

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 84/LM/Oct04

In the matter concerning the large merger between:

Momentum Group Ltd

and

Bonheur 94 General Trading (Pty) Ltd

Reasons

Introduction

1. On 29 April 2005 the Competition Tribunal approved the merger between Momentum Group Ltd and Bonheur 94 General Trading (Pty) Ltd, provided that the merger transaction is the transaction as reflected in the following two agreements:
 1. The Sale of Business Agreement between Medscheme Holdings (Pty) Ltd (of the first part, as seller) and Sovereign Health (Pty) Ltd (of the second part, as purchaser) dated 25 April 2005.
 2. The Sale of Shares Agreement between Medscheme Holdings (Pty) Ltd (of the first part, as seller) and Southern Life Healthcare Holdings (Pty) Ltd (or its nominee) (of the second part, as purchaser) in relation to ordinary shares in the issued share capital of Sovereign Health (Pty) Ltd dated 25 April 2005.
2. The reasons are set out below.

Background

3. The transaction, which the Competition Commission originally filed with the Tribunal on 14 January 2005, involved the establishment of a joint venture between Momentum Group Ltd (“Momentum”) and Medscheme Holdings (Pty) Ltd (“Medscheme”) through the sale of 50% of the issued share capital by Medscheme to Momentum of the business of Sovereign Health (Pty) Ltd (“Sovereign”), a division of Medscheme. To achieve this Medscheme intended to transfer its Sovereign business to Bonheur, a wholly owned subsidiary of Medscheme. Then, in terms of a Sale of Shares agreement, Momentum would purchase 50% of the issued shares in Bonheur from Momentum.
4. The First Rand Group Ltd controls both the acquiring firm Momentum and Discovery Health. Discovery and Medscheme are the two largest administrators of medical schemes, with shares of 22% and 17% respectively. The retention of rivalry between these two administrators is an important concern.
5. During the hearing on 9 February 2005 the Tribunal raised certain concerns that the structural links between Momentum and Discovery on the one hand and Medscheme on the other, as a competitor and joint venture partner, could facilitate the sharing of competitive sensitive information between them. In light of this the Tribunal requested the parties to submit a draft condition that would cure its concerns.
6. The parties, in response to the Tribunal’s request, submitted the following draft condition on 14 February 2005:

For so long as a firm in the Medscheme Group (i.e. Medscheme Ltd or any firm that is controlled by Medscheme Ltd) and a firm in the FirstRand Group (i.e. FirstRand Group Ltd or any firm that is controlled by FirstRand Group Ltd) own shares in Sovereign Health (Pty) Ltd (“Sovereign Health”), no person that is a director or an employee of any firm in the Medscheme group or the FirstRand group shall be appointed to the Board of Directors of Sovereign Health.

7. The Competition Commission, in commenting on the above proposal, indicated that it remained concerned that the proposed condition would delay rather than eliminate the possible sharing of information between the independent directors on the one hand and the parties’ shareholders on the other hand. It therefore proposed, as an alternative, the formation of a “blind trust” whereby Momentum opens an account with an independent investment firm, which then holds and manages Momentum’s

interests in Sovereign on behalf of Momentum. Structurally, Momentum would then operate separately from Sovereign and/or Medscheme, which in the Commission's view would address the post-merger concern.

8. The Tribunal requested the parties to comment on the Commission's proposal. On 22 March 2005 the merging parties informed the Tribunal that they had agreed to restructure the transaction. In terms of the new proposal Momentum will acquire all the issued shares in Bonheur and not only 50% as was originally intended. Momentum, through its subsidiary Southern Life, will thus acquire 100% control over the business of Sovereign Health. Thus Medscheme will post merger have no further interest in Sovereign Health.
9. The concern that the joint venture could serve as an information sharing vehicle between competitors is thus eliminated. The Commission was satisfied that the change to the transaction would eliminate its concerns. It was also satisfied that the transaction, although altered, did not need to be re-notified.

Effect of the transaction on competition

10. Sovereign Health is an administrator of medical aid schemes.¹ Its services entail the managing of financial aspects of medical aid schemes, including contribution collection and adjudication and payments of claims. It also attends to queries by members and medical service providers and handles other aspects related to fund management.
11. Momentum, the acquiring firm, and its sister company Discovery Health both provide healthcare funding products. Momentum also markets and distributes a medical aid scheme called Pulz, for which Sovereign acts as the administrator. Discovery Health is the administrator of its own Discovery medical aid scheme, which accounts for 95% of its business, external medical schemes account for the remaining 5%.²
12. Services overlap in only one product market, the market for medical aid administration, in which both Discovery Health and Sovereign compete nationally.

¹ It provides services to the following open schemes: National Medical Plan, Topmed Medical Scheme, Meridian Health, Pulz and part of Medshield Medical Scheme and to the following closed schemes: Anglo American Corporation Medical Scheme, Bepmed, Midmed, Nampak Group Medical Society, Netcare Medical Scheme, PG Group Medical Scheme and SA Breweries Medical Aid Society.

² The only open scheme that Discovery manages is its own Discovery Medical scheme. The other schemes are all closed schemes, namely Quantum Medical Aid Society, Medisense Medical Scheme, Anglovaal Group Medical Scheme, Retail Medical Scheme, Edcon Medical Aid Scheme, CSIR Medical Scheme, IBM (SA) Medical Aid Society and Southern Sun Medical Aid Scheme.

13. Discovery's medical aid scheme is by far its administrative arm's largest customer. Based on the historical relationship between the administrator and the medical aid scheme, the Commission is of the view that chances are slight that Discovery's trustees would switch administrators.³ The Commission argues that 95% of Discovery's 22% market share is uncontested, with customers highly unlikely to switch when the SSNIP test is applied, leaving Discovery with only 1% market share in the contestable part of the market.⁴ Whether this approach is correct is not something we need to decide.
14. Sovereign Health's market share is 5%. Post-merger the combined entity's market share in the Momentum stable would thus be 6%.
15. However, should one include Discovery's market share of 22%, the First Rand Group's market share would be 28%. Its closest rivals are Medscheme with a market share of 17% and Metropolitan Health with 9%.
16. The merging parties have argued that Momentum and Discovery are managed separately and would have a competitive relationship albeit both are ultimately controlled by First Rand. Although access to their internal strategy documentation bears this out this arrangement represents FirstRand's present business choice. It must not be forgotten that Discovery was once owned by First Rand via Momentum. If First Rand has a change of mind, it could prefer co-operation between its health care interests in the future. We must therefore assess the merger on the assumption that Momentum and Discovery belong to a single economic entity.
17. In assessing the strength of competition in the market we found that there are more than 17 medical scheme administrators that compete in this market, with market shares ranging from 1% to 9%.
18. Secondly, strong countervailing power exists. The trustees of a medical scheme choose the preferred administrator. In terms of the Medical Schemes Act, a medical scheme may, on giving 6 months notice, replace its administrator with another. Since trustees of medical schemes are aware of the Registrar of Medical Schemes' drive to reduce the non-healthcare expenditure of medical schemes they use this as leverage in

³ According to the parties trustees of medical aid schemes ultimately decide on the preferred administrator. In terms of the Medical Schemes Act, medical schemes may change administration and managed care providers on 6 months notice.

⁴ The SSNIP test, also called the hypothetical monopolist test, tests the effect that a small but significant non-transitory increase in price, usually between 5-10%, would have on customers.

negotiating fees with medical scheme administrators.⁵ However, in the event of excessive prices, medical schemes could always self-administer.

19. Finally, barriers to entry are relatively low. Due to the minimal regulation that applies to administrators such as accreditation in terms of the Medical Schemes Act and relatively low sunk costs entry is relatively easy. During the past 3 years eight new competitors entered the market.⁶

20. In light of the above we conclude that the merger is unlikely to substantially prevent or lessen competition.

Public interest issues

21. According to the parties the merger would not result in any retrenchments, since the business of Sovereign will continue to operate as a separate discreet business.

N Manoim

2 June 2005
Date

Concurring: D Lewis and Y Carrim

⁵ According to the parties, the Council's current guidelines provide that administration costs should not exceed 10% of member contributions and there is a great deal of pressure on administrators to bring their fees in line with these guidelines.

⁶ See page 569 of the record.