



## **Decision of the Competition Commission**

**CCM/DS/0034**

**Non-Confidential**

**Proposed acquisition of 30% shares of Medscheme (Mtius) Ltd by Mauritian Eagle Insurance Co. Ltd (now Eagle Insurance Ltd)**

**17 June 2019**

# Competition Commission

**Decision of the Competition Commission on the proposed acquisition of 30% shares of Medscheme (Mtius) Ltd by Mauritian Eagle Insurance Co. Ltd (now Eagle Insurance Ltd).**

## **THE COMMISSION -**

Mr. D. P. A. Mariette - Vice-Chairperson,  
Mr. C. Seebaluck - Commissioner,  
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to the Undertakings given by Mauritian Eagle Insurance Co. Ltd (now Eagle Insurance Ltd) on 06 and 18 February 2019,

Having regard to a Report of the Executive Director dated 19th April 2019 on the Undertakings given by Mauritian Eagle Insurance Co. Ltd,

We, Commissioners, decide as follows:-

## **1. Introduction**

- 1.1 On 21 December 2018, Mauritian Eagle Insurance Co. Ltd ('MEI') and Medscheme (Mtius) Ltd ('MML') under section 47(4) of the Competition Act 2007 (the 'Act') applied to the Competition Commission (the 'Commission') for guidance on the proposed acquisition (the 'transaction') by MEI of 30% shares of MML.
- 1.2 The Executive Director of the Commission (the 'Executive Director') investigated on the transaction, notified both MEI and MML of his preliminary findings, considered the various Undertakings given by both MEI and MML in light of his preliminary findings and on 19 April 2019, pursuant to section 51(2) of the Act submitted his Final Report to us for a decision.

## **2. Parties**

- 2.1 MEI was established and incorporated in 1974 as a private company limited by shares, bearing business registration number C06002277. It is a subsidiary company of the IBL Group and operates in all classes of business within the short-term (general) insurance in Mauritius. Its activities consist of claims handling and monitoring, claims recovery, corporate and marine

insurance, motor insurance, health insurance and personal lines insurance, reinsurance and international market, and business development.

- 2.2 From the Report of the Executive Director, we note that MEI has a fronting arrangement with [REDACTED] which is an administrator for medical health insurance claims and offers health insurance. [REDACTED] is not licensed to conduct health insurance business but uses the licence of MEI to offer health insurance products on the market as per the terms of the fronting arrangement.
- 2.3 On 29 May 2019, MEI wrote to the Commission to inform that it has changed its company name such that henceforth, it will be known as Eagle Insurance Limited. MEI has submitted a scan copy of the 'Certificate of Incorporation on Change of Name' issued on 24 April 2019 by the Registrar of Companies. We therefore understand that the new legal entity is Eagle Insurance Ltd (EIL) and shall refer to same in the ensuing paragraphs.
- 2.4 As regards MML, it is incorporated as a private company limited by shares, bears business registration number C07003574 and has a subsidiary which was incorporated in 2010 and is known as Xperience Ltd. MML is also a wholly-owned subsidiary of Medscheme Holdings (Pty) Ltd which is in turn, wholly owned by AfroCentric Investment Corporation Limited. MML is a medical insurance and provident fund administrator and is engaged in the provision of membership management and claims administration of health insurance policies.

### 3. The Transaction

3.1 The transaction is particularised as follows:-

- 3.1.1 EIL will acquire 30% shareholding in MML, and in so doing, will acquire 30% ownership in MML. The acquisition will allow EIL to exercise at least material influence over the policy of MML and will bring the enterprises of EIL and MML under the common ownership and control of EIL which is conducive to a merger situation.
- 3.1.2 The said acquisition of 30% will be done through an issue of shares in MML to which EIL will subscribe. The agreed value of the transaction is estimated to be around Rs 15 million, which will be injected by way of cash by EIL in MML. As such, the investing entity is EIL and the target entity is MML.
- 3.1.3 For EIL, as a new entrant in the health insurance market, through this transaction, it is the most effective and economical way to penetrate a growing market in that it "will partner with an established third-party administrator in the market" whereas MML, on its part, sees this transaction as a good opportunity "to maximize and grow its portfolio

of clients (which consists of healthcare insurance claims, employer medical aids and provident fund associations).

3.1.4 We are given to understand that the transaction also includes, at first stage, the development and launch of the health insurance product of EIL, namely CarePlus, and the outsourcing of the administration of the product to MML. The CarePlus product was launched in September 2018 for corporate clients and in August 2018 for individual clients. At the second phase of the transaction, EIL will work towards consolidating its relationship with MML.

3.1.5 We also take note that upon conclusion of the transaction, MML will cease to offer its product Xperience Care Plus Health Policy, through its subsidiary, Xperience Ltd, as same will be transferred to EIL and hence, EIL will own the brand Care Plus. As a consequence of the said transaction, Xperience Ltd will exit the market.

#### **4. Investigation and Preliminary Findings**

4.1 The Executive Director, upon receipt of the Application, initiated an investigation of the transaction under section 51 of the Act and informed both EIL and MML of his preliminary findings -

4.1.1 The Executive Director reported that EIL and MML may be competing in the market for supply of health insurance schemes to corporate clients and analysis of the market shares showed that the combined market share of EIL and MML is above 30%. He was of the considered view that if the market for supply of health insurance schemes is supplemented by the market for third party administration, then MML would have more than 30% of market shares. Therefore, the market share thresholds set under the Act for the transaction to be reviewable, is likely to be met.

4.1.2 The Executive Director also observed that certain competition concerns may arise as a result of the transaction as EIL could gain access to the data of MML's clients which may be used to hinder competition, and that EIL could, post-merger, have the incentive to foreclose [REDACTED] from the market given that EIL provides fronting services to [REDACTED] and the latter is a competitor to MML.

4.2 Based on his above observations, the Executive Director formed his view that the transaction needed further assessment.

4.3 Both EIL and MML voluntarily offered undertakings to minimise any apprehensions and competition concerns regarding the transaction.

## 5 Undertakings

5.1 Behavioural undertakings were submitted to the Commission by EIL and MML on 6 and 18 February 2019 respectively. They are:-

5.1.1 Ring fencing of MML data: Both EIL and MML have undertaken to ring fence data of MML's clients. The Directors appointed by EIL on the board of MML shall not have access to data held by MML on its clients. In addition, IT systems and databases will be hosted independently of each other; and

5.1.2 With respect to the fronting arrangement with [REDACTED], EIL has undertaken to keep it unaltered, post-transaction, such that EIL will continue to offer on a fair, reasonable and non-discriminatory basis its fronting services to [REDACTED].

## 6 The Law

6.1 Section 63(3) of the Act provides that *"the Commission may, after having taken cognizance of the report of the Executive Director on the matter, determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition"*

6.2 Section 47 of the Act defines the conditions to be satisfied for a merger situation whereas section 48 sets the grounds for review by the Commission of any potential merger situation.

## 7 Views of Stakeholders

7.1 As a matter of fairness, the Executive Director also consulted various stakeholders as regards the transaction. The main apprehension expressed by most of the stakeholders is that *"there is the risk of unauthorized access to confidential information of clients of MML (scope of coverage, premium and claims experience)"*.

## 8 Views of the Executive Director on the Undertakings

8.1 The Executive Director is of the view that the undertakings offered by EIL and MML satisfactorily address the competition concerns he identified during his investigation and which are highlighted in his preliminary findings.

## 9 Determination

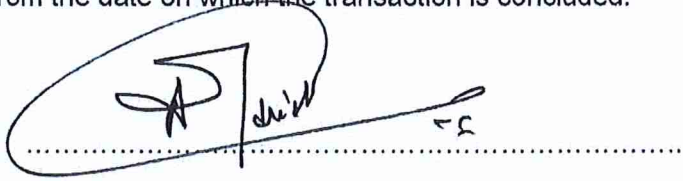
- 9.1 Under Section 63 of the Act, the Commission may, after having taken cognizance of the Report of the Executive Director on the transaction, determine the matter on the basis of undertakings if it considers that the undertakings satisfactorily address all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition.
- 9.2 We have perused the Report of the Executive Director and as such, we are satisfied with the arguments put forward by the Executive Director to address all concerns raised by stakeholders but for one which we are of opinion requires more attention. It relates to the particular concern raised by almost all interested parties that EIL will have access to sensitive data held by MML on its clients should the transaction be approved by the Commission. We are in agreement with the insurance companies that access by EIL to data held by MML may result in lessening of competition. However, this is not to disapprove the transaction on this sole competition concern as raised, among others, by these insurance companies and/or stakeholders. The Commission would fail to discharge its statutory functions, duties and responsibilities if it were to limit itself to conclude that the undertakings given by EIL and MML are not sufficient and strong enough to rely upon for circumventing any foreseeable competition concerns. As such, we require that the Undertakings given shall be supplemented by other undertaking(s) to assure all stakeholders that the market will remain unharmed upon finalisation of the transaction. Since this is an application for guidance on the acquisition of 30% shares of MML by EIL as compared to a situation where the Executive Director would intervene and start an investigation on his own initiative or upon complaint received, we deemed it necessary to call both EIL and MML for a meeting to give further undertaking regarding ring fencing of data. In the light of the meeting held between the Commission and Mr Derek Wong Wan Po, Chief Executive Officer of EIL and Mr Sujit Woozageer, Managing Director of MML on 23 May 2019, EIL, as agreed during the said meeting, has by letter dated 10 June 2019 communicated to the Commission additional undertakings which we reproduce as follows:-
- 9.2.1 *"Eagle Insurance Ltd remains at the disposal of the Commission for any inspection should the need arise"; and*
- 9.2.2 *"One of the two persons representing Eagle Insurance Ltd on the Board of Directors of Medscheme (Mtius) Ltd would not be a Director of Eagle Insurance Ltd".*
- 9.3 These additional undertakings coupled with previous ones, according to us, sufficiently address the concerns raised by stakeholders as regards access by EIL to data of MML on its

clients in that the Commission may intervene as and when the need arises to inspect files and/or documents held by EIL.

**10 Decision**

- A. Having considered the various concerns raised by the Executive Director in his Report and that expressed by various stakeholders, the Undertakings given by EIL and the applicable law, we conclude that we accept the Undertakings of EIL as particularised under paragraph 5 (i) and (ii) above and the additional undertakings reproduced at paragraph 9 above.
  
- B. All Undertakings shall be effective as from the date on which the transaction is concluded.

Mr Desiré Pierre Alberto Mariette  
(Vice-Chairperson)



Mr Candayalallsing Seebaluck  
(Commissioner)



Mrs Vedwantee Bikhoo  
(Commissioner)



**17 June 2019**

