
SOUTH AFRICA / JUDGMENT

Enx Group Limited v Extract Group Limited (LM082Jun17) [2017] ZACT 46 (4 September 2017) [2017] ZACT 46

COURT

Competition Tribunal

BEFORE

Andiswa Ndoni, Imraan Valodia, Fiona Tregenna

CASE / FILE NUMBER

LM104Jul17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM104Jul17

In the matter between:

Old Mutual Life Assurance Company

(South Africa) Limited

Primary Acquiring Firm

and

Kagiso Infrastructure Empowerment Fund

Primary Target Firm

Panel

: Andiswa Ndoni (Presiding Member)

: Imraan Valodia (Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard on

: 16 August 2017

Order Issued on

: 16 August 2017

Reasons

Issued on : 29 August 2017

Reasons

for Decision

Approval

- [1] On 16 August 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction between Old Mutual Life Assurance Company (South Africa) Limited and Kagiso Infrastructure Empowerment Fund.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

[31] The primary acquiring firm is Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA"), acting in respect of and on behalf of the portfolio of assets called the Ideas Managed Fund ("Ideas Fund"). OMLACSA is a company incorporated in accordance with the laws of the Republic of South Africa.

[41] OMLACSA is a wholly owned subsidiary of Old Mutual Emerging Markets Limited ("OMEM"), which is controlled by Old Mutual Group Holdings (South Africa) ("OMSA"). OMSA is ultimately controlled by Old Mutual Pie, a firm listed on the London Stock Exchange. The abovementioned firms and their subsidiaries will be referred to as the Acquiring Group.

- [5] OMLACSA controls a number of firms in South Africa, including the Ideas Fund, which is a linked investment policy product of OMLACSA. The Ideas Fund is an infrastructure equity fund investing in economic infrastructure (e.g. toll roads, power and gas and rail), social infrastructure (e.g. office accommodation and prisons), bonds and renewable energy (e.g. wind farms and solar plants).
- [6] OMLACSA is primarily a provider of long-term insurance products. African Infrastructure Investment Managers (Pty) Ltd ("AIIM") is one of the fund managers that form part of the Acquiring Groups' investment arm. AIIM's investment portfolio includes economic infrastructure assets and investments into renewable energy projects. AIIM is the duly authorised representative and fund manager of the Ideas Fund portfolio of assets.

Primary target firm

- [7] The primary target firm is Kagiso Infrastructure Empowerment Fund ("KIEF"), a trust registered at the office of the Master of the Western Cape High Court.

- [8] KIEF is a private equity fund managed by the Infrastructure Empowerment Fund Managers ("IEFM"), with the principal objective of identifying investment opportunities pertaining to infrastructure and renewable energy projects to be undertaken in South Africa.

Proposed transaction

- [9] In terms of the proposed transaction, OMLACSA (on behalf of the Ideas Fund) intends to increase its existing interest by acquiring the majority interest in KIEF from the existing participants, thus acquiring sole control of KIEF. The Liberty Group will be the only remaining investor participant.

Rationale

- [10] The transaction provides an attractive alternative approach to an asset level acquisition and will allow OMLACSA to increase its exposure in Trans African Concessions (Pty) Ltd ("TRAC") and South African Toll and Road Company (Pty) Ltd ("SATRC").

Toll Road assets deliver a predictable long term cash flow with relatively low operation risk.

- [11] The exiting investor participants have elected to exit the portfolio of infrastructure assets through a disposal of units in KIEF to an existing participant in the Fund.

Impact on competition

- [12] The Commission considered the activities of the merging parties and found that there was a horizontal overlap in the activities of the merging parties in relation to the provision of private equity investments as they both provide private equity investments.
- [13] The Acquiring Group invests in a diverse portfolio of assets whereas KIEF invests in economic infrastructure and renewable energy. However, the Commission assessed a broad market for the provision of private equity investments.
- [14] In this market the merged entity will have a market share of less than 10% with a negligible market share accretion. Further, the merged entity will continue to face competition from numerous competing firms such as Public Investment Corporation, Abraaj Group, Actis Africa Limited, Brait Private Equity (Pty) Ltd, Ethos Private Equity (Pty) Ltd, and DPI (Pty) Ltd, amongst others.

Public interest

- [15] The merging parties submitted that the proposed transaction will have no adverse effect on employment as KIEF and the Ideas Fund have no employees.[1]
- [16] The Commission was of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

Conclusion

[17] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.

29 August 2017

DATE

Prof. Fiona

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring

Case Manager:

Kameel Pancham

For the merging parties: Susan Meyer of Cliffe Dekker Hofmeyr

For the Commission: Zanele Hadebe and Ratshidaho Maphwanya

[1] Inter alia Commission's Recommendation page 13.

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