

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 86/LM/Oct06

In the matter between:

Lexshell 44 General Trading (Pty) Ltd **Acquiring Firm**

And

V&A Waterfront Holdings (Pty) Ltd **Target Firm**

Panel : D.H Lewis (Tribunal Member) M.T.K Moerane (Tribunal Member), and M Mokuena (Tribunal Member)

Heard on : 04 December 2006

Decided on : 04 December 2006

Reasons Issued: 04 December 2006

REASONS FOR DECISION

Approval

[1] On the 04th of November 2006, the Tribunal unconditionally approved the proposed merger between the abovementioned parties. The reasons for the decision follow.

Parties

[2] The acquiring firm is Lexshell 44 General Trading (Pty) Ltd (“Lexshell”) a company incorporated under the laws of South Africa. Lexshell is a shelf company and controls no firm. The following firms have direct control over Lexshell: London & Regional Group Holding Ltd (“London & Regional”)¹ which holds 50.1% shares in Lexshell and Istithmar PJSC (“Istithmar”)² which holds 24.8% shares of Lexshell³. Lexshell is a company formed by London & Regional Holdings (“L&R”), which is involved in traditional prime and secondary office and retail commercial investment, sale and lease-back portfolio, hotels and healthcare, Istithmar Private Joint Stock Company

¹ London & Regional is a private company incorporated under the laws of England and Wales having its principal place of business in London. It is a wholly owned subsidiary of Loopsign Ltd a company incorporated under the laws of England and Wales and having its principal place of business in London.

² Istithmar is a company incorporated under the laws of the United Arab Emirates and having its principal place of business in Dubai.

³ Members of historically disadvantaged group own the other 25.01% shares in Lexshell. See page 47 of the record.

("Istithmar") which is involved in shipyard and yacht repair services, property and real estate development, and private equity and BEE investors.

[3] The primary target firm is V&A Waterfront Holdings (Pty) Ltd ("V&A Holdings")⁴. V&A Holdings is jointly controlled by Transnet Second Defined Pension Fund ("TSDPF"), Transnet Ltd ("Transnet"), Transnet Retirement Fund ("TRF") and Transnet Pension Fund⁵. TSDPF holds 43.6%, Transnet holds 26%, TRF holds 22.6% and TPF holds 7.8% issued linked units in the V&A Holdings.

Transaction

[4] In terms of the deed of sale entered into between Lexshell and Transnet, Lexshell intends to acquire 100% of the issued linked units in V&A Holdings.

Rationale of the Transaction

[5] From the acquiring group's perspective the transaction will allow Istithmar and London & Regional (both of whom are foreign investors) to enter the South African market on commercially acceptable terms and conditions. From the target group's perspective the sale enables Transnet to focus on its core ports, freight rail and pipeline businesses in South Africa.

Parties' Activities

[6] Lexshell is a newly formed company controlled by a consortium of international property and BEE investors. Lexshell and its shareholders currently provide no products or services in South Africa. London & Regional is one of Europe's largest, privately owned, property investment and development companies with investments in eighteen European countries. It has interest in traditional prime and secondary office and retail commercial investment, sale and lease-back portfolio, hotel and healthcare. V&A Holdings is an investment holding company and does not sell any products nor provide any services. The firms⁶ controlled by V&A Holdings render services in property management and development sector, and also has property investment in retail, office, industrial, residential property.⁷

⁴ V&A Holdings wholly owned subsidiaries are: V&A Properties (Pty) Ltd ("V&A Properties"); Victoria & Alfred Waterfront (Pty) Ltd ("V&A Manco"); V&A Waterfront Marina (Pty) Ltd ("V&A Marina") and Ebelink (Pty) Ltd ("Ebelink"). V&A Holdings also holds 70% of the beneficial interest in Two Oceans Aquarium Trust ("The Trust") which controls the Two Oceans Aquarium ("Two Oceans Aquarium")

⁵ TSDPF, TPF, TRF are independent pension and retirement funds and are not controlled by any specific entity.

⁶ See footnote 4

⁷ For the various activities in which firms controlled by V&A Holdings are involved in see pages 84 to 104 of the record.

The Relevant Market

[7] The parties submitted in their filing that there is no horizontal overlap between the business activities of the acquiring group and those of the target group. According to the parties the acquiring group is also not active in any product market upstream or downstream to those product markets in which the target group is active in South Africa.⁸ The Commission's investigation found that although there is a product overlap between the activities of merging parties in retail, office property and property development, there is no geographic overlap between the activities of the merging parties. We therefore agree with both the merging parties and the Commission view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Public Interest Issues

[8] There are no public interest issues.

Conclusion

[9]. Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

D. H Lewis

Tribunal Member

04 December 2006

Date

M Mokuena and M.T.K Moerane concurring.

Tribunal Researcher : J Ngobeni

For the merging parties : Pieter Steyn (Werksmans); Dave Thompson
(Cliffe Dekker) and Andries Le Grange
(Hofmeyr)

For the Commission : Mulalo Ratshisusu
Mergers and Acquisitions

⁸ The target group provides retail, office property development in the Western Cape Province, whereas the acquiring group is active in more than 18 countries excluding South Africa.