

COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 10/LM/Jan09

In the matter between:

Old Mutual (South Africa) Ltd

Acquiring Firm

And

Medscheme Life Assurance Ltd

Target Firm

Panel : N Manoim (Presiding Member); U Bhoola (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on : 11 March 2009

Decided on : 11 March 2009

Reasons Issued on : 01 April 2009

Reasons for Decision

Approval

[1] On 11 March 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Old Mutual (South Africa) Ltd and Medscheme Life Assurance Ltd. The reasons appear below.

Parties

[2] The acquiring firm is Old Mutual (South Africa) Ltd ("OMSA"). OMSA is indirectly controlled (through wholly owned subsidiaries) by Old Mutual plc ("Old Mutual").¹

¹ OMSA directly controls Nedgroup Life Assurance Company Ltd ("NLACL"); Old Mutual Investment Group SA (Pty)Ltd ("OMGISA"); Old Mutual Investment Administrators (Pty)Ltd ("OMIA"); OM Portfolio Holdings (South Africa) Ltd ("OMPH"); Spice Financial Holdings (Pty)Ltd ("SFH"); BoE (Pty)Ltd ("BoE"); Old Mutual Investment Group Property Investments (Pty)Ltd ("OMIGPI"); Old Mutual Healthcare (Pty)Ltd ("OMHc"); Old Mutual Investment Services (Pty)Ltd ("OMIS"); Old Mutual Health Insurance Ltd ("OMHI"); Old Mutual Capital Partners (Pty)Ltd ("OMCP"); Vuselela Investments (Pty)Ltd ("VI"); Metropolis Health Services ("MHS"); Old Mutual Alternative Risk Transfer Ltd ("OMART"); Old Mutual unit Trust Managers Ltd ("OMUTM"); Old Mutual Fund Administrators Services (Pty)Ltd ("OMFAS"); Old Mutual FundsNet Nominees (Pty)Ltd ("OMFN"); Visimed Properties and Administrators (Pty) Ltd ("VPA"); Old Mutual Specialised Finance (Pty)Ltd ("OMSF"); Old Mutual Capital Holding (Pty)Ltd ("OMCH"); Celestis Broker services (Pty) ("CBS"); Black Broker Holdings (Pty)Ltd ("BBH") and Old Mutual Life Holdings (South Africa) Ltd ("OMLH") which controls Old Mutual Life Assurance Company (South Africa) Ltd ("OMLACSA").

[3] The primary target firm is Medscheme Life Assurance Ltd (“Medscheme Life”).² Medscheme Life is a wholly owned subsidiary of Medscheme Financial Services (Pty) Ltd (“MFS”).

Transaction

[4] In terms of the structure of the transaction, OMSA is acquiring 100% of the issued share capital and financial interest in Medscheme Life from MFS. On completion of the transaction, OMSA will control Medscheme Life.

Rationale for the Transaction

[5] This transaction takes place in the context of two other transactions concluded at the same time. In the first transaction Lethimvula, the controlling shareholder of Medscheme, will be acquiring 100% of the ordinary shares and shareholder loans of Old Mutual Healthcare (Pty) Ltd (“OMHc”) from OMSA. OMHc, like Medscheme, is an administrator of medical schemes. Old Mutual will still control Oxygen another medical scheme administrator. However the second transaction between the firms, involves a series of joint marketing relationships between Lethimvula and OMSA. As these firms are the parent companies of competing subsidiaries, a joint marketing arrangement might raise competition concerns. However the merging parties and the Commission were both of the view that these arrangement were not linked to the merger before us, and as the Commission is still to consider the OMHc merger, which has been notified, this issue will be given due consideration then.³

[6] The severability is confirmed by internal documents from OMSA, which treat the present transaction as a ‘*separate*’ and ‘*stand alone*’ transaction. By contrast the other two transactions referred to above are described as “*inter conditional*”.⁴ We do not need to consider this issue any further in the present merger.

Parties Activities

[7] OMSA act as an investment holding company in respect of a variety of businesses with the following core business activities and products: asset management; healthcare; savings plans for specific goals or education funding; the provision of banking and

² Medscheme Life does not control any firm.

³ See transcript page 3

⁴ See record 716.

investment products offerings; general insurance and life assurance. The firms controlled by OMSA, who are active in the assurance market, include Old Mutual Life Assurance Company (South Africa) Ltd (“OMLACSA”) Old Mutual Alternative Risk Transfer Ltd (“OMART”); Nedgroup Life Assurance Company Ltd (“NLACL”)⁵; and BoE (Pty) Ltd (“BoE”)⁶. OMLACSA’s principal activity is the transaction of all classes of life assurance and retirement funding in South African market. OMLACSA is a registered long term insurer who is currently authorized to provide the following products: Life Policies (including death benefit policies,pre-retirement savings,endowments,post retirement income and funeral benefits); assistance policies; disability policies; fund and fund member policies; health policies; reclassified retrenchment cover and sinking fund policies. OMLACSA operates both in the individual⁷ and group life segments⁸. OMART is a cell captive insurer.⁹ OMART is authorized to enter into assistance, disability, fund, health, life and sinking fund policies.

[8] Medscheme Life is a registered long term insurer which is currently authorised to provide the following products: Life Policies (including death benefit policies,pre-retirement savings,endowments,post retirement income and funeral benefits); assistance policies; disability policies; fund and fund member policies; health policies; reclassified retrenchment cover and sinking fund policies. Medscheme operates both in the individual¹⁰ and group life segments¹¹.

Relevant product Market

[9] According to the Commission there is an overlap in the activities of the merging firms in respect of the provision of group life policies and individual policies. The Commission submits that from a policy holder’s point of view group cover and individual cover are not interchangeable. According to the Commission there is a degree of supply side substitution in the long-term insurance sector in that an insurer who is issued with a license to render a long term insurance has a choice to either provide group cover or individual cover or both.

⁵ NLACL is only active in individual life assurance market and operates predominantly in the credit life market.

⁶ BoE Life’s product range includes only investment and annuity products, sold on an individual life and sinking fund basis.

⁷ For a list of OMLACSA’s individual life business products please see page 49-50 of the record.

⁸ OMLACSA’s also has a range of group life business products. OMLACSA’s employee benefits products and services include the following group life business products: Retirement funding investment solutions, which include a range of guaranteed products, annuity portfolios and market linked products; Group Life cover; Disability cover; Funeral cover and retrenchment cover.

⁹ A cell captive insurer is an insurance company that sells segments (or cells) of its company to large commercial companies who wish to self insure. See record page 52.

¹⁰ In the individual life business segment Medscheme Life operates primarily in the lower market, selling single needs and packaged products. Medscheme Life currently actively markets the following three key products line: cancer which is classified as disability business; funeral and accidental death.

¹¹ Medscheme Life group life business products are generally focused on broad group risk, with life and disability cover, income protection and dread disease. It also has a number of group funeral schemes.

The Commission therefore defines the market broadly as the market for the provision of long term insurance. The Commission defined the geographic market as national as the insurance brokers and agents are located across the country.

Competition Analysis

[10]

Table 1: Market share for the provision of long-term life insurance

Insurer	Estimated market shares
Momentum Group	17.61%
OMLACSA	16.91%
OMART	<1%
Nedgroup Life	<1%
BOE Life	<1%
Liberty Group	10.09%
Sanlam	10.05%
Investec	7.14%
Metropolitan	4.63%
Alternative Chanel	3.29%
Coronation	2.72%
Medscheme Life	<1%
Others	25%
Total	100%
Merging firms combined	<20%
Pre-merger HHI	1590.56
Post Merger HHI	1628.56
Change in HHI	38

Source: the merging parties

10.1 As can be seen above OMLACSA, OMART, Nedgroup Life and BOE life will have a combined market share of about 19% and the target firm has less than 1%. According to the Commission the merged entity will have a post merger market share of less than 20% in the

provision of long term insurance in South Africa. The Commission's investigation revealed that the merged entity will continue to face effective competition from notably the following firms: Momentum Group with 17.61%;Liberty Group with 10.09%;Sanlam with 10.05%; Investec with 7.14%;Metropolitan with 4.63%;Alternative Channel with 3.29%;Coronation with 2.72% and others with 25%. We therefore agree with the Commission's conclusion that the proposed transaction is unlikely to raise any competition concerns, as the increase in the market share is insignificant and the change in HHI is also insignificant. There are no public interest issues.

Conclusion

[11] Accordingly the transaction is unconditionally approved.

N Manoim

Tribunal Member

01 April 2009

Date

U Bhoola and M Mokuena concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Edward Nathan Sonnenburgs

For the Commission : Xolela Nokele (Mergers and Acquisitions)