

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 28/LM/May02

In the large merger between:

Santam Limited

and

Allianz Risk Transfer Limited

Reasons for Decision

APPROVAL

On 29 May 2002 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Santam Limited and Allianz Risk Transfer Limited in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

1. The acquiring firm is Santam Limited ("Santam"), a short-term insurance company catering to corporate and personal clients.
2. The target firm is Alliance Risk Transfer Limited is a subsidiary of Allianz AG in Germany, Allianz SA Ltd and Alliance Insurance Limited. Allianz AG has 30% while Alliance Insurance has 70% of ART.

The Merger Transaction

3. Santam is acquiring the entire shareholding in and claims against Allianz Risk. Post-merger, Allianz will be run by Santam as a separate legal entity. Santam will manage and conduct Allianz's global accounts that have an influence in South Africa. In other words, Santam will continue to be Allianz's representative for all its business in South Africa.

Rationale for the Transaction

4. Santam wants to its product and service offering, specifically its ART business, in order to be able to offer these types of products to its clients.

Allianz seeks to exit the South African market as part of its international strategy. Santam and Allianz have had a long-standing relationship. The merger provides a means for Santam to acquire a business with an established license and client base.

The relevant product market

5. Both firms operate in the short-term insurance market. Such insurance contracts provide for the indemnification of the insured policy holder in the event of a loss, in return for the payment of a premium.
6. Allianz Risk Transfer provides what are known as Alternative Risk Transfer or “ART” products for large corporates. ART is a specialized form of short term insurance, a non-conventional, more creative and flexible method of financing risk. ¹It essentially provides customized financing of risk exposure for the big corporates and industrial clients, relative to their specific risk requirements and profiles. It is different from traditional short-term insurance in many respects and may comprise more traditional insurance, but also may include new previously non-insurable risks².
7. Santam caters to corporate and individual clients, providing traditional short-term insurance plus a range of tailor-made insurance products, including those for corporate risk management, niche businesses, underwriting and ART. In respect of the latter category of insurance, it however does not provide conduct business as a cell captive insurer.³
8. We accept the contention that the market for ART products is a separate relevant market to that of traditional short-term insurance and that the relevant market is that of the provision of ART products, inasmuch as both parties carry on this activity.
9. The parties and the Commission contended that geographic market is international since a South African customer can turn to an international insurance competitor for its ART business. The parties confirmed at the hearing that in general, insurance business can only be placed with local

¹ It consists of a range of risk-solution models & instruments:

- Self Insurance
- Financial Re-insurance
- Multi-trigger and spread loss covers
- Other hybrids.

² The Commission states that it differs from traditional short-term insurance in other respects too, in that it includes multi-year policies; includes risk transfer of non-insurance risk and provides for various hybrids of traditional insurance. It does, however have similarities with short-term insurance – the essential risk transfer transaction is the same, both regulated under the Short Term Insurance Act and require a 5-year business plan as to how the business will be run.

³ This is one of many methods of underwriting risk. Briefly, cell captive insurers use their client’s own funds to finance solvency requirements, such as retained earnings, issued capital and share premium. Other methods include captive insurers, rent-a-captive.

domiciled insurers, under the supervision of the Financial Services Board (“FSB”). However, it is fairly common for application to be made with the FSB to write business offshore where there is limited insurance and reinsurance capacity in South Africa, provided the application is then approved by a committee. In view of the impact on competition, the Tribunal does not find it necessary to decide this point.

Impact on competition

10. According to figures supplied by the parties, Santam has 7.3% of the domestic ART market and Allianz has 3.2%. Post-merger, Santam will have a combined market share of 10.5% in the national market, which will make it the second largest provider of ART insurance, the largest being Guard Risk, having 50%. Guard Risk is owned by Alexander Forbes. There are in addition approximately 7 cell captive insurers in the domestic market.
11. It seems the major barrier to entry is the capacity of short-term insurers to rely on own funds to meet solvency requirements. They can, by means of being a cell captive insurer, use the client’s funds to finance this, but there are additional administrative requirements placed on these types of insurers.⁴
12. The Tribunal is persuaded that there is sufficient countervailing power in this market to offset any potential price manipulation by the dominant players. The parties’ clients, the consumers of ART, are large multinational corporates, who have the ability to negotiate prices and policy terms with insurers.

Conclusion

The Tribunal endorses the Commission’s finding that this transaction will not substantially lessen or prevent competition in any market. The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns which would alter this conclusion.

N. Manoim

6 June 2002
Date

Concurring: D. H. Lewis , U. Bhoola

⁴ As a cell captive, there are specific registration requirements, for instance, one has to have specific categories of shares available.