



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM088Aug19

In the matter between:

**Old Mutual Life Assurance Company (South Africa)
Ltd (acting in respect and on behalf of the portfolio
of assets called the IDEAS Managed Fund)**

Primary Acquiring Firm

and

African Infrastructure Investment Fund

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Anton Roskam (Tribunal Member)
Heard on	: 6 November 2019
Order Issued on	: 6 November 2019
Reasons Issued on	: 3 December 2019

Reasons for Decision

Approval

- [1] On 6 November 2019, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction between Old Mutual Life Assurance Company (South Africa) Ltd (“OMLACSA”), acting in respect and on behalf of the portfolio of assets called the IDEAS Managed Fund (“IDEAS Fund”), and African Infrastructure Investment Fund (“AIIF”).

[2] The reasons for the unconditional approval follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is OMLACSA acting in respect and on behalf of the portfolio of assets called the IDEAS Fund. OMLACSA is a public company incorporated in accordance with the laws of South Africa.
- [4] OMLACSA is a wholly owned subsidiary of Old Mutual Emerging Markets (Pty) Ltd ("OMEM"), which is ultimately controlled by Old Mutual Ltd ("OM").
- [5] The IDEAS Fund is an infrastructure equity fund, managed by African Infrastructure Investment Managers (Pty) Ltd ("AIIM").
- [6] OMLACSA is a registered long-term insurer authorized to provide, *inter alia*, assistance; disability; health; and life policies. In addition, OMLACSA provides retirement fund administration services.
- [7] The IDEAS Fund is an infrastructure equity fund, managed by AIIM, which invests in economic infrastructure, social infrastructure and renewable energy infrastructure. Relevant for purposes of the proposed transaction is the renewable energy portfolio of the IDEAS Fund. The portfolio consists of solar, wind and hydro technology in the Western Cape, Northern Cape, Eastern Cape and the Free State Provinces.
- [8] OMLACSA and all its associated firms and subsidiaries are, hereafter, collectively referred to as the Acquiring Group.

Primary target firm

- [9] The primary target firm is AIIF, a vesting trust established for the purpose of undertaking equity investments in African infrastructure projects. OMLACSA holds a 31.82% participating interest in AIIF.

- [10] The AIIF fund manager responsible for the management of the portfolio of assets and business of AIIF is AIIM. AIIM does not, however, control AIIF.
- [11] AIIF is a private equity infrastructure investment fund which invests predominantly in toll road assets and renewable energy. AIIF currently owns and controls Umoya Energy (RF) (Pty) Ltd (Umoya) and has a non-controlling minority interest in Trans African Concessions (Pty) Ltd (TRAC) and N3 Toll Concession (RF) (Pty) Ltd (N3 Toll).
- [12] Relevant for purposes of the proposed transaction are Umoya's commercial operations in terms of its 20-year Power Purchase Agreement ("PPA") with Eskom.¹ Umoya was established to finance and establish the Hopefield Wind Farm Project, situated in the Western Cape.

Proposed transaction and rationale

- [13] The IDEAS Fund will acquire 100% of the participation units in AIIF from AIIF's investors. OMLACSA will increase its existing shareholding in AIIF from 31.82% to 81.06%. Upon implementation, the Acquiring Group will exercise sole control of AIIF.
- [14] From the perspective of the Acquiring Group, the proposed transaction is an attractive alternative approach to an asset level acquisition and will allow the Acquiring Group to increase its exposure in TRAC, N3 Toll and Umoya. Furthermore, TRAC, N3 Toll and Umoya constitute attractive assets already within the IDEAS Fund's portfolio.
- [15] The Exiting Unit Participants ("the sellers") seek to dispose of their respective interests in the fund and gain liquidity.

Impact on competition

¹ Umoya selected as a preferred bidder by the Department of Energy's Renewable Energy Independent Power Producer Procurement Programme ("REIPPP").

- [16] The Commission considered the activities of the parties to the proposed transaction and found that it raises a horizontal overlap in the provision of private equity funds/investments and the production of renewable energy.
- [17] In its assessment of the national market for the provision of private equity funds/investments, the Commission found that the merged entity will have an estimated post-merger market share of approximately 8.10%, with an accretion of 0.28%. In view of the merged entity's low market share and share accretion, the Commission concluded that the proposed transaction is unlikely to lead to the substantial lessening of competition.
- [18] The Commission further assessed the national market for the provision of renewable wind energy and found that the merged entity will have an estimated post-merger market share of 9.21% with an accretion of 1.98%. Umoya has contracted its entire capacity to Eskom in terms of a twenty-year PPA. The electricity generated by Umoya is supplied to the national grid. Eskom has entered into PPAs with more than 65 producers who will continue to supply renewable energy until the year 2030. According to the Commission, the proposed transaction does not materially change the structure of the market.
- [19] Insofar as the PPA is concerned, Eskom predetermines the prices and the capacities in the market. These values do not fluctuate. The Commission therefore concluded that the proposed transaction is unlikely to lead to substantial lessening or prevention of competition in this market.
- [20] We found no reason to disagree.

Public interest

- [21] The merging parties submitted that no retrenchments or job losses will result from the proposed transaction.
- [22] Furthermore, no public interest concerns are expected to arise as a result of the proposed transaction.

Conclusion

[23] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, the proposed transaction raises no public interest concerns. Accordingly, we approve the proposed transaction unconditionally.



Mr. Enver Daniels

3 December 2019

DATE

Ms Yasmin Carrim and Mr. Anton Roskam concurring

Case Manager:	Helena Graham
For the merging parties:	Nazeera Mia of Cliffe Dekker Hofmeyr
For the Commission:	Nonhlanhla Msiza and Mogau Aphané