



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM010Apr23

In the matter between:

Old Mutual Funeral Services (Pty) Ltd

Primary Acquiring Firm

And

Two Mountains Underwriters (Pty) Ltd, Two
Mountains Burial Services (Pty) Ltd and Two
Mountains Financial Services (Pty) Ltd

Primary Target Firms

Panel : J Wilson (Presiding Member)
: AW Wessels (Tribunal Panel Member)
: T Vilakazi (Tribunal Panel Member)
Heard on : 30 June 2023
Decided on : 3 July 2023

Order

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by:Jerome Wilson
Signed at:2023-07-03 19:22:14 +02:00
Reason:Witnessing Jerome Wilson

Jerome Wilson

Presiding Member
Adv. Jerome Wilson SC

3 July 2023

Date

Concurring: Mr Andreas Wessels and Dr. Thando Vilakazi



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 3 July 2023

To : Bowmans Attorneys

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comtrib.co.za

Case Number: LM010Apr23

Old Mutual Funeral Services (Pty) Ltd And Two Mountains Underwriters (Pty) Ltd, Two Mountains Burial Services (Pty) Ltd and Two Mountains Financial Services (Pty) Ltd

You applied to the Competition Commission on **06 April 2023** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

Tebofo Mphahlele

ANNEXURE A

OLD MUTUAL FUNERAL SERVICES PROPRIETARY LIMITED

and

TWO MOUNTAINS UNDERWRITERS PROPRIETARY LIMITED, TWO MOUNTAINS BURIAL SERVICES PROPRIETARY LIMITED AND TWO MOUNTAINS FINANCIAL SERVICES PROPRIETARY LIMITED

CASE NUMBER: LM010Apr23

CONDITIONS

1. DEFINITIONS

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
- 1.1.1. **“Acquiring Firm”** means Old Mutual Funeral Services Proprietary Limited;
 - 1.1.2. **“Acquiring Group”** means Old Mutual Limited together with all firms forming part of the Old Mutual group of companies;
 - 1.1.3. **“Approval Date”** means the date referred to on the Tribunal’s merger Clearance Certificate (Notice CT10) in terms of the Competition Act;
 - 1.1.4. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.5. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission.
 - 1.1.6. **“Competition Act”** means the Competition Act 89 of 1998, as amended;
 - 1.1.7. **“Conditions”** means these conditions, and "Condition" means, as the context requires, any one of them;
 - 1.1.8. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

- 1.1.9. **“Historically disadvantaged persons”** means persons as defined in section 3(2) of the Competition Act;
- 1.1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.11. **“Merger”** means the acquisition of sole control of the Target Firms by the Acquiring Firm;
- 1.1.12. **“Merging Parties”** means the Acquiring Firm and the Target Firms;
- 1.1.13. **“Moratorium Period”** means 36 months from the Implementation Date and includes the period between the Approval Date and the Implementation Date;
- 1.1.14. **“Relevant Internal Human Capital Policies”** means the human capital policies of the Acquiring Group which are applicable to the Target Firms, including those relating to (i) remuneration, (ii) medical aid cover, (iii) learning, development and training, and (iv) other benefits (e.g., leave entitlements, and wellness and reward benefits);
- 1.1.15. **“South Africa”** means the Republic of South Africa;
- 1.1.16. **“SMME”** means a small, medium, or micro enterprise as contemplated in the National Small Enterprise Act, No. 102 of 1996;
- 1.1.17. **“Target Firms”** means (i) Two Mountains Underwriters Proprietary Limited, (ii) Two Mountains Burial Services Proprietary Limited and (iii) Two Mountains Financial Services Proprietary Limited;
- 1.1.18. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.19. **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal.

CONDITIONS

2. Employment

- 2.1. The Merging Parties shall not retrench any employee as a result of the Merger, for the duration of the Moratorium Period.
- 2.2. For avoidance of doubt, Merger-specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 66 of 1995; (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.

3. Benefits alignment

- 3.1. The Target Firms are to introduce medical aid cover in line with the policies of the Acquiring Firm for employees of the Target Firms within [REDACTED] of the Implementation Date.
- 3.2. The Relevant Internal Human Capital Policies of the Target Firms shall be aligned with those of the Acquiring Group within [REDACTED] of the Implementation Date.

4. SMME Support

- 4.1. In order to support SMMEs in the funeral services sector supply chain, particularly those owned by historically disadvantaged persons, the Target Firms shall, over a period of [REDACTED] from the Implementation Date, procure at least [REDACTED] of the goods and services required for their businesses from any such local SMMEs, on commercially reasonable terms.

5. Target Firms' Expansion

- 5.1. The Target Firms commit to investing [REDACTED] in capital expenditure in relation to the Target Firms' facilities and operations over a period of [REDACTED] from the Implementation Date.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 6.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 6.2. The Target Firms shall circulate a copy of the Conditions to all their respective employees and employee representatives within 5 (five) Days of the Approval Date.
- 6.3. As proof of compliance with clause 6.2, the Target Firms shall within 30 (thirty) Days of circulating the Conditions, submit to the Commission an affidavit deposed to by a senior official of the Target Firms, attesting to the circulation of the Conditions and providing the necessary documentary evidence.
- 6.4. The Target Firms shall, on the first to the third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 2.
- 6.5. The Target Firms shall, on the first anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 3.1.

- 6.6. The Target Firms shall, on the first to the third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 3.2.
- 6.7. The Target Firms shall, on the first to the third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 4.1.
- 6.8. The Target Firms shall, on the first to the fifth anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 5.1.
- 6.9. Each report submitted in terms of paragraphs 6.4 to 6.8 shall be accompanied by an affidavit deposed to by a senior official of the Target Firms, confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 6.10. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

7. APPARENT BREACH

- 7.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

8. VARIATION

- 8.1. The Merger Parties and/or the Commission may at any time, and on good cause shown, apply to the Tribunal for any of the Conditions to be lifted, revised or amended.

9. GENERAL

- 9.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.