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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM193Jan17

In the matter between:

GUARDRISK LIFE LIMITED	Acquiring Firm
And	
THE LONG TERM CREDIT LIFE INSURANCE POLICIES CURRENTLY UNDERWRITTEN BY THE STANDARD GENERAL INSURANCE COMPANY LIMITED IN RELATION TO THE CREDIT LIFE AGREEMENT ENTERED INTO BETWEEN RESIDUAL DEBT SERVICES LIMITED (UNDER CURATORSHIP) AND ITS CREDIT CUSTOMERS AND THE CREDIT LIFE AGREEMENT ENTERED INTO BETWEEN AFRICAN BANK LIMITED AND ITS CUSTOMERS	Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 29 March 2017
Order Issued on	: 29 March 2017
Reasons Issued on	: 09 May 2017

REASONS FOR DECISION

APPROVAL

[1] On 29 March 2017, the Competition Tribunal approved the large merger between Guardrisk Life Limited ("Guardrisk") and The Long Term Credit Life Insurance Policies Currently Underwritten by the Standard General Insurance Company Limited ("Stangen") in relation to The Credit Life Agreement Entered

into between Residual Debt Services Limited (Under Curatorship) ("RDS") and its Credit Customers and The Credit Life Agreement entered into between African Bank Limited and its Customers.

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

[3] The primary acquiring firm is Guardrisk, a public company wholly incorporated in accordance with the company laws of the Republic of South Africa. Guardrisk is a wholly-owned subsidiary of Guardrisk Group (Pty) Ltd which is, in turn, a wholly listed subsidiary of MMI Strategic Investments (Pty) Ltd, ultimately controlled by MMI Holdings Limited (collectively "the MMI Group"), a public company listed on the Johannesburg Securities Exchange Limited ("JSE"). Guardrisk does not directly or indirectly control any firms.

[4] The MMI group develops, markets, and distributes a variety of short term and long term insurance products and offers asset management, savings, investment, healthcare administration, short term insurance, and employee benefits cover services as well as providing long term credit life products in South Africa.

[5] Within the MMI group, Guardrisk provides long term alternative risk transfer insurance products to corporates and retirement funds to cover post-retirement healthcare liabilities and to self-insure employee risk benefits.

Primary Target Firm

[6] The target businesses are the businesses of the Master Policies issued by Stangen in respect of customers of the lending units of RDS and African bank Limited and the Group Policies concluded between Stangen and RDS.

[7] The Master Policies are comprised of the credit life insurance policies issued on 28 October 2008[1] and the credit life insurance policies issued on 22 April 2010.[2] The policyholders in respect of the Master Policies are the individual credit customers of RDS and African Bank Limited.[3] The Master Policies insure repayment of a loan in the event of the death of disability of the party taking out such a loan.

[8] The Group Policies are comprised of group policy number ABL/GRP/08/12 concluded between Stangen and RDS on 23 August 2012 and group policy number ABL/GRP/08/15 concluded between Stangen and RDS on 30 July 2015. The policyholder in respect of the group policies is RDS.

[9] The seller of the policies in question is Stangen, a long term insurer which underwrites and provides credit life insurance and funeral policies in respect of customers of its sister subsidiary RDS, and African Bank Limited. Stangen is a public company incorporated in accordance with the laws of the Republic of South Africa and a wholly owned subsidiary of Africa Bank Investment Limited (ABIL).[4] ABIL controls a number of subsidiaries in addition to Stangen, most notably to the transaction before us is RDS (previously Africa Bank Limited).

History of RDS, Good Bank and Africa Bank Limited

[10] In August 2014, RDS (then African Bank Limited) was placed under curatorship, initiating the sequence of events leading to the transaction considered in these reasons.

[11] Preceding the placing of RDS (then African Bank Limited) under curatorship, The South African Reserve Bank ("SARB"), concerned with impact the failure of the then Africa Bank Limited would have on the South African economy, proposed a restructuring proposal on which a consortium of South African banks acted. The consortium created "New HoldCo Limited", with "Good Bank" being its wholly owned subsidiary. As per the SARB's proposal, Good Bank

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[1] Policy number ABL/COM/11/08
[2] Policy Number ABL/COM/04/10
[3] African Bank Limited was previously known as "Good Bank".
[4] ABIL is a company incorporated in the Republic of South Africa and listed in the JSE

was to inherit all the 'good banking businesses' of the failing African Bank Limited.

[12] On 4 April 2016, the entity now known as RDS changed its name from African Bank Limited to Residual Debt Services (RDS). On the same date Good Bank (being the wholly owned subsidiary of New Holdco Limited) changed its name to African Bank. New HoldCo Limited (the entity constructed by the consortium of banks) changed its name to African Bank Holdings Limited.

[13] At the same time, the banking business of RDS in respect of those loans identified as having a high likelihood of repayment ("good loans") were transferred from RDS to African Bank. The businesses in respect of any other loans ("bad loans") remained with RDS.

[14] The cover in respect of the Master Policies for both good and bad loans remained with Stangen as did all cover in terms of the Group Policies in respect of bad loans. All cover in terms of the Group Policies in respect of any good loans reduced to zero and came to an end based on the fact that the outstanding loan amounts for good loans in the hands of RDS reduced to zero.

PROPOSED TRANSACTION AND RATIONALE

[15] In terms of the proposed transaction, Stangen will transfer the Master Policies and Group Policies by means of statutory assignment to Guardrisk. The consequence of the transaction will be that Guardrisk becomes the primary insurer in respect of the Master Policies and Group Policies. Stangen will cease to be the primary insurer in respect of the master policies and group policies. Guardrisk will, as a consequence of the transfer, directly control the target businesses in terms of, inter alia, section 12(1)(a) of the Competition Act No 89 of 1998, as amended.

[16] In terms of rationale, the merging parties submitted that the purpose of the proposed transaction is to give effect to an agreement reached between the parties in the settlement of material litigation between them. The parties further submit that the newly established Africa Bank group wishes, subject to the

freedom of choice rights of its customers, to cater for all the insurance needs of its customers through its relationship with Guardrisk in terms of which it has established a cell captive structure.

RELEVANT MARKETS AND IMPACT ON COMPETITION

[17] On the Commission's analysis, the merging parties are both active in the narrow market for the provision of individual long term credit life insurance products in South Africa and the market for the provision of corporate group long-term credit life insurance products in South Africa.

[18] In addressing the horizontal overlap in the market for the provision of individual long term credit life insurance products, the Commission submitted that the merged entity would possess a 30.13% market share with a market share accretion of approximately 6.01%. The merging parties submitted that there are a number of strong competitors in the market which would be able to constrain the post-merger entity from exercising market power. The Commission, in agreement with the merging parties, further submitted that s106(4)(a) of the National Credit Act, provides that a customer is entitled to choose the insurer who will provide cover for the duration of a credit agreement or debt. The Commission submitted that s106(4)(a) would entitle a customer to substitute their existing policy for one of their own choice should the merged entity unilaterally raise prices.

[19] In the market for the provision of corporate group long-term credit life insurance products in South Africa, the Commission found the post-merger entity to have a post-merger market share of approximately 23.38% with an accretion of 22.25%. In agreement with the merging parties, the Commission found that the merged entity would not have the ability to unilaterally increase prices post-merger owing to the presence of strong, established competitors in the market.

[20] The Commission concludes in its report that the proposed transaction is unlikely to give rise to unilateral effects in the markets for the provision of individual long term credit life insurance products in South Africa and for the provision of

corporate group long-term credit life insurance products in South Africa. We see no reason to differ from this conclusion.

[21] The merger does not present a threat of preventing or lessening competition in any of the identified markets.

CONCLUSION

[22] The merger is unlikely to substantially prevent or lessen competition in the provision of individual long term credit life insurance products in South Africa and the market for the provision of corporate group long-term credit life insurance products in South Africa.

[23] The merger additionally does not raise any public interest concerns.

[24] Accordingly we approved the transaction without conditions.

Ms. Y Carrim **<u>09 May 2017</u>**
Date

Ms. A Ndoni and Mrs. M Mokuena concurring

Tribunal Researcher:	Alistair Dey-Van Heerden
For the Merging Parties:	Daryl Dingley of Webber Wentzel
For the Commission:	Daniela Bové