



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM156Nov20**

In the matter between

**DOTSURE LTD**

Primary Acquiring Firm

And

**HOLLARD HOLDINGS (PTY) LTD**

Primary Target Firm

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Panel : Y Carrim (Presiding Member)  
: M Mazwai (Tribunal Member)  
: E Daniels (Tribunal Member)  
Heard on : 12 February 2021  
Order Issued on : 12 February 2021  
Reasons Issued on : 10 March 2021

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### REASONS FOR DECISION

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#### APPROVAL

- [1] On 12 February 2021, the Competition Tribunal ("Tribunal") approved a large merger between Dotsure Ltd and Hollard Holdings (Pty) Ltd with conditions.
- [2] The reasons for the conditional approval follow.

## **PARTIES TO THE PROPOSED TRANSACTION**

- [3] The first primary acquiring firm is Dotsure Ltd (“Dotsure”). The second primary acquiring firm is Hollard Holdings (Pty) Ltd (“Hollard”).
- [4] Dotsure is a wholly owned subsidiary of Badger Holdings (Pty) Ltd (“Badger”). Badger is controlled by Badger International (Pty) Ltd (“Badger International”), which holds ██████% of the issued shares in Badger. The remaining shares in Badger (██████%) are held by Hollard. The Badger Group (i.e. Badger International and all the firms which it directly and indirectly controls) is an insurance provider in South Africa.
- [5] Hollard is controlled by Pickent Holdings (Pty) Ltd. The Hollard Group (i.e. Hollard and all firms which it directly and indirectly controls) is also an insurance provider. The Hollard Group additionally provides a range of investment products to a diverse customer base.

## **PROPOSED TRANSACTION AND RATIONALE**

- [6] The proposed transaction involves Dotsure acquiring control over Hollard’s direct personal lines insurance business (“the target business”) currently underwritten by a subsidiary of Hollard.<sup>1</sup>
- [7] As part of the consideration for Dotsure’s acquisition of the target business, the proposed transaction also involves Hollard acquiring a 43% shareholding in Badger International. Post-merger, Hollard will exercise joint control over Badger International, and Dotsure will control the target business.<sup>2</sup>

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<sup>1</sup> The Hollard Insurance Company Ltd.

<sup>2</sup> A number of internal restructuring steps will take place pursuant to the proposed transaction. See record pages █████ and █████.

## RELEVANT MARKETS AND COMPETITION ANALYSIS

- [8] The proposed transaction presents both horizontal and vertical overlaps. The horizontal overlaps arise because both merging parties offer services in short-term (non-life) and long-term (life) insurance in South Africa.
- [9] The following relevant markets were identified by the Competition Commission (“Commission”) and estimated post-merger market shares<sup>3</sup> and accretion were calculated.

Relevant national market	Merged entity's market share	Accretion
<b>Long-term (life) insurance</b>		
The <i>broader</i> market for the provision of long-term insurance policies nationally	1.3%	0.1%
The <i>narrow</i> markets for the national provision of:		
Assistance (funeral) insurance	20.1%	0.1%
Disability insurance	1.3%	< 0.1%
Life insurance	1.5%	< 0.1%
<b>Short-term (non-life) insurance</b>		
The <i>broad</i> market for the provision of short-term insurance policies nationally	10%	0.5%
The <i>narrow</i> markets for the national provision of:		
Property insurance	8.6%	0.1%
Transport insurance	13.7%	< 0.1%
Motor insurance	12.8%	1.2%
Accident & health insurance	8.9%	< 0.1%
Guarantee insurance	4.3%	< 0.1%
Liability insurance	4.5%	0.1%
Engineering insurance	12.6%	< 0.1%
Miscellaneous insurance	3.2%	< 0.1%

- [10] From the above table, it is evident to us that the proposed transaction is unlikely to substantially prevent or lessen competition in any of these long-term and short-term insurance markets due to (i) the low levels of accretion in each market, and (ii) the merging parties would continue to face competition from various players in each market.

<sup>3</sup> To estimate the market shares, the Commission used the insurance data contained in the 2017 insurance tables published by the Prudential Authority of the Reserve Bank of South Africa. The Commission noted that both the merging parties and their competitors submitted that the structure of the market had not changed significantly since this 2017 data.

- [11] The vertical overlaps arise because the Badger Group provides limited re-insurance and brokerage services to insurers within the Hollard Group. The proposed transaction was however unlikely to result in input foreclosure because (i) Hollard has been the only firm that Dotsure has provided re-insurance services to in the last three years, and (ii) Dotsure's estimated market share in the re-insurance market is less than 0.1%.
- [12] Customer foreclosure concerns were unlikely to arise because Hollard is a relatively small player in the downstream short-term insurance market with a market share of approximately 10%.

#### *Views of third parties*

- [13] This transaction requires the approval of the Financial Sector Conduct Authority ("FSCA"), a conduct regulator that assesses the potential impact of the transfer of policies from one insurer to the other, to ensure that it does not lead to any unfair outcomes to policyholders. At the time when the Commission filed its recommendation with the Tribunal, the FSCA had not yet commenced its assessment of the proposed transaction.<sup>4</sup>
- [14] Our consideration of the proposed transaction from a competition law point of view is not however dependent on the commencement or the outcome of the FSCA process.
- [15] No other third parties raised concerns regarding the effects of the proposed transaction on competition.

#### **PUBLIC INTEREST**

- [16] The merging parties had informed the Commission at the time of filing that the merger would result in the retrenchment of approximately 37 employees. During the Tribunal proceedings, the merging parties estimated that this number would be 28 employees.<sup>5</sup>

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<sup>4</sup> See Commission's recommendation at page 27.

<sup>5</sup> See Transcript page 5 paras 16-17.

- [17] The merging parties further submitted that approximately 70 employees of the target business might also be required to relocate from the Johannesburg office to either the George or Springs offices of the Badger Group but that they were willing to cover the relocation costs of these employees.<sup>6</sup>
- [18] The Department of Trade, Industry and Competition (“DTIC”) filed submissions with the Commission stating that the proposed merger could not be justified on public interest grounds in terms of section 12A(3)(b) of the Competition Act No. 89 of 1998 which requires the competition authorities to consider the impact of the merger on employment. The DTIC submitted that if the Tribunal considers approving this transaction, the following mitigating measures should be imposed on the merging parties:
- 18.1 No retrenchments for up to 24 months;
  - 18.2 After this 24 month period, if retrenchments are still necessary, the merging parties should offer suitable employment opportunities within the broader Hollard and Badger Group of companies, as opposed to retrenchments;
  - 18.3 Notwithstanding the aforementioned, voluntary severance packages (“VSPs”) must be offered to workers who are unable, or unwilling to relocate, before retrenchments are considered;
  - 18.4 The merging parties should consider setting up a worker’s shareholding structure that would give workers an opportunity to benefit and participate in the ultimate ownership of the merged entity.
- [19] The merging parties subsequently agreed to the above conditions.
- [20] During the Tribunal’s proceedings, it became evident that the target business’ employees were still concerned about the increased travelling involved with a possible move to the Springs office during the 24-month period. When this matter was canvassed with the merging parties by the Tribunal, the parties committed to consider providing travel assistance or permitting work from home

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<sup>6</sup> The merging parties subsequently agreed to a condition to cover the relocation costs of employees as per clause 4 of the conditions.

for these transferring employees on a case by case basis for a maximum of 24 months.

## **CONCLUSION**

[21] 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, any public interest concerns raised by the merger could be cured by the conditions agreed to by the merging parties.

[22] Accordingly, we approved the proposed transaction subject to the conditions attached as Annexure A.

Signed by: Yasmin Tayob Carrim  
Signed at: 2021-03-10 15:00:32 +02:00  
Reason: I approve this document

*Yasmin Tayob Carrim*

**10 March 2021**

**Date**

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**Ms. Yasmin Carrim**

**Ms. M Mazwai and Mr E Daniels concurring**

Tribunal Case Managers: P Kumbirai and M Tshabalala

For the Merging Parties: D Dingley and B Masango of Webber Wentzel  
Attorneys

For the Commission: B Ntshingila and T Mahlangu

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**CONDITIONS**

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**DEFINITIONS**

1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning: –
  - 1.1 “Acquiring Firm” means Dotsure Limited;
  - 1.2 “Affected employees” means employees of the Merging Parties in South Africa who may be retrenched as a result of the Merger;
  - 1.3 “Approval Date” means the date on which the Merger is approved by the Tribunal and as set out in the Tribunal’s clearance certificate;
  - 1.4 “Acquiring Group” means the Badger Group;
  - 1.5 “Badger Group” means Badger International and all firms which it directly and indirectly controls;
  - 1.6 “Commission” means the Competition Commission of South Africa;
  - 1.7 “Competition Act” means the Competition Act, No. 89 of 1998, as amended;
  - 1.8 “Conditions” means the conditions set out herein;
  - 1.9 “Days” means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
  - 1.10 “Dotsure” means Dotsure Limited;

- 1.11 **“Implementation Date” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;**
- 1.12 **“LRA” means the Labour Relations Act 66 of 1995, as amended;**
- 1.13 **“Merger” means the acquisition of control by the Acquiring Firm over the Target Firm;**
- 1.14 **“Merging Parties” means the Acquiring Firm and the Target Firm;**
- 1.15 **“Relocation Costs” means the costs related to the relocation of a relocating employee in terms of clause 3.1 below and his/her immediate dependent family which includes only:**
- 1.15.1 the cost of up to 2 (two) return air tickets and up to 3 (three) days full board and lodging for the relocating employee and one other person being a spouse or partner to visit George in preparation for the relocation;
- 1.15.2 transport of the relocating employee's reasonable furniture and household goods to George from the relocating employee's primary residence in Gauteng (**“the primary residence”**) limited to a maximum of two vehicles;
- 1.15.3 storage of the relocating employee's reasonable furniture and household goods from the primary residence for up to one month from the date on which the relocating employee is required to report for duty in George (**“the relocation date”**);
- 1.15.4 insurance of the relocating employee's reasonable furniture and household goods (for full replacement value) while in transit and storage as provided for in clauses 1.15.2 and 1.15.3. above;
- 1.15.5 transport for the relocating employee and dependents from Gauteng to George by road or air at the Merging Parties' discretion;
- 1.15.6 accommodation (full board and lodging) for the relocating employee and dependents in Gauteng for up to three days prior to the relocation date;
- 1.15.7 accommodation for the relocating employee and dependents in George for up to one month after the relocation date;



- 1.15.8 subject to the relocating employee selling the primary residence and purchasing a new primary residence in George within three months of the relocation date, transfer fees to attorneys, commissions to realtors and the costs of raising a new bond;
- 1.15.9 subject to the relocating employee selling the primary residence and purchasing a new primary residence in George within three months of the relocation date, the lower of the two mortgage bond costs where the transfer period results in bonds being payable on both the primary residence and the new primary residence purchased in George;
- 1.15.10 costs directly arising from a breach of any lease, where the relocating employee is renting accommodation. These are limited to the cost of the lease (for up to three months) and the cost of advertising for a new tenant (if the employee's lease agreement requires this); and
- 1.15.11 costs, where requiring the assistance of a third party service provider, will be calculated in the sole discretion of the Merging Parties with reference to three written cost estimates obtained by the relocating employee from reputable service providers.
- 1.16 **"Target Firm" means Hollard's direct, personal lines, insurance business, which business is currently underwritten by The Hollard Insurance Company Limited;**
- 1.17 **"Tribunal" means the Competition Tribunal of South Africa.**
- 1.18 **"VSP(s)" means Voluntary Severance Package(s)**

## **2. EMPLOYMENT CONDITIONS**

- 2.1. The Merging Parties shall not retrench or relocate to George, Western Cape (unless an employee waives their relocation related right) any employee in South Africa as a result of the Merger for a period of 24 (twenty-four) months from the Implementation Date.

- 2.2. For the sake of clarity, retrenchments for purposes of clause 2.1 above will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- 2.3. Should the need to retrench employees arise post the 24 (twenty-four) month period contemplated in clause 2.1, the Merging Parties shall for a further period of 24 (twenty-four) months give preference to any affected employees in relation to any available vacancies that may arise within any wholly owned subsidiaries and/or divisions that are operationally under the control of the Badger and Hollard Groups provided they have the requisite qualifications, skills, know-how and experience.
- 2.4. To the extent that it is reasonably practical and commercially viable, the Merging Parties undertake to provide VSPs to the affected employees that are unable to relocate post the 24 (twenty-four) month period contemplated in clause 2.1. The Merging Parties shall, subject to compliance with the LRA, offer VSPs to the affected employees prior to making a final determination of the employees to be retrenched.

### **3. CONDITION RELATING TO THE EXPENSE OF RELOCATION COSTS AND TRAVEL ASSISTANCE**

- 3.1. The Merging Parties will cover the relocation costs of all the employees that might be required to move from the Gauteng province to George, Western Cape.
- 3.2. In the event that the relocating employee resigns and / or leaves the merged entity within 12 (twelve) months of the relocation date, he/she will be held personally responsible for the outstanding portion of the relocation expenses. (i.e. if the employee only works for 10 (ten) of the 12 (twelve) months, the

merged entity will recover the proportionate amount of the total moving cost by deducting it from his/her final salary payment).

- 3.3. The Merging Parties will in exceptional circumstances (based on operational requirements, the business plan and relative to the rest of the transferring employees) consider providing travel assistance or permit work from home arrangements to transferring employees on a case by case basis that will be moving to the Springs office post the implementation of the merger for a maximum period of 24 (twenty-four) months.

#### **4. CONDITION ON THE ESTABLISHMENT OF AN EMPLOYEE SHARE SCHEME**

- 4.1. The Merging Parties and the Commission also agreed to a condition obligating the Merging Parties to consider setting up an employment share scheme within 5 (five) years after the Implementation date. In this regard, the Merging Parties commit to assessing the viability of establishing a share scheme that will give workers an opportunity to benefit and participate in the ultimate ownership of the merged entity within 5 (five) years from the implementation date of the Proposed Transaction.

#### **5. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 5.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of it becoming effective.
- 5.2. The Merging Parties shall each circulate a copy of the Conditions to their employees in South Africa, the relevant trade unions and employee representatives within 5 (five) Days of the Approval Date.
- 5.3. As proof of compliance thereof, the Chief Executive Officer of Dotsure, on behalf of the merged entity, shall within 10 (ten) Days of circulating the Conditions, submit an affidavit to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees, the relevant trade unions and employee representatives.

- 5.4. Any employee, relevant trade union or employee representative of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.
- 5.5. The Merging Parties shall, on the fifth anniversary of the Implementation Date, communicate to the Commission whether the assessment on the viability of establishing a share scheme as indicated in clause 4.1 has been conducted and, if so, the outcome of the said assessment.
- 5.6. As part of their reporting, the Merging Parties should submit a detailed report explaining the factors considered in reaching the outcome outlined in clause 5.5 above.

## **6. BREACH**

- 6.1. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules For the Conduct of Proceedings in the Tribunal.

## **7. VARIATION**

- 7.1. The Merging Parties or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

## **8. GENERAL**

- 8.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).