COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM165Dec22

In the large merger between:

Sanlam Ltd and Sanlam Life Insurance Ltd	Primary Acquiring Firms
and	
AfroCentric Investment Corporation Ltd	Primary Target Firm

Panel	:	G Budlender (Presiding Member)
	:	T Vilakazi (Tribunal Member)
	:	F Tregenna (Tribunal Member)
Heard on	:	19 April 2023
Reasons issued on	:	17 May 2023

REASONS FOR DECISION (Non-Confidential)

Introduction

[1] On 19 April 2023, the Competition Tribunal ("Tribunal") unconditionally approved the proposed acquisition by Sanlam Ltd ("Sanlam"), Sanlam Life Insurance Ltd ("Sanlam Life") of AfroCentric Investment Corporation Ltd ("AfroCentric"). Following the implementation of the proposed transaction, Sanlam will have sole control over the AfroCentric Group.

Parties to the Proposed Transaction

[2] The primary acquiring firms are Sanlam and Sanlam Life ("Sanlam Group"). Sanlam is a public company incorporated in accordance with the laws of the Republic of South

Africa. Sanlam is listed on the Johannesburg Stock Exchange ("JSE") and is not controlled by any single shareholder.[1]

[3] Of relevance to the proposed transaction is that Sanlam wholly owns Sanlam Life. In turn, Sanlam Life controls ACT Healthcare Assets (Pty) Ltd ("AHA") as to 28.7% with the remaining shares in AHA being held by AfroCentric (the primary target firm). AHA, in turn, directly holds all the operating assets of AfroCentric. In other words, Sanlam indirectly controls all the operating assets of the primary target firm, AfroCentric.

[4] The primary target firm is AfroCentric, a public company incorporated in accordance with the laws of the Republic of South Africa. AfroCentric is listed on the JSE and is not controlled by any single shareholder.[2] AfroCentric, the firms controlling it and the firms controlled by it are hereafter collectively referred to as the "AfroCentric Group".

[5] AfroCentric controls AHA as to 71.3% and, as mentioned above, the remaining 28.7% shareholding is held by Sanlam.

Activities of the parties

[6] We note here that the Sanlam Group and AfroCentric Group provide a number of services to each other.

[7] The Sanlam Group provides the following services to the AfroCentric Group:

7.1. potential sales leads for individual healthcare advice;

7.2. co-branding, white labelling, and marketing of AfroCentric's healthcare products (i.e., health insurance, corporate wellness and gap cover products branded as "Sanlam Gap Cover" and "Sanlam Primary Care", respectively); and

7.3. underwriting services for cell captive short-term insurance products.

[8] Further, the Sanlam Group provides, among other services, healthcare advisory or consulting services to individuals.

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[1] As at 31 December 2021, the firms holding a beneficial shareholding greater than 5% of the issued share capital in Sanlam were (i) Public Investment Corporation SOC Ltd (14.24%); and (ii) Ubuntu-Botho Investments (Pty) Ltd (13.13%).
[2] As at 30 June 2022, the persons holding a beneficial shareholding greater than 5% of the issued share capital in AfroCentric were: (i) Community Healthcare Holdings (Pty) Ltd (22.41%); (ii) Golden Pond Trading 175 (Pty) Ltd (16.01%); (iii) RQ Investments (Pty) Ltd (9.93%); (iv) ARC Financial Services Investments (Pty) Ltd (8.46%); (v) XTR Investment Capital (5.1%); and (vi) WHB Holdings (5.1%).

[9] The AfroCentric Group provides the following services to the Sanlam Group:

9.1. marketing services;

9.2. potential sales leads for non-life insurance products; and

9.3. corporate wellness services.

[10] Further, the AfroCentric Group provides, among other services, healthcare advisory or consulting services to individuals.

Transaction and Rationale

[11] In terms of the proposed transaction, Sanlam intends to acquire between 51% and 74.65% in AfroCentric. The proposed transaction is intended to be implemented by way of two related and interdependent acquisitions:

11.1. The "Partial Offer": Sanlam will, to the extent that a sufficient portion of the shareholders of AfroCentric accept Sanlam's offer to acquire their shares, acquire a minimum of 31.3% and a maximum of 64.45% of the then-current issued shares in AfroCentric. The shareholders will have three options on which they can accept Sanlam's offer and these include (i) 100% cash for AfroCentric's shares; (ii) 50% cash and 50% of the value in AfroCentric shares to be exchanged for shares in Sanlam; and (iii) 100% of AfroCentric's shares to be exchanged for shares in Sanlam; and

11.2. The "Asset-for-Share Transaction": to the extent that the Partial Offer proceeds, Sanlam Life and AfroCentric will conclude an asset for share agreement in terms of section 42 of the Income Tax Act 58 of 1962 in terms of which AfroCentric shall issue shares to Sanlam Life equal to 28.7% of the shares in AfroCentric, subsequent to such issue in consideration for the disposal by Sanlam Life to AfroCentric of all the shares held by Sanlam Life in AHA, being 28.7% of the shares therein.

[12] Accordingly, following the implementation of the proposed transaction:

12.1. Sanlam will hold between 22.3% and 45.95% of the shares in AfroCentric by virtue of the Partial Offer (with the percentage shareholding immediately following the Partial Offer having been diluted by virtue of the issue of new shares in accordance with the Asset-for-Share Agreement); and

12.2. Sanlam Life will hold 28.7% of the shares in AfroCentric by virtue of the Asset-for-Share Agreement.

[13] In sum, as Sanlam Life is a wholly owned subsidiary of Sanlam, Sanlam will then effectively hold between 51% and 74.65% of the shares in AfroCentric as a result of the proposed transaction and will enjoy sole control thereover in terms of the Competition Act, 89 of 1998 ("the Act"). The remaining share capital, between 25.35% and 49% will be held by various non-controlling shareholders.

[14] Considering that the transaction is taking place in two parts, namely the Partial Offer prior to the Asset-for-Shares transaction, the Competition Commission ("the Commission") assessed whether or not the proposed transaction constitutes a single indivisible transaction.

[15] In this regard the Commission noted that both Sanlam and Sanlam Life are subject to common shareholding by virtue of Sanlam Life being a wholly owned subsidiary of Sanlam, and that both acquisitions are interrelated in the sense that the Asset-for-Share Transaction (i.e. Sanlam Life Acquisition) is conditional on the implementation of the Partial Offer Transaction (Sanlam Acquisition). Further, both Sanlam and Sanlam Life operate interrelated businesses.

[16] Based on the above, the Commission concluded that the proposed transaction is indivisible and has, accordingly, assessed it as a single transaction. We find no reason to differ from the Commission's assessment of the proposed transaction.

Rationale

[17] The primary acquiring firms submitted that the proposed transaction, which contemplates Sanlam deepening its investment in AfroCentric and becoming the sole controller thereof, is the next step in this longstanding relationship, for the benefit and growth of both businesses. Further, and through the proposed transaction, Sanlam will be able to integrate AfroCentric's product offering into its ecosystem, while AfroCentric will gain increased access to the wide Sanlam distribution network. AfroCentric's client base will also benefit from the strength of the Sanlam brand as well as access to the overall Sanlam product offering.

[18] The primary target firm, AfroCentric, submitted that the proposed transaction will see Sanlam become a strategic shareholder in AfroCentric and thereby have alignment with other AfroCentric shareholders in the future strategy of AfroCentric. Sanlam's move from

shareholding/control at the level of AHA up to AfroCentric will facilitate improved alignment of interest between the Sanlam Group and AfroCentric, potentially supporting further investment from the Sanlam Group, development of bespoke healthcare solutions through the co-operation of the Sanlam Group and AfroCentric teams and potential integration of the Sanlam Group and AfroCentric products.

[19] The Commission was satisfied with the submitted rationale for the proposed transaction and concluded that the main rationale for this instant transaction is to enable the alignment of AfroCentric's growth strategy with that of Sanlam.

The Commission's competition assessment

[20] The Commission found that the proposed transaction presents both a horizontal and vertical overlap in the activities of the merging parties.

[21] In terms of the horizontal overlap, the merging parties both supply healthcare advisory or consulting services to individuals.

[22] In terms of the vertical overlap, the Commission notes that the vertical overlap is bi-directional in the sense that both parties to the merger provide certain services and products to each other.

[23] Sanlam provides AfroCentric with the following products and/ or services:

23.1. potential sales leads for individual healthcare advice;

23.2. co-branding, white labelling, and marketing of AfroCentric's healthcare products (i.e. health insurance as well as corporate wellness and gap cover products branded as 'Sanlam Gap Cover' a 'Sanlam Primary Care', respectively); and

23.3. underwriting services for cell captive short-term insurance products.

[24] However, the Commission noted that Sanlam is not in the primary business of providing potential sales leads, nor in the business of co-branding, white labelling and marketing healthcare services, products or advice. In this regard, the merging parties submit that Sanlam only provides these products and/or services to AfroCentric, as a result of Sanlam's shareholding in AfroCentric, and provides these services at no cost. As such, the Commission concluded that, absent Sanlam's shareholding in AfroCentric, it is unlikely that Sanlam would provide these potential sales leads to AfroCentric and/or any other healthcare advisory business. Considering the above, the Commission found it

appropriate to not assess the effect of the proposed transaction on the market segments for (i) the upstream provision of potential sales leads for individual healthcare advice and (ii) the upstream co-branding, white labelling and marketing services.

[25] Conversely, AfroCentric provides Sanlam with the following products and/ or services:

25.1. marketing services;

25.2. potential sales leads for non-life insurance products; and

25.3. corporate wellness services.

[26] The Commission noted that AfroCentric only provides potential sales leads to Sanlam as a result of Sanlam's shareholding in AfroCentric. As such, the Commission concluded that, absent Sanlam's shareholding in AfroCentric it is unlikely that AfroCentric would provide potential sales leads to Sanlam. Considering the above, the Commission found it similarly appropriate to not assess the proposed transaction on its effect in the market segment for the upstream provision of sales leads for non-life insurance products.

[27] Further, and in terms of the marketing services provided by AfroCentric to Sanlam, the Commission noted that these services were provided as a result of a once-off contract between Sanlam and AfroCentric to launch Sanlam Health Solutions. In other words, Sanlam used AfroCentric's marketing services for a single non-recurring initiative and AfroCentric does not currently receive revenue from Sanlam pertaining to the provision of marketing services. The merging parties submitted that Sanlam generally uses the marketing services of various agencies, and this will remain the case post-merger. Considering the above, the Commission was of the view that the proposed transaction is unlikely to result in any foreclosure concerns and did not assess the effect of the proposed transaction on the market segment for the supply of marketing services. In addition, the Commission noted that Sanlam only sources its occupational health and wellness services from AfroCentric. Therefore, the transaction does not raise foreclosure concerns in this regard.

[28] Thus, the Commission assessed the effect of the proposed transaction in the following markets:

28.1. the provision of healthcare advisory or consulting services to individuals;

28.2. the upstream provision of underwriting services for cell captive short-term insurance products;

28.3. the downstream provision of medical aid gap cover insurance; and

28.4. the upstream provision of corporate wellness services.

Horizontal effects

<u>The national market for the provision of healthcare consulting services to individuals</u>

[29] In this market, the Commission found that the merged entity will have a combined market share of approximately [redacted] (post-merger) in the national market for the provision of healthcare consulting or advisory services to individuals. Further, the Commission found that there are various alternative suppliers of healthcare consulting or advisory services in South Africa in addition to the merged entity.[3]

[30] Given the small combined market share and the fact that the merged entity will face competition from multiple other entities, the Commission concluded that the proposed transaction is unlikely to result in the merged entity attaining market power in the national market for the provision of healthcare consulting or advisory services to individuals. We are in accord with the Commission's findings in this market.

Vertical effects

<u>The national upstream market for the provision of underwriting services for cell captive short-term insurance products</u>

[31] In this market the Commission found that the Acquiring Group has an approximately [redacted] market share in the relevant national market for the provision of underwriting services for cell captive short-term insurance products based on revenue. In addition, the Commission noted that there are seven registered cell captive short-term insurers in South Africa in 2022.[4]

[32] Based on the above, the Commission concluded that the Acquiring Group does not have the ability to foreclose its downstream competitors from accessing underwriting services for cell captive short-term insurance products. There are several viable alternatives

[3] Including: (i) HealthMan; (ii) Sasfin; (iii) SHM Consulting; (iv) Glopin Healthcare Consultants; (v) CMAC Healthcare Consulting; and (vi) GTC Healthcare Consulting.

[4] Including: (i) Centriq Insurance Company; (ii) FirstRand Insurance Services Company Ltd; (iii) Guardrisk Insurance Company Ltd; (iv) Hollard Specialist Insurance Ltd; (v) Mutual & Federal Risk Financing Ltd; (vi) Yard Insurance Ltd; and (vii) Escap SOC Ltd.

upstream who will continue to constrain the merged entity. We are in accord with the Commission's findings in this market.

The downstream market for the national provision of medical aid gap cover

[33] Centriq, a subsidiary of Sanlam, underwrites AfroCentric's medical aid gap cover product (i.e., Sanlam Gap Cover – this product is co-branded with Sanlam). The Commission noted that it was unable to obtain information on revenue or the client base of market participants operating in the downstream national market for the provision of medical aid gap cover. However, the Commission found that this relevant market has several active players.[5]

[34] Considering the above, the Commission noted that AfroCentric is unlikely to be a dominant player in the downstream national market for the provision of medical aid gap cover. This is largely because AfroCentric competes with at least 20 players in this relevant market and is thus unlikely to account for a substantial proportion of purchases from the upstream market. We have no reason to differ from the Commission's assessment of the market save to say that the Commission should endeavour to provide the Tribunal with information on revenue or the client base, and base its assessment on same wherever possible, even if this means relying on previous matters (that are not outdated) where the same markets were considered in those respective assessments.

The upstream national market for the provision of occupational health and wellness services

[35] The Commission noted, again, that it was unable to obtain information on revenue or client base of market participants operating in the upstream market for the provision of occupational health and wellness services. However, the Commission provided that this relevant market has several active players.[6]

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[5] Including: (i) AfroCentric (Sanlam Gap Cover); (ii) Absa; (iii) Stratum Benefits; (iv)Turnberry; (v) Essential Gap Cover; (vi) Ambeldown; (vii) Complimed; (viii) Xelus; (ix) Sirago; (x) Jenius; (xi) Talksure; (xii) Old Mutual; (xiii) Momentum GapCover; (xiv) Discovery Gap Cover; (xv) Liberty Gap Cover; (xvi) Constantia Insurance; (xvii) Alexander Forbes; (xviii) Auto & General Insurance; (xix) Liberty Essential Gap Cover; (xx) Admed Gap Cover; and (xxi) Zestlife Gap Cover.

[6] Including: (i) Assegai Strategic Investments ASI; (ii) Careways Wellness (Pty) Ltd; (iii) HSP Group SA(Pty) Ltd; (iv) MIMED Occupational Health (Pty) Ltd; (v) SetsMol Enterprise; (vi) Company Wellness Solutions; (vii) M&M Wellness Solutions (Pty) Ltd; (viii) Maeko Social Work Services; (xi) MMM3 Training and Development; (x) NBC Holdings (Pty) Ltd; (xi) Personnel Transit 2 Wellness; (xii) Universal Corporate Wellness (Pty) Ltd; (xiii) Velocity Wellness; (xiv) Calibre Clinical Consultants (Pty) Ltd; (xv) Centre for Occupational and Wellness Services; (xvi) Kaelo Risk (Pty) Ltd; (xvii) ICAS Southern Africa; (xviii) LifeAssist (Pty) Ltd; (xix) Life Employee Health Solutions (Pty) Ltd; (xx) Metropolitan Health Corporate (Pty) Ltd; (xxi) Workforce Healthcare (Pty) Ltd; and (xxii) High Heelers (Pty) Ltd.

[36] The Commission concluded that the market appears to be fragmented and as such, AfroCentric is unlikely to be a dominant player in the upstream national market for the provision of occupational health and wellness services.

[37] Considering the above, the Commission was of the view that the proposed transaction is unlikely to raise any substantial input foreclosure concerns for firms operating in the downstream market segment for the provision of insurance products (where Sanlam is active). We agree with the Commission's assessment pertaining to input foreclosure in this market, but reiterate the caveat as detailed in paragraph 34, above.

[38] Finally, the Commission concluded that customer foreclosure concerns do not arise as Sanlam only sources its occupational health and wellness services from AfroCentric. In other words, none of the upstream providers of occupational health and wellness services are going to lose Sanlam as a customer.

[39] Considering the findings of the Commission as detailed above, we are of the view that the proposed transaction is unlikely to result in the substantial lessening of competition in any of the affected markets.

Public Interest

Employment

[40] The merging parties provided an unequivocal statement that the proposed transaction will have no negative effect on employment in South Africa and no retrenchments or redundancies, as a result of the proposed transaction are contemplated.

Promotion of a greater spread of ownership

[41] The pre-merger HDP shareholding in the Acquiring Group and Target Group is 46.85% and 50.43%, respectively.

[42] The most recent submission from the merging parties on the final structure of the transaction, indicates the following:

42.1. [redacted] and

42.2. [redacted]

[redacted]

[43] Thus, following the implementation of the proposed transaction, AfroCentric's HDP shareholding will increase from 50.43% pre-merger to between [redacted]% post-merger.

[44] The proposed transaction does not raise any other public interest concerns.

Conclusion

[45] We conclude that, the proposed transaction does not raise any competition or employment concerns. Further the proposed transaction has a positive effect on the greater spread of ownership as in section 12A(3)(e) of the Act.

[46] We therefore approve the transaction unconditionally.

17 May 2023

Adv. G Budlender SC | **Date**

Dr Thando Vilakazi and Prof. Fiona Tregenna concurring

Tribunal Case Manager:	Kameel Pancham
For the Merging Parties:	Lizel Blignaut and Lameez Mayet of ENSafrica
For the Commission:	Zukile Sokapase and Grashum Mutizwa