



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM078Aug22**

In the matter between:

**Berkshire Hathaway Inc**

Acquiring Firm

and

**Alleghany Corporation**

Target Firm

Panel : Yasmin Carrim (Presiding Member)  
: Andiswa Ndoni (Tribunal Panel Member)  
: Imraan Valodia (Tribunal Panel Member)

Heard on : 21 September 2022

Order issued on : 21 September 2022

Reasons issued on : 22 September 2022

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### REASONS FOR DECISION

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#### Approval

- [1] On 21 September 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein Berkshire Hathaway Inc. (“Berkshire”), through O&M Acquisition Corp. (“Merger Sub”), intends to acquire 100% of the outstanding voting securities of Alleghany Corporation (“Alleghany”). Upon implementation of the proposed transaction, Berkshire will acquire sole control over Alleghany as envisaged by section 12(2) of the Competition Act 89 of 1998, as amended.

## **Parties to the transaction and their activities**

### *Primary acquiring firm*

- [2] The primary acquiring firm is Berkshire Hathaway Inc. (“Berkshire”), a holding company incorporated in accordance with the laws of the State of Delaware, United States of America (USA).
- [3] Berkshire is not directly or indirectly controlled by any person or firm.
- [4] Berkshire controls the following firms in South Africa: Duracell South Africa Proprietary Limited, FlightSafety International South Africa Limited, General Reinsurance Africa Limited, GRSA Services Proprietary Limited, Iscar South Africa Proprietary Limited, Lubrizol South Africa Proprietary Limited, MiTek Industries South Africa Proprietary Limited, Richline SA Proprietary Limited and TaeguTec South Africa Proprietary Limited.
- [5] All firms directly and indirectly controlled by Berkshire are collectively referred to as the “Acquiring Group”.
- [6] The Acquiring Group is involved in the insurance and reinsurance business, a freight rail transportation business and a group of utility and energy generation and distribution businesses.

### *Primary target firm*

- [7] The primary target firm is Alleghany Corporation (“Alleghany”), a company incorporated in accordance with the laws of the State of Delaware, United States of America (USA).
- [8] Alleghany is not directly or indirectly controlled by any person or firm.
- [9] Alleghany<sup>1</sup> controls the following firms outside of South Africa: Jazwares, Linesight, Transatlantic Reinsurance Company and TransRe London Ltd.
- [10] All firms directly and indirectly controlled by Alleghany are collectively referred to as the “Target Firm”.
- [11] The Target Firm’s activities in South Africa include (i) the provision of non-life reinsurance, (ii) the provision of professional construction consultancy services; and (iii) the sale of toys through distributors.

## **Proposed transaction and rationale**

### *Transaction*

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<sup>1</sup> Alleghany does not directly or indirectly control any firms in South Africa.

[12] In terms of the proposed transaction, Berkshire through O&M Acquisition Corp intends to acquire 100% of the outstanding voting securities of Alleghany. Upon implementation of the proposed transaction, Berkshire will exercise sole control over Alleghany, as envisaged by section 12(2)(a) of the Competition Act 89 of 1998, as amended.

### *Rationale*

[13] The acquiring and target firms submit that they are pursuing the proposed transaction as they believe that there is a strong strategic fit between their two businesses. They have a similar investment philosophy and largely complementary businesses.

### **Relevant market and impact on competition**

[14] The Competition Commission (“the Commission”) considered the activities of the merging parties and found that the proposed transaction gives rise to a horizontal overlap in the supply of reinsurance, specifically in the supply of non-life reinsurance.

[15] The Commission found that the merging parties would have a combined market share in the range of [3-6] % post-merger with a market accretion in the range of [0-2] % in the broad market for the supply of reinsurance globally.

[16] The merged entity would have a combined market share in the range of [6-10] % post-merger in the narrow market for the global supply of non-life reinsurance.

[17] Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

[18] When assessing the proposed transaction, the Tribunal did not find any evidence suggesting that that the relevant market should be broader than the one defined above.

### *Relevant counterfactual*

[19] The Tribunal assessed the prospects for competition with the proposed transaction against the competitive status quo without the proposed transaction. Based on the above evidence, it concluded that there are no competitive concerns raised.

[20] No third parties raised concerns regarding the effects of the proposed transaction on competition.

### **Public interest**

#### *Effect on employment*

[21] The Commission engaged with the merging parties who submitted that the proposed transaction will not give rise to any retrenchments in South Africa since the proposed transaction is occurring outside of South Africa.

*Effect on the spread of ownership*

[22] The Commission engaged the merging parties on the manner in which the proposed transaction promotes a greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market in terms of Section 12A (3)e of the Competition Act.

[23] The merging parties submitted that since Alleghany does not directly or indirectly control any firms in South Africa, there are no firms in South Africa in which HDPs or Broad-Based Black Economic Empowerment (B-BBEE) shareholding could be held.

[24] The Commission found that the proposed transaction raised no further public interest concerns.

**Conclusion**

[25] Considering the above, The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approve the proposed transaction unconditionally.

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**Ms Yasmin Carrim**

**22 September 2022**  
**Date**

**Concurring: Ms Andiswa Ndoni and Prof. Imraan Valodia**

Tribunal case manager : Baneng Naape

For the merging parties : Tamara Dini and Kayla Abrahams of Bowmans Law

For the Commission : Nomthandazo Mndaweni