

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM115Oct23

In the large merger between:

**The Compensation, duly represented by the
Public Investment Corporation SOC Limited**

Primary Acquiring Firm

And

Rand Mutual Holdings Limited

Primary Target Firm

Panel:	L Mncube (Presiding Member) A Wessels (Tribunal Member) M Mazwai (Tribunal Member)
Heard on:	20 December 2023
Order issued on:	20 December 2023
Reasons Issued on:	19 January 2024

REASONS FOR DECISION

Introduction

- [1] On 20 December 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger whereby The Compensation Fund (“CF” or the “Acquiring Firm”), duly represented by the Public Investment Corporation SOC Limited (“PIC”), intends to acquire **[percentage of shares]**% of the ordinary share capital of Rand Mutual Holdings Limited (“RMH” or the “Target Firm”).
- [2] Upon conclusion of the proposed transaction, the CF will be able to exercise negative control over RMH post-transaction.

Primary acquiring firm

- [3] CF, a schedule 3A public entity under the Department of Employment and Labour, it is established in terms of section 15 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, as amended (“COIDA”).

- [4] The CF provides compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases.
- [5] There are three primary insurance products provided by CF namely: medical insurance; compensation for injuries and diseases sustained at the workplace; and pension funds. The CF also provides in-house administrative services which are not offered to external third parties. These administrative functions are purely performed in-house to service the main business activities of the CF.

Primary target firm

- [6] RMH is a company incorporated in terms of the laws of South Africa and is a holding company with no business operations of its own.
- [7] RMH is a wholly owned subsidiary of Rand Mutual Assurance Company Limited (“RMA”). RMA is a non-profit mutual assurance organisation established pursuant to section 30 of the COIDA.
- [8] RMH has numerous subsidiaries which conduct in-house functions to support its main business related to life insurance such as administrative services, IT and technology services, property holdings companies and rehabilitation and wound care facilities.
- [9] Of relevance to the proposed transaction are the business activities of Rand Mutual Life Assurance Company Limited (“RMA Life”) which operates as an insurance company which underwrites assistance, disability, health, and life insurance products.

Description of the transaction and rationale

- [10] The CF will acquire contractual rights to materially influence the business and strategic direction of the Target Firm. Therefore, upon completion of the proposed transaction, the CF will be able to exercise negative control over RMH. Post-transaction, the CF and RMA will continue to operate independently of one

another.¹

[11] In terms of the rationale for the proposed transaction, the proposed transaction is in line with the group strategy objectives of the RMA and the CF sees this transaction as a strategic investment. to target activities designed to alleviate unemployment, stimulate job creation, encourage job retention, and establish training and skills development.

Competition assessment

[12] The proposed transaction results in horizontal overlaps in the market for life insurance products and services. There is a horizontal overlap in the business activities of the merging parties in relation to the provision of life insurance products and services related to COIDA claims. This is because CF, and the Target Group both offer life insurance products and services arising from COIDA claims. However, these products and services have distinct differences.

[13] In order for a third-party to provide insurance claims arising from COIDA, it is mandatory for such a third-party to secure a license to do so.

[14] The Department of Employment and Labour has issued two mutual licenses to RMA, namely Class IV (mining) and Class XIII (building construction) licenses. The Department of Employment and Labour has issued one mutual licence to Federated Employers Mutual Assurance Company Proprietary Limited, namely Class V (iron, steel and metal). The CF provides COIDA insurance services for all other industries where COIDA claims arise excluding the mining; iron, steel and metal; and building and construction industries.²

[15] Accordingly, the insurance products and services offered by the CF and RMA are not demand-side substitutable as they each provide insurance products and services to distinct industries, underpinned by the COIDA licenses which mutual assurances are mandated to have in order to provide insurance cover for claims arising pursuant to COIDA.

[16] We considered the impact of the merger on the supply of life insurance products

¹ See Competitiveness Report in Meger Record at para 7.4, p 65.

² The Commission may find it prudent to use its advocacy function to consult with the Department of Employment and Labour on what appears to be very limited competition in relation to COIDA claims.

and services related to COIDA claims in: (1) mining; and (2) building construction industries in South Africa. However, given that the merger does not cause competition concerns even on this narrow basis, it is not necessary to conclude on the precise scope of the relevant markets.

[17] Both CF and RMH (through its subsidiaries) provide administrative services and own or have interest/investments in rentable office space properties. In relation administrative services, the merging parties provide these services in-house as an ancillary function to their main business activities and do not offer these services to external third parties. In respect of rentable office space properties, the Acquiring Group has minimal interest/investments in rentable office space properties of **[between 0 – 5%]**. The Target Group owns and controls rentable office space properties through its subsidiary, RMA Property, which is used for in-house ancillary property functions. Neither of the merging parties lease rentable office space properties to external third parties. Based on the above, we noted that in relation to the market for administrative services and rentable office space property, the merging parties are not active competitors in this market. Thus, the proposed transaction does not result in any market share accretion in this regard.

[18] The proposed transaction does not give rise to any vertical concerns.

[19] Therefore, we conclude that the proposed transaction is unlikely to result in the substantial prevention or lessening of competition in any relevant market.

Public interest

Employment

[20] The merging parties submit that there will be no job losses as a result of the proposed transaction.³

[21] The employees of the Target Firm were duly notified of the proposed transaction and did not raise any employment related concerns. However, the employee

³ Merger record, p 11.

[22] We find that the proposed transaction is unlikely to have a negative impact on employment.

Spread of ownership

[23] The CF is a body of the South African government and does not have a black-based black economic empowerment (“B-BBEE”) rating. RMA (and by implication RMH) is a level 1 B-BBEE contributor and does not have a HDP shareholding.

[24] Given that the government is the ultimate shareholder and the dividends which accrue to it benefit all the people of South Africa, the Commission concluded that the proposed transaction does not require any further intervention as regards the promotion of a greater spread of ownership.

[25] The proposed transaction raised no other public interest concerns.

Third party views

[26] No third party raised any concerns.

Conclusion

[27] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and the proposed transaction does not raise public interest concerns.

[28] In the circumstances, we unconditionally approve the proposed transaction.

Signed by:Liberty Mncube
Signed at:2024-01-19 11:45:42 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

19 January 2024

Prof. Liberty Mncube

Date

Mr Andreas Wessels and Ms Mondo Mazwai concurring

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Phuti Mashalane, Nkonzo Hlatshwayo and Dale
Adams of Werksmans Attorneys

For the Commission:

Tarryn Sampson, Raksha Darjiand Grashum
Mutizwa