

SOUTH AFRICA / JUDGMENT

Old Mutual Insure Limited v Genric Insurance Company Limited (LM127Oct22) [2022] ZACT 56 (30 November 2022) [2022] ZACT 56

COURT
Competition Tribunal

BEFORE
Y Carrim, F Tregenna, A Ndoni

CASE / FILE NUMBER
LM127Oct22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM127Oct22

In the matter between:

Old Mutual Insure Limited

Primary Acquiring Firm

and

Genric Insurance Company Limited

Primary Target Firms

Panel: Y

Carrim (Presiding Member)

F Tregenna (Tribunal Member)

A Ndoni (Tribunal Member)

Heard on: 24

November 2022

Order issued on: 24 November 2022

Reasons

issued on: 30 November 2022

REASONS

FOR DECISION

Introduction

- [1] On 24 November 2022, the Tribunal unconditionally approved the large merger in which Old Mutual Insure Limited (“OMI”) intends to acquire all of the issued shares in Genric Insurance Company Limited (“Genric”).

Primary acquiring firm

- [2] The primary acquiring firm is OMI, private company incorporated in accordance with the laws of South Africa. OMI is controlled by Mutual and Federal Investments Proprietary Limited (“Mutual and Federal”), which in turn is ultimately controlled by Old Mutual Limited (“OML”). OML is a public company and such it is not controlled by any individual shareholder.[1]
- [3] In South Africa, OMI controls the following firms: (i) Credit Guarantee Insurance Corporation of Africa Limited; (ii) Elite Risk Acceptances Proprietary Limited; (iii) Galilean Properties Proprietary Limited; (iv) Mutual and Federal Risk Financing Limited;
- (v) ONE Financial Services Holdings Proprietary Limited (“OFSH”); and
- (vi) Sintelum Proprietary Limited (“Sintelum”).
- [4] OMI, OML and the firms controlled by the Old Mutual Group shall be referred to as (“the Acquiring Group”).
- [5] The Acquiring Group is a diversified African financial services group that offers a broad spectrum of financial solutions to retail and corporate customers. OML operates across various lines of business in the financial services industry, including life and savings, property, asset management and banking and lending. The Old Mutual Group is a licensed non-life insurer, providing non-life insurance services to personal, commercial and corporate clients.
- [6] OMI’s products cover a broad spectrum of non-life insurance solutions such as property, transportation motor, accident and health, guarantee, liability, engineering and miscellaneous insurance in South Africa.

Primary target firms

- [7] The primary target firm is Genric and is not controlled by any individual shareholder.[2]

- [8] Generic controls a number of firms, including the following firms: Automotive VAP Solutions Proprietary Limited; Drivewize Service and Maintenance Plans Proprietary Limited (Drivewize); Delicieuse Deli Proprietary Limited (Delicieuse Deli); GENRIC Africa Proprietary Limited (GENRIC Africa); and GENRIC Aviation Underwriting Managers Proprietary Limited (GENRIC Aviation).
- [9] Generic, all firms that it controls, and all the firms controlled by those firms shall be referred to as the ("the Target Group").
- [10] The Target Group is a licensed non-life and specialist insurer. The Target Group's product portfolio includes appliance warranty, brick and mortar, car hire insurance, gadget insurance and excess waiver insurance.
- [11] The Target Group's primary distribution channel is through a network of approximately [...] independent intermediaries in terms of which they create awareness of the Target Group's product range.

Competition Assessment

- [12] The Commission considered the activities of the merging parties and found that the proposed transaction results in both a horizontal overlap and a vertical overlap.
- [13] The Commission assessed the activities of the merging parties in the following national markets:
- 13.1. non-life property insurance products;
 - 13.2. non-life transport insurance products;
 - 13.3. non-life motor insurance products;
 - 13.4. non-life accident and health insurance products;
 - 13.5. non-life liability insurance products; and
 - 13.6. non-life miscellaneous insurance products.
- [14] In the broad market for non-life or short-term insurance, the Commission found that the merging parties will have an approximated [...] combined post-merger market share, with the accretion of [...] Santam is the largest player with a market share of approximately 23%.^[3]
- [15] In the narrow markets for non-life insurance the Commission found that the merging parties will have a combined post-merger market share of less than [...] in all relevant markets for non-life insurance products (as listed in paragraph 13 above).

- [16] With regards to the vertical overlap, the Commission assessed whether the merger is likely to result in competitors of the Target Group being foreclosed from accessing reinsurance from the Acquiring Group.[....]
- [17] Based on the above, the Commission did not find it necessary to assess potential input foreclosure further.
- [18] Finally, the Commission assessed whether the merger is likely to result in competitors of the Acquiring Group (i.e., reinsurance providers) in the upstream market, being denied access to the Target Group as a customer.
- [19] The Commission's interaction with reinsurance providers such as [....] [....] established that post-merger, there remain ample alternative primary insurance companies that the providers of reinsurance services can offer their services to. Another reinsurance provider, [...] submitted that it provides reinsurance services to at least nine South African customers (Insurance companies) across multiple lines of business. It further submitted that it has no concerns with the proposed transaction.
- [20] The Commission was thus of the view that the proposed transaction is unlikely to result in substantial customer foreclosure concerns.
- [21] Given the above, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We concur with this finding.

Public Interest

Effect on employment

- [22] The merging parties provided an unequivocal statement that no job losses will arise in South Africa as a result of the proposed transaction.
- [23] [....]
- [24] The merging parties submitted that the Pre-merger Retrenchments are entirely unrelated to the proposed transaction and were affected in the ordinary course, in order to, amongst other things, maximize efficiency and to be more competitive.
- [25] [....]
- [26] [....]
- [27] Considering the above, the Commission was of the view that the Pre-Merger Retrenchments are unlikely to have been as a result of the proposed merger. Accordingly, the proposed transaction is unlikely to raise employment concerns.

Effect on the spread of ownership

[28] The merging parties indicated that OML has [...] HDP shareholdings, and OML and a [...] voting interest using the modified flow through principle. The Target Group does not have any shareholding by HDPs.

[29] In addition, the merging parties indicated that OML is in the process of improving its B-BBEE credentials. In this regard, OML is in the process of implementing a new B-BBEE Transaction (called Bula Tsela), as committed to in the Framework Agreement signed in 2018 with the Department of Trade, Industry & Competition (“DTIC”), in terms of which it will increase its HDP shareholdings to over 30%. The B-BBEE Transaction will include the following:

29.1. An approximate R2.8 billion B-BBEE Ownership transaction in OML resulting in an approximate 4% increase in HDP shareholding in OML.

29.2. Creation of a broad-based community trust focusing on financial education for small to medium entities (“SMEs”) and digital skills development.

29.3. Employee share ownership trusts (“ESOP Trusts”) will hold, in total, approximately 1.60% of OML’s issued share capital for the benefit of employees of the Old Mutual Group.

29.4. Black members of the public will subscribe for ordinary shares in a special purpose vehicle (“RetailCo”), which, in turn, will hold approximately 1.29% of OML’s issued share capital.

29.5. A Community trust will hold approximately 1.29% of OML’s issued share capital, for the benefit of various qualifying black community beneficiaries.

29.6. OML and its subsidiaries will provide notional vendor funding to the ESOP Trusts and to the Community Trust, and actual vendor funding to RetailCo, to facilitate the B-BBEE Transaction.

29.7. As part of the B-BBEE Transaction an ESOP Trust will be created. The merging parties have submitted said that the B-BBEE Transaction will be fully implemented by December 2022.

[30] The proposed transaction raised no other public interest concerns.

Conclusion

[31] Having considered the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

Date: 30 November 2022

Ms Yasmin Carrim

Prof. Fiona Tregenna and Ms Andiswa Ndoni concurring

Tribunal Case Manager: Theodora Michaletos

For the Merging Parties: Xolani Nyali of Bowmans

For the Commission:

Yolanda Okharedia and Themba Mahlangu

- [1] The top 3 shareholders of OML are Public Investment Corporation (15.43%), Allan Gray (11.23%), and Prudential Portfolio Managers (5.83%).
- [2] The shares in Genric are collectively owned by [....].
- [3] Other players include Hollard Insurance (8.4%), Guardrisk (6.8%), OUTsurance (5.9%) and Bryte Insurance (3.3%). Furthermore, the Commission found that there are about 90 insurance companies active in the non-life insurance market.

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