

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 15/LM/Feb06

In The Large Merger Between:

Old Mutual Properties (Pty) Ltd

Acquiring Firm

And

Marriott Property Services (Pty) Ltd

Marriott Asset Management (Pty) Ltd

Marriott Corporate Services (Pty) Ltd

Marriott Unit Trust Management Company Limited

Target Firms

Reasons for Decision

Approval

1. On 22 March 2006, the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Old Mutual Properties (Pty) Ltd and Marriott Property Services (Pty) Ltd, Marriott Asset Management (Pty) Ltd, Marriott Corporate Services (Pty) Ltd and Marriott Unit Trust Management Company Limited. The reasons for this decision follow.

The Transaction

The Parties to the transaction

2. The acquiring firm is Old Mutual Properties (Pty) Ltd, a wholly owned subsidiary of Old Mutual SA Limited. ¹
3. The target firms are Marriott Property Services (Pty) Ltd, Marriott Asset Management (Pty) Ltd, Marriott Corporate Services (Pty) Ltd and Marriott Unit Trust Management Company Limited. Marriott Holdings Limited holds 100% of the share capital of each of the target firms. RMBT Holding Limited ("RMBT") holds 100% of Marriott Holdings.² According to the parties, no individual shareholder controls RMBT.³

¹ Full details of the Old Mutual Group structure can be found from page 91-121.

² The structure of the Marriott Group can be found on page 388 of the record.

³ The parties do however refer to Grindrod Limited as a major shareholder of RMBT – see page 52 of the record.

The Structure of the transaction

4. Old Mutual Properties is acquiring from Marriott Holdings, all of its shares in and claims against the target firms, as well as:
 - 4.1. RMBT's claim against Marriott Corporate Services;
 - 4.2. Marriott Corporate Property Bank Limited's⁴ claim against Marriott Corporate Services and Marriott Asset Management; and
 - 4.3. White Stork Limited's ⁵ shares in and claims against Marriott Isle of Man Limited.⁶

Rationale for the transaction

- 4.3.1. For Old Mutual Property, the transaction represents an opportunity for growth by acquisition.⁷ For Marriott Holdings, it allows its shareholders to realize their investment, and exit the market.⁸

Competition analysis

5. Both parties, either directly or indirectly, are involved in property management, institutional asset management, unit trust management, property asset management and life assurance products. ⁹ The Commission analysed all these activities under the broad market for asset management (with sub markets for property management, institutional asset management, life assurance products, property asset management and unit trust management). The parties' instead identified two separate markets for property management and asset management (with sub markets for institutional and retail asset management, life assurance products, property asset management and unit trust management).
6. Despite its identification of a broad market the Commission relied on data provided by the parties in their competitiveness report. Although the parties' market share figures for the asset management market did not include the property management sector, the Commission nevertheless transcribed this data from the parties' report and reported the figures as the market shares for their broadly defined asset management market (in other words including property management).
7. During the hearing held on the 22 March 2005, the Tribunal asked the Commission to explain its differing view of the relevant market:

MS KHUMALO: The Commission looked at asset management as a whole and so we took

4 A subsidiary of Marriott Holdings.

5 An off shore entity which the merging parties state has an almost identical shareholding spread to that of RMBT Holdings.

6 An off shore entity.

7 See page 380 of record.

8 See page 52 of the record.

9 For more details regarding the parties' activities see pages 53-58 of the record as well as pages 5-6 of the Commission's Report.

everything that forms part of wealth creation as asset management hence we looked at asset management as the market for this transaction. So we just looked at the all the subsections of asset management, which contributes to the creation of wealth and encompassed it under asset management.

8. While we are of the view that is unnecessary to make a definitive finding on the relevant market, for these purposes, we will accept the parties' definition of two separate markets, Both the Commission and parties were in agreement that the relevant geographic market is national.

Property Management

9. The parties provided the following market share estimates for the largest participants in the property management market:

Table 1: Property Management

Firm	% Market share
Broll	17.5
Gensec	15
Investec	8.6
Old Mutual Property	7.2
Liberty	6.3
Rand Merchant Bank	5.1
Marriott	4.9

Source: Taurus Report and parties' estimates

10. Post merger, the merged entity will account for approximately 12.1% of the property management market. According to the parties, customers have strong countervailing power and can, without cost, switch service providers should prices increase or service levels drop.

Asset Management

11. The parties similarly provided market share estimates for the largest participants in the asset management sub markets. Firstly, the market for institutional and retail asset management:

Table 2: Institutional and Retail asset management

Firm	% Market share
Old Mutual Asset Management	20.3
Sanlam Investment Management	17.3
Stanlib	12.7
RMB Asset Management	10.4
Investec Asset Management	8

12. Secondly, the market for life assurance products:

Table 3: Life Assurance Products

Firm	% Market share
Liberty	28.3
Old Mutual Life Assurance Company	22.4
Momentum	14.4
Sanlam	12.4
Metropolitan	7

13. According to the parties, in both the sub markets for institutional and retail asset management and for life assurance products, Marriott Asset Management has a share of less than 1%.¹⁰ The parties submit that this is insignificant and therefore unlikely to impact competition in this market.

14. The parties provided the following data for the market for property asset management:

Table 4: Property Asset Management

Firm	% Market share
Liberty	12.5
Sanlam/Gensec	10.5
Old Mutual Property	8
Investec	7
Madison	7
Marriott Asset Management	4.2
Rand Merchant Bank	3.7

15. In the market for property asset management, the merged entity's combined market share will be 12,2%. The parties submit that the market shares must be viewed in the context of the broad asset management markets, and that since Old Mutual Property provides these services only to Old Mutual Life Assurance Company (South Africa) Limited¹¹ and to Old Mutual Asset Managers, Old Mutual Property itself does not compete in this market.

16. Finally, the market for unit trust management:

Table 5: Unit Trust Management

Firm	% Market share
Stanlib	15.8
ABSA	10.9
Sanlam	9.1
Investec	8.6

¹⁰ Old Mutual Asset Managers has a 20.3% share of the Institutional and Retail Asset management market and Old Mutual Life Assurance Company (South Africa) Limited has a 22.4% share of the Life Assurance products market. See page 62-63 of the record.

¹¹ An institutional investor in the Old Mutual Group of companies.

M-Cubed	8.1
Old Mutual Unit Trust Managers	7.6
Allan Gray	7

17. According to the parties Marriott Unit Trust Management Company accounts for approximately 1.6% of this market. The parties further submit that the combined market share of approximately 9.2% will not have a substantial effect on competition in the unit trust management market when regard is had to the larger market shares of the competitors listed above and the extensive countervailing power of customers.

18. Having regard to the submissions made by the parties regarding the markets for property management and asset management (including all the sub markets identified above) as well as the submissions made by the Commission regarding the broad asset management market, we agree that the transaction is unlikely to substantially prevent or lessen competition.

19. There are no public interest issues which arise.

Conclusion

20. We accordingly approve the transaction for the above reasons.

Y Carrim

9 May 2006
Date

Concurring: M Moerane and L Reyburn.

For the merging parties: L Mendelsohn (Edward Nathan (Pty) Ltd).

For the Commission: L Khumalo (Mergers and Acquisitions).