



COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No.: LM123Nov24

In the matter between:

RMB Property Holdco 1 Proprietary Limited;
Atterbury Property Proprietary Limited; and
Geelhoutboom Estate Proprietary Limited

Primary Acquiring Firms

And

Lagoonbay Lifestyle Estate Proprietary Limited

Primary Target Firm

Panel:	I Valodia (Presiding Member) A Ndoni (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	17 January 2025
Decided on:	17 January 2025
Reasons Issued on:	03 February 2025

REASONS FOR DECISION

Introduction

- [1] On 17 January 2025, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger in which Atterbury Property Proprietary Limited (“Atterbury”) and Geelhoutboom Estate Proprietary Limited (“Geelhoutboom”) each intend to acquire 25% of the issued shares in Lagoonbay Lifestyle Estate Proprietary Limited (“Lagoonbay”) from RMB Property Holdco 1 Proprietary Limited (“RMB Property”).
- [2] Post-merger, RMB Property, Atterbury and Geelhoutboom will collectively exercise joint control over Lagoonbay.

Parties and activities

Primary acquiring firms

- [3] The primary acquiring firms are RMB Property, Atterbury and Geelhoutboom which are each incorporated in South Africa.
- [4] RMB Property is controlled by [REDACTED]
[REDACTED]
[REDACTED]
FirstRand Limited ("FirstRand"), a company listed on the Johannesburg Stock Exchange ("JSE") and not controlled by any single shareholder (all firms directly and indirectly controlled by FirstRand are collectively referred to as the FirstRand Group").
- [5] Of relevance to this merger are FirstRand Group's property activities, including the residential property activities to be conducted at the target firm, Lagoonbay.
- [6] Atterbury is controlled by Atterbury Property Holdings Proprietary Limited ("APH"). APH is jointly controlled by Atterbury Manfou Proprietary Limited ("Manfou") and RMB Prop Holdco 1 Proprietary Limited ("RMB Prop"). Atterbury and all the firms it controls, all the firms controlling Atterbury and all the firms controlled by those firms are collectively referred to as the "Atterbury Group".
- [7] The Atterbury Group is a property investment and development company with a portfolio of investments in properties and developments in commercial, industrial, residential and retail in Suth Africa.

- [8] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[9] The Geelhoutboom Group is a property investment and development company that holds undeveloped hectares of land in George, Western Cape. The undeveloped land will be developed [REDACTED]
[REDACTED]

[10] The FirstRand Group, Atterbury Group and Geelhoutboom Group are collectively referred to as the 'Acquiring Group'.

Primary target firm

[11] The primary target firm is Lagoonbay, a company incorporated in South Africa. Lagoonbay is wholly owned and controlled by RMB Property.

[12] Lagoonbay does not control any firm.

[13] Lagoonbay is a property investment and development company that holds undeveloped land in Glentana (Hooge Kraal) George, Western Cape intended for development as residential property.

Description of the transaction and rationale

[14] In terms of the proposed transaction, Atterbury and Geelhoutboom each intend to acquire 25% of the issued shares in Lagoonbay from RMB Property.

[15] Post-merger, RMB Property, Atterbury and Geelhoutboom will collectively exercise joint control over Lagoonbay.

Risk Mitigation Transaction

- [16] Prior to the proposed transaction, RMB Property held a [REDACTED]% interest in Lagoonbay while the loan funding was provided by FirstRand Bank Limited (“FirstRand”) (who is the ultimate controller of RMB Property). [REDACTED] in order to mitigate its risk, FirstRand perfected its security and acquired a [REDACTED] [REDACTED] in Lagoonbay on 5 August 2024 (the “Risk Mitigation Transaction”).
- [17] In the instant transaction, FirstRand (through RMB Property) is also a primary acquiring firm since FirstRand’s acquisition of Lagoonbay pursuant to the Risk Mitigation Transaction is being notified. A notification is required since FirstRand is not disposing all the interest it acquired in Lagoonbay as contemplated by the Practitioner Update.²
- [18] The Competition Commission (“Commission”) found that the change from sole to joint control over Lagoonbay requires notification, notwithstanding the Risk Mitigation Transaction, in line with the Constitutional Court’s decision in *Competition Commission of South Africa v Hosken Consolidated Investment Limited*.³
- [19] We find no basis to disagree with the Commission’s assessment of the Risk Mitigation Transaction.

Competition assessment

- [20] The Competition Commission (“Commission”) considered the activities of the merger parties and assessed a horizontal overlap as the merger parties are involved in the development of vacant land. The Commission also found that the parties hold vacant land which may be developed for residential purposes in George, Western Cape.
- [21] The Commission mentioned that the Acquiring Group’s vacant land is situated in Molen Drift, George while Lagoonbay is situated in Hooge Kraal George and

² Practitioner Update Issue 4: The application of merger provisions of the Competition Act 89 of 1998, as amended, to risk mitigation financial transactions.

³ 2019 (4) BCLR 470 (CC).

found that these two tracts of vacant land are situated approximately 22km from each other.

[22] Although neither merger parties' land has been developed for residential purposes and whilst the parties respective vacant land is approximately 22km apart, the Commission nevertheless conducted a worst-case scenario assessment on the basis that each merger party's respective vacant land is subsequently developed for residential purposes.

[23] After conducting the worst-case scenario assessment, the Commission found that the merged entity will continue to face constraint from a number of rival residential land developments in George.

[24] On account of the evidence before us, and after considering the effect of the proposed transaction on the market for development of vacant land, we agree with the Commission's assessment that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public interest assessment

Employment

[25] The merger parties provided an unequivocal undertaking that the proposed transaction will not have adverse effects on employment.

[26] We find that the proposed transaction is unlikely to raise any employment concerns.

Promotion of a greater spread of ownership by HDPs and workers in firms in the market

[27] The merger parties submitted that Lagoonbay's HDP shareholding will increase from ■■■% to ■■■%.

27.1. The parties submit that the level of HDP ownership attributable to Lagoonbay is 7.24% since prior to the Risk Mitigation Transaction,

FirstRand's applicable B-BBEE certificate reflected black ownership of [REDACTED]

[28] The Commission did not agree with the merger parties' HDP ownership calculation, on the following basis:

28.1. The Commission is of the view that on the date the merger was notified, Lagoonbay was wholly owned by FirstRand Group, and therefore its entire 35.99% HDP shareholding should be attributed to Lagoonbay.

28.2. The FirstRand Group and Atterbury have 35.99% and [REDACTED]% shareholding held by HDPs, respectively. Therefore, the Commission calculated that the proposed transaction results in the reduction of HDP ownership over Lagoonbay from 35.99% to [REDACTED] percentage points) $((35.99\% \times 50\%) + ([REDACTED]\% \times 25\%) = [REDACTED]\%)$.

28.3. The Commission was of the view that the dilution should be viewed in the context of the proposed transaction because it will enable FirstRand to reduce its debt by Lagoonbay and facilitate the introduction of shareholders who will provide additional funding for the development of the Lagoonbay property.

[29] In the circumstances, we do not find it necessary to conclude on whether the proposed transaction promotes a greater spread of ownership, due to the fact that Lagoonbay will remain transformed with [REDACTED]% of its shareholding held by HDPs post-merger and the development of Lagoonbay (through the proposed transaction) will generate jobs and opportunities for various service providers in the Southern Cape region. We concluded that no further intervention is required.

[30] No other public interest issues arise from the proposed transaction.

[31] No third party expressed any public interest concerns about the proposed transaction.

Conclusion

[32] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

[33] We therefore approve the proposed transaction without conditions.

Signed by: Imraan Valodia
Signed at: 2025-02-03 18:03:27 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

Prof. Imraan Valodia

03 February 2025

Date

Ms. Andiswa Ndoni and Adv. Geoff Budlender SC concurring.

Tribunal Case Managers:	Karabo Orekeng and Juliana Munyembate
For the Merger Parties:	Chris Charter and Mmakgabo Mogapi of Cliffe Dekker Hofmeyr
For the Commission:	Nonhlanhla Msiza and Wiri Gumbie