

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 21/LM/Apr02

In the large merger between:

V&A Waterfront Holdings (Pty) Ltd

and

**V&A Waterfront Properties Ltd, V&A Waterfront Marina (Pty) Ltd And
Victoria & Alfred Waterfront (Pty) Ltd**

Reasons for Decision

APPROVAL

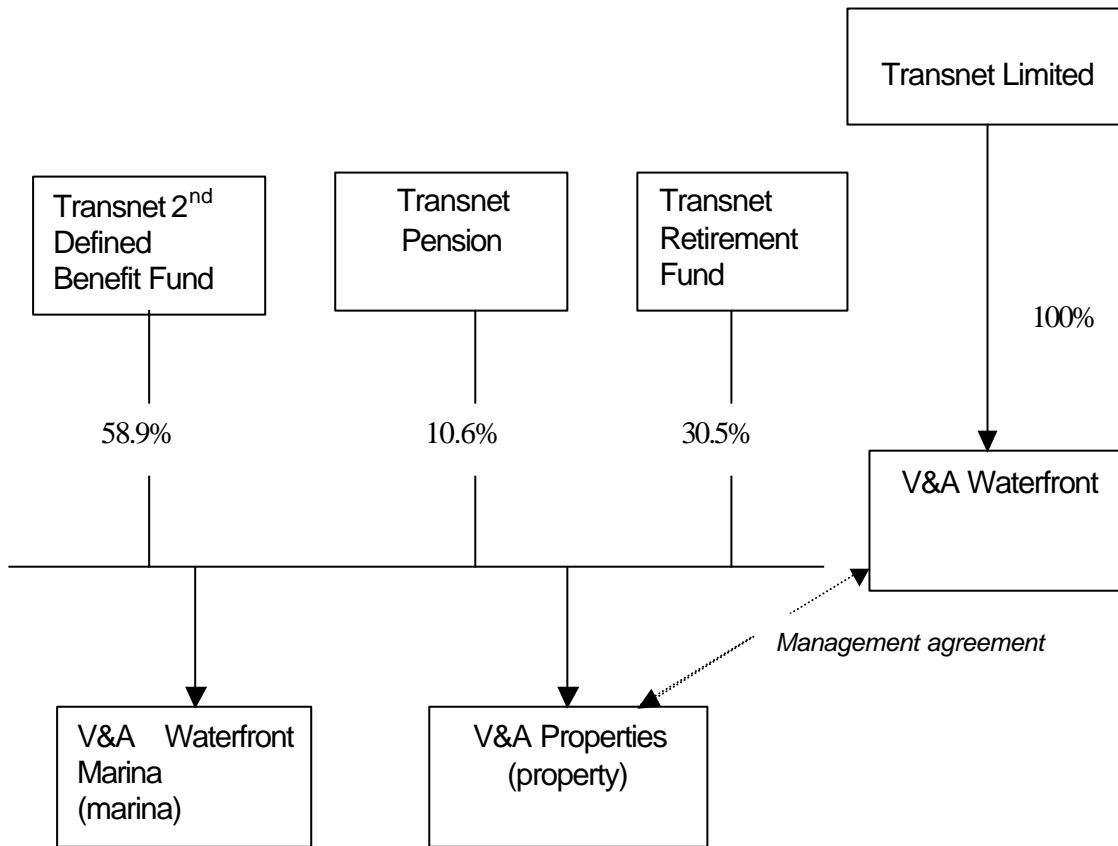
On 8 May 2002 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between V&A Waterfront Holdings (Pty) Ltd and V&A Waterfront Properties Ltd, V&A Waterfront Marina (Pty) Ltd And Victoria & Alfred Waterfront (Pty) Ltd (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

Background to the merger transaction

1. The V&A Waterfront development is a "mixed-use" development comprising activities such as fishing, shopping, offices and residential facilities. It is a major tourist attraction in the Western Cape.
2. Transnet Pension Fund acquired the Waterfront from Transnet Limited ("Transnet") in 1994. Transnet however retained ownership in the management company.
3. During 2000-01, the Transnet Pension fund sold the marina land and rental enterprise to V& A Properties.
4. Later the Transnet Pension Fund was split into three funds, the Pension Fund, Second Defined Benefit Fund and Retirement Fund ("the Funds"). The three funds jointly owned the assets, liabilities, rights and obligations

of the assets owned by Transnet Pension Fund. The three funds therefore collectively own the property at the Waterfront. At present, Transnet owns the management company that runs the Waterfront. We set out below in Diagram 1 the structure of the V& A Group prior to the merger.

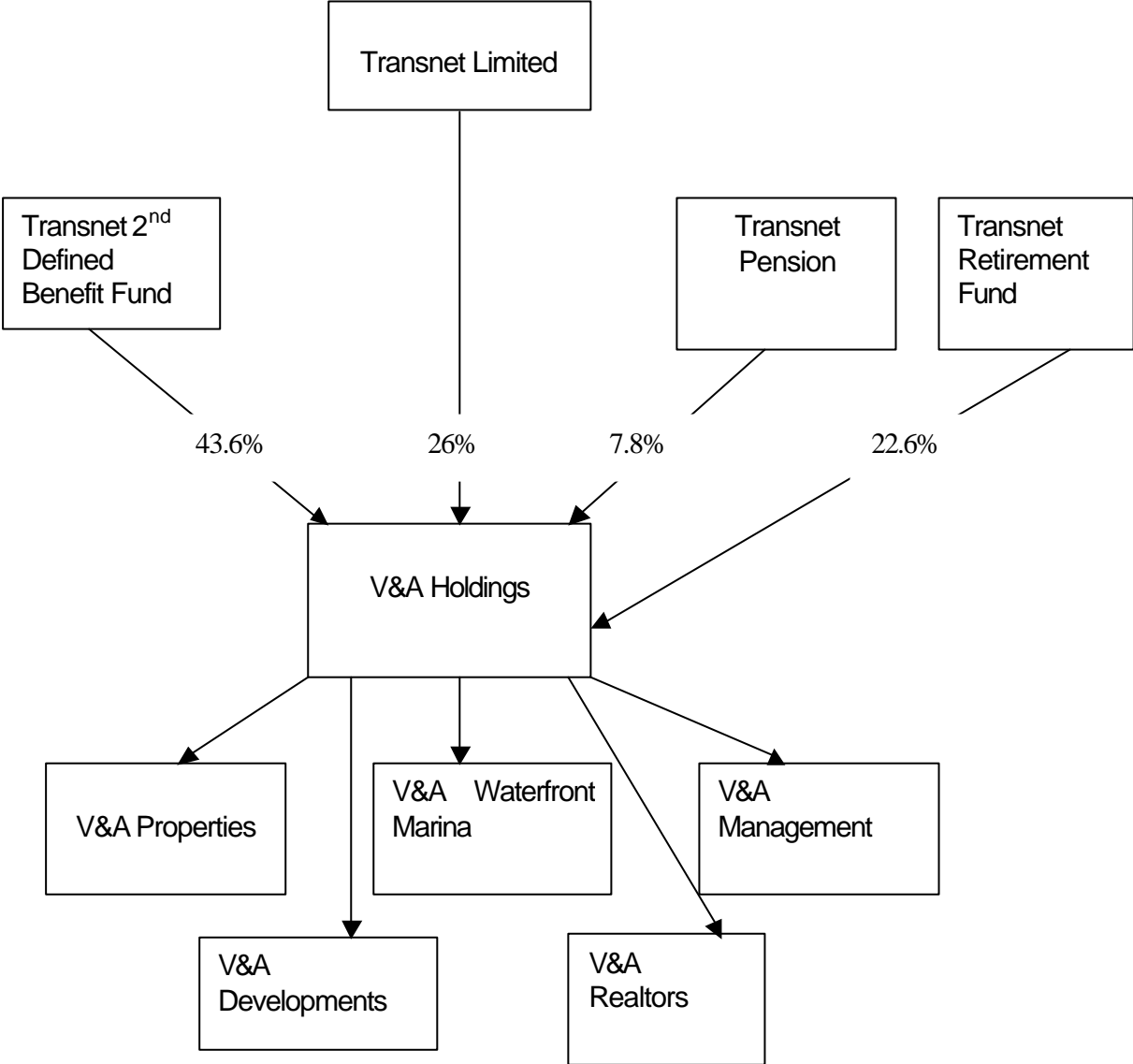
DIAGRAM 1: PRE-MERGER STRUCTURE



5. This transaction is essentially a restructuring of the V&A Group. It entails the formation of V&A Waterfront Holdings (Pty) Ltd (“V&A Holdings”), a private company, which is the vehicle through which the various Funds and Transnet are merging their respective interests in the Waterfront, in proportion to their respective contributions. Transnet will now acquire an equity stake in the Waterfront itself.

6. The companies being acquired are V&A Marina, V&A Property and V&A Management, as well as V&A Waterfront Developments (Pty) Ltd and V&A Realtors (Pty) Ltd. V&A Holdings will be the holding company for these various Waterfront operational companies.
 - V&A Marina (Pty) Ltd owns the Marina residential development. Its function is to develop residential apartments for sale by sectional title.
 - V&A Properties (Pty) Ltd owns and leases out the entire Waterfront property, comprising the hotel, offices, retail stores and fishing and port activities. It does not own the marina property, as stated above.
 - V&A Waterfront (Pty) Ltd (the “Management Company”) manages the property owned by V&A Properties and V&A Marina.
 - Both V&A Waterfront Developments (Pty) Ltd and V&A Realtors (Pty) Ltd are presently dormant companies.
7. Pursuant to this transaction, Transnet will acquire a minority interest in the Waterfront, with the other 74% being held by the funds. V&A Holdings will accordingly serve as the vehicle through which the four shareholders hold their interest in the Waterfront. Post-merger it will hold 100% in each of the subsidiaries. (See Diagram 2 Below)
8. The purchase price is being paid by way of an allotment and issue of shares and debentures in V&A Holdings to the Fund.
9. Post-merger the Waterfront will be managed on a day-to-day basis by the operational companies with the four shareholders being merely investors.

DIAGRAM 2: RESTRUCTURING POST-MERGER:



Rationale for the Transaction

10. V&A Holdings is being formed as a means to settle outstanding contractual obligations between the Funds and Transnet (arising from the 1994 sale), raise external funding for future development projects at the Waterfront, which the various Transnet pension funds cannot do on their own, as well as to attract investors.¹

The relevant product market

11. The affected market is the market for the development of waterfront properties. Since this is a transaction involving a restructuring within the V&A Group, it is not necessary to more specifically define the relevant market.

Impact on competition

12. There is no change to the status quo arising from this transaction. Furthermore, no changes will occur to the employment of the union members or their conditions of employment.
13. However, Transnet is now acquiring an equity stake in the Waterfront itself which it hitherto did not have. This raises the risk of it restricting the entry of new entrants who may seek to lease facilities on the Waterfront. The concern arises since Transnet owns the harbour facility. Therefore, there is the possibility that Transnet could deny access to the harbour with respect to a competitor, particularly when it has a direct commercial interest in the company running the Waterfront operations. The Tribunal raised this concern with the parties at the hearing. The parties responded by saying that Transnet up until now controlled 100% of the management company which effectively ran the harbour and concluded leases with respect thereto, in any event. Therefore, they argue, there is no change – Transnet will now merely have a minority interest in the Waterfront complex (26%), effectively reducing its influence on the daily operations of the Waterfront. It will not dictate to the property company nor get involved in the management of the waterfront property.
14. There is furthermore no evidence to suggest any collusion with Transnet and the other pension fund companies having a stake in the Waterfront. The Tribunal was assured by the parties that Transnet does not control the pension funds. The trustees for each fund, whether appointed by Transnet or the trade unions, are committed to their members' interests. Transnet, in fact, has in the past competed with the various pension funds for tenants who seek leases at the Waterfront.

¹ Page 39 Shareholders' Agreement.

Conclusion

The Tribunal endorses the Commission's finding that this transaction will not substantially lessen or prevent competition. Inasmuch as Transnet can elect to defend its commercial interests in the Waterfront by restricting new entrants thereto, this merger does not confer any more power than Transnet had pre-merger, by virtue of its ownership of the management company. The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns which would alter this conclusion.

N. Manoim

24 May 2002
Date

Concurring: D.H. Lewis , P. Maponya