

SOUTH AFRICA / JUDGMENT

Liberty Group Ltd v Liberty Active Ltd and Others (16253) [2013] ZACT 29 (18 April 2013) [2013] ZACT 29

COURT

Competition Tribunal

BEFORE

Takalani Madima, Andiswa Ndoni, Anton Roskam

CASE / FILE NUMBER

016253

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016253

In the merger between:

LIBERTY GROUP LIMITED PRIMARYACQUIRING FIRM

and

LIBERTY ACTIVE LIMITED,

CAPITAL ALLIANCE LIFE LIMITED AND

LIBERTY GROWTH LIMITED PRIMARYTARGET FIRMS

Panel : Takalani Madima (Presiding Member)

Andiswa Ndoni (Tribunal Member)

Anton Roskam (Tribunal Member)

Heard on : 20 March 2013

Order issued on : 20 March 2013

Reasons

issued on : 18 April 2013

Decision

Unconditional Approval

On 20 March 2013, the Competition Tribunal (“Tribunal”), in terms of section 14A(1)(a) of the Competition Act of 19981, approved the merger between Liberty Group Limited and the three target firms, namely Liberty Active Limited, Capital Alliance Life Limited and Liberty Growth Limited. The reasons for unconditionally approving the proposed transaction follow below.

Parties to the transaction

The primary acquiring firm Liberty Group Limited (“Liberty Group”), a wholly owned subsidiary of Liberty Holdings Limited (“Liberty Holdings”). Liberty Group is a financial services group which offers a comprehensive range of long-term insurance products and services to both individual and corporate clients.

The target firms detailed below are all solely controlled by the Liberty Group.

Liberty Active Limited (“Liberty Active”) is a licensed long-term insurance provider which develops, markets and sells various funeral and life cover plans specifically for emerging consumers, investment plans and lastly, funeral plans and credit insurance in the embedded risk category.

Capital Alliance Life Limited (“Capital Alliance”) is a licensed long-term insurance provider which develops, markets and sells products with a focus on group benefits, such as income replacement benefits, permanent disability benefits, death benefits and progressive educator benefit.

Liberty Growth Limited (“Liberty Growth”) administers legacy products, the majority of which are retail investment and risk policies, as well as policies similar to those which Liberty Active sells to emerging customers.

Proposed transaction

In terms of the proposed transaction, Liberty Group will acquire the businesses of certain other subsidiaries of Liberty Holdings. This transaction represents a change in direct control of these businesses of the target firms. However, there will be no change in ultimate control of these target firms, given that they will continue to be indirectly controlled by Liberty Holdings.

Given that the acquiring firm and the three target firms all hold separate long-term insurance licences prior to the transaction, this transaction will enable the consolidation of the licences attached to the businesses.

Rationale for the transaction

Liberty Group purchased Capital Alliance, including the long-term insurance licences of Capital Alliance and Liberty Growth, eight years ago. At that time, Liberty Group already owned Liberty Active, which also holds a long-term insurance licence.

Thereafter, Liberty integrated its long-term insurance operations. Given that Liberty Group and the three target firms all hold separate long-term insurance licences, there is no clear organisation of product lines or business units and therefore managing Liberty Group's long-term insurance unit is made rather difficult.

By consolidating the long-term insurance licences by means of this transaction, Liberty Group is able to mitigate various risks, increase the free capital and reduce the operational complexities of such a structure.

Competition assessment

The merging parties and the Commission segmented the long-term insurance market into different classes, depending on the specific risk covered, such as health, assistance, disability, life, fund and sinking fund policies.

The long-term insurance business of Liberty Group is integrated across the target firms and the firms do not compete with or supply one another. Therefore, there will not be a horizontal nor a vertical overlap in the activities of the parties.

As this transaction constitutes an internal restructuring, there will not be a change in the dynamics of the long-term insurance market and the market shares will remain the same.² Thus the estimated market shares of the consolidated group will remain the same as prior to the transaction. Therefore, Liberty Group (along with the target firms) has an estimated 28.97% of the health category, 23.73% of the assistance category, 22.36% of the disability category, 15.9% of the life category and 2.72% of the fund category. Liberty Group does not hold a share of the sinking fund category.

There are a number of players in the long-term insurance market which provide competition for the Liberty Group.

Public interest

The merging parties confirmed that the proposed transaction will not have any effect on employment.³ No other public interest issues arise as a result of this transaction.

CONCLUSION

Given that the dynamics of the market will not change and that there are many competitors in the market, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no other public interest concerns. Accordingly, we approve the proposed merger unconditionally.

18 April 2013

TAKALANI MADIMA DATE

Andiswa Ndoni and Anton Roskam concurring

Tribunal Researcher: Nicola Ilgner

For the Commission: Zanele Hadebe

For the merging parties: Webber Wentzel

¹Act No. 89 of 1998, as amended.

²See page 2 of the transcript.

³See page 48 of the merger record.

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