho Maphwanya, Makati Seekane, and
Tshehla Mathe.