COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 37/AM/Apr11

In the matter between:

Aon South Africa (Pty) Ltd	First Applicant
Glenrand MIB Ltd	Second Applicant
and	
The Competition Commission	Respondent
In re: the intermediate merger between:	
Aon South Africa (Pty) Ltd	Primary Acquiring Firm
and	
Glenrand MIB Ltd	Primary Target Firm

Panel	:	Norman Manoim (Presiding Member); Andreas Wessels (Tribunal Member); and Merle Holden (Tribunal Member)
Heard on	:	02 August 2011
Order issued on	:	04 August 2011
Reasons issued on	:	24 November 2011

Reasons for Decision

Introduction

[1] On 21 April 2011 AON South Africa (Pty) Ltd and Glenrand MIB Ltd (herein after referred to as "the merging parties"), filed an application in terms of section 16(1)(a) of the Competition Act (No.89 of 1998), requesting the Tribunal to consider an intermediate transaction that was approved by the

Competition Commission ("the Commission") on 07 April 2011, subject to conditions. It is common cause that this transaction is unlikely to substantially prevent or lessen competition in any relevant market. Therefore the conditions imposed by the Commission related only to public interest concerns, particularly the effect of the merger on employment.

[2] The Commission approved the transaction subject to the condition that no dismissals, based on operational requirements, were to take place at the merged entity. This condition was, however, not applicable to employees classified as skilled. Skilled employees were defined as those earning in excess of R 30 000 per month. This classification was based on a pay based proxy using AON's business model.

[3] The merging parties were not happy about the conditions imposed and submitted that the Commission failed to establish prima facie substantial employment concerns. They further argued that even if the Commission identified prima facie issues arising from the envisaged job losses, they had followed a rational process to arrive at the determination of the number of jobs that might be lost and that they could justify the need for them. They therefore requested the Tribunal to approve the merger without conditions.

[4] The merging parties have moved from this position and just prior to the commencement of our hearing they tendered certain conditions that would limit the extent of the retrenchments.

[5] On 4 August 2011, we approved the merger subject to conditions. These conditions, contained in our August order, are for convenience set out again in Annexure A hereto. The conditions that we imposed on the merger are substantially the same as those eventually tendered by the merging parties. In these reasons we explain why we have approved the merger subject to these conditions.

Parties to the transaction

[6] The primary acquiring firm is Aon South Africa (Pty) Ltd ("AON").[1]

[7] The primary target firm is Glenrand MIB Ltd ("Glenrand'). Prior to the merger, Glenrand was a public company listed on the JSE. Glenrand has a large number of direct and indirect subsidiaries.[2] In terms of the structure of the transaction, AON sought to acquire the entire issues share capital of Glenrand. Both firms conduct business as short-term insurance brokers and risk advisory firms.

Background

[8] The merging parties had, in their original filing to the Commission, indicated that approximately 220 employees might be retrenched, following the implementation of the merger on a "worst case scenario". The reasons given by the merging parties for these possible retrenchments were that (i) Glenrand's accounting and personal lines business models would be restructured in order to bring them in line with AON's centralised models, (ii) there would be a certain amount of duplication at executive and senior management levels as well as a duplication as result of the overlap of branches between the constituent businesses of the merged entity and (iv) Glenrand would be delisted from the JSE, which would mean that staff would no longer be required for listing purposes.

[9] The merging parties indicated that these retrenchments would affect employees of both AON and Glenrand. At that stage Glenrand employed approximately 890 employees and AON employed approximately 617 employees in South Africa. Therefore the 220 jobs compromised approximately 15% of the combined workforce of AON and Glenrand in South Africa.

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[1] Aon is controlled by Aon Holdings through a 70% shareholding. Aon Holdings also controls Aon Holdings Sub-Sahara Africa (Pty) Ltd and Aon Re Africa (Pty) Ltd t/a Aon Benfield. Aon has the following subsidiaries: Pennant Administrators (Pty) Ltd, Pinion Insurance Brokers (Pty) Ltd, QED Actuaries and Consultants (Pty) Ltd, Mafube Risk and Insurance Brokers (Pty) Ltd, Aon Consulting South Africa (Pty) Ltd and Aon Risk Services South Africa (Pty) Ltd.

[2] See annexure A for a list of these subsidiaries.

Legal principles

[10] We have previously laid down the principles in relation to merger related retrenchments in the *Momentum*[3] merger. In that matter, we stated that:

"The evidential burden that the parties must meet, once a prima facie case has been established, must satisfy two criteria namely that:

1) *a rational process has been followed to arrive at the determination of the number of jobs to be lost, i.e. that the reason for the job reduction and the number of jobs proposed to be shed are rationally connected; and*

2) *the public interest in preventing employment loss is balanced by an equally weighty, but countervailing public interest, justifying the job loss and which is cognisable under the Act."*

[11] In *Momentum* we indicated as follows regarding what these countervailing public interests were:

"Examples of possible public interest justifications that might flow from the prior competition inquiry might be that the merger:

1) *is required to save a failing firm;*

2) *is required, because pre-merger, the merging firms will not be competitive unless they can lower their costs to be equally as efficient as their rivals and only the merger can bring about these savings through the contemplated employment reduction; or*

3) *will lead to lower prices for consumers because of the merged firm's lower cost base and that this lower cost base can only come about or is materially dependent upon, the contemplated employment reduction".*

[3] *Metropolitan Holdings Limited and Momentum Group Limited, Case No: 41/LM/Jul10.*

Commission's decision

[12] The Commission approved the merger subject to the following conditions:

1) *Aon South Africa (Proprietary) Limited (Aon), Glenrand MIB Limited (Glenrand) and their respective direct and indirect subsidiaries, shall ensure that there are no dismissals, based on the merger entity's operational requirements, in South Africa, resulting from the merger.*

2) *For the sake of clarity, dismissals do not include, (i) voluntary separations arrangements (ii) voluntary early retirement packages; and (iii) unreasonable refusal to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended.*

3) *The conditions in 1 above shall not apply to skilled staff (earning above R30 000 per month) as identified per the attached annexure 1 provided to the Commission.*

4) *Aon, Glenrand and their subsidiaries must circulate this condition within 7 days of the merger clearance to their staff (subject to any essential confidentiality redactions in respect of Annexure 1.*

[13] In brief the Commission reasoned that the merging parties had not met the test set out in the *Momentum* case despite being asked to justify the likely number of retrenchments. For that reason it imposed the conditions it did.

[14] The Commission did not accept the merging parties arguments that further consultations on the merger would have amounted to prior implementation or that Glenrand would have had to cut jobs even without the merger as it was losing market share.

The merging parties' consideration application

[15] In their consideration application the merging parties contended that the Commission's conditions were not justified and they contended for an unconditional approval. There primary concern was that the cap on

retrenchments was indefinite and not a moratorium for a fixed period as was the case in *Momentum*.

[16] However, the merging parties have changed their position, in several respects, from what it was before the Commission, since filing this application. Firstly they undertook two further exercises to ascertain the number of employees likely to be retrenched. As a result of these exercises, fewer employees face retrenchment than were signalled earlier. Secondly, they were now willing to accept a moratorium on retrenchments as a condition for the approval of the merger. Thirdly, as a result of a voluntary retrenchment package offered by AON, after the Commission's conditional approval some employees had accepted the package and resigned. This has lowered the number of redundancies and hence the number of employees required to be retrenched. (Note that in terms of the Commissions' condition the offering of such a package was permissible.)

[17] The Commission too moved its position. In heads of argument in the consideration application counsel conceded that the cap on retrenchments could not be indefinite, but should apply for a limited period and suggested that it be two years.

[18] In view of this shift by both parties it is not necessary for us to consider the debate between the merging parties and the Commission on the prior conditions imposed by the Commission as this has become moot. We will now only consider whether the conditions presently proposed are adequate to protect the public interest in employment.

Analysis of the conditions

[19] We do not need to decide whether the process followed by the merging parties prior to the filing of the consideration was adequate, as they have taken further steps since then that we will take into account for their benefit when making this assessment.

[20] Prior to the merger, the merging parties' approach was to compare a list of their respective employees and make assumptions as to the redundancy of roles, using AON's business model. From this list (which indicated the job title, age, gender, office and salary) 218 potentially at risk employees were

identified, using a pay based proxy and dividing the employees into skilled, semi-skilled and unskilled categories.

[21] However subsequently and after the Commission had approved the merger conditionally AON management performed two further exercises to estimate retrenchments; namely the Paterson job evaluation and what they termed a budget and financial forecast of the business units evaluation within the merged entity. The Paterson evaluation placed 161 of these employees in the skilled category, 44 in the semi-skilled and 13 in the unskilled category.

[22] The results of the budget and financial forecast approach identified 137 superfluous people. Of these 137, we were informed that 57 had already applied for voluntary retrenchments and 14 had already resigned of their own accord. Therefore only a balance of 66 employees faced possible retrenchments and of these 66, 12 were classified as skilled (i.e. earning above R30 000 per month), 24 as semi-skilled (i.e. earning between R15 000 and R30 000 per month) and 30 as unskilled (earning below R15 000 per month).

[23] In a table below we set out for easier consideration the iteration in jobs at risk that this unfolding process yielded

Original position (Total facing retrenchment 218)	**Paterson evaluation results ((Total facing retrenchment 218)**	**Budget and financial forecast results (Total facing retrenchment 66)**
• 45 employees - skilled • 90 employees - semi-skilled • 83 employees - unskilled	• 161 employees - skilled • 44 employees – semi-skilled • 13 employees – unskilled	• 12 employees - skilled • 24 employees - semi-skilled • 30 employees - unskilled

[24] We are satisfied that having gone through several exercises using different methodologies the parties have followed a rational process. Whilst they did not have the benefit it appears of a representative employee body to consult with, they did use other means to properly consider the potential employment

loss. The merging parties also led evidence of employment prospects in their industry. [4]

[25] Secondly, and more importantly, far fewer jobs will be possibly lost than initially envisaged. There has also been an attempt to give greater protection to unskilled employees who are those less likely get re-employed soon if they were retrenched. Whilst skilled employees are not protected, these employees, the evidence suggests, have greater job prospects. Importantly, we required at an earlier pre-hearing that these proposed conditions be made available to employees for their consideration prior to the hearing and we invited them to come forward with concerns. None did.

[26] The merging parties have also given evidence justifying the need for the retrenchments. Glenrand, in their opinion, has performed poorly in the market recently and the AON management consider that retrenchments in certain areas are necessary to lower its operating costs. We were advised at the hearing that savings in operating costs would be passed on to some consumers in the form of lower premiums.

[27] Thus two of the justifications for the retrenchments contemplated in *Momentum* have been advanced.[5] Evidence of justification is most credible when supported by contemporaneous documentation; i.e. documentation prepared at the time of the consideration of the transaction which shows it was considered by the merging parties as part of their business rationale for the merger and not with any eye to making their position more congenial to these proceedings. In this case whilst evidence for the cost savings was not supported by any contemporaneous documentation, but relied on the say so of a witness at the hearing, the evidence of Glenrand's troubles were, and this alone suffices.

[28] The tendered conditions were as follows:

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[4] See evidence of Mr. Leeu Morwe, Aon's Executive Head of Human Resources.
[5] See paragraph 11 of this decision above.

1) *Aon South Africa (Proprietary) Limited ("AON"), Glenrand MIB Limited ("Glenrand") and their respective direct and indirect subsidiaries, shall ensure that –*

   a. *there are no dismissals of employees earning less than R15 000 a month (on the basis of the relevant employees' total cost to company as at 7 April 2011);*

   b. *there are dismissals of no more than 24 employees earning between R15 000 and R30 000 a month (on the basis of the relevant employees' total cost to company as at 7 April 2011),*

   in South Africa, based on the merged entity's operational requirements, resulting from the merger.

2) *For the sake of clarity, dismissals do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended.*

3) *These Conditions will apply for a period of only 2 years commencing from 7 April 2011.*

4) *Any employee who believes that his/her employment with the merged entity has been terminated in contravention of these Conditions may approach the Commission with their complaint.*

5) *Aon, Glenrand and their subsidiaries must circulate a copy of these Conditions to its employees within 7 days of the Tribunal's decision.*

6) *The merged entity will provide a report to the Commission by no later than 7 October 2011, 6 April 2012, 5 October 2012 and 5 April 2013 reflecting the dismissals based on the merged entity's operational requirements within the previous 6 month period as a result of the merger.*

[29] We were satisfied that the conditions proposed were adequate to remedy any public interest concern in respect of employment loss as a result of the merger. Certain of the reporting obligations needed to be clarified and for this reason we expanded on the original clause 6 by adding 6.1 to 6.3 as set out in Annexure A hereto.

Norman Manoim **24 November 2011**
Date

Andreas Wessels and Merle Holden concurring.

Tribunal Researcher : Ipeleng Selaledi

For the merging parties : Adv D. N. Unterhalter SC and Adv J. Wilson instructed by Edward Nathan Sonnenbergs

For the Commission : Adv V. Ngalwana and Adv N. Mayet-Beukes Instructed by the State Attorney

ANNEXURE "A"

COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

Case No: 37/AM/APR11

In the matter between:

AON SOUTH AFRICA (PTY) LTD	Applicant
GLENRAND MIB LTD	Second Applicant
and	
THE COMPETITION COMMISSION	Respondent

In re: the intermediate merger between:

AON SOUTH AFRICA (PTY) LTD	Primary Acquiring Firm
and	
GLENRAND MIB LTD	Primary Target Firm

Panel	:	Norman Manoim (Presiding Member); Andreas Wessels (Tribunal Member); and Merle Holden (Tribunal Member)
Heard on	:	02 August 2011
Decided on	:	04 August 2011

ORDER

Further to the First and Second Applicant's Application in terms of Section 16 (1)(a) of the Competition Act (No. 89 of 1998), as amended, read with Rule 32 of the Rules

of Conduct of Proceedings in the Competition Tribunal, the Tribunal approves the merger in terms of Section 16(2)(b) subject to the following conditions:

1. Aon South Africa (Proprietary) Limited ("**Aon**"), Glenrand MIB Limited ("**Glenrand**") and their respective direct and indirect subsidiaries, shall ensure that –

    a. there are no dismissals of employees earning less than R15 000 a month (on the basis of the relevant employees' total cost to company as at 7 April 2011);

    b. dismissals of employees earning between R15 000 and R30 000 a month (on the basis of the relevant employees' total cost to company as at 7 April 2011) shall not exceed 24,

    in South Africa, based on the merged entity's operational requirements, resulting from the merger.

2. For the sake of clarity, dismissals do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended.

3. These Conditions will apply for a period of 2 years commencing from 7 April 2011.

4. Any employee who believes that his/her employment with the merged entity has been terminated in contravention of these Conditions may approach the Commission with their complaint.

5. Aon, Glenrand and their subsidiaries must circulate a copy of these Conditions to all their employees in South Africa within 7 days of the Tribunal's order.

6. The merged entity will provide a report to the Commission by no later than 7 October 2011, 6 April 2012, 5 October 2012 and 5 April 2013 reflecting the

following information in regard to the previous 6 month period:

6.1 in terms of condition 1 above, the number of dismissals based on the merged entity's operational requirements as a result of the merger, as well as for each of these dismissals the relevant employee's total cost to company as at 7 April 2011;

6.2 in terms of condition 2 above, the number of (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed, as well as in respect of each of these the relevant employee's total cost to company as at 7 April 2011;

6.3 for each of the unreasonable refusals to be redeployed, the nature of and reasons for the relevant employee's objection to be redeployed, as well as the merged entity's' justification for redeployment.

Norman Manoim
Presiding member

Concurring: Andreas Wessels and Merle Holden

Tebogo Mputle

From: Tebogo Mputle
Sent: Thursday, November 24, 2011 4:31 PM
To: Fergus Reid; 'jbalkin@ens.co.za'; 'rgoodman@ens.co.za'; 'bakhem@compcom.co.za'
Cc: Ipeleng Selaledi; Lerato Motaung
Subject: AON SA and the Competition Commission - 37/AM/Apr11
Attachments: 20111124152431359.pdf

Dear all

Please see attached the Tribunal's reasons for the decision in the above matter and kindly confirm receipt.

Kind Regards

Tebogo Mputle
Registry Administrator
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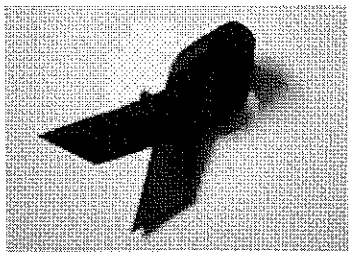

Tracking: