



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM081Jul19

In the matter between:

Brookfield Asset Management Inc

Primary Acquiring Firm

And

Oaktree Capital Group LLC

Primary Target Firm

Panel	: M Mazwai (Presiding Member)
	: E Daniels (Tribunal Member)
	: A Ndoni (Tribunal Member)
Heard on	: 09 October 2019
Order issued on	: 09 October 2019
Reasons issued on	: 07 November 2019

REASONS FOR DECISION

CONDITIONAL APPROVAL

- [1] On 09 October 2019, the Competition Tribunal ("Tribunal") conditionally approved the large merger between Brookfield Asset Management Inc and Oaktree Capital Group LLC. The conditions are attached marked Annexure A.
- [2] The reasons for the conditional approval follow.

PARTIES TO THE TRANSACTION

Primary Acquiring Firm

- [3] The primary acquiring firm is Brookfield Asset Management Inc (“Brookfield”), a company incorporated in accordance with the company laws of Ontario, Canada. Brookfield is co-listed on the New York Stock Exchange. Brookfield is controlled by Partners Ltd, which has the ability to elect half of the directors of Brookfield through the 100% of the Class B limited voting shares in Brookfield it owns.¹
- [4] Brookfield is an asset management company that owns and operates assets through the firms it controls in South Africa. The activities of these firms range from real estate, renewable power, infrastructure private equity and public securities. Brookfield does not have registered funds in South Africa.

Primary Target Firm

- [5] The primary target firm is Oaktree Capital Group LLC (“OCG”), a company incorporated in accordance with the company laws of the United States of America. OCG is listed on the New York Stock Exchange. Oaktree Capital Group Holdings L.P (“OCGH LP”) holds 100% of OCG’s Class B units while the shareholding of Class A units are held in the following respect, 99.98% are held by Public Investors and 0.02% by OCGH LP.²
- [6] OCG and OCGH LP are controlled by Oaktree Capital Group Holdings GP, LLC (OCGH GP), OCGH GP is in turn controlled by senior executives within OCG who are entitled to designate all the members of the OCG board of directors. OCGH LP and OCG respectively hold 54% and 46% economic interest in the entities referred to as “Oaktree Operating Group”.
- [7] Similar to the primary acquiring firm, OCG is an asset manager with an asset portfolio in credit, private equity, real estate and listed equities. It also does not have any registered funds in South Africa. As part of its investments in private equity, OCG controls three entities in South Africa which include New Pier, GSM

¹ Brookfield controls a number of companies outside of South Africa referred to as “Clarios Firms”. It also controls various companies in South Africa.

² The current principals and employees of OCG hold interests through OCGH LP.

Manufacturing and GSM Trading, which are involved in the retail and wholesale supply of active sports and/or lifestyle footwear, apparel and accessories in South Africa.

PROPOSED TRANSACTION

- [8] The transaction comprises two phases, the first involves Brookfield and OCGH LP acquiring joint control in OCG and the second will be the sole acquisition of OCG by Brookfield.
- [9] The Commission assessed the indivisibility of the transaction and found that these phases are interdependent as the second phase of the transaction will not take place without the fulfilment of the first phase of the proposed transaction from a factual and legal point of view. Furthermore, in its assessment, the Commission looked at the length differential between the two phases and found that it may take the merging parties up to 7 years to reach the second phase of the proposed transaction.
- [10] In assessing the indivisibility of the two phases, the Commission relied on the Tribunal decisions in the Crown Gold Recoveries (Pty) Ltd and Industrial Development Corporation of South Africa Limited and; Khumo Bathong Holdings (Pty) Ltd ("Crown Gold/Khumo Bathong merger") and concluded that the transactions were indivisible since the second phase of the transaction will not happen without the first phase.³
- [11] Regarding the lengthy period between phase one and two, the Commission was concerned about possible changes in market conditions over time since the trigger events for sole control could occur at any time between phase one and two in the 7 years. The Commission has recommended a condition which requires the merging parties to notify the Commission should Brookfield fail to establish sole control over OCG within the Interim period of 2 years.

³ Competition Tribunal case number 31LMMAY02.

COMPETITION ANALYSIS

- [12] When considering the activities of the merging parties, the Commission found that there is a horizontal overlap in the provision of asset management services on the international level. This overlap constituted a product overlap and not a geographical overlap as neither of the firms has registered funds in South Africa nor do they hold licenses from Financial Sector Conduct Authority (FSCA) to carry out asset management services in South Africa.
- [13] No horizontal overlaps between the activities of the South African entities controlled by the merging parties were identified as the OCG controls entities active in the manufacturing and distribution of clothes, while Brookfield controls entities active in energy and infrastructure. Consequently, the Tribunal is of the view that the proposed transaction is unlikely to result in any substantial preventing or lessening of competition in any market since the parties' asset management portfolios do not overlap in South Africa.

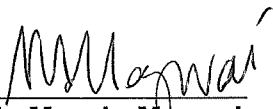
PUBLIC INTEREST

- [14] During the merger investigation, the Commission engaged with various employee representatives. South African Clothing and Textile Workers Union (SACTWU) advanced concerns of potential job losses and requested that the Boardriders/Billabong conditions to be extended. These conditions emerge from an intermediate merger where OCG, through Boardriders Inc, acquired Billabong International Ltd. The merger was approved subject to an employment condition that the merging parties do not retrench any employees as a result of the merger for the period of two years from the implementation date.
- [15] The merging parties submitted that the merger transaction will not negatively affect employment in terms of retrenchment or job losses. The merging parties undertook to ensure compliance with the current Boardriders/Billabong conditions.⁷

⁷ Commission Case No: 2018JAN0023

CONCLUSION

[16] In light of the above, we approved the transaction subject to the conditions agreed to by the Commission and merging parties attached hereto marked **Annexure A**.


Ms Mondo Mazwai

07 November 2019
Date

Mr Enver Daniels and Ms Andiswa Ndoni

Tribunal Case Manager	:Lumkisa Jordaan
For the merging parties	:Richard Bryce and Tamara Dini of Bowmans Law
For the Commission	:Tumiso Loate, Thabelo Masithulela and Raksha Darji