



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM223Nov17

In the matter between:

**THE UNEMPLOYMENT INSURANCE FUND ACTING
THROUGH ITS AUTHORISED REPRESENTATIVE THE
PUBLIC INVESTMENT CORPORATION SOC LIMITED**

Acquiring Firm

And

**MATSEKE MEDICAL CONSULTANTS CC; MATSEKE
MEDICAL INVESTMENTS (PTY) LTD; FRIEDSHELF 41 (PTY)
LTD AND CLINIX HEALTH GROUP LIMITED**

Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 13 December 2017
Order Issued on	: 13 December 2017
Reasons Issued on	: 15 December 2017

Reasons for Decision

APPROVAL

- [1] On 13 December 2017 the Competition Tribunal ("Tribunal") approved the proposed transaction between the Unemployment Insurance Fund ("UIF") acting through its authorised representative: Public Investment Corporation SOC Limited ("PIC") and Matseke Medical Consultants CC, Matseke Medical Investments Pty Ltd and Clinix Health Group ("CHG").
- [2] The reasons for approving the proposed transaction follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

- [3] The primary acquiring firm is the UIF acting through its authorize representative, the PIC. The PIC is a state-owned company controlled by the South African Government which acts as an asset management and investment company for various entities including the UIF, the Government Employees Pension Fund ("GEPF") and the Compensation Fund ("CF").
- [4] The UIF is a public entity established in terms of section 4(1) of the Unemployment Insurance Act, 63 of 2001. The UIF falls under the management purview of the Department of Labour and serves as an administrator of the contributions made by employees under the Unemployment Insurance Contributions Act, 4 of 2002.
- [5] The PIC has interests in a number of entities which operate in an array of industries. In the healthcare industry, the PIC has interests in three major competitors of CHG, being Netcare Limited, the Life Healthcare Group and the Mediclinic Group. In addition, the PIC, through GEPF, holds interests in the Kiat and Botshilu Private Hospitals (situated in Nelspruit, Mpumalanga and Soshanguve, Gauteng respectively). Furthermore, through CF, the PIC has a stake in the Modderfontein Private Hospital ("Modderfontein") situated in Modderfontein, Johannesburg) and the Razorite Healthcare Fund.
- [6] The UIF has investments in various entities which operate in a number of industries, but does not have any interests in companies operating in the healthcare industry.

Primary Target Firm

- [7] The primary target firm is CHG,¹ a firm incorporated in accordance with the laws of the Republic of South Africa and controlled by Friedshelf 41 (Pty) Ltd ("Friedshelf").² Friedshelf's largest shareholder is the KOP Share Trust which controls 49.77% of the firm. The second largest shareholder in CHG is Matseke Medical Investments (Pty) Ltd ("MMI"), an investment holding company which controls 35.11% of CHG. MMI is, in turn, wholly controlled by a second investment holding company, Matseke Medical Consultants CC ("MMC"). MMI, MMC, and the KOP Share Trust are all wholly owned and controlled by Dr Khamane Obed Peter Matseke.
- [8] CHG's core business consists of seven hospitals located across the Gauteng and North-West provinces. The hospitals are built in or around lower income areas and target specifically lower income earners, providing healthcare services to previously underserved and low-income communities.

PROPOSED TRANSACTION AND RATIONALE

- [9] The proposed transaction involves the acquiring firm acquiring a 32% shareholding in CHG. The shareholding will be comprised of a 12% indirect shareholding and a 20% direct shareholding.
- [10] The indirect shareholding in CHG will be acquired by the acquisition of 51% of the shares in MMC, which will confer control over MMC and, in turn, MMI to the PIC. The control over MMI will result in the acquiring firm commanding an 18% share of Friedshelf which would translate to a 15% shareholding in CHG.
- [11] The direct shareholding will be the acquired by the acquiring firm in a new share subscription transaction. The consequence of the share subscription will be the direct acquisition of a 20% shareholding in CHG by the primary acquiring firm

¹ The other two firms listed as target firms (MMI and MMC) are investment holding companies, relevant to the transaction only insofar as they possess a shareholding in CHG.

² Friedshelf controls an 83% share of CHG.

as well as the dilution of the 15% shareholding in CHG controlled by the primary acquiring firm through MMC to 12%.

- [12] Post transaction, the UIF through the PIC will control 32% of the shareholding CHG. The shareholding will afford the primary acquiring firm the ability to nominate two out of a maximum of ten directors to CHG, as well as other minority shareholder protections such as the ability to withhold the approval of the annual budget, the approval of the development of any hospital, and any expenditure exceeding 10% of the allocated amount in the approved budget.
- [13] In terms of rationale, the acquiring firms submit that the proposed transaction is aligned with the PIC's developmental investment mandate to invest in crucial sectors which are essential to unlocking economic potential whilst presenting valuable social returns of the economy. It also submits that the transaction presents an opportunity for the UIF to invest in the healthcare sector to enhance the B-BBEE participation in the key economic sector.
- [14] CHG submits that it has been experiencing financial difficulties and the funding to be provided by the PIC and UIF would financially stabilize CHG, allowing it to expand its operations.

RELEVANT MARKETS AND IMPACT ON COMPETITION

- [15] The Commission submits in its recommendations that the transaction does not result in any horizontal overlaps because the PIC, UIF, GEPP and CF do not have any controlling interests in businesses providing healthcare services in South Africa. In addition, pre-transaction, there is no business relationship between the merging parties.
- [16] The Commission indicated that the PIC's shareholding in other private hospitals raises concerns related to potential exchange of competitively sensitive information.
- [17] The Commission assessed the PIC's shareholding in Netcare, Life Healthcare and Mediclinic private hospitals. It determined that the PIC's shareholding in

such entities does not provide it with any form of control over the firms and concluded that the proposed transaction would be unlikely to create a platform for the exchange of competitively sensitive information.

- [18] The Commission assessed the PIC, through GEPF's shareholding in the Kiaat and Botshilu private hospitals. It found that the hospitals in question do not compete with any of the hospitals controlled by CHG owing to their geographic placement. The Commission thus concluded that it was unlikely that the proposed transaction would create an incentive for the exchange of competitively sensitive information.
- [19] The Commission assessed the PIC, through CF's shareholding in Modderfontein. It found that whilst the Solomon Stix Morewa Memorial Hospital ("Stix Morewa"), controlled pre-transaction by CHG, could be considered a competitor to Modderfontein because of its geographic proximity, Stix Morewa was excluded from the transaction by the merging parties.³ The Commission concluded that the proposed transaction would not therefore, present any incentive or platform for information sharing.
- [20] Because of the lack of any horizontal overlap and the absence of a concern relating to information sharing, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. We see no reason to differ.

PUBLIC INTEREST

- [21] The Merging parties submitted that the transaction was structured in such a way that the underlying business of the target firm would remain unchanged and consequently there would be no adverse effect on employment and, in particular, no merger specific job losses or retrenchments would take place. The merging parties also assured the Tribunal that while Stix Morewa was

³ The merging parties submitted that it was anticipated that KOPM Investments (Pty) Ltd would acquire CHG's share in the operational entity controlling Stix Morewa.

excluded from the transaction, no retrenchments would take place there as a result of the merger.

[22] The proposed transaction further raises no other public interest concerns.

CONCLUSION

[23] 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 public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



Ms Yasmin Carrim

15 December 2017

Date

Ms Andiswa Ndoni and Mrs Medi Mokuena concurring.

Tribunal Researcher: Alistair Dey-Van Heerden

For the merging parties: Natalie von Ey of CDH

For the Commission: Zanele Hadebe