



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM265Mar19

In the matter between

Old Mutual Life Assurance Company (South Africa) Ltd Primary Acquiring Firm

And

AE-AMD Independent Power Producer 3 (RF) (Pty) Ltd Primary Target Firms
AE-AMD Independent Power Producer 1 (RF) (Pty) Ltd

Panel	: Norman Manoim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 2 May 2019
Order Issued on	: 2 May 2019
Reasons Issued on	: 27 May 2019

REASONS FOR DECISION

Approval

[1] On 2 May 2019, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Old Mutual Life Assurance Company (South Africa) Ltd (“OMLACSA”) and AE-AMD Independent Power Producer 3 (RF) (Pty) Ltd (“Herbert”), AE-AMD Independent Power Producer 1 (RF) (Pty) Ltd (“Greefspan”), hereinafter collectively referred to as the merging parties.

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

Parties to the transaction

Primary Acquiring Firm

- [3] OMLACSA is a long- time insurer listed on the Johannesburg Stock Exchange. OMLACSA is ultimately controlled by Old Mutual Plc, a firm incorporated in accordance with the laws of London. OMLACSA controls a number of entities in South Africa and internationally.
- [4] OMLACSA is an authorised provider of various insurance policy products. OMLACSA is also a leading investor in the renewable energy sector. Of relevance to the proposed transaction is its investments in renewable energy projects under the governments Renewable Energy Independent Power Purchase Procurement Program (“REIPPPP”).

Primary Target Firms

- [5] The primary target firms are Herbert and Greefspan. The Target Firms are jointly controlled by AE-AMD Renewable Energy (Pty) Ltd (“AE-AMD”) and OMLACSA. The Target Firms do not control any firms.
- [6] The Target Firms are Independent Power Producers (IPPs) established solely for the purposes of supplying electricity generated from renewable energy to Eskom, in terms of the REIPPPP. Herbert owns and operates a 22-megawatt solar plant, while Greefspan owns and operates a 11-megawatt solar plant. Both plants are located in the Northern Cape.

Proposed transaction

- [7] In terms of the *Sale and Repurchase Agreement* entered into between the merging parties, OMLACSA, through its agent—African Infrastructure Investment Managers (Pty) Ltd—will increase its shareholding in each of the Target Firms from 49% to 51%. Post-merger, OMLACSA will exercise sole control over the Target Firms. The proposed transaction will take place through a series of steps pursuant to the implementation of the proposed transaction.

Impact on competition


- [8] The Competition Commission (“Commission”) considered the activities of the merging parties, particularly OMLACSA’s existing interests in several renewable energy producers. Nevertheless, despite these interests, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. There were a number of reasons for this.
- [9] First, *de facto* prior to the merger, OMLACSA was able to exercise decisive influence over the target firms. Second, all independent power producers have long term contracts with Eskom, which, *inter alia*, set prices, so there is no possibility of any post-merger ability to increase price.
- [10] Third, the competition in this market is for bids for IPP licences not for supply of electricity. There have been several rounds of bidding over the years and from the data we have been provided with, prices have fallen significantly over time in each successive round of bidding. Finally, there has been no reduction in the number of firms willing to bid. Therefore, we see no reason to differ from the Commission’s conclusion.

Public interest

- [11] The merging parties confirmed that the proposed transaction will not have any negative effects on employment in South Africa.
- [12] The proposed transaction raises no other public interest concerns.

Conclusion

[13] 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 concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Norman Manoim

27 May 2019
Date

Mr Enver Daniels and Mrs Medi Mokuena concurring.

Tribunal Researcher: Hlumelo Vazi

For the merging parties: S van der Meulen and M Seekane of Webber Wentzel

For the Commission: H Mhlari and Z Hadebe