



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 017533

In the matter between:

Old Mutual Life Assurance Company (South Africa) Ltd and Business Venture Investments No. 1360 (Pty) Ltd	Acquiring Firm(s)/ Target Firm(s)
And	
Woolworths (Pty) Ltd	Target Firm Acquiring Firm

Panel	:	Mondo Mazwai (Presiding Member) Medi Mokuena (Tribunal Member) Fiona Tregenna (Tribunal Member)
Heard on	:	02 October 2013
Order issued on	:	02 October 2013
Reasons issued on	:	30 October 2013

Reasons for Decision

Approval

1. On 02 October 2013 the Competition Tribunal ("the Tribunal") unconditionally approved an asset swap transaction between Old Mutual Life Assurance Company (South Africa) Ltd ("OMLACSA") and Business Venture Investments No. 1360 (Pty) Ltd ("BVI"), on the one hand, and Woolworths (Pty) Ltd ("Woolworths") on the other, in terms of which OMLACSA and BVI will acquire two retail properties from Woolworths ("the retail property transaction"), which in turn, will acquire two industrial properties from OMLACSA ("the industrial property transaction").

2. The reasons for the approval of the proposed transaction follow.

The Parties and their activities

3. The primary acquiring firms in the retail property transaction are OMLACSA and BVI, firms incorporated in terms of the laws of the Republic of South Africa. OMLACSA is controlled by Old Mutual Life Holdings (South Africa) Ltd ('OMLH '), which is in turn controlled by Old Mutual (South Africa) Ltd ('OMSA '). OMSA is controlled by Old Mutual Netherlands B.V. ('Old Mutual Netherlands ') which is a wholly owned subsidiary of OM Group (UK) Ltd ('OM Group UK '). OM Group UK is in turn wholly owned by Old Mutual Plc.
4. BVI is 100% controlled by the Government Employees Pension Fund (" GEPF "). GEPF directly and indirectly controls the following firms: ADR International Airports South Africa (Pty) Ltd, Pareto Ltd, Lexshell 44 General Trading (Pty) Ltd, CBS Property Portfolio and Opiconsivia Investments 230 (Pty) Ltd.
5. OMLACSA conducts business in the life assurance sector in Southern Africa, including South Africa, and also has investments in fixed property including retail, office and industrial property. BVI was formed in 2009 as a vehicle to hold additional property investments outside of Pareto. It is an unlisted property variable loan stock company which invests in immovable property with a focus on acquiring and developing major retail centres in South Africa. Of relevance to the competition assessment of this transaction are OMLACSA and BVI's joint ownership of two retail properties, namely, Cavendish Square and Cavendish Connect (" Cavendish ") as well as OMLACSA's ownership of two industrial properties, namely, the Trade Centre and Racehorse Industrial.
6. The primary target firm in the retail property transaction is Woolworths, a firm incorporated in terms of the laws of the Republic of South Africa. Woolworths is directly controlled by Woolworths Holdings Ltd ("

Woolworths Holdings }). Woolworths Holdings is not controlled by any firm and is listed on the Johannesburg Stock Exchange.

7. Woolworths conducts business in the food and retail sector in Southern Africa, including South Africa and also has investments in fixed property including retail, office and industrial property. Of relevance to the competition assessment of this transaction is Woolworths' ownership of two industrial properties, namely, Montague Gardens and Montague Gardens Extension as well as two retail properties, namely, The Place and Dreyer Street.
8. Regarding the industrial property transaction, Woolworths is the primary acquiring firm. OMLACSA (more specifically, the Trade Centre and Racehorse Industrial properties) is the primary target firm.

Proposed transaction and rationale

9. As indicated above, the proposed transaction constitutes an asset swap between the merging parties in terms of which OMLACSA and BVI intend to jointly acquire two retail properties, namely, "The Place" and "Dreyer Street"; from Woolworths. In turn, Woolworths intends to acquire two industrial properties, namely, the "Trade Centre" and "Racehorse Industrial"; from OMLACSA. Upon completion of the proposed transaction, OMLACSA and BVI will jointly own the two target retail properties and Woolworths will solely own the two target industrial properties.
10. OMLACSA and BVI indicated that proposed transaction gives them an opportunity to acquire more retail space, thus adding to the much needed critical mass at Cavendish.
11. Woolworths indicated that it wishes to increase its distribution chain capabilities by building clothing and general merchandise facilities on the target industrial properties.

Competition analysis

12. As OMLACSA and BVI already own retail properties and are swapping retail assets and Woolworths already owns industrial properties and is swapping industrial assets, the Commission assessed the impact of the proposed transaction in the markets for rentable retail and rentable industrial properties.

The market for rentable retail property

13. The two target retail properties that are to be acquired from Woolworths are both situated in Claremont, Cape Town, and are adjacent to the shopping centre that OMLACSA and BVI currently jointly own, i.e. Cavendish. The Commission, however, found that there is no direct horizontal overlap since the two target retail properties are classified as convenience centres¹⁾ whilst the shopping centre owned by OMLACSA and BVI is classified as a comparative centre.²⁾

14. However, since the target properties are adjacent to OMLACSA and BVI's comparative centre (Cavendish) and will, post-merger, become extensions of Cavendish³⁾, the Commission assessed the impact of the transaction on the rentable retail comparative centre market within a 15km radius of Cavendish in Cape Town. The Commission found that there are a significant number of alternative retail centres which fall within the category

¹⁾ Convenience centres typically include free standing, convenience, neighbourhood and to a certain extent smaller community sized centres. The tenant mix of these types of shopping centres is dominated by grocery stores and is not as wide ranging and as such customers cannot do wide comparative shopping.

²⁾ Comparative centres include larger community, minor regional, regional and super regional sized centres. These centres have a wide range of tenant mix which enables customers to compare many items such as fashion items and jewellery.

³⁾ According to the merging parties the target properties together with Cavendish shall constitute a (larger) regional shopping centre, post-merger.

of comparative centres and other retail properties within close proximity of Cavendish which will constrain the merged entity post-merger. These properties include Kenilworth Centre, Ottery Centre, Blue Route Mall, Golden Acre, Rosmead Shopping Centre, N1 Value Centre and others.

15. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for rentable retail comparative centres as there are numerous other alternative retail properties within a 15km radius of Cavendish.

The market for rentable industrial property

16. The two industrial properties that Woolworths intends to acquire from OMLACSA are located in Montague Gardens and Milnerton, Cape Town. As Woolworths already owns two industrial properties in Montague Gardens which are within a 10km radius of the target properties, the Commission identified a horizontal overlap in respect of industrial property within a 10km radius. The Commission found that Woolworths' post-merger market share will be approximately 2% and that Woolworths will still continue to face competition from several competitor industrial properties within the identified 10km radius such as Spearhead Business Park, Fortune Park, Bridge Park, Montague Square and others. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for rentable industrial property.

Coordinated Effects

17. The Commission further considered whether this transaction could be used by the merging parties to facilitate the exchange of commercially sensitive information to the detriment of competition as the parties are exchanging assets related to markets in which they are already active. The Commission, however, found that coordination is unlikely given that the

parties are swapping assets which are in different products markets, i.e. OMLACSA and BVI are acquiring convenience centres whereas Woolworths is acquiring industrial properties. Further, both the comparative retail and industrial markets are not concentrated and sensitive information such as rental prices is publicly available in both markets.

Public interest

18. The merging parties confirmed that the proposed transaction will have no adverse effect on employment and will not result in any retrenchments in South Africa.⁴⁾ The proposed transaction raises no other public interest concerns.

Conclusion

19. For the reasons mentioned above, we approve the proposed transaction unconditionally.


Mondo Mazwai

30 October 2013
Date

Medi Mokuena and Fiona Tregenna concurring

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Roxanne Ker of Walkers Inc

For the Commission: Grashum Mutizwa

⁴⁾ See merger record, pages 59 - 63. Also see paragraph 8.1 of the Commission's merger report.