

SOUTH AFRICA / JUDGMENT

ABSA Bank Ltd v Certain movable and immovable assets and claims (excluding any liabilities) of A Million Up 105 (Pty) Ltd (016394) [2013] ZACT 35 (27 May 2013)

[2013] ZACT 35

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Andiswa Ndoni, Mondo Mazwai

CASE / FILE NUMBER

016394

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 016394

In the matter between:

ABSA Bank Limited PrimaryAcquiring Firm

and

Certain movable and immovable assets and claims

(excluding any liabilities) of A Million Up 105 (Pty) LtdPrimary Target Firm

Panel : Yasmin Carrim (Presiding Member) Andiswa Ndoni (Tribunal Member)

Mondo Mazwai (Tribunal Member)

Heard on : 17 April 2013

Order issued on : 17 April 2013

Reasons issued : 27 May 2013

DECISION

Unconditional approval

On 17 April 2013, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed merger between ABSA Bank Limited and Certain movable and immovable assets and claims (excluding any liabilities) of A Million Up 105 (Pty) Ltd.

The reasons for approving the proposed transaction follow.

Parties to transaction

The primary acquiring firm is ABSA Bank Limited (“ABSA Bank”), a wholly-owned subsidiary of ABSA Group Limited, which provides a diverse range of retail, business, corporate and investment banking services to both individual and corporate clients. ABSA also has a property portfolio comprising of retail, office and industrial space.

The primary target firm consists of certain movable and immovable assets and claims, excluding any liabilities, of A Million Up 105 (Pty) Ltd (“AMU”). AMU acquired credit facilities to develop the 15 On Orange complex from ABSA Bank in 2008. However, AMU failed to comply with its obligations in terms of those credit facilities as a consequence of which ABSA filed for its liquidation.

Proposed transaction and rationale

ABSA Bank will acquire AMU assets comprising immovable assets, movable assets and claims, which include 129 hotel rooms, 167 parking bays, 6 retail property units and 7 residential penthouses.

The rationale for the transaction is for ABSA Bank to recover the money owed to it by AMU by acquiring these assets and reselling them at market-related prices at a later stage.¹

The liquidators wish to dispose of all the assets in order to satisfy AMU’s major creditor’s claims

Competition assessment

Both ABSA Bank and AMU are involved in the residential property market, however, ABSA Bank’s residential properties located in the Western Cape are houses aimed at low income earning customers whilst the residential properties of AMU that are being acquired are luxury penthouses aimed at high income earning customers. Therefore, no product overlap arises from this transaction.

The properties which ABSA Bank owns with the closest substitutability possibility to AMU’s luxury penthouses comprise townhouses are located in Gauteng and therefore there is no geographic overlap in respect of the residential properties.

ABSA Bank submitted that it does not intend to keep the hotel for a long period and will therefore continue operating it until ABSA Bank is in a position to sell the hotel at a market-related price.

Public interest

The merging parties confirmed that the proposed transaction will not lead to any employment losses.²

No other public interest issues arise as a result of this transaction.

CONCLUSION

Having regard to the facts above, we find that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant markets. Accordingly, we approve the proposed merger unconditionally.

_____ 27 MAY 2013

YASMIN CARRIM DATE

Andiswa Ndoni and Mondo Mazwai concurring

Tribunal Researcher: Nicola Ilgner

For the Commission: Reabetswe Molotsi

For the merging parties: ABSA Legal Competition Team

¹See page 9 of the transcript.

²See pages 5 and 60 of the merger record.

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