COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 67/LM/Oct09

In the matter between:

Pareto Limited Acquiring Firm

And

Old Mutual Life Assurance Company (South Africa) Limited Target Firm

Panel	:	N Manoim (Presiding Member) A Wessels, (Tribunal Member), and A Ndoni (Tribunal Member)
Heard on	:	9 December 2009
Order Issued	:	9 December 2009
Reasons Issued:		29 January 2010

Reasons for Decision

Approval

[1] On 9 December 2009, the Tribunal unconditionally approved the merger between Pareto Limited and Old Mutual Life Assurance Company (South Africa) Limited. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firm is Pareto Limited ("Pareto"), on behalf of a nominee, a company yet to be formed ("Newco"). Pareto is a company incorporated under the company laws of South Africa. Pareto is 60% controlled by the Board of Trustees[1] of the Eskom Pension & Provident Fund ("EPPF") and 40%

[1] The Board of Trustees consist of Mr XK Memani, Mr MN Bailey, Mr B Blignaut, Mr WE Green, Mr A Jeawon, Mr GJ Kruger, Mr D Macatha, Ms JM Maisela, Mr TJ Matsau, Ms EM Pule, Mr WJ Swart, Mr MAP Tseki, Adv. NK Tsholanku and Dr EZ Xaba.

controlled by the Public Investment Corporation ("PIC"). The parties submitted that PIC does not control Pareto. The EPPF does not control any other firm besides Pareto.

[3] The PIC is solely controlled by the Minister of Finance on behalf of the state. The PIC controls various firms including CBS Property Portfolio Limited ("CBS").

[4] The shareholders and the shareholding of Newco will be identical to that of Pareto. Thus Newco will be 60% controlled by EPPF and 40% controlled by PIC.

[5] The primary target firm is Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA"), in respect of the two regional shopping centres, namely the Menlyn Shopping Centre in Pretoria and the Cavendish Square and Cavendish Connect ("Cavendish") in Cape Town ("primary target properties").

The transaction

[6] In terms of the proposed transaction, OMLACSA will sell 50% of the ownership interest in the primary target properties (Menlyn Shopping Centre and Cavendish Square and Cavendish Connect) to Pareto. Pareto has elected to nominate a yet-to-be established special purpose vehicle as the purchaser. Post merger Menlyn Shopping Centre and Cavendish Square and Cavendish Connect will be jointly controlled by Newco and OMLACSA.

THE PARTIES' ACTIVITIES

Primary acquiring firm

[7] The EPPF is a defined benefit fund with defined employer and employee contributions that provides retirement, withdrawal, death and disability benefits to members, pensioners and/or dependents. The EPPF's investments consist of fixed interest and money market investments, shares and fixed properties. It owns and manages an office complex in Parktown, Johannesburg and office park housing EPPF's offices in Bryanston, Johannesburg.

[8] The PIC invests funds on behalf of the public sector entities including the Government Employees Pension Fund and is one of the largest investment managers in South Africa. The PIC manages a number of properties which provide office, retail, industrial and other rental space. The PIC also owns properties through its subsidiary CBS.

[9] Pareto is an unlisted property variable loan stock company and its main business is investing in immovable property. Pareto focuses on acquiring and developing major retail centres in South Africa. Although the merging parties submitted that the PIC does not control Pareto, for completeness sake we shall consider the properties owned by PIC. Thus we shall consider the properties owned by Pareto, the PIC and CBS in Gauteng and Western Cape.[2]

Primary target firm

[10] OMLACSA conducts business in the life assurance sector in Southern Africa, through which it provides life, disability and health insurances, retirement savings and investment products to individuals and groups. It also has investments in fixed property located throughout South Africa including retail, office and industrial property. For the purposes of this transaction, only OMLACSA's interests in the target properties are relevant and these are its interests in Menlyn Shopping Centre and Cavendish Square and Cavendish Connect.

Rationale for the transaction

[11] Pareto's business goal is to provide sustainable long-term property income growth and hence sustainable cash distribution to shareholders. It aims to achieve the growth in property income by optimising the usage of the existing property investments through refurbishments and extensions and acquiring new retail properties with a minimum GLA of 30 000 square metres. The proposed transaction is in line with Pareto's pursuit of the above mentioned goal.

[12] OMLACSA ... **[CONFIDENTIAL]**

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[2] See p9 of the Commission's recommendations to the Tribunal for a complete list of the properties owned by the acquiring group..

The relevant market

[13] The Commission and the parties submitted that the relevant product market is the market for regional shopping centres. The merging parties further stated that the regional markets can in fact be divided into super regional shopping centre (Menlyn Shopping Centre) and minor regional shopping centre (Cavendish Square and Cavendish Connect).

[14] The Commission and the merging parties submitted that the geographic market is local and is restricted to a 40-50km radius.[3]

Competition analysis

[15] We now turn to analyse competition in the relevant geographic markets in greater detail below.

<u>Regional Shopping Centres in Gauteng</u>

[16] In Gauteng, OMLACSA owns Menlyn Shopping Mall. Pareto owns 56% of Westgate Shopping Centre which is 77km from Menlyn Shopping Centre, 67% of Southgate Mall that is 63Km from Menlyn Shopping Centre and 100% of Cresta Shopping Centre that is 58km from Menlyn Shopping Centre.[4] As the merging parties and the Commission submitted that competition in this market takes place in a radius of approximately 40-50km we conclude that Pareto's shopping centres (Westgate, Southgate and Cresta Shopping Centres), do not compete with the Menlyn Shopping Centre as they are located more than 50km from it.

[17] Although Sandton City, is a regional shopping centre that has the same offering as Menlyn Shopping Centre in terms of tenant mix and shopping experience, there is no need to consider it for the purposes of this merger as Pareto has a non-controlling minority interest and does not participate in its management or exercise any voting rights in that regard.[5]

[3] Based on information from IPD and the South African Property Owners' Association ("SAPOA"), and previous Tribunal decisions, the Commission and the parties concluded that the geographic market is local.

[4] See record p31.

[5] See Transcript pp 8-9.

[18] Post merger, Pareto will have a market share of 20.1% and will continue to compete with various firms in this market which include Growthpoint (with a 20.1% market share), Liberty (with a 15.6% market share), Attfund (with a 8.7% market share), Hyprop Investments (with a 8.5% market share), and Sasol Pension Fund (with a 8.3% market share), among others. The merger will therefore not result in a substantial prevention or lessening of competition in the market for regional shopping centres in Gauteng.

<u>Regional Shopping Centres in Cape Town</u>

[19] In Cape Town, the two shopping centres owned by the acquiring firms namely, Pareto's 57.5% interest in the Tyger Valley Centre and the PIC's controlling interest in Vangate Shopping Centres, are situated between 10-35km radii of the Cavendish Shopping Centre. As a result, they are likely to be regarded as competitors of Cavendish Shopping Centre. The post merger market share does not raise competition concerns as the merged entity will continue to face credible competition. Post merger, Pareto will have a market share in Cape Town of approximately 16.3%. In addition, the merged entity will continue to face competition from various firms like Sycom Property Fund (with a 16.2% market share), Hyprop (with a 12.2% market share), Fountainhead Property Fund (with an 11% market share), and Attfund (with a 6.3% market share), among others. The merger is therefore unlikely to lead to a substantial lessening or prevention of competition in the market for regional shopping centres in Cape Town.

Public Interest

[20] There are no public interest issues.

Conclusion

[21] The merger is approved unconditionally as it does not lead to a substantial prevention or lessening of competition as shown above. In addition, there are no public interest issues.

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N Manoim	**DATE**
Tribunal Member	

A Wessels and A Ndoni concurring.

Tribunal Researcher : R Kariga

For the merging parties: Cliffe Dekker Hofmeyr Attorneys

For the Commission : N Harilal (Mergers and Acquisitions)