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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM146Oct16

In the matter between

Swanvest 120 Proprietary Limited	**Primary Acquiring Firm**
And	
RMB-SI Investments Proprietary Limited	**Primary Target Firm**

Panel	: Ms Andiswa Ndoni (Presiding Member)
	: Prof Imraan Valodia (Tribunal Member)
	: Mr Enver Daniels (Tribunal Member)
Heard on	: 8 February 2017
Order Issued on	: 8 February 2017
Reasons Issued on	: 2 March 2017

REASONS FOR DECISION (NON-CONFIDENTIAL)

Approval

[1] On 8 February 2017, the Competition Tribunal ("the Tribunal") approved the large merger between Swanvest 120 Proprietary Limited and RMB-SI Investments Proprietary Limited.

[2] The reasons for the approval are as follows.

Parties to the transaction

Primary Acquiring Firm

[3] Swanvest 120 Proprietary Limited ("Swanvest") is an investment holding company that is wholly controlled by Santam Limited ("Santam"), which is listed on the Johannesburg Stock Exchange ("JSE"). Santam wholly controls a number of other subsidiaries including Centriq Insurance Holdings and MiWay Group Holdings ("MiWay"), which are collectively referred to as the Santam Group.

[4] Santam Group engages in the business of short-term and long-term insurance. Furthermore, it provides value added products (VAPs) which are added to the short-term insurance policies to enhance the overall value offer.[1]

Primary Target Firm

[5] The primary target firm is RMB-SI Investment (Pty) Ltd ("RMB-SI") and its wholly owned subsidiaries, associates and strategic investments, collectively referred to as the RMB-SI Group. RMB-SI is controlled by Rand Merchant Investment Holdings (RMI), a public company listed on the JSE.

[6] RMB-SI is a short-term and long-term insurance provider that offers, amongst other insurance products, value-added products in the form of auto-body care and maintenance benefits which provide benefits relating to motor-vehicle scratches and dents as well mechanical and electrical warranty products.[2]

Proposed transaction and rationale

[7] In terms of the Sale of Shares Agreement, the Santam Group intends to purchase, through Swanvest, the entire issued share capital of the RMB-SI

[1] Pg. 2 of the Transcript.
[2] Ibid.

Group (excluding Truffle Capital Proprietary Group). Post-merger, the Santam Group will exercise sole control over the RMB-SI Group.

[8] Santam Group submits that the proposed transaction will be a good strategic fit and that Santam is well positioned to provide a platform for future growth of the RMB-SI business.

[9] RMI submits that the proposed transaction will enable RMB-SI to be more optimally positioned within a large insurance group. As such, Santam Group will provide RMB-SI's business with efficient infrastructure while retaining the entrepreneurial culture of independence.

Relevant market and impact on competition

[10] The proposed transaction presents a horizontal overlap in the broad market for the provision of short-term and long-term insurance.

[11] The narrow short-term insurance market is further delineated into :

[11.1] the narrow market for commercial short-term insurance products.

[11.2] the narrow market for personal short-term insurance products.

[11.3] the narrow market for corporate short-term insurance products.

[11.4] the narrow market for short-term property insurance.

[11.5] the narrow market for short-term transport insurance.

[11.6] the narrow market for short-term motor insurance.

[11.7] the narrow market for short-term accident and health insurance market.

[11.8] the narrow market for short-term guarantees insurance market.

[11.9] the narrow market for short-term liability insurance.

[11.10] the narrow market for short-term engineering insurance.

[11.11] the narrow market for short-term miscellaneous insurance.

[11.12] the narrow motor VAPs market namely:

[11.12.1] the narrow market for the provision of mechanical and electrical warranty.

[11.12.2] the narrow market for the provision of insurance bodyline cover (scratch and dent).

[12] The Commission, in its investigation of the broad short-term insurance market, found that the merging parties would have an estimated combined market share of approximately 25% with an accretion of less than 2%. In addition, the merging parties will continue to face competition from other incumbent players such as Hollard, Guardrisk, Mutual and Federal, Outsurance and Zurich Insurance within the market.

[13] With respect to the market for commercial and personal short-term insurance, the Commission found that the merging parties will have market shares of approximately 42% and 24% respectively with market share accretions of less than 2%.[3] With respect to corporate insurance, however, the Commission found that there will be no market accretion due to the minimal presence of RMB-SI in that market.

[14] In the narrow markets for the provision of short-term property, transportation, motor, accident and health, guarantee, liability, engineering miscellaneous

[3] Pg. 3 of the Transcript.

insurance products, the Commission found that the market share of the merging parties is approximately 34% with an accretion of less than 1%.[4] Upon further analysis, the Commission concluded that despite high market share in the market for the provision of short-term transportation products, the merging parties will face competition from many competitors such as the likes of Zurich, Outsurance, Mutual and Federal, Guardrisk and Hollard across all segments of the short-term insurance market.

[15] In the VAPs market for the provision of mechanical and electrical warranty insurance and bodyline cover (scratch and dent cover), the merging parties submitted that RMB-SI does not engage its business in the motor vehicle trade market nor is its products described as VAPs. RMB-SI considers its insurance policy, the Prime Motor Assist, to be a stand-alone insurance product that is not sold in the market where VAPs are sold nor in the market served by motor traders. With reference to the Commission's findings in the proposed intermediate merger between Hollard and Motovantage, the Commission found that RMB-SI was not a competitor in that market. In the current transaction, the Commission's investigation revealed that the merging parties are minor participants in the VAPs market unlike their competitors. The proposed transaction is unlikely to confer any market power onto the merging parties. Post-merger, the merging parties will possess a market share of 0.3% in the mechanical and electrical warranty market and a market share of 6% in the bodyline insurance market.[5] As such, the Commission concluded that the proposed transaction within this VAPs market is unlikely to raise competition concerns.

[16] In the broad market for the provision of long-term insurance, the Commission's investigation revealed that, post-merger, the merging parties will have a market share of at least 11% which represents an accretion of less than 1% The Commission concluded that the proposed transaction is unlikely to substantially

[4] Pg. 3 of the Transcript.
[5] Pg. 4 of the Transcript.

prevent or lessen the competition in the broad market for the provision of long-term insurance.

[17] A competitor within the insurance market raised numerous concerns with the Commission regarding the effect of the proposed transaction within in the relevant markets. It was submitted that the control of a quarter of the market by Santam Group will place it in a dominant position thus granting it market power over the supply chain in the motor value chain. Furthermore, the proposed transaction will reduce the local reinsurance premiums that are required to build and support the balance re-insurance portfolios.

[18] With regards to the first concern, the Commission submitted that the merging parties would have market shares of approximately 29% – that is in the motor insurance market – with an accretion of approximately 1.5%. The insignificant market share accretion is a compelling indication that the proposed transaction would not confer dominance on the merging parties within the motor insurance industry.[6] Furthermore, the Commission found that there are reputable competitors including the likes of Hollard, Mutual and Federal, Guardrisk and Outsurance that the merged entity will have to compete with in the motor insurance market.

[19] With regards to the second concern, the Commission found that RMB-SI possess approximately 1.5% of the total reinsurance pool contribution. The Commission was of the view that the above contribution is minute in comparison to the overall domestic reinsurance market.[7] The proposed transaction is therefore unlikely to change RMB-SI's reinsurance pool nor alter the dynamics of the market therein. The Commission further engaged other reinsurers, none of which raised concerns regarding the proposed transaction.

[20] In the relevant markets, the Commission found that the market share accretions were minimal and therefore did not raise any competition concerns.

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[6] Pg. 5 of the Transcript.
[7] Pg. 6 of the Transcript.

Restraint of trade

[21] Contained in the Sale Agreement is a restraint of trade clause whereby RMI (the seller) undertakes to the acquiring firm that it shall not within a three year period, in the territory initiate any business for its own account or acquire any assets or an interest in any undertaking that constitutes a competing activity.[8]

[22] The merging parties submit that the restraint of trade clause is reasonable in the circumstances as it is concluded for commercial reasons and intends to protect the RMB-SI Group's goodwill and Santam's rights in respect of the know-how and clients of the RMB-SI Group from RMI.[9]

[23] The Commission assessed the restraint of trade clause and concluded that the duration was reasonable and justifiable in the circumstances and this it is unlikely to substantially prevent of lessen competition in the market. We are accordingly satisfied with the rationale provided by the merging parties and have no doubt as to the Commission's conclusion regarding the restraint of trade clause.

[24] In view of the above, we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Public interest

[25] The merging parties submit that the proposed transaction will not result in merger specific retrenchments nor give rise to any negative effects on public policy considerations.

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[8] [redacted] [Confidential information]

[9] Pg. 12 of the Transcript.

[26] Based on the above, the Commission was of the view that the proposed transaction would not result in any job losses. Furthermore, the proposed transaction did not raise other public interest concerns.

Conclusion

[27] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Prof. Imraan Valodia — **2 March 2017**
Date

Ms Andiswa Ndoni and Mr Enver Daniels concurring

Tribunal Researcher:	Ndumiso Ndlovu
For the merging parties:	Lebogang Phaladi and Ryan Goodman for ENSafrica
For the Commission:	Portia Bele