



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM128Aug17

In the matter between:

OLD MUTUAL ALTERNATIVE RISK TRANSFER LIMITED

Acquiring Firm

And

**THE RIGHTS AND OBLIGATIONS OF MMI GROUP LIMITED
PERTAINING TO LONG TERM INSURANCE ANNUITY
POLICY (POLICY NUMBER 110071)**

Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 11 October 2017
Order Issued on	: 11 October 2017
Reasons Issued on	: 07 November 2017

Reasons for Decision

APPROVAL

- [1] On 11 October, 2017, the Competition Tribunal approved the large merger between Old Mutual Alternative Risk Transfer Limited ("OMART") and the Rights and Obligations of MMI Group Limited Pertaining to a Long-Term Insurance Annuity Polity (Policy Number 110071) ("the target policy") without conditions.
- [2] The reasons for the unconditional approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

- [3] The primary acquiring firm is OMART, a wholly owned subsidiary of Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA") which is, in turn controlled by Old Mutual Group (South Africa) (Pty) Ltd ("OMSA").¹ OMART does not control any entities
- [4] OMART is a registered long-term insurance provider that is operative as a cell captive insurer that sells segments of insurance to commercial entities who wish to self-insure without obtaining their own long-term insurance license and without having to administer a long term insurance business. OMART additionally provides life policies (including death benefits policies, pre-retirement savings endowments, annuities and funeral benefits).

Primary Target Firm

- [5] The target policy, consisting of the rights and obligations pertaining to a long term insurance annuity policy is, pre-transaction, controlled by MMI Group Limited ("MMI"). MMI is a registered long term insurer, and provider of health funding, life insurance, investments and multi-management activities.
- [6] The target policy arises from an obligation undertaken by OMLACSA to provide post-retirement medical aid contributions to those employees of OMLACSA who commenced employment prior to 1 August 1998 and reached retirement age whilst in the employ of OMLACSA ("the retirement promise").
- [7] Initially, the retirement promise was self-funded by OMLACSA. However it later decided to outsource its funding obligation by taking out the target policy with MMI. MMI issued the target policy to OMLACSA (as the promoter) and the Old Mutual Staff Medical Aid Fund (as the policy holder) on 12 December 2003.

¹ OMSA is, in turn, wholly owned by Old Mutual (Netherlands) B.V which is, in turn, wholly owned by OM Group (UK) Limited.

- [8] The purpose of the target policy was for MMI to pay an annuity stream to the Old Mutual Staff Medical Aid Fund and in return OMLACSA would pay premiums to MMI in respect of a transfer policy entered into between the two. The target policy thus simply forms part of a funding mechanism for the benefit of the Old Mutual Staff Medical Aid Fund.

PROPOSED TRANSACTION AND RATIONALE

- [9] The proposed transaction, structured in terms of a transfer agreement, takes place in terms of section 37(2) of the Long Term Insurance Act,² which will result in OMART assuming all rights and obligations of the target policy.³ Post-merger, OMART will exercise sole control over the target policy.
- [10] The transaction is motivated by OMLACSA's decision to consolidate the insurance business within its group structure. MMI, as the transferor in the transaction submits that it received the request from OMLACSA, the holder of the policy, to transfer the target policy to OMART and has agreed to do so.

RELEVANT MARKETS AND IMPACT ON COMPETITION

- [11] The Commission in its report indicates that the nature of the transaction and the history of the relationship between the two parties renders the transaction unlikely to lessen or prevent competition. In spite of this conclusion, the Commission submitted that it would, for the purpose of investigating the merger, assess the broad market for the provision of long-term insurance policies as well as the narrow market for the provision of post-retirement medical aid products, as both MMI and the acquiring group were active in such markets.

² 52 of 1998.

³ At the merger hearing, the issue of the Tribunal's jurisdiction to assess the transaction before it had been before the Registrar of the FSB was addressed. The representative of the merging parties submitted that one of the conditions precedent for approval before the Registrar was the approval of the Commission- which we understand to mean the competition authorities. [see *Transcript of Proceedings LM128Au17, pg6 lines 4-8.*] We thus need not further consider nor make a ruling on the issue for the purposes of these reasons.

- [12] In assessing the relevant markets, the Commission concluded that in the broad market for the provision of long-term insurance policies, OMART, post-transaction, would possess a 19.62% market share with an accretion of 0.325% and in the narrow market for the provision of Post-Retirement Medical Aid ("PRMA") promises, OMART would possess a 2.4% share in the market with an accretion of 0.5%.
- [13] In both markets, the Commission submits that low accretion values in both markets would not alter the market structure and that there were still numerous players able to constrain the post-merger entity.
- [14] The Commission concludes that the transaction is unlikely to result in the substantial prevention or lessening of competition in any of the relevant markets. We see no reason to differ from this conclusion.

PUBLIC INTEREST


- [15] In relation to employment, the merging parties submit that the merger will not have any impact on employment and, in particular that no merger specific retrenchments will arise as a result of the transaction. We accept that submission.
- [16] In their report the Commission notes that the present transaction will have no effect on the retired employees as the PRMA promise cannot be impacted by the funding mechanism implemented by OMLACSA and does not, therefore, raise any other employment concerns.⁴

CONCLUSION

- [17] 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,

⁴ See para 52 of the confidential report,

no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Enver Daniels

07 November 2017

Date

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring

Tribunal Researcher: Alistair Dey-Van Heerden

For the Merging Parties: Nazeera Mia of CDH

For the Commission: Sewela Moshoma and Ratshidaho Maphwanya