



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM253Mar16

In the matter between:

Hollard Holdings (Pty) Ltd

Primary Acquiring Firm

And

Regent Life Insurance Company Ltd

Primary Target Firms

Regent Life Assurance Company Ltd

And

Collision Management Centre (Pty) Ltd

Intervener

Panel : Yasmin Carrim (Presiding Member)
Mondo Mazwai (Tribunal Member)
Imraan Valodia (Tribunal Member)

Heard on : 12 and 18 April 2017

Last submission : 19 April 2017

Decided on : 24 April 2017

Reasons issued on : 21 June 2017

REASONS FOR DECISION (NON-CONFIDENTIAL VERSION)

Approval

[1] On 24 April 2017, the Competition Tribunal ("Tribunal") conditionally approved the transaction involving Hollard Holdings Proprietary Limited ("Hollard") and Regent Life Insurance Company Limited ("Regent Insurance") and Regent Life Assurance Company Limited ("Regent Assurance").

[2] The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary acquiring firm(s)

- [3] The primary acquiring firm is Hollard, a private company incorporated in South Africa, or its Nominee (created under the name Hollard Fundco (RF) (Pty) Ltd). The Nominee is intended to be the entity through which Hollard will acquire the shares of Regent Insurance and Regent Assurance ("Regent Group"). Hollard is ultimately controlled by the Arcadia Trust.

- [4] Hollard, through its wholly-owned subsidiary, The Hollard Insurance Company Limited ("HIC"), provides short-term insurance policies across personal lines, commercial lines and corporate lines. In these broad sectors, HIC operates across eight product lines, namely motor insurance, liability insurance, engineering insurance, property insurance, transportation insurance, accident and health insurance, guarantee insurance and miscellaneous insurance.

- [5] Hollard has another subsidiary, Hollard Life Assurance Company Limited ("Hollard Life"), which provides individual life policies, assistance policies, funeral policies, personal accident policies, credit life policies, investment policies including endowment, guaranteed capital plan and guaranteed income plan policies, with-profit policies, group risk benefits and impaired annuities.

Primary target firm(s)

- [6] The primary target firms are Regent Insurance and Regent Assurance, which are wholly owned by Imperial Holdings Limited ("Imperial"). Imperial is a public company listed on the JSE Limited and is not controlled by any one shareholder. Regent Insurance solely controls Erf Four Nine Spartan (Pty) Ltd, Motor Compliance Solutions (Pty) Ltd ("MCS"), Paintech Maintenance (Pty) Ltd ("Paintech"), Legal Advice Consultants (Pty) Ltd and SA Warranties (Pty) Ltd ("SAW"). Regent Assurance solely controls Struland Property Development (Pty) Ltd ("Struland") I'sure Risk Solutions (Pty) Ltd ("I'sure") and Cedar Employee Benefits (Pty) Ltd.

- [7] The Regent Group offers long-term and short-term insurance solutions as well as non-insurance products. Regent Insurance and Regent Assurance insurance products

consist of life insurance products, travel insurance products, car and home insurance products and commercial vehicle insurance.

Proposed transaction and rationale

Background

- [8] It is worthy to note that the transaction before us is not what was initially filed with the Competition Commission ("Commission") or referred to the Tribunal, but a scaled-down version of the initial transaction. The initial transaction consisted of two legs. The first is the one before us, namely Hollard's acquisition of Regent ("Hollard/Regent transaction") and the second, which was abandoned was MotoVantage Holdings (Pty) Ltd ("MotoVantage") acquiring control over SAW, MCS, Paintech and Anvil Premium Finance (Pty) Ltd ("Anvil") from Imperial.
- [9] MCS, Paintech, Anvil and SAW fall within the Regent Group and are the firms that provide value added products ("VAPs") in the motor insurance line business of Imperial. MotoVantage is ultimately controlled by Hollard and FirstRand Bank Limited ("FirstRand"). Wesbank, which is a division of FirstRand is also a provider of vehicle and asset finance. Wesbank acts as an intermediary in the motor value chain for the provision of VAPs and offers insurance products such as comprehensive vehicle insurance, bodyline products, deposit protector, vehicle tracking and warranty insurance amongst others. MotoVantage on the other hand, provides marketing, distribution, administration services in relation to VAPs and non-insurance VAPs.
- [10] The second leg of the transaction would have resulted in MotoVantage acquiring sole control of SAW, MCS, Paintech and Anvil, as MotoVantage was only interested in the VAPs business within the Regent Group. For purposes of these reasons, we shall refer to this scenario as the 'old transaction'.
- [11] During its investigation the Commission had various concerns arising from the second leg of the transaction, namely the:
- Horizontal overlapping activities of the Hollard Group and Regent Group in relation to the provision of short term insurance solutions, long-term insurance solutions, credit life and shortfall VAPs;

- Horizontal overlapping of activities of the MotoVantage Group and VAPs of the Regent Group;
- Vertical relationships arising between the activities of the merging parties in relation to: the provision of underwriting management services in which an underwriting manager offers a support function into the selling of underwritten products; provision of insurance services of VAPs in which an insurance service provider offers a support function or input into the selling and marketing of underwritten VAPs; the sales of VAPs at Imperial Dealerships where either the underwriter, the underwriting manager or both do not belong to the Regent Group (this concern was coupled with an exclusive ten-year dealership distribution agreement ("distribution agreement") at Imperial Dealerships); and lastly the ability by Wesbank to exert influence over Finance and Insurance Personnel ("F&I's) to direct customers to finance their vehicles and VAPs through Wesbank at Imperial Dealerships;
- Possible coordinated effects raised by third parties wherein Wesbank may have access to sensitive information which would enable it to further embed its leading market position in the vehicle and asset finance sector; and
- Public interest concerns in relation to 140 employees in semi-skilled, skilled and management positions within the entities of the merging parties.

[12] The merging parties tendered remedies to address some of the concerns specifically the information exchange concern and the F&I's concern. However, the Commission and the merging parties could not agree on remedies to address the employment-related concerns, the unilateral effects as well as the distribution agreement concern. The Commission thus recommended a prohibition of the merger to the Tribunal.

Intervener

[13] A pre-hearing was convened on 2 November 2016, at which the matter was set down as a matter of urgency for a total of 12 days in January and April 2017 respectively.

- [14] It was also at this pre-hearing that the Collision Management Centre (Pty) Ltd ("CMC") made clear that it intended filing an application requesting the Tribunal to grant it the right to intervene and participate in the merger proceedings. CMC is a short term insurance claims administrator, which processes insurance claims and losses emanating from auto body repair and maintenance products on behalf of its only client, Regent.
- [15] CMC's application was heard on 2 December 2016. CMC sought rights of participation in the merger proceedings in relation to: pre-hearings in the merger proceedings; any interlocutory proceedings; issuing of summons; filing of witness statements; cross-examining of witnesses; calling for production of documents; submitting of remedies at the end of the hearing in relation to its position; and inspection of any documents produced at the hearing or prior. CMC sought participation as it was concerned that the merged entity [REDACTED] entered into by CMC and the Regent Group in 2008, which would drive CMC out of business, resulting in job losses of the 30 employees under its employment.
- [16] We granted CMC's intervention application on 5 December 2016, but limited its scope of participation only to the likely impact the second leg of the transaction would have on public interest matters.

Subsequent Developments

- [17] Running concurrently with the preparation and hearing of CMC's application, was the filing of documents in relation to the main hearing scheduled to commence on 23 January 2017. It was during the filing of witness statements and the filing of the economic expert reports that the Commission realised, through consultation with its independent economic expert that it had overlooked an additional competition effect of the proposed second leg of the transaction relating to warranties. The concern pertained to the role played by underwriting managers in the pricing, design, policy wording, sales and marketing of warranty products.
- [18] The Commission identified a significant lessening of competition, in the market for mechanical VAPs that would emanate as a result of the proposed merger. In addition to this, more concerns about co-ordination had come to light as a result of an analysis of CMC's witness statement (factual witness statement filed on behalf of the Commission) and the merging parties' discovery. This meant that parties would not be able to proceed

on the scheduled January dates and the matter had to be postponed and set down for March and April 2017 instead, again on an expedited basis.

- [19] A new timetable was agreed upon by the parties on 19 January 2017 to cater for the Commission's new concerns. It was during this process that the parties advised the Tribunal that they had agreed to hold off the filing of the witness statements pending the outcome of negotiations taking place amongst the parties. On 6 April 2017, the parties advised that they had reached a consensus with regards to a remedy that can be presented as part of uncontested proceedings before the Tribunal.
- [20] The remedy meant that the MotoVantage/Wesbank/First Rand leg would no longer be part of the contemplated transaction. Furthermore, the VAPs business conducted within the Imperial group (housed under Regent Insurance) would first be transferred onto SAW, a subsidiary of Regent Insurance, and retained by Imperial, where after Hollard will acquire the shares in the Regent entities.
- [21] The parties further advised that the draft conditions will include various measures that will be put in place to address the Commission's concerns regarding coordinated effects between the Imperial VAPs businesses and MotoVantage. The second leg of the transaction thus fell away and the only aspect of the transaction that was heard before us was the Hollard/Regent transaction. In this transaction before us, post-merger, Hollard or its Nominee will acquire sole control of the Regent Group, except for the VAPs businesses which will remain with Imperial.

Rationale

- [22] [REDACTED]
[REDACTED]
[REDACTED]

At the hearing

- [23] The parties only addressed us on the Hollard/Regent aspect of the transaction, which is the remaining aspect of the transaction. The Commission submitted that the merging parties decided to revise the proposed transaction to address the concerns raised with the MotoVantage/Wesbank aspect of the merger which would have seen Wesbank increasing its already huge influence in the market.

- [24] The Commission also submitted that the revised transaction did not affect its market definition under the old transaction. It was further submitted, that in relation to the current transaction any concerns emanating from the MotoVantage/Wesbank leg of the transaction had been nullified. The proposed distribution agreement between MotoVantage and Imperial post-merger would thus no longer take place and any concerns in relation to that agreement fell away.
- [25] The only concerns that the Commission had with the current transaction was its likely impact on employment, coordinated effects flowing from Hollard having a shareholding in MotoVantage and information exchange as summarised below-

(i) Coordinated effects

The Commission submitted that coordinated effects were still of concern since Hollard has a shareholding in MotoVantage. The Commission further submitted that with Regent moving to Hollard post-merger, and with Regent still underwriting Imperial's VAPs, the Commission was concerned about possible coordinated effects post-merger. This would result in possible information exchange.

(ii) Employment

As mentioned earlier, the Commission was concerned that post-merger 140 jobs were likely to be lost, but that number eventually dropped to 64. The job losses consisted of various skilled levels of the Patterson job grading. The Commission found that the need for retrenching as a result of a duplication of staff positions and the substantial loss of jobs outweighed the potential efficiency gains resulting from the merger.

(iii) Information exchange

The Commission also had concerns about any director sitting on a Hollard or Regent board, who may also possibly sit on a MotoVantage and Imperial board. The Commission submitted that this might be a problem post-merger since such director might be part of the decision making in relation to pricing of VAPs.

Remedies

Employment conditions

- [26] The merging parties had proposed remedies to address the above concerns of the Commission. In relation to the employment concern, the conditions stipulate that the merging parties shall not retrench any employees as a result of the merger for a period of three years from the date of approval of the proposed transaction, with the exception of the "affected employees", which in the conditions are defined as no more than 76 employees identified and employed by Hollard, Regent Insurance and Regent Assurance, falling in various Patterson grades skilled levels. This meant that of the 140 merger specific job losses that the Commission had identified, the merging parties had agreed to save 64.

Information exchange conditions

- [27] In relation to the information exchange concern, although the revised transaction no longer envisaged MotoVantage acquiring the VAPs businesses from Imperial the VAPs will still be underwritten by Regent Insurance.
- [28] The Commission submitted that this was of concern because underwriters still have the power of determining pricing. It would therefore be a problem to have a Regent director sitting on a MotoVantage board, as such director could still be involved in the pricing of VAPs. Hence the Commission submitted that the merging parties must undertake that no director of the Hollard Group and Regent Group will sit on the MotoVantage board or be a member of its executive management team.
- [29] The objective of this condition was to preclude a director on the Hollard or Regent board to influence price making decisions in relation to the VAPs market. To address the Commission's concern even further, the conditions stipulated that although Hollard will still be entitled to appoint a director to the board of MotoVantage, such director would not be involved in the operation and strategy of the VAPs business within the Hollard or Regent Group post-merger.
- [30] To seal this condition even further, the Commission required that such director provide an affidavit confirming that he/she is not involved in the operation and strategy of the VAPs business within the Regent Group and will not share any sensitively competitive information obtained at the MotoVantage board.

Distribution agreement conditions

- [31] In relation to the distribution agreement concern, the Commission submitted that although the distribution agreement between MotoVantage and Imperial had fallen away with the MotoVantage/Wesbank merger falling away, the Commission needed re-assurance that no similar arrangement would take place post-merger.
- [32] To address this, a clause was included in the conditions stipulating that from a period of [REDACTED] from date of implementation of the merger, no such distribution agreement or any arrangement of similar nature would be concluded between the merging parties. When asked during the hearing what is meant by 'similar arrangements', the Commission submitted that this also included cell-captive arrangements,¹ binders and re-insurance agreements.
- [33] However, the merging parties added that this did not include [REDACTED] that is contemplated by the conditions. The [REDACTED] will be between Regent Insurance and Imperial to cater for [REDACTED]. The merging parties thus submitted that the Commission's concerns regarding any ties with MotoVantage had been completely addressed, even [REDACTED]. The merging parties further submitted that the [REDACTED] will cater for both these scenarios but will be entered into between Imperial and Regent, and not MotoVantage.
- [34] Further to this, the merging parties re-assured the Tribunal during the hearing that there was currently no distribution agreement in place, and that any existing distribution agreement between Imperial and MotoVantage is null and void. During the hearing we asked the parties to ensure that this was clearly stipulated in the conditions, which they did. In addition to this, the merging parties re-assured us that any cell-captive arrangements that had been anticipated through the merger between MotoVantage and Imperial will no longer take place.

¹ Cell captive arrangements are known in the markets as agreements wherein retailers, banks and motor manufacturers are allowed to offer insurance products to their clients without setting up an insurance company. Instead of paying premiums to an insurer, the cell owners retain underwriting profits and built capital on their cells.

Structure of the proposed transaction conditions

- [35] The conditions also addressed the structure of the proposed transaction, in that they recorded the fact that the second leg of the transaction will no longer be taking place and that the VAPs business of Regent Insurance will be retained by Imperial.

Undertaking in relation to future business

- [36] [REDACTED]

- [37] [REDACTED]

- [38] [REDACTED]

[REDACTED]

[REDACTED]

Undertakings in relation to CMC

- [39] CMC still raised concerns with the revised transaction. It began by submitting that it had been kept in the dark as to what the latest developments were, in relation to the proposed transaction or how such developments would even impact its position. CMC further submitted there was no need for a clause that speaks to [REDACTED] in relation to the undertakings made by the merging parties to CMC. This, CMC submitted was because the preceding clause had catered for CMC's needs in relation to its relationship with Regent and there was thus no need for the clause that deals with [REDACTED]. In addition to this, CMC submitted that [REDACTED] clause referred to an [REDACTED] [REDACTED] which CMC had no knowledge of, or what it entailed. CMC submitted that it would not be fair on it, to have as part of its undertakings a clause applicable to it, that it has no clue what some elements of it entails.
- [40] The Commission and the merging parties maintained that CMC's concerns were not merger related. As mentioned earlier, CMC was only permitted to intervene in relation to the public interest aspect of the proposed transaction. Its concerns emanated from the MotoVantage leg of the transaction. Although this transaction has since fallen away, it transpired at the hearing that CMC still raised a concern with the fact that [REDACTED]
[REDACTED].
- [41] The main issue of contention between CMC and the merging parties was the contractual arrangements in relation to the Paintech business, wherein [REDACTED] as contemplated in the conditions will affect the future contractual obligations by Regent towards CMC. CMC provides administration services to the RenewTech business which is located in the South African Vehicle Maintenance (Pty) Ltd ("SAVMC") and Paintech.
- [42] The merging parties submitted that there were two reasons why CMC's contentions are unfounded. Firstly, the merging parties explained that the VAPs policies that fall under the Historical Inforce VAPs Insurance Policies or the [REDACTED] should not be of concern as those will still be [REDACTED]
[REDACTED]. Secondly, after the [REDACTED]
[REDACTED] to
[REDACTED] - the impact on CMC

will be negligible because Paintech only comprises 20% of the business of CMC, with RenewTech comprising the other 80%. Post-merger CMC will still render services to RenewTech which will remain with Imperial.

[43] Furthermore, [REDACTED] will provide CMC with ample time to diversify its business elsewhere such that there are no job losses resulting from its discontinuation with the Paintech business. Lastly, the merging parties submitted that any exclusivity that exists in relation to the administration services performed by CMC for the Paintech business, the merging parties had no problem with waiving such exclusivity and include it in the undertakings towards CMC. This would allow CMC to start diversifying its business immediately upon approval of this transaction.

[44] CMC argued that the split in the businesses was closer to 50/50. However the principled argument being put forward by the merging parties was that CMC would still retain the RenewTech business post-merger and would still enjoy the benefit of the [REDACTED], diversify and seek new business.

[45] The merging parties nevertheless decided to make undertakings to CMC that in as far as its contractual arrangement in relation to SAVMC is concerned, these will not be affected and will continue unchanged during all three of the dispensations arising from the proposed transaction, [REDACTED]. The merging parties further submitted that the undertakings towards CMC also had to take into account the fact that the competition authorities are not the only regulators that regulate this category of business, as there is also an arbitration dispute that is yet to be heard between CMC and Regent in relation to the Paintech business.

[46] Based on the submissions made during the hearing we are of the view that the clause that provides for [REDACTED] We agree with the merging parties' submission that CMC has more than enough time to diversify its business to avoid any job losses that might emanate from it possibly losing the Paintech business. We further agree with the merging parties that the merged entity cannot force – nor should they seek to influence - [REDACTED] to utilise CMC as its administrator because the objective of the condition was [REDACTED]. We further agree with the merging parties that the clause that deals with

the [REDACTED] in relation to the undertakings given to CMC is thus necessary to complement the clause that deals with [REDACTED] clause of the conditions.

Conclusion

[47] In light of the parties' submissions at the hearing, and the attached conditions below, we were satisfied that the proposed conditions adequately addressed the concerns raised by the Commission and the Tribunal, and we thus approved the proposed transaction subject to the conditions attached hereto as **Annexure A**.



Ms Yasmin Carrim

21 June 2017

DATE

Ms Mondo Mazwai and Prof. Imraan Valodia concurring

Tribunal Case Manager : Caroline Sserufusa

For the merging parties : Adv. Unterhalter instructed by Bowman Gilfillan and ENS

For the Commission : Nelly Sakata, Daniele Bove, Hugh Dlamini, and Thulani Mandiriza

For the Intervener : Adv. Gotz instructed by Howard Woolf Attorneys

ANNEXURE A

Hollard Holdings (Pty) Ltd and the following target firms:

Regent Insurance Company Limited and Regent Life Assurance Company Limited

CT CASE NUMBER: LM253Mar16

CONFIDENTIAL CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1. **"Acquiring Firm"** means Hollard Holdings;
2. **"Affected Employees"** mean no more than 76 employees (out of a total of 140) identified and employed by Hollard Holdings, Regent Insurance and Regent Assurance falling in Paterson grades Skilled C upper lower D to E as set out in Annexure B to these Conditions;
3. **"AMH"** means Associated Motor Holdings Proprietary Limited and its subsidiaries;
4. **"Anvil"** means Anvil Premium Finance Proprietary Limited;
5. **"Approval Date"** means the date referred to on the Tribunal's Merger Clearance Certificate (Form CT 10);
6. **"CMC"** means Collision Management Centre (Pty) Ltd;
7. **"CMC Agreement"** means the agreement concluded between CMC and the Regent Group on 22 February 2008 together with the addenda thereto concluded on 31 March 2008 and 28 May 2014 respectively;
8. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
9. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
10. **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;

11. **"Competitively Sensitive Non-Public Information"** includes but is not limited to a third party's pricing information and other terms and conditions pertaining to its vehicle and asset finance offering per customer, the make, model, mileage and other particulars of the vehicles financed by a third party, the details of the motor dealership from which the vehicle was purchased, incentive schemes, discounts provided to customers, price increase or price reduction, customer-specific information (including but not limited to sales volumes, sales value, asset finance transactions, name, identity and other particulars of the third party's customers), investment strategies, business across motor dealerships in South Africa, business plans and expansion plans;
12. **"Conditions"** mean these conditions;
13. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
14. **"Exclusive Distribution Agreement"** means the distribution agreement originally entered into between AMH; MotorHappy, F&I Management Solutions, Imperial, Liquid Capital and MotoVantage;
15. **"Future VAPs Policies"** means the policies administered by Imperial and sold at the Imperial Motor Dealerships after the Interim Period;
16. **"Historical Inforce VAPs Insurance Policies"** means the policies sold and administered through the Imperial Group (which includes new policies underwritten by the Regent Group and sold and administered through the Imperial Group up until the day immediately prior to 1 July 2017);
17. **"Hollard Life"** means Hollard Life Assurance Company Limited and its subsidiaries (if any);
18. **"Hollard Holdings"** means Hollard Holdings (Pty) Ltd and its subsidiaries;
19. **"Hollard Insurance"** means The Hollard Insurance Company Limited and its subsidiaries (if any);
20. **"Imperial Group"** means Imperial Holdings Limited (Imperial) and its subsidiaries;
21. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties which will be no later than 1 July 2017;
22. [REDACTED]
23. [REDACTED]
[REDACTED]

- 24. **"Liquid Capital"** means Liquid Capital Proprietary Limited;
- 25. **"LRA"** means the Labour Relations Act 66 of 1995 (as amended);
- 26. **"Maintenance Agreement"** means the agreement concluded between Regent Insurance and CMC on the 28th of May 2013;
- 27. **"MCS"** means Motor Compliance Solutions Proprietary Limited;
- 28. **"Merger"** means the acquisition of control of the Target Firms by Hollard Holdings;
- 29. **"Merging Parties"** mean collectively the Acquiring Firm and the Target Firms;
- 30. **"MotorHappy"** means MotorHappy Proprietary Limited;
- 31. **"MotoVantage"** means MotoVantage Holdings (Pty) Ltd and all firms controlled directly or indirectly by Motovantage, including Engine Room, Motorite, SMART and Streamline;
- 32. **"Imperial Motor Dealerships"** means the motor dealerships owned by the Imperial Group;
- 33. **"Nominee"** means Hollard Fundco (RF) Proprietary Limited;
- 34. **"Paintech"** means Paintech Maintenance Proprietary Limited;
- 35. **"Paterson Grading System"** means the job grading system set out in Annexure B;
- 36. **"Regent Group"** means Regent Insurance and Regent Assurance and their subsidiaries;
- 37. **"Regent Insurance"** means Regent Insurance Company Limited;
- 38. **"Regent Assurance"** means Regent Life Assurance Company Limited;
- 39. **"SAVMC"** means South African Vehicle Maintenance Co (Pty) Ltd;
- 40. **"SAW"** means SA Warranties Proprietary Limited;
- 41. **"Target Firms"** mean Regent Insurance and Regent Assurance;
- 42. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 43. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Competition Tribunal;

44. "VAPs" means motor value-added products, forming part of those non-regulated VAPs and those regulated by applicable Laws in the insurance industry with the benefits regulated and underwritten on a short-term or long-term insurance license;

2. RECORDAL

- 2.1. The Merging Parties and MotoVantage notified the Merger to the Commission on 3 March 2016.

- 2.2. Originally, the transaction notified to the Commission was that (i) Hollard Holdings or its Nominee will acquire control over Regent Insurance and Regent Assurance and (ii) MotoVantage will acquire control over SAW, Paintech, MCS and Anvil, which are entities within the Imperial Group.

- 2.3. MotoVantage will no longer be part of the transaction and, accordingly, the portion of the transaction referred to in paragraph 2.2(ii) hereof will no longer take place. Instead, the Imperial Group will retain control over SAW, Paintech, MCS and Anvil. There will be an internal reorganization within the Imperial Group prior to the implementation of the Merger to give effect to this and these entities will constitute and be part of the future VAPs business within the Imperial Group.

2.4. Effect of the Merger on employment

- 2.4.1. The Merging Parties submitted that the Merger may result in the retrenchment of a maximum of 140 (one hundred and forty) employees.

- 2.4.2. Following its investigation, the Commission found that employees will likely face retrenchments as a direct result of the Merger. Given this, the Commission is concerned about the likely impact of the Merger on employment.

- 2.4.3. The Commission found that the need for retrenching as a result of duplications of employment roles and the substantial loss of jobs did not outweigh the potential efficiency gains resulting from the Merger. Further, the Commission found that the merging parties have not discharged the evidentiary burden and have not demonstrated that such efficiency gains will filter down to consumers. In addition, the Merger creates a substantial negative effect on small business.

- 2.4.4. In order to remedy the public interest concerns arising from the Merger as identified by the Commission, the Commission recommends that the Merger be approved subject to the Conditions set out in paragraph 3.1 and 3.2 below.

- 2.4.5. The Merging Parties are willing to provide the undertakings set out in paragraph 3.1 and 3.2 below in order to finalise this matter and to enable them to proceed with the proposed transaction as expeditiously as possible.

2.5. Effect of the Merger on Competition

- 2.5.1. Following its investigation and during its preparation for the hearing, the Commission raised various competition-related concerns. These are set out in more detail in the Commission's referral and in the report filed on behalf of the Commission by its appointed economic experts, Acacia.
- 2.5.2. In order to remedy the competition-related concerns arising from the Merger as identified by the Commission, the Commission recommends that the Merger be approved subject to the Conditions set out in paragraphs 3.3 to 3.13 and paragraphs 4 and 5 below.
- 2.5.3. The Merging Parties are willing to provide the undertakings set out in paragraphs 3.3 to 3.13 and paragraphs 4 and 5 below in order to finalise this matter and to enable them to proceed with the proposed transaction as expeditiously as possible.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

Save for the conditions related to the definition in paragraph 23, the structure of the proposed transaction set out in paragraph 3.12 below, the undertakings in relation to future business set out in paragraphs 4, 6.5 and 6.8 below, the time period of the Interim Period, the time period of the undertaking in paragraph 3.9, and Annexure C which are confidential, the Conditions set out herein are not confidential.

A EMPLOYMENT CONDITIONS

- 3.1. The Merging Parties shall not retrench any employees as a result of the Merger for a period of three (3) years from the Approval Date, save for the Affected Employees.
- 3.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct or poor performance.

B CONDITIONS RELATING TO INFORMATION EXCHANGE

- 3.3. The Regent Group, Hollard Life and Hollard Insurance shall ensure that none of their directors are appointed to the board of directors of MotoVantage or otherwise be a member of its executive management team. For the avoidance of doubt, Hollard Holdings will be entitled to

appoint a director to the board of directors of MotoVantage who is not involved in the operation and strategy in the VAPs businesses within the Regent Group, Hollard Life and Hollard Insurance. Such director will sign a confidentiality agreement, in terms of which he or she acknowledges that he or she will maintain confidentiality over and use Competitively Sensitive Non-Public Information which he or she comes into contact with as a result of being on the board of MotoVantage for designated purposes only. The designated purposes will not result in a sharing of MotoVantage's information with the Imperial Group.

- 3.4. Condition 3.3 above means that no member of the board of directors of the Regent Group, Hollard Life and Hollard Insurance shall be permitted to attend, contribute to and/or participate in any meetings or any decisions of the MotoVantage board.
- 3.5. All employees of Hollard Life and Hollard Insurance and the Target Firms who obtain lawful access to Competitively Sensitive Non-Public Information of third parties shall retain same in secret other than for use as permitted in agreements entered into with the aforementioned third parties, and as required by law. For the avoidance of doubt, any permitted uses will not result in a sharing of such Competitively Sensitive Non-Public Information with MotoVantage.
- 3.6. The relevant employees within Hollard Insurance, Hollard Life and the Regent Group will sign confidentiality agreements, in terms of which each employee acknowledges that he or she will maintain confidentiality over and use the Competitively Sensitive Non-Public Information only for designated purposes.
- 3.7. There will be separate administration and account management teams within Hollard Insurance and Hollard Life responsible for VAPs policies administered by respectively MotoVantage and the Imperial Group.
- 3.8. The conditions set out in paragraphs 3.3 to 3.7 hereof will remain in force until the Regent Group ceases the underwriting of VAPs policies administered and sold by the Imperial Group.

C CONDITIONS RELATING TO THE EXCLUSIVE DISTRIBUTION AGREEMENT

- 3.9. The Merging Parties confirm that the Exclusive Distribution Agreement is of no force and effect and all the provisions thereof are null and void. For a period of [REDACTED] from the Implementation Date, the Merging Parties confirm that no distribution agreement verbal, written or otherwise and/or similar arrangement (which for the avoidance of doubt is related to the exclusive distribution of the VAPs through the Imperial Group channels and a non-compete in relation thereto outside of the Imperial channels) will be concluded between the Imperial Group and Hollard Holdings/the Regent Group.

D CONDITIONS RELATING TO THE STRUCTURE OF THE PROPOSED TRANSACTION

3.10. As set out in paragraph 2.3. above, the portion of the transaction referred to in paragraph 2.2(ii) will no longer take place.

3.11. SAW, Palntech, MCS and Anvil will be retained within the Imperial Group.

3.12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4. UNDERTAKINGS IN RELATION TO FUTURE BUSINESS

4.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.2. [REDACTED]
[REDACTED]

4.3. [REDACTED]

4.3.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.3.2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.3.3. [REDACTED]
[REDACTED]
[REDACTED]

5. UNDERTAKINGS RELATING TO CMC

5.1. CMC has certain written agreements with the Imperial Group / Regent Insurance, namely :-

5.1.1. The CMC Agreement;

5.1.2. The Maintenance Agreement; and

5.1.3. a claims administration agreement concluded between SAVMC and CMC on the 19th June 2014.

5.2. The Merging Parties undertake that :-

5.2.1. all the agreements referred to in paragraph 5.1 above will remain in force after the Implementation Date. In particular –

5.2.1.1. all the rights and obligations in terms of the agreements referred to in paragraphs 5.1.1 and 5.1.2 above will remain in force as between Regent Insurance and CMC; and

5.2.1.2. all the rights and obligations in terms of the agreements referred to in paragraph 5.1.3 above will remain in force as between SAVMC and CMC.

5.2.2. For the duration of the agreements referred to in paragraph 5.1.1 and 5.1.2 above (being the CMC Agreement and the Maintenance Agreement), and unless and until they are lawfully terminated in accordance with their terms, these agreements will continue to apply to all Paintech VAPS insurance products issued and/or underwritten by, and claims arising against, Regent Insurance.

5.3. Other than as regards the agreement referred to in 5.1.3 above, the obligations in this section are only enforceable in respect of the Historical Inforce VAPs Insurance Policies in relation to Paintech products and for so long as any [REDACTED] in respect of Paintech products are underwritten by Regent Insurance thereafter. Notwithstanding the foregoing it is recorded in the interest of clarity that this condition does not impact any rights or contractual entitlements that may apply in terms of the agreements and are under all circumstances subject to other regulatory requirements, including the Short Term Insurance Act and the Financial Advisory and Intermediary Act and that may apply as a question of South African law.

5.4. Regent Insurance confirms that it will not enforce its rights in relation to any provision in the CMC Agreement and the Maintenance Agreement which prevents CMC from providing administration services as contemplated in the aforementioned agreements to parties other than Regent Insurance from the Approval Date.

6. COMPLIANCE WITH THE CONDITIONS

- 6.1. The Regent Group, Hollard Life and Hollard Insurance shall circulate a copy of the employment Conditions to all employees and/or their respective employee representatives within 5 (five) Days of the Approval Date.
- 6.2. The Merging Parties shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of it becoming effective.
- 6.3. Within a period of 1 month of the Approval Date, the Merging Parties will provide to the Commission copies of the signed agreements giving effect to the Merger, as read with these Conditions.
- 6.4. The Regent Group, Hollard Life and/or Hollard Insurance shall, on an annual basis within 1 month of the anniversary of the Implementation Date, for a period of 3 (three) years, submit a report to the Commission indicating their compliance with respect to conditions 3.1 and 3.2. The report shall indicate, *inter alia*, the number and skills levels (as identified in the Paterson Grading System) of employees retrenched within that period and the reasons for such retrenchments. This report shall be accompanied by an affidavit by a senior representative confirming the accuracy of the report.
- 6.5. [REDACTED]
- 6.6. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of the Conditions may approach the Commission with his or her complaint.
- 6.7. The Imperial Group shall, within 1 month of the 2nd anniversary of the Implementation Date, submit a report to the Commission indicating their compliance with respect to conditions 4.1 and 4.2. This report shall be accompanied by an affidavit by a senior representative confirming the accuracy of the report.
- 6.8. [REDACTED]

- 6.9. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been a breach by the Merging Parties of the Conditions, the breach will be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.
- 6.10. Hollard Holdings shall ensure that its director appointed on the MotoVantage board (as envisaged in paragraph 3.3. above) shall provide an affidavit confirming compliance to paragraph 3.3.
- 6.11. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.
- 6.12. All correspondence in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

7. DURATION OF THE CONDITIONS

The Conditions will automatically terminate after 7 (seven) years from Approval Date or upon fulfilment by the Merging Parties of their obligations contained herein, whichever date is earlier. Notwithstanding this the reporting obligations of the Regent Group, Hollard Life, Hollard Insurance and the Imperial Group contained in clause 6.5 and 6.8 shall remain in force for at least one year after the last expiring policy contemplated in clauses 6.5 and 6.8.

ANNEXURE B**Job profile of the Affected Employees**

Paterson Band	No of Staff per band
Skilled C upper lower D	55
Skilled upper D lower E	15
Skilled E	5
Skilled E	1
Total	76

