COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM190MAR22

In the matter between:

Sanlam Investment Holdings (Pty) Ltd (And its Subsidiaries)	**Primary Acquiring Firms**
and	
The Asset Management Business of Absa Group Limited	**Primary Target Firm**

Panel	:	I Valodia (Presiding Member)
	:	A Ndoni (Tribunal Member)
	:	F Tregenna (Tribunal Member)
Heard on	:	21 July 2022
Order issued on	:	21 July 2022
Reasons issued on	:	25 July 2022

REASONS FOR DECISION

[1] On 21 July 2022, the Tribunal conditionally approved the large merger in which Sanlam Investment Holdings (Pty) Ltd ("SIH") (and its subsidiaries) intends to acquire The Asset Management Business of Absa Group ("Absa Group"). In exchange, Absa Financial Services Limited ("AFS"), as subsidiary of Absa Group will acquire a minority shareholding in SIH. Post-merger, The Asset Management Business of Absa Group will be controlled by SIH.[1]

[2] SIH and its subsidiaries are incorporated in terms of the laws of South Africa and are controlled by SIH Capital Holdings (Pty) Ltd ("Sanlam Capital Holdings"). Sanlam Capital Holdings is ultimately controlled by Sanlam Limited ("Sanlam"). Sanlam is a public company listed on the Johannesburg Stock

[1] Merger Recommendation, p4 of 39, para [1].

Exchange, A2X and the Namibian stock exchanges. Sanlam operates through several subsidiaries, associated companies, and joint ventures. Relevant to the proposed transaction are the activities of SIH, which provides asset management services throughout South Africa. Sanlam and all its subsidiaries will collectively be referred to as the Sanlam Group or the Acquiring Group".

[3] The Asset Management Business of Absa Group comprises traditional products and asset classes such as money market, equity, bonds, absolute return and balance fund type of products, conducted through Absa Asset Management, Absa Alternative Asset Management, The AMM Business, Absa Fund Managers, the EFT Business.[2]

Competition Assessment

Market definition: relevant product market

[4] According to the merging parties, the relevant market for the proposed transaction is the broad or general market for asset management services. The merging parties relied on South African[3] and international[4] case precedents.

[5] In assessing the relevant product market for the proposed transaction, the Commission relied on the Tribunal's decision between *Capitalworks Atlanta GP Proprietary Limited and Peregrine Holdings Limited* ("*Capitalworks*") [5], where it accepted the market definition of a broad market for asset management services. Therefore, it assessed the broad market for asset management services.

[6] When considering the proposed transaction, the Tribunal did not find any evidence suggesting that the relevant product market was different from the from the market definition used in the *Capitalworks* decision.

Relevant geographic market

[7] In determining the relevant geographic market, the Commission considered the European Commission's ("EC") findings in the *NN Group N.V and Delta Lloyd N.V* ("*NN Group NV*") and *GE Capital and Heller* ("*GE Capital*"). In *NN Group*

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[2] The Target Firms are all ultimately wholly owned and controlled by Absa Financial Services Limited ("AFS") except for the ETF Business which is wholly owned and controlled by Absa Bank Limited ("Absa Bank"). AFS and Absa Bank are controlled by Absa Group.
[3] *Metropolitan Holdings Limited And Momentum Group*, Case No.: LM021May20, the Tribunal assessed the transaction as based in a national (broadly defined) market for the provision of general asset management services to all investors as well as in nationally (more narrowed defined) potentially relevant markets for the management of respectively (i) collective investment schemes and (ii) general asset management funds.
[4] The European Commission defined a broad market for asset management while leaving open the possibility for segmenting between retail and institutional clients such as pension funds, banks, and insurance companies.
[5] Case No.: LM021May20.

NV, the EC considered the geographic scope for asset management was national. However, in *GE Capital*, the EC considered that the market for private equity investment could be national or wider but did not conclude as the matter did not raise competition concerns.

[8] The Commission concluded that it would assess the effects of the proposed transaction in the national market for the provision of asset management services as the merging parties' activities occur throughout South Africa.[6]

[9] Based on the evidence provided above, the Tribunal also assessed the impact of the proposed transaction in the national market for the provision of asset management.

Market shares

[10] According to the Commission, the merged entity will have a market share of approximately be 11.23%, with an accretion in the relevant market of 5.32%. The Commission found that there are several other competitors active in the market and has raised no concerns with the proposed transaction.[7]

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

[12] Having considered the above, the Tribunal concluded that it is unlikely that the proposed merger will result in any competition concerns.

Cross-shareholdings and information sharing

[13] The Commission assessed the possible concerns that may arise from cross-shareholding and possible information exchange, given that some of the competitors of the merging parties own shares in the merging parties.[8] The Commission requested the parties to provides the following:

a. Information on whether or Ninety-One and Old Mutual can appoint directors in the board of Absa Group.

b. Whether the Public Investment Corporation ("PIC")[9] can veto any decisions in Sanlam and Absa Group and the type of information the PIC has access to as a shareholder in Sanlam and Absa Group.

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[6] Merger Recommendations, p26 of 39, para [87].
[7] Merger Record, p28 of 39, para [89] and p28 of 39, para [92].
[8] The Commission found that Ninety-One and Old Mutual, the competitors of SIH and Absa Group in the market for provision of asset management services, are also shareholders in Absa Group. Ninety-One has 5.65% shares, while Old Mutual has 5.27% shares in Absa Group.
[9] PIC has interest in Sanlam (13.65%), Absa Group (5.27%), and other asset managers including Stanlib, Ninety-One, Coronation and Nedgroup amongst others.

c. To explain how Sanlam and Absa Group will ensure that no commercially sensitive information is shared between PIC and asset management firms that PIC's holds interest in.

[14] After considering the merging parties' responses to the above-mentioned questions, the Commission concluded that the proposed transaction is unlikely to result in coordinated effects in the form of sharing commercially sensitive information because there is no cross-directorship between the merging parties and the merging parties' competitors. This is because PIC, Old Mutual and Ninety-One do not have a right to appoint directors in the merged entity, as result of their minority shareholding.

[15] Access to any commercially sensitive information of the merging parties is precluded because both the merging parties are publicly listed companies and need to comply with the JSE's listing requirements which regulate disclosure obligations. Furthermore, the merging parties submitted that where an asset managers hold shares in a listed entity, any decision as to how to exercise voting rights in respect of these shareholdings will be made by the individual asset manager because they owe fiduciary duties to their clients (in respect of the non-discretionary investment mandates).

[16] Considering the above the Commission is of the view that the proposed merger is unlikely to result in coordinated effects in the form of sharing of commercially sensitive information as there are no cross directorships between the parties.

Public Interest

Effect on employment

[17] The Commission considered whether the proposed transaction would have an adverse effect on employment. The merging parties submitted that the proposed transaction may give rise to potential duplication of roles at senior investment professional, senior professional, senior executive, and senior management levels retrenchments. The merging parties also indicated that SIH has not performed a detailed assessment of the potentially duplicative roles and no person has been identified as being potentially duplicated.[10]

[18] The employee's representative of SIH employees, Mr Sipho Gumbi, was contacted by the Commission during its investigation to ascertain whether the employees of SIH were notified and if they had any concerns with the proposed transaction, however, the Commission did not receive a response.[11] For the target firm, the employees are represented by the South African Society of Bank Officials ("SASBO"), which was also contacted by the Commission.

[10] Merger Recommendation, p33 of 39, para [113].
[11] Merger Recommendation, p34 of 39, para [115].

a. SASBO submitted that they note the impact of the proposed transaction on employment and rely on the undertaking made by the merger parties, that the 26 affected staff members will be redeployed as they are highly skilled, experienced and in demand within the industry. SASBO raised no objection to the proposed transaction.

[19] The Tribunal observed the effect of the proposed transaction on employment and raised a concern that no detailed assessment of the potentially duplicative roles was completed by the merger parties. The Tribunal requested the parties to elucidate (i) whether there were any staff below the senior professional, senior executive and senior management level that may be affected by the proposed transaction and (ii) it requested the merging parties and the Commission to consider an undertaking not to retrench any staff below the senior professional, senior executive, and senior management levels for a period of 2 (two) year post implementation of the merger.

[20] The Tribunal is of the view that a condition to guarantee that they are no retrenchment below the Patterson Grade D level would address an important public interest concern.[12] In response to the Tribunal's request, the merging parties and the Commission agreed to the condition.

Effect on the spread of ownership

[21] The merging parties submitted that the proposed transaction would have the positive effect of increasing the assets under management of black-owned fund managers.[13] This is because as a result of the merger, the target group would form part of Sanlam Group which is recognised as black owned in terms of the Financial Sector Charter. The Acquiring Group is a level 1 B-BBEE contributor, and it has a historically disadvantaged persons ("HDP") shareholding of 49%. Absa Group has 12.83% HDP shareholding, the proposed will result in Absa Group acquiring initial shareholding in SIH.[14]

[22] Having considered the above, the Tribunal concludes that the proposed transaction does not raise any public interest concerns.

Conclusion

[23] For the reasons set out above, the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the transaction raises no public interest concerns.

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[12] See Annexure A: Merger Conditions, p4 of 6, para [1.21]. "Patterson Grade D" means middle management who are professionally qualified. This includes the senior professional, senior executive, and senior management levels.

[13] Merger Recommendations, p36 of 39, para [126].

[14] Merger Recommendation, p36 of 39, para [126].

Signed by:Imraan Valodia
Signed at:2022-08-04 16:24:19 +02:00
Reason:Witnessing Imraan Valodia

Imraan Valodia

25 July 2022

Professor Imraan Valodia

Date

Ms Andiswa Ndoni and Professor Fiona Tregenna concurring

Tribunal Case Managers:	Makati Seekane and Sinethemba Mbeki
For the Merging Parties:	Anton Roets, Avias Ngwenya of Nortons Inc and Natalia Lopes, Aziza Mdee of ENS Africa.
For the Competition:	Zintle Siyo and Themba Mahlangu