COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM235Mar17

In the matter between:

GUARDRISK INSURANCE COMPANY LIMITED	Acquiring Firm
And	
RMB STRUCTURED INSURANCE LIMITED'S PERSONAL LINES, COMMERCIAL LINES AND SMART DEVICE INSURANCE BUSINESS MANAGED BY CIB PROPRIETARY LIMITED	Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 31 May 2017
Order Issued on	: 31 May 2017
Reasons Issued on	: 22 June 2017

REASONS FOR DECISION

APPROVAL

[1] On 31 May 2017, the Competition Tribunal approved the large merger between Guardrisk Insurance Company Limited ("Guardrisk") and RMB Structured Insurance Limited's ("RMBSI") Personal Lines, Commercial Lines And Smart Device Insurance Business Managed By CIB Proprietary Limited ("CIB").

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

[3] The primary acquiring firm is Guardrisk, a public company wholly incorporated in accordance with the laws of the Republic of South Africa. Guardrisk is a wholly-owned subsidiary of Guardrisk Group (Pty) Ltd which is, in turn, a wholly listed subsidiary of MMI Strategic Investments (Pty) Ltd, ultimately controlled by MMI Holdings Limited (collectively "the MMI Group"), a public company listed on the Johannesburg Securities Exchange Limited ("JSE"). Guardrisk does not directly or indirectly control any firms.

[4] The MMI group develops, markets, and distributes a variety of short term and long term insurance products and offers asset management, savings, investment, healthcare administration, short term insurance, and employee benefits cover services as well as providing long term credit life products in South Africa.

[5] Within the MMI group, Guardrisk provides long term alternative risk transfer insurance products to corporates and retirement funds to cover post-retirement healthcare liabilities and to self-insure employee risk benefits.[1]

Primary Target Firm

[6] The target businesses are RMBSI's personal lines, commercial lines, and smart device insurance policies, all of which are managed by CIB. The insurance lines pre-merger are directly controlled by RMBSI which is the underwriter of all policies in the target businesses. RMBSI is controlled by Swanvest 120 (Pty) Ltd which is, in turn, wholly controlled by Santam Life Limited, a firm listed on the JSE.

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[1] In this regard, Guardrisk is short-term and long-term insurer registered in terms of the Short Term Insurance Act, no. 53 of 1998(as amended) ("STIA").

[7] The target businesses are administered by CIB in its capacity as an underwriting manager as defined by the South African Short Term Insurance Act[2] ("STIA") and in accordance with a binder agreement entered into between CIB and RMBSI. CIB manages the target business through brokers and mainly relate to property and motor risks. Mr. Joubert, for Guardrisk, indicated at the merger hearing that CIB owns the relationships with brokers and via such they place business to the insurer or policy holder.[3]

PROPOSED TRANSACTION AND RATIONALE

[8] In terms of the short-term insurance business agreement entered into between Guardrisk, RMBSI, and CIB, Guardrisk intends to purchase the RMBSI insurance business managed by CIB. The transfer is subject to approval in terms of s37 of the STIA. Pursuant to the implementation of the transaction, the target businesses will be directly controlled by the primary acquiring firm but will continue to be managed by CIB in accordance with a binder agreement entered into between CIB and Guardrisk.

[9] At the merger hearing on 31 May 2017, the representative for the merging parties indicated that the transaction amounts to no more than a changing of the licensee in that the insurance license holder moves from RMBSI's book to Guardrisk's.[4]

[10] In terms of rationale, the merging parties submitted that the business strategies of CIB and RMBSI had diverged since the inception of the binder relationship them. Given the change in strategic views, the two parties mutually agreed that the best path forward was for CIB to find an alternative insurer, which it did in Guardrisk.[5]

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[2] Act no. 53 of 1998 (as amended).
[3] Tribunal Transcript, 31 May 2017, page 4, lines 7-9.
[4] *Ibid*, page 6, lines 8-11.
[5] Competitiveness Report, page 3, Merger Record, page 55; Tribunal Transcript, 31 May 2017, page 7, lines 19-25.

RELEVANT MARKETS AND IMPACT ON COMPETITION

[11] On the Commission's analysis, the merging parties are both active in the broad market for the provision of short-term insurance products as comprised of a number of narrower markets.[6]

[12] In addressing the horizontal overlap in the broad market for the provision of short term insurance products, the Commission submitted that the merged entity would possess approximately 8.2% of the market share with a market share accretion of less than 0.5%. The merging parties submitted that there are a number of strong competitors in the market and that the switching costs are insignificant due to the fact that legislation facilitates the ability of customers to easily switch insurance products. These factors strongly indicate that the post-merger entity would be constrained from exercising market power.

[13] In none of the narrower markets surveyed by the Commission did the market share accretion exceed 3.5%.[7] In only two of such markets would the merged entity possess a market share percentage of above 20% and in both of such markets, the high market share was existent pre-merger.[8]

[14] The Commission concludes in its report that the proposed transaction is unlikely to give rise to unilateral effects in the broad market for the provision of short-term insurance products or any of the narrower markets assessed. We see no reason to differ from this conclusion.

[15] The merger does not present a threat of preventing or lessening competition in any of the identified markets.

[6] These markets are: The narrow market for short term: property; transport; motor; accident and health; liability; and miscellaneous insurance. Additionally the Commission assessed the narrow markets for commercial short-term insurance products and the narrow market for personal short-term insurance products.
[7] Competition Commission report, page 17.
[8] *Ibid*, para 37.

PUBLIC INTEREST

[16] The merging parties confirmed that the proposed transaction will have no effect on employment owing to the fact that the target businesses, as insurance lines, have no employees.

[17] Addressing the potential impact of the merger on consumers, Mr. Joubert stated at the merger hearing that the merger would not result in any change to the terms of existing policyholders' policies and, in the unlikely event that he was wrong, legislation requires that no policy holders are placed in a "worse off" position.[9]

CONCLUSION

[18] The merger is unlikely to substantially prevent or lessen competition in the provision of individual long term credit life insurance products in South Africa and the market for the provision of corporate group long-term credit life insurance products in South Africa.

[19] The merger additionally does not raise any public interest concerns as the target business are lines of insurance and thus have no employees.

[20] Accordingly we approved the transaction without conditions.

Mr. N Manoim — **22 June 2017**
Date

Mr E Daniels and Prof I Valodia concurring

Tribunal Researcher:	Alistair Dey-Van Heerden
For the Merging Parties:	Ryan Goodman and Minenhle Sambo of EnsAfrica
For the Commission:	Boitumelo Makgoba

[9] Tribunal Transcript, 31 May 2017, page 5, lines 13-18.