



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM216Feb17

In the matter between:

DISCOVERY BANK LIMITED

Acquiring Firm

And

**THE "DISCOVERY" BRANDED CREDIT AND FUEL CARDS
BUSINESS OF FIRST NATIONAL BANK**

Target Firm

Panel : Enver Daniels (Presiding Member)
: Fiona Tregenna (Tribunal Member)
: Medi Mokoeuna (Tribunal Member)

Heard on : 7 November 2018

Order Issued on : 7 November 2018

Reasons issued on : 23 November 2018

REASONS FOR DECISION

APPROVAL

- [1] On 07 November 2018, the Competition Tribunal approved a large merger between Discovery Bank Limited ("Discovery Bank") and The "Discovery" Branded Credit And Fuel Cards Business Of First National Bank ("card transfer business").
- [2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

- [3] Discovery Bank is a newly established firm incorporated in terms of the laws of the Republic of South Africa. It is wholly owned and controlled by Discovery Bank Holdings, a newly established company which has applied to be registered as a bank controlling company in terms of the Banks Act No. 94 of 1990 (as amended).
- [4] Discovery Bank and Discovery Bank Holdings are ultimately controlled by Discovery Limited, a public company listed on the Johannesburg Securities exchange ("JSE"). Discovery Limited controls a number of firms, primarily active in the provision and administration of insurance services.
- [5] On 12 October 2017 the South African Reserve Bank ("SARB") issued Discovery Bank with a licence to operate as a bank. At the time of these reasons, Discovery Bank has not yet commenced operating under such a licence.

Primary Target Firm

- [6] The card transfer business is a business within the First Rand Bank Limited ("FRB") credit card division. FRB is owned and controlled by First Rand, a company listed on the JSE and not controlled by any one firm.
- [7] First Rand controls a number of other firms including First Rand Investment Holding Pty Ltd ("FRIHL"), First Rand EMA Holdings limited and others, collectively referred to as the First Rand Group.
- [8] The First Rand Group is active in the financial service sector which includes retail banking, broking, asset / investment management, and project finance among others. Through a firm called First Rand Life, the group is active in the provision of long-term insurance.

- [9] The card transfer business issues discovery branded credit cards and fuel cards to members of the Discovery Health Medical Scheme and other users of the Discovery Groups products.

PROPOSED TRANSACTION AND RATIONALE

- [10] In the transaction announced to the Commission on 27 January 2017 (“initial transaction”), Discovery Bank intended to acquire the card transfer business from FRB with a condition that that First Rand, FRIHL be compensated through its subsidiary FRIHL obtaining a 25,01% passive, non-controlling shareholding in Discovery Bank.
- [11] The Commission investigated the initial transaction and found that the cross shareholding by FRIHL in Discovery Bank would raise a raft of competition concerns. On 3 October 2017 the Commission proposed a remedy that the envisioned cross shareholding be divested to allow for the entry of Discovery Bank as an independent, competitive force in the market.
- [12] Parallel to the Commission’s investigation, the SARB was considering Discovery Bank’s application for a banking license. The SARB found that cross shareholding by FRIHL in Discovery Bank would increase the contagion risk in the banking sector. The SARB thus made its approval of Discovery Bank’s Banking licence conditional upon the divestiture by FRIHL of the proposed cross shareholding over a period of 5 years.
- [13] After lengthy commercial negotiations, the merging parties amended the initial transaction (“amended transaction”). In a letter to the Commission on 8 September 2018, the representatives of the merging parties indicated that in terms of the amended transaction, First Rand would sell the card transfer business with neither FRIHL or the FirstRand Group acquiring any shareholding in Discovery Bank.

- [14] The Commission referred the amended transaction to the Tribunal, recommending approval without conditions.
- [15] At the merger hearing, the Tribunal questioned the merging parties as to whether the change in the underlying transaction required a new notification to the Commission.
- [16] The merging parties submitted that the change in presence of the non-controlling minority shareholder did not alter the mechanics of the change in control envisioned. The initial transaction saw the acquisition of the card transfer business by Discovery Bank. The amended transaction retained this primary characteristic. The amendment to the transaction did thus not warrant a new notification.¹ The Commission supported the merging parties' submissions.
- [17] In terms of the rationale, Discovery Bank submitted that the transaction was driven by a desire to increase its financial service product offering by establishing a new bank in South Africa, and in contemplation thereof it wished to acquire the card transfer business. Discovery indicated that it intended to expand into retail banking through the establishment of a holistic banking product offering and by registering its own bank thereby introducing a new competitor into the industry.

RELEVANT MARKETS AND IMPACT ON COMPETITION

- [18] The Commission assessed the revised transaction and found that such presented no horizontal or vertical overlap and was thus unlikely to substantially prevent or lessen competition within the South African retail banking sector.
- [19] We find no reason to disagree.

¹ Tribunal Transcript of Proceedings 07 November 2018 ("Tribunal transcript") p12-13 lines 3-18.

PUBLIC INTEREST

- [20] The merging parties submitted that no employees would be retrenched as a result of the proposed transaction.
- [21] This was confirmed at the merger hearing by the representatives for the acquiring firm who submitted that the call centre employees responsible for the card transfer business had always been housed within the Discovery Group and would simply be moved to Discovery Bank upon the conclusion of the transaction.²
- [22] In addition, the representatives of First Rand confirmed that all the staff currently employed for the purpose of administrating the card transfer business at FRB were also employed in other positions within the bank and thus there was no duplication of structures.³
- [23] In terms of service offerings, the panel questioned the merging parties as to whether the terms of service for the clients of the card transfer business would remain the same. The merging parties responded indicating that the service offering would remain competitive as compared to the current offerings.⁴

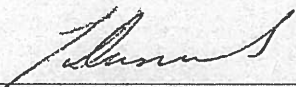
² Tribunal transcript p17-18 lines 15-3.

³ Tribunal transcript p18 lines 17-19.

⁴ Tribunal transcript p20 lines 10-18.

CONCLUSION

- [24] The proposed transaction does not result in any horizontal or vertical overlap and is unlikely to lead to a substantial prevention or lessening of competition.
- [25] The proposed transaction does not raise any public interest concerns.
- [26] Accordingly, the transaction was approved without conditions.



Enver Daniels

23 November 2018

Date

Prof. Fiona Tregenna and Mrs Medi Mokuena concurring.

Tribunal Researcher: Alistair Dey-Van Heerden

For the acquiring firm: Justin Balkin and Derushka Chetty of EnsAfrica

For the target firm: Janine Simpson of DLA Piper

For the Commission: Ratshidaho Maphwanya