

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 40/LM/Apr07

In the matter between:

Leisurecorp LCC

Acquiring Firm

And

Novelway Mauritius Limited

Target Firm

Panel : Y Carrim (Presiding Member), M Mokuena (Tribunal Member),
and M Holden (Tribunal Member)

Heard on : 30 May 2007

Decided on : 30 May 2007

Reasons Issued: 26 June 2007

Reasons for Decision

Approval

- 1] On 30 May 2007, the Tribunal unconditionally approved the merger between LeisureCorp LCC and Novelway Mauritius Limited. The reasons for approving the transaction follow.

The parties

- 2] The primary acquiring firm is LeisureCorp LCC ('Leisurecorp'). There are two shareholders in Leisurecorp namely Istithmar Private Joint Stock Company (Istithmar') with 99% shareholding in Leisurecorp and Dubai World Holdings Limited ('Dubai World Holdings') with 1% shareholding in Leisurecorp. Dubai World Holdings does not control any firms in South Africa.

- 3] Istithmar is ultimately controlled by Dubai World Corporation ('Dubai World'). Istithmar has a substantial number of firms worldwide and its South African subsidiaries are Istithmar Real Estate (South Africa) (Pty) Ltd ('Istithmar Real Estate') and Lexshell 44 General Trading (Pty) Ltd ('Lexshell'), which are investment holdings companies.¹
- 4] The only-wholly owned subsidiary of Lexshell is V&A Waterfront Holdings (Pty) Ltd ('V&A Holdings'). The subsidiaries of V&A Holdings are:
- [4.1] V&A Waterfront Properties (Pty) Ltd ('V&A Properties');
 - [4.2] Victoria & Alfred Waterfront (Pty) Ltd ('V&A Manco');
 - [4.3] V&A Waterfront Marina (Pty) Ltd ('V&A Marina'); and
 - [4.4] Two Oceans Aquarium Trust ('The Trust').
- 5] Leisurecorp does not control any firms in South Africa.
- 6] The primary target is Novelway Mauritius Limited ('Novelway Mauritius'). Novelway Mauritius is controlled by Coolibah Limited (40% shareholder), Canterbury Capital Limited (30% shareholder) and Namly Limited (30% shareholder), which are Mauritian companies.² In South Africa Novelway Mauritius controls Novelway Investments (Pty) Ltd ('Novelway'). Novelway has the following wholly owned subsidiaries:
- [6.1] Pearl Valley Properties (Pty) Ltd;
 - [6.2] Pearl Valley Golf Club (Pty) Ltd;
 - [6.3] Pearl Valley Developments (Pty) Ltd; and
 - [6.4] Pearl Valley Management Company (Pty) Ltd.
- 7] Pearl Valley Manco controls Pearl Valley Golf Shop (Pty) Ltd.

¹ For a complete list of all subsidiaries of Istithmar, see annexure F.

² The only other company controlled by Coolibah Limited, Canterbury Capital Limited and Namly Limited either individually or jointly is Pearl Valley Mauritius Limited. (Record p416)

Description of the transaction

8] Leisurecorp intends to acquire 100% of the issued share capital and claims in Novel Way Mauritius.³

Rationale for the transaction

9] Leisurecorp views this transaction as a stand-alone investment opportunity with potential for growth.

10] Novel Mauritius has submitted that this transaction will enable it to strengthen its cash flow status and asset base.⁴

The parties' activities

Primary acquiring firm

11] The acquiring group is involved in the following activities:

[11.1] Port operation services in 30 countries (excluding South Africa);

[11.2] Operating the Jebel Ali Freezone and Techno Industrial Park in Dubai;

[11.3] Private equity, commodities and other investments;

[11.4] Property and real estate development;

[11.5] Cleaning maintenance and parking;

[11.6] Security;

[11.7] Horticulture;

[11.8] Craft market rentals;

³ This acquisition is in terms of the sale and purchase agreement in terms of which the primary acquiring firm will acquire from Coolibah Limited, Canterbury Capital Limited and Namly Limited (the sellers) all of the issued share capital in and claims against the target firm. (Record p418).

⁴ Novelway Mauritius also stated that it considered that Leisurecorp has the skills, funds and ability to further its current development, as well as the proposed development to be known as the Pearl Valley II development.

[11.9] International planning and development;

[11.10] Marketing;

[11.11] Sales of gift vouchers;

[11.12] Tourism and events income; and

[11.13] Ownership of a public aquarium.

The primary target firm

12] Novelway Mauritius is involved in the development of Golf Estates and currently owns the Pearl Valley Estate.

Competition analysis

13] The merging parties are both involved in the development of Golf Estates. Consequently there is an overlap in the activities of the merging parties. However, there is no geographic overlap as the Golf Estates owned and developed by Leisurecorp are based in Dubai, in the United Arab Emirates and those owned developed by Novelway Mauritius are based in South Africa.

14] At the hearing, the Tribunal enquired as to why a market definition analysis had not been undertaken by the Commission in its recommendation. In particular the Tribunal requested the Commission and the parties to address it on whether the relevant market was not a market for luxury accommodation in the Western Cape, thus implying substitutability between Golf Estates developed by Pearl Valley Group in Paarl and residential luxury apartments developed by V&A Marina in the Cape Town area.

15] The parties stated that they had indeed considered that possibility but had found very little data.⁵ The Investment Property Databank (IPD) does not have data on Golf Estates and residential luxury apartments. Nor were they able to find a sufficient basis for defining a market for the development of golf estates. In addition, they stated that the market shares of the acquiring firm in the

⁵ Transcript p2.

development of the Pearl Valley Golf Estate will not continue indefinitely into the future because upon completion the erven will be sold off and the developer will exit that market.⁶ They further stated that residential luxury apartments are not substitutable with Golf Estates since upon buying into a Golf Estate a person is entitled to become a member of a golf club and to a number of amenities which are very different from the amenities that a person who buys into a residential luxury apartment is entitled to.

The Tribunal is of the view that although the Commission did not fully investigate the possibility of substitutability between Golf Estates and luxury apartments, it is likely that the development of Golf Estates, in which ownership is not retained by the developer, and the ownership of luxury apartments would constitute separate product markets. However there is no need for the Tribunal to conclusively decide on the relevant market since the acquiring firm intends to develop the Pearl Valley Golf Estate and to exit that market in the future.⁷

Public Interest

16] There are no public interest issues.

Conclusion

17] The merger is approved unconditionally.

Y Carrim
Tribunal Member

26 June 2007
DATE

M Mokuena and M Holden concur in the judgment of Y Carrim
Tribunal Researcher : R Kariga

For the merging parties: LE Grange Hofmeyr Herbstein & Gihwala Inc.

For the Commission : I Selaledi, and M Mohlala (Mergers and Acquisitions)

⁶ It is not clear whether that is what will happen in this instance.

⁷ Transcript p4.

