

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case NO: 19/LM/Feb08

In the matter between

Stocks Building Africa (Pty) Ltd

Primary Acquiring firm

And

Housing Africa Development (Pty) Ltd

Primary Target Firm

Panel : Y Carrim (Tribunal Member); M Mokuena (Tribunal Member)
and U Bhoola (Tribunal Member)

Heard on : 09 April 2008

Decided on : 09 April 2008

Reasons Issued : 16 April 2008

Reasons for Decision

Approval

[1] On 09 April 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Stocks Building Africa (Pty) Ltd and Housing Africa Development (Pty) Ltd unconditionally. The reasons appear below.

Parties

[2] The primary acquiring firm is Stocks Building Africa (Pty) Ltd (“Stocks”). Stocks is jointly controlled by RMB Venture Two (Pty) Ltd (“RMB Venture”), Leswikering Building (Pty) Ltd (“Leswikering”) and Management Consortium (“Management”).¹

¹ RMB has 40% shareholding and Leswikering and Management each have 30% shareholding in Stocks.

[3] The primary target firm is Housing Africa Development (Pty) Ltd (“Housing Africa”).² Housing Africa is not controlled by any firm. Its major shareholders are Louis Christoffel de Jager with 35%, Willem Ernest du Toit with 35% and Housing Employees Share Trust with 17% shareholding.

Transaction

[4] Stocks intends to acquire the entire issued share capital of Housing Africa.³ Post merger, Stocks will become the sole shareholder of Housing Africa.

Rationale

[5] Stocks is in the process of expanding its operations into the wider construction industry and is of the view that expanding into the market segment serviced by Housing Africa will add momentum to its vision of becoming a major player in the South African construction industry.

[6] For Housing Africa, the proposed transaction represents an opportunity for its main shareholders to realise their investment.

Parties’ Activities

[7] Stocks is a building company specialising in general construction works, residential buildings and non-residential buildings. Stocks’ activities are mostly concentrated in the commercial and industrial fields, including leisure developments, shopping centres, airports, public private partnerships and institutional buildings. Leswikering is an investment company and does not have an interest in any entity conducting business similar to Housing Africa. First Rand, the parent company of RMB Venture, is involved in the financial services industry.⁴

² Housing Africa was previously a part of Stocks group of companies and operated as “Stocks Housing (Pty) Ltd”. It was purchased by the Housing Management Team from Stocks in 2001.

³ This will be done in terms of two sale agreements. In the first agreement, Stocks will acquire 96% of the shares in housing Africa from the Trustees of the Housing Africa Employees share Trust (“main agreement”). The remaining 4% will be acquired from Ricardo Deon Ludick, Clive Henry Ludick, Gert Lukas van der Werff and George Trotsky de Lange (“secondary agreement”).

⁴ First Rand has another subsidiary which is involved in the building construction market, i.e. RMB Properties. Although RMB Properties is involved in the property development services, these only relate to development of industrial, retail and commercial properties.

[8] Housing Africa is involved in the building of residential housing units which range from R750 000 to R3 million. Housing Africa's operations are focused on the development of low cost housing, bondage housing, sectional title cluster developments and tender work for residential construction.

Relevant Market

[9] In defining the relevant market, the Commission stated that although housing construction can be regarded as a distinct product market from the rest of the building construction market, it is not essential to settle on the precise definition of the relevant market. This view is informed by the fact that Housing Africa, unlike Stocks, is not involved in the general construction market other than residential construction.

The Commission also relied on interviews held with major construction companies which suggested that residential housing construction is driven by different market forces and approaches from general building construction and as such cannot be included in the same product market.⁵ At the hearing the merging parties submitted that even if the Tribunal were to define the relevant market as the residential construction market, they were active in different segments of that market. Stocks is involved in large high rise construction such as the Michaelangelo in Sandton. Housing Africa did not construct any buildings above three floors and did not construct buildings in concrete frame structures.

The geographic market in which the parties' activities overlap is in respect of Gauteng. However, the Commission's investigation with customers of the merging parties revealed that there are no barriers to utilising construction companies located elsewhere in the country. The Commission therefore assessed the effects of the proposed transaction on both the national market as well as in Gauteng.

Competition Analysis

[10] For purposes of this transaction we will only consider the effect thereof in the market for residential construction as it is the only area in which the parties' activities

⁵ The Commission had interviewed Group 5. Group 5 also operates in affordable residential housing construction.

overlap. Housing Africa's market share is estimated to be between 1% and 3% in Gauteng and less than 1% nationally.⁶ Stocks' market share is estimated to be less than 1% both nationally and in Gauteng. The combined national market share of the two entities post merger would not be more than 2%. There are other firms from whom merging parties will face competition such as Cosmopolitan Projects, RBA Holdings SEAkay and M&T Developments.

[11] Based on the above the transaction will not result in substantially lessening or preventing competition in the market for residential construction.

Public interest

[12] The transaction does not give rise to any public interest issues.

Y Carrim
Tribunal Member

16 April 2008
Date

Concurring: M Mokuena and U Bhoola

Tribunal Researcher : I Selaledi
For the merging parties : Cliffe Dekker Inc
For the Commission : Mfundo Ngobese (Mergers and Acquisitions)

⁶ Housing Africa is active in Gauteng, Mpumalanga and Limpopo. Stocks operates in Gauteng, Kwazulu Natal, Western Cape, Eastern Cape and North West.