

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019919

In the matter between:

**Old Mutual Life Assurance Company
(South Africa) Limited**

Primary Acquiring Firm

And

Safe Farm Ventures (Pty) Ltd

Primary Target Firm

Panel	:	Yasmin Carrim (Presiding Member), Anton Roskam (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	14 January 2015
Order issued on	:	14 January 2015
Reasons issued on	:	09 February 2015

Reasons for Decision

Approval

- [1] On 14 January 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA") and Safe Farm Ventures (Pty) Ltd ("SFV"). The transaction was already implemented at the time when it was notified to the Competition Commission ("Commission"), and was thus in contravention of section 13A of the Competition Act 89 of 1998 ("the Act"). The reasons for approving the transaction follow.

Parties to transaction

- [2] The primary acquiring firm is OMLACSA, a wholly-owned subsidiary of Old Mutual plc, which is the ultimate parent company of the various subsidiary and associate companies constituting of the Old Mutual Group of companies ("Old Mutual Group"). The Old Mutual Group is an international long-term savings, insurance, banking and investment group offering a range of financial products and services. For purposes of the proposed transaction, the relevant subsidiaries are OMLCSA and Futuregrowth Asset Management Proprietary Limited ("Future Growth"). Future Growth operates as an independent asset management boutique within the Old Mutual Group that manages Agri-Fund. Agri-Fund currently owns four farms that produce lemons, table grapes and grape fruit.
- [3] The primary target firm is SFV, which operates as the property holding company of the Southern African Fruit Exports Limited ("SAFE"), a firm incorporated in Mauritius. SFV currently owns eight and leases four farms in the Eastern Cape, Western Cape and Northern Cape provinces. All grapes and citrus fruit harvested on the farms owned, or leased to, SFV are supplied exclusively to SAFE for supply to the export market.

Proposed transaction and rationale

- [4] In November 2009, the UFF Trust Fruit *en Commandite* Partnership ("the *en Commandite* Partnership"), acting through the United Farmers Fund Trust ("UFF Trust") in its capacity as General Partner of the *en Commandite* Partnership, acquired a 50% interest in SFV through funding provided by OMLCSA. Prior to the *en Commandite* Partnership's acquisition of a 50% interest in SFV, SFV was wholly owned by SAFE. By May 2013, OMLACSA had acquired a direct interest of 22% in SFV, with the

en Commandite Partnership's interest in SFV having been diluted to 28%. In June 2013, OMLACSA acquired the *en Commandite* Partnership's remaining 28% interest in SFV, so that by June 2013, SFV was jointly owned equally by SAFE and OMLACSA. It is this last acquisition that is the subject matter of the current transaction before us.

[5] The parties submit that the non-notification of the transaction was due to the unusual nature of the rights of transfer in SFV, and admit that the failure to notify was a bona fide error. The parties also admit to having contravened section 13A of the Act.

[6] The parties submit that the reasons for dissolving the *en Commandite* Partnership was due to the UFF Trust not being able to raise additional funding for SFV's further expansion and due to the fact that a conflict of interest had risen between UFF Agri Management and SFV which had not been resolved.

Competition assessment

[7] The Commission decided to refrain from providing a definite view on the recommended administrative fine as it had not interrogated the merged parties' reasons for failure to comply with the Act, but rather decided to conduct this assessment in a separate process.

[8] During the hearing, the Commission submitted that its assessment revealed that the merging parties' farms are not leased to any third party and as such do not form part of the open market. Based on this, the Commission came to the conclusion that the proposed transaction raises no competition concerns. During the hearing the Commission re-assured us that it had considered the submissions made by the merging parties in their competitive assessment, but came to the conclusion that the proposed transaction does not substantially prevent or lessen competition, as the target group does not seem to have a large

number of farms to constitute significant market share. Furthermore the Safe Group seems to be the one that is more focused on the agricultural export market.¹

Public Interest

- [9] The merging parties confirmed that the proposed transaction will have no effect on employment.²

CONCLUSION

- [10] The proposed transaction is unlikely to substantially prevent or lessen competition and we thus approve the transaction without conditions. The proposed transaction raised no public interest concerns.



Ms Yasmin Carrim

09 February 2015
DATE

Mr Anton Roskam and Ms Medi Mokuena concurring.

Tribunal Researcher:	Caroline Sserufusa
For the merging parties:	Rudolph Labuschagne of Bowman Gilfillan
For the Commission:	Dineo Mashego

¹ See pages 10-11 of the transcript of the hearing.

² See page 77 of the merger record.