



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018473

In the matter between:

SOUTHERN SUN HOTEL INTERESTS (PTY) LTD

Primary Acquiring Firm

And

THE CULLINAN HOTEL (PTY) LTD

Primary Target Firm

Panel	: Y Carrim (Presiding Member)
	: M Mazwai (Tribunal Member)
	: A Ndoni (Tribunal Member)
Heard on	: 23 April 2014
Order Issued on	: 23 April 2014
Reasons Issued on	: 21 May 2014

Reasons for Decision

Approval

- [1] On 23 April 2014, The Competition Tribunal ("**Tribunal**") unconditionally approved the acquisition by Southern Sun Hotel Interests (Pty) Ltd of an additional 10% shareholding in The Cullinan Hotel (Pty) Ltd.

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

Parties to the transaction

- [3] The primary acquiring firm is Southern Sun Hotel Interests (Pty) Ltd ("**SSHI**"), a wholly owned subsidiary of Southern Sun Hotels (Pty) Ltd ("**Southern Sun Hotel**"). Southern Sun in turn is wholly owned by Tsogo Sun Holdings (Pty) Ltd ("**Tsogo Sun**"). Tsogo Sun is controlled by Tsogo Investment Holding Limited and SABMiller Plc.
- [4] The primary target firm The Cullinan Hotel ("**the Cullinan**") is jointly controlled by SSHI and Liberty Group Limited. Liberty's main shareholders include Standard Bank, Government Employees Pension Fund and the Black Managers' Trust (Lexshell 622 Investment (Pty) Ltd).

Proposed Transaction and Rationale

- [5] SSHI and Liberty are in a joint venture agreement in which both entities have 50% control in the Cullinan. SSHI intends acquiring an additional 10% shareholding in the Cullinan and Liberty shares will decrease to 40%. This will increase SSHI's shareholding in the joint venture to 60% and it will also acquire *de jure* sole control. In its report the Commission expressed the view that despite the 40% shareholding the list of minority protections afforded to Liberty in the shareholders' agreement resulted in a *de facto* joint control. However during the hearing the Commission conceded that because Liberty will not have any involvement in the running of the hotel this transaction does not change how the hotels will be managed post-merger. SSHI was the *de facto* manager of the Cullinan and this was unlikely to change in the foreseeable future.
- [6] SSHI in line with the Group's strategy intends to acquire assets rather than lease or manage properties which are owned by third parties. Liberty will be able to consolidate its hotel interests into one vehicle with a simplified

management and leasing structure. The transaction also allows Liberty to release a portion of its assets for sale without completely exiting the business.

- [7] The Cullinan will acquire various assets from SSHI as a going concern namely; Garden Court Eastgate and Hatfield, Southern Sun and Garden and Waterfront.

Relevant Market and Impact on Competition

- [8] The relevant market is that for the provision of short-term accommodation activities of hotels and motels at a local level, being Cape Town, Sandton and Pretoria.
- [9] Both the merging parties are active in the market for provisions of short-term accommodation activities of hotels. SSHI operates a number of hotels that range from 1, 2, 3, 4 and 5 star grading under various brand names throughout South Africa either as owner or manager on behalf of third parties. The Cullinan operates 3 hotels, namely, Southern Sun The Cullinan (Cape Town), the Southern Sun Katherine Street (Sandton), the Garden Court Morningside (Sandton). Some of the merging parties' main competitors in the market for provision of short-term accommodation activities of hotels and motels are Garden Court, City Lodge and Protea Hotel.
- [10] The Commission identified that in the market for accommodation in Cape Town in the three, four and five star hotel grading they have a market share estimate of 24%. In Sandton the market for three, four and five star hotel grading they have an estimated market share of 23.5% and in the Pretoria area the two and three star graded hotel accommodation they have an estimated market share of 15%. The Commission did not reach a definitive conclusion on the relevant product market in this merger as the merging parties market shares are relatively low regardless of whether the product market is defined broadly or narrowly.

- [12] When the Commission narrowly assessed the provision of hotel accommodation market in terms of two and three star graded hotel accommodation in Pretoria, Cape Town and Sandton it identified overlapping areas. When it assessed the market broadly in terms of three, four and five hotel star grading it found that post-merger the market shares of the parties are not going to change as the proposed transaction does not result in any market accretion as SSHI already manages and operates all the Hotel properties that form part of the Cullinan post-merger
- [13] Customers and Competitors contacted raised no concerns with regards to the proposed transaction and that the transaction will not be changing anything in that there will be no additional forums that will come into the market and also there are a number of other competing hotels which would offer accommodation in competition to the merged entity.
- [14] There is horizontal overlap in terms of the activities of the merging parties in that SSHI and the Cullinan are both involved in the market for the provision of hotel accommodation. However SSHI already has a joint controlling stake in the Cullinan and it operates and manages the various hotel businesses that will form part of the restructured the Cullinan post transaction.
- [15] The proposed transaction is unlikely to substantially prevent or lessen competition in the markets identified because there are a number of players that are providing the short term hotel accommodation in the areas that were considered for the proposed transaction.
- [16] The Commission is of the view that the proposed transaction will not lead to either adverse unilateral or co-ordinated effects. In the Cape Town location the Southern Sun the Cullinan Hotel is located close to the V&A Waterfront which is a major tourist attraction and has considerable competition from a number of alternative competitors providing short-term accommodation. In Sandton, the Southern Sun in Katherine Street and Garden Court in Morningside are located in the business hub of Johannesburg and it is further a major tourist district. The area has a variety of short-term accommodation

for the various customers. Similarly Hatfield where the Garden Court is situated is the national government's administrative capital and home to many diplomatic communities. This ensures that a wide range and a variety of short-term accommodation is available.

- [17] The Commission has no competition concerns, it agreed that the shareholders' agreement confers control onto Liberty which would not otherwise be present if those provisions weren't there. If Liberty were to dilute its assets and move towards greater shareholding the Commission would not have competition concerns. In the event that Tsogo Sun at a later stage decides to exercise its call option to acquire Liberty's remaining 40% shareholding, the Commission agreed that Liberty will not be required to file a merger notification. The Tribunal recommended it do so out of courtesy.

Conclusion

- [18] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for provisions of short-term accommodation activities of hotels. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



Yasmin Carrim

21 May 2014
DATE

Mondi Mazwai and Andiswa Ndoni concurring

Tribunal Researcher:	Moleboheng Moleko
For the merging parties:	Anthony Norton and Mfundo Ngobese – Nortons Inc.
For the Commission:	Nompucuko Nontombana and Zanele Hadebe