



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM106Sep22

In the matter between:

Manta Bidco Ltd

Primary Acquiring Firm

And

Mediclinic International PLC

Primary Target Firm

Panel : J Wilson (Presiding Member)
: I Valodia (Tribunal Panel Member)
: F Tregenna (Tribunal Panel Member)
Heard on : 15 March 2023
Decided on : 23 March 2023

Order

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by Jerome Wilson
Signed at 2023/03/23 07:43:04 +02:00
Reason: Witnessing Jerome Wilson

Presiding Member
Adv. Jerome Wilson SC

23 March 2023

Date

Concurring: Prof. Imraan Valodia and Prof. Fiona Tregenna

Merger Clearance Certificate

Date : 23 March 2023

To : Webber Wentzel Attorneys

Case Number: LM106Sep22

Manta Bidco Ltd And Mediclinic International PLC

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **26 August 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

Tebogo H. Mphahlele

CONFIDENTIAL

ANNEXURE A
MANTA BIDCO LIMITED
AND
MEDICLINIC INTERNATIONAL PLC
CASE NUMBER: LM106Sep22

CONDITIONS

1. DEFINITIONS

- 1.1 The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings –
- 1.1.1 **"Acquiring Firm"** means Bidco;
- 1.1.2 **"Acquiring Group"** means Bidco and the Consortium;
- 1.1.3 **"Approval Date"** means the date referred to on the Tribunal's merger clearance certificate (Form CT 10), being the date on which the Merger is approved in terms of the Competition Act;
- 1.1.4 **"B-BBEE"** means the Broad-Based Black Economic Empowerment as defined in the B-BBEE Act;
- 1.1.5 **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
- 1.1.6 **"Black"** means black people defined in the B-BBEE Act;
- 1.1.7 **"Black-owned businesses"** means a business that is held as to at least 51% by Black people;
- 1.1.8 **"Black women-owned business"** means a business that is held as to at least 30% by Black women;

- 1.1.9 **"Codes"** means the relevant codes of good practice published in terms of the B-BBEE Act in terms of which Mediclinic's broad-based black economic empowerment score is measured;
- 1.1.10 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.11 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.12 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
- 1.1.13 **"Competitively Sensitive Information"** means, without limitation, (i) pricing, volume, margin and cost information in relation to particular products, services, clients and/or suppliers, and (ii) information regarding budgets, business plans and business strategies.
- 1.1.14 **"Conditions"** means these conditions;
- 1.1.15 **"Consortium"** means the Relevant Remgro Subsidiaries and SAS;
- 1.1.16 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.17 **"dtic"** means the Department of Trade, Industry and Competition of South Africa;
- 1.1.18 **"EME"** means exempted micro-enterprise as defined in the Codes;
- 1.1.19 **"Employee Benefit Scheme"** means a profit participation scheme to be established for the benefit of Qualifying Workers pursuant to these Conditions;
- 1.1.20 **"Establishment Period"** means 18 (eighteen) months from the Implementation Date;
- 1.1.21 **"HDP"** means a historically disadvantaged person as defined in the Competition Act;
- 1.1.22 **"Implementation Date"** means the date occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.1.23 **"Medical Innovations"** means Medical Innovations Proprietary Limited;

- 1.1.24 **"Mediclinic"** means Mediclinic International plc;
- 1.1.25 **"Medical Training"** means training of healthcare and support professionals working in and supporting healthcare service delivery;
- 1.1.26 **"Mediclinic Southern Africa"** means Mediclinic Southern Africa Proprietary Limited;
- 1.1.27 **"Merged Entity"** means Mediclinic subject to the control of the Acquiring Group following the Implementation Date;
- 1.1.28 **"Merger"** means the proposed acquisition by the Acquiring Firm of the entire issued and to be issued ordinary share capital of Mediclinic other than the shares held by the Relevant Remgro Subsidiaries by way of a Scheme of Arrangement under Part 26 of the UK Companies Act, the shares held being held by the Relevant Remgro Subsidiaries to be acquired pursuant to a subscription and rollover agreement;
- 1.1.29 **"Merging Parties"** means the Acquiring Group and Mediclinic;
- 1.1.30 **"Moratorium Period"** means a period of 3 (three) years from the Implementation Date and includes the period between the Approval Date and the Implementation Date;
- 1.1.31 **"NDoH"** means the South African National Department of Health;
- 1.1.32 **"Nurses Training"** means the training of nurses at Mediclinic's accredited nursing training centres;
- 1.1.33 **"QSE"** means a qualifying small enterprise as defined in the Codes;
- 1.1.34 **"Qualifying Workers"** means all Workers in South Africa in the continuous employ of Mediclinic Southern Africa and its subsidiaries and Medical Innovations with more than 1 (one) year tenure regardless of grade / position, excluding all Workers who are management employees sharing in a short term incentive plan;
- 1.1.35 **"Reference ESP"** means the notional employee share plan as more fully described in line item 3 of **Annexure A.1**;
- 1.1.36 **"Relevant Remgro Subsidiaries"** means Remgro Health, RHH and Remgro Jersey;
- 1.1.37 **"Remgro"** means Remgro Limited;

- 1.1.38 **"Remgro Health"** means Remgro Health Limited;
- 1.1.39 **"Remgro Jersey"** means Remgro Jersey GBP Limited;
- 1.1.40 **"RHH"** means Remgro Healthcare Holdings Proprietary Limited;
- 1.1.41 **"SAS"** means SAS Shipping Agencies Services S.à.r.l.;
- 1.1.42 **"South Africa"** means the Republic of South Africa;
- 1.1.43 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.1.44 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.1.45 **"UK Companies Act"** means the Companies Act 2006 of the United Kingdom, as amended from time to time;
- 1.1.46 **"Unjani Clinics"** means Unjani Clinics NPC, a non-profit company (registration number 2014/089277/08) and a registered public benefit organisation (PBO 930047735) established to implement and manage the Unjani Clinic Network;
- 1.1.47 **"WDGMC"** means Wits Donald Gordon Medical Centre Proprietary Limited, a public-private partnership between Mediclinic and Wits University, in respect of which Mediclinic owns a 49.9% shareholding;
- 1.1.48 **"Wits University"** means the University of the Witwatersrand, Johannesburg; and
- 1.1.49 **"Worker"** means an employee as defined in the Labour Relations Act 66 of 1995, as amended.

2. **COLLABORATION WITH THE SOUTH AFRICAN PUBLIC HEALTH SECTOR**

- 2.1 Mediclinic shall provide support on addressing surgical backlogs in the South African public healthcare sector by performing, with partnering practitioners and specialists, at least 1,000 (one thousand) *pro bono* surgeries at its facilities in South Africa in aggregate over its next 5 (five) financial years commencing 1 April 2023 (subject to appropriate practitioners and specialists being available to perform the surgeries in line with healthcare practice).

- 2.2 The manner in which the aforementioned *pro bono* surgeries in clause 2.1. are performed by Mediclinic is contingent on a variety of factors, many of which are not in Mediclinic's control. Notwithstanding, Mediclinic undertakes to consult with the relevant provincial departments of health where Mediclinic has a presence regarding the nature and geographical location of such *pro bono* surgeries. The recommendations timeously made by the NDoH, to the extent reasonably possible, affordable and practical, will be considered in delivering on this condition.
- 2.3 The Merging Parties confirm that the Merger will not negatively impact Mediclinic's collaboration with the South African public healthcare sector. Mediclinic shall continue to collaborate and engage with public healthcare sector stakeholders on the components of a sustainable healthcare system.

3. DOCTOR ENGAGEMENT PROGRAMME

- 3.1 In furtherance of the undertakings set out in clause 2, and in consultation with the NDoH, Mediclinic undertakes to implement a programme within its network of hospitals, aimed at engaging doctors and encouraging them to assist with *pro bono* surgeries.
- 3.2 The Mediclinic Industry Affairs Executive shall manage the aforementioned undertaking in clause 3.1, in collaboration with the Mediclinic existing doctor relationship management team, to ensure that the objectives of this clause are achieved and effectively implemented.

4. SKILLS DEVELOPMENT AND CORPORATE SOCIAL RESPONSIBILITY INITIATIVES

Funding Allocations for Medical Training

- 4.1 Mediclinic shall, for its next 3 (three) financial years commencing 1 April 2023:
- 4.1.1 spend at least R22.5 million (twenty-two million five hundred thousand Rand) on Medical Training at WDGMC in aggregate over the period;
- 4.1.2 sponsor training grants and bursaries for Medical Training, of not less than R30 million (thirty million Rand) in aggregate over the period, taking into account, *inter alia*, information on individuals in need, to be provided timeously to Mediclinic by the NDoH from time to time; and
- 4.1.3 make donations of not less than R15 million (fifteen million Rand) in aggregate over the period to the National Department of Health Public

Health Enhancement Fund or similar South African Medical Training focused institution.

Nurses Training

- 4.2 Mediclinic shall, for its next 5 (five) financial years commencing on 1 April 2023, cover the full annual tuition costs of such number of nursing students that will comprise, when aggregating the number of nursing students whose tuition costs will be covered per annum over the 5 (five) financial year period, no fewer than 1,700 (one thousand seven hundred) nursing students, at an approximate cost of R80 000 000 (eighty million Rand).¹

5. **ENTERPRISE AND SUPPLIER DEVELOPMENT: ENHANCING THE SOUTH AFRICAN HEALTHCARE SECTOR**

Mediclinic shall, during its next 5 (five) financial years commencing 1 April 2023, spend at least an aggregate total amount of R40 million (forty million Rand) in the form of grants or loans to support Unjani Clinics (or similar facilities in underserved communities) in the establishment or upgrading of at least 20 (twenty) clinics and/or mobile health units in aggregate aimed at advancing the South African healthcare sector, particularly in underserved areas. When selecting such facilities and/or areas, Mediclinic will consider timeous input from the NDoH as to the underserved areas most in need.

6. **PROCUREMENT**

Mediclinic shall in aggregate for its next 5 (five) financial years commencing 1 April 2023, spend not less than R5 billion (five billion Rand) on procuring from Black-owned businesses, of which amount Mediclinic shall spend no less than R2.5 billion (two point five billion Rand) on procuring from Black-owned EMEs and/or QSEs. These spend commitments are made on the basis that the goods and services that Mediclinic requires to be procured are available on reasonable, practical and competitive terms that comply with regulatory requirements (as applicable) and Mediclinic's reasonable requirements, particularly regarding availability, quantity, quality aligned with market standards, counterparty risk and pricing.

¹ For the avoidance of doubt, where 'S' is students paid for in any year, $(S1 + S2 + S3 + S4 + S5 \geq 1,700)$. [As an illustrative example, 340 students paid for per year will be $(5 \times 340 \Rightarrow 1,700)$, or another illustrative example could be $(240 + 290 + 340 + 390 + 440 \geq 1,700)$].

7. CAPITAL EXPENDITURE

Mediclinic shall, for its next 5 (five) financial years commencing 1 April 2023, incur no less than R5 billion (five billion Rand) of capital expenditure in its South African operations.

8. EMPLOYMENT

8.1 Subject to the provisions of clause 8.2 below, the Merged Entity shall not retrench any permanent or fixed-term contract employees as a result of the Merger ("**Merger-specific retrenchments**") during the Moratorium Period.

8.2 The undertaking provided in paragraph 8.1 above means that no retrenchments will result as a consequence of the implementation of the Merger. For the sake of clarity, Merger-specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements (for the purposes of the Labour Relations Act) unrelated to the Merger (vi) terminations in the ordinary course of business, including, but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

9. ESTABLISHMENT OF AN EMPLOYEE BENEFIT SCHEME

9.1 By the end of the Establishment Period, Mediclinic Southern Africa shall be obliged to establish, for the benefit of Qualifying Workers, an Employee Benefit Scheme in accordance with the key design principles set out in **Annexure A.1**.

10. INFORMATION SHARING

10.1 The Merging Parties shall take the following measures to address the risk of information sharing post-Merger:

10.1.1 Any director, employee or representative of Remgro (or any of its subsidiaries) who has or obtains access to Competitively Sensitive Information relating to Mediclinic Southern Africa shall keep such Competitively Sensitive Information confidential, and shall, in particular, not disclose such Competitively Sensitive Information to any director, employee or representative of Discovery Holdings (Pty) Ltd ("Discovery"),

Momentum Metropolitan Holdings Limited (“MMH”) or National Healthcare Group (Pty) Ltd (“NHG”).

- 10.1.2 Any director, employee or representative of Remgro (or any of its subsidiaries) who has or obtains access to Competitively Sensitive Information relating to Discovery, MMH or NHG shall keep such Competitively Sensitive Information confidential, and, in particular, shall not disclose it to any director, employee or representative of Mediclinic Southern Africa, Mediclinic or Bidco.
- 10.1.3 In the event that, and/or for so long as, a representative of Remgro (or any of its subsidiaries) becomes, or is, a director of Mediclinic Southern Africa, Mediclinic or Bidco, Remgro shall ensure that such person signs a written confidentiality undertaking confirming such person’s obligations in terms of clause 10.1.1. above.
- 10.1.4 In the event that, and/or for so long as, a representative of Remgro (or any of its subsidiaries) becomes, or is, a director of Discovery, MMH or NHG, Remgro shall ensure that such person signs a written confidentiality undertaking confirming such person’s obligations in terms of clause 10.1.2. above.

11. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 11.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 11.2 The Merged Entity shall, within 30 (thirty) Days of the end of Mediclinic's financial year-end, for its next 5 (five) financial years commencing 1 April 2023, provide to the Commission a report detailing its progress regarding the compliance with the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the report's accuracy.
- 11.3 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.
- 11.4 Any person who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent

breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of clause 12 below.

12. VARIATION OF THE CONDITIONS

The Merging Parties or the Commission may at any time, on good cause shown (including any adverse effect on the Merged Entity's financial performance or macroeconomic or political conditions or healthcare or other applicable regulations impacting the Merged Entity's operations, for example, the impact of COVID-19) and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified or substituted.

13. APPARENT BREACH

If the Merging Parties appear to have breached the Conditions, or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

14. GENERAL

All correspondence concerning the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za, ministry@thedtic.gov.za and nicholas.crisp@health.gov.za.

ANNEXURE A.1

	Design Principle	Applicable Criteria
1	Structure	<ul style="list-style-type: none"> To be established for the benefit of Qualifying Workers, which provides Qualifying Workers with economic rights associated with the profit after tax produced by, or within, the relevant constituent components of the Mediclinic Southern Africa group and Medical Innovations.
2	Quantum of benefits	<ul style="list-style-type: none"> The economic benefits due to Qualifying Workers in terms of the Employee Benefit Scheme will be, at least, equivalent to the economic benefits due to Qualifying Workers in terms of the Reference ESP, meaning that the net present value of cash flows, less any remaining funding or liabilities ("Net Cash Flows"), due to Qualifying Workers in terms of the Employee Benefit Scheme will or will likely be the same or higher than the Net Cash Flows due to Qualifying Workers in terms of the Reference ESP.
3	Reference ESP	<p>For the purpose of line item 2 above, the Reference ESP is a notional Employee Share Plan which:</p> <ul style="list-style-type: none"> is established as an evergreen employee share trust for the benefit of Qualifying Workers; acquires and holds shares in Mediclinic Southern Africa as is equal to 5% of the total issued shares in Mediclinic Southern Africa, measured on a fully diluted basis²; and is vendor-financed on market-related terms.
4	Funding of the Employee Benefit Scheme	<ul style="list-style-type: none"> The Employee Benefit Scheme will not have any funding associated with it.
5	Cost to Qualifying Workers	<ul style="list-style-type: none"> The cost to Qualifying Workers will be R 0 (nil / zero Rand).
6	Duration	<ul style="list-style-type: none"> The Employee Benefit Scheme will endure on an evergreen basis. Termination of the Employee Benefit Scheme, for whatever reason, will result in the Employee Benefit Scheme being compensated for the value of the economic benefits forfeited, with such compensation to be held as an asset and used to continue to pay benefits to Qualifying Workers.
7	Participants	<ul style="list-style-type: none"> Qualifying Workers

² The Reference ESP will notionally hold 5% of the total number of shares then in issue, after the issue of new shares to the Reference ESP. For the avoidance of doubt, where total shares prior to Reference ESP is "T" and Reference ESP shares issued is "E" then $(E / (T + E)) = 5\%$. [As an illustrative example, 100 shares prior to Reference ESP with 5.2632 new shares issued will be $(5.2632 / (100 + 5.2632)) = 5\%$].

	Design Principle	Applicable Criteria
8	<i>Benefits</i>	<ul style="list-style-type: none">○ Qualifying Workers will be entitled to receive a share of the profit after tax produced by or within the Mediclinic Southern Africa group, or constituent components of the Mediclinic Southern Africa group, on a basis that satisfies the provisions of line item 2 above.