

SOUTH AFRICA / JUDGMENT

Old Mutual Capital Holding (Pty) Ltd v Old Mutual Finance (Pty) Ltd (RF) (019232)

[2014] ZACT 97 (30 September 2014)

[2014] ZACT 97

COURT
Competition Tribunal

BEFORE
Norman Manoim, Yasmin Carrim, Anton Roskam

CASE / FILE NUMBER
019232

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019232

In the matter between:

Old Mutual Capital Holding (Pty) Ltd.....Acquiring
Firm

And

Old Mutual Finance (Pty) Ltd (RF).....Target Firm

Panel: Norman Manoim (Presiding Member),

Yasmin Carrim (Tribunal Member)

and Anton Roskam (Tribunal Member)

Heard on: 10 September 2014

Order issued on: 10 September 2014

Reasons issued on : 30 September 2014

Reasons for Decision

Approval

[1] On 10 September 2014 the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between Old Mutual Capital Holding (Pty) Ltd (“OMCH”) and Old Mutual Finance (Pty) Ltd (RF) (“OMF”). The reasons for approving the proposed transaction follow.

Parties to transaction

- [2] The primary acquiring firm is OMCH, a company incorporated in accordance with the company laws of the Republic of South Africa. OMCH is a wholly-owned subsidiary of Old Mutual Emerging Markets Limited (“OMEML”), a public company listed on the Johannesburg Securities Exchange (“JSE”). OMCH is ultimately controlled by Old Mutual pic (“OM pic”), a public company listed on the London, Johannesburg, Malawi, Namibia and Zimbabwe Securities Exchange. OM pic controls a number of firms in South Africa and throughout the world. For purposes of this transaction, it is worth noting that OM pic has a 58% shareholding in Nedbank Group Limited and a 58% shareholding in Nedbank Limited, (herein collectively referred to as “Nedbank”)
- [3] OMCH falls under the emerging markets unit of OM pic. Its primary activity is acting as an investment holding company. The emerging market unit is involved in providing long-term savings products solutions which address both investment protection and retirement needs.
- [4] The primary target firm is OMF, a firm incorporated in accordance with the laws of the Republic of South Africa. OMF is jointly controlled by OMCH, Business Doctor Consortium Ltd (“BDCL”) and Business Doctor South Africa Trust No.1 (“BDSAT1”).
- [5] OMF operates in the Old Mutual Retail Mass Foundation Cluster as a credit provider which provides unsecured loans, comprising of personal and consolidation loans to the South African market. OMF also offers certain development loans funded by the Masisizane Fund at the request of the Old Mutual Group. Although OMF was previously active in the home loan market, for the past five years it has not provided any mortgage loans.

Proposed transaction

- [6] The proposed transaction emanates from a previous transaction between BDCL which provided OMCH with the option to require BDSL and BDSAT1 to sell their entire shareholding in OMF.

OMCH is thus partially exercising this option. The proposed transaction will result in OMCH increasing its shareholding in OMF from 50% to 75% by acquiring a 17% shareholding from BDCL and 8% from BDSAT1. Post-merger, OMCH will thus solely control OMF.

Competition assessment

- [7] The proposed transaction gives rise to a horizontal overlap in the activities of the merging parties since Nedbank and OMF offer unsecured loans to individual customers. After consultation with market participants the Commission estimated that the postmerger market shares would be approximately 12%. The merging parties submitted the post-merger market shares would be approximately 17%; however they conceded that the Commission’s market share submissions were likely to be more reliable, as it had access to market participants’ information during its investigation, which they did not have.

[8] In addition to this, the Commission submitted that the merging parties are still likely to continue to face fierce competition from competitors such as Capitec Bank and African Bank, inter alia. The Tribunal raised African Bank's recent demise with the merging parties given that the largest share of this market was attributed to it. The merging parties submitted that even though African Bank was now under curatorship it was still continuing to operate in the market. Therefore African Bank's market share in the relevant product market was unlikely to change significantly in the short term. share common directors.¹ in addition to this Mr McLeod stated that Nedbank and OMF have always operated independently of each other, and would continue to do so post-merger.

[9] During the hearing, Craig McLeod a senior legal advisor at Old Mutual gave an assurance that Nedbank and OMF have always operated

independently of each other, and would continue to do so post-merger.

Public Interest

[10] The Commission confirmed that the proposed transaction will have no adverse effect on employment² and raises no other public interest concerns.

CONCLUSION

[11] We agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition and thus approve the transaction without conditions.

30 September 2014

DATE

Mr Norman Manoim

Ms Yasmin Carrim and Mr Anton Roskam concurring.

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Nkonzo Hlatshwayo of Webber Wentzel

For the Commission: Relebohile Thabane

¹See page 6 of the Transcript of the hearing.

²See paragraph 7 page 14 of the Commission's Report.

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