

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 51/LM/Jul09

In the matter between:

Acucap Investments (Pty) Ltd

Acquiring Firm

and

**Old Mutual Life Assurance Company (South Africa) Ltd in
respect of Bayside Mall**

Target Firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal
Member) and A Wessels (Tribunal Member)
Heard on : 26 August 2009
Order issued on : 26 August 2009
Reasons issued on : 01 October 2009

Reasons for Decision

Introduction

- [1] On 26 August 2009 the Tribunal unconditionally approved the acquisition by Acucap Investments (Pty) Ltd of Old Mutual Life Assurance Company (South Africa) Ltd in respect of a rental enterprise known as Bayside Mall. The reasons follow below.

Parties

- [2] The primary acquiring firm is Acucap Investments (Pty) Ltd ("Acucap Investments"), a company registered under the laws of the Republic of South Africa. Acucap Investments is controlled by Acucap Properties (Pty) Ltd ("Acucap"). Acucap's major shareholders holding more than 5% of the share capital are Nedbank Ltd (6.51%), Thesele Group (Pty) Ltd (5.74%) and Public Investment Corporation (13.21%).

- [3] The primary target firm is an undivided half share in property letting business known as the Bayside Mall owned by Old Mutual Life Assurance Company (South Africa) Ltd (“OMLACSA”). OMLACSA’s ultimate parent company is Old Mutual plc.

Activities of the parties

- [4] Acucap Investments carries on a property investment business, real estate activities with its own or rented property and property management on a fee or contract basis. Acucap is a property loan stock company listed on the JSE in the Real Estate-Real Estate Holdings & Development sector. Acucap invests in retail property situated in major urban centres and its existing portfolio comprises various rental properties in the retail, office and industrial space sectors of the property market in Gauteng, Western Cape, Eastern Cape and Kwa-Zulu Natal provinces.
- [5] The primary target firm is an undivided half share in property letting business known as the Bayside Mall owned by OMLACSA.

The transaction

- [6] In terms of the sale of agreement concluded between Acucap and OMLACSA, Acucap purchased from OMLACSA its undivided half share in the rental enterprise known as Bayside Mall, as a going concern. Pre-merger, the 50% interest in the rental enterprise was held by an ultimate subsidiary of Acucap, Advent Properties (Pty) Ltd (“Advent”). Post transaction Advent will hold 100% of the rental enterprise.

Rationale

- [7] Acucap submits that the proposed transaction represents an opportunity to expand its investments portfolio in one of Cape Town’s highest growth nodes, where there is a strong demand for retail space from national retailers. OMLACSA’s rationale is to realise its investments in the target company in order to generate cash resources and liquidity required for other forms of investments.

Competition Analysis

[8] The relevant market in this transaction is the market for retail letting in the minor regional mall category in the Milnerton node, Cape Town. This merger is however, unlikely to substantially prevent or lessen competition as the transaction merely represents a change from joint to sole control by the acquiring firm in regard to the rental enterprise known as “Bayside Mall”.

Public Interest

[9] The transaction does not raise any significant public interest concerns.

N Manoim

01 October 2009
Date

Y Carrim and A Wessels concurring.

Tribunal Researcher : I Selaledi
For the merging parties : Vani Chetty Competition Law (Pty) Ltd
For the Commission : F Reid