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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020487

In the matter between:

SASFIN BANK LIMITED Primary Acquiring Firm

And

FINTECH (PTY) LTD Primary Target Firm

Panel	: Mr A Wessels (Presiding Member)
	: Prof. I Valodia (Tribunal Member)
	: Ms M Mokuena (Tribunal Member)
Heard on	: 11 March 2015
Order Issued on	: 11 March 2015
Reasons Issued on	: 31 March 2015

Reasons for Decision

Conditional approval

[1] On 11 March 2015, the Competition Tribunal ("Tribunal") conditionally approved the acquisition by Sasfin Bank Limited ("Sasfin Bank") of Fintech (Pty) Ltd ("Fintech"). The conditions that we have imposed relate to employment, as explained below.

[2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

[3] The primary acquiring firm is Sasfin Bank. Sasfin Bank is wholly owned by Sasfin Holdings Limited ("Sasfin"). Sasfin is not controlled any one firm. Sasfin Bank and Sasfin will collectively be referred to in these reasons as "the Sasfin Group".

[4] The Sasfin Group provides multiline banking and financial services and mainstream products to entrepreneurial businesses. It has six key business areas: business banking, capital, treasury, wealth management, transactional banking and commercial solutions.

[5] The primary target firm is Fintech. Fintech controls a number of firms.[1]

[6] Fintech offers asset rental finance solutions to businesses and equipment suppliers. It provides financing in respect of *inter alia* office automation equipment, audio visual equipment, IT equipment, selected industrial equipment, automated teller machines, medical equipment and CCTV equipment.

Proposed transaction and rationale

[7] The Sasfin Group intends to acquire 100% of the issued share capital in Fintech.

[8] The Sasfin Group submitted that the proposed transaction presents *inter alia* an opportunity to strengthen its position in the market, access to more clients and economies of scale.

[9] Fintech submitted that the proposed transaction will reduce risks since Fintech will have the support of Sasfin Bank as an established bank in South Africa.

[1] See merger record, pages 6, 32 and 33.

Relevant markets and impact on competition

[10] Broadly speaking the merging parties both operate in the market for the provision of rental sale and instalment sale agreement services.

[11] The Competition Commission ("Commission") identified a horizontal overlap in the activities of the merging parties in respect of rental and instalment financing for office automation equipment, audio visual equipment, information technology equipment and industrial equipment. The Commission however did not find it necessary to definitively conclude on the relevant product markets.

[12] The Commission found that the merged entity will have a post-merger market share of less than 5% in the market for the provision of rental sale and instalment sale financing services in South Africa. The Commission further found that the merged entity will be constrained by other competitors such as FirstRand Bank, Nedbank Ltd and other non-bank competitors such as HP Finance and Pinnacle. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

[13] Even if potential narrower relevant product markets than the provision of rental sale and instalment sale financing services are considered, it is unlikely that the proposed merger will raise competition concerns given the relative size of the merging parties in the areas where the merging parties' activities overlap.

[14] We thus concur with the Commission's conclusion.

Public interest

[15] We below deal with the anticipated effects of the proposed transaction on employment. The proposed merger raises no public interest concerns other than employment concerns.

[16] The merging parties submitted to the Commission that the merged entity will not retrench any employees for a period of one year after the implementation of the proposed merger. The Commission then required clarity regarding the potential retrenchments and requested that the merging parties provide estimations as to the number of employees that may potentially be affected by the proposed transaction, their skills profile and educational background. The merging parties subsequently provided the number of employees that may be affected and their respective positions within Sasfin Bank and Fintech. Based on these submissions, the Commission recommended a conditional approval of the proposed transaction by placing a moratorium on the maximum number of employees that may be retrenched as result of the proposed merger.

[17] The merging parties had no objection to the Commission's proposed employment condition but, for a specific reason[2], requested that the Commission consider an extended period before notifying and circulating the conditions to all employees of the merging parties. The Commission was of the view that this request was not unreasonable. We however disagree. This was however resolved at the hearing and the merging parties agreed that they shall circulate a copy of the conditions to the employees[3] within 7 days of the merger approval date.

[18] The Tribunal furthermore made certain comments regarding the drafting of the Commission's proposed conditions. We have ultimately approved the proposed transaction subject to the following employment conditions as agreed to by the merging parties:

a. Except for a maximum of eight (8) skilled employees of the merged entity employed within the Finance, Information Technology, Collections, Credit, Human Resources, Marketing, Sales and Administration Divisions that may be retrenched as a

[2] Claimed as confidential by the merging parties.
[3] All those employees employed by Sasfin Bank and Fintech at the time of implementation of the merger.

result of the proposed merger, the merging parties shall not retrench any other employees as a result of this merger.[4]

b. In the event that it becomes necessary to retrench the above-mentioned employees, the merged entity will endeavour to offer such employees alternate positions within Sasfin or voluntary severance packages.

Conclusion

[19] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

[20] With regards to public interest, we have approved the proposed transaction subject to the above-mentioned employment conditions as agreed to by the merging parties. The conditions that we have imposed are attached hereto market as "**Annexure A**".

Mr A Wessels

31 March 2015
DATE

Prof. I Valodia and Ms M Mokuena concurring

Tribunal Researcher:	Moleboheng Moleko
For the merging parties:	Kirsty Van Den Bergh and Ryan Goodman of Edward Nathan Sonnenbergs Inc
For the Commission:	Relebohile Thabane and Werner Rysbergen

[4] For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended; (iv) resignation or retirements in the normal course; and (v) retrenchments lawfully effected for operational requirements unrelated to the merger.