



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018994

In the matter between:

Delta Property Fund

Acquiring Firm

And

**Two Properties (Known
as OMC Durban and The Marine) owned by Old Mutual
Life Assurance Company (SA) Ltd**

Target Firm

Panel : Anton Roskam (Presiding Member),
Medi Mokuena (Tribunal Member)
and Imraan Valodia (Tribunal Member)
Heard on : 27 August 2014
Order issued on : 27 August 2014
Reasons issued on : 23 September 2014

Reasons for Decision

Approval

[1] On 27 August 2014 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Delta Property Fund ("Delta") and Two Properties (known as OMC

Durban and The Marine) owned by Old Mutual Life Assurance Company (SA) Ltd ("Old Mutual").

- [2] The reasons for approving the proposed transaction follow.

Parties to transaction

- [3] The primary acquiring firm is Delta, a company listed on the Johannesburg Securities of Exchange Limited ("JSE"). Delta is therefore not controlled by any single firm. Delta's property portfolio comprises of rentable Grade A, B, C and P, as well as mixed use (office and retail) properties located throughout the Republic of South Africa.
- [4] The Target Properties consist of two properties namely, the Old Mutual Precinct and The Marine, which are both located in the Durban central business district ("CBD") in KwaZulu Natal Province ("KZN"). The OMC Durban comprises of Grade A office space, whilst The Marine, which is a consolidation of five properties, is used for rentable office space.

Proposed transaction

- [5] Through the proposed transaction, Delta will purchase the Target Properties from Old Mutual, thus acquiring sole control over the two properties. This will be implemented through a Purchase and Sale of a Letting Enterprise Agreement.

Competition assessment

- [6] The Competition Commission's ("Commission") assessment revealed a horizontal overlap in the market for the provision of rentable office and retail property in the Durban CBD.

Office Property

[7] The Commission's analysis revealed an overlap in the market for the provision of rentable Grade A office space in the Durban CBD. The merged entity will thus have a post-merger market share of less than 46%, with a market accretion of less than 20%. Although the post-merger market share is high, during the hearing, the Commission re-assured us that there is a lot of vacant space in the Durban CBD in relation to Grade A office space. Such vacant space includes property owned by the merging parties as well as competitors of the Merging parties. This gave the Commission comfort that it is highly unlikely that the merging parties would attempt to increase rentals post-merger.

[8] The Commission also spoke to tenants of the merging parties who revealed that they are able to negotiate rentals and the duration of their lease agreements with their landlords. The merged entity will also continue to face competition from other market players in the market such as Redefine Properties, Blend Properties, CBS Properties and Nedbank Properties inter alia.

Retail Property

[9] The proposed transaction also results in an overlap in the market for the provision of convenience shopping centres in the Durban CBD. The Commission based its analysis on a 10 kilometre ("km") radius from the Target Properties' shopping centres. This revealed that post-merger the merged entity will have a market share of less than 5%, with a market accretion of less than 2%. In addition to this, market players such as Vukile Property Fund Limited, Redefine Income Fund Limited, will continue to constrain the merged entity post-merger.

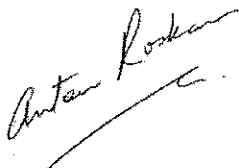
[10] The Durban CBD also has plenty of vacant buildings that offer rentable retail space. Building managers the Commission spoke to revealed that there are at least two buildings situated approximately 100 meters from the Target Properties. The Commission thus came to the conclusion that there are various alternatives available for the tenants of the merging parties, should the merged entity decide to increase rentals post-merger.

Public Interest

[11] The merging parties confirmed that the proposed transaction will have no adverse effect on employment and raises no other public interest concerns¹.

CONCLUSION

[12] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition. We therefore approve the transaction without conditions.



Mr Anton Roskam

23 September 2014
DATE

Prof. Imraan Valodia and Ms Medi Mokuena.

Tribunal Researcher:

Caroline Sserufusa

For the merging parties:

Albert Aukema of Cliffe Dekker Hofmeyer Inc

For the Commission:

Tshegofatso Radinku

¹ See page 47 of the Merger record.