COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 50/LM/AUG10

In the matter between:

ABSA Bank Ltd	Acquiring Firm
And	
Alexander Forbes Homeplan Joint Venture	Target Firm

Panel	:	Y Carrim (Presiding Member) A Wessels (Tribunal Member) M Mokuena (Tribunal Member)
Heard on	:	03 November 2010
Order issued on	:	03 November 2010
Reasons issued on	:	23 December 2010

Reasons for Decision

Approval

[1] On 03 November 2010 the Competition Tribunal ("Tribunal") approved a transaction involving ABSA Bank Ltd and Alexander Forbes Homeplan Joint Venture. The reasons for the approval of the transaction follow below.

The parties and their activities

[2] The primary acquiring firm is ABSA Bank Ltd ("ABSA"), a wholly owned subsidiary of ABSA Group Limited ("ABSA Group"). There are numerous shareholders in ABSA Group of which Barclays Bank PLC is the largest. ABSA is a duly licensed commercial bank. Of relevance to this transaction is its involvement in the provision of Pension Backed

Home Loans (PBLs) by means of its Pension Supported Housing Loans business unit, which is located within the Secured Lending Cluster of the Retail Bank division.

[3] The primary target firm is the business of Alexander Forbes Homeplan Joint Venture ("Homeplan"), an unincorporated joint venture partnership between ABSA and Alexander Forbes Financial Services (Pty) Ltd ("Alexander Forbes"). Homeplan does not control any entities.

[4] Homeplan is active in the provision of PBLs to individuals. Its clients are members of retirement funds and the retirement funds themselves. The members receive the funds advanced by Homeplan for their housing requirements and are party to the PBL arrangements. The retirement fund is also a party to the arrangement as it stands surety for the loans advanced. The merging parties described their roles in Homeplan as follows: "*Alexander Forbes performs the administrative functions and ABSA the credit and funding matters for Homeplan. Alexander Forbes utilises its large influence in the pension fund administrative business to secure mandates and to generate new business*."

The transaction

[5] In terms of the proposed transaction ABSA intends to acquire sole control over the business of Homeplan by acquiring Homeplan's PBL book. Following the implementation of the proposed transaction the parties have agreed to terminate and dissolve Homeplan.

The rationale

[6] The proposed transaction is aligned to ABSA's strategy to develop its existing business in the provision of PBLs. Alexander Forbes considered Homeplan to be better placed with an owner with access to and direct control of its own funding lines.

The relevant market and impact on competition

[7] As is evident from the description of the parties' activities above, their activities horizontally overlap in relation to the provision of PBLs.

[8] In terms of the Pension Funds Act, 24 of 1956, a member of a pension scheme may use his/her pension as security for a loan for certain stipulated housing purposes up to a maximum of 90% of his/her post-tax withdrawal benefit in a fund. The actual percentage is determined by the rules of the fund and by how much each individual can afford to repay every month. The fund guarantees the loan which is ordinarily repayable in instalments and the tangible asset, i.e. the house, is not used as security. PBLs are provided by employers (so-called direct loans) as well as by some retirement funds directly to their members.

[9] Although the merging parties stated that PBLs provide borrowers with "*quick and convenient access to credit, and increased affordability*", they argued that the relevant market is a national market for unsecured personal lending because individuals can easily substitute between PBLs and micro-loans for the purpose of funding improvements to residential property. The merging parties further argued that PBLs are predominantly provided by both corporates (in their capacity as employers) and by retirement funds. For the sake of completeness the merging parties however submitted information to the Competition Commission ("Commission") in relation to the provision of (i) home loans; (ii) unsecured personal loans (including micro-loans); and (iii) PBLs.

[10] The Commission however disagreed with the merging parties' market delineation and concluded that the relevant market is a national (more narrowly defined) product market for the external provision of PBLs by financial institutions.

[11] According to the Commission micro-loans and PBLs are not close substitutes because of the different risks involved in securing the loans. An individual cannot elect to obtain a PBL unless he/she has pension benefits to pledge, i.e. PBLs are secured against a safe and generally liquid asset namely the pension scheme, whereas one does not require any security to obtain a micro-loan. PBLs can furthermore only be used for housing purposes while micro-loans can be used for any number of purposes. Finally, individual pension benefits can only be used to secure a PBL if the relevant pension scheme permits it; there are no such constraints concerning micro-loans. The Commission furthermore found that the average terms, interest rates and speed of conclusion of these two types of loans are significantly different.

[12] The Commission also concluded that there is limited substitutability between PBLs and mortgage loans given (i) significant differences between the costs and interest rates of these two types of loans, with PBLs being significantly cheaper from a customer perspective; (ii) the generally small size of PBLs, which make them inappropriate for house purchases; and (iii) the use of PBLs by low income groups who generally would have less access to mortgage finance.

[13] The Commission furthermore rejected the contention that there is a larger relevant market for the provision of PBLs generally, including the self-provision of PBLs by pension schemes. According to the Commission a scheme that self-provides PBLs to its members will not also appoint an external PBL provider. A member of a scheme therefore cannot substitute between an externally provided PBL and an internally provided PBL because the scheme will provide only for one of these methods. The Commission therefore regarded the provision of PBLs by external providers as a separate relevant market to that of self-provision of PBLs by schemes themselves.

[14] Nothing however turns on whether the market is defined broadly as advanced by the merging parties or defined more narrowly as argued by the Commission because, as set out below, the transaction does not raise any competition concerns under any plausible market delineation. We therefore leave the market definition open in this case.

[15] In a potential national market for the provision of home loans Homeplan has a *de minimis* market share and we therefore do not consider this potential market any further below.

[16] In the provision of personal unsecured loans by banks the combined national market share of ABSA and Homeplan is less than 25%.[1] Large players in this market segment include African Bank, Nedbank Standard Bank and FNB. In a potential narrower market for the provision of micro-loans ABSA is a small player compared to other entities in the market of which the leading player is African Bank.

[17] In a (broadly defined) potential market for PBLs as argued by the merging parties (including direct loans by employers and retirement funds) the combined national market share of ABSA and Homeplan is less than 15%. Although the narrower market as defined by the Commission, i.e. the external provision of PBLs by financial institutions in South Africa, is a concentrated one several large players will be active in such market post merger including the large banks such as Standard Bank, FNB and Nedbank as well as the non-banking PBL provider NBC Futureplan. Other less significant competitors include IEMAS, Capitec, Abacus and Theba Bank.

[18] The Commission however raised a competition concern in regard to certain clauses in a collaboration agreement concluded between ABSA and Alexander Forbes. This agreement is an agreement whereby ABSA contracts Alexander Forbes to construct a computer interface between it and Alexander Forbes for its exclusive use for a certain period in order to administer PBL loans and flag pledged pension benefits.

[19] In considering the theory of harm the Commission concluded that a pre-merger linkage between Homeplan, as PBL provider, and Alexander Forbes, as pension administrator, gave Homeplan a significant competitive advantage and hold over schemes to which they were both appointed. The original terms of the above-mentioned collaboration agreement between ABSA and Alexander Forbes (see paragraph [19] below) appeared to continue such a competitive linkage in future between ABSA and Alexander Forbes. Subject to legislative restrictions and discharging their fiduciary duties, this agreement initially required Alexander Forbes to use its best endeavours to position ABSA as preferred PBL provider subject to ABSA's pricing being competitive. Furthermore, payments are to be

[1] This market share does not take into account the provision of personal unsecured loans by non-banks.

made in respect of each loan or advance taken by the beneficiary of an Alexander Forbes administered pension scheme. According to the Commission this would incentivise Alexander Forbes to favour ABSA thus establishing, in effect, the same significant advantage that existed prior to this transaction.

[20] Although the parties disagreed with the Commission's identified competition concern it nevertheless in October 2010 amended the relevant clause(s) in the collaboration agreement between ABSA and Alexander Forbes so that ABSA would not act as a preferred provider of PBLs but only as a provider (not sole, exclusive or preferred). According to the Commission this largely severs the linkage established by the collaboration agreement between Alexander Forbes as pension administrator and ABSA as PBL provider.

[21] Given the aforementioned amendments to the collaboration agreement and other considerations, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any potential relevant market.

Public interest

[22] The parties confirmed that none of the Homeplan employees will be retrenched as a result of the proposed deal. No other public interest issues arise from this transaction.

CONCLUSION

[23] We approve the proposed transaction unconditionally.

____________________ 23 December 2010

A Wessels **DATE**

Concurring: Y Carrim and M Mokuena

Tribunal Researcher:	R Badenhorst
For the merging parties:	ABSA was represented by its own in-house legal representative
For the Commission:	F Reid