competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM014Apr16

In the matter between:

SANTAM LIMITED	Acquiring Firm
And	
ABSA INSURANCE COMPANY LIMITED'S INTERMEDIATED COMMERCIAL LINES BUSINESS	Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 20 July 2016
Order Issued on	: 20 July 2016
Reasons Issued on	: 12 August 2016

Reasons for Decision

APPROVAL

[1] On 20 July 2016, the Competition Tribunal approved the large merger between Santam Limited ("Santam") and ABSA Insurance Company Limited's ("AIC") Intermediated Commercial lines Business ("the target firm") with a condition pertaining to employment.

[2] The reasons for the conditional approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

[3] The primary acquiring firm is Santam, a firm listed on the JSE with Sanlam life insurance holding a 62,19% share of its issued share capital. Santam specializes in the provision of short-term insurance products for a diversified market in South Africa. These products are offered through broker's networks and direct sales channels and include personal, commercial, agricultural and specialized insurance as well as wholesale reinsurance products.

Primary Target Firm

[4] The target firm is wholly controlled by AIC which is in turn, a wholly owned subsidiary of ABSA Financial Services Limited ("ABSA FS"). ABSA FS is a wholly owned subsidiary of Barclays Africa Group Limited ("Barclays"). The target firm's business primarily provides short-term insurance products such as property, motor liability and engineering products to commercial clients.

PROPOSED TRANSACTION AND RATIONALE

[5] In terms of the proposed transaction, Santam will acquire the target firm as a going concern, exercising sole control over it post-transaction.[1] AIC will otherwise remain a competitor with Santam in respect of broader short-term insurance market as well as other narrower short-term insurance markets.

[6] Santam submits that the target firm is currently inefficient and unprofitable. It states that through its acquisition, Santam will be able to enhance the primary target firm's value.

[7] AIC submits that the sale is in line with its transformative strategy focusing on core strengths and expertise. This strategy was prompted by new, strong,

---

[1] In terms of the sale agreement Santam will acquire: ABSA policies in force at the effective date, insurance assets, ABSA intermediary agreements, specified employees, working capital, goodwill, employee liabilities and the insurance liabilities in respect of AIC intermediated Commercial lines business.

competitors, high capital costs and a deficiency in scale. The applicability of this strategy is supported by a resolution by the directors of AIC detailing the target firm's high earnings volatility and returns below cost of equity over the last years.[2]

RELEVANT MARKETS AND IMPACT ON COMPETITION

[8] The merging parties both provide short term insurance products

[9] The Tribunal has previously held defining the market as the provision of short-term insurance may be too broad and the market should be further subdivided into the markets for the provision of personal, commercial and corporate cover.[3] AIC only provides commercial cover. This too may be too broad a market definition so the Commission subdivided this further in its analysis.[4]

[10] In none of the assessed sub-markets did the market share accretion exceed 2% nor did it materially alter the structure of the markets. Additionally, the presence of strong, reputable competitors in all of these markets will mean that Santam is unlikely to be in a position to exercise significant market power post-merger.

[11] At the merger hearing, Santam sought to dispute their market share in the broad market for the provision of all short-term insurance as well as the narrower market for short-term commercial line cover calculated by the Commission. Whilst we note their disagreement with the Commission's market share, we shall not make a ruling on this issue owing to the paucity of information at our disposal as well as the irrelevance of such issue to the determination of the matter at hand. On both the market shares calculated by the Commission as

---

[2] ABSA Insurance Company limited "Circulated resolution by the directors of the abovementioned company" Exhibit T3, *found at* page 396 of the merger record.

[3] *See* Swanvest 120 (Pty) Ltd and Indwe Broker Holdings Limited LM058Sep10 and Santam limited and Emerald Insurance Company Limited LM025Aug09.

[4] These sub-markets were the markets for short-term commercial products relating to property, motor, liability and engineering insurance.

well as those calculated by the merging parties, the merger does not present a threat of preventing or lessening competition in any of the identified markets.

PUBLIC INTEREST

[12] In relation to employment, the merging parties submit that the merger will not have any impact on employment, in particular, that no merger specific retrenchments will arise as a result of the transaction.

[13] In their report the Commission noted ongoing communication between the merging entities and the South African Society of Bank Officials (SASBO) a trade union representing the employees affected by the merger. At the hearing it was confirmed that the Commission had not yet obtained the final views of SASBO regarding the merger. Mr Gous from Santam informed the panel that discussions with SASBO and the Merging parties were ongoing, with the only bone of contention being that certain employee benefits provided by ABSA may not follow the employees into the merged entity. He was unable to certainly state whether, at the time of the hearing, such issues had been resolved.

[14] In the context of such uncertainty, the panel additionally noted a Barclays strategic document which highlights that:

> *"Santam has committed to finding alternative opportunities, decreasing the potential for retrenchments"*[5]

[15] When this statement was put to the merging parties, they were quick to direct the panel to clause 6.14 of their sales agreement governing the merger which stipulates that Santam undertakes to not retrench any of the relevant ABSA employees for a period of twelve months.

[16] These documents suggest that merger related retrenchments were contemplated but that the parties had reciprocally undertaken that these were not to happen in the first year. There are two problems with this. First the

---

[5] Barclays Africa Corporate Development "Project Hermes; GIC Submission" 16 July 2015 page 6 *found at* Page 403 of the merger record.

consultation process with the union appears incomplete. Second the undertaking is not enforceable by any employee. We raised this with the parties who were agreeable to this undertaking being made condition for the approval of the merger and hence enforceable on behalf of affected employees. The condition, attached to these reasons as 'Annexure A', has a scope no broader than that agreed to between the parties in the sale agreement, but its inclusion serves to ensure that Santam may be held accountable by its employees should it not comply with the contractual obligation.

CONCLUSION

[17] The merger is unlikely to substantially prevent or lessen competition in the broad market for the provision of short term insurance, the narrower market for the provision of short-term commercial insurance products or any of its sub-markets.

[18] In light of the uncertainty pertaining to the ongoing negotiations with SASBO, it is prudent to reiterate the merging parties' commitment to ensuring no merger related retrenchments.

[19] Accordingly we approved the transaction subject to the employment condition attached as 'Annexure A.'

Norman Manoim

<u>12 August 2016</u>
Date

Medi Mokuena and Andiswa Ndoni concurring

Tribunal Researcher: Alistair Dey-Van Heerden

For the Merging Parties: Edward Nathan Sonnenberg

For the Commission: Portia Bele

ANNEXURE A

SANTAM LIMITED

and

ABSA INSURANCE COMPANY LIMITED'S INTERMEDIATED COMMERCIAL LINES BUSINESS

Case Number LM014Apr16

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings-

1.1. **"Commission"** means the Competition Commission of South Africa;

1.2. **"Conditions"** mean these conditions;

1.3. **"Date of Approval"** means the date referred to in the Competition Tribunal's merger clearance certificate (Form CT 10);

1.4. **"Labour Relations Act"** means the Labour Relations Act no. 66 of 1995 (as amended);

1.5. **"Sales Agreement"** means the Sales Agreement entered into between ABSA Insurance Company Limited and Santam Limited on 13 April 2016;

1.6. **"Santam"** means Santam Limited;

1.7. **"Specified Employees"** means those employees as defined in clause 6.1 and 6.2 of the Sales Agreement.

2. CONDITIONS

2.1. For a period of one (1) year from the date of approval of this merger, Santam will not retrench any Specified Employees.

2.2. For the sake of clarity, retrenchments do not include:

2.2.1. Voluntary retrenchments;

2.2.2. Voluntary early retirement packages;

2.2.3. Unreasonable refusals to be redeployed in accordance with provisions with the Labour Relations Act; and

2.2.4. Termination due to resignation or retirement.

3. MONITORING

3.1. Santam shall notify all its employees of the conditions within seven (7) business days of the order.

3.2. As proof of compliance therewith, Santam shall, within five (5) business days of giving notice of the conditions, provide the Commission with an affidavit by a senior official attesting to the fact and attach a copy of the notice sent.

3.3. Any employee who believes that his/her employment with Santam has been terminated in contravention of these conditions may approach the Commission with his or her complaint.

3.4. All correspondence in relation to these conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.