COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No.: 10/LM/Feb04

In the large merger between:

ABSA Bank Limited

and

Avena Leaseplan South Africa (Pty) Limited

Reasons for Decision

Approval

1. On 19 May 2004 the Competition Tribunal issued a Merger Clearance Certificate approving unconditionally the transaction between the abovementioned parties. The reasons for the Tribunal's decision follows.

The Parties

2. The primary acquiring firm is ABSA Bank, a wholly owned subsidiary of ABSA Group Ltd ("ABSA Group"). ABSA Group has in excess of 20 subsidiaries out of which only ABSA Fleet Services Limited ("AFS") is relevant for purposes of this transaction.

3. AFS has a 50% share in Fleet Support Services (Pty) Ltd ("FSS"). FFS is a joint venture company between AFS and Imperial Fleet Services (Pty) Ltd ("Imperial") with each entity holding a 50% share.

4. The primary target firm is Avena Leaseplan South Africa ("Avena")[1], which controls Lease Plan Fleet Management South Africa (Pty) Ltd ("LPSA"). Avena is controlled by LeasePlan Corporation N.V. ("LPNV"), a Netherlands incorporated company, which is in turn controlled by ABN AMRO Bank N.V. ("ABN").

The Transaction

5. The proposed transaction involves ABSA Bank acquiring 100% of Avena from LPNV. This will result in Avena becoming a wholly owned subsidiary of ABSA Bank.[2]

Rationale for the Transaction

6. ABSA's rationale for the deal is that it will result in material cost savings and will give it access to LPSA's experience and trade record in managing manufacturer' maintenance plans. ABSA further says that the deal will therefore place it in a good

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[1] Avena is an investment company, which does not conduct any business operations itself.
[2] The parties indicated that LPNV would dispose of its 100% shareholding in Avena to ABSA Bank, which will give ABSA Bank indirect control over LPSA. After implementation of the proposed transaction, AFS's vehicle leasing and fleet management business will be transferred to LPSA whereas the shares held by Avena in LPSA will be transferred to ABSA Bank by way of a dividend *in specie*.

position to win further such contracts.[3]

7. LPSA claims that the deal will give it more flexibility to expand within the local market particularly in government fleets. The merging parties state that when LPNV acquired LPSA from Investec Bank in 1998 LPNV anticipated that its presence in South Africa would be a key to ensure future delivery of global solutions to its multi-national consumers. However, the demand, which LPNV anticipated, did not materialise. As a result their local presence is no longer considered to be a strategic requirement.[4]

The parties' activities

8. ABSA Group is active in the broader banking, insurance, financial and property sectors.

9. AFS (ABSA's subsidiary company) provides vehicle leasing and fleet management services in passenger, light commercial vehicles, buses and trucks.

10. *FSS* is a joint venture company between AFS and Imperial. It provides a complete outsourced solution of asset administration. Its services include vehicle procurement, vendor payment, cash management, maintenance authorisation and invoice vetting, technical inspections for major mechanical repairs and related aspects.

As indicated earlier, the parties will post merger exit this joint venture.

11. Avena is an investment company which does not conduct business operations. Its subsidiary, LPSA, is involved in vehicle leasing and fleet management in passenger and light commercial vehicles but not in trucks or buses. It also provides maintenance plans for manufacturers.

Overlap of activities

12. The parties indicated at the hearing that FSS does not provide the same service/s as AFS hence FSS does not operate in the same market.[5] FSS we were advised provides back office services. The overlap in activities between the merging parties is thus limited to the activities of AFS.

The relevant product and geographic markets

13. In light of the above information, both the Commission and the parties define the relevant product market as the market for vehicle leasing and fleet management for passenger and light commercial vehicles.

14. It appears further that the merging parties conduct their businesses nationally. The Commission asserts that competition in the relevant market takes place nationally with their competitors having a national presence.[6] The merging parties submit that their customers are big sophisticated corporate clients, which have the capacity to source the services from any service provider throughout South Africa.

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[3] Refer to pages 929 and 930 of the file.
[4] See page 3 (Para. 2) of the Commission's mergers & acquisitions report and page 466 of the record.
[5] See pages 3 to 4 of the transcript dated 19 May 2004.
[6] Competitors in this market include Avis, Imperial, Stannic, Debis, Viamax (Transnet), CLM (Unitrans), Super Group and Nedbank.

15. The Commission therefore concluded that the relevant geographic market is national.

Competition analysis

Vertical integration

16. ABSA provides finance not only to AFS and post merger to LPSA, but at present also finances Imperial, Avis, Debis and Super Group (which are of course the merged entities' competitors). The parties were emphatic at the hearing that ABSA will continue to do so post-merger.[7] When asked whether this could give rise to concerns of either possible foreclosure or information sharing with rivals we were assured the transaction could not be used to do this. In relation to the possibility of foreclosure ABSA pointed out that these firms are financed by several banks and ABSA is not their only source for funds. Secondly loans are provided to the groups as a whole and are not confined to the leasing activities specifically so that the banks do not receive information in return that would assist them to strategically assess rivals businesses.

17. For this reason the vertical relationship does not seem to raise any competition concerns.

Market shares

18. Both the Commission and the parties have indicated the estimated market shares for vehicle leasing and fleet management on a national basis as follows.

Avis - 22%; Imperial – 17%; Stannic – 15%; Debis – 14%; **LPSA – 10%**; **AFS – 6%**; Viamax (Transnet) – 6%; CLM (Unitrans) – 4%; Super Group – 4%; and Nedbank – 2%.

19. From the above, it is apparent that the merging firms will have a combined estimated market share of **16% post merger** which the Commission indicates is slightly higher than its benchmark of 15%.[8] And hence is an indication that concentration in this market is moderate.[9]

20. The Commission further contends that the merged entity will still face competition from significant players such as Avis (22%), Imperial (17%), Stannic (15%) and from other players active in this market. It further indicated that the merging parties' customer's apprehension of this transaction is that no negative effect on their business is likely to result from this merger.[10] As a result, the Commission concluded that it does not foresee any possibility of the merged entity being able to exercise any market power post-merger.

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[7] Refer to Mr Paul Mansour's testimony (pages 5 to 8 of the transcript).

[8] See page 6 (para. 1) of the Commission's Mergers and Acquisitions Report.

[9] *Ibid* at page 6.

[10] They submitted that they invite tenders from the fleet management companies with the result that they choose their services provider in the tendering process. Furthermore, they normally choose 2 or more service providers and whenever they need cars they request their services providers to submit quotes and then choose the company with the best quotation. It appears that if ABSA Bank does not give them better quotes they can always take their business to a competitor, which offers them better quotes.

Public interest issues

21. The transaction does not raise substantial public interest concerns except for the anticipated twenty job losses resulting from the AFS exiting the joint venture company with FFS.[11] It is the Commission's submission that such anticipated retrenchment of 20 employees does not justify conditional approval or prohibition of this transaction.

Conclusion

22. The transaction raises neither competition nor public interest concerns and is approved unconditionally.

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Dave Lewis **Date**

Concurring: Norman Manoim and Thandi Orleyn

For the merging parties:	Tsakani Mhlanga & Jean Meijer (*Cliffe Dekker Inc.*)
For the Commission:	Mark Worsley (*Legal Services*) assisted by Makgale Mohlala (*Mergers & Acquisitions*)

[11] The parties indicated that FFS currently employs 108 employees and out of that only 2 are blue-collar employees who will also form part of the employees to be retrenched. The parties further submitted that ABSA Group might employ some of the 20 employees expected to loose their jobs. However, they did not indicate how many they would employ. In addition, on 18 February 2004 SASBO, the representative employees union at the primary acquiring firm, filed a notice of intention to participate in this merger proceedings, which it subsequently withdrew.