

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM116Sep22

In the matter between:

Old Mutual Life Assurance Company (South Africa)
Ltd

Primary Acquiring Firm

and

Safe Farm Venture (Pty) Ltd

Primary Target Firm

| | | |
|-------------------|---|------------------------------|
| Panel | : | I Valodia (Presiding Member) |
| | : | AW Wessels (Tribunal Member) |
| | : | A Ndoni (Tribunal Member) |
| Heard on | : | 22 December 2022 |
| Order issued on | : | 22 December 2022 |
| Reasons issued on | : | 10 January 2023 |

REASONS FOR DECISION

Introduction

[1] On 22 December 2022, the Tribunal unconditionally approved the large merger whereby Old Mutual Life Assurance Company (South Africa) Limited (“OMLACSA”) intends to acquire the remaining 50% of the share capital of Safe Farm Ventures (Pty) Ltd (“Safe Farm”) held by K2013162622 (South Africa) (Pty) Ltd (“SA Holdco”).

Primary acquiring firm

[2] OMLACSA is a public company incorporated in South Africa and is wholly owned by Old Mutual Emerging Markets Proprietary Limited (“OMEM”).¹

¹ OMEM is in turn wholly owned by Old Mutual Group Holdings (SA) Limited (“OMSA”), which is in turn wholly owned by Old Mutual Limited (“OM”). OM has a primary listing on the JSE Limited and is not controlled directly or indirectly by any firm.

- [3] OMLACSA controls 50% of Safe Farm, the target firm. OMLACSA and all the firms directly and indirectly controlling it (the “Acquiring Group”) have a diverse shareholder base, which include historically disadvantaged persons (“HDPs”).
- [4] The Acquiring Group is an international long-term savings, insurance, banking and investment group, offering a range of financial products and services. For purposes of the proposed transaction, the relevant subsidiary or associate companies are OMLACSA, Futuregrowth and Fruitone.
- [5] One of the funds in the portfolio of funds managed by Futuregrowth is the Futuregrowth Agri-Fund (“Agri- Fund”), which specialises in the investment of agricultural land, biological assets, agriculture infrastructure and other related farming implements. The Agri-Fund owns seven citrus farms in various provinces in South Africa through Agri-Fund 1, Agri-Fund 2 and Safe Farm.

Primary target firm

- [6] Safe Farm is a private company incorporated in South Africa which is jointly controlled by SA Holdco and OMLACSA, the current acquiring firm. Safe Farm holds 33.3% interests in Neutral Logistics (Pty) Ltd (“Neutral Logistics”).
- [7] SA Holdco is a company incorporated in accordance with the laws of Mauritius and is not an HDP.
- [8] Safe Farm and all the firms directly and indirectly controlling it (the “Target Group”) operate as a property holding company in respect of certain farms and is involved in farming operations. The Target Group, through Safe Farm, owns three farms, two of which produce and export citrus fruit (the other produces grapes).
- [9] Safe Farm was placed in business rescue during May 2021. Since entering business rescue, Safe Farm has not conducted any farm management services for third parties and only manages its own farms.

Competition Assessment

- [10] Both the Acquiring Group and the Target Group are active in the production and supply of grapes and citrus fruit through the operations of Safe Farm in which they have joint control.
- [11] The proposed transaction does not give rise to any horizontal overlaps, as the Acquiring Group already jointly controls Safe Farm and the proposed transaction will not result in any market share accretion.
- [12] Further, the Competition Commission (“Commission”) found that there is no vertical overlap between the activities of the merging parties.
- [13] For completeness, the merging parties have a combined estimated market share of less than 5% in both the market for the production of citrus and grapes, suggesting they are relatively small players in the respective markets.
- [14] Having considered the above, the Tribunal concluded that it is unlikely that the proposed merger will result in a substantial prevention or lessening of competition in any relevant market and the proposed transaction is unlikely to significantly change the structure of any market in South Africa, as the Acquiring Group is moving from jointly controlling to solely controlling Safe Farm.

Public Interest

Effect on employment

- [15] The merging parties submitted that the proposed transaction will not have any detrimental effect on employment. Specifically, no merger-related retrenchments or job losses will occur. The proposed transaction is aimed at saving jobs as SFV is currently a firm in business rescue.²
- [16] The Commission noted that as the proposed transaction does not result in a horizontal overlap, it is unlikely to result in potential job duplications between the

² Page 55 of the Merger Record.

employees of the Acquiring Group and the Target Group that may necessitate job losses.

[17] Accordingly, the proposed transaction is unlikely to raise employment concerns.

Effect on the spread of ownership

[18] The merging parties submitted that the exiting 50% shareholder of Safe Farm (SA Holdco) is not an HDP and the proposed merger cannot result in a dilution of HDP ownership as the ultimate controller of the Acquiring Group is a listed company with a diverse shareholder base and the proposed transaction promotes a greater spread of HDP ownership.³

Other public interest issues

[19] The proposed transaction raised no other public interest concerns.

Third party views

Concerns raised by SA Holdco relating to the proposed transaction

[20] There is currently a contractual dispute between the Old Mutual and SA Holdco (the joint venture partners) regarding the ownership of shares, which is subject to on-going litigation in the High Court.

[21] The Commission submitted that it is not competent to decide on the contractual issues of ownership of shares and who is authorized to give consent on behalf of the target firm for merger notification purposes. Importantly, it is not Safe Farm itself (as the target firm) that is objecting to the joint filing, but a joint venture shareholder in Safe Farm that is objecting (being SA Holdco).

[22] The Tribunal requested that SA Holdco make submissions on the issue for consideration. Following SA Holdco's preliminary submission, the Tribunal was of the view that the dispute between SA Holdco and OMLACSA does not relate to any competition matters and the issue is not something that the Tribunal would

³ Page 56 of the Merger Record.

be competent to adjudicate given that there is no application to interdict the approval of the merger by SA Holdco, pending the High Court litigation.

Conclusion

[23] Having considered the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not have a negative impact on the public interest.

Prof. Imraan Valodia

10 January 2023

Date

Mr Andreas Wessels and Ms Andiswa Ndoni concurring

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Susan Meyer of Cliffe Dekker Hofmeyr Inc

For the Commission: Rethabile Ncheche and Grashum Mutizwa