

In the large merger between:

BoE Bank Limited

and

Cashbank Limited

Reasons for Decision

APPROVAL

On 12 September 2001 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between BoE Bank Limited and Cashbank Limited without conditions in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The merger transaction

1. The primary acquiring firm, BoE Bank Limited (“BoE”), is acquiring the underlying assets of the target firm, Cashbank Limited (“Cashbank”).¹
2. Following the merger, Cashbank will operate as a division of BoE Bank.

The Gateway SPV

3. During the merger hearing, it emerged that the parties sought to obtain simultaneous approval for the BoE’s acquisition of Gateway SPV, a separate vehicle created in 2000 for the purpose of raising funds for Cashbank and to drive securitisation.²
4. In terms of the agreement between Cashbank and Gateway Home Loans, Gateway acquired a portion of Cashbank’s loan book, (valued at R150 million as at 30 April 2001) subject to the condition that such loan book be managed by Cashbank on behalf of the SPV. The Gateway loan book consists entirely of housing loans secured by mortgage bonds.

¹ Cashbank is controlled by Cashbank Holdings Limited, an unlisted public company.

² This, a joint initiative with the National Housing Finance Corporation, this venture was set up with the purpose of providing affordable housing finance to individuals without access to conventional credit.

5. The parties maintained at the hearing that BoE has two ways of acquiring the loan book. Firstly, if the book is bought back by Cashbank before the effective date of the main transaction, it would therefore constitute an asset and be included in the business assets sold to BoE. The other alternative is for the SPV to sell the loan book directly to BoE after the effective date. The parties argued that whatever route is followed by BoE for the acquisition of Gateway,³ it fell within the ambit of this merger transaction and it was accordingly competent for the Tribunal to evaluate it simultaneously with the primary transaction. The Commission maintained however that the second route constituted a separately notifiable transaction. However the Tribunal decided that in view of the insignificant competitive effect of these additional assets being acquired, the fact that in essence the acquisition of the loan book formed part of the same transaction, as well as the fact that the parties had provided full disclosure around this transaction when questioned about it by the Commission, it would include the Gateway acquisition in its consideration of the entire transaction.⁴

EVALUATING THE MERGER

The relevant market

6. Both parties are registered banks providing a range of banking services within South Africa. BoE primarily caters to the middle to upper income market, whilst Cashbank's focus is the emerging market. There are, nevertheless, overlaps in respect of some product markets.⁵
7. For the purpose of this analysis, we will disregard the corporate and high income individual market and focus on the middle and lower income markets.
8. There are only three BoE subsidiaries whose services are relevant in this regard, namely, NBS, BoE Business Bank division (Pep Bank) and Credcor.

- **NBS**

NBS focuses on the middle-income individual market, providing mortgage loans, savings and investment products & advice, as well as financial planning.

- **BoE Business Bank**

³ To be determined in the forthcoming weeks.

⁴ The other alternative being for the SPV to sell the loan book directly to BoE after the effective date, would have meant incurring costs for an additional filing.

⁵ The mass market segment contributes less than 1% to BoE's total earnings. (BoE Market Focus & Earnings Contribution Schedule)

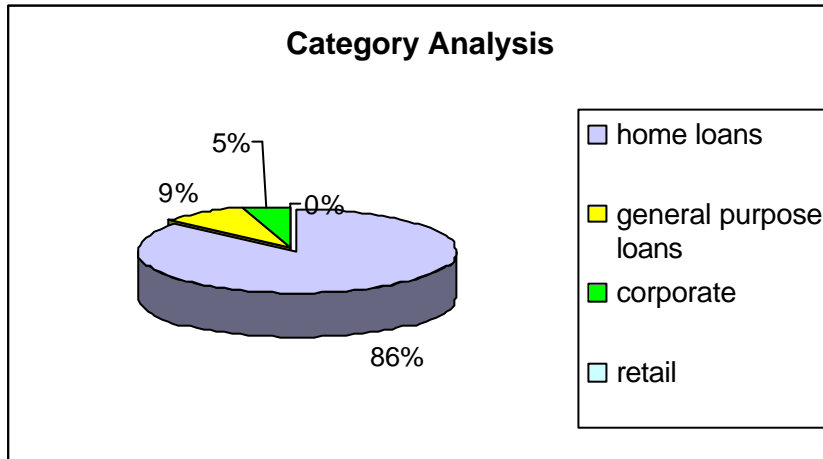
BoE Business Bank division (through PEP Bank⁶) provides services to small and medium sized businesses. It has established a presence in the emerging market, targeting the lower income, previously inaccessible segment of the market.

- **Credcor**

Provides personal finance to retail consumers through independent retail merchants.

Cashbank

9. Cashbank is primarily focussed on the emerging or low income market. Its core expertise is the provision of housing finance, however it does also provide other types of advances, grouped by category, viz. general purpose, corporate loans⁷, and retail. The proportion of business effected per Cashbank category of activity is reflected below:



10. The Commission identified overlaps in relation to the following services:
 - a. Housing Loans
 - b. General Purpose Loans
 - c. Corporate Loans
 - d. Retail Loans
11. However, on closer examination, it appears that markets can be further stratified according to income grouping of customers and product type:

⁶ PEP Bank is a Joint Venture between BoE Bank and Pepkor. BoE has licensed the “PEP” name from Pepkor, but Pepkor has no equity in PEP, which is merely a division of BoE Bank.

⁷ The parties maintain Cashbank no longer advances corporate loans.

PRODUCTS	BOE	CASHBANK
1. Housing Loans:		
- secured by pension/provident fund	X	V
- secured by mortgage bond	V (NBS)	V
• Below R120 k ⁸	X	V
• R120 k-R150 k	V	V
2. General Purpose Loans		
- middle income market	V (NBS)	X
- emerging market	V Credcor – max R35k	V max R25k
	PEP – max R10k	
3. Corporate Loans⁹	V	X
4. Retail Loans	V	V

Source: parties' Market & Competition Report

12. From the above table, it is apparent that the areas of overlap (as indicated by shaded rows) are in respect of the:
- i. Housing loan middle-income market secured by bond;
 - ii. General purpose loan mass/emerging market;
 - iii. Retail loan mass market.
13. We accept the distinction between loans secured by mortgage bond and those secured by pension or provident fund since this appears to be a separate niche of the housing loans market that caters primarily to the emerging market.
14. Though it could well be argued that the divisions between middle and emerging market may seem somewhat arbitrary,¹⁰ the income segments nevertheless do enable comparison of overlap at various income levels, as well as allowing one to narrow the market analysis. We accordingly accept this definition of the relevant market.

⁸ According to the parties, NBS advance very few, housing loans under R120 000.

⁹ Although Cashbank provided corporate loans in the past, the parties maintain that they no longer provide new corporate loans.

¹⁰ The parties argue that housing loans below R120 000 are generally referred to as the “mass market”, as are general purpose loans below R35 000.

Geographical Market

14. The Commission stated that the market was national since BoE (both NBS and Credcor) have branches in all major cities while Cashbank services its clients via their employers situated all over the country. We accept this definition.

Market Shares

Housing Market

15. NBS is the only division of BoE involved in the housing loans market. As reflected in the table below, the combined market share post-merger is 9.4%. The parties maintained that the housing loans market could be divided into loans secured by mortgage bond and those secured by pension and provident fund. Notwithstanding their assertions that the relevant market could be confined only to the area of overlap, namely that of housing loans secured by mortgage bonds, they produced market share figures in respect of the total mortgage bond market. The parties explained that the DI900 Reserve Bank returns from which their data was extracted only delineated rigid categories of mortgage housing loans therefore no more specific data was available.¹¹

Firm	Value (R000)	% of Total
Cashbank	463 003	0.25
- pension/provident	173 242	
- mortgage bond ¹²	289 761	
NBS	16 616 096	9.11
TOTAL MARKET	182 370 000	100

Source: DI900 Reserve Bank Returns- month-end 30 April 2001

10. The parties further confirmed that despite the lack of hard data in support, Cashbank was a somewhat small player in the market for loans secured by pension/provident fund market with Alexander Forbes, Standard Bank and National Benefits Consultants (NBC) enjoying infinitely more market share. From figures submitted in respect of the total advances of the major players in this market, Cashbank enjoys a mere 3.05% market share, with Alexander Forbes capturing approximately 32 % of this market.¹³

¹¹ The parties maintained that these figures are in respect of all mortgage loans , irrespective of amount. They were unable to obtain market share information only in respect of loans within the R120 000 to R150 000 category.

¹² Including the Gateway loan book of R150.815 million.

¹³ Parties' Competitiveness Report, page 5.

General Purpose Loans¹⁴

11. The parties described this category of loan as “personal loans to individuals in the mass market sector.”¹⁵ Their combined market share post-merger will be 4.6%.

Firm	Value (R000)	% of Total
Cashbank	32 957	0.3
NBS	466 000	4.3
- PEP	31 000	
- Credcor	435 000	
TOTAL MARKET	10 900 000	100

Source: Unaudited management accounts of company, MFRC

Retail Loans

12. The parties estimated that Cashbank’s retail loans comprised approximately 0.03% of its total advances¹⁶. As for BoE, only its Credcor division provides retail loans, comprising 15% of its total advances. The parties submitted that market share information was difficult to obtain since those loan grantors that provided retail credit subsumed this under their total “advances” category. Such grantors were in any event reluctant to disclose sensitive market data. The Commission did however establish from market share information submitted from various sources, that the post-merger market share in this category would not exceed 1%.

Impact on competition

13. In the housing loans market, Cashbank’s core activity, it is apparent that the combined entity’s combined market share of approximately 9.4% does not raise any competition concerns. Competitors such as ABSA, Nedcor, Standard Bank and Firststrand further indicate sufficient competition within this market.
14. With respect to general purpose loans, again, the low market shares of 4.6% do not merit concern. Furthermore, there is sufficient competition in the emerging market from other micro-lending institutions and banks to reassure that competition in this market will not be lessened.
15. As for retail loans, a post-merger share of less than 1% would definitely not have an impact on competition in this market.
16. The Tribunal therefore endorses the Commission’s view that this merger will not result in the substantial lessening or prevention of competition in any market.

¹⁴ The parties did not provide data to reflect the market shares of other competitors in this market.

¹⁵ Parties’ Competitiveness Report, page 6.

¹⁶ See Business Category Analysis, above.

Public Interest Considerations

17. The primary rationale behind the transaction is to facilitate BoE's foray into the emerging market housing loans sector. The merger will apparently enhance emerging market access to home loans since BoE will be able to contribute significant capital, technical and other resources. Without the merger, the parties contended that Cashbank could be forced to cease operating altogether.

18. The merger raises no public interest concerns. The parties maintained that there might be some rationalization occasioned by the integration of BoE's restructuring operations, however this was in respect of skilled jobs and in any event would not exceed the amount of expected job losses should the merger not go ahead.

D.H. Lewis

21 September 2001

Date

Concurring: N. Manoim, D. Terblanche