



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM059Jun19

In the matter between:

Peermont Holdings (Pty) Ltd

Primary Acquiring Firm

And

LCI (Overseas) Investments (Pty) Ltd

Primary Target Firm

Panel	: Ms Mondo Mazwai (Presiding Member)
	: Mr Enver Daniels (Tribunal Member)
	: Ms Yasmin Carrim (Tribunal Member)
Heard on	: 04 September 2019
Order Issued on	: 04 September 2019
Reasons Issued on	: 02 October 2019

REASONS FOR DECISION

Approval

- [1] On 04 September 2019, the Competition Tribunal ("Tribunal") unconditionally approved a large merger transaction whereby Peermont Holdings (Pty) Ltd ("Peermont") intends to acquire the entire issued share capital of LCI (Overseas) Investments (Pty) Ltd ("LCI Overseas Investments"). Hereunder, we collectively refer to Peermont and LCI Overseas Investments as the "merger parties".
- [2] The reasons for our approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Peermont is a hospitality and entertainment company that owns and operates casino complexes and short-term accommodation and conference/banqueting facilities in South Africa and Botswana. In South Africa, Peermont operates 8 casino complexes. Of relevance to the proposed transaction is Emperor's Palace located in Gauteng.
- [4] Peermont is ultimately owned by Peermont Global Holdings (Pty) Ltd ("Peermont Holdings"). Peermont Holdings is jointly controlled by Golden Tree Asset Management LP and MIC Leisure (Pty) Ltd.

Primary Target Firm

- [5] LCI Overseas Investments operates a casino complex in South Africa through Emerald Safari Resort (Pty) Ltd ("Emerald"). Emerald also provides short-term accommodation and conferencing/banqueting facilities.
- [6] LCI Overseas Investments controls Emerald as to 70%. The remaining shareholding is held by Modirapula Leisure (Pty) Ltd ("Modirapula") (20%) and Marung Investments Ltd ("Marung") (10%). LCI Overseas Investments is controlled by London Clubs Holdings Ltd ("London Clubs") which is ultimately owned by Caesars Entertainment Corporation ("Caesars").

The proposed transaction

- [7] There are two transactions envisaged in this merger notification.
- [8] In the first transaction, in terms of the Share Repurchase Agreements, Emerald will repurchase its shares from Modirapula (20%) and Marung (10%). Upon completion of this transaction, LCI Overseas will hold a 100% interest in Emerald ("Minority transaction"). In the second transaction, in terms of the Share Purchase Agreement, Peermont will acquire 100% of the issued share capital in LCI Overseas Investment. Post-merger, Peermont will exercise control over LCI Overseas Investments ("Majority transaction").

- [9] The merger parties submitted that both the minority and the majority transactions are to be considered as a single indivisible transaction because the majority transaction would not take place without the minority transaction. In other words, both transactions are legally and factually indivisible. The Commission considered these submissions in light of the Tribunal's case law on this point and concluded that both minority and majority transactions constituted a single indivisible transaction.
- [10] In addition, we noted that the proposed transaction was notified to the Gauteng Gambling Board ("GGB") on 21 June 2019. The Commission was informed by the GGB that the process to complete the evaluation of the transaction would take 3 – 6 months. At the time of the hearing, the merger parties and the Commission were yet to receive any views regarding the status of transaction from the GGB.

Relevant market and impact on competition

Market definition

- [11] When investigating the effect on competition as a result of the proposed transaction, the Commission did not conclude on a relevant market. It did, however, consider the merger in the narrow market for casino venues/complexes in Gauteng as a worst-case scenario.

Product market

- [12] The Commission had regard to previous large merger transactions and submissions made by the merger parties and found that the merger parties are involved in the provision of casino gaming and offer ancillary services such as hotel conferencing/banqueting facilities.
- [13] The Commission considered demand and supply substitutability dynamics in the market. It found that there were different product offerings in casinos from other entertainment forms since casinos do not compete with other entertainment facilities that are found outside casino complexes such as movie theatres, restaurants and night clubs. In essence, gambling offerings are unlikely to be substitutable from a demand point of view. From a supply side perspective, other

types of gambling venues are unlikely to switch to operating casinos due to regulatory constraints and therefore are unlikely to be in competition with one another.

- [14] With regards to barriers to entry, the Commission found that entry into the market is not easy due to regulatory barriers imposed by legislation. The National Gambling Act¹ permits only 41 casino licences in South Africa of which 39 have been issued. In Gauteng, all available licences have been issued.
- [15] Based on the information it received, the Commission found that there is no consensus regarding product market definition and submitted that even if it left the product market open, it would not affect the outcome of its investigation.

Geographic market

- [16] The Commission considered that the two casinos relevant to the proposed transaction (Emperor's Palace and Emerald) are approximately 100 kilometres (km) apart.
- [17] The Commission found that casinos derive more than 60% of their revenue within a 25km radius and the percentage of revenue decreased with increases in distance, with less than 10% revenue generated from a radius of 51-70kms. In this matter, Sun International submitted that it considered Emperor's Palace as a competitor,² not Emerald. In addition, a large amount of the hotel's income is derived from patrons that are located within a 25km radius. Tsogo Sun submitted that it did not consider any of the merger parties as competitors.³ Akin to Sun International, a large amount of Tsogo's income is derived from gamblers within a 25km radius.
- [18] If the Commission were to assess the merger within a 25km radius, it would imply that the merger parties were not competitors. A 50km radius on the other hand would imply that there was minimal competition. As such, the Commission did not

¹ Act No 7 of 2004.

² Sun International's Carnival City and Time Square Casino's are located 21km and 49km from Emperor's Palace respectively.

³ Tsogo's closest casinos are located approximately 39.9km and 92.7km from Emperor's Palace.

conclude on a precise geographical market and considered the transaction within the Gauteng region.

Competition Assessment

- [19] The Commission assessed the merger parties market shares, by considering i) the number of casinos owned by each market participant and ii) each firm's revenues.
- [20] In terms of casinos owned by market participants, the Commission found that the merged entity will have a combined post-merger market share of 28,6%, and in terms of revenues, the merged entity will have a combined post-merger market share of 27,1%. Based on these market shares, the Commission concluded that the proposed transaction is unlikely to substantially affect the structure of the casino market in Gauteng. Post-merger, the merger parties will continue to face competition from Tsogo Sun and Sun International.
- [21] In view of the above analysis, we concurred with the Commission's findings and concluded that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in the relevant market even on a worst-case scenario.

Public interest

- [22] Peermont's employees at various casinos are represented by the National Union of Public Service & Allied Workers ("NUPSAW") and Future of South African Workers Union ("FOSAWU") whereas Emerald's employees are represented by an employee representative (Ms Mantu Dlamini, the Human Resources Executive).⁴ NUPSAW and FOSAWU did not raise any employment concerns.
- [23] The Commission noted that Emerald's employees raised some concerns. These concerns, however, were alleviated when the management of Emerald assured the employees that no retrenchments were anticipated as a result of the proposed transaction. To this end, the employees are supportive of the transaction.⁵

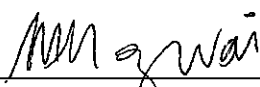
⁴ See Record pg. 1165, 1166, 1202 and 1204.

⁵ See Record pg. 1170: Ms Dlamini's e-mail of 22 July 2019.

- [24] The Commission noted that in September/October 2017, Emerald retrenched 79 employees and a further 3 employees in March and September 2018. In their merger filing, the merger parties explained that the retrenchments were as a result of the following: i) Emerald's poor financial performance since 2014; ii) Emerald's attempt to provide service cost-effectively, and efficiently and iii) to promote job security.
- [25] The Commission found that the timing of the retrenchments did not overlap with the timing of the proposed transaction. The parties' legal representatives confirmed this during the hearing.
- [26] The merger parties also undertook at the hearing to not retrench any employees as a result of the proposed transaction.

Conclusion

- [27] In view of the above, we concluded that the proposed transaction is unlikely to result in a substantial lessening and prevention of competition in any market. In addition, the proposed transaction will not result in any job losses nor does it raise concerns on any of the other public interest grounds. Accordingly, we approved the proposed transaction unconditionally.



Ms Mondo Mazwai

02 October 2019

Date

Mr Enver Daniels and Ms Yasmin Carrim concurring.

Tribunal Case Manager : Ndumiso Ndlovu
For the Primary Acquiring Firm : J Lurie of Bowmans
For the Primary Target Firm : J Katz of ENSafrica