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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM155Feb20

In the matter between:

AfroCentric Health (RF) (Pty) Ltd	Primary Acquiring Firm
And	
Dental Information Systems (Pty) Ltd	Primary Target Firm

Panel	:	Enver Daniels (Presiding Member)
	:	Andiswa Ndoni (Tribunal Member)
	:	Andreas Wessels (Tribunal Member)
Heard on	:	25 August 2020
Order Issued on	:	26 August 2020
Reasons Issued on	:	28 January 2021

Reasons for Decision

Approval

[1] On 25 August 2020, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving AfroCentric Health (RF) (Pty) Ltd and Dental Information Systems (Pty) Limited.

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

Parties to the proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is AfroCentric Health (RF) (Pty) Ltd ("AfroCentric"). AfroCentric is controlled by ACT Health Care Assets (Pty) Ltd ("ACT Health"). ACT Health is jointly controlled by AfroCentric Investment Corporation Ltd ("AfroCentric Investment") and Sanlam Ltd ("Sanlam").

[4] AfroCentric Investment and Sanlam are listed companies and are not controlled by any single shareholder. Sanlam does not control any firms that could be deemed relevant for the purposes of the competition assessment of the proposed transaction. AfroCentric Investment and its subsidiaries will collectively be referred to as the AfroCentric Group.

[5] The AfroCentric Group is an investment holding company invested in the healthcare sector. It operates through various subsidiaries, providing affordable and quality health administration, health risk management and a range of complementary solutions across the healthcare value chain to medical scheme clients and their members. Of relevance to the competition assessment of the proposed transaction are the activities of the AfroCentric Group as a health administrator and managed health care organisation.

Primary target firm

[6] The primary target firm is Dental Information System Holdings (Pty) Ltd ("DENIS"). DENIS is controlled by EOH Abantu (Pty) Ltd ("EOH Abantu"), which is in turn controlled by EOH Holdings Ltd ("EOH Holdings"). EOH Holdings is a listed company and as such it is not controlled by a single shareholder.

[7] DENIS controls Dental Information Systems (Pty) Ltd ("Dental Systems"), which in turn controls the DENIS Insurance Administrators (Pty) Ltd, Riverbend Tarde and Investment 38 (Pty) Ltd and DENIS Underwriting (Pty) Ltd.

[8] DENIS is a registered managed care organisation specialising in managing dental benefits. DENIS offers a set of dental benefits, managed by a rules-based management system, which enables dental costs to be effectively managed to the benefit of patients, the medical schemes, and dentists alike.

[9] DENIS and its subsidiaries will collectively be referred to as the DENIS Group.

Proposed transaction and rationale

[10] In terms of the Sale of Shares Agreement, the Afrocentric Group intends to acquire 100% of the issued share capital of the DENIS Group from EOH Abantu. On completion of the proposed transaction, the AfroCentric Group will own and control the DENIS Group. The DENIS Group will operate as a separate legal entity within the AfroCentric Group.

[11] The AfroCentric Group submitted that the proposed transaction will enable them to [redacted] The acquisition will give the Group, especially its subsidiaries like Medscheme, the capability to provide their clients with comprehensive dental management solutions, which it is not currently in a position to do.

[12] DENIS Group submitted that the proposed transaction would benefit its business, as it would be aligned with the AfroCentric Group whose primary focus is in the healthcare sector. Furthermore, the Seller EOH believes that the DENIS Group and its employees will benefit from being part of the AfroCentric Group, a black-owned, diversified group of companies with a strong presence in the healthcare industry.

Impact on competition

[13] The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the provision of managed healthcare services, specifically in the provision of dental managed healthcare services. The Commission also found that the merging parties offer complementary services. The activities of the merging parties complement each other in the following ways:

[13.1] Firstly, the managed dental care services offered by DENIS forms part of the broad range of managed health care services which AfroCentric offers to medical schemes; and

[13.2] Secondly, the managed dental care services offered by DENIS can be sold together with the administration services which AfroCentric as a licenced administrator offers to medical schemes.

[14] In light of the above, the Commission assessed the effect of the proposed transaction in the following markets:

[14.1] The national narrow market for the provision of managed dental healthcare services;

[14.2] The national broad market for the provision of managed healthcare services; and

[14.3] The national market for the provision of medical scheme administration services.

[15] [redacted]

[16] In the national broad market for the provision of managed healthcare services, the Commission found the merged entity will have an estimated market share of 36%, [redacted] The AfroCentric Group has an estimated market share of 31%, whereas DENIS has an estimated market share of 5%. The Commission notes that the merged entity will continue to face competition from several players such as Discovery Health, Universal Health, Old Mutual Healthcare, Metropolitan Health Risk Management and Providence Healthcare Risk Managers, amongst others.

[17] In the national market for the provision of medical scheme administration services, the Commission found that AfroCentric Group is a significant player with an estimated market share of 32%. The AfroCentric Group competes with the likes of Discovery Health (32%), Metropolitan Health (17%), and MMI Health amongst others. The target firm is however not active in this market. As such, there is no horizontal overlap between the activities of the merging parties in this regard. However, given the complementary nature of the merging parties' services, the Commission also considered this market for the purposes of its portfolio effects assessment.

Theories of harm:

[18] In light of the above, the Commission identified the following as the relevant theories of harm:

[18.1] Unilateral effects: the Commission considered whether or not AfroCentric will be able to unilaterally increase its prices in the provision of managed dental care services, being the market where the activities of the merging parties overlap horizontally and the parties have a high combined market share of more than 70%.

[18.2] The second theory considered is portfolio effects and/or if foreclosure concerns are likely to result from the proposed merger due to the complementarity of the merging parties' activities.

[19] In conducting the unilateral effects assessment, the Commission considered whether or not the merging parties are close competitors in the market for the provision of managed dental care services. The Commission found that the AfroCentric Group and DENIS are not close competitors as the Acquiring Group does not focus on the dental managed care services. This was also confirmed by customers and competitors contacted by the Commission. According to customers of the merging parties, the closest competitor to DENIS is Dental Risk Company ("DRC"). Polmed, a customer of DENIS, indicated that it is only aware of two companies which provide managed dental healthcare services, namely, DENIS and DRC. However, through its investigation, the Commission established that there are other players active in the market such as MMI Dental Risk Management, Supplementary Health Services, Discovery Health, Universal Health, Agility Health, Metropolitan Health Risk Management and Knowledge Objects Healthcare amongst others.

[20] In light of the above, the Commission concluded that the proposed transaction is unlikely to result in significant merger-specific unilateral effects in the market for the provision of managed dental care services.

[21] In assessing the portfolio effects, the Commission considered whether AfroCentric will be able to leverage the dominance of DENIS in the provision of managed dental care services to the broader market for the provision of managed care services; and secondly, whether, as a direct result of the proposed transaction, AfroCentric will be able to leverage the dominance of DENIS to dominate the market for the provision of administration services to medical aid schemes.

[22] In assessing whether the proposed merger will enable the AfroCentric Group to leverage the dominant position of DENIS in the narrow market for managed dental healthcare services in the broader market for managed healthcare services, the Commission found that the AfroCentric Group focusses on three managed care sub-markets being (i) hospital benefit management; (ii) pharmacy benefit management; and (iii) disease benefit management. The DENIS Group only provides dental benefit management services. Thus, as a direct result of the proposed merger, the AfroCentric Group will focus and specialise on 4 (four) sub-markets out of 7 (seven) sub-markets of broad managed health care services.

[23] The Commission furthermore assessed whether the merging parties will have the ability or incentive to leverage the dominant position of DENIS in the narrow market for the provision of managed dental care services and in the broader market for managed care services. The Commission also considered the potential effects of such a leveraging strategy on competition. With respect to ability, the Commission found that the merging parties will have the ability, as the AfroCentric Group is one of the large players in the broad market for managed health care services and DENIS is a dominant player in the narrow market for managed dental care services. With respect to incentives, the Commission concluded that the Afrocentric Group would have incentives to leverage the dominance of DENIS, because the services are complementary and are offered to similar customers. The Commission submitted that this is also reflected in the rationale for the proposed transaction and some internal documents provided by the parties indicating that the merger will help the

AfroCentric Group to enhance the benefits it offers to medical scheme members.

[24] With respect to effects and the presence of alternative players, the Commission found that there are other players in the market that can replicate the offering of the merged entity should they engage in any anticompetitive bundling strategy. These include amongst others Discovery Health; MMI Group (including Metropolitan Health and Momentum Health), Universal Health, and Sechaba Medical Solutions. These players can provide different types of managed care services that the AfroCentric Group will be able to offer post-merger.

[25] [redacted]

[26] In light of the above, the Commission concluded that the proposed merger is unlikely to result in significant portfolio effects that could substantially foreclose the merging parties' rivals as there are other players in the market who are able to replicate any possible bundling by AfroCentric Group. Furthermore, the Commission found that the medical schemes' current way of contracting will constrain the parties from engaging in any anticompetitive bundling or foreclosure strategy.

[27] In assessing whether as a direct result of the proposed merger, the AfroCentric Group will be able to leverage the dominant position of DENIS in the narrow market for managed dental care services in the market for the provision of administration services, the Commission considered whether the proposed

merger will result in AfroCentric getting significant additional clients and whether the AfroCentric Group is likely to combine its administration services with managed dental care to obtain or enhance its dominance in the administration market. The Commission also assessed whether there are other players active in market for the provision of administration services which could offer a full suite of services like AfroCentric which will be able to constrain the merged entity from monopolising the entire value chain.

[28] With respect to AfroCentric obtaining significant additional clients from the transaction, the Commission finds that currently [redacted] These medical aid schemes are currently administered by the AfroCentric Group. As such, the merger is unlikely to enhance the position of the Afrocentric Group in the administration market, as DENIS' main clients are already administered by AfroCentric.

[29] Thus, the Commission found that the proposed merger does not introduce significant new clients to AfroCentric. If AfroCentric wished to administer other clients of DENIS, it will have to compete with the current administrators in the market. The Commission is of the view that the proposed merger is unlikely to substantially increase the market position of AfroCentric by adding significant new medical aid schemes.

[30] With respect to whether the AfroCentric Group will have the ability to combine its administration services with managed dental care to obtain or enhance its position in the administration market, the Commission finds that the merging parties will have the ability to engage in a leverage strategy, given DENIS' dominant position in the narrow market for the provision of dental managed care services. However, the merged entity will be constrained by medical aid schemes. Medical aid schemes determine the services they require from managed care providers and appoint different service providers through a tender process.

[31] With respect to incentives, the Commission notes that the Acquiring Group's rationale for the merger included that [redacted]'. Considering the above, the Commission is of the view that there are incentives for the AfroCentric Group to leverage the dominance of DENIS in the medical scheme administration market.

[32] In relation to the effects, the Commission found that there are at least 4 (four) players active across all levels of the value chain. These include AfroCentric, MMI Group, Discovery, and Universal Health amongst others. Discovery, the largest player in the provision of medical aid scheme administration services, is also active across the value chain with its own in-house managed healthcare services and managed dental healthcare services.

[33] The Commission concluded that the proposed merger will not result in AfroCentric being able to offer a unique product to medical aid schemes, as it will continue to face competition from other players that are able to replicate any possible offering by AfroCentric to medical aid schemes.

[34] In light of the above, the Commission is of the view that the proposed merger is unlikely to result in substantial portfolio effects as the merging parties will continue to face competition from players active at both the administration level and managed care services level. Furthermore, any leveraging strategy will be constrained by medical aid schemes which have the power to appoint managed care services separately from administration services. In addition, the Commission notes that membership of DENIS' network is voluntary and non-exclusive. DENIS' membership currently amounts to approximately 1900 dental practices out of a market of 2500. The benefits to members include assured scheme member visits, transparent benefit sets and claims settlement terms, as well as improved ease of practice management.

Third party concerns:

[35] The Commission also received various concerns from third parties which can be summarised as follows:

[35.1] Post-merger, the AfroCentric Group will use DENIS' relationships with other medical aid schemes to grow its presence in the industry. In this regard, the Commission found that [redacted] These clients are currently administrated by the AfroCentric Group.

[35.2] Post-merger, the AfroCentric Group will potentially control prices and member volumes. The Commission's investigation found that by acquiring DENIS, it is unlikely that the AfroCentric Group will obtain market power in the broad market for the provision of managed care services that will result in any substantial unilateral effects. The Commission found that there are other players in the market which can mimic any possible bundling by AfroCentric. Furthermore, the Commission found that DENIS' network contracts are non-exclusive. This allows practitioners to retain the option to join other Managed Care Organisation ("MCO") networks while remaining part of the DENIS' network.

[35.3] Post-merger, DENIS will have access to its competitors' pricing structures. The merging parties confirmed that as an administrator they get access to the medical aid schemes' contracts with service providers to effect payments. The Commission noted that there are internal restrictions that apply even to entities within the same group of companies wherein an administrator is prohibited from sharing client information. The Commission submits that the administrators within the Afrocentric Group, such as Medscheme, would be prohibited from sharing the information of DENIS' competitors with other entities in the AfroCentric Group. Further, the Commission submits that the merging parties highlighted that as DENIS will operate as a distinct and separate entity within the AfroCentric Group, it will not have access to the confidential information of the clients, sub-contractors or other managed care services providers used by other entities within the AfroCentric Group given the stringent confidentiality provisions in place.

[35.4] GEMS raised a concern that the merger will increase AfroCentric's bargaining power. The Commission found that the acquisition of DENIS by the AfroCentric Group is unlikely to give the AfroCentric Group significant market power or bargaining power as medical schemes will still have the ability to switch to other players active in the market. Furthermore, the Commission's investigation found that big medical aid schemes such as GEMS enjoy some countervailing power. The merger is unlikely to negatively affect this power.

[35.5] The Commission also received a concern that the merger creates a conflict of interest in that the merged entity will be able to award dental managed care contracts to itself. The Commission found that the contracting relationship is between the managed care service provider and the medical scheme, rather than between the managed care service provider and the administrator of the medical scheme. As such, the AfroCentric Group as an administrator does not have the powers to appoint a managed care service provider; it is the medical aid scheme that appoints a service provider.

[35.6] Another concern that the Commission received was that the remuneration of dentists will continue to decline. The Commission is of the view that this concern is not merger specific. Furthermore, the Commission noted that the decline in remuneration was mainly as a result of the responsibility given to MCOs as appointed by medical schemes to contain schemes' costs while ensuring that practitioners provide members with the highest quality and most clinically appropriate healthcare services. To achieve this, the

Commission notes that MCOs negotiate value-based remuneration with healthcare service providers. MCOs play an important role in monitoring claims by members and practitioners to prevent overcharging, clinically inappropriate services being provided and improper billing practices. In addition, the Commission considered the Health Market Inquiry's (HMI) findings in the case Study of DPA vs DENIS. The HMI case study found that:

"remuneration is monitored by the CMS, profit and losses disclosed by scheme annual returns and audited financial statements of the MCOs provides an approximation for the reasonableness of the fees charged. Further, during accreditation or review, the CMS Accreditation Unit compares fees charged by different MCOs offering similar services and will request detailed explanations from MCOs who charge higher prices to justify the difference."

[36] The Dental Professionals Association ("DPA") applied to and was granted the right to intervene on a limited basis. The Tribunal issued a directive, directing the DPA to participate in the merger proceedings by making written submissions prior to the hearing, and oral submissions at the hearing.

[37] DPA is a not-for-profit organisation, which represents the interest of its members who are not only predominantly black, but who work mainly in disadvantaged, rural and peri-urban areas, although some of its members also practice in the urban areas.

[38] According to the DPA, the merger raises great public interest issues, which the Commission, according to the DPA, did not consider broadly.

[39] In terms of the Tribunal's directive, the DPA addressed the following issues:

[39.1] Whether the proposed merger is likely to substantially prevent or lessen competition;

[39.2] The levels of concentration, and history of collusion in the market;

[39.3] The ability of small and medium businesses ("SMEs") or firms controlled or owned by historically disadvantaged persons ("HDPs") to effectively enter into, participate in, or expand within the market; and

[39.4] The promotion of a greater spread of ownership, in particular to increase the levels of ownership by HDPs and workers in firms in the market

[40] According to the DPA, the private healthcare market has 81 medical schemes, consisting of 21 open and 60 restricted schemes. In the restricted medical scheme market, GEMS had a market share of 46%, POLMED 13% and the remaining medical schemes each have a market share of less than 6%.

[41] DPA members were exposed mainly to GEMS, POLMED and Bonitas. Two administrators, Discovery Health and Medscheme Holdings (Pty) Ltd control 40% and 39% of the market respectively while MMI Health has a market share of 5%. The 14 self-administered schemes collectively account for 10% of the market.

[42] The dental care market is divided between DENIS and DRC. DENIS, with the exception of its contract with GEMS, operates in the open schemes market, while DRC services the restricted scheme market and the low benefit options offered by Discovery Health. Of importance is the DPA's statement that Medscheme has the capacity to provide dental managed care and it does so for the majority of the medical schemes it administers such as POLMED and is thus a competitor to DENIS and DRC. The merger will remove the benefits of competition, according to the DPA.

[43] DENIS and Medscheme are competitors in the managed care administration from which the DPA members derive their livelihoods. According to the DPA,

DENIS has been "stripping" benefits of the consumers under GEMS and Bonitas, but its members are able to derive benefits from claims administered by Medscheme such as POLMED.

[44] The DPA fears that post the merger, DENIS and Medscheme will cooperate and DENIS will overtake Medscheme which will lead to the eradication of SME's and the HDI's who are members of the DPA, because a merger between DENIS and Medscheme will remove competition in the dental managed care administration completely.

[45] According to the DPA, the remuneration of dentists by medical schemes continues to decline and will decline even further. This decline the DPA attributes solely to the dental managed care administrators. This will be exacerbated should DENIS take over the Medscheme dental managed care administration.

[46] The DPA also submits that the merger will not facilitate an increase in the ownership of businesses by HDI's. The DPA states that the various issues it has with DENIS are merger specific, as the DENIS Network is a Preferred Provider Network (PPN). Membership of this network guarantees the members work, but on terms stipulated by DENIS.

[47] The merging parties point out that membership of the scheme is purely voluntary and practitioners may leave the network at any time. The Network has been rejected by the DPA members because of the tariff structure which DPA members regard as being too low. DPA members believe that the Network serves to capture the market by making itself attractive to potential clients, the medical schemes.

[48] The real issue appears to be the tariffs paid to the dentists. Put differently, the fees they generate when doing dental work for clients who belong to DENIS administered medical schemes are, according to the DPA, too low.

[49] The Commission has investigated the merger thoroughly in accordance with its mandate and obligations in terms of the Act. It has paid particularly close attention to the submissions made by third parties, including the DPA.

[50] We have considered the submissions made by the DPA. Although the DPA appear to have complaints relating to the treatment meted out to their members by DENIS, those complaints are either not merger specific or fall outside of the factors which we must consider in terms of section 12A of the Act.

[51] We have also considered the submissions of and the recommendations made by the Commission in relation to the third-party concerns and the merger and conclude that those submissions and recommendations have been carefully made in accordance with the provisions of the Act.

[52] The DPA is, understandably concerned about the issues which impact on its members and should raise those with the appropriate bodies.

[53] Given all the issues mentioned herein and, in its recommendations, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. We concur with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[54] The merging parties confirmed that the proposed transaction will not have a negative impact on employment as it will not result in job losses. However, the Commission found that the AfroCentric Group had engaged in pre-merger operational retrenchments of approximately [redacted] employees. The Commission found that these retrenchments are unlikely to be merger specific as the retrenchments are as a result o[redacted]. The Commission concluded that the proposed transaction will not result in any job losses and there are no other public interest concerns.

[55] We concur with the Commission that the proposed transaction raises no public interest concerns.

Conclusion

[56] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

Enver Daniels

____________________ 28 January 2021

Mr Enver Daniels **DATE**

Ms Andiswa Ndoni and Mr Andreas Wessels concurring

Tribunal Case Manager	: Ms Busisiwe Masina
For the Merging Parties	: Adv J Wilson SC instructed by Ndzabandzaba Attorneys and Webber Wentzel Attorneys
For the Commission	: Mr Themba Mahlangu and Mr Billy Mabatamela
Intervenor	: Adv Puseletso Swele instructed Kunene Ramapala Inc