



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM147Oct16

In the matter between:

Stellar Capital Partners Limited

Primary Acquiring Firm

and

Prescient Holdings Proprietary Limited

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: AW Wessels (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 30 November 2016
Order Issued on	: 30 November 2016
Reasons Issued on	: 13 December 2016

Reasons for Decision

Approval

[1] On 30 November 2016, the Competition Tribunal ("Tribunal") conditionally approved the large merger between Stellar Capital Partners Limited ("Stellar") and Prescient Holdings Proprietary Limited ("Prescient"). The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary acquiring firm

[2] The primary acquiring firm is Stellar, a company incorporated in South Africa. Stellar is listed on the Johannesburg Securities Exchange ("JSE"), and is not controlled by any firm. Stellar controls various firms that are generally active in the financial services market. For purposes of the proposed transaction, Stellar and its subsidiaries will be referred to as the Acquiring Group. The Acquiring

Group is active in the provision of specialized financial service solutions to firms in the information, communication, telecommunication and automotive repair industries. The Acquiring Group also provides asset management services to institutional investors and corporate advisory services. The Acquiring Group is also active in the design, manufacture, distribution and installation of electronic technology products and provision of custom solutions for the aviation, telecommunications, defence and contract manufacturing markets. Of relevance to the proposed transaction, is the Acquiring Group's activities in the provision of asset management services.

Primary target firm

[3] Prescient is a company incorporated in South Africa. Prescient is controlled by Prescient Limited, which is listed on the JSE. Prescient Limited is not controlled by any firm. Prescient and its subsidiaries are also active in the provision of financial services. For purposes of the proposed transaction, Prescient and its subsidiaries will be referred to as the Target Group. The Target Group provides investment management, fund services and administration, stock broking, wealth management, retail and institutional retirement and insurance products.

Proposed transaction

[4] This transaction comprises of two legs. The first is definite the second subject to a condition. In the first leg Stellar will acquire 60% of the issued share capital of Prescient, such that post-merger Stellar will have sole control over Prescient. The remaining 40% issued share capital will be held by the Prescient Limited management. However, whether Stellar retains the full 60% issued share capital is dependent on whether the second leg is implemented. If it is, Stellar will sell 10.1% of its stake to an empowerment trust known as the Prescient Empowerment Trust (PET"). Thereafter, Stellar's holding will be diluted to 49.9%; it will become, as a result, a joint, not sole, controller of Prescient. The parties seek an approval of both legs of the transaction. Put differently, if only the first leg is implemented Stellar will be a sole controller, if the second is, Stellar will then be a joint controller.

[5] During the hearing the merging parties submitted that the only thing outstanding for the second leg or the PET deal to be implemented was for them to obtain funding approval from Standard Bank. If Standard Bank approves the funding of PET, the BEE transaction of 10.1% will take place immediately after Stellar acquires the 60%. If the funding application is not successful, then Stellar will end up holding 60% of Prescient.¹ The Commission did not regard the two legs as comprising separate transactions, regardless of the fact that each leg posited a different control scenario.

[6] We see it differently. Whilst we do not wish to burden the merging parties with having to notify the merger again if the PET transaction is implemented, we also cannot give them a blank cheque. Sole control and joint control, as we have previously held, are separately notifiable events.² However, since the analysis of the transaction will not change whether or not the PET leg is implemented, we have also given approval for the latter, provided it is implemented within a finite time period.³ The merging parties had no objection to the notification being made a condition to the proposed transaction and undertook to notify the Commission and Tribunal by no later than 31 January 2017 of the outcome. Our condition provides for this.

Impact on competition

[7] The proposed transaction gives rise to a horizontal and vertical overlap.

[8] The Commission identified the relevant product market as the national market for the provision of asset management services. The Commission found that the post-merger market share will be less than 2%, and the merged entity will continue to face competition from other firms such as Sanlam Investment Management (Pty) Ltd, Allan Gray Limited and Old Mutual Investment Group (Pty) Ltd amongst others.

¹ See pages 6-7 of the transcript of hearing.

² See Tribunal decision in Iscor Limited and Saldanha Steel (Pty) Ltd, case number: 76/LM/Dec01, at pages 7-8.

³ The Commission also confirmed during the hearing that whether or not the BEE deal is successful, this does not affect its competition analysis of the proposed transaction.

[9] The Commission also identified a vertical overlap emanating from the proposed transaction, since the Target Group provides stock broking services to asset managers. The Commission analyzed possible foreclosure concerns in the upstream market for the provision of stock broking services and the downstream market for the provision of asset management services. In relation to input foreclosure, the Commission found that the proposed transaction is unlikely to result in any foreclosure as the Target Group only has 1% market share in the market for the provision of stock broking services. In relation to customer foreclosure the Commission found that again the proposed transaction is unlikely to result in any foreclosure as the acquiring firm also only accounts for 1% market share in the market for the provision of asset management services. The Commission thus submits that the proposed transaction is unlikely to substantially lessen or prevent competition in any of the identified markets. We concur with the Commission on its findings.

[10] We agree with the Commission's competition assessment that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[11] The merging parties submitted that the proposed transaction will not result in an adverse impact on employment. In addition to this, the proposed transaction does not give rise to any other public interest concerns.

Conclusion

[12] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market. In addition, no public interest issues arise from the proposed transaction. However, given the possible dual nature of the proposed transaction, we conditionally approved the proposed transaction with the conditions attached hereto marked as Annexure A.



Mr Norman Manoim

13 December 2016

DATE

Mr AW Wessels and Ms Medi Mokuena concurring

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Nazeera Mia of Cliffe Dekker Hofmeyr

For the Commission: Boitumelo Makgabo

Annexure A

Stellar Capital Partners Limited

And

Prescient Holdings (Pty) Ltd

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CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Conditions"** means these conditions;
- 1.2. **"Merging Parties"** means Stellar Capital Partners Limited ("Stellar") and Prescient Holdings Proprietary Limited ("Prescient");
- 1.3. **"Tribunal"** means Competition Tribunal; and
- 1.4. **"Commission"** means the Competition Commission of South Africa;
- 1.5. **"First Leg"** means the proposed transaction wherein Stellar will acquire 60% and sole control of the issued share capital of Prescient;
- 1.6. **"Second Leg"** means the proposed black economic empowerment transaction wherein PET will acquire 10.1% of Prescient, and Stellar will dilute to 49.9%, giving Stellar joint control of Prescient;
- 1.7. **"PET"** means the Prescient Empowerment Trust, a special purpose vehicle that is entirely owned by the Prescient Foundation, registration number 2011/010305/07;

2. Conditions to the approval of the Merger

- 2.1. The first leg of the proposed transaction has been approved.
- 2.2. The second leg of the proposed transaction is also approved provided it has been concluded by no later than 31 January 2017.
- 2.3. The Merging Parties shall notify the Commission by no later than 31 January 2017, of the implementation of the Second Leg of the proposed transaction.