

NOTICE 246 OF 2012**COMPETITION COMMISSION**

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:
MARSH (PROPRIETARY) LIMITED AND MARSH HOLDINGS (PROPRIETARY) LIMITED
AND
THE BUSINESS OF ALEXANDER FORBES RISKS SERVICES (PROPRIETARY) LIMITED,
ALEXANDER FORBES COMPENSATION TECHNOLOGIES ADMINISTRATION
(PROPRIETARY) LIMITED AND ALEXANDER FORBES I-CONNECT (PROPRIETARY)
LIMITED

2011SEP0267

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firms are Marsh (Pty) Ltd ("Marsh Local") and Marsh Holdings (Pty) Ltd ("Marsh Holdings"). The majority of shares in Marsh Holdings are owned by Marsh incorporated ("Marsh Inc."), a company incorporated in terms of the laws of United States of America. The remaining shares in Marsh Holdings are owned by Marsh Associates (Pty) Ltd ("Marsh Associates"). Marsh Associates and Marsh Inc. are wholly owned subsidiaries of Marsh & McLennan Companies Inc. ("MMC"), which is a company incorporated in terms the laws of United States of America. Marsh Local is owned by Marsh Holdings and the remaining shares are held by Parmtro Investments No. 79 (South Africa) (Pty) Ltd.

MMC in South Africa through Marsh Local and Marsh Holdings, collectively referred to as Marsh, acts as an intermediary between insurance companies and corporate clients seeking appropriate short term insurance relating to property and casualty risks.

The primary target firms are the corporate and commercial short term insurance brokerage business conducted by Alexander Forbes Risk (Pty) Ltd ("AFRS") in South Africa; Alexander Forbes Technologies Administration (Pty) Ltd ("AFCT Administration"); and Alexander Forbes i-Connect (Pty) Ltd ("i-Connect"), hereinafter referred to as the Primary Target Firms. The primary target firms are wholly owned by Alexander Forbes Risk and Insurance Services (Pty) Ltd, which is a wholly owned subsidiary of Alexander Forbes Limited.

AFRS is involved in the provision of short term insurance brokerage services in terms of which it acts as an intermediary between insurance companies and customers seeking insurance. AFCT administration assists employers to comply with the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as well as its regulations and procedures. i-Connect perform policy administration services on behalf of insurers with whom it has agreement.

The Commission found that there is a horizontal overlap in the activities of the merging parties in the market for the provision of short term corporate insurance brokerage services. However, the Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of short-term corporate insurance brokerage services. This is due to fact that there are alternative international players in the market that compete with the merging parties such as Willis and JLT. The Commission also finds that barriers to entry in the market are low for international players. Further, customers of the merging parties are big corporate clients and have significant countervailing power, as they are able to switch between short-term corporate brokers within a short space of time without incurring cost.

The public interest concerns arising from the proposed merger relates to employment. The parties submit that the proposed merger is likely to result in job losses of employees in the junior and middle management positions of the merged entity. These employees are skilled and the employees under middle management are qualified whilst the majority of employees under junior management have matric.

The Commission is of the view that the number of employees that are likely to lose jobs as a result the proposed transaction are not of considerable magnitude. Notwithstanding the foregoing, the Commission adopted a conservative approach and investigated whether the merging parties followed rational investigation as set out in the *Metropolitan decision* and whether there are short term prospects of re-employment of the affected employees. The Commission found that the merging parties have in material parts met the rational investigation set out in the *Metropolitan decision*.

With respect to the short term prospects of re-employment of the affected employees, the Commission did not get a clear indication from the market participants whether employees with such skills (IT, finance and claims) are likely to be absorbed in the market within a short space of time taking into account of the fact that there have been job losses in the insurance sector in the past two years although the Commission has learnt from the competitors of the merging parties that there is a shortage of skills in claims and IT in the insurance sector.

Notwithstanding the fact that the job losses arising from the proposed merger are not of considerable magnitude, the merging parties have undertaken to limit the job losses to junior and middle management employees earning a salary of above R250 000 per annum. However, there are some employees in junior management who do not have a post-matric qualification and their short term prospects of re-employment might be limited although skilled.

Therefore, the Commission approved the proposed merger subject to the following conditions, which the merging parties have also agreed to.

Conditions

- 1.1 Alexander Forbes Risk Services (Proprietary) Limited, Alexander Forbes Compensation Technologies Administration (Proprietary) Limited, Alexander Forbes i-Connect (Proprietary) Limited, Marsh Holdings (Proprietary) Limited and Marsh (Proprietary) Limited (collectively the "Merging Parties"), and their respective direct and indirect subsidiaries shall, subject to the consultation requirements of section 189 of the Labour Relations Act, 1995, as amended ("LRA"), ensure that in South Africa, as a result of the merger, there are –
 - 1.1.1 no retrenchments of employees earning less than R250 000 per annum (on the basis of the relevant employees' total cost to company as at 30 November 2011);
 - 1.1.2 retrenchments of no more than 4 (four) employees in the junior management category earning between R250,000 and R570,500 per annum (on the basis of the relevant employees' total cost to company as at 30 November 2011);
 - 1.1.3 retrenchments of no more than 30 (thirty) employees in the middle management category earning between R250 000 and R1,452,420 per annum (on the basis of the relevant employees' total cost to company as at 30 November 2011); and

- 1.1.4 no retrenchments of employees in the junior management category referred to in paragraph 1.1.2 that have no qualifications other than a matric (grade 12) qualification.
- 1.2 For the sake of clarity, retrenchments 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 LRA.
- 1.3 These Conditions will apply for a period of 2 years commencing from the date of merger clearance.
- 1.4 Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.
- 1.5 The Merging Parties shall circulate a copy of these Conditions to their employees within 7 days of the merger clearance and shall provide the Commission with proof thereof.
- 1.6 The Merging Parties will provide a report to the Commission on the following respective dates: 30 May 2012, 30 November 2012, 30 May 2013 and 30 November 2013 reflecting the retrenchments effected within the previous 6 month period as a result of the merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.