



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM175Jan23

In the matter between:

Santam Limited

Acquiring Firm

and

The MTN Portfolio Comprising the Device Insurance Policies Marketed and Distributed by Mobile Telephone Networks (Pty) Ltd and Underwritten by Guardrisk Insurance Company Ltd

Target Firm

Panel : Jerome Wilson (Presiding Member)
: Tregenna Fiona (Tribunal Panel Member)
: Liberty Mncube (Tribunal Panel Member)

Heard on : 13 March 2023

Order issued on : 13 March 2023

Reasons issued on : 24 April 2023

REASONS FOR DECISION

Approval

- [1] On 13 March 2023, the Competition Tribunal ("Tribunal") unconditionally approved the large merger in terms of which Santam Limited ("Santam") intends to acquire the device insurance policies marketed and distributed by Mobile Telephone Networks Proprietary Limited ("MTN SA") and currently underwritten by Guardrisk Insurance Company Limited ("Guardrisk") through a cell structure, together with certain assets and liabilities pertaining to such policies ("the MTN Portfolio"). Upon implementation of the proposed transaction, Santam will become the underwriter of, and will thus acquire sole control over, the MTN Portfolio.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Santam, a company incorporated in terms of the laws of South Africa.
- [3] Santam is controlled by Sanlam Limited ("Sanlam"). Sanlam is a public company listed on the Johannesburg Stock Exchange and is not controlled, directly or indirectly, by any one firm.
- [4] Sanlam and all its subsidiaries, including Santam, will collectively be referred to as the "Acquiring Group".
- [5] Santam is a short-term (non-life) insurer, which is licensed in terms of the Insurance Act, 18 of 2017 ("Insurance Act"), to provide policy benefits under short-term / non-life policies for all classes of business (corporate, commercial, niche and specialist markets as well as personal lines) in South Africa.

Primary target firm

- [6] The primary target firm is the MTN Portfolio.
- [7] The MTN Portfolio is currently underwritten by Guardrisk in a cell structure. Guardrisk is a wholly owned subsidiary of Momentum Metropolitan Holdings Limited ("MMI"). MMI is a public company listed on the Johannesburg Stock Exchange and is not controlled, directly or indirectly, by any one firm.
- [8] The MTN Portfolio comprises the insurance policies marketed and distributed by MTN SA to its clients in respect of devices such as cellphones, laptops, tablets and wearable devices. The insurance products include: i) all risk cover for loss, theft and any damage; ii) cover for theft and loss only; iii) liquid or accidental damage only; and iv) cover for the repair of the insured device.

Proposed transaction and rationale

Transaction

- [9] The proposed transaction essentially comprises the transfer of the device insurance policies comprising the MTN Portfolio from Guardrisk to Santam, in terms of a regulatory portfolio transfer process as prescribed in the Insurance Act, subject to approval of the Prudential Authority. Upon approval of the regulatory portfolio transfer, Santam will underwrite MTN SA's device insurance policies and become the new underwriter of the MTN Portfolio.

Rationale

[10]



Relevant market and impact on competition

[11] The Competition Commission (“the Commission”) considered the activities of the merging parties and found that the proposed transaction will result in a horizontal overlap in the supply of short-term/ non-life insurance products. In particular, the Acquiring Group is a provider of non-life/ short-term insurance products, whilst the MTN Portfolio offers device insurance policies for cellphones, laptops, tablets and wearable devices.

Relevant product market

[12] In identifying the relevant product market, the Commission had regard to the decision of the Tribunal in **Swanvest 120 (Pty) Ltd/ Indwe Broker Holdings Limited**,¹ in which the Tribunal held that a market for the “*provision of short-term insurance*” may be too broad, and that the market should be subdivided further into the markets for the provision of personal, commercial, and corporate cover.

[13] The Commission also considered the Tribunal’s decisions in **Momentum Metropolitan Investments (Pty) Ltd/ The Short-term Insurance Business of Alexander Forbes Limited**² and **Swanvest 120 Proprietary Limited/ RMB-SI Investments Proprietary Limited**³, where the Tribunal referred to a “*broad short-term insurance market*” and to “*narrow short-term markets for (i) property insurance, (ii) transport insurance, (iii) motor insurance, (iv) accident and health insurance (v) guarantee insurance, (vi) liability insurance, (vii) engineering insurance, and (viii) miscellaneous insurance.*”

[14] The Commission considered that, in the present transaction, the MTN Portfolio consists only of device insurance policies for cellphones, laptops, tablets and wearable devices, which fall under (movable) property insurance; whereas

¹ Swanvest 120 (Pty) Ltd / Indwe Broker [2010] ZACT (LM058Sep10).

² Momentum Metropolitan / Alexander Forbes [2019] ZACT (LM109Sep19).

³ Swanvest 120 / RMB SI Investment [2016] ZACT (LM146Oct16).

Santam offers different types of short-term insurance, including property insurance.

- [15] In the circumstances, the Commission did not conclude on the exact scope of the product market but assessed the proposed transaction in the broad market for the provision of short-term (non-life) insurance.

Geographic market

- [16] As regards the relevant geographic market, the Commission noted that the market for insurance products, whether broadly or narrowly defined, has previously been considered by the Tribunal to be national in scope.⁴
- [17] However, for purposes of the present transaction, the Commission submitted that the exact scope of the geographic market can be left open, as the proposed transaction will not lead to competition concerns irrespective of the geographic scope of the market.
- [18] Accordingly, the Commission, while not concluding on the relevant market, assessed the effect of the proposed merger in the broad market for the provision of short-term insurance in South Africa.
- [19] The Tribunal agrees that it is not necessary to conclude on the definition of the relevant product and geographic market in this case as the proposed merger does not raise competition concerns irrespective of the exact scope of the relevant market.

Competition analysis

- [20] In calculating market shares in the broad short-term insurance market, the Commission used 2022 data obtained from the Prudential Authority.
- [21] Based on this data, the Commission found that the merged entity will have a post-merger market share of approximately [REDACTED] with an accretion of less than [REDACTED]. The Commission also found that the merged entity will continue to face constraints from various other significant players such as Guardrisk, Hollard Insurance, Old Mutual, OUTsurance and others.
- [22] The Commission accordingly concluded that the proposed merger is unlikely to substantially prevent or lessen competition in the market as the merging parties

⁴ *Swanvest 120 (Pty) Ltd/ Indwe Broker Holdings Limited [2010] ZACT (LM058Sep10); Sanlam Limited/ Emerald Insurance Company Limited [2009] ZACT (M025Aug09); Hollard Insurance Company Ltd/ Etana Insurance Company Ltd (017442).*

do not have market power and the market share accretion caused by the merger will be low.

- [23] Having regard to the above, the Tribunal agrees with the Commission's assessment that the proposed transaction is unlikely to substantially prevent or lessen competition in the broad short-term insurance market.

Public interest

Effect on employment

- [24] The merging parties submitted that the proposed transaction will not give rise to any job losses (including forced retrenchments and redundancies) in South Africa.
- [25] The merging parties indicated in this regard that the MTN Portfolio is comprised of assets and, as such, has no employees.
- [26] The Commission contacted the trade union that represents the employees of Santam, namely SASBO, which expressed a concern that the statement in the merger filing that the merger would not give rise to any retrenchments excluded "*retrenchments lawfully effected for operational requirements unrelated to the proposed transaction*". SASBO stated that, although they did not have any objection to the proposed merger and understood that the merger parties had undertaken not to effect any forced merger-specific retrenchments, this exclusion was ambiguous and confusing because labour would not be able to determine whether or not a retrenchment was merger-specific or for operational reasons.
- [27] In response to SASBO's concerns, the merging parties indicated that any employees would be free to engage the Commission if they were concerned that any retrenchments were merger-specific, and that the rights of all employees would be safeguarded in terms of the Competition Act and the Labour Relations Act, No. 66 of 1995.
- [28] The Commission noted that merging parties' undertaking that the proposed transaction will not result in any job losses or retrenchments, and also that the merger will not result in any duplication of roles as the MTN Portfolio does not have any employees. The Commission also noted that the caveat on merger-specific retrenchments that formed the basis of SASBO's concern is generally contained as a standard clause in any employment conditions imposed by the competition authorities; and that SASBO did not express any objection to the proposed merger itself.

[29] Given the above, the Commission concluded that the proposed transaction is unlikely to have a negative impact on employment, and that no change to the exclusion referred to by SASBO was warranted in the circumstances of this case. The Tribunal agrees with this conclusion.

Effect on the spread of ownership

[30] The Commission engaged the merging parties on the question whether the proposed transaction promotes a greater spread of ownership, in particular, by increasing the levels of ownership by historically disadvantaged persons (“HDPs”) and workers in firms in the market, within the meaning of section 12A(3)(e) of the Competition Act.

[31] The merging parties submitted that the Acquiring Group has a Level 1 B-BBEE rating and the Commission found that approximately 43% of the shares in the Acquiring Group are held by HDPs.

[32] As regards the target firm, the Commission found that approximately 37% of the shares in MMI (the current ultimate controller of the MTN Portfolio) are held by HDPs.

[33] Based on the above, the Commission concluded that the proposed transaction will promote a greater spread of ownership within the meaning of section 12A(3)(e) of the Competition Act.

[34] The Commission also found that the proposed transaction does not raise any other public interest concerns.

[35] We agree with the Commission’s conclusion that the proposed transaction does not raise any public interest concerns.

Conclusion

[36] Considering the above, the Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition or to give rise to any negative public interest effects. Accordingly, we approve the proposed transaction unconditionally.

Signed by: Jerome Wilson
Signed at: 2023-04-24 09:51:55 +02:00
Reason: Witnessing Jerome Wilson

Jerome Wilson

Adv. Jerome Wilson SC

24 April 2023
Date

Concurring: Prof. Liberty Mncube and Prof. Imraan Valodia

Tribunal case manager : Baneng Naape

For the merging parties : Natalia Lopes of Edward Nathan Sonnenbergs Inc.

For the Commission : Zintle Siyo and Themba Mahlangu