COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019240

In the matter between:

Metropolitan Health Corporate (Pty) Ltd Primary Acquiring Firm

And

CareCross Health (Pty) Ltd Primary Target Firm

Panel	:	Mondo Mazwai (Presiding Member), Fiona Tregenna (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	19 November 2014
Order issued on	:	19 November 2014
Reasons issued on	:	05 February 2015

Reasons for Decision

Approval

[1] On 19 November 2014 the Competition Tribunal ("Tribunal") unconditionally approved a large merger between Metropolitan Health Corporate (Pty) Ltd ("MH") and CareCross Health (Pty) Ltd ("CareCross"). The reasons for approving the proposed transaction follow.

Parties to transaction

[2] The primary acquiring firm is MH, a company incorporated in accordance with the laws of South Africa. MH is owned by MMI Holdings Limited ("MMI"), which is a South African based financial services group listed on the South African Stock Exchange, the

[3] JSE. MH, itself or through its subsidiaries, provides a suite of services including medical scheme administration, managed healthcare and healthcare-related IT services.

[4] The primary target firm is CareCross, a company incorporated pursuant to the laws of the Republic of South Africa. CareCross, through its various subsidiaries provides managed healthcare services to medical schemes and occupational health and wellness services to large employers. The subsidiaries that are being acquired by MH are the following:

4.1 Occupational Care South Africa Proprietary Limited ("OCSA")

4.2 Workerscare Proprietary Limited ("Workerscare"), Onecare Health Proprietary Limited ("Onecare")

4.3 Nucare (Pty) Ltd ("Nucare").

Proposed transaction and rationale

[5] The proposed transaction involves the sale of the issued share capital in CareCross by the existing CareCross shareholders to MH. MH is not acquiring firms in which CareCross only has a minority shareholding or which are dormant and is also not acquiring the pharmaceuticals business of CareCross. Following the transaction, the parties anticipate that the CareCross Group will continue to be run autonomously from MH.[1]

[6] According to MH, it anticipates value from the proposed transaction as MH will have access to capitation capabilities through the capitation risk model employed by CareCross. MH sees this model as a means of offering affordable access to

[1] See pages 50-51 of the merger record.

quality healthcare, allowing it to reduce healthcare costs without compromising the quality of care.

Competition assessment

[7] The proposed transaction results in both horizontal and vertical overlaps.

[8] As mentioned above, MH and CareCross are both involved in providing managed health care services[2] to medical schemes. They both also provide occupational health and wellness services. Both parties provide these services nationally.

[9] The Commission identified the national broad market for the provision of managed care services (this comprises primary, specialist and tertiary managed care services)[3]; the national narrow market for the provision of primary managed care services (being the segment of the market in which CareCross predominantly operates); and the national broad market for the provision of occupational health and wellness services as the relevant product markets for its analysis of the proposed transaction.[4] It is worthy to note that the Commission also considered the possibility of narrower markets, by virtue of assessing the substitutability of the capitation payment model versus the conventional fee-for-services payment model. Based on the submissions from market participants, the Commission

[2] Managed health care services refer to methods of reducing costs associated with providing health care, while ensuring an acceptable standard of care. Essentially, through managed care, risk is transferred from a medical scheme to a managed care provider for a fee. The managed care provider bears the risk of providing the health care benefits agreed with the medical scheme within the costs agreed, without compromising quality.

[3] Primary managed care services refer to the management of services provided by general practitioners ("GPs") or other professional service providers whom patients first engage when seeking treatment. Specialist managed care refers to the management of healthcare services provided by specialists generally on referrals from primary managed care providers, such as GPs. Tertiary managed care services refer to the management of services provided at the hospital or specialist clinics level.

[4] See page 40 of the Commission's Report.

decided not to delineate the product market according to payment methods. [5]

The broad market for the provision of managed care services

[10] Parties contacted by the Commission during its investigation had differing views on whether the type of managed care services provided (primary, specialist and tertiary) each constituted a separate market or whether each forms part of the broad market for managed care services.

[11] Given the differing views, the Commission did not conclusively determine the relevant market, but assessed the competition effects of the proposed merger on the broad market, as well as the narrow market.

[12] Regarding the broad market, the Commission sought to estimate market shares based on the number of members of medical schemes managed by each Managed Care Operator ("MCO")[6]. According to the Commission, the merged entity will have market shares of less than 18%[7].

[13] The Commission concluded that the merged entity was unlikely to exercise market power post-merger as it will continue to face

[5] See pages 30-33 of the Commission's Report.

[6] The merging parties provided estimate market shares for firms which provide medical scheme administration services as well as managed care services from the CMS' Annual Report 2012/2013. The estimate market shares are therefore not congruent with the relevant market as defined by the Commission. They also do not take into account "pure" managed care service providers whose information is not captured in the CMS report, as "pure" managed care service providers are not required to submit information to the CMS.

[7] The Commission states that this estimate market share likely overstates the post-merger market shares of the merged entity as the market shares were calculated on the basis of information that the Commission could obtain from contacted MCOs. There are other MCOs for whom the Commission does not have information. According to the Commission and the merging parties, there are 40 accredited managed care organisations registered with the CMS.

competition from other market players, such as Discovery Health, Prime Cure, Medscheme and V-Med amongst others.

The narrow market for the provision of primary managed care services

[14] According to the Commission, the merged entity will have a market share of less than 26%, post-merger with an accretion of less than 18%. In this narrow market, there are only five Managed Care Organisations ("MCOs") accredited to provide primary managed care services. The Commission however was satisfied that the other three MCOs (namely Discovery Health, Prime Cure and Universal Health) would continue to constrain the merged entity post-merger.

The broad market for the provision of occupational health and wellness services

[15] According to the parties, occupational health comprises a variety of services in the workplace ranging from medical care and screening of employees to detect and monitor disease and illness. Wellness services entail the promotion of health awareness, training and education in the workplace. Parties contacted by the Commission differed on whether occupational health constitutes a distinct and separate market from wellness services or whether the two form part of one market.

[16] For purposes of its analysis, the Commission assessed the broad market for occupational health and wellness services. In this market the Commission's analysis revealed that the merged entity will have a post-merger market share of less than 7%. According to the Commission, the merged entity will continue to face fierce competition from other competitors such as EOH,

Proactive Health Solutions, Universal Health, Care Ways and many others.

Vertical overlap

[17] The vertical aspect of the transaction emanates from the fact that CareCross provides managed care services to less than 2% of the total beneficiaries within the schemes administered by MH. The Commission however came to the conclusion that it is highly unlikely that the merged entity will engage in any foreclosure strategies to the detriment of MH's competitors, since the medical scheme clients independently elect their preferred services provider.

Concerns from third parties

[18] The Commission received various concerns from competitors of the merging parties as well as the Council for Medical Schemes ("CMS"), the industry regulator for medical scheme providers. These parties were contacted by the Tribunal and advised of the hearing date. They advised that they had no further submissions and would not be attending the hearing. The CMS was present during the hearing but indicated that it would not be making any submissions.

[19] The concerns raised *inter alia* were that the proposed transaction will result in the following:

19.1 Other administrators and MCOs will be foreclosed access from practitioners within the CareCross network ("the foreclosure concern");

19.2 Since MH is a medical scheme administrator (and CareCross is not) there was concern of a potential sharing of

CareCross medical scheme client's information with MH ("the sharing of information concern");

19.3 The transaction would eliminate CareCross as an independent low cost managed care service provider (particularly for capitated services) ("the elimination of a low cost managed care service provider"); and

19.4 The merged entity could potentially become dominant within the market for the provision of occupational health and wellness services. This is because firms that have their medical schemes administered by MH are unlikely to use another firm to offer occupational health and wellness services ("the dominance in occupational health and wellness concern").

[20] After having considered the concerns raised, the Commission came to the following conclusions:[8]

20.1 Regarding the foreclosure concern, the Commission concluded that MH has no incentive to foreclose access by other administrators or MCOs to the CareCross network. Moreover, GPs within CareCross are independent of CareCross as they are not employed by CareCross, As such, they are free to contract with other administrators or MCOs and to belong to other networks.

20.2 Concerning the sharing of information, the Commission found that in the industry, there are already medical scheme administrators that administer competing schemes (subject to confidentiality arrangements). The merging parties advised that legal undertakings of confidentiality have been given to CareCross customers. Additionally, according to the parties, the

[8] See pages 66-67 of the Commission's Report.

CareCross business will continue to be run separately and independently of MH, using a stand-alone IT platform.

20.3 As to the elimination of CareCross as a low cost capitated managed care service provider, the Commission concluded that there are other managed care service providers who will continue to exercise a constraint on the merged entity. In any event, according to the Commission, CareCross's turnover generated from capitated fees was negligible (less than 10%). As also indicated, CareCross will continue to render low cost managed care services as a stand-alone and independent entity.

20.4 The Commission concluded, regarding the alleged dominance of the merged entity in occupational health and wellness services, that this was not the case (the merged entity's estimate market share post-merger is 7%). Furthermore, the decision regarding which provider to use is made independently by the medical scheme and the employer. Apart from offering a better deal from its competitors, the merged entity would have no influence over the choice of provider.

Public Interest

[21] Both the Commission and the merging parties submitted that the proposed transaction raises no public interest concerns. The merging parties confirmed that there will be no retrenchments as a result of the merger.

CONCLUSION

[22] We agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the transaction does not raise any public interest issues.

[23] We approve the transaction without conditions.

Ms Mondo Mazwai — 05 February 2015 DATE

Prof. Fiona Tregenna and Ms Medi Mokuena concurring.

Tribunal Researcher:	**Caroline Sserufusa**
For the merging parties:	Lesley Morphet of Webber Wentzel
For the Commission:	Reabetswe Molotsi