COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020388

In the matter between:

THE HOUSING IMPACT TRUST FUND SOUTH AFRICA Primary Acquiring Firm

And

RAND LEASES SECURITISATION (RF) (PTY) LTD Primary Target Firm

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Panel	: Yasmin Carrim (Presiding Member)
	: Norman Manoim (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 11 February 2015
Order Issued on	: 11 February 2015
Reasons Issued on	: 26 February 2015

Reasons for Decision

Approval

[1] On 11 February 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between The Housing Impact Trust Fund South Africa and Rand Leases Securitisation (RF) (Pty) Ltd.

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

Parties to the transaction and their activities

Primary acquiring firm

[3] The primary acquiring firm is The Housing Impact Trust Fund South Africa ("HIFSA"), a trust registered in terms of the laws of the Republic of South Africa. In addition to the individual trustees[1], HIFSA's other participants or investors are Old Mutual Life Assurance Company (South Africa) Ltd (54.66%), Development Bank of South Africa Limited (32.79%), Government Employees Pension Fund (represented by the Public Investment Corporation) (10.93%) and Eskom Pension and Provident Fund (1.64%)

[4] HIFSA is controlled by Old Mutual Alternative Investments Proprietary Limited ("OMAI") in its capacity as authorised agent and fund manager. OMAI is a wholly-owned subsidiary of Old Mutual Investment Group Proprietary Limited ("OMIG"), which is controlled by Old Mutual Plc. Old Mutual plc is the parent company of the various subsidiaries and associate companies which constitute the Old Mutual Group ("OMG"). No single shareholder controls Old Mutual plc and its shares are dispersed amongst a number of shareholders, which include the following: Public Investment Corporation (10.37%), BlackRock Inc. (5.44%), Cevian Capital (4.98%), Sanlam Limited (4.11%) and others.

[5] HIFSA is a "Development Impact Fund" which provides commercial investments to the low-income housing sector. HIFSA's primary focus is the investment of housing and housing-related assets within South Africa. It invests in all aspects of the housing value chain, from the physical development of housing through to mortgage and incremental housing finance. More specifically, HIFSA's housing-related investment activities include physical development, ownership of rental stock and end-user finance. Its investments primarily target households earning less than R17 600 per month (subject to annual adjustment). In addition, HIFSA provides property development through its partner, which is appointed for the purpose of performing all property development and management duties associated with HIFSA's investment projects. At present, HIFSA is invested in housing and housing-related assets in the following provinces:

[1] The individual trustees are Peter Levett, Braam Naude, TP Nchoco, Nico van Aardt, Peter Golesworthy and Peter de Beyer.

- Gauteng (Johannesburg Central, Johannesburg West, Tshwane Central, Ekurhuleni East and Randfontein);
- Western Cape (Bellville and Cape Town); and
- Eastern Cape (Port Elizabeth).

[6] In addition to HIFSA, OMAI carries out its development impact investments through two funds, namely the Financial Sector Charter and the Schools Investment Fund. As noted, OMAI is controlled by OMG which is one of HIFSA's primary funders. OMG has investments in the following provinces:

- Gauteng (Benoni);
- Western Cape (Pineland);
- Eastern Cape (Port Elizabeth);
- Mpumalanga (Nelspruit); and
- Northern Cape (Kathu).

Primary target firm

[7] The primary target firm is Rand Leases Securitisation (RF) Proprietary Limited ("RLS"), a private company incorporated in accordance with the company laws of the Republic of South Africa. RLS is owned in equal proportions by HIFSA and Rand Leases Properties Proprietary Limited ("RLP") and is thus the vehicle through which HIFSA and RLP conduct their business relationship. RLS does not control any firm in South Africa. RLP has two individual shareholders, Mr Grant Fischer (70%) and Mr PHL Rama (30%). In addition to RLS, RLP has three wholly-owned subsidiaries in South Africa, namely Bryanston Wedge Proprietary Limited, First Wesgold Properties Proprietary Limited and Four Three Two Three Properties Proprietary Limited.

[8] RLS is active in the property development industry, its primary focus being the development of residential property for low-to-middle income earners. RLS is involved in all aspects of property development including identifying and purchasing land, obtaining the requisite approvals, undertaking the development project and marketing the development to end users upon completion. At present, RLS has investments in property development projects in the Johannesburg and Ekurhuleni metropolitan areas.

Proposed transaction and rationale

[9] In terms of the Sale of Shares and Claims Agreement between the parties, HIFSA will acquire RLP's 50% shareholding in RLS such that its current shareholding in the target firm will be increased to 100%. Upon completion of the proposed transaction, HIFSA will have sole control over RLS with RLP exiting as shareholder and manager.

[10] The merging parties submitted that they entered into the proposed transaction to terminate the business relationship arising from their joint control of RLS. Apart from this shareholding in RLS, OMIG and/or HIFSA do not provide any products or services to RLS nor does RLP procure any products or services from OMIG or HIFSA.

Impact on competition

[11] As noted RLS, the company over which HIFSA and RLP have joint control, is engaged in the development of residential property for low-to-middle income earners. Accordingly, the Commission concluded that there is a horizontal overlap in the activities of the merging parties as a result of this joint control in RLS pre-merger.[2] However, since HIFSA already controls RLS, the transaction will not alter the market structure and will not result in any market share accretion.

[12] In relation to horizontal overlaps outside the joint venture, HIFSA provides investments for housing development projects and, through its partner, provides property development projects for low-cost housing across South Africa. It currently has projects in the following areas:

- City of Cape Town;
- Ekurhuleni Metropolitan Municipality;
- Tshwane Metropolitan Municipality;
- Midvaal;
- Nelspruit;
- Johannesburg;

[2] Note: the Tribunal considers this to be a limited horizontal overlap wherein the parties are only engaged in the same activities by virtue of their concurrent shareholding in RLS and not as separate entities conducting separate operations in which there is overlap.

- Kimberley;
- Krugersdorp;
- Bloemfontein;
- Nelson Mandela Metropolitan Municipality; and
- Kathu.

RLS, on the other hand, provides property development for low-cost housing in the Johannesburg and Ekurhuleni Metropolitan areas in Gauteng. Accordingly, the Commission found that a horizontal overlap exists in the activities of the merging parties outside the joint venture as both HIFSA and RLS are active in the market for the development of low-cost housing in the Johannesburg and Ekurhuleni metropolitan areas (Roodepoort and Boksburg) in Gauteng.

[13] The Commission thus assessed the competitive effects of the proposed transaction in the aforementioned market, finding that the merged entity's estimated post-merger market share will be 7% and 10% in the Boksburg and Roodepoort areas respectively. Further, the merging parties will continue to face competition from numerous private property developers[3] as well as from national and provincial government. The Commission thus concluded that this horizontal overlap is unlikely to raise any competition concerns.

[14] At the hearing, the Tribunal asked the Commission how they arrived at these low market share figures. The Commission stated that the market share figures were based on the information provided by the merging parties. The Commission explained that it requested figures from the merging parties' competitors but they indicated that due to the lack of public information relating to market shares, they were unable to assist. Further, the merging parties indicated that when identifying appropriate land for development purposes, they are guided and constrained by the council's plans for the relevant areas.

[15] The Commission also found that a vertical relationship exists as HIFSA provides funds to RLS for the development of its housing projects. However, only 5% of HIFSA's available funds have been allocated to RSL with a much larger proportion being allocated to various other projects in the market. Further, the Commission

[3] These property developers include: Valumax, MDV Developments, Trustgo Developments, Bigen Africa, Living Africa Group, Space Securitisation, Calgro M3 Holdings, Dino Properties, Kiron Homes, Cosmopolitan Projects, RBA Holdings Limited and others.

found that in the event that HIFSA decides not to provide funds to other property developers post-merger, HIFSA's customers may turn to the major banks and the National Housing Finance Corporation for funding. Thus the proposed transaction will not result in any input foreclosure. Moreover, since RLS currently receives all of its funds from HIFSA and RLP, there will be no foreclosure concerns for competitors. The Commission therefore concluded that the vertical relationship between the merging parties is unlikely to result in any foreclosure concerns.

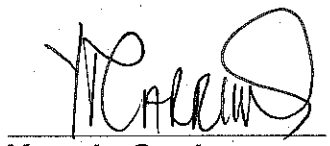
[16] We concur with the Commission's competition assessment that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[17] Given that the merging parties do not have any employees, the proposed transaction raises no employment concerns. In addition, no other public interest concern is implicated.

Conclusion

[18] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



Yasmin Carrim

26 February 2015
DATE

Norman Manoim and Medi Mokuena concurring

Tribunal Researcher: Ammara Cachalia
For the merging parties: Xolani Nyali
For the Commission: Zanele Hadebe