

SOUTH AFRICA / JUDGMENT

Bonitas Medical Fund v Nedgroup Medical Aid Scheme (LM092Oct21) [2021] ZACT 75 (9 November 2021)

[2021] ZACT 75

COURT
Competition Tribunal

BEFORE
Y Carrim, E Daniels, F Tregenna

CASE / FILE NUMBER
LM092Oct21

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COMPETITION
TRIBUNAL OF SOUTH AFRICA
Case
No.: LM092Oct21
In

the matter between:	Bonitas Medical Fund Primary Acquiring Firm And Nedgroup Medical Aid Scheme Primary Target Firm
Panel:	Y Carrim (Presiding Member) E Daniels (Tribunal Member) F Tregenna (Tribunal Member) Heard

on: 09 November 2021
Order
Issued on: 09 November 2021
ORDER
Further
to the recommendation of the Competition Commission in terms of
section 14A(1)(b) of the Competition Act, 1998 (“the
Act”)
the Competition Tribunal orders that–
1.
the merger between the abovementioned parties be approved in
terms of
section 16(2)(a) of the Act; and
2.
a Merger Clearance Certificate be issued in terms of Competition
Tribunal Rule 35(5)(a).
Presiding
Member
09 November 2021
Ms
Yasmin
Carrim
Date

Concurring: Mr Enver Daniels and Prof. Fiona Tregenna
COMPETITION TRIBUNAL OF
SOUTH AFRICA
Case
no: LM092Oct21
Bonitas
Medical Fund (Primary Acquiring Firm)
and
Nedgroup
Medical Aid Scheme (Primary Target Firm)

REASONS FOR DECISION

- [1] On 9 November 2021, the Competition Tribunal unconditionally approved a large merger between Bonitas Medical Fund (“Bonitas”) and Nedgroup Medical Aid Scheme (“NMAS”).
- [2] The transaction involves the amalgamation of Bonitas and NMAS in terms of which NMAS will transfer its existing members, assets and liabilities, as a going concern, to Bonitas. Following the implementation of the proposed transaction, NMAS will be deregistered and cease to exist.

- [3] Bonitas is a medical scheme duly registered in terms of section 24(1) of the Medical Schemes Act,[1] (“the MSA”) and regulated by the Council for Medical Schemes (“CMS”). Bonitas is not directly or indirectly controlled by any shareholder or firm and does not control (directly or indirectly) any firm. In terms of the MSA, Bonitas is managed by a board of trustees, elected directly from amongst its members.
- [4] Bonitas is an open medical scheme offering 14 benefit options.[2] Other services that Bonitas offers to its members include administration services, managed care services, asset management, capitation arrangements, actuarial services, investment consulting and auditing services through third party providers.

Bonitas uses Medscheme Holdings (Pty) Ltd (“Medscheme”) as its administrator for the medical scheme administration services.

- [5] NMAS is also a medical scheme registered in terms of the MSA and regulated by the CMS. NMAS is not directly or indirectly controlled by any firm, and it does not control any firm.
- [6] NMAS operates as a restricted or closed medical scheme with membership restricted to employees and retirees of Nedbank and Old Mutual Insure. NMAS provides five benefit options.[3] Pre-merger, it was compulsory for Nedbank and Old Mutual Insure employees and retirees to join NMAS, unless they were already a member of their spouse’s medical scheme. NMAS also provides administration services, managed care services, asset management services, capitation arrangements, actuarial services, investment consulting and auditing through third party providers. NMAS is also administered by Medscheme as its administrator.
- [7] The Competition Commission (“the Commission”) found horizontal overlaps in the activities of the merging parties in that both Bonitas and NMAS are involved in the provision of medical schemes in South Africa. The proposed transaction does not result in any vertical overlaps as there is no pre-existing relationship between the merging parties that could result in vertical concerns. The Commission identified two relevant markets based on case precedent. A broad market for the provision of both open and closed medical schemes and a narrow market for the provision of closed medical schemes.[4]
- [8] In the broad market, the Commission found that post-merger the merged entity will have a market share below 10%, with a market share accretion of approximately less than 1%.[5] The merged entity would continue to face competition from numerous schemes[6] in a market with overall 76 medical schemes (with 18 open schemes) operating in South Africa. Given the presence of many alternatives in the market and the minimal market share accretion arising as a result of the proposed transaction, the Commission was of the view that the proposed transaction was unlikely to substantially prevent or lessen competition in the broad market for the provision of medical schemes in South Africa.

[9] Despite the absence of overlap in the narrow market, the Commission considered NMAS' market share estimates in the narrow market for the provision of closed medical schemes. NMAS was estimated to have a market share of less than 2%. The Commission also solicited the views of the CMS on the proposed transaction; and no competition

or public interest concerns were raised. Accordingly, the Commission was of the view that, regardless of the market considered (whether broad or narrow), the proposed transaction is unlikely to raise any competition concerns in the affected markets.

[10] The Commission has considered whether the proposed transaction will have any effect on NMAS members' premiums/contributions post-merger. This concern was based on the merging parties' submissions that post-merger, NMAS will be deregistered and will no longer be offering any benefit options to its members. The merging parties have submitted that, post-merger, each of NMAS' members will be able to elect a benefit option from Bonitas' 14 current benefit options. The merging parties also provided the independently prepared Exposition Report - a statutorily required[7] report that aims to assess whether an amalgamation would be in the interest of medical scheme members. In the evaluation, the actuaries

compiled a detailed benefit option mapping exercise to identify which Bonitas benefit option is best suited for NMAS members. It was found that there are various Bonitas benefit options which provide very similar benefit structures to NMAS' options.[8] The Commission further notes that, post-merger, NMAS' members will be free to choose from the full range of Bonitas' 14 options best suited to their needs and circumstances.

[11] The Commission noted that NMAS' members will not be compelled to switch to Bonitas post-merger. Those who do not move to Bonitas will still have the option of joining Discovery or Bestmed schemes, which provide a wider range of benefit options than the NMAS offering. Considering the above, the Commission is of the view that members will not be in a worse off position, instead they may be in a better position given that they would have access to three possible medical scheme options, which each provide a wider range of benefit options than the NMAS offering. The Commission also noted that NMAS

members had in fact voted in favour of the proposed transaction.

[12] The merging parties submitted that the proposed transaction will not have any adverse effects on employment. Bonitas currently has 15 employees and they are not represented by any trade unions. NMAS has no employees. The Commission engaged Bonitas' employee representative who disclosed that none of the employees raised any concerns regarding the proposed transaction. The merging parties have also provided an unequivocal statement that there will be no retrenchments as a result of the proposed transaction. The Commission did not find any evidence to suggest that the merging parties intend retrenching employees as a result of the merger.

- [13] Regarding the spread of ownership public interest consideration, the merging parties submit that no shareholder or entity holds ownership of any form in Bonitas or NMAS because, in terms of the MSA,[9] the business of a medical scheme must be managed by a board of trustees elected directly from amongst its members. While a board of trustees oversees each respective scheme, the schemes belong to the members. The Commission found that all members will become part of the amalgamated scheme thus the identity of the members to the respective schemes before and after the implementation of the proposed transaction will not change, save for the fact that members will now be part of an amalgamated scheme. Accordingly the Commission found that the proposed merger is unlikely to result in a negative effect on the promotion of a greater spread of ownership.
- [14] We agreed with the Commission's findings and concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.

9 November 2021

Ms Yasmin Carrim

Date

Prof Fiona Tregenna and Mr Enver Daniels concurring

Tribunal Case Manager: P Kumbirai and M Tshabalala

For the Merging Parties: A Mahomed and Z van der Westhuizen of GMI Attorneys

For the Commission: Z Hadebe and T Masithulela

[1] Act No 131 of 1998.

[2]

(i) BonComprehensive, (ii) BonClassic, (iii) BonComplete, (iv) Standard, (v) Standard Select, (vi) BonSave, (vii) Primary, (viii)

Primary Select, (ix) Hospital Standard, (x) BonFit Select, (xi) BonEssential, (xii) BonEssential Select, (xiii) BonCap and (xiv)

BonStart.

[3]

(i) Platinum, (ii) Comprehensive, (iii) Traditional, (iv) Savings and (v) Hospital network.

- [4] In this regard, open schemes refer to medical schemes that are open to the general public, such that anyone can join given that they can afford the relevant contributions. Closed or restricted schemes on the other hand are schemes that allow only a pre-specified group of people to join. These specified groups may include current or former employees of a firm or members of a particular profession, professional association or union.
- [5] Market share estimates are based on membership numbers as at 31 December 2020.
- [6] Such as Discovery Health Medical Scheme, Momentum Health, Key Health, Bestmed Medical Scheme, Fedhealth Medical Scheme, Medihelp, Medshield Medical Scheme, Sizwe Medical Fund, Cape Medical Plan, Compcare Wellness Medical Scheme, Genesis Medical Scheme, Health Squared Medical Scheme, Hosmed Medical Aid Scheme and Suremed Health, amongst others.
- [7] In terms of section 63 of the MSA.
- [8] In particular, 91% of current NMAS members utilise the Traditional, Savings and Hospital Network benefit options, which have a good fit with their equivalent Bonitas options and largely result in the same level of contributions being paid. Moreover, NMAS members with the Comprehensive benefit option will pay lower contributions for the same level of benefits. However, NMAS members with the Platinum benefit option, 5% of NMAS membership as of May 2021, would have to pay significantly higher contributions under the comparable Bonitas option (BonComprehensive) for the same level of benefits. They are therefore expected to opt for BonClassic, which has a lower level of benefits, but they will also pay lower contributions.
- [9] Section 29(1)(a).

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