



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM161Aug18

In the matter between:

**AFRICAN RAINBOW CAPITAL FINANCIAL SERVICES
HOLDINGS (PTY) LTD**

Acquiring Firm

And

**COMMONWEALTH BANK OF SOUTH AFRICA (HOLDING
COMPANY) LIMITED**

Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 24 October 2018
Order Issued on	: 24 October 2018
Reasons Issued on	: 15 November 2018

Reasons for Decision

APPROVAL

[1] On 28 October 2018, the Competition Tribunal approved a large merger between African Rainbow Capital Financial Services Holdings (“ARC Finholdco”) and Commonwealth Bank of South Africa (Holding Company) Limited (“CBSA Holdco”).

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

- [3] ARC Finholdco is a company incorporated in accordance with the Company laws of the Republic of South Africa. It is directly controlled by African Rainbow Capital (Pty) Ltd (“ARC”), which is in turn, wholly owned by Ubuntu-Botho investments. ARC additionally holds a 51% share in African Rainbow Investments Limited. The remaining 49% of which is held by public shareholders. Relevant to the proposed transaction, ARC Finholdco controls ARC Imali-Madi (RF) Ltd (“ARC Imali-Madi”).
- [4] As ARC Investments, ARC Finholdco, and ARC Imali-Madi are ultimately controlled by ARC, they will be collectively referred to as the ‘acquiring group’.
- [5] The acquiring group is active in the financial services sector, within which it controls many firms across a wide range of industries. Its investment portfolio is comprised of insurance brokerage, healthcare administration businesses, equity brokerage, risk management, investment management services and research and broking businesses.

Primary Target Firm

- [6] CBSA Holdco is a company incorporated in accordance with the laws of South Africa which is controlled by Commonwealth Bank of Australia (CBA), which holds 90% of its shares. The remaining 10% is held by ARC Imali-Madi. CBSA Holdco wholly controls Tyme Technical Solutions (“TTS”) and the Commonwealth Bank of South Africa (“CBSA”).
- [7] CBSA and TTS jointly operate as a digital bank trading under the name TYME Digital Bank. Tyme Bank currently provides a range of banking services, with a primary focus on money transfers available at Pick n Pay stores.¹

PROPOSED TRANSACTION AND RATIONALE

¹ Tyme’s further offerings include a financial wellness platform, and an advance against future sales service.

- [8] The proposed transaction involves an acquisition by ARC Finholdco of 90% of the share capital in CBSA Holdco from CBA. Thereafter ARC Imali-Mali will distribute its shareholding in CBSA Holdco to ARC Finholdco. At the completion of the transaction, ARC Finholdco will wholly own and control CBSA Holdco.
- [9] In terms of rationale, the acquiring group submitted that it intends to facilitate CBSA bringing to the market a retail and transactional banking offering targeted at lower income consumers and small and micro businesses which are currently unbanked and/ or underbanked completely. It submitted that its overall objective is to promote financial inclusion of South Africans currently being excluded from the traditional banking market.
- [10] CBA, the seller, submitted that it has taken the decision to exit the South African Market and that this transaction presented an alternative to shutting down CBSA.

RELEVANT MARKETS AND IMPACT ON COMPETITION

- [11] The Commission considered the activities of the merging parties and found that the proposed merger raised a horizontal overlap only insofar as the acquiring group currently holds a shareholding in CBSA.
- [12] The Commission therefore concluded that the transaction raised no horizontal nor vertical concerns and that it would therefore not lead to a substantial prevention or lessening of competition.
- [13] We find no reason to disagree.

PUBLIC INTEREST

- [14] The merging parties submitted that no employees would be retrenched as a result of the proposed transaction.

[15] The Commission additionally found that the merger would facilitate the entry of a new bank in the banking industry. It submitted that the proposed merger would have a positive impact on the banking industry as well as the ability of firms owned and controlled by historically disadvantaged individuals.

NOTIFICATION TO THE MINISTER

[16] The Commission, in accordance with Rule 36(1) of the Rules for the Conduct of Proceedings in the Competition Commission, sent the Minister of Finance a copy of the merger notice, and all documents filed in respect of the merger. The minister did not file a form CC5(3) form indicating an intent to participate, nor did he send an acknowledgement of receipt.

[17] The Commission sent out a second letter to the Minister of Finance. To date the Commission has not received any notice of intention to participate from the Minister.

[18] At the hearing, the Commission was questioned as to the steps it had taken to obtain the views of the Minister. Its response was that no further action had been taken other than mailing the Minister.

[19] Whilst the issue did not cause a delay in the Tribunal's approval of the merger in question, the Commission may be wise to take steps to ensure that their notifications have been noted.

CONCLUSION

[20] The proposed transaction does not lead to a substantial prevention or lessening of competition.

[21] The proposed transaction does not raise any public interest concerns.

[22] Accordingly, the transaction was approved without conditions.



Enver Daniels

15 November 2018

Date

Prof. Fiona Tregenna and Mrs Mondo Mazwai concurring.

Tribunal Researcher: Alistair Dey-Van Heerden

For the merging parties: Werner Rysbergen of Webber Wentzel and Mark Griffiths of Norton Rose Fulbright

For the Commission: Nonhlanhla Msiza and Mogau Aphone