COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM120Nov21

In the matter between:

SWANVEST 120 PROPRIETARY LIMITED	Acquiring Firm
and	
INDWE BROKER HOLDINGS PROPRIETARY LIMITED	Target Firm

Panel:	Liberty Mncube (Presiding Member) Mondo Mazwai (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on:	04 April 2022
Date of last submission:	07 April 2022
Order issued on:	08 April 2022
Reasons issued on:	12 May 2022

REASONS FOR DECISION

[1] On 8 April 2022, the Tribunal conditionally approved a large merger in terms of which Swanvest 120 Proprietary Limited ("Swanvest")[1] intends to acquire additional 76% of the issued share capital of Indwe Broker Holdings Proprietary Limited ("Indwe")[2].

[1] Swanvest is a private company incorporated in accordance with the laws of South Africa.
[2] Indwe is a private company incorporated in accordance with the laws of South Africa. Indwe controls Indwe Risk Services Proprietary Limited ("IRS"). IRS controls Indwe Financial Services Proprietary Limited (trading as "Indwe Blue Star").

Transaction

[2] Swanvest currently holds a 24% interest in Indwe and following implementation of the proposed transaction, Swanvest will hold solely control Indwe.

Parties to the transaction and their activities

Primary acquiring firm

[3] Swanvest is an investment holding company, a wholly owned subsidiary of Santam Limited[3] and Swanvest, all firms it controls, all firms that control Swanvest will be referred to in these reasons as the "Acquiring Group".

[4] The Acquiring Group is a provider of financial services, in respect of long and short-term insurance. Of relevance to the proposed transaction is the Acquiring Group's activities under the Short-Term Insurance Act, 1988 ("STIA"), and in particular, the Acquiring Group is a short-term insurer in South Africa and provides various types of short-term insurance cover to individuals and corporate/commercial clients.

[5] The Acquiring Group offers short-term insurance cover via direct sales whereby the Acquiring Group sells short-term insurance cover directly to clients through inter alia, call centre operations; and short-term insurance brokers who are intermediaries that interact with various clients and sell a particular insurer's products (tied brokers) or independent brokers (i.e., not controlled by a particular insurer) who sell several insurers products.

Primary target firm

[6] Indwe (together with its subsidiaries) comprises a short-term insurance broker providing short-term insurance brokerage services to individual and commercial clients.

[3] Santam Limited is controlled by Sanlam Limited ("Sanlam") as to 59.9%. Sanlam is a public company and not controlled by any individual shareholder. Sanlam controls several firms, including, Sanlam Life Insurance Limited, one of the selling firms. Sanlam also indirectly holds a 49% joint controlling interest in Indwe.

[7] Indwe is jointly controlled by ARC Financial Services Proprietary Limited ("ARC") (as to 51%), Swanvest (as to 24%) and Sanlam Life Insurance Limited (as to 25%). ARC is controlled by Ubuntu-Botho Investments Proprietary Limited ("Ubuntu-Botho"). Ubuntu-Botho is ultimately controlled by various Motsepe Family Trusts which are under the control and benefit of Mr. Motsepe.

[8] Indwe and all firms that it controls shall be referred to as the "Target Group". The majority of the Target Group's business is underwritten by Santam Limited, with the balance being underwritten by other short-term insurers.

Relationship between the parties

[9] The Competition Commission ("Commission") in its assessment found there is a horizontal overlap in the activities of the merging parties in respect of short-term insurance brokerage services.

[10] The proposed transaction, however, results in the Target Group moving from being jointly controlled, to being unilaterally controlled (i.e., 100%), by the Acquiring Group.

[11] The Commission also found that the proposed transaction results in a vertical overlap because the merging parties are active at the different levels of the short-term insurance value chain. In particular, the Target Group provides independent short-term insurance brokerage services whilst the Acquiring Group underwrites short-term insurance cover offered by the Target Group and other brokers.

Relevant markets

Product market

[12] In identifying the relevant product markets, the Commission had regard to the acquisition by African Rainbow Capital Proprietary Limited and Sanlam Life

Insurance Limited of controlling shares in Indwe from Swanvest[4], wherein the Commission identified a market for the provision of short-term insurance and this approach was also followed by the Tribunal.

[13] The Commission also considered the merger between *Swanvest 120 (Pty) Ltd and Indwe Broker Holdings Limited ("Swanvest/Indwe merger")*[5] wherein the Commission and the Tribunal considered a separate market for short-term insurance broking.

[14] We have not received any information suggesting a departure from the previous Tribunal approach. In current case, we focus our assessment on the provision of short-term insurance and a market for the provision of short-term insurance broking. We do not find it necessary to conclude on the scope of the relevant product markets.

Geographic market

[6] Regarding the market for the provision of short-term insurance and the market for short-term insurance broking, the Tribunal has previously concluded that the relevant market is national.[6] We did not receive any evidence suggesting a departure from the above approach and therefore we considered the relevant geographic markets to be the upstream national market for the provision of short-term insurance products and the downstream national market for the provision of independent short-term insurance brokerage services.

[7] Therefore, we do not find it necessary to conclude on the scope of the relevant geographic markets.

Competition Assessment

Horizontal unilateral effects

[8] The Acquiring Group already controls the Target Group pre-merger, the merger does not give rise to any market share accretion or a change in the

[4] Commission Case No.: 2015Oct0549 and Tribunal Case No.: LM171Nov15.

[5] Commission Case No.: 2010Aug5312 and Tribunal Case No.: 60/LM/Sep10.

[6] Tribunal Case No.: LM171Nov15 and Tribunal Case No.: 60/LM/Sep10.

competitive landscape. We do not consider it likely that the merger will give rise to a substantial lessening of competition.

Vertical effects

[9] The merger does have a vertical dimension. We assessed whether the merger is likely to result in competitors of the Target Group (i.e., independent short-term insurance brokers) being foreclosed from accessing short-term insurance products.

[10] The Acquiring Group has a market share of approximately [redacted] and the Commission found that even though the Acquiring Group is the largest insurer for short-term insurance services, it is unlikely that it will foreclose downstream competitors of the Target Group, as they will be able to still procure short-term insurance services from the remaining players in the market which hold approximately [redacted] of the short-term insurance market. Also, the Commission estimated that the Target Group accounts for approximately [redacted] of the Acquiring Group's short-term insurance revenue.

[11] On the above evidence, we conclude that it is unlikely that post-merger, the Acquiring Group will not have the ability to foreclose other independent brokers, access to inputs and we are of the view that the proposed transaction is unlikely to result in substantial lessening of competition concerns.

[12] We assessed whether the merger is likely to result in competitors of the Acquiring Group (i.e., short-term insurance providers) in the upstream market, being denied access to the Target Group as a customer.

[13] The Commission's interactions with STIA insurers such as Hollard, Telesure, OUTsurance and Guardrisk established that post-merger, there remain ample alternative independent short-term insurance brokers.[8]

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[7] According to the FSCA's annual report of 2020-2021. (https://www.fsca.co.za/Annual%20Reports/FSCA%20Annual%20Report%202020-21.pdf), there were approximately 75 licensed short-term insurance insurers in South Africa. Therefore, there appears to be ample alterative short-term insurance underwriters available for the Target Group's rivals.

[15] The Commission's recent investigations such as *Jacana Capital Proprietary Limited and Mpumalanga Risk Acceptances Proprietary Limited*[9] suggests that there are at least 6000 independent short-term insurance brokers active in South Africa.

[16] It was estimated that the Target Group has [redacted] market share, and the Acquiring Group has (via Snyman van der Vyver) [redacted] market share as regards the provision of independent short-term insurance brokerage services.

[17] Based on the above, we are of the view that the proposed transaction is unlikely to result in substantial lessening of competition concerns.

Third parties' views

[14] During investigation, the Commission received various concerns from competitors.

[15] The concerns included that the proposed transaction will result in the Target Group becoming an STIA broker 'tied' to the Acquiring Group and may result in the Acquiring Group no longer underwriting STIA business with other independent brokers; the trend of large STIA insurers acquiring independent brokers reduces the market within which independent brokers can contest; the Acquiring Group will be able to share confidential information (e.g., client information) from its interactions with other independent brokers, with the Target Group; and that the merger is inconsistent with the Financial Sector Conduct Authority ("FSCA") requirements regarding conflict of interest as post-merger, the Target Group will be unable to provide independent advice

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[8] Such as March, AON, PSG, FirstRand, ABSA, Standard Bank, Mango5 Ins. Cons, Insurance Supermarket, LIBRA, Optimum, Deo Gratia, Protektum, Pleroma, IEMAS, Rand Pro, Motion Insurance, SAPCOR, Louis Malherbe, Multirisk, FSP Solutions and many others.

[9] Commission case no. 2020Jun0062.

[10] Based off the KPMG Survey of the South African Insurance Industry 2021 – October 2021 as well as the best estimates of the merging parties.

[11] Based off the KPMG Survey of the South African Insurance Industry 2021 – October 2021 as well as the best estimates of the merging parties.

to clients as to the best STIA cover for their needs, given that only the Acquiring Group’s offerings will be available.

[16] In assessing the third-party concerns, the Tribunal sought clarity from the merging parties and the Commission as to why information exchange is not a concern in the proposed transaction. The merging parties explained[12] that there is no incentive for Santam Limited to share the short-term insurance brokerage competitor’s confidential information with Indwe and as the Acquiring Group controls the Target Group pre-merger and the merger does not change this position, the merging parties submitted that it would be to their commercial detriment to disclose confidential information of the independent brokers to whom they provide underwriting, given that independent brokers account for the vast majority of the Acquiring Group’s STIA revenues.

[17] The Commission explained that the information exchange concern does not arise specifically because of the merger. Put differently, as Sanlam already controls Indwe pre-merger, that concern (to the extent that it is material) exists pre-merger. Also, the Commission’s assessment concluded that there is unlikely to be an incentive for Sanlam to engage in information exchange as that strategy is likely to have commercial and reputational implications for Sanlam.

[18] The Commission interacted with the FSCA, which has indicated that it was satisfied that the proposed transaction does not raise any conflict of interest as all STIA providers and brokers are expected to treat customers fairly. Moreover, as part of the Prudential Authority’s (“PA”) approval process (the PA approved this transaction on 15 December 2021), the merging parties are required to provide clients of the Target Group with the option to remain with their existing short-term insurance insurer, or to transfer to the Acquiring Group’s STIA cover. This process is under the oversight of the PA which confirmed its satisfaction that the merging parties had provided clients with the opportunity to exercise this option.

[12] Email from ENS Africa on behalf of the merging parties dated 7 April 2022.

[19] Based on the above evidence, our view is that the proposed transaction does not raise material concerns.

Public Interest

Effect on Employment

[20] The merging parties submitted that the proposed transaction will not give rise to any job losses (including forced retrenchments and redundancies) in South Africa.[13]

[21] Considering the above and the fact that the acquiring group already controls the target group pre-merger, the proposed transaction is unlikely to result in employment concerns.

Effect on the promotion of a greater spread of ownership

[22] The Target Group is held as to 57% by Historically Disadvantaged Persons ("HDPs"). The Acquiring Group is held as to 30.36% by HDPs.

[23] The Commission found that the proposed transaction will result in the reduction of HDPs at the Target Group and requested the merging parties to consider an employee share ownership program ("ESOP") or a transaction that would increase HDPs ownership levels within the Target Group.

[24] The merging parties argued that the proposed transaction does not raise any public-interest concerns that justify remedial action and submitted that the proposed transaction facilitates a greater spread of ownership in that ARC's exit from the Target Group, facilitates ARC's investment in the transferred businesses[14] which are subsidiaries of the Target Group pre-merger, whereby Indwe will undergo a restructuring in terms of which it will dispose of its current controlling shareholding in Indwe Risk Solutions Proprietary Limited and Acquideas Proprietary Limited, as well as the Indwe Risk Solutions Business (which makes up the corporate lines portion of the Indwe business)

[13] As stated in the merging parties' 'Joint Competition Report' at paragraph 10.2.1 (p64 of the Merger Record).

[14] The Commission assessed and satisfied itself that the turnover and assets of the businesses that are transferred by Indwe fall below the threshold of an intermediate merger.

(the "Transferred Businesses"). The Transferred Businesses will result in the formation of a new independent STIA broker, which will be held as to [redacted] by ARC and [redacted] by workers.

[25] The merging parties have, however, committed to increasing their present R6 million per year investment in its HDP insurance broker development program by at least an additional R2.2 million per year for a three-year period (R6.6 million commitment) post-merger. This will facilitate Indwe embarking on a similar programme aimed at developing at least 10 HDP insurance brokers.

[26] The Tribunal enquired as to how the [redacted] shareholding is to be held by ARC and [redacted] by workers in the Transferred Business is to be reckoned and whether this shareholding is in addition to the 30.36% shareholding held by the Acquiring Group or is it included. The Commission explained that post-merger, ARC, independent from Sanlam, will hold an interest in the Transferred Businesses. Sanlam has no shareholding in the Transferred Businesses.

[27] The merging parties submitted that ARC will hold a [redacted] interest (with [redacted] being held by workers) in the new brokerage. Notably, the Acquiring Group will not hold any interest in the new brokerage. The 30.36% shareholding does not take into consideration the percentage shareholding to be held by ARC and employees in the new brokerage. The acquiring group will not hold an interest in the new brokerage post-merger and in this regard the proposed transaction does promote a greater spread of ownership.

[28] Given the submissions by the merging parties, we left the question open on whether the tendered conditions offset the dilution in the target group's pre-merger HDP shareholding.

[29] We find that the commitments on the development of HDP brokers offered by the merging parties has a net positive effect on public interest and parties offset any significant public interest concerns raised by the proposed transaction.

Other public interest issues

[30] The proposed transaction raised no other public interest concerns.

Conclusion

[31] In order to give effect to the above, the merging parties, in agreement with the Commission, tendered the set of conditions annexed hereto as **Annexure "A"** which the Tribunal has imposed as conditions to the approval of the merger.

[32] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no substantial public interest concerns.

[33] Accordingly, we conditionally approve the proposed transaction.

Signed by:Liberty Mncube
Signed at:2022-05-12 13:18:10 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

Professor Liberty Mncube

12 May 2022
Date

Ms Mondo Mazwai and Professor Imraan Valodia concurring

Tribunal Case Manager:	Juliana Munyembate
For the Merging Parties:	Natalia Lopes and Hayley Lyle of ENSafrica
For the Commission:	Wiri Gumbie, Nonhlanhla Msiza and Yolanda Okharedia