COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 70/LM/Jun12

In the matter between:

ABSA BANK LIMITED	Acquiring Firm
And	
THE PRIVATE LABEL STORE CARD PORTFOLIO OF EDCON (PTY) LTD	Target Firm

Panel	:	N Manoim (Presiding Member) A Wessels (Tribunal Member) M Mokuena (Tribunal Member)
Heard on	:	20 September 2012
Order issued on	:	20 September 2012
Reasons issued on	:	23 January 2013

Reasons for Decision

Conditional approval

1. The Competition Tribunal ("Tribunal") on 20 September 2012, in terms of section 16(2)(b) of the Competition Act of 1998[1], conditionally approved the large merger involving Absa Bank Limited and the Private Label Store Card Portfolio of Edcon (Pty) Ltd.

Parties and their activities

2. The primary acquiring firm is Absa Bank Limited ("Absa"), a company incorporated in terms of the laws of the Republic of South Africa. Absa is a wholly owned subsidiary of Absa Group Limited ("Absa Group"), a public

[1] Act No. 89 of 1998, as amended.

company listed on the Johannesburg Securities Exchange ("JSE"). Absa Group controls various subsidiaries in the banking, financial services and other sectors.[2]

3. Absa Group operates within the broader financial services industry, and its core activities extend across a range of financial services provided to retail and corporate clients, through personal, commercial and wholesale banking, to insurance. Of specific relevance to the competition assessment of this transaction is that Absa provides its clients with personal loans, overdraft facilities and credit cards. ABSA Group furthermore has a joint venture with Woolworths (Pty) Ltd ("Woolworths"). This joint venture, Woolworths Financial Services (Pty) Ltd ("WFS"), offers customers the following types of unsecured credit products: (i) private label store cards, which can be used at any Woolworths store and at selected Engen Food Stops; (ii) personal loans; and (iii) credit cards. Absa has a 50% share in WFS.[3]

4. The primary target firm is the Private Label Store Card Portfolio of Edcon (Pty) Ltd. Edcon (Pty) Ltd ("Edcon") is a wholly owned subsidiary of Edgars Consolidated Stores Limited and is indirectly held by Edcon Holdings (Pty) Ltd. The above-mentioned store card portfolio forms part of Edcon's unincorporated Credit and Financial Services Division.

5. Edcon offers qualifying customers private label store cards through which they can purchase clothing, footwear, mobile phones, cosmetics, home ware, stationary and books on credit primarily at any of Edcon's retail stores (such as Edgars, Jet, Boardmans and CNA) in South Africa. The store card portfolio complements Edcon's retail franchise through the issuing of private label store cards to qualifying customers on two options, namely (i) six months interest free; and (ii) twelve months interest bearing. Edcon further currently has acceptance relationships for its private label store cards with several third-party merchants such as Greyhound, Citiliner, Medicross and Primecure.

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[2] See record pages 8 to 10.
[3] See transcript page 3.

Proposed transaction and rationale

6. In terms of the *Asset Acquisition Agreement*, Absa will acquire the right title and interest to the accounts and receivables relating to the South African private label store card portfolio of Edcon (hereinafter referred to as "the Portfolio").

7. Absa views the proposed transaction as providing it with the opportunity to enter into a strategic relationship with Edcon for the provision of unsecured credit products.

8. Edcon's rationale for the proposed transaction is to realise a return from the sale of the Portfolio.

Relevant market and impact on competition

9. The merging parties submitted that Absa will acquire the Portfolio and enter into a strategic relationship with Edcon for the provision of unsecured credit and other financial services to Edcon customers. They further submitted that Absa Group and Edcon will enter into a Program Agreement in terms of which Edcon will continue to manage and operate the Portfolio on Absa Group's behalf. Pursuant to the implementation of the proposed transaction, Absa will be responsible for credit, fraud risk management, legal, accounting, compliance and key back office operations, whilst Edcon will be responsible for managing the front office operations, primary customer interaction and certain back office operations pertaining to the Portfolio.

10. The Commission found that the activities of the merging parties horizontally overlap in respect of the provision of unsecured credit to individuals in South Africa. The Commission further found that the combined post-merger national market share of the merging parties in 2011/2012 in this market will be approximately [20-30]%. Competitors in this market include large players such as African Bank, Standard Bank and FNB, as well as a number of smaller players.

11. The Commission was not concerned about unilateral effects flowing from the proposed transaction, but was however concerned that the proposed transaction will create a platform for collusion and give rise to the exchange of information between Edcon and Woolworths through Absa. The Commission was of the view that because of Absa's post-merger stake in both WFS and the Portfolio, Edcon and Woolworths might benefit from each other's commercial information such as cardholder's data, marketing plans, financial data, business strategies and other commercial information, to the ultimate detriment of competition. The Commission therefore concluded that the existence of the post-merger structural link between WFS and the Portfolio could lead to coordination between competitors (i.e. Edcon and Woolworths) on *inter alia* pricing, marketing policies and commercial strategies. This the Commission argued is likely to substantially prevent or lessen competition. We concur with the Commission's findings.

12. However, to address the above concerns, the Commission and the merging parties agreed on a set of behavioural conditions. This was confirmed by the representatives of the merging parties at the hearing.[4] We have imposed these conditions on the merging parties, which in essence are that:

    12.1. For as long as Absa controls both the Portfolio and WFS, it shall continue to apply certain ring fencing measures, to ensure that Edcon and Woolworths do not share their respective competitively sensitive information through Absa (see condition 3.1). Competitively sensitive information shall include, but not be limited to, any and all such information relating to:

    (i) Pricing – including, but not limited to, pricing of specific products, prices/discounts offered to specific clients and planned price reductions or increases;
    (ii) Margin information by product or client;
    (iii) Costs information for particular products;

[4] See transcript page 3.

(iv) Information on specific clients and client strategy, including information with respect to the sales volume of clients; and

(v) Marketing strategies.

12.2. We have further imposed a number of monitoring conditions relating to the above-mentioned behavioural remedy (see condition 4).

13. We are satisfied that the imposed conditions are necessary to address the identified competition concern of likely post-merger information exchange between WFS and the Portfolio through Absa, and that these conditions are proportional to and adequately address this concern.

Public interest

14. The merging parties confirmed that the proposed merger will not give rise to any job losses.[5] The proposed merger raises no other public interest issues.

CONCLUSION

15. We approve the proposed transaction subject to the conditions as per the attached **Annexure A**.

Andreas Wessels

23 January 2013
DATE

Norman Manoim and Medi Mokuena concurring

Tribunal researcher:	Thabo Ngilande
For Absa:	Mark Griffiths
For Edcon:	Ahmore Burger-Smidt of Werksmans Attorneys
For the Commission:	Zanele Hadebe

[5] See *inter alia* record pages 14 and 57.