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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018390

In the matter between:

One Mutual Investment (Pty) Ltd	Primary Acquiring Firm
And	
ABSA Insurance Risk Management Services Ltd	Primary Target Firm

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Panel:	Takalani Madima	(Presiding Member)
	Medi Mokuena	(Tribunal Member)
	Anton Roskam	(Tribunal Member)
Heard on:	19 February 2014	
Order Issued:	19 February 2014	
Reasons Issued on:	7 March 2014	

Reasons for Decision

Introduction

[1] On 19 February 2014 the Tribunal approved the acquisition by One Mutual Investments (Pty) Ltd of the entire issued share capital of ABSA Insurance Risk Management Services Ltd from ABSA Insurance Company Ltd. The reasons for the decision are set out below.

The parties

[2] The primary acquiring firm is One Mutual Investments (Pty) Ltd ("OMI"), a firm incorporated in accordance with the laws of South Africa. OMI is an acquisition vehicle and does not own or control any firms. It is jointly controlled by One Group Short Term Holdings (Pty) Ltd ("OGST") holding 74.9% and Mutual & Federal Insurance Company Ltd ("Mutual & Federal") holding 25.1% of the share capital. OMI is owned by One Financial Services Holdings (Pty) Ltd ("OFSH") and Mutual and Federal is owned by Old Mutual South Africa.

[3] The primary target firm is ABSA Insurance Risk Management Services Ltd ("AIRMS"), a firm incorporated in accordance with the laws of South Africa. AIRMS is in turn a wholly owned subsidiary of ABSA Insurance Company Ltd and its ultimate holding company is Barclays Africa Group Ltd.

The transaction

[4] In terms of the transaction OMI will acquire 100% of the shares in AIRMS from ABSA Insurance Company. OGST and Mutual and Federal will jointly control OMI post the transaction.

Rationale for the transaction

[5] OFSH submitted that it currently operates as an underwriting manager, as such it acts as an agent of an insurer with limited mandate and discretion. Although it has sufficient critical mass to operate as an insurer it does not own a short-term insurance license. In order to qualify for a short-term license it requires capital support in the form of equity to comply with the Short Term Insurance Act and the solvency requirements of the Financial Services Board ("FSB"). It therefore needs to partner with a large insurer such as Mutual and Federal which would provide it with capital support to meet the FSB regulatory requirements.

[6] Mutual & Federal considers its equity stake in OMI as an investment.

[7] According to AIRMS it is no longer considered core to the activities and long term strategy of Barclays Africa Group Ltd.

The relevant market

[8] Mutual and Federal provides insurance services to private, commercial and corporate clients in South Africa. It owns a short-term insurance license and utilizes underwriting managers and intermediaries to provide insurance services.

[9] OFSH provides underwriting management services and offers a wide range of short-term insurance products for a variety of needs. It currently acts as agent for AIRMS, a short-term insurance cell captive provider. A cell captive is an insurance vehicle that allows the short-term license holder to use a third party to act on its behalf in the market and it therefore shares in the profit and losses of whatever the third party would gain in the market. In this case the target firm AIRMS is the holder of a short-term insurance license but does not provide any short-term insurance products itself. It relies on OFSH which conducts its operations through a third-party cell captive called OneCom.[1]

[10] AIRMS is licensed in terms of the Short Term Insurance Act to provide short-term insurance products to customers. As indicated above AIRMS does not provide short-term insurance to members of the public but its short-term insurance license has been endorsed by the Financial Services Board to allow AIRMS to also operate as a cell captive insurance provider. It therefore operates as a short-term insurance cell captive provider in that it provides its cell captive license to cell owners such as OFSH who act as underwriting manager and agent of AIRMS. AIRMS' customers are therefore cell owners such as OFSH that require use of its license so that they in turn can provide short term insurance products to their customers.

[11] In light of the above the Commission identified the following relevant product markets:

1. A single market for all short-term insurance products;
2. A separate market for each type of short-term insurance product, namely:
    - Property
    - Transportation
    - Motor

[1] The merging parties intend to terminate the cell post the transaction and offer the same short-term insurance products through AIRMS general short-term insurance license.

- Accident & health
- Guarantee
- Liability
- Engineering
- Miscellaneous

3. A separate market for different clusters of short-term insurance products;
4. A separate market for cell captives.

[12] The Commission found that the proposed transaction was unlikely to prevent or lessen competition regardless on whether the market is defined broadly or narrowly and therefore it did not conclude on any of the the relevant product markets but considered the effect of the transaction on competition in all of these markets. It concluded that the relevant geographic market is the South African national market.

Effect on competition

[13] In the broad single market for all short-term insurance products the merged entity will have an estimated market share of approximately 10.3%. There are a number of well-known competitors in this market such as Santam (market share 19%), Guardrisk (6.3%), OUTsurance (6.1%), Zurich (4%) and Hollard (6.4%) to mention a few. The Commission therefore found that the proposed transaction is unlikely to substantially prevent or lessen competition in the single market for all short-term insurance products.

[14] The Commission also considered the effect of the transaction on more narrowly defined product markets. It identified separate markets for each of the seven short-term insurance products and found that the merged entity's market share in each will be as follows post the transaction:

- 11.55% (representing an accretion of 0.3%) in property cover
- 17.9% (representing an accretion of 1.8%) in transport cover
- 10.6% (representing a accretion of 1.1%) in motor cover
- 4.2% (representing an accretion of 2.1%) in accident & health cover
- 0.3% (representing an accretion of 0.2%) in guarantee cover
- 6.8% (representing an accretion of 0.9%) in liability cover

- 16.8% (representing an accretion of 1.2%) in engineering cover

[15] The merged entity's market share accretion in the above product markets are small and its market shares remain low. There are several competitors in each of these markets, of which the market shares of the largest players are set out in the table below:

Competitor	Property	Transport	Motor	Accident & Health	Guarantee	Liability	Engineering
Merged entity	11.5	17.9	10.6	4.2	0.3	6.8	16.8
Santam	19.8	28.8	21	5.4	1.8	30	24.7
Guardrisk	5.8	13.10	2.8	20.2	2.10	11.6	15.2
Hollard	4.1	7.5	9.4	6.7	1.4	1.3	5.8
OUTsurance	5.8	0.6	9.4	0	1.4	0.9	0
Zurich	4.4	4.6	4.1	3.4	0	2.2	9.2

[16] It is therefore unlikely that the merged entity would be in a position to exercise market power in any of the identified short-term insurance segments as set out above.

[17] The Commission also considered the market shares of the merged entity with regard to the different clusters of short-term insurance products namely Personal Business, Corporate Business and Commercial Business. It found that the merged entity will have a post merger market share of 7.35% in the personal product cluster, 7.89% in the corporate product cluster and 15.55% in the commercial product cluster. Numerous players are active in these markets and the transaction therefore does not raise any competition concerns in the identified clusters.

[18] Since the merged entity will not be active in the market for cell captives post the transaction I do not have to consider the effect of the transaction on this market.

Public interest

[19] There were no employment or any other public interest concerns raised in this transaction.

Conclusion

[20] Although the proposed transaction results in an horizontal overlap in the short-term insurance activities of the merging parties, the accretion in all of the possible product markets identified by the Commission, whether broad or narrow, is relatively insignificant and the merged entity's market shares will remain low. There are also numerous competitors in all of these markets. The transaction is therefore unlikely to substantially prevent or lessen competition in any of the relevant markets.

[21] I accordingly approve the transaction unconditionally.

____________________	7 March 2014
Takalani Madima	**Date**

Medi Mokuena and Anton Roskam concurring

Tribunal Researcher:	Rietsie Badenhorst
For the merging parties:	Norton Rose Fullbrecht
For the Commission:	Grace Mohammed