

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 016808

In the matter between:

The Competition Commission

Applicant

and

Old Mutual Life Assurance Company (SA) Ltd
Momentum Group Ltd (as it was then)

First Respondent
Second Respondent

Panel: N Manoim (Presiding Member), T Madima
(Tribunal Member) and A Ndoni (Tribunal
Member)

Heard on: 12 June 2013

Decided on: 12 June 2013

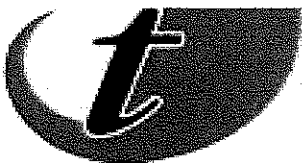
Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondents, annexed hereto marked "A".



Presiding Member
N Manoim

Concurring: T Madima and N Ndoni



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Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

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

Notice of Motion

Date: 30-May-2013 File # 046790 016808

To: The registrar of the Competition Tribunal

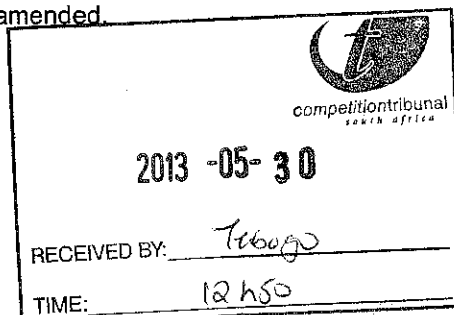
Concerning the matter between:

The Competition Commission (Applicant)

and OMLACSA and Another (Respondent)

Take notice that the Applicant intends to apply to the Tribunal for the following order:

Confirmation of the attached Consent Agreement concluded on 21 May 2013 between the Competition Commission and Old Mutual Life Assurance Company (South Africa) Limited and Momentum Group Limited as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(b) and section 59(1)(d)(i) of the Competition Act No. 89 of 1998, as amended.



Name and Title of person authorised to sign:

Ms Wendy Mkwanzani - Chief Legal Counsel

Authorised Signature:

Date:

30-May-2013

For Office
Use Only:

Tribunal file number:

Date filed:

**BEFORE THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CT CASE NO:

CC CASE NO: 2011Apr0030

In the matter between:

COMPETITION COMMISSION

Applicant

and

**OLD MUTUAL LIFE ASSURANCE COMPANY
(SOUTH AFRICA) LIMITED**

First Respondent

MOMENTUM GROUP LIMITED (as it was then)

Second Respondent

FILING SHEET

DOCUMENT FILED:

**CONSENT AGREEMENT BETWEEN THE
COMPETITION COMMISSION AND OLD MUTUAL LIFE
ASSURANCE COMPANY (SOUTH AFRICA) LIMITED
AND MOMENTUM GROUP LIMITED IN RESPECT OF
AN ALLEGED CONTRAVENTION OF SECTION 13A(3)
OF THE COMPETITION ACT NO. 89 OF 1998, (AS
AMENDED).**

FILED BY:



COMPETITION COMMISSION

77 Meintjies Street
Block C, DTI Campus
Sunnyside
PRETORIA

Ref: B. Ngcobo/ B. Ntshingila

Tel: (012) 394 3448/ (012) 394 3147

Fax: (012) 394 4448/ (012) 394 4147

E-mail: BonganiN@compcom.co.za

BusisiweN@compcom.co.za

TO:

**THE REGISTRAR
COMPETITION TRIBUNAL**

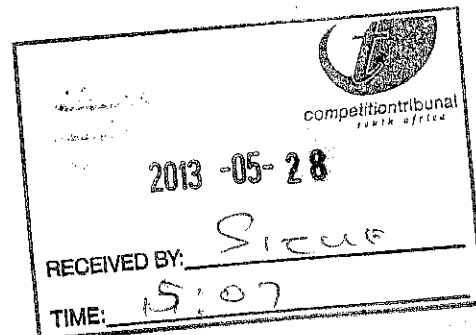
77 Meintjies Street
Block C, DTI Campus
Sunnyside
PRETORIA

Ref: Lerato Motaung

Tel: (012) 394 3355

Fax: (012) 394 0169

E-mail: leratom@comptrib.co.za



AND TO: Cliffe Dekker Hofmeyr Inc

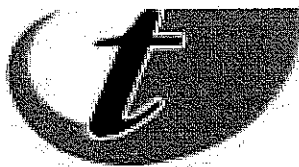
11 Buitengracht Street
Cape Town

Ref: Petra Krusche

Tel: 021 481 6350

Fax: 021 481 9504

E-mail: petra.krusche@dlacdh.com



competitiontribunal south africa

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Form continues on Page 2.

Contacting the Tribunal

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

Referral of Complaint by Commission

Date: 28 May 2013

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

Old Mutual Life Assurance Company (South Africa) Limited and
Momentum Group Limited

Concerning:

(Complaint name and Commission file number:)

Competition Commission v Old Mutual Life Assurance Company (South Africa) Limited and Momentum Group Limited Case No: 2011Apr0030

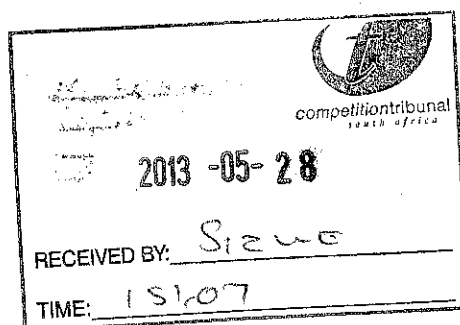
From: the Competition Commission

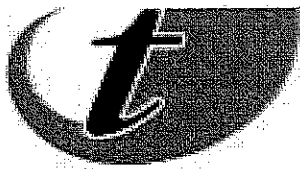
The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 13A(3) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

The complaint concerns an alleged contravention of section 13A(3) of the Competition Act No. 89 of 1998, as amended.

The details of the contravention are fully set out in the consent agreement concluded on 21 May 2013 between the Competition Commission and Old Mutual Life Assurance Company (South Africa) Limited and Momentum Group Limited Case No: 2011Apr0030 attached hereto.





competitiontribunal south africa

Form CT1(1) Page 2 About this Form

This form is issued in terms of section 50 of the Competition Act.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:

- (a) a concise statement of the grounds on which the Complaint is opposed;
- (b) the material facts or points on which the respondent relies;
- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 through 19.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

Confirmation of the attached consent agreement concluded on 21 May 2013 between the Competition Commission and Old Mutual Life Assurance Company (South Africa) Limited and Momentum Group Limited as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(b) and section 59(1)(d)(i) of the Competition Act No. 89 of 1998, as amended.

☒ This referral is to proceed as a consent proceeding.

☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

Ms Wendy Mkwanzani - Chief Legal Counsel

Authorised Signature:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No:

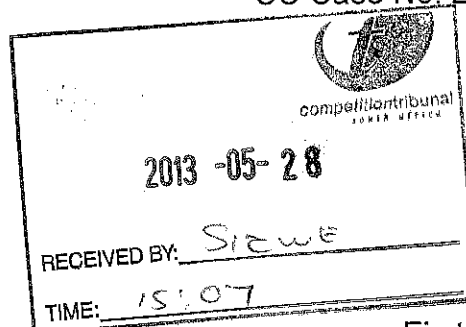
CC Case No: 2011Apr0030

In the matter between:

THE COMPETITION COMMISSION

and

OLD MUTUAL LIFE ASSURANCE COMPANY
(SOUTH AFRICA) LIMITED



Applicant

First Respondent

MOMENTUM GROUP LIMITED (as it was then)

Second Respondent

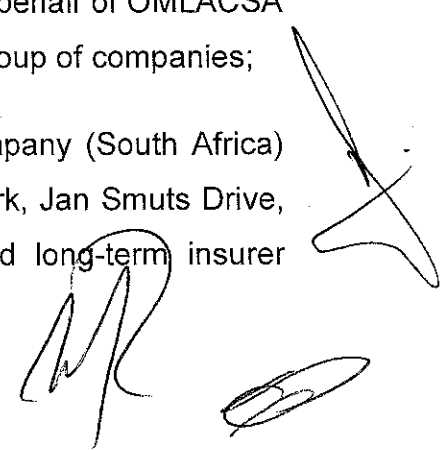
CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
THE RESPONDENTS IN REGARD TO A CONTRAVENTION OF SECTION 13A
OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED)

The Competition Commission and the Respondents hereby agree that application be made to the Competition Tribunal for this agreement to be confirmed as a consent order of the Competition Tribunal in terms of section 49D as read with section 58(1)(b) and section 59(1)(d)(i) of the Competition Act 89 of 1998, as amended.

1 DEFINITIONS

For the purpose of this agreement, the following definitions apply –

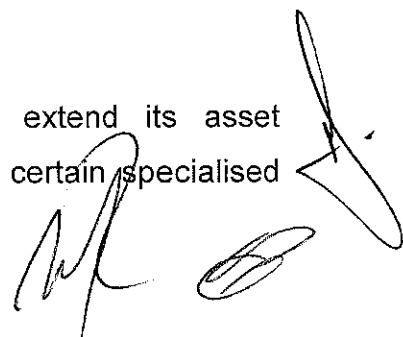
- 1.1 "Act" means the Competition Act, 89 of 1998 (as amended);
- 1.2 "Commission" means the Competition Commission of South Africa, a statutory body, established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, dti Campus, corner Meintjies and Esselen Streets, Sunnyside, Pretoria, Gauteng;

- 1.3 **"Consent Agreement"** means this agreement signed by the Parties;
- 1.4 **"Futuregrowth"** means the wholly owned subsidiary of OMIGSA, with its principal business address at third floor, Great Westerford Building, 240 Main Road, Rondebosch, a registered financial services provider and a specialised asset manager with notable expertise in fixed income and social responsibility assets;
- 1.5 **"Futuregrowth Merger"** means the merger in terms of which OMIGSA acquired the entire shareholding and business of Futuregrowth so that it became a subsidiary of OMIGSA, which transaction was unconditionally approved by the Tribunal on 28 August 2008 under case number 71/LM/Jun08;
- 1.6 **"FSB"** means the Financial Services Board responsible for the regulation of, amongst others, long-term insurance business under the Long-Term Insurance Act;
- 1.7 **"Long-Term Insurance Act"** means the Long-Term Insurance Act of 1998 as amended;
- 1.8 **"Momentum"** means Momentum Group Limited (now known as MMI Group Limited), with its principal business address at 268 West Avenue, Centurion, Pretoria, a registered long-term insurer under the Long-Term Insurance Act;
- 1.9 **"OMIGSA"** means Old Mutual Investment Group (South Africa) Limited, with its principal business address at Mutual Park, Jan Smuts Drive, Pinelands, Western Cape. OMIGSA is a registered financial services provider providing asset management services to the investment market and mandated to perform certain functions on behalf of OMLACSA and other companies forming part of the Old Mutual group of companies;
- 1.10 **"OMLACSA"** means Old Mutual Life Assurance Company (South Africa) Limited, with principal business address at Mutual Park, Jan Smuts Drive, Pinelands, Western Cape. OMLACSA is a registered long-term insurer under the Long-Term Insurance Act;
- 

- 1.11 **"Parties"** means the Commission and the Respondents;
- 1.12 **"Policyholders"** means the policyholders of the Transfer Policies;
- 1.13 **"Respondents"** means OMLACSA and Momentum collectively;
- 1.14 **"Section 37(2) Transfer"** means the transfer of the Transfer Assets and Transfer Policies from Momentum to OMLACSA pursuant to the Transfer Agreement;
- 1.15 **"Transfer Agreement"** means the agreement entered into between the Respondents on 1 April 2009 under section 37(2) of the Long-Term Insurance Act, in terms of which OMLACSA would assume Momentum's rights and obligations to the Policyholders in respect of the Transfer Policies and accept delivery of the Transfer Assets;
- 1.16 **"Transfer Assets"** means the assets held to meet the obligations of the relevant Respondent/long-term insurer towards the Policyholders in terms of the Transfer Policies and managed by Futuregrowth;
- 1.17 **"Transfer Policies"** means the linked long-term insurance policies which are the subject of the Transfer Agreement; and
- 1.18 **"Tribunal"** means the Competition Tribunal of South, a statutory body established in terms of section 26 of the Act, with its principal place of business at Building C, Mulayo Building, DTI Campus, corner Meintjies and Esselen Streets, Sunnyside, Pretoria, Gauteng.

2 BACKGROUND

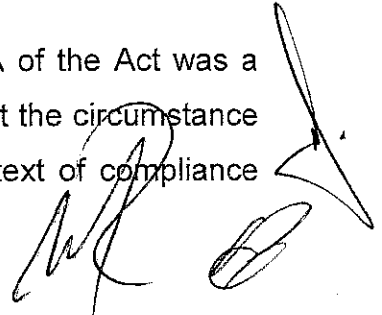
- 2.1 The circumstances and context under which the merger was implemented prior to its approval
- 2.1.1 At all relevant times Futuregrowth was the portfolio manager appointed to manage the Transfer Assets in accordance with the investment mandate relating to the Transfer Policies.
- 2.1.2 The Futuregrowth Merger allowed OMIGSA to extend its asset management skills in fixed income capability and certain specialised



products (i.e. by acquiring Futuregrowth's business), and facilitated Futuregrowth's access to the Old Mutual group of companies' retail distribution channels and a long-term insurance licence with linked policy capacity.

- 2.1.3 In the Futuregrowth Merger, the Commission and the Tribunal understood the relevance of the linked policy capability of Old Mutual and the prospect that an Old Mutual long-term insurance licence would be used to underwrite the Transfer Policies per the rationale for and as recorded in the Tribunal's reasons for its approval of the Futuregrowth Merger.
- 2.1.4 Competition in the market involving linked long-term insurance policies occurs mainly at the asset management / investment level. Investors generally prioritise the identity and capabilities of the asset manager, who will manage their investment via a linked policy issued by an established long-term insurer, when making investment choices. In contrast, competition in the non-linked long-term insurance market is driven almost entirely by an assessment of the insurers' ability.
- 2.1.5 At all relevant times, OMIGSA, Futuregrowth and Momentum considered the Policyholders' investments represented by the Transfer Policies and the Transfer Assets as managed by Futuregrowth to form part of the business of Futuregrowth, and that the Section 37(2) Transfer was an implementation of the Futuregrowth Merger.
- 2.1.6 It was not discussed nor contemplated by any of the persons involved in the Futuregrowth Merger that the Section 37(2) Transfer could be a merger under the Act.
- 2.1.7 The only part of the business of Momentum over which OMLACSA acquired control under the Section 37(2) Transfer was the Transfer Assets and the Transfer Policies.

The Respondents' failure to comply with section 13A of the Act was a *bona fide* and reasonable mistake, taking into account the circumstance that the Section 37(2) Transfer occurred in the context of compliance



with the Long-Term Insurance Act in relation to the Futuregrowth Merger and with the consent of the FSB and Policyholders.

3 COMMISSION'S INVESTIGATION AND FINDINGS

The Commission's investigation established the following –

3.1 An implemented merger

3.1.1 The Section 37(2) Transfer resulted in the acquisition of control, within the meaning of section 12(1) of the Act, by OMLACSA over part of the business of Momentum comprising the Transfer Assets and Transfer Policies. This merger also met the thresholds of a large merger and was therefore notifiable.

3.1.2 The Respondents implemented the merger prior to its notification to the Commission and approval by the Tribunal in terms of section 13A of the Act.

4 ADMISSION

The Respondents admit that –

4.1 The Section 37(2) Transfer constituted a notifiable large merger under section 12(1)(c) of the Act read together with the schedule for determining thresholds.

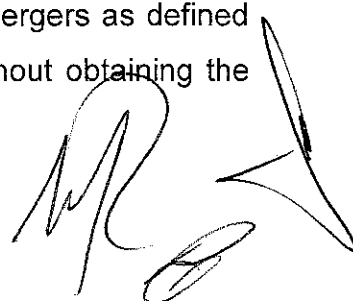
4.2 The merger was implemented prior to its notification to the Commission and approval by the Tribunal as prescribed by section 13A of the Act.

4.3 They were responsible for notifying the merger under the Act.

5 AGREEMENT CONCERNING FUTURE CONDUCT

5.1 The Respondents agree and undertake –

5.1.1 To not implement any transaction, which constitute mergers as defined in the Act and meet the threshold for notification without obtaining the prior approval from the competition authorities;

A handwritten signature in black ink, appearing to be 'R. O.', is located at the bottom right of the page.

- 5.1.2 Develop and implement a compliance programme designed to ensure that its employees, management and directors do not engage in any conduct which constitutes a contravention of the Act, a copy of which shall be submitted to the Commission within 60 days of the date of confirmation of this consent agreement as an order of the Tribunal.

6 ADMINISTRATIVE PENALTY

- 6.1 Having regard to the provisions of section 58(1)(a)(iii), read with sections 59(1)(d), 59(2) and (3) of the Act, the Respondents accept that they are liable to pay an administrative penalty for the contravention of section 13A(3) of the Act.

- 6.2 The Parties agree that an administrative penalty of R175,000 (one hundred and seventy five thousand Rand) shall be imposed on each of the Respondents.

- 6.3 The amount of each administrative penalty is less than 10% of the annual turnover of each Respondent as stipulated in section 59(2) of the Act.

- 6.4 Each Respondent shall pay the penalty amount to the Commission within 7 (seven) days of the confirmation of this Consent Agreement as an order of the Tribunal,

- 6.5 The said amount shall be paid into the following Commission's bank account –

Bank	ABSA Bank
Account Name	Competition Commission
Account Number	4050778576
Branch Code	323345

- 6.6 The Commission will pay the administrative penalties into the National Revenue Fundas stipulated in section 59(4) of the Act.

7 FULL AND FINAL SETTLEMENT

Upon confirmation of the Consent Agreement as a consent order by the Tribunal, all proceedings between the Commission and the Respondents in

relation to their failure to comply with section 13A(3) of the Act investigated under the Commission's case number 2011Apr0030, shall be concluded.

Signed at Pinelands on the 5th day of May 2013



MR ABRAHAM PAULUS NAUDE
~~GENERAL MANAGER INVESTMENT SERVICES CORPORATE~~
~~HEAD OF INSTITUTIONAL INVESTOR PORTFOLIOS~~

OLD MUTUAL LIFE ASSURANCE COMPANY (SOUTH AFRICA) LIMITED

Signed at Centurion on the 10th day of April 2013



MR FRANCOIS JOOSTE
GROUP COMPANY SECRETARY
MOMENTUM GROUP LIMITED

Signed at Pretoria on the 21 day of May 2013



MR SHAN RAMBURUTH
COMPETITION COMMISSION OF SOUTH AFRICA