

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: 121/LM/Dec05**

**In the large merger between:**

**Old Mutual Healthcare (Pty) Ltd**

**Primary Acquiring Firm**

**and**

**Kwacha (Pty) Ltd**

**Primary Target Firm**

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**Reasons for Decision**

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**Approval**

1. On 14 June 2006 the Competition Tribunal issued a merger clearance certificate approving the merger between Old Mutual Healthcare (Pty) Ltd and Kwacha (Pty) Ltd. The reasons appear below.

**The Parties**

2. The acquiring firm is Old Mutual Healthcare (Pty) Ltd ("Old Mutual"). Old Mutual is a wholly owned subsidiary of Old Mutual South Africa Limited, ("Old Mutual SA"). Old Mutual SA is in turn indirectly controlled by Old Mutual plc, which has its business address in London, United Kingdom. Old Mutual also controls Visimed Properties and Administrators (Pty) Ltd, which is in the process of being liquidated.<sup>1</sup>
3. The primary target firm is Kwacha (Pty) Ltd ("Kwacha"). Kwacha's largest shareholder is Micawber 148 (Pty) Ltd which has 14% of the issued shares in Kwacha. Apart from that no other firm or individual controls Kwacha.<sup>2</sup> Kwacha in turn controls the following firms:
  - 3.1. Sizwe Medical Services (Pty) Ltd ("Sizwe");

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<sup>1</sup> See page 4 of the Commission's recommendations and page 20 of the record.

<sup>2</sup> Kwacha has many shareholders. The parties have submitted that 37 out of a total of Kwacha shareholders are historically disadvantaged individuals and these account for 97.368% of the entire shareholding in Kwacha. See page 22 of the record for details.

- 3.2. Cheiron Health Technologies (Pty) Ltd (“Cheiron”);
- 3.3. Kwacha Property Holdings (Pty) Ltd;
- 3.4. Recent Investments (Pty) Ltd; and
- 3.5. Investment Facility Six Five Four (Pty) Ltd.

### **The Merger Transaction**

4. The transaction is divided into two parts. In the first leg of the transaction, Old Mutual will acquire 51% of the issued shares in Sizwe and 90% of the issued ordinary shares in Cheiron from Kwacha.
5. In the second leg of the transaction, Old Mutual will issue to Kwacha new ordinary shares in the issued ordinary shares in Old Mutual comprising 23.3% of the entire issued ordinary share capital of Old Mutual. Kwacha will acquire joint control over Old Mutual by virtue of the minority protections contained in the shareholders’ agreement concluded by Kwacha, Old Mutual, and Old Mutual SA.<sup>3</sup>

### **Rationale for the Transaction**

6. Old Mutual perceives the proposed transaction as providing it with an opportunity to introduce an empowerment partner. Old Mutual regards Kwacha as an ideal empowerment partner since it has significant experience the business conducted by Old Mutual.
7. The proposed merger is perceived by Kwacha as providing Sizwe and Cheiron with access to the Old Mutual’s group’s marketing and distribution channels as well as the strong brand of the group.

### **The merging parties’ activities**

#### **Old Mutual**

8. Old Mutual is a provider of administration and managed care services to medical schemes. Currently, Old Mutual provides administration and managed care services to three open membership medical schemes namely Oxygen Medical Scheme, Medical Expenses Distribution Society and Selfmed Medical

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<sup>3</sup> See page 179 of record for a copy of the shareholders’ agreement and page 195-198 of the record for the minority protections afforded to Kwacha. At the hearing Old Mutual indicated that it subsequently intends to acquire 100% and does not intend to have any other minority shareholder holding a minority stake whether in the form of ordinary shares or in the form of preference shares that give it a degree of control. See page 4 of the transcript.

Scheme.<sup>4</sup> Old Mutual is also currently providing administration and managed care services to ten corporate/ restricted membership schemes. The services offered by Old Mutual can be segmented as follows:

- 8.1. administration services which include the following:
  - 8.1.1. provides call centre services to both members and providers in regard to various queries;
  - 8.1.2. member services focus on key areas such as member registration, written enquiries and credit management;
  - 8.1.3. claims adjudication and assessment services, which focuses on payment of providers and members;
  - 8.1.4. financial reporting, which includes preparation of scheme accounts for auditing purposes and the provision of management information to medical schemes;
  - 8.1.5. IT infrastructure services, which includes the provision of IT hardware and software catering for different benefit structures;
  - 8.1.6. contribution collection includes services of collecting contributions from members; and
  - 8.1.7. scheme management provides a contact channel between Old Mutual and the relevant medical scheme administered by it. It also prepares information for the board of Trustee meetings, operations meetings, Audit Committee and Annual General Meetings.
- 8.2. Managed care services which include the following:
  - 8.2.1. Hospital benefit management  
This involves managing the level and intensity of care medical scheme members that are hospitalised aiming at elimination of waste through the inappropriate use of resources.<sup>5</sup>
  - 8.2.2. Pharmacy benefit management  
It manages the usage of medicine for both acute and chronic conditions of medical scheme members.<sup>6</sup>

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<sup>4</sup> However, Selfmed has given notice to terminate Old Mutual's service with effect from 31 December 2005. See page 28 of the record for details.

<sup>5</sup> This includes pre-certification services prior to admission to ensure that a medical scheme member is eligible for benefits in a specific scheme option, case management and concurrent review to ensure the appropriate level of care and discharge management to ensure an appropriate institution for care required.

<sup>6</sup> It includes activities such as authorization of members for access to chronic medicine benefits, enrolling members on medical management programme for prescribed minimum benefits, drug utilization review, member support services and medical formulary management that is evidence based.

#### 8.2.3. Disease management services

This department manages certain diseases that have a high prevalence at a potential high cost to medical schemes. It includes programs such as HIV and AIDS, oncology management, maternity, renal care, psychiatry, and other lifecare programmes.

#### 8.2.4. Provider relations Services

This involves development of relationships with risk management strategies of old Mutual and medical schemes, retrospective statistical trend analysis on claims from different providers and investigate possible fraudulent claims from providers or medical scheme members.

#### 8.2.5. Medical Advisory Services

These services include provision of clinical expertise, treatment algorithms and guidelines underpinning clinical decisions

#### 8.2.6. Business Intelligence Services

This department guides the board of Trustees of the relevant medical scheme in risk management strategies. Services offered by this department include risk identification, management reports that indicate clinical trends and scheme clinical risk reports.

#### 8.2.7. Actuarial and legal consulting services

Old Mutual offers legal services such as preparation of resolutions for the Board of Trustees, provision of legal advice in respect of the drafting of contracts and in respect of member enquiries, complaints and agreements and other legal services.

### **Kwacha**

9. Kwacha is a holding company which invests in companies rendering healthcare, managed care and administration services.

### **Sizwe**

10. Sizwe provides administration services to the Sizwe Medical Fund. These services include membership services, claims related services, and accounting and investment of funds. It provides:

- 10.2.1. Membership Services including processing of member applications, arrangement for receipt and banking of contributions, maintenance and updating of member records, issuing of member cards, billing of clients and the monthly production of a list of active members.

- 10.2.2. Claims related services including payments to suppliers of services or refunds to members, handling of members' queries (through a national call centre), dispatching of monthly claims transaction and claim processing.

- 10.2.3. Accounting and investment of funds, including depositing of all contributions into the medical scheme's bank account, investment of surplus funds subject to the Medical Schemes Act, production of monthly income and expenditure statements and balance sheets for Trustees, balancing and reconciling of Medical schemes' books of account or audit purposes and the production of monthly statistics of expenditure on each major category of service.

### **Cheiron**

11. Cheiron provides managed care services to Sizwe Medical Fund. The services include hospital benefit management, total drug management across acute and chronic medication as well as clinical auditing. Cheiron also provides disease management to Sizwe Medical Fund in the areas of HIV/AIDS Diabetes, Hyperlipidaemia, Hypertension and Asthma. Further Cheiron provides the IT platform to the Sizwe Medical Fund for the purpose of administering its membership.

11.2.1. Chronic Medical Services;

11.2.2. Hospital utilisation management programme including:

11.2.2.1. pre-authorisation;

11.2.2.2. case-management; and

11.2.2.3. clinical auditing; and

11.2.3. disease management.

### **Recent Investments (Pty) Ltd**

12. Recent Investments (Pty) Ltd ("Recent Investments") is a special purpose vehicle, which has been established for the purpose of holding a non-controlling interest in Network Healthcare Holdings Limited ("Netcare").<sup>7</sup> According to the Commission Recent Investments holds approximately 2% of the issued share capital in Netcare. The parties have submitted that Recent Investments is in the process of disposing its interest in Netcare.<sup>8</sup>

### **Investment Facility Six Five Four (Pty) Ltd**

13. Investment Facility Street Five Four (Pty) Ltd ("Investment Facility"). Investment Facility is a special purpose vehicle, which has been established

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<sup>7</sup> See page 21 of the record.

<sup>8</sup> See e-mail from WWB dated 22 February 2006 on page 502 and 503 of the record. However, at the hearing the parties advised that Recent Investment's stake in Netcare has already been sold. What remains is Recent Investment's 0.02% shareholding in Netcare and this amounts to 449 000 ordinary shares. See page 3 of the transcript.

to hold shares in Mx Healthcare Corporation (Pty) Ltd (“Mx Health”). Kwacha has now disposed of its indirect interest in Mx Health.<sup>9</sup>

### **The relevant product markets**

14. According to the parties and the Commission the relevant product market is in two parts, namely the provision of medical scheme administration services and the provision of managed care services.
15. The parties have submitted that in order to be eligible to provide administration services to a medical scheme, the Council for Medical Schemes must accredit a medical administrator. Medical scheme administration services comprise of a package of services such as membership services, claims related services, accounting and investment of funds and query services. The administration services can be divided into two, namely, the provision of such services to restricted schemes and the provision of such services to open schemes. The parties have submitted that there is no restriction preventing an administrator from providing services on both restricted and open schemes. The Commission accordingly defined the relevant market broadly as the provision of medical scheme administration services.
16. The parties submitted that managed care services may be provided as comprehensive and integrated clinical risk management services to the members within a medical scheme (“integrated services”) or limited range of services focusing on one area of risk management (“focused services”). However, according to the parties, these services compete with each other whether they are integrated or focused. The Commission did not make a definitive conclusion on the product market relating to the market for managed care services. For the purpose of analysing this transaction the commission defined the product market as the broad market for the provision of managed care services.
17. There is a product overlap in the activities of the parties as they both provide administration services to medical schemes and they also provide managed care services. Old Mutual and Sizwe provide medical scheme administration services and Old mutual and Cheiron provide managed care services. It should be noted that Cheiron provides these services only to the Sizwe Medical Fund.

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<sup>9</sup> The Commission under Case No. 2005Sept1850 approved this transaction. See page 21 of the record.

## Relevant Geographic market

18. The Commission has defined the geographic market as national since the merging parties and their competitors provide medical scheme administration services and managed care services nationally.

## Effect on Competition

19. As shown in Table 1 below, the combined market share of the merging parties is estimated to be 8.06% post merger in the market for the provision of medical schemes administration. The market share post merger is considered small and consequently, does not raise serious competition concerns. This market share is based on the number of beneficiaries both in open schemes and restricted schemes. The Council separated the figures for open medical schemes and for restricted medical schemes. However, such a distinction reveals that there is no real difference in the market shares in both open medical schemes and restricted medical schemes. The market shares in the open medical schemes and the restricted medical schemes are more or less similar to each other.<sup>10</sup>

**Table 1 showing the market shares in the market for the provision of medical schemes administration services.**<sup>11</sup>

<b>Administrator</b>	<b>Estimated market share as at December 2004</b>
Discovery Health (Pty) Ltd	24%
Medscheme Administrators (Pty) Ltd	16.3%
Metropolitan Health Group	8.6%
Mx Network Systems (Pty) Ltd	7.1%
<b>Old Mutual Healthcare</b>	<b>5.7%</b>
Sovereign Healthcare Limited	4.4%
<b>Sizwe</b>	<b>2.36%</b> <sup>12</sup>

20. The parties have submitted that, in addition to having a low market share post-merger, there are currently approximately twenty-five independent medical scheme administrators participating in this market. Sizwe administers only one medical scheme namely Sizwe Medical Fund. Old

<sup>10</sup> See pages 33-34 of the record where the parties gave the two tables indicating market shares in the open medical schemes and the restricted medical schemes. On page 61 of the record the parties submitted that should the market for the provision of administration services be separated into provision of administration to open medical schemes and to restricted medical schemes, the combined merging parties' shareholding will be 8.41 % in the market for the provision of administration services to open medical schemes and 7.25% for the provision of administration services to restricted schemes.

<sup>11</sup> These figures have been obtained from the council for Medical Schemes Annual Report 2004-5 and page 33 of the record which is the parties' competitive report. On pages 303-306 of the record the Council give further details in respect of this market.

<sup>12</sup> See page 61 of the record. At the hearing the parties submitted that the figures in the combined market shares should be 5.7% for Old Mutual and 2.36% for Sizwe and the combined market share will be 8.06%. See page 1 of the transcript.

Mutual on the other hand, administers three open membership medical schemes and ten restricted membership medical schemes.

21. In the market for the provision of managed care services, the parties did not have market share figures available. They estimated that the combined market share post-merger will be approximately 8%. Since Cheiron provides managed care services only to Sizwe Medical Fund, it was submitted that it has a small market share. Moreover, the parties submitted that they provide managed care services to the same customers to whom they provide medical schemes administration services. Since the parties' combined market share post merger in the provision of administration services is estimated to be 8.06% the parties do not expect their market share in the managed care services to be more than 8.06%.
22. The merging parties compete with various other accredited managed care services providers such as Discovery Health (Pty) Ltd, Eternity Healthcare (Pty) Ltd, Eynet (Pty) Ltd, Faranani Health Solutions (Pty) Ltd, Huntrex 5 (Pty) Ltd, Prime Cure (Pty) Ltd, Care Cross Health (Pty) Ltd, Medscheme Holdings (Pty) Ltd, and Netdirect (Pty) Ltd and various others. These companies will continue to compete with the merging parties post-merger.

### **Submissions by the Council**

23. The Council for Medical Schemes ("the Council") was approached by the Commission to give its input with regard to the transaction. In its response, the Council focused more on the issue of shareholding of medical schemes administrators in hospital groups. More particularly, the Council referred to the shareholding of Old Mutual Life Assurance Company of South Africa Limited which holds 10.1% in Life Healthcare, previously known as Afrox Healthcare. The Council submitted that Old Mutual SA should not be permitted to increase its shareholding in hospital groups. In advancing this argument, the Council stated that there is a restriction on the First Rand Group prohibiting it from increasing its shareholding in Life Healthcare.
24. The Commission submitted that the present transaction does not give rise to or facilitates Old Mutual SA's ability to increase its shareholding in either Life Healthcare or Netcare. According to the parties Kwacha/Sizwe's interest in Netcare is approximately 2% and it was submitted that that stake is in the process of being disposed of. The Commission is of the view that no active steps need to be taken at this point in time to ensure that Old Mutual SA does not increase its shareholding in a hospital group. The Commission further stated that the likely effect of any increase in shareholding will be dealt with as and when there is a proposed acquisition.
25. Having regard to the various issues surrounding the nature of this transaction, the Tribunal agrees with the conclusions of the Commission. Indeed the Commission will deal with the issue of Old Mutual SA's shareholding in hospital groups as and when the need arises. Such a



transaction will be referred for approval and when that happens, the Commission will deal with the matter.

### **Public Interest**

26. There are no public interest issues that may raise serious competition concerns.

### **Conclusion**

27. We conclude that the merger will not lead to a substantial lessening or prevention of competition.

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**M Mokuena**

15 August 2006  
**Date**

**Concurring: M Moerane and U Bhoola**

For the merging parties:	Justin Balkin for Edward Nathan Corporate Law Advisors and Jocelyn Katz, Webber Wentzel Bowens
For the Commission:	Maarten Van Hooven, Mergers and Acquisitions