

# COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 33/LM/Mar09**

In the matter between:

**ApexHi Properties Limited**

Acquiring Firm

And

**Ambit Properties Limited**

Target Firm

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Panel : D Lewis (Presiding Member) N Manoim, (Tribunal Member),  
and Y Carrim (Tribunal Member)

Heard on : 24 June 2009

Order Issued : 24 June 2009

Reasons Issued: 8 October 2009

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## Reasons for Decision

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### Approval

- [1] On 24 June 2009, the Tribunal unconditionally approved the merger between ApexHi Properties Limited and Ambit Properties Limited. The reasons for approving the transaction follow.

### The parties

- [2] The primary acquiring firm is ApexHi Properties Limited ("ApexHi"), a public company incorporated under the company laws of the Republic of South Africa and is listed on the JSE Securities Exchange. ApexHi is not controlled by any single shareholder but controls ApexHi Charitable Trust ("Apex Trust") and Business Venture Investments 1232 (Pty) Ltd ("Business Venture"). The major shareholders in ApexHi are Old Mutual Group Limited (with 8.18% A Units; 12.42% B Units; and 11.38% C Units); Outward Investment (Pty) Ltd (with 7.21% A Units; 17.86% B Units; and 3.51% C Units); Coronation (with 6.50% A Units); Investec Limited (with 5.48% A Units; 5.47% B Units; and 6.15% C Units); and Clearwater Property Holdings (Pty) Ltd (with 23.62% C Units).
- [3] The primary target firm is Ambit Properties Limited ("Ambit"), a public company listed on the JSE Securities Exchange. Ambit is not controlled by any single

shareholder. Its major shareholders and the respective percentage units they hold are ApexHi Properties Limited (34.8%)<sup>1</sup>; ABSA Commercial Property Finance (34.57%); Outward Investments (Pty) Ltd (9.25%), and Oasis Crescent Management (2.33%).

### **Description of the transaction**

- [4] The proposed transaction occurs by way of a scheme of arrangement between ApexHi, Ambit and Ambit Management Services (Pty) Ltd (“AMS”). In terms of the first arrangement, ApexHi intends to increase its 34.8% shareholding in Ambit to 100% by acquiring all linked units. In terms of the second arrangement, ApexHi intends to take cession of AMS’ asset management agreement (“AMS Agreement”) with Ambit from AMS.
- [5] At the conclusion of the transaction, ApexHi will solely control Ambit and AMS’ asset management contract of Ambit will be undertaken by Madison Property Fund Managers (“Madison”) pursuant to Madison’s existing asset management contract with ApexHi.

### **THE PARTIES’ ACTIVITIES**

#### **Primary acquiring firm**

- [6] ApexHi is a property loan stock company, which owns a portfolio of properties comprising offices, retail, industrial and residential properties throughout South Africa. It is listed on the JSE Securities Exchange in the “Financial Services-Real Estate” sector. The existing ApexHi Property Portfolio comprises mostly retail and office space with a small portion of industrial space. The majority of ApexHi’s properties are geographically located in the Gauteng region. ApexHi does not conduct its own asset management as this function is outsourced to Madison.

#### **Primary target firm**

- [7] Ambit is also a property loan stock company, which owns a portfolio of properties comprising offices, retail and industrial properties throughout major metropolitan areas in South Africa. Ambit has a sectorally diversified portfolio with a bias towards office space.

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<sup>1</sup> This was as a result of the merger between ApexHi Properties Limited and Business Venture Investments that was conditionally approved by the Tribunal on 26 February 2009 under case number 01/LM/Jan09. The conditions prohibited ApexHi from exercising any form of control over Ambit.

## **Rationale for the transaction**

- [8] ApexHi submitted that this transaction is in line with its strategy of increasing its stake in Ambit should an opportunity arise. The acquisition further provides ApexHi with an indirect exposure to a portfolio that is complementary to its existing property portfolio.
- [9] For Ambit, the proposed transaction helps it to avoid the consequences of Ambit remaining with two significant unit holders, ABSA and ApexHi, who may have different initiatives in their investment in Ambit. Ambit further submitted that the offer was very attractive and Ambit was a willing seller.

## **The relevant market**

- [10] There is an overlap in the activities of the parties with respect to rentable office, rentable industrial and rentable retail properties. The Commission and the parties submitted that the relevant product and geographic markets<sup>2</sup> are the market for Rentable grade A office space in Johannesburg CBD Node; Rentable grade B office space in Greater Johannesburg Area Node and Centurion Node; Rentable light industrial property in Jet Park Node and Welkom Node; and Rentable local convenience centre in Johannesburg CBD Node and Randburg Node.

## **Competition analysis**

- [11] We now turn to analyse the relevant geographic markets in greater detail below.

### Rentable A Grade office property

- [12] The Commission submitted that ApexHi has a market share in the rentable grade B office space of approximately 1%, and Ambit has a market share of approximately 4%. The parties' combined post-merger market share will be approximately 5%.

### Rentable grade B office properties

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<sup>2</sup> Based on information from IPD and the South African Property Owners' Association ("SAPOA"), and previous Tribunal decisions, the Commission and the parties concluded that the geographic market is local.

- [13] In the Greater Johannesburg Node ApexHi has a market share of approximately 9% in the market for grade B office properties, and Ambit has a market share of approximately 5%. The post merger market share will be approximately 14%. At the hearing the parties submitted that they only have a combined of 5 properties and they will continue to face competition from other market participants like Growthpoint, and Old Mutual.
- [14] In the Centurion Node, ApexHi has a market share of approximately 2% and Ambit has a market share of approximately 4%. The parties combined post merger market share is approximately 6%.

#### Rentable light industrial properties

- [15] In the Jet Park Node, ApexHi has a market share of approximately 2% in the market for light industrial properties while Ambit has approximately 4%. The combined post merger market share will be approximately 6%, which is insignificant to raise competition concerns.
- [16] In the Welkom Node, ApexHi has a market share of approximately 1% and Ambit has a market share of 4%. The combined post merger market share will be approximately 5%.

#### **Conclusion on the overlaps**

- [17] Combined market shares do not exceed 6 % in any of the markets considered. On this basis the transaction is unlikely to lead to a substantial prevention or lessening of competition.

#### Rentable retail space properties

- [18] In the rentable retail convenience space in the Johannesburg CBD Node, ApexHi has a market share of approximately 3%, and Ambit has approximately 2%. The post merger market share of the merged entity will be approximately 5%, which is insignificant to raise competition concerns.
- [19] In the Randburg Node, ApexHi has a market share of approximately 1% and Ambit has approximately 1%. The post merger market share will be approximately 2%.

#### **Public Interest**

- [20] There are no public interest issues.

## Conclusion

[21] The merger is approved unconditionally as it does not lead to a substantial prevention or lessening of competition as shown above. In addition, there are no public interest issues.

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**N Manoim**

**Tribunal Member**

**8 October 2009**

**DATE**

D Lewis and y Carrim concurring.

Tribunal Researcher : R Kariga

For the merging parties: Vani Chetty Competition Law (Pty) Ltd

For the Commission : L Madihlala and L Khumalo (Mergers and Acquisitions)