



## **OUTCOME OF COMPETITION TRIBUNAL CASES**

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### **Tribunal approves merger conditions which maintain competition in payments systems**

Today the Competition Tribunal approved conditions to two small mergers in the payment systems market. The first of these mergers took place between Lexshell 129, a Bankserv subsidiary, and Nomad Information Systems. The second was a merger between Comesa Financial Exchange, also a Bankserv subsidiary, and Emid Holdings. The conditions which the Tribunal approved today are designed to protect competitors from the dominant and influential position the mergers have created for Bankserv.

The Competition Commission first approved both mergers, with conditions, on 31 August 2010. The mergers had already been implemented. However, the Association of System Operators (ASO), an industry body representing the bulk of authorised payments system operators functioning in the payments space in South Africa, requested the Tribunal to review the Commission's August 2010 decision. The Tribunal, following a hearing in this matter, sent the mergers back to the Commission for re-assessment. The Commission then issued a new decision approving the mergers, with conditions, on 7 August 2013. The merging parties then requested the Tribunal to consider their mergers and approve both transactions without conditions. This hearing was scheduled to take place from today to 11 April 2014 and the ASO had been given permission to intervene in the hearing. The ASO had raised concerns about the dominant position Bankserv acquired through these two mergers and did not believe that the conditions imposed by the Commission would prevent an anti-competitive outcome. On the other hand, the merging firms felt that the Commission's conditions were too stringent.

However in a dramatic last minute development on the eve of the commencement of the hearing all the parties, including the ASO, settled the case between them by agreeing to amended conditions. It is these conditions which the Tribunal approved earlier today.

The acquiring firm in the first merger, Lexshell 129, is a subsidiary of Bankserv. Bankserv is the inter-bank clearing and settlement systems operator which is responsible for facilitating the clearing and settlement of payments from one bank to another. Nomad, which Lexshell acquired through the first merger, provides technology for the electronic switching of funds from a cardholder's personal bank account to the bank account of Nomads retail client. Nomad also provides related value added services. The acquiring firm in the second merger, Comesa, is also a subsidiary of Bankserv. Emid, the target of the second merger, is a specialist provider of ICT services which includes transaction and account management solutions.

In order to address the competition concerns, the approved conditions ensure a separation between Bankserv's core operations from the operations of Nomad, on the one hand, and Emid on the other hand. Given that Nomad and Emid's competitors rely on Bankserv for certain services, the conditions state that Bankserv must give the competitors of Nomad and

Emid fair access to services and must not discriminate in favour of Nomad or Emid. The conditions also contain a range of provisions preventing Bankserv from giving Nomad and Emid an unfair advantage in the market. The conditions apply for ten years and are retrospective, which means that they apply from the time the Commission made its initial decision on this matter in 2010.

Essentially the conditions require Bankserv, Nomad and Emid to operate as separate business units while still allowing them to integrate where necessary in order to achieve business efficiencies.

The Tribunal would have heard this case from today to 11 April with about thirteen witnesses, including three economists, set to testify if the parties had not settled the matter.

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