



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:97/LM/Oct12

In the matter between:

Bonitas Medical Fund

Acquiring Firm

And

Pro Sano Medical Scheme

Target Firm

Panel : Norman Manoim (Presiding Member),
Yasmin Carrim (Tribunal Member)
and Andreas Wessels (Tribunal Member)
Heard on : 05 December 2012
Reasons issued on : 20 December 2012

Reasons for Decision

Approval

[1] On 05 December 2012 the Competition Tribunal ("Tribunal") approved the merger between Bonitas Medical Fund ("Bonitas") and Pro Sano Medical Scheme ("Pro Sano"). The reasons for approval follow below.

The Transaction

[2] The primary acquiring firm is Bonitas Medical Fund, a medical scheme duly registered in terms of the Medical Schemes Act (“MSA”), Act No. 131 of 1998, as amended (“the MSA”) with the Council for Medical Schemes. Bonitas is managed by a board of trustees. It provides medical scheme cover to private individuals and companies.

[3] The primary target firm is Pro Sano Medical Scheme, a medical scheme registered in terms of the MSA with the Council for Medical Schemes. Pro Sano is managed by a board of trustees consisting of nine trustees, six being elected from amongst members and three external appointed trustees in terms of section 29(1) of the MSA.

The Rationale

[4] The proposed transaction entails the transfer of the business of Pro Sano, comprising of Pro Sano’s medical scheme business, assets, liabilities, contracts and employees, to Bonitas, which result in Pro Sano’s medical schemes business being absorbed into Bonitas. The member of Pro Sano will be transferred to Bonitas. Pursuant to the merger, Pro Sano’s registration as a medical scheme will be cancelled in terms of section 27 of the MSA.

The Relevant Market and Impact on Competition

[5] Prior to the merger both parties were involved in the provision of open and closed medical schemes. Open medical schemes provide medical insurance packages to the general public whilst closed schemes are restricted to particular constituencies of members such as the employees of a firm. Whilst for the purposes of this decision we are not required to decide whether the market for medical insurance should be segmented in this way, the overlaps on either calculation are not significant, for the open segment the market share would be 13.7% and for the closed, 8.1%.

[6] In both market segments, the merged entity will also be constrained by large medical schemes such as Discovery Health Medical Scheme, Government Employees Medical Scheme and numerous other medical schemes. Further the market share accretion is less than 2%, which is too low to raise any competition concerns.

[7] None of the third parties associated with the medical scheme market (including the medical schemes and regulatory bodies) expressed any concerns over this merger transaction.

[8] Indeed the merger is more likely to be pro-competitive as from evidence at the hearing, post merger, Bonitas will be able to bargain with health providers such as the private hospital groups on behalf of a larger constituency of members, thus giving it some countervailing power against these powerful suppliers. During the hearing the parties cited one example of this already where a provider had offered an improved benefit if the merger is approved.

[9] Bonitas has conceded that fees for some Pro Sano plans will be increased post merger. However, the point was made that Pro Sano would have had to raise its fees next year to avoid failure if the merger did not go ahead. Secondly the number of members affected was not great and some of those affected could elect to move to cheaper alternatives. Given that members are not locked into long term contracts those not satisfied could switch to other providers. Overall the benefits to the majority of both Bonitas and erstwhile Pro Sano members will be better post merger as a result of the merged firm's improved bargaining position and given a competitive market for funding these benefits will more than likely be passed over in some form to members in the future.

CONCLUSION

[10] There are no significant public interest issues and we accordingly agree with the Commission's findings and therefore approve the transaction without conditions.



N Manoj

20 December 2012
DATE

Yasmin Carrim and Andreas Wessels concurring.

Tribunal Researcher: Thabo Ngilande
For the merging parties: Gildenhuis Malatjie Inc
For the Commission: Zanele Hadebe