

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 72/LM/Aug06

In the matter between:

ApexHi Properties Limited

Acquiring Firm

And

Old Mutual Life Assurance Company (SA) Ltd

Target Firm

Panel : N Manoim (Presiding Member), T Orleyn (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on : 27 October 2006
Decided on : 27 October 2006
Reasons Issued: 7 November 2006

Reasons for Decision

Approval

[1] On 27 October 2006 the Tribunal issued a merger clearance certificate unconditionally approving the merger between ApexHi Limited and the immovable property owned by Old Mutual Life Assurance Company (SA) Ltd. The reasons for approving the transaction follow.

The Parties

[2] The primary acquiring firm is ApexHi Limited ("ApexHi"), a variable rate property company loan stock listed on the JSE Securities Exchange. No firm directly or indirectly control ApexHi. Its stakeholders in terms of "A" Units and "B" Units are:

	A Units	B Units
	<u>% held</u>	<u>% held</u>
[2.1] Old Mutual	10.1	5.9

[2.2]	Redefine Income Fund	9.4	15.3
[2.3]	Coronation	7.6	-
[2.4]	StanLib	5.9	8.4
[2.5]	Investec	5.8	6.3
[2.6]	Marriot Funds	-	5.0
[2.7]	Other	61.2	59.2

[3] The primary target firm is Old Mutual Life Assurance Company (SA) Limited (“OMLACSA”). OMLACSA is a wholly owned subsidiary of Old Mutual Life Holdings, which in turn is a wholly owned subsidiary Old Mutual South Africa Limited (“OMSA”).¹

The Transaction

[4] ApexHi is acquiring from OMLACSA nine property letting enterprises as a going concern. These comprise the immovable properties, lease and the property letting enterprises conducted in respect of such properties.

TABLE 1

Property portfolio being acquired

Property	Geographical area	Type	Grade
Freeway Centre	Wynberg, Sandton	Retail	C
Sentrakor	Pretoria CBD	Office with Retail	D

¹ OMSA's ultimate controlling company is Old Mutual plc (“OM”), a public company incorporated in the United Kingdom, and is listed on the London, Malawi, Namibia and Zimbabwe Stock Exchanges and on the JSE Securities Exchange.

President Centre	Pretoria CBD	Office with Retail	D
Steyns Arcade	Pretoria CBD	Office with Retail	D
Oudehuis Centre	Sommerset West	Retail	Neighbourhood Shopping Centre-B
5 Girton Road	Parktown	Office	B
Kempton Square	Kempton Park	Community	Community
Fabric Park	Midrand	Light Industrial	Prime-B
Pepsi	Aeroton	Light Industrial	Prime-B

Rationale for the transaction

- [5] ApexHi views the transaction as enhancing and complementing the quality, size, diversification, and risk profile of its existing portfolio of properties in the rentable office space, rentable retail space and rentable industrial space sectors.
- [6] OMLACSA perceives the transaction as an advancement of its strategy to dispose of properties that no longer fit its investment profile. Such properties are deemed non-core.

The parties' activities

The Primary Acquiring Firm

ApexHi

- [7] ApexHi's property portfolio is spread throughout South Africa and includes properties in the rentable office space, rentable retail space, and rentable light industrial space. For the purposes of this transaction the following properties are relevant:

TABLE 2

Property	Geographical Area	Type	Grade
Princess of Wales	Parktown	Offices	B
Victoria Gate	Parktown	Offices	B

The primary target firm

- [8] OMLACSA is a wholly owned subsidiary of Old Mutual Life Holdings (South Africa) Limited and is a registered long-term insurer. OMLACSA has a portfolio of properties throughout South Africa in the rentable office space, rentable retail space, and rentable light industrial space sectors. The properties it is disposing of in this transaction are listed in Table 1 above.

Relevant market

- [9] In defining the geographic and product markets, the Commission and the parties relied on the information from the Investment Property Databank of South Africa (“IPD”) which has identified different nodes in consultation with market participants and the South African Property Owners’ Association (“SAPOA”). In the case of *Growthpoint and Business Technology Holdings*,² the Tribunal questioned the reliability of information from SAPOA as the only tool used for an antitrust analysis.³ In this decision it is not necessary to precisely define the market because the market shares are too small and do not raise competition concerns. It is thus not necessary to deal with concerns raised by the Tribunal in the case of *Growthpoint and Business Technology Holdings*.

Competition analysis

- [10] Post-merger the merging parties will have a combined market share of 4.68%.⁴ This market share is insignificant and does not raise any competition concerns.
- [11] Furthermore, there are other property owning companies in the relevant nodes that compete with the merging firms. These include, among others, Acucap Properties, Capital Property Fund, Growthpoint Properties, Hyprop

² *Growthpoint and Business Connection Technology Holdings* Tribunal case number 49/LM/Jun06.

³ Ibid par 9-19 of post-script analysis.

⁴ The market shares are obtained from SAPOA. The Commission also contacted IPD to verify information submitted by the parties and was informed that the IPD relied on information from SAPOA especially with regards to office properties (cf Record p7). See also pp32-35 of the record.

Investments, and Paramount Property Fund. The Commission stated that the industry players it contacted indicated that the merging firm are small players in the property sector.⁵

Public Interest Issues

[12] There are no public interest issues.

Conclusion

[13] The transaction will not lead to a substantial prevention or lessening of competition and is accordingly approved. The post-merger market shares of the parties remain low and there are various players in the relevant nodes that compete with the merging firms. Moreover, there are no public interest concerns that may affect this conclusion.

N Manoim
Tribunal Member

7 November 2006

DATE

T Orleyn and M Mokuena concur in the judgment of N Manoim.

Tribunal Researcher: R Kariga

For the merging parties: Vani Chetty, Edward Nathan Sonnenbergs Attorneys

For the Commission : Kwena Mahlakoana and Makgale Motlala (Mergers and Acquisitions)

⁵ Record p7.