COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM062Jul15/021782

In the matter between:

Old Mutual Alternative Investments Holdings Proprietary Limited — Primary Acquiring Firm

and

African Infrastructure Investment Managers Proprietary Limited

and

African Infrastructure Investment Fund 2 General Partner Proprietary Limited — Primary Target Firms

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Panel	: Norman Manoim (Presiding Member)
	: Anton Roskam (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 14 October 2015
Order Issued on	: 14 October 2015
Reasons Issued on	: 9 November 2015

Reasons for Decision

Approval

[1] On 14 October 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Old Mutual Alternative Investment Holdings Proprietary Limited ("Old Mutual Alternative") and African Infrastructure Investment Managers Proprietary Limited ("AIIM") and African Infrastructure Investments Fund 2 General Partner Proprietary Limited ("AIIF2")

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm, Old Mutual Alternative is a newly incorporated private company. It is wholly-owned by Old Mutual Investment Group (South Africa) Holdings (Pty) Ltd which is in turn wholly-owned by Old Mutual Group Holdings (South Africa) (Pty) Ltd ("OMSA"). OMSA is a wholly-owned subsidiary of Old mutual (Netherlands) B.V. which is in turn wholly-owned by OM Group (UK) Limited.

[4] What we will now refer to as "the Acquiring Group" comprises the companies listed above. It is an international long-term savings, banking and investment group. Old Mutual Alternative is responsible for the management of IDEA Managed Funds of the Acquiring Group. IDEA Managed Funds is a domestic infrastructure equity fund which invests in economic infrastructure, social infrastructure and renewable energy.

Primary target firm

[5] The Target firm, AIIM is jointly controlled by Macquarie Africa (Pty) ("Macquarie Africa") Ltd and Old Mutual Investment Group (South Africa) Holdings. The second target firm, AIIF2 is jointly controlled by Macquarie Africa and Winterbreeze Investment Holding Company (Pty) Ltd which is a subsidiary of Old Mutual Investment Group (South Africa).

Proposed transaction and rationale

[6] In terms of the proposed transaction Old Mutual Alternative intends to acquire the 50% shareholding held by Macquarie Africa in each of the firms respectively. Subsequent to the transaction the Acquiring Group will exercise sole control over AIIM and AIIF2.

[7] The Acquiring Group submitted that the proposed transaction offers attractive growth prospects and broadens their South African footprint. Macquarie Africa intends to focus its resources on businesses which are core to its parent company.

Impact on competition

[8] The Commission when investigating the activities of the merging parties found the following:

(i) A horizontal overlap in private equity investment, as the Acquiring Group is active in this market outside of the joint-venture with Macquarie Africa.

(ii) A horizontal overlap in the production of renewable energy as both merging parties invest in firms active in the production of renewable energy.

(iii) A vertical relationship between the merging parties exists as the Acquiring Group provided finance, regulatory compliance and fund-raising support services to AIIM.

[9] In its investigation of the horizontal overlap in private equity investment, the Commission found that the merging parties would have a post-merger market share of less that 10% with an accretion which falls below 5%. It also found that the merged entity would continue to face competition from other private equity investment firms within the market post-merger. In light of their findings the Commission was of the view that the proposed transaction was unlikely to substantially lessen or prevent competition in this market.

[10] Regarding the market for the production of renewable energy, the Commission estimated the merged entity's market share to fall below 20% with an accretion of less than 10%.[1] The Commission was of the view that the merged entity would not be able to exercise market power within this market as Eskom, the only customer of renewable energy, retains exclusive rights to transmit electricity to end consumers. The merged entity would also be constrained by other renewable energy producers who account for approximately 80% of the market. The Commission was of the view that the proposed transaction would unlikely lead to substantially prevent or lessen competition in the market for the production of renewable energy in South Africa.

[11] The Commission when investigating the vertical overlap between the merging parties found that AIIM only procured these services from the Acquiring Group and not from any other third party service provider. It also found that the Acquiring Group likewise, does not provide these services to any other third party. Due to these facts the Commission was of the view that the proposed transaction would unlikely lead to customer or competitor foreclosure concerns. It was therefore of the view that the proposed transaction would unlikely lead to a substantial lessening or prevention of competition.

[12] The Tribunal accepts the Commission's findings in relation to the horizontal overlaps in private equity investment and renewable energy production. We further find that the vertical overlap does not present any foreclosure concerns. We therefore conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any market within South Africa.

Public interest

[1] During the hearing the merging parties submitted that many of the firms which the Commission included in the market share calculation are not controlled by the Old Mutual Group and therefore the market share would be less than 10%.

[13] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.[2] The proposed transaction further raises no other public interest concerns.

Conclusion

[14] 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 transactions. Accordingly, we approve the proposed transaction unconditionally.

Mr Norman Manoim	09 November 2015 **DATE**

Mr Anton Roskam and Ms Fiona Tregenna concurring

Tribunal Researcher:	Aneesa Ravat
For the merging parties:	Susan Meyer and Nazeera Mia of Cliffe Dekker Hofmeyr
For the Commission:	Reabetswe Molotsi, Seema Nunkoo and Xolela Nokele

[2] *Inter alia* merger record page 9.