competitiontribunal
south africa

**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No.: 016592**

In the matter between:

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| **Land and Agricultural Bank of South Africa** | Acquiring Firm |
| And | |
| **Performing Financial Products of the Lending Book of GWK Ltd** | Target Firm |

**Case No.:016626**

And the matter between

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| **Land and Agricultural Bank of South Africa** | Acquiring Firm |
| And | |
| **Statusfin Financial Services (Pty) Ltd** | Target Firm |

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| Panel | : | Norman Manoim (Presiding Member), Takalani Madima (Tribunal Member) and Anton Roskam (Tribunal Member) |
| Heard on | : | 26 June 2013 |
| Order issued on | : | 26 June 2013 |
| Reasons issued on | : | 09 July 2013 |

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## Reasons for Decision

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### Approval

[1] On 26 June 2013, the Competition Tribunal ("Tribunal") approved the mergers between The Land and Agricultural Bank of South Africa

("LandBank") and The Performing Financial Products of the Lending Book ("The Lending Book") of GWK Ltd ("GWK") and Statusfin Financial Services (Pty) Ltd ("Statusfin"). For the sake of convenience we decided to jointly delineate the reasons for both transactions, which follow below.

**Parties to the transaction**

[1] The primary acquiring firm is LandBank an entity incorporated and governed through the Land and Agriculture Development Bank Act.[1] LandBank is a specialist financier of agriculture and rural development, which provides wholesale and retail lending to agricultural cooperatives and emerging farmers. Such funds can be in the form of revolving loans, long-term mortgages and insurance operations.

[2] The primary target firms are:

- The Lending Book, which is used to provide retail funds directly to agricultural clients who require such capital to fund their farming and agro-processing activities. The Lending Book is active throughout South Africa on a national basis.
- Statusfin, which is a wholly-owned subsidiary of MGK Operating Company (Pty) Ltd ("MGK"). Statusfin also provides retail funds directly to agricultural clients who require such capital to fund their farming and agro-processing activities.

**Rationale for the transaction**

[3] Due to various similar transactions that have been notified to the Commission by LandBank, the Commission decided to probe further and find out from LandBank what the rationale was to its sudden acquisitions of various cooperatives in the Agricultural Industry.[2] LandBank submitted that because these cooperatives had a limit as to the funding they are able to receive, it was difficult for LandBank as

[1] Act no 15 of 2002.
[2] See Transcript of hearing para 10, page 7.

part of its legislative mandate to financially assist emerging farmers, and by acquiring the cooperatives it would be easier for LandBank to achieve this.[3]

[4] Mr Jac Marais, on behalf of the merging parties for the Statusfin transaction, testified that the product LandBank developed was unique in the agricultural environment, and as such there is no limitation on any of the other competitors to develop a similar product, and therefore notify similar transactions to the Commission.[4]

**Relevant markets and impact on competition**

[5] In both transactions there is a horizontal overlap in the activities of the merging parties, as both target firms and LandBank supply retail financial services to the Agricultural industry.

[6] Although the transaction also has vertical aspects to it, since LandBank provides wholesale trading to the Lending Book and Statusfin, the Commission found no reason to have concerns as the amount of the total value of wholesale funding by LandBank to both target firms is fairly minimal. In addition to this, the Commission submitted that the proposed transaction would not lead to any input foreclosure as there are many alternatives to the merged entity that customers could switch to post merger.

**Market share**

[7] Post merger, the merged entity will have a market share of 27 % in the retail funding market to the agricultural industry. Although this figure is high, the accretion in market share from the Lending Book will only be 1.05% for the GWK transaction, and 1.8% for the Statusfin transaction, which the Commission submitted did not raise any concerns, as the merged entity would continue to compete with firms such as ABSA, Standard Bank, Nedbank and Senwes, post merger.[5]

[3] See Transcript of hearing qt page 6.
[4] See Transcript of hearing at page 11.
[5] See page 18 of Commission's Referral Report.

**Barriers to Entry**

[8] The merging parties acknowledged that barriers to entry are high but argued that they were not insurmountable in both relevant product markets. These range from regulatory barriers to high capital outlay. For one to enter the market for the wholesale of funding in the agricultural industry, a capital outlay of R2.5 billion is required, and R300 million as capital outlay in the retail lending market is required.[6]

**Our Analysis**

[9] The essential question in these types of transactions is whether the farmer as a consumer is better off lending from LandBank, or lending from the cooperatives. The merging parties during the hearing submitted that post merger the status quo would remain the same as a farmer would still have the convenience of continuing to do business with the cooperatives as before.

[10] The merging parties have testified to a pro-competitive effect of the merger. Although interest rates on loans are likely to stay the same, farmers will be able to source larger loans from the LandBank than they were from any of the target firms pre-merger. This is because the LandBank, with its superior balance sheet, is better positioned to extend loans than either of the target firms.[7]

[11] The Commission also submitted during the hearing that it spoke to farmers during its investigation who were in support of the transactions as the position post merger would benefit them more than the current situation.[8]

[12] During the hearing, we asked the Commission how it deals with these types of transactions, i.e. a variety of incremental mergers by a particular

[6] See merger record (Landbank and GWK) at para 7.1.3, page 76, in Competitiveness Report submitted by merging parties.
[7] See Transcript of hearing at page 8.
[8] See Transcript of hearing at page 14.

firm (in this case LandBank) where none of the mergers themselves are significant. The Commission submitted that it takes a holistic approach wherein it will consider the notifications at hand in conjunction with similar previous mergers that were notified.[9]

[13] The Commission went on further to testify that going forward, it will revisit customers it had spoken to when the first merger was notified, to find out whether these transactions had any pro-competitive gains in the market. Currently however the Commission did not follow this approach as it submitted that the time span between when the first merger was notified and the current two transactions, was too short for any evidence of positive results emanating from the transactions to show in the market.[10]

**CONCLUSION**

[14] There are no significant public interest issues and we accordingly approve the transaction without conditions.

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**Anton Roskam**

09 July 2013
**DATE**

**T Madima and N Manoim concurring.**

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| Tribunal Researcher: | **Caroline Sserufusa** |
| For the merging parties: | Jac Marais of Adams and Adams, Richard van Rensburg of Edward Nathans Sonnenbergs |
| For the Commission: | Rakgole Mokolo |

[9] See Transcript of hearing at page 13.
[10] See Transcript of hearing at page 15.