



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM039Jun16

In the matter between:

BONITAS MEDICAL FUND

Primary Acquiring Firm

and

LIBERTY MEDICAL SCHEME

Primary Target Firm

Panel : Medi Mokuena (Presiding Member)
: Anton Roskam (Tribunal Member)
: Andiswa Ndoni (Tribunal Member)
Heard on : 24 August 2016
Order Issued on : 24 August 2016
Reasons Issued on : 15 September 2016

Reasons for Decision

Approval

- [1] On 24 August 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between the Bonitas Medical Fund and Liberty Medical Scheme.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Bonitas Medical Fund (“Bonitas”), a medical scheme duly registered with the Council for Medical Schemes (“CMS”) in terms of section 24(1) of the Medical Schemes Act 131 of 1998 (“the Medical Schemes Act”).
- [4] Bonitas is active in the medical schemes industry and operates as an open medical scheme. Bonitas is neither directly nor indirectly controlled by another firm. Further, Bonitas does not directly or indirectly control any firm but is managed by a board of trustees.

Primary target firm

- [5] The primary target firm is Liberty Medical Scheme (“Liberty”), a medical scheme duly registered with the CMS in terms of section 24(1) of the Medical Schemes Act.
- [6] Liberty is registered with the Council for Medical Schemes (“CMS”) and is neither directly nor indirectly controlled by another firm. Liberty does not directly or indirectly control any firm but is managed by a board of trustees.

Proposed transaction and rationale

- [7] The merging parties intend to amalgamate their businesses to form one medical scheme. Liberty’s medical scheme and all its assets will be transferred to Bonitas. The amalgamated scheme will continue under the name “Bonitas Medical Fund”. The board of trustees will consist of 8 of the existing Bonitas trustees and 3 of the Liberty trustees.
- [8] The proposed amalgamation is also subject to the approval of the Registrar of the Medical Schemes. Further, there is no purchase consideration.
- [9] Bonitas submits that the proposed transaction is meant to enhance the combined entity’s competitive position in the relevant market, thereby increasing its bargaining power with suppliers. The amalgamation will ensure that Liberty members will become members of a large, sustainable medical scheme (Bonitas), whereas an amalgamation with Liberty will further enhance the Bonitas brand by allowing it exposure to a different market segment than Bonitas’ traditional catchment market.

[10] Liberty submits that the purpose for the amalgamation is to secure the continued cover provided by Liberty to its members and their beneficiaries by: (i) mitigating the risk of insolvency (ii) stabilising and improving the membership base through: (a) total membership and (b) the age profile of members and beneficiaries.

Impact on competition

[11] The Competition Commission (“Commission”) found that the activities of the merging parties overlap horizontally in the provision of medical aid services to individuals and companies.

[12] Further, the activities of the merging parties overlap with regard to the administration and managed care services. However, these services are not carried out by the merging parties themselves, but are provided by third parties contracted to the merging parties. None of the third party administrators are directly related to any of the merging parties except through contracts.

[13] The merging parties submitted that both parties are active as open medical schemes and the Commission, thereafter found it prudent to analyse the relevant market at a narrow level, for open medical schemes, and at a broad level, for open and closed medical schemes.¹

[14] The merging parties submit that in the narrow view of the relevant market for open schemes, Bonitas has a market share of 13% and Liberty 2.5%. The amalgamated entity will, post-merger, have a market share of 15.5% with a minor 2.5% increment, resulting in a relatively small change to the structure of the market.

[15] If the broader market for open and closed schemes is looked at the amalgamated entities market share decreases to 9% with Liberty only accounting for 1.4%. Discovery and GEMS account for approximately 50% of the relevant market in the narrow and broad markets, respectively. The merging parties further submit that they

¹The Commission engaged CMS who confirmed that medical cover is provided within two-subsectors, namely: restricted schemes and open schemes. Membership in closed schemes is restricted to professionals and companies in sectors of the economy. Open schemes are open to private individuals, and companies that elect to purchase cover on behalf of their employees in open schemes. Therefore the products offered in open and restricted scheme environments are not close substitutes, rendering the open and restricted environments as separate markets. See also, Transcript page 5, lines 12-21 where Mr Gerhard van Emmenis (the chief operating officer of Bonitas) and Mr Andrew Edwards (the principal officer of Liberty) both confirmed that the respective schemes both operate within the open market.

will face effective competitors in both the open and closed schemes markets, and such competitors will remain as constraints post-merger.

- [16] The Commission found that the merging parties do not provide products and/or services to each other. Therefore no vertical foreclosure effects arise from the proposed transaction.
- [17] The Commission received concerns from the CMS regarding the proposed transaction, however these concerns specifically relate to the merging parties conduct. The concerns appear to be non-merger specific and largely appear to be beyond the Commission's jurisdiction.
- [18] The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [19] We agree with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [20] The merging parties submit that there is no effect with respect to employment on either Bonitas or Liberty. The primary acquiring firm will become the successor-in-title of the primary target firm. Therefore all the employees of the target firm will be transferred in terms of section 197 of the Labour Relations Act.
- [21] The Commission contacted both employee representatives at Liberty and Bonitas, who confirmed receipt of the merger filing. Neither employees of Liberty nor of Bonitas raised concerns about the transaction.²
- [22] Accordingly, the proposed transaction will not have adverse effect on employment, because retrenchments will not result from the proposed transaction.
- [23] The proposed transaction further raises no other public interest concerns.

Conclusion

- [24] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no

² Merger Record *inter alia* page 39.

public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Ms Medi Mokuena
Ms Medi Mokuena

15 September 2016
DATE

Mr Anton Roskam and Ms Andiswa Ndoni concurring

Case Manager:	Kameel Pancham
For the merging parties:	Aneesa <u>Mahomed</u> and Zelmaine Shaw of Gildenhuis <u>Malatji</u> Inc.
For the Commission:	Thelani Luthuli