

SOUTH AFRICA / JUDGMENT

Capitec Life Limited v Funeral Insurance Business Underwritten in the Cell Structure of Centriq Life Insurance Company Limited (LM152Dec23) [2024] ZACT 35 (15 April 2024)

[2024] ZACT 35

COURT

Competition Tribunal

BEFORE

A Kessery, F Tregenna, L Mncube

CASE / FILE NUMBER

LM152Dec23

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COMPETITION TRIBUNAL
OF SOUTH AFRICA

Case No.: LM152Dec23

In

the large merger
between:

Capitec
Life Limited
Primary
Acquiring Firm
And
The
funeral insurance business underwritten
Primary
Target Firm
in
the cell structure of Centriq Life Insurance
Company
Limited

Panel:

A Kessery (Presiding Member)
F
Tregenna (Tribunal Member)
L
Mncube (Tribunal Member)
Heard

on:	14 March 2024 Order issued
on:	14 March 2024 Reasons Issued
on:	15 April 2024

REASONS FOR DECISION

Approval

[1] On 14 March 2024, the Competition Tribunal (“the Tribunal”) conditionally approved the large merger in terms of which Capitec Life Ltd (“Capitec Life”) (the primary acquiring firm) will acquire sole control of the funeral insurance business

underwritten by Centriq Life Insurance Company Ltd (“Centriq Life”) in terms of a cell captive arrangement[1] with Capitec Ins (Pty) Ltd (“Capitec Ins”) (the “Target Business”), which insurance business risk is reinsured to and administered by Sanlam Developing Markets Ltd (“SDM”).

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Capitec Life. Capitec Life does not directly or indirectly control any firms. Capitec Life is wholly owned by Capitec Insurance Holdings (Pty) Ltd (“Capitec Insurance”), which in turn is wholly owned by Capitec Bank Holdings Ltd (“Capitec Holdings”). Capitec Holdings is not controlled by any individual shareholder or firm. Capitec Holdings and the firms controlled by it are referred to as the “Capitec Group”.
- [3] Capitec Group operates through its subsidiaries to provide banking and insurance services. It is responsible for capitalising the Target Business in order to ensure it can meet its liabilities and statutory solvency requirements. The Capitec Group is also responsible for marketing, distributing and selling funeral insurance policies of the Target Business to its banking clients only, which role also includes attending to the entering into, the variation of, or the renewal of any funeral insurance policy.

Primary target firm

- [4] The primary target firm is the Target Business which is jointly and directly controlled by Capitec Ins, Capitec Bank Ltd (“Capitec Bank”), Centriq Life and SDM. The Target Business comprises of a book of funeral insurance policies in terms of the cell captive agreement with Centriq Life as the underwriter and which is distributed by Capitec Bank. Centriq Life and SDM are ultimately wholly owned by Sanlam Ltd (“Sanlam”). Sanlam is not controlled by any firm/s.

Proposed transaction and rationale

Transaction

- [5] The proposed transaction relates to the termination of the Co-Operation Agreement between Capitec Bank, Capitec Ins, Centriq Life and SDM in respect of the Target Business. After the termination of the Co-Operation Agreement, Capitec Life will take over the role and functions of SDM (excluding reinsurance) until the Target Business is ultimately transferred to Capitec Life in terms of section 50 of the Insurance Act No. 18 of 2017 (“Insurance Act”). SDM will, after termination of the Co-Operation Agreement, also cease providing reinsurance to the Target Business.
- [6] The proposed transaction will ultimately result in the Target Business being solely controlled by Capitec Life, after termination of certain agreements (Co- Operation, Reinsurance and Operating Agreements), and upon completion of the transfer of the Target Business to Capitec Life in terms of section 50 of the nsurance Act.

Rationale

- [7] Capitec Group received its insurance licence from the Prudential Authority and the Financial Sector Conduct Authority on 3 October 2022. It therefore no longer needs Centriq Life to underwrite the funeral insurance policies of the Target Business. It now has the licence to underwrite the following classes and sub-classes of life insurance business: risk, credit life and funeral cover.

Competition assessment

- [8] The Competition Commission (“Commission”) considered the activities of the merging parties and found that the activities of the Target Business are attributable to Capitec Group given that it already controls the Target Business pre-merger. Further, Capitec Group is only involved in providing funeral insurance policies to Capitec Bank’s clients through the Co-operation Agreement and does not currently underwrite any funeral insurance policies to the general public which are not Capitec Bank clients. Accordingly, the Commission is of the view that the proposed transaction is unlikely to change the structure of any market or lead to the accretion of any market shares.
- [9] There is no vertical overlap between the merging parties’ activities as they do not participate at different levels of the same supply chain.
- [10] Having considered the above, we agree that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest assessment

Employment

[11] The merging parties submitted that there will be no retrenchments or job losses as a result of the proposed transaction.

[12] We are of the view that the proposed transaction is unlikely to raise any employment concerns post-merger.

Spread of ownership

[13] The Commission noted that the proposed transaction results in a 6.65% dilution of shareholding by historically disadvantaged persons (“HDP”) because Capitec Group has 24.7% black shareholding/ownership and Sanlam (the exiting party) is a level one Broad-Based Black Economic Empowerment (“B-BBEE”) contributor, and is 46.85% black-owned, with 21.90% ownership by black women. It nevertheless also agreed with the merging parties that there is no pre- or post-merger HDP shareholding attributable to the Target

Business since it is an unincorporated business.

[14] The Commission also noted that the Capitec Group currently only provides funeral insurance policies to Capitec Bank’s clients and not to the general public; already has pre-existing rights, obligations and joint control of the Target Business; the parties always contemplated the possibility of a run-down or transfer of the Target Business to another insurer including the Capital Group if the arrangement was not renewed; and the Target Business runs predominantly for the benefit of the Capitec Group. In addition, Capitec Group, a public company with 24.7% HDP shareholding/ownership will be entitled to 100% of the profits and/or

losses of the Target Business post-merger as opposed to 70% of the profits and/or losses of the Target Business pre-merger. Further, the HDP ownership of both parties (i.e., Capitec Group and Sanlam) would remain unchanged as a result of the proposed transaction.

[15] Following negotiations with the Commission, the merging parties subsequently agreed that Capitec Group will subscribe for shares in [...] and/or an alternative HDP entity for a purchase consideration equal to an amount of R[...] and provide funding to [...] and/or an alternate HDP entity by way of a donation in the form of a grant, in an amount equal to a minimum value of R[...] (collectively referred to as the “Investment”). [...] and/or the alternative HDP entity will ring-fence the Investment solely for the purposes of investing, developing and supporting HDP owned small- and medium-sized businesses.

Conclusion on public interest

[16] We are not aware of any other public interest concerns arising in this case.

Third party views

[17] No third parties, whether customers or competitors, expressed concerns about the proposed merger to the Tribunal.

Conclusion

[18] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any significant public interest concerns.

[19] We therefore approve the proposed transaction subject to the conditions attached hereto as Annexure A

Signed by: Anisa Kessery

Signed at: 2024-04-15 15:31:26 +02:00

Reason: Witnessing Anisa Kessery

15 April 2024

Adv. Anisa Kessery

Date

Prof. Liberty Mncube and Prof. Fiona Tregenna concurring. Tribunal Case Managers: Theodora Michaletos and Baneng Naape For the Merging Parties: Werner Rysbergen of DLA Piper, Daryl Dingley and Busisiwe Masanga of Webber Wentzel, and Nicole Britton of Clyde & Co For the Commission: Wiri Gumbie, Zanele Hadebe and Nhlakanipho Mbhense

[1] In terms of the Insurance Act No. 18 of 2017, “cell captive insurer” means an insurer that only conducts

insurance business through cell structures; “cell structure” means an arrangement under which a person

(cell owner)— (a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares; (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and (c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up.

[2] [...], which Capitec Holdings has a shareholding in, was incorporated on 12 May 2017 by the Capitec Group, and is an Enterprise and Supplier

Development (“ESD”) beneficiary as well as an authorised financial services provider. It is a venture capital firm, which provides mutually beneficial long-term equity investments into the Small, Medium and Micro Enterprise sector as a form of sustainable and impactful ESD.

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Prepared on 12 October 2026 · Esheria