



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 05/LM/Jan11

In the matter between:

**Hyprop Investment Limited and Atterbury  
Investment Holdings**

**Acquiring Firms**

And

**Attfund Retail Limited  
and Mentrablox (Pty) Limited**

**Target Firms**

Panel	:	Norman Manoim (Presiding Member) Andreas Wessels (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	06/04/2011
Order issued on	:	06/04/2011
Reasons issued on	:	04/05/2011

### Reasons for Decision

#### Approval

- 1] On 6 April 2011 the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Hyprop Investment Limited and Atterbury Investment Holdings and Attfund Retail Limited and Mentrablox (Pty) Ltd. The reasons for approval of the proposed transaction follow below.

#### Parties to transaction

- 2] The primary acquiring firms are Hyprop Investment Limited ("Hyprop") and Atterbury Investment Holdings ("AIH") collectively referred to as the primary acquiring firms. Both the primary acquiring firms are incorporated in accordance with the laws of the Republic of South Africa. Hyprop is a listed company and as such it is not controlled by any individual shareholder. The AIH is also not

controlled by any individual firm.<sup>1</sup>

- 3] The primary target firms are Attfund Retail Limited (“Attfund Retail”) and Mentrablox (Pty) Ltd (“Mentrablox”) collectively referred to as the primary target firms. The primary target firms are incorporated in accordance with the laws of the Republic of South Africa. Attfund Retail is not controlled by any individual shareholder.<sup>2</sup>

### **Parties’ activities**

- 4] Hyprop is a property loan stock company which specialises in prime shopping centres and has a property portfolio comprised of retail and office space. It has a specialised portfolio of ten properties. The Hyprop property portfolio comprises office, hotel and retail properties located throughout South Africa, which includes minor regional, regional and super regional shopping centres.
- 5] Redefine is a property loan stock company with a diversified property portfolio in the rental property market, including office, retail and industrial sectors in various locations throughout South Africa. AIH is part of the Atterbury Group. Atterbury Group is an unlisted capital growth property fund, which invest in premium commercial and retail assets in major South Africa metropolitan areas. Its property portfolio consists of 12 properties, comprising rentable retail properties, rentable office properties, and rentable industrial properties.
- 6] Attfund retail is an investment holding company with approximately twelve (12) properties in retail and office sectors of the property market. Attfund Retail conducts its own asset and property management functions internally. Word 4 Word marketing is involved in the marketing of approximately 36 shopping centres and Mentrablox is a newly created limited liability company, which was created by Attfund Retail to own Garden Route Mall. Garden Route Mall could be described as a rentable retail space consisting of 53 557m.

### **Proposed transaction and rationale**

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1 The following are its major shareholders and their shareholdings: Redefine; Stanlib Fund; Old Mutual Fund; and Standard Bank. Hyprop does not directly or indirectly control any firm. Redefine does not control any other firm.

2 The following are its major shareholders: Atterbury Investment Holding Limited; (the primary acquiring firm in the instant transaction); The Village Trust; Clidet No 683 (Pty) Ltd; and Y3K Investment (Pty) Ltd. Mentrablox is a wholly owned subsidiary of Attfund Retail (the primary target firm in the instant).

- 7] In terms of the Acquisition Agreement entered into between Hyprop, Attfund Retail and various other parties, Hyprop is acquiring the entire issued share capital of Attfund Retail. This includes Attfund Retail property portfolio, its asset management businesses 2 610 430 Acucap units, 8 897 297 Sycom units, and Word 4 Word Marketing (Pty) Ltd (“Hyprop – Attfund transaction”).
- 8] Simultaneously with the Hyprop – Attfund transaction the parties have also entered into another agreement in terms of which Atterbury Investment Holding (“AIH”) intends to subscribe for 80% of ordinary issued share capital in Mentrablox.
- 9] These two interrelated transaction are going to be implemented as follows: Attfund Retail will first transfer one of its properties, a shopping centre known as Garden Route Mall, to its wholly owned subsidiary Mentrablox; Hyprop will then acquire the entire issued share capital of Attfund Retail; AIH will subscribe for 80% shares in Mentrablox and subsequently Attfund Retail shareholding in Mentrablox will be sold to Hyprop; and AIH will have a call option to acquire Hyprop’s shareholding in Mentrablox, after a two year period.
- 10] On completion of the Hyprop Attfund transaction, Hyprop will have sole control over Attfund Retail and negative control over Mentrablox. On completion of the Garden Route Transaction, AIH and Hyprop will have joint control over Mentrablox and thus Garden Route Mall.
- 11] The proposed transaction will result in Hyprop having a stronger retail portfolio, and thus creating a property portfolio well spread between office and high quality retail properties with a complementary tenant mix. Attfund Retail believes the proposed merger will result in attractive liquidity of its share to the benefit of both current and future shareholders.

## **COMPETITION ASSESSMENT**

- 12] The Commission found that the proposed transaction presents both horizontal and vertical overlaps. The horizontal overlap occurs in as far as the merging firms are active in the provision of rentable retail space and the provision of rentable office space. The vertical relationship between the activities of the merging parties occurs in as far as the Word 4 Word, the other target firm in the instant transaction is active in the provision of marketing services to retailers and

property related projects.

13] The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition, as the market in which the parties compete are fragmented with at least more than five (5) players active in the market. Further, the Commission finds that tenants or customers of the merging firms have the ability to negotiate for better rentals and the availability of other alternative centres within a close proximity presents them with some degree of countervailing power.

14] With respect to vertical overlap, the Commission finds that it is unlikely to result in significant foreclosure concerns, as the market shares of the merged entity in both markets remain low. Further, the Commission finds that both the markets in which the merging firms competes are fragment with numerous players active in those markets.

#### **Public Interest**

15] No public interest issues arise from the proposed transaction.

#### **Conclusion**

16] Based on the above we conclude that it is unlikely that the proposed transaction would lead to a substantial prevention or lessening of competition in the relevant market. Furthermore, no public interest concerns arise from this deal. Accordingly the proposed transaction is approved unconditionally.

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**Ms Y Carrim**

**04/05/2011**

Date

#### **N Manoim and A Wessels concurring**

Tribunal Researcher: Thabani Ngilande

For the merging parties: Vani Chetty

For the Commission: Themba Mahlangu