



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM091Aug22

In the large merger between:

**K2022451328 SOUTH AFRICA (PTY) LTD**

Acquiring Firm

and

**Preference Capital (Pty) Ltd**

Target Firm

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### REASONS FOR DECISION

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#### Approval

- [1] On 4 October 2022, the Competition Tribunal unconditionally approved the large merger where K2022451328 (South Africa) Proprietary Limited (“K2022”) intends to acquire by subscription for shares, a [REDACTED] interest in Preference Capital Proprietary Limited (“PrefCap”). Post-transaction, K2022 will have control over PrefCap in terms of section 12(2)(g) in terms of the Competition Act, 1998 (“the Act”).

#### The Parties

##### *Primary acquiring firm*

- [2] The primary acquiring firm is K2022, a firm controlled by Old Mutual Emerging Markets Proprietary Limited (“OMEM”). OMEM is in turn controlled by Old Mutual Group Holdings (South Africa) Limited (“OMGHSA”), which is controlled by Old Mutual Limited (“OML”). OML is a listed company that is not controlled by any firm. As of 24 June 2022, the top 5 OML shareholders are: Public Investment Corporation (16.90%); Allan Gray Proprietary Limited (8.02%); BlackRock Inc. (5.63%); Old Mutual Investment Group (3.17%); and Sanlam Investment Management (2.93%).
- [3] OML controls numerous firms in South Africa, including Masisizane Fund Non-Profit Company (“Masisizane”), Old Mutual Investment Administrators Proprietary Limited and Old Mutual Investments Proprietary Limited. K2022 is a newly incorporated company and does

not control any firm/s. K2022, OML and all its subsidiaries will from hereon be collectively referred to as the “Old Mutual Group”.

#### *Primary Target firm*

[4] The primary target firm is PrefCap. PrefCap controls Alternative Finance Solutions Proprietary Limited t/a BizCash, Preference Capital Asset Finance Proprietary Limited, Cash Flow Capital Proprietary Limited, and Change Financial Solutions Proprietary Limited. PrefCap and its subsidiaries are collectively referred to as the “PrefCap Group”.

[5] PrefCap is not controlled by any single firm. It has the following shareholders: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **Proposed transaction and rationale**

##### *Transaction*

[6] K2022 intends to acquire by subscription for shares, a [REDACTED] interest in PrefCap. Post-transaction, K2022 will have control over PrefCap in terms of section 12(2)(g) in terms of the Competition Act, 1998 (“the Act”).

##### *Rationale for the transaction*

[7] The acquiring firm wishes to grow market access to the SME market and diversify their revenue stream.

[8] The target firm wishes to benefit from strategic advantages from the transaction such as increased access to Old Mutual distribution networks, the ability to reach transformation goals in a shorter time, access to cheaper debt funding, brand association and the ability to create new products with Old Mutual as an old and established brand and to offer Old Mutual’s products and services to their SME customer base.

#### **Activities of the Parties**

[9] The Old Mutual Group is active in the financial services and insurance sectors in South Africa and other African countries. The Old Mutual Group's ultimate parent company, OML, is involved in the financial and insurance markets in South Africa and internationally through a number of subsidiaries. Relevant to the proposed transaction is a firm within the Old Mutual Group, Masisizane, which operates in the financial services market. Masisizane is a non-profit initiative which provides funding and lending services to businesses. They target black-

owned businesses with a particular focus on enterprises owned by women, youth and people with disabilities operating in agri-business, franchising, supply chain and manufacturing, tourism, technology, media, and telecoms.

- [10] The PrefCap Group provides lending services to small and medium-sized enterprises (“SME”) market across industries. Examples include companies involved in retail such as independently owned Pick n Pay Family and Spar stores; hardware stores; firms providing car repair services; as well as firms in mining; manufacturing; renewable energy; fleet management; engineering; plastic, recycling and waste management; earth moving (mines, construction and civils); material handling; specialized printing; golf and gardening; access platforms and cranes.

### **Competition assessment**

- [11] In its assessment of the proposed transaction, the Competition Commission (the “Commission”) found no vertical overlap between the activities of the merging parties. They considered whether there may be a horizontal overlap in the activities of the merging parties in that both are active in the provision of lending/funding services to businesses. They further considered whether the companies overlap in a possible submarket for lending and funding services to black owned and SME customers.
- [12] The merging parties submitted that while the Old Mutual Group is active in the broader financial services market, it does not operate in the small and medium enterprise (SME) lending sub-market and pursuant to the proposed transaction wishes to enter this sub-market. Accordingly, the merging parties are of the view that there is no product overlap between the activities of the PrefCap Group and any firm within the Old Mutual Group.
- [13] The Commission found that the parties competed in different sub-segments of the market.
- [14] Masizane has a focus on companies that are minimum 51% black owned (particularly black women, youth and people with disabilities) operating in either the agri-business, franchise, supply chain or tourism. In addition, Masizane is concentrated in under-developed areas of South Africa, including its rural areas, small towns and townships, where businesses are typically seen as high-risk and struggle to secure finance through traditional channels.
- [15] PrefCap focuses on SMEs. It does not fund start-ups, does not require that a business it funds be black-owned or woman-owned and considers businesses in a wider range of industries. They also have a minimum requirement of R1 million in turnover. PrefCap does

not operate in the rural areas and its clients are typically able to access funding from bank and any other lending institutions.

- [16] The Commission considered the extent to which there is an overlap in services provided to sub-segments of black-owned and SME firms by the merging parties and concluded that while there are instances in which there are overlaps in potential clients there are important differences in the target customers. In particular, Prefcab does not and does not intend to fund start-ups.
- [17] They conclude that while there is some competitive interaction between the two companies, the merging parties are unlikely to be close competitors.
- [18] The Commission then assessed the effects of the proposed transaction on the national market for the provision of funding/lending services to businesses. While market shares were not available, they obtained the views of market participants [REDACTED] [REDACTED] to obtain their views on the market structure. They found that the largest South African banks as well as fintechs (including several focused on the SME market) provide funding to businesses. The merging parties were not listed as significant market players by the market participants.
- [19] As such, the Commission concluded that the transaction is unlikely to substantially lessen or prevent competition in the market for the provision of funding/lending services to businesses.
- [20] Furthermore, the Commission found that the merged entity will continue to be constrained post-transaction by several alternatives in the provision of funding/lending services businesses market.
- [21] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [22] Based on the above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

**Public interest**

*Effects on employment*

[23] The merging parties submitted that the employees of each target firm within Prefcap will continue to be employed within each entity and there will be no change to staff numbers or employment terms (except for some differences to the contracts of skilled Key Personnel).

[24] In addition, the merger parties submit that the Proposed Transaction will result in further employment within the PrefCap Group including bringing skilled previously disadvantaged individuals to the Prefcap board and operational staff.

[25] [REDACTED]

[26] K2022 is a newly incorporated company and does not have any employees. The trade unions which represent the employees of the Old Mutual Group are the Insurance and Banking Staff Association (IBSA) and the South African Society of Bank Officials (SASBO). On the other hand, the employees of the PrefCap are represented by an employee representative.

[27] The Commission engaged with the respective representatives of the merging parties' employees.

[28] IBSA confirmed that it has been notified of this merger and that no employees have been affected.

[29] SASBO indicated it has no objection to the proposed transaction as it will have no adverse impact on employment of the members of the Old Mutual Group.

[30] Similarly, the PrefCap employee representative submits that PrefCap employees have not raised concerns with the proposed transaction and that the general consensus by all employees seems to be that they are happy with the proposed merger.

[31] We agree with the Commission's view that the proposed transaction is unlikely to have a negative impact on employment.

## *Spread of Ownership*

- [32] The Commission found that K2022 does not have any HDPs or B-BBEE shareholders. However, OML (at the apex of the Old Mutual Group) has a level 1 B-BBEE certificate. With respect to black ownership, OML achieved an economic interest of black people of 28.79% on a flow-through basis and 28.94% on a modified flow-through basis. In addition, the shareholders of OML have recently approved 'Bula Tsela', a B-BBEE deal/transaction which will result in an estimated 4% increase in the black shareholding in Old Mutual, bringing this total shareholding to over 30%. These outcomes apply equally to OMGHSA and OMEM, which holds 100% of the issued ordinary shares of K2022. On the other hand, PrefCap does not have any HDPs or B-BBEE shareholders.
- [33] The proposed transaction therefore introduces and increases the levels of HDPs ownership in PrefCap. Given this, the Commission is of the view that the proposed transaction has a positive effect on the promotion of a greater spread of ownership in the market.
- [34] We agree with the Commission's findings that the proposed transaction does not raise concerns relating to the promotion of a greater spread of ownership by HDPs and in fact leads to a greater spread of HDP shareholdings in the market.

## **Conclusion**

- [35] For the above reasons, we find that the proposed transaction is unlikely to result in a substantially prevent or lessen competition in the relevant market. Furthermore, the proposed transaction raises no public interest concerns. Therefore, the Tribunal approved the proposed transaction without conditions.

Signed by: Sha'ista Goga  
Signed at: 2022-10-11 12:57:09 +02:00  
Reason: Witnessing Sha'ista Goga

*Sha'ista Goga*

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**Ms Shaista Goga**

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**11 October 2022**

**Date**

**Professor F Tregenna and Ms A Ndoni concurring**

Tribunal Case Manager:  
For the Merging Parties:  
For the Commission:

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