
SOUTH AFRICA / JUDGMENT

Absa Bank Limited v Custody, trustee and derivatives clearing business of Societe Generale S.A Johannesburg branch and global custody services performed via foreign sub-custodians (LM021May19) [2019] ZACT 32 (28 June 2019)

[2019] ZACT 32

COURT

Competition Tribunal

BEFORE

Norman Manoim, Mondo Mazwai, Medi Mokuena

CASE / FILE NUMBER

LM021May19

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM021May19

In the matter between

Absa Bank Limited

Primary Acquiring Firm

And

The custody, trustee and derivatives clearing

Primary Target Firm

business of Societe Generale S.A Johannesburg

branch and global custody services performed

via foreign sub-custodians

Panel : Norman Manoim (Presiding Member)

: Mondo Mazwai (Tribunal Member)

: Medi Mokuena (Tribunal Member)

Heard on: 12 June 2019

Order Issued on: 12 June 2019

Reasons

Issued on : 28 June 2019

REASONS FOR DECISION

Approval

- [1] On 12 June 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Absa Bank Limited ("Absa") and the custody, trustee and derivatives clearing business of Societe Generale S.A ("SocGen")

Johannesburg branch and global custody services performed via foreign sub- custodians ("Target Assets"), hereinafter

collectively referred to as merging parties.

- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Absa is a wholly owned subsidiary of Absa Group Ltd ("Absa Group"). The shares in Absa Group are widely dispersed and as

such no single shareholder controls Absa Group. Absa Group and Absa collectively control a number of firms in South Africa.

- [4] Absa is listed as a regional African banking and insurance business. It offers a complete range of retail, business, corporate and investment banking products. Absa also provides derivatives clearing and services in relation to its own trading activities.

Primary Target Firm

- [5] SocGen is a public company incorporated in accordance with laws of France. SocGen is listed on the Euronext Paris Exchange and is not controlled by any single shareholder. SocGen controls the Target Assets and two firms namely Societe Generale South African

Nominees (Pty) Ltd and Goudstad Nominees (Pty) Ltd, hereinafter collectively referred to as the "Nominee Companies".

- [6] In terms of the custody services, the services include safekeeping and securities; settlement; corporate action; withholding tax; reporting and reconciliation; foreign exchange services for major currencies; payment processing and cash account management. In

South Africa, the services are primarily provided to financial institutions.

[7] The trustee business provides trustee services to fund managers and administrators; as well as compliance with investment funds policies. The derivatives clearing services involve the clearing of trades in respect of listed derivatives. The Nominee Companies

hold the securities and/or the interest in securities for clients.

Proposed transaction

[8] In terms of the Sale of Business Agreement, Absa will acquire the Target Assets and the Nominee Companies from SocGen. Post-merger, Absa will own and control the Target Assets and Nominee Companies.

Impact on competition

[9] The Competition Commission ("Commission") considered the activities of the merging parties and identified a horizontal

overlap in the national market for the provision of (i) equity derivatives clearing services, (ii) currency derivatives clearing

services and (iii) interest rate derivatives clearing services. The Commission also assessed the broader market for the provision of derivatives clearing services.

[10] In its investigation, the Commission found that the merged entity will have combined post-merger market shares of less than 20%, 30% and 15% in each of the respective relevant markets. In terms of the market share accretions, they are all de minimis.

[11] In the broader market for the provision of derivatives clearing services, the Commission found that the merged entity will have a combined post-merger market share of less than 20%, with an accretion of less than 5%.

[12] The Commission was of the view that the proposed transaction is unlikely to raise competition concerns as the market share accretions are relatively low. Further, the merged entity will continue to face competitive constraints from other market participants such as Standard Bank, RMB Bank and Nedbank.

[13] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We see no reason to differ from this conclusion.

Public interest

[14] The merging parties confirmed that the proposed transaction will not have any negative effects on employment in South Africa.

[15] The proposed transaction raises no other public interest concerns.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr Norman Manoim

Ms Mondo Mazwai and Mrs Medi Mokuena concurring.

28 June 2019

Date

Tribunal Researcher: Hlumelo Vazi

For the merging parties: A Roets of Nortons Inc and I Dhladhla of Absa Group Limited.

For the Commission N Msiza and M Aphone

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