

NON-CONFIDENTIAL



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM141Aug17

In the large merger between:

Firefly Investments 326 (Pty) Ltd

Primary Acquiring Firm

and

Bayport Financial Services 2010 (Pty) Ltd

Primary Target Firms

Panel	: Enver Daniels (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 11 October 2017
Order Issued on	: 16 October 2017
Reasons Issued on	: 13 November 2017

Reasons for Decision

Approval

- [1] On 16 October 2017, the Competition Tribunal ("Tribunal") conditionally approved the proposed transaction between Firefly Investments 326 (Pty) Ltd ("Firefly Investments") and Bayport Financial Services 2010 (Pty) Ltd ("BFSSA").
- [2] The reasons for approving the proposed transaction follow.

Parties to the Proposed Transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Firefly Investments, a newly established firm, established for the purposes of the transaction and which is wholly owned by the Government Employees Pension Fund ("GEPF"), which is represented by the Public Investment Corporation (SOC) Limited ("PIC")
- [4] The GEPF controls a number of firms and also holds non-controlling shareholdings in the following firms which are relevant to the proposed transaction: Bayport Management Limited ("BML"); VBS Mutual Bank – South Africa; SA Home Loans – South Africa; Standard Bank Group Limited; First Rand Limited; Absa Group Limited; Capitec Bank Limited; African Bank Limited; Old Mutual plc; and Investec.
- [5] The GEPF is Africa's largest pension fund with investments in various classes of assets, including equities, property and fixed income.

Primary Target Firms

- [6] The primary target firm is BFSSA, a company incorporated in accordance with the laws of the Republic of South Africa and which is wholly owned by Bayport Management Limited ("BML"), a public company incorporated in accordance with the laws of Mauritius.
- [7] BFSSA controls a number of firms. BML also controls a number of firms including, Bayport International Headquarter Company (Pty) Ltd ("BIHQ"), which in turn controls Actvest (Pty) Ltd ("Actvest").
- [8] BFSSA is a non-banking financial institution specialising in the provision of unsecured personal loans in South Africa, predominantly to the growing middle classes. BFSSA acts as an originator of unsecured and developmental loans for Bayport Securitisation (RF) Limited ("Baysec"). The BML Group provides personal unsecured credit and consumer finance solutions.

Proposed Transaction and Rationale

- [9] Firefly will acquire >50% of the issued share capital of BFSSA from BML and will exercise control over BFSSA post-merger. BML will hold the remaining shares post-merger.

- [10] A similar transaction was approved by the Tribunal on 9 December 2016¹ whereby Firefly Investments acquired a >50% shareholding in BML.² However, the Commission has advised that upon implementation of that transaction certain of the BEE shareholders in Firefly Investments withdrew from the deal, hence the re-notification of this merger.³ The only difference between the previous transaction and this is that the former involved several acquiring firms whereas the latter involves just one acquiring firm.⁴ The target firm and what is being acquired remain the same.⁵
- [11] According to the merging parties, the proposed transaction will, *inter alia*, give the GEPPF the opportunity to invest in a black-owned and managed holding company and allow for transformation within the financial resources industry in South Africa. [REDACTED]
[REDACTED]
[REDACTED]

Impact on Competition

- [12] The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal or vertical overlap as the GEPPF does not have control over any firms active in the provision of unsecured personal loans to individuals in direct competition with BFSSA.

Information Exchange Concerns

- [13] The Commission found that the GEPPF/PIC holds non-controlling interests in a number of firms that compete with the BML Group and/or BFSSA in the provision of unsecured loans. These competitors of the BML Group and/or BFSSA include SA Home Loans Standard Bank, Investec, VBS Bank, First Rand and Old Mutual.
- [14] The non-controlling interests held by the GEPPF/PIC, *inter alia*, allow it to appoint and/or nominate directors to the boards of BFSSA as well as its competitors. As such the Commission raised concerns that these interests held in competing firms could potentially allow for the sharing of competitively sensitive information which could create the potential for coordination between competitors. The GEPPF/PIC's cross directorship and cross shareholding could enable BFSSA and competing firms to align their strategies to the detriment of competition in the market.

¹ Transcript 11 October 2017 at page 5.

² LM157Nov16.

³ CC Recommendation at page 8.

⁴ Transcript 11 October 2017 at page 16.

⁵ Ibid.

[15] In order to address these concerns the Commission imposed various conditions. In essence, the conditions restrict the GEPP/PIC from appointing common directors on the boards of BFSSA and any of its competitors. The condition provides that, for as long as the PIC/GEPP can nominate individuals to the board of BFSSA, the PIC must ensure that those directors on the board of BFSSA are not nominated, appointed or do not serve on any board or management committee of the firms in competition with the BML Group and/or BFSSA.

[16] At the hearing, the panel raised concerns that the definition of "competitors" in the conditions, which included only those competitors in which GEPP/PIC currently holds an interest, was unduly narrow.⁶ As such the merging parties agreed to expand the definition of "competitors" so as to include not only those competitors in which GEPP/PIC currently holds an interest, but also "*any other competitor to the Target Firm in the market for unsecured lending*". The Tribunal was satisfied with this amendment.

Public Interest

[17] The Commission found that the proposed transaction is unlikely to negatively affect employment as Firefly is a newly established firm and therefore does not have any employees.

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

Conclusion

[19] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no further public interest issues arise from the proposed transaction. The information exchange concerns that arise are adequately safeguarded by the proposed conditions. Accordingly, we approve the proposed transaction with conditions marked as **Annexure "A"**.



Mr Enver Daniels

13 November 2017

DATE

Mrs Medi Mokuena and Prof Fiona Tregenna concurring

⁶ Transcript 11 October 2017 at page 16.

Tribunal Researcher: Hayley Lyle

For the merging parties: Ahmore Burger-Smidt and Kwazi Buthulezi of Werksmans Attorneys.

For the Commission: Reabetswe Molotsi