COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 60/LM/Sep10

In the matter between:

Swanvest 120 (Pty) Ltd **Acquiring Firms**

And

Indwe Broker Holdings Ltd **Target Firms**

Panel	:	Norman Manoim (Presiding Member) Andreas Wessels (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	17/11/2010
Order issued on	:	17/11/2010
Reasons issued on	:	02/12/2010

Reasons for Decision

Approval

1] On 17 November 2010 the Competition Tribunal ("Tribunal") unconditionally approved the merger between Swanvest 120 (Pty) Ltd ("Swanvest") and Indwe Broker Holdings Ltd ("Indwe"). The reasons follow below.

The Transaction

2] In this transaction Swanvest, a wholly owned subsidiary of Santam Ltd ("Santam"), intends to acquire Indwe which is currently controlled jointly by the Thebe and Phamodzi groups. Swanvest provides short term insurance. Through its holdings, Indwe operates as a short term insurance broker and a short term insurance administrator through its various subsidiaries. The two subsidiaries of Indwe which are relevant for the purpose of this analysis are Indwe Risk Services (Pty)

Ltd ("Indwe Risk") which is a broking firm, and Original Co-Sourcing SA (Pty) Ltd ("Orico"), which is an insurance administrator.

3] Premerger Santam through Swanvest is a minority shareholder of Indwe, and the shareholding in Indwe is as follows:
Swanvest - 37.8%
Pamodzi - 26.3%
Mainstreet -16.8%
Thebe - 19.04%

4] In terms of the transaction, Santam (through Swanvest) will acquire 100% control over Indwe, by acquiring the shareholdings of Pamodzi and Thebe Group which hold the majority of the issued share capital of Indwe. The parties submitted that this is in terms of Swanvest's pre-emptive right which is embodied in a shareholders agreement amongst the shareholders of Indwe.

Rationale

5] According to Santam the merger is essentially a defensive move which accords with its pre-emptive rights, and the aim is that it hopes to protect its interest in valuable insurance work being placed with it by Indwe, given that the controlling Thebe and Phamodzi group companies are exiting in order to realise their investment in Indwe. It was explained at the hearing that the merger was triggered by the latter's wish to sell and not Santam's wish to acquire. Santam feared that if it did not follow its pre-emptive rights it might hold a substantial minority interest in a business controlled by a rival.

The Issue of Control

6] Given the genesis of the Indwe structure, an issue was argued at the hearing around whether Swanvest already had some form of joint control before this transaction, and whether consequently there may possibly have been a prior unnotified merger. However we did not consider this issue presently. The Commission is aware of the facts and can bring proceedings if it concludes that there should have been a prior notification. On that basis we do not make a finding in this regard.

Competition Analysis

7] There is only a vertical relationship between the merging parties. The Commission identified the relevant markets as:

- three upstream markets for short term insurance viz: personal lines, commercial lines and corporate lines
- three downstream markets for short term insurance broking viz: personal lines broking, commercial lines broking and corporate lines broking; and
- a market for insurance administration containing the administration of certain outsourced insurer functions viz: claims handling, settling and policy issuing as agent for insurer.

8] With respect to market shares, the parties indicated that it was difficult to provide separate market share estimates for the different niches of short term insurance; i.e. personal, commercial and corporate insurance lines. Santam's market share in the upstream market was estimated to be 19.7%. Though it is a fairly large player, it is not to the extent to suggest that it is dominant. There are other preferred players in this market such as Mutual and Federal, Zurich, Hollard, Outsurance and others. In the downstream market, Indwe is an insignificant player with an estimated market share of approximately 3%. There are numerous large players in the downstream market such as Glenrand MIB, Alexander Forbes, ABSA, and PSG.

9] The key competition concern was whether the incentives of Indwe would change once Santam has sole control. Santam argued that despite having control the Indwe business would have to be run independently to retain credibility in the industry. On the other hand it was concerned if the stake was covered by a rival and hence the merger was described as defensive. At the hearing this was explained to our satisfaction. The use of the term defensive was used in the context of protecting their investment in Indwe as opposed to their share of Indwe's business. Whilst it is not clear whether Santam will as sole controller permit the autonomy suggested, the non-Santam business handled by Indwe (currently Santam constitutes in the region of 60% of its business) is not sufficient to create concerns, nor does it appear that any rivals of Santam raised this as a serious concern.

10] With regards to the insurance administration market, no accurate market share estimates were provided. However, the Commission found that there was no alarm caused by the acquisition of Orico as an insurance administrator given the insignificant size of Indwe in the broker market. The fact that Orico is a "captive" insurance administrator which administers only clients arising from Indwe Risk, albeit for different insurers, means that there are similarly no concerns raised in this part of the market.

Information Exchange

11] Various players from the upstream market such as Zurich and Hollard raised concerns about the possible information sharing between the merging parties post merger. However the Commission found that it was unlikely that the merging parties would engage in such conduct which would be detrimental to the credibility and reputation of these firms. In addition the Commission found that the industry has measures in place to manage appropriate information dissemination and to protect confidential information from unauthorised leakage.

Conclusion

12] We therefore conclude that the proposed merger is unlikely to lead to a substantial prevention or lessening of competition in any of the relevant markets. There are no public interest concerns arising from the proposed deal. Hence the proposed transaction is approved unconditionally.

02/12/2010

Norman Manoim DATE

Andreas Wessels and Yasmin Carrim concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Cliffe Dekker Hofmeyr

For the Commission: F. Reid