

# COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 90/LM/Aug08

In the matter between:

**Attacq Property Fund Limited**

Acquiring Firm

And

**Waterfall Property Development Company (Pty) Ltd**

Target Firm

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Panel : D Lewis (Presiding Member) N Manoim, (Tribunal Member),  
and M Mokuena (Tribunal Member)

Heard on : 15 October 2008

Order Issued : 15 October 2008

Reasons Issued: 10 November 2008

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## Reasons for Decision

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### Approval

- [1] On 15 October 2008, the Tribunal unconditionally approved the merger between Attacq Property Fund Limited and Waterfall Property Development Company (Pty) Ltd. The reasons for approving the transaction follow.

### The parties

- [2] The primary acquiring firm is Attacq Property Fund Limited ("Attacq"), a public company incorporated under the laws of the Republic of South Africa.<sup>1</sup> Attacq is not controlled by any single shareholder. Attacq's shareholders include BNF Trust, Mergon Trust, Atterbury Property Holdings (Pty) Ltd and Santam Investment Management and these shareholders have concluded a Cooperation Agreement.<sup>2</sup> Attacq controls in excess of fifteen firms.<sup>3</sup>

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<sup>1</sup> Attacq was formed when various properties, and the Attfund Limited shares held by Atterbury Property Holdings (Pty) Ltd and its founders, were consolidated into a single fund. See record page 34.

<sup>2</sup> See Cooperation Agreement dated 29 October 2008.

<sup>3</sup> The firms controlled by Attacq include the following Atterbury Property Johannesburg, Atterbury Property Investments (Pty) Ltd, Atterbury Property Cape Holdings (Pty) Ltd, Attshore (Pty) Ltd, Lady Brooks Office Park Holdings (Pty) Ltd, Highgrove Property Holdings (Pty) Ltd, Attcorn Property Holdings (Pty), Attcorn Property Gauteng (Pty) Ltd, Brooklyn Square, and Attvest Property Development JV (Pty) Ltd.

- [3] The primary target firm is Waterfall Development Company (Pty) Ltd (“Waterfall Development Company”), in respect of certain development rights relating to a vacant land, which is multi-zoned Waterfall property development located in Midrand.
- [4] The parties submitted that this vacant land consists of approximately 2000ha and is currently owned by Witwatersrand Estates Limited (“WEL”) and two other property holding companies. They further submitted that the vacant land is subject to a lease with developers in order to effect developments in the land. WII has therefore entered into lease agreement with Waterfall Investment Company (“WIC”) in terms of which WIC will have the same rights as WII.
- [5] WIC then granted Waterfall Development Company (“WDC”) exclusive rights to develop the vacant land. WDC is now selling those development rights in the instant transaction to Attacq.
- [6] This vacant land is situated between Midrand, Woodmead, Sunninghill and Buccleuch.

### **Description of the transaction**

- [7] In terms of this transaction, Attacq intends to acquire the development rights in respect of the Waterfall development from the Waterfall Development Company. The development rights include the right to develop the following:
- [7.1] Waterfall Wedge Retail;
  - [7.2] Allandale Light Industrial Park;
  - [7.3] Allandale Commercial Park;
  - [7.4] Waterfall City CBD;
  - [7.5] Waterfall Eco Office Park;
  - [7.6] Eco Retail Precinct;
  - [7.7] Woodmead North Office Park;
  - [7.8] Woodmead View Office Park (Phase 2);
  - [7.9] Woodmead East Business Park; and
  - [7.10] Waterfall Warehouse & Distribution Park.

- [8] The parties submit further submit that Attacq will own the above mentioned properties upon the completion of development.

### **Rationale for the transaction**

- [9] For the acquiring firm this transaction presents an opportunity to acquire and provide an attractive long term development opportunity.
- [10] The proposed transaction affords Waterfall Development Company with an opportunity to sell some of the development rights, as it does not have the capacity to develop all the sites.

### **The parties' activities**

#### **Primary acquiring firm**

##### Attacq

- [11] Attacq is a property fund which owns a property portfolio comprising of offices, retail and industrial properties. Attacq is also involved in property development. The parties submitted that Attacq, through Atterbury Asset Managers (Pty) Ltd, manages and administer its property portfolio.
- [12] Attacq owns 17 office properties, 10 retail shopping centres and 2 light industrial properties. The properties that are relevant for the purposes of the present transaction are Attacq's two grade A office properties, one regional shopping centre and three community shopping centres. The grade A office properties are situated in Centurion, the regional shopping centres are situated in Roodepoort, Centurion and Woodhill, and the community shopping centres are each situated in Tyger Valley, Klerksdorp and Brooklyn.

#### **The primary target firm**

- [13] Upon completion, the Waterfall Development will comprise of the following properties:

##### *Waterfall Wedge Retail*

- [14] This will be a community shopping centre consisting of approximately 15 000 square metres to be located in Waterfall Wedge Housing Development. This is expected to be completed during October 2010

##### *Allandale Light Industrial Park*

- [15] This will be a light industrial park consisting of approximately 160 000 square metres of light industrial space to be located in Allandale. This is expected to be completed during October 2010.

*Allandale Commercial Park*

- [16] This will be an industrial property to be located next to the Allandale off-ramp. The first construction phase will commence in July 2009 and is expected to be completed during 2013.

*Waterfall City CBD*

- [17] This will be a mixed use development consisting of office space, residential developments and retail facilities. The retail facilities will be a regional shopping centre and is likely to be developed in 7 years.

*Waterfall Eco Office Park*

- [18] This will be an office park to be located next to the N1 Highway consisting of grade A office space. The first construction phase will commence in 2011 and expected to be completed in 2015.

*Eco Retail Precinct*

- [19] This will be a retail development which will comprise of a neighbourhood shopping centre. This is expected to be completed in 2009.

*Woodmead North Office Park*

- [20] Most offices have been completed. Attacq intends to acquire the development rights to 2 stands namely 31 and 32 as part of the proposed transaction. Construction of this phase is expected to be completed during 2009.

*Woodmead New Office Park (Phase 2)*

- [21] Phase 2 of the office park development comprise of grade A office space. This development is expected to be completed in 2013.

*Woodmead East Business Park*

- [22] This is a commercial warehouse development located next to the M1 Highway. This development is constructed in phases to commence during 2009 likely to be completed during 2012.

### *Waterfall Warehouse & Distribution Park*

- [23] This will be a warehouse and distribution centre and is likely to be completed during 2018.

### **Competition analysis**

- [24] The Commission assessed the merger by considering the overlap that will occur once the development is completed in relation to the properties of the acquiring firm. There will be an overlap with regards to grade A office properties, regional shopping centres, and community shopping centres.
- [25] With regard to community shopping centres, there is no geographic overlap as the acquiring firm has three community shopping centres, which are situated in Tyger Valley, Klerksdorp and Brooklyn and the community shopping centres to be developed will be situated between Midrand, Woodmead, Sunninghill and Buccleuch.
- [26] There is no overlap in the market for grade A office space as the acquiring firm's grade A office properties are situated in Centurion and the grade A office property to be developed will be situated between Midrand, Woodmead, Sunninghill and Buccleuch.
- [27] With regard to regional shopping centres, the acquiring firm has regional shopping centres situated in Roodepoort, Centurion and Woodhill. The regional shopping centre to be developed will be in Midrand. The Commission concluded that the regional shopping centre to be developed will compete with the acquiring firm's regional shopping centre in Centurion and Woodhill as they are within the 40-50km radius.<sup>4</sup> The Commission found that the acquiring firm will have a market share of 14.1% combined post merger market share for regional shopping centres in the area within 40km radius from Midrand. In our view, this market share is unlikely to raise competition concerns.

### Vertical integration

- [28] The parties submitted that the proposed transaction will result in vertical integration as the acquiring firm is involved in property development and it is acquiring development rights in respect of the above mentioned properties.

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<sup>4</sup> In the case of *Attfund Limited and Cape Gate Regional (Pty) Ltd & Others* Case 50/LM/Jun06 the Tribunal stated that regional shopping centres situated 40-50km apart are not likely to compete in the same geographic market.

This vertical integration is unlikely to give rise to any foreclosure concerns as there are several property developers such as Old Mutual Properties, RMB Properties, Zenprop, Spearhead Properties, WHBO and Liberty Properties, among others, which will be available in the unlikely event that the acquiring firm is foreclosed.

### **Public Interest**

[29] There are no public interest issues.

### **Conclusion**

[30] The merger is approved unconditionally.

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N Manoim  
Tribunal Member

**10 November 2008**

**DATE**

D Lewis and M Mokuena concur in the judgment of N Manoim

Tribunal Researcher : R Kariga

For the merging parties: Glyn Marais Attorneys

For the Commission : K Mahlakoana (Mergers and Acquisitions)