



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 57/LM/Jul11

In the matter between:

Old Mutual Life Assurance Company (South Africa)

Acquiring Firm

And

Liberty Star Consumer Holdings (Pty) Ltd

Target Firm

Panel : Norman Manoim (Presiding Member)
Andreas Wessels (Tribunal Member)
Yasmin Carrim (Tribunal Member)
Heard on : 24/08/2011
Order issued on : 24/08/2011
Reasons issued on : 05/09/2011

Reasons for Decision

APPROVAL

- 1] On 24 August 2011 the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Old Mutual Life Assurance Company of South Africa ("OMLACSA") and Liberty Star Consumer Holdings ("Libstar"). The reasons for approval of the proposed transaction follows below.

THE TRANSACTION AND RATIONALE

- 2] In terms of the proposed transaction Old Mutual which currently already has 9.38%¹ indirect shareholding in Libstar intends to acquire 14.952% direct shareholding in Libstar from Absa Bank. Post transaction, OMLACSA will control Libstar, and will be entitled to exercise veto rights in Libstar through the negative control obtained consequent to this transaction.

¹ This is held through Lereko Metier Capital Growth Fund ("LMCGF").

- 3] OMLACSA views the proposed transaction as an attractive investment opportunity which will expand its investment footprint in the food manufacturing sector in South Africa. For Libstar, the transaction will give it access to finance, and for ABSA, the seller, this is an opportunity to realise its investment.
- 4] OMLACSA is active in the insurance industry and provides different products such as life policy, assistance policies, disability policies, health policies, reclassified retrenchment cover as well as sinking fund policies to individuals and groups. Libstar is an investment holding company with various subsidiaries active in the South African fast moving consumer goods market,² with specific focus on companies active in the contact manufacturing and private label industries.

COMPETITION ASSESSMENT

- 5] There is no overlap in the activities of the merging parties as OMLACSA does not control any firms which compete with Libstar in the fast moving consumer goods market.
- 6] During the hearing, the question was raised whether there could potentially be any vertical concerns arising from this deal given that Old Mutual group has underlying business interests in the food manufacturing sector in South Africa, as it has a non-controlling effective 42.56% interest in Metaf Investment Holdings, which in turn owns 100% of the share capital of Metcash Trading Africa. Further, Old Mutual also holds 9.7% of the shares in Metcash.
- 7] The merging parties submitted that there is no prospect of vertical foreclosure as Old Mutual's stake in Metcash does not give it the ability to dictate Metcash's purchasing strategy. It was also said that Metcash's policy does not allow it to stock particular brands to the exclusion of other brands, and that Libstar has no incentive to foreclose in favour of Metcash as it has no shares in Metcash. Furthermore that Old Mutual's interest in Libstar merely gives it negative control and not the ability to dictate the operations of the underlying investee companies.

PUBLIC INTEREST

² This includes goods such as wet condiments, sauces, salad dressing, toiletries, confectionery, cereal, herbs and spices and cheese.

8] This deal does not give rise to any public interest issues.

CONCLUSION

9] Having regard to these considerations, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. It also will not change the structure of any market given that there is no overlap in the activities of the merging parties. The transaction is therefore approved without conditions.

N Manoim

05/09/2011

Date

Y Carrim and A Wessels concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Cliffe Dekker Hofmeyr

For the Commission: Noma Tsego and Londiwe Khumalo