



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM198Oct17

In the matter between:

Old Mutual Retirement Accommodation Fund (Pty) Ltd Primary Acquiring Firm

And

Fair Cape Life Right Holdings (Pty) Ltd Primary Target Firm

Panel : Norman Manoim (Presiding Member)
: Medi Mokuena (Tribunal Member)
: Mondo Mazwai (Tribunal Member)
Heard on : 22 November 2017
Order Issued on : 22 November 2017
Reasons Issued on : 15 December 2017

Reasons for Decision

Approval

- [1] On 22 November 2017, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Old Mutual Retirement Accommodation Fund (Pty) Ltd and Fair Cape Life Right Holdings (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follows.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Old Mutual Retirement Accommodation Fund (Pty) Ltd ("OMRAF"), a company incorporated in accordance with the company laws of the Republic of South Africa. OMRAF is a wholly-owned subsidiary of Old Mutual Life Assurance Company Limited ("OMLASCOSA") which is ultimately controlled by Old Mutual Plc.
- [4] OMRAF is an investment fund that focuses on the growing need for retirement accommodation by investing in new developments and funding existing retirement housing projects in South Africa. OMRAF focuses on life right, sectional title, freehold and rental investments.
- [5] OMRAF and its controllers are hereinafter collectively referred to as the Acquiring Group.

Primary target firms

- [6] The primary target firm is Fair Cape Life Right Holdings (Pty) Ltd ("FLRH"), a private company incorporated in accordance with the company laws of the Republic of South Africa. FLRH is owned and controlled by Faircape Retirement Holdings Trust ("Faircape Trust").
- [7] FLRH and its controllers are hereinafter collectively referred to as the Target Group.
- [8] The Target Group owns and operates six (6) retirement accommodation facilities situated in the Western Cape.

Proposed transaction and rationale

- [9] In terms of the Sale of Shares and Claims Agreement, OMRAF intends to acquire 50% of the issued share capital of FLRH and 50% of all amounts owing by FLRH to Faircape Retirement Trust. Post-merger, OMRAF and Faircape Trust will exercise joint control over FLRH.
- [10] The Acquiring Group submits that the purchase of FLRH is aligned with its objective of optimizing risk-and return and building a long-term asset base of retirement accommodation. The Target Group submits that it has entered into the proposed transaction in order to become aligned with the Old Mutual Group and benefit from Old Mutual's brand reputation in the financial sector.

Impact on competition

- [11] The Commission considered the activities of the merging parties and found that the proposed transaction presents a horizontal overlap as the merging parties are engaged in the provision of retirement accommodation in the Western Cape through various business models.¹ Furthermore, the Commission found that the merged entity will have a market share of less than 6% and that the merging parties will continue to face competition from its market counterparts such as Helderberg Villages, Cape Peninsula Organisation for the Aged (CPOA) and Devmark Property.
- [12] As such the Commission submitted that the proposed merger is unlikely to lessen or prevent competition in the relevant market and recommended that the proposed merger be approved without conditions
- [13] We concur with the Commission's findings.

¹ The proposed transaction is assessed in the Western

Public interest

[14] The merging parties confirmed that the proposed transaction will not have any negative effect on employment in South Africa.

[15] The proposed transaction further raises no other public interest concerns.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Norman Manoim

15 December 2017

DATE

Mrs Medi Mokuena and Ms Mondo Mazwai concurring

Tribunal Case Manager : Ms Busisiwe Masina
For the merging parties : Ms Suzane Meyer
For the Commission : Ms Nonhlanhla Msiza