



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM257Mar16

In the matter between:

AFRICAN RAINBOW CAPITAL (PTY) LTD

Primary Acquiring Firm

and

Ooba (PTY) LTD

Primary Target Firm

Panel	: AW Wessels (Presiding Member)
	: Prof Fiona Tregenna (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 29 June 2016 and 10 August 2016
Last submission received on	: 11 August 2016
Order Issued on	: 12 August 2016
Reasons Issued on	: 07 September 2016

Reasons for Decision

Conditional approval

- [1] On 12 August 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between African Rainbow Capital (Pty) Ltd ("ARC") and ooba (Pty) Ltd ("ooba") subject to certain behavioural conditions.
- [2] The reasons for conditionally approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is ARC, a private company incorporated in terms of the company laws of the Republic of South Africa. ARC is a wholly-owned subsidiary of Ubuntu-Botho Investments (Pty) Ltd ("UBI"). Sizanani-Thusanang-Helpmekaar (Pty) Ltd ("Sizanani") holds 68.8% of the ordinary shares of UBI. The remaining 31.2% of the ordinary shares of UBI is held by various Broad Based Black Economic Empowerment groups (the "UBI BBBEE entities"). The sole shareholder of Sizanani is Ubuntu-Ubuntu Commercial Enterprises (Pty) Ltd ("Ubuntu-Ubuntu"). The shares of Ubuntu-Ubuntu are held by various trusts for the benefit of Mr Patrice Motsepe and his immediate family, except for the Motsepe Foundation.
- [4] We note that UBI is Sanlam Limited's ("Sanlam") empowerment partner. UBI holds 14.5% of the shares of Sanlam. The relevance of this will be explained below. Sanlam is however not a party to the proposed transaction.
- [5] ARC controls a number of firms of which Indwe Risk Services (Pty) Ltd ("IRS") is relevant for the competition assessment of the proposed transaction. IRS is an insurance broker that provides intermediary services to registered and approved insurers that offer insurance solutions for personal lines, business insurance and risk consulting.

Primary target firm

- [6] The primary target firm is ooba, a private company incorporated in terms of the company laws of the Republic of South Africa. ooba is not controlled by any single firm. ooba controls *inter alia* evo Group (Pty) Ltd, evo Business Services (Pty) Ltd and ooba Investment Holdings (Pty) Ltd ("OIH") (collectively referred to hereinafter as the "ooba Group").
- [7] The ooba Group comprises of companies that provide mortgage originator services that assist home buyers with sourcing bond financing for residential property. It also provides building, mortgage protection insurance as well as personal line cover in respect of household items and vehicles.

Proposed transaction and rationale

- [8] In terms of the *Subscription Agreement*, ARC intends to acquire 30% of the issued ordinary and participatory shares in ooba. Following the implementation of the proposed transaction, ARC will hold the majority shares in ooba and will be able to exercise veto rights in terms of the Memorandum of Incorporation. ARC will therefore be able to materially influence the business of ooba and exercise control in terms of section 12(2)(g) of the Competition Act, 89 of 1998 as amended ("the Act").
- [9] ARC submitted that its overall vision and strategy is to invest in the full spectrum of financial and related services. ARC intends to achieve this vision and strategy by building and maintaining strategic partnerships within South Africa and abroad, by obtaining equity in product providers.
- [10] ooba submitted that it will derive a number of benefits from the proposed transaction *inter alia* that ARC will serve as a strategic partner in order to access growth opportunities and increase the BBEE ownership within opportunities within the ooba Group.

Impact on competition

- [11] As stated above, IRS provides insurance brokerage services whilst the ooba Group provides various types of insurance. The Competition Commission ("Commission") identified a vertical relationship between the activities of the merging parties in the markets for the provision of insurance brokerage services and the provision of short-term (property and motor) insurance as well as long-term insurance.
- [12] The Commission found that the merging parties have low market shares (estimated to be below 5%) in the respective markets where there is a vertical relationship. The Commission further found that there are large competitors such as Santam and Mutual & Federal in the insurance markets and players such as Professional Provident Society Marketing Services, Badger Holdings, MiWay Insurance, Outsurance and others in the insurance brokerage services market(s).
- [13] Given the existence of alternative service providers and the merging parties' low market shares in the vertically affected markets, the Commission concluded that the

proposed transaction is unlikely to raise any foreclosure concerns. We concur with this finding.

- [14] However, following its investigation the Commission was concerned that the proposed transaction will give rise to coordination concerns. The concern was that the proposed transaction is likely to create a platform for the sharing of competitively sensitive information between ooba and certain of its competitors in the short- and long-term insurance markets due to pre-existing common shareholdings of Hollard Holdings (Pty) Ltd ("Hollard") and ooba in OIH, and UBI's interest in Sanlam. (We note that Hollard and Sanlam are not parties to the proposed transaction.)
- [15] Currently UBI, the holding company of ARC, has the ability to appoint three non-executive board members on the board of Sanlam and may cast 14.5% of the votes that may be cast at a shareholders meeting. Hollard and ooba hold 25% and 75% shares, respectively, in OIH.
- [16] The proposed transaction, i.e. ARC's acquisition of 30% of the shares of ooba, creates an indirect structural link between Sanlam (through UBI's 14.5% shareholding in Sanlam) and ooba (through ARC's 30% shareholding in ooba) and Hollard (through Hollard's 25% shareholding in OIH).
- [17] Hollard, Sanlam and ooba are all competitors in the provision of short- and long-term insurance in South Africa. Although ooba is primarily a mortgage originator, ancillary to its mortgage origination business it provides, through OIH and OIH's subsidiaries, home and home-loan insurance solutions, as well as certain personal line insurance products. Sanlam provides a comprehensive range of short- and long-term insurance products through its subsidiaries, Santam and Sanlam Life Insurance Ltd ("Sanlam Life") and their subsidiaries.
- [18] We however note that ooba's current national market shares in the short- and long-term insurance markets are very small.
- [19] To remedy the concerns in relation to potential post-transaction information exchange between ooba and the abovementioned competitors in the insurance markets, the Commission recommend that the proposed transaction be approved subject to certain behavioural conditions relating to the removal of common board representation to sever any ties that might facilitate information sharing between these competitors.

- [20] We concur with the Commission that behavioural conditions are warranted to address these concerns and explain below what conditions we have imposed.
- [21] The merging parties engaged with the Commission in an attempt to craft conditions based on principles relating to cross-directorships that the merging parties (and ARC specifically) were willing to accept and that would give comfort to and adequately address the concerns that the competition authorities may have with cross-directorships. The basis of this was that the remedies should only regulate and prohibit cross-directorships between competing entities.
- [22] ARC stressed its intention to establish a substantial, black owned and controlled investment company focusing on the financial services industry and that ARC has and will continue to have close ties to the Sanlam Group. Furthermore, the merging parties submitted that the Sanlam UBI relationship has been instrumental in the establishment and growth of UBI and ARC and will continue to be material to grow ARC as an empowered financial services entity.
- [23] The merging parties further stated that the trusted business relationship between UBI and Sanlam has led to the appointments of former Sanlam CEO Johan van Zyl and Sanlam Investments CEO, Johan van der Merwe, to jointly head ARC. Both these gentlemen remain to serve as non-executive directors on certain of the Sanlam Group's boards.
- [24] In essence, ARC submitted that it requires the ability to continue to appoint non-executive directors to the Sanlam and Sanlam Life boards of directors, and to appoint from its limited resources, appropriately qualified and specialised directors to oversee its investments. The directors with extensive experience in the financial services sector are Mr Johan van Zyl, Mr Johan van der Merwe and Mr Machiel Reyneke and these directors have continuing relationships with the Sanlam Group.
- [25] The merging parties argued that the Commission's proposed set of conditions was unduly restrictive and would negatively affect the ability of ARC, as a firm controlled and owned by previously disadvantaged persons, to become competitive in the financial services industry since it would not be able to nominate its preferred directors to the board of ooba, given their historical and continuing relationships with Sanlam.

- [26] Since the Commission and the merging parties could not reach agreement on all aspects of the proposed conditions, each party submitted a set of proposed behavioural conditions for the Tribunal's consideration. The set of conditions proposed by the merging parties essentially prohibits cross-directorships between ooba and Sanlam entities where the director would be involved in any operational Sanlam business that operates in the short- and long-term insurance markets. The Commission's proposed set of conditions was broader, prohibiting cross-directorships between ooba and Sanlam, as well as between ooba and Sanlam Life.
- [27] Although the Commission and the merging parties ultimately to a large extent resolved their differences regarding the proposed behavioural conditions, one main dispute remained unresolved. The unresolved issue was post-transaction cross-directorships between ooba and Sanlam Life and mainly revolved around Mr Johan van Zyl as a non-executive director on the board of Sanlam Life. Of relevance is that Mr Van Zyl also serves as a divisional non-executive member of a non-statutory board of Sanlam Personal Finance (a division of Sanlam Life). The latter division operates Sanlam's long-term insurance business.¹
- [28] The merging parties were of the view that Mr Van Zyl should, post-transaction, be able to sit on the ooba board if he relinquishes his position on the board of Sanlam Personal Finance (an entity competing with ooba), while remaining on the Sanlam Life board.²
- [29] We note that Mr Johan van der Merwe, ARC's second potential nominee to the ooba board, is not a director of Sanlam or Sanlam Life. He holds an advisory position on a Sanlam Life divisional board which does not provide products or services that overlap with those provided by ooba or OIH.
- [30] We considered a number of factors in relation to the abovementioned remaining dispute between the Commission and the merging parties, including the Sanlam Group's operational and governance structures, as explained below:
- [31] First, we note that ARC's nominated directors to the Sanlam and Sanlam Life boards are non-executive directors.

¹ See Transcript 10 August 2016, page 5.

² Transcript 10 August 2016, page 5.

- [32] The factual situation regarding the structure and functioning of the main boards of the Sanlam Group are set out in the Sanlam Annual Report 2015.³ This indicates that the main board of Sanlam and the main board of Sanlam Life are duplicated boards that operate effectively as a single main board for the Sanlam Group. The directors appointed to the Sanlam board are also appointed to the board of directors of Sanlam Life. Furthermore, the Sanlam and Sanlam Life board meetings are combined meetings and are held concurrently. The Sanlam and Sanlam Life boards therefore operate effectively as a single “holding company” main board that is responsible for the Sanlam Group’s overall group strategy and business. Thus, the available factual evidence suggests that Sanlam Life operates *de facto* as a holding company and not as an operating company (contrary to the Commission’s view that informed its proposed set of conditions).
- [33] We furthermore note that the conditions that we have imposed require that for the duration of the conditions, ARC shall within 15 business days of any change to the Sanlam Group operational and corporate governance structure that is material to the effectiveness of the imposed conditions inform the Commission of these changes.⁴
- [34] The Sanlam Life legal entity houses the overwhelming majority of Sanlam Group’s activities. Sanlam Life’s business operations within the Republic of South Africa are conducted overwhelmingly through clusters or operational divisions that are subject to the direction of “divisional boards” and/or management committees. These clusters or business divisions are Santam, Sanlam Personal Finance, Sanlam Investments and Sanlam Emerging Markets.
- [35] The abovementioned group businesses or clusters plan and present their strategic plans and budgets to the Sanlam Group Executive Committee. Importantly, no non-executive directors serving on the Sanlam and Sanlam Life boards of directors serve on the Sanlam Group Executive Committee. Part of the conditions that we have imposed is the requirement that ARC shall ensure that its nominees to the board of directors of ooba do not serve on the Sanlam Group Executive Committee and are not executive directors of any entity in the Sanlam Group (see paragraph 38 below).
- [36] The non-executive directors on the Sanlam and Sanlam Life main boards do not in the ordinary course receive detailed and granular competitively sensitive information

³ Accessible at www.sanlam.com. Specifically see pages 217 - 219 of the 2015 Sanlam Annual Report.

⁴ See paragraph 4.7 of the imposed conditions.

in regard to the Operational Entities⁵ businesses in the relevant insurance markets because when the Sanlam and Sanlam Life boards sit, they sit as a duplicate board, dealing with matters of strategy at a high level. In other words, these directors do not receive information on the detailed level that is usually associated with the board of directors of an operational entity.

[37] We further considered the fact that ooba is currently a very small player in the provision of short- and long-term insurance in South Africa and that there are a number of alternative insurance providers other than Sanlam.

[38] Given all of the above, we have approved the proposed merger subject to the following behavioural conditions:

[38.1] Upon the Implementation Date⁶ and for as long as ARC has shareholding in and the ability to nominate directors to the boards of ooba and UBI has a shareholding in ARC and the ability to nominate directors to the boards of Sanlam and therefore Sanlam Life (given the duplicated main boards described above):

ARC shall ensure that its nominees to the board of directors of ooba:

- (i) are not the same persons serving, nominated and/or appointed on any boards of the Sanlam Competing Entities⁷ or management committees of the divisions or clusters of the Sanlam Competing Entities that operate in the Overlapping Relevant Markets⁸;
- (ii) do not serve on the Sanlam Group Executive Committee and are not executive directors of any entity in the Sanlam Group;
- (iii) are not the same persons nominated and/or appointed on the board of OIH

⁵ "Operational Entities" mean all legal entities (and their divisions and business units) in the Sanlam Group (other than Sanlam Life) that conduct business operations; and in respect of Sanlam Life, all its divisions and/or business units that conduct business operations.

⁶ "Implementation Date" means the date, occurring following the date of approval, on which the proposed transaction is implemented by the merging parties.

⁷ "Sanlam Competing Entities" mean the Operational Entities within the Sanlam Group that supply similar products/services or operate in the same line of business as the ooba Group particular in the Overlapping Relevant Markets.

⁸ "Overlapping Relevant Markets" mean all the markets related to the provision of insurance products/services offered by the ooba Group and in this instance include the provision of building insurance, mortgage protection insurance, personal line cover in respect of household items and vehicles including similar financial service or insurance products that the ooba Group might offer from time to time.

or management committees of OIH;

(iv) decline any and all invitation(s) to attend any meeting(s) of the board of directors and/or management committees of OIH; and

(v) undertake to adhere to a Confidentiality and Information Exchange Policy.

[39] Furthermore, the merging parties offered the following additional safeguards which we have also imposed as conditions:

[39.1] ARC shall design and implement a Confidentiality and Information Exchange Policy to the satisfaction of the Commission. The Confidentiality and Information Exchange Policy will stipulate *inter alia* –

- (i) that ARC's nominees on the ooba board do not share or discuss any Competitively Sensitive Information⁹ belonging to ooba and OIH with any persons serving, nominated and/or appointed on any boards of the Sanlam Competing Entities or management committees of the divisions or clusters of the Sanlam Competing Entities that operate in the Overlapping Relevant Markets, or any person not entitled to receive the Competitively Sensitive Information belonging to ooba and OIH in the ordinary course; and
- (ii) any ARC nominee to ooba's board that is also appointed to the Sanlam and Sanlam Life boards shall:
 - (a) recuse himself or herself from any ooba board discussion in regard to detailed and granular Competitively Sensitive Information;
 - (b) will not exercise his or her right as a director of ooba to require ooba to provide to him or her any detailed or granular Competitively Sensitive Information; and
 - (c) in the event that he or she is unable to perform his or her duties as a director of ooba by reason of the restrictions placed on him or her in terms of the Confidentiality and Information Exchange Policy, he or she will resolve that conflict in compliance with the above undertakings, including by way of disclosure to the ooba board and/or as he or she may be otherwise be advised given the particular

⁹ As defined in the conditions.

circumstances and, if necessary, by resigning from the ooba board.

[39.2] ooba shall put in place and maintain adequate policies and practices to ensure that no detailed or granular Competitively Sensitive Information belonging to ooba and OIH is shared with any ARC nominee to ooba's board that is also appointed to the Sanlam and Sanlam Life boards or to any boards of the Sanlam Competing Entities or management committees of the divisions or clusters of the Sanlam Competing Entities that operate in the Overlapping Relevant Markets. In this regard ooba shall design and implement a Confidentiality and Information Exchange Policy to the satisfaction of the Commission. The Confidentiality and Information Exchange Policy will stipulate *inter alia* that ooba will ensure that the board packs and information provided by ooba to the ARC nominee director that is also appointed to the Sanlam and Sanlam Life boards do not include any detailed or granular Competitively Sensitive Information.

[39.3] The Confidentiality and Information Exchange Policy shall apply to all employees and management of the Merging Parties and UBI.

[40] For the sake of clarity, the above means that Mr Johan van Zyl as a non-executive director of the Sanlam Life board can be appointed to the ooba board as long as he relinquishes his position on the divisional board of the competing entity, Sanlam Personal Finance.

[41] The imposed set of conditions is proportional to competition concerns identified by the Commission and adequately addresses those concerns.

Public interest

[42] The merging parties confirmed that the proposed transaction will not have any negative effect on employment in South Africa.¹⁰

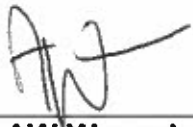
[43] The proposed transaction further raises no other public interest concerns.

Conclusion

[44] In light of the above, we conclude that the proposed transaction raises coordination concerns. However, the set of behavioural conditions that we have imposed

¹⁰ See Merger Record, *inter alia* page 11.

adequately addresses these concerns. For ease of reference the set of conditions is attached hereto marked as "**Annexure A**". Furthermore, no public interest issues arise from the proposed transaction.



Mr AW Wessels

07 September 2016
DATE

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring

Case Manager: Kameel Pancham

For the merging parties: Adv Hamilton Maenetje instructed by ENSAfrica

For the Commission: Dineo Mashego and Lindiwe Khumalo

ANNEXURE A: CONDITIONS

African Rainbow Capital Proprietary Limited

and

ooba Proprietary Limited

CT Case Number: LM257Mar16

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Acquiring Firm"** means ARC;
- 1.2. **"Approval Date"** means the date referred to in the Tribunal's Merger Clearance Certificate (Form CT10);
- 1.3. **"ARC"** means African Rainbow Capital (Pty) Ltd;
- 1.4. **"Business Day"** means any day other than a Saturday, Sunday or a day gazetted as a national public holiday in the Republic of South Africa;
- 1.5. **"Commission"** means the Competition Commission of South Africa;
- 1.6. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.7. **"Competitively Sensitive Information"** means competitively sensitive information in regard to products/services within the Overlapping Relevant Markets and includes but is not limited to information relating to:
 - 1.7.1. Pricing – including, but not limited to, prices/ discounts/ rebates offered to specific clients and planned reductions or increases;
 - 1.7.2. Margin information by product or client;
 - 1.7.3. Cost information;
 - 1.7.4. Information on specific clients and client strategy, including information with respect to the sales volumes of clients;
 - 1.7.5. Marketing strategies;

- 1.7.6. Budgets and business plans; and
- 1.7.7. Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant products/services.
- 1.8. **"Conditions"** mean these conditions;
- 1.9. **"Hollard"** means Hollard Holdings (Pty) Ltd;
- 1.10. **"Implementation Date"** means the date, occurring following the Approval Date, on which the Proposed Transaction is implemented by the Merging Parties;
- 1.11. **"Merging Parties"** mean ARC and ooba;
- 1.12. **"OIH"** means ooba Investment Holdings (Pty) Ltd;
- 1.13. **"ooba"** means ooba (Pty) Ltd;
- 1.14. **"ooba Group"** means ooba and all subsidiaries of ooba;
- 1.15. **"Operational Entities"** means:
 - 1.15.1. all legal entities (and their divisions and business units) in the Sanlam Group (other than Sanlam Life) that conduct business operations; and
 - 1.15.2. in respect of Sanlam Life, all its divisions and/or business units that conduct business operations;
- 1.16. **"Overlapping Relevant Markets"** means all the markets related to the provision of insurance products/services offered by the ooba Group and in this instance include the provision of building insurance, mortgage protection insurance, personal line cover in respect of household items and vehicles including similar financial service or insurance products that the ooba Group might offer from time to time;
- 1.17. **"Proposed Transaction"** means the acquisition of control over ooba by ARC;
- 1.18. **"Sanlam"** means Sanlam Limited;
- 1.19. **"Sanlam and Sanlam Life boards"** mean the boards of directors of Sanlam and Sanlam Life;
- 1.20. **"Sanlam Competing Entities"** mean the Operational Entities within the Sanlam Group that supply similar products/services or operate in the same line of business as the ooba Group particular in the Overlapping Relevant Markets;
- 1.21. **"Sanlam Group"** means Sanlam and all its wholly-owned subsidiaries and any firm

in which Sanlam has material influence over the operations of such firm;

- 1.22. **“Sanlam Group Executive Committee”** means the committee that has oversight over the Sanlam Group’s operational entities and is made up of, inter alia, the Sanlam Group’s Chief Executive Officer and Financial Director, the Chief Executive Officers of the various Sanlam business clusters and divisions and other key Sanlam Group executives, all of which are Sanlam Group employees;
- 1.23. **“Sanlam Life”** means Sanlam Life Insurance Limited;
- 1.24. **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.25. **“Tribunal Rules”** mean the rules prescribed in the Competition Act; and
- 1.26. **“UBI”** means Ubuntu-Botho Investments (Pty) Ltd.

2. **RECORDAL**

- 2.1. On 18 March 2016, the Commission received notice of the Proposed Transaction whereby ARC intends to acquire control over ooba pursuant to acquiring a 30% (thirty percent) shareholding in ooba. Following its investigation, the Commission was concerned that the Proposed Transaction is likely to create a platform for the sharing of Competitively Sensitive Information between ooba and its competitors in the long-term and short-term insurance markets due to pre-existing common shareholdings of Hollard and ooba in OIH, and UBI’s interest in Sanlam. Hollard and Sanlam are, however, not parties to the Proposed Transaction.
- 2.2. Currently UBI, the holding company of ARC, has the ability to appoint 3 (three) non-executive board members on the board of Sanlam and may cast 14.5% (fourteen and a half percent) of the votes that may be cast at a shareholders meeting. Hollard and ooba hold 25% (twenty five percent) and 75% (seventy five percent) shares, respectively, in OIH.
- 2.3. ooba is primarily a mortgage originator, but ancillary to its mortgage origination business it provides, through OIH and OIH’s subsidiaries, home and home-loan insurance solutions, as well as a small volume of personal line insurance products. Sanlam provides a comprehensive range of short- and long-term insurance products through its subsidiaries, Santam and Sanlam Life, and their subsidiaries and, accordingly, there is the Overlapping Relevant Markets.
- 2.4. Hollard, Sanlam and ooba are competitors in the provision of short- and long-term insurance (ooba’s national market share in the short- and long-term insurance markets is however very small. ARC’s acquisition of 30% (thirty percent) of the shares

of ooba creates an indirect structural link between Sanlam (through UBI's 14.5% (fourteen point five percent) shareholding) and ooba (through ARC's 30% (thirty percent) shareholding) and Hollard (through Hollard's 25% (twenty-five percent) shareholding in OIH).

2.5. The Merger Parties have furthermore placed on record that:

- 2.5.1. the main board of Sanlam and the main board of Sanlam Life are duplicated boards and operate effectively as a single main board for the Sanlam Group;
- 2.5.2. ARC's nominated directors to the Sanlam and Sanlam Life boards are non-executive directors;
- 2.5.3. no non-executive directors serving on the Sanlam and Sanlam Life boards of directors serve on the Sanlam Group Executive Committee;
- 2.5.4. Sanlam Life's business operations within the Republic of South Africa are conducted overwhelmingly through clusters or operational divisions that are subject to the direction of "divisional boards" and/or management committees; and
- 2.5.5. non-executive directors on the Sanlam and Sanlam Life main boards do not in the ordinary course receive detailed and granular Competitively Sensitive Information in regard to the Operational Entities' businesses in the Overlapping Relevant Markets.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

Upon the Implementation Date and for as long as ARC has shareholding in and the ability to nominate directors to the boards of ooba and UBI has a shareholding in ARC and the ability to nominate directors to the boards of Sanlam and therefore Sanlam Life (given the duplicated main boards described above):

- 3.1. ARC shall ensure that its nominees to the board of directors of ooba:
 - 3.1.1. are not the same persons serving, nominated and/or appointed on any boards of the Sanlam Competing Entities or management committees of the divisions or clusters of the Sanlam Competing Entities that operate in the Overlapping Relevant Markets;
 - 3.1.2. do not serve on the Sanlam Group Executive Committee and are not executive directors of any entity in the Sanlam Group;

- 3.1.3. are not the same persons nominated and/or appointed on the board of OIH or management committees of OIH;
 - 3.1.4. decline any and all invitation(s) to attend any meeting(s) of the board of directors and/or management committees of OIH; and
 - 3.1.5. undertake to adhere to a Confidentiality and Information Exchange Policy.
- 3.2. ARC shall design and implement a Confidentiality and Information Exchange Policy to the satisfaction of the Commission. The Confidentiality and Information Exchange Policy will stipulate *inter alia* –
- 3.2.1. that ARC's nominees on the ooba board do not share or discuss any Competitively Sensitive Information belonging to ooba and OIH with any persons serving, nominated and/or appointed on any boards of the Sanlam Competing Entities or management committees of the divisions or clusters of the Sanlam Competing Entities that operate in the Overlapping Relevant Markets, or any person not entitled to receive the Competitively Sensitive Information belonging to ooba and OIH in the ordinary course; and
 - 3.2.2. any ARC nominee to ooba's board that is also appointed to the Sanlam and Sanlam Life boards shall:
 - 3.2.2.1. recuse himself or herself from any ooba board discussion in regard to detailed and granular Competitively Sensitive Information;
 - 3.2.2.2. will not exercise his or her right as a director of ooba to require ooba to provide to him or her any detailed or granular Competitively Sensitive Information; and
 - 3.2.2.3. in the event that he or she is unable to perform his or her duties as a director of ooba by reason of the restrictions placed on him or her in terms of the Confidentiality and Information Exchange Policy, he or she will resolve that conflict in compliance with the above undertakings, including by way of disclosure to the ooba board and/or as he or she may be otherwise be advised given the particular circumstances and, if necessary, by resigning from the ooba board.
- 3.3. ooba shall put in place and maintain adequate policies and practices to ensure that no detailed or granular Competitively Sensitive Information belonging to ooba and OIH is shared with any ARC nominee to ooba's board that is also appointed to the Sanlam and Sanlam Life boards or to any boards of the Sanlam Competing Entities or management committees of the divisions or clusters of the Sanlam Competing

Entities that operate in the Overlapping Relevant Markets. In this regard ooba shall design and implement a Confidentiality and Information Exchange Policy to the satisfaction of the Commission. The Confidentiality and Information Exchange Policy will stipulate *inter alia* that ooba will ensure that the board packs and information provided by ooba to the ARC nominee director that is also appointed to the Sanlam and Sanlam Life boards do not include any detailed or granular Competitively Sensitive Information.

- 3.4. The Confidentiality and Information Exchange Policy shall apply to all employees and management of the Merging Parties and UBI.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. ARC shall within 3 (three) months of the Approval Date, develop and submit a Confidentiality and Information Exchange Policy to the Commission in line with the Conditions.
- 4.2. ooba shall within 3 (three) months of the Approval Date, develop and submit a Confidentiality and Information Exchange Policy to the Commission in line with the Conditions.
- 4.3. The Commission shall provide comments on the Confidentiality and Information Exchange Policy contemplated in respectively 4.1 and 4.2 above within 10 (ten) business days of receipt.
- 4.4. Within 10 (ten) business days of the approval of the policy contemplated in 4.1 and 4.2 above by the Commission, ARC and ooba respectively shall submit an affidavit confirming the implementation of the policy.
- 4.5. Within 10 (ten) days of the Approval Date, ARC shall submit an affidavit listing the names of the persons nominated and appointed by UBI as board members to the boards of directors of UBI, Sanlam, ARC and ooba, their tenure and the nature of their directorships.
- 4.6. For the duration of these Conditions, ARC shall notify the Commission of any changes to the board members or nature of their directorships as listed per 4.5 within 10 (ten) days of such change.
- 4.7. For the duration of these Conditions, ARC shall within 15 (fifteen) business days of any change to the Sanlam Group operational and corporate governance structure that is material to the effectiveness of these Conditions inform the Commission of

these changes.

- 4.8. The Merging Parties and/or the Commission shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Conditions.
- 4.9. The documents referred to in paragraphs above must be submitted to the following e-mail address: mergerconditions@compcom.co.za.
- 4.10. Any person who believes that the Merging Parties have not complied with and so are in breach of these Conditions may approach the Commission. In the event that the Commission determines that there has been an apparent breach of the Conditions by the Merging Parties, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules.