



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM065May18

In the matter between

GroCapital Holdings (Pty) Ltd

Primary Acquiring Firm

And

South African Bank of Athens Ltd

Primary Target Firm

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Panel	: Mr Norman Manoim (Presiding Member)
	: Mrs Medi Mokuena (Tribunal Member)
	: Ms Andiswa Ndoni (Tribunal Member)

Heard on	: 12 September 2018
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Order Issued on	: 12 September 2018
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Reasons Issued on	: 21 September 2018
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### REASONS FOR DECISION

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#### Approval

- [1] On 12 September 2018, the Competition Tribunal ("the Tribunal") conditionally approved the large merger between GroCapital Holdings (Pty) Ltd ("GroCapital") and South African Bank of Athens Limited ("SABA").
- [2] The reasons for the approval follow.

## **Parties to the transaction and their activities**

### *Primary acquiring firm*

- [3] GroCapital is jointly owned and controlled by: AFGRI Holdings (Pty) Ltd ("AFGRI"), Fairfax Africa Investment (Pty) Ltd ("Fairfax Africa") and The Public Investment Corporation (SOC) Ltd ("PIC"). AFGRI and Fairfax Africa are both ultimately owned by Fairfax Financial Holdings Ltd, a public Canadian investment company.
- [4] GroCapital provides financial services to businesses involved in the agricultural value chain and is one of a number agriculture commodity related companies owned by AFGRI, collectively referred to as the AFGRI Group.

### *Primary target firm*

- [5] The primary target firm is SABA, a banking services provider to clients in various industries. SABA is owned and controlled by the National Bank of Greece ("NBG").

## **Proposed transaction and rationale**

- [6] In terms of the proposed transaction, GroCapital will acquire the majority of SABA's share capital from NBG and make a mandatory offer, in terms of s123 of the Companies Act, for all other outstanding shares. Post-transaction, SABA will be solely controlled by GroCapital.
- [7] In August 2017, the Tribunal unconditionally approved essentially the same transaction between GroCapital and SABA.<sup>1</sup> However, the Merging Parties were thereafter advised by the South African Reserve Bank ("SARB") that it would enhance their application for regulatory approval if they included the PIC as a shareholder of GroCapital. The Merging Parties thus restructured the acquiring group and re-notified this transaction to the Commission following SARB approval. Hence the only difference between the two transactions is the inclusion of PIC as a part-owner of the acquiring firm.

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<sup>1</sup> GroCapital Holdings (Pty) Ltd And South African Bank of Athens Ltd LM077Jun17

- [8] AFGRI submits that the transaction allows it to grow its financial services offering by acquiring an entity with a banking licence. NBG submitted that the disposal is a result of Greece's financial situation that has constrained capital conditions and reduced growth. The PIC is looking to maximise returns on investment in a new banking entity.

#### **Relevant market and impact on competition**

- [9] In the previously approved transaction, the Commission assessed the horizontal and vertical overlaps that arose between the AFGRI Group and SABA. It was found that these overlaps would be unlikely to substantially prevent or lessen competition in the relevant markets.<sup>2</sup> These overlaps were not evaluated again in the present transaction.

#### **Information exchange and cross-directorship concerns**

- [10] As a result of the PIC's interests in various South African banking service providers, the Commission evaluated potential co-ordinated effects in the broad market for the provision of banking services. The Commission found that some of the PIC's interests grant it access to confidential information and the ability to appoint members onto the board of directors of the relevant banking entities. Post-transaction, the PIC will also be able to influence operations and appoint directors of GroCapital, the sole controller of SABA.
- [11] The PIC as a mutual shareholder thus represents a potential platform for sharing of sensitive information and a mechanism to facilitate collusion between competing banking service providers. To address these concerns, the merging parties have agreed that the PIC will not appoint any person onto the board of GroCapital or SABA who is, or has been in the preceding six months, a member of the board of a competing banking service provider. Further, the PIC will ensure measures are in place to prevent the exchange of sensitive information, including confidentiality undertakings by representatives on the GroCapital and SABA boards.

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<sup>2</sup> LM077Jun17, Para 12

- [12] We are satisfied that the imposed conditions adequately address any concerns relating to information exchange and cross directorships between competitors.

#### **Public interest**

- [13] The Merging Parties submit that the proposed transaction will not result in any job losses.<sup>3</sup> All relevant employee representatives were contacted by the Commission and no concerns were raised. The Commission was satisfied that the proposed transaction is unlikely have a negative impact on employment or raise any other public interest concerns.

#### **Conclusion**

- [14] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and that any potential co-ordination concerns are adequately addressed by the conditions. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction subject to the conditions attached hereto as 'Annexure A'.

  

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Mr Norman Manoim

21 September 2018  
Date

**Mrs Medi Mokuena and Ms Andiswa Ndoni**

Tribunal Researcher: Jonathan Thomson

For the merging parties Andries Le Grange of Cliffe Dekker Hofmeyr Inc

For the Commission: Billy Mabatamela

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<sup>3</sup> Paragraph 8, page 47 of the Commission's Record.

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**ANNEXURE A**

**GroCapital Holdings (Pty) Ltd**

**and**

**South African Bank of Athens Limited**

**CASE NUMBER: 2018May0034**

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**CONFIDENTIAL CONDITIONS**

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**1. RECORDAL**

1.1 The Commission and the Merging Parties have agreed to the following conditions.

**2. DEFINITIONS**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

2.1 “**Absa**” means Absa Bank Limited;

2.2 “**Acquiring Firm**” means GroCapital;

2.3 “**Approval Date**” means the date referred to in the Competition Tribunal Order;

2.4 “**African Bank**” means African Bank Limited;

2.5 “**Bayport**” means Bayport Management Limited;

2.6 “**Capitec Bank**” means Capitec Bank Limited;

2.7 “**Commission**” means the Competition Commission of South Africa;

2.8 “**Competing Firms**” means Absa, African Bank, Capitec Bank, Ecobank, Investec, Old Mutual and VBS Bank and any other entity that competes against the Target Firm in the banking sector in

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South Africa and in which the PIC directly or indirectly holds shareholding interest that enables the PIC to appoint or nominate a director/s to the board of those entities;

2.9 **“Competitively Sensitive Information”** includes, but is not limited to:

- 2.9.1 Pricing – including, but not limited to, pricing of specific products within those overlapping relevant markets, prices / discounts / rebates offered to specific clients and planned reductions or increases;
- 2.9.2 Margin information by product or client;
- 2.9.3 Financial data;
- 2.9.4 Cost Information;
- 2.9.5 Information on specific clients and client strategy, including information with respect to the sales volume of clients;
- 2.9.6 Marketing strategies;
- 2.9.7 Advertising strategies;
- 2.9.8 Customer information;
- 2.9.9 Budgets and business plans; and
- 2.9.10 Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant products.

2.10 **“Conditions”** means these conditions;

2.11 **“Ecobank”** means Ecobank Transnational Inc.;

2.12 **“GroCapital”** means GroCapital Holdings (Pty) Ltd;

2.13 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

2.14 **“Investec”** means Investec Limited;

2.15 **“Merger”** means the acquisition of control by GroCapital over SABA;

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- 2.16 **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 2.17 **"Old Mutual"** means Old Mutual Plc;
- 2.18 **"Operational Involvement"** means any PIC individuals who have access to Competing Firms competitively sensitive information by virtue of PIC being a shareholder in those firms;
- 2.19 **"PIC"** means Public Investment Corporation SOC Limited, a duly authorised representative of the Unemployment Insurance Fund, the Government Employees Pension Fund and the Compensation Fund;
- 2.20 **"Proposed Transaction"** – means the acquisitions of control by GroCapital over SABA after the introduction of PIC in GroCapital's control structure;
- 2.21 **"Resultant"** means Resultant Finance (Pty) Limited;
- 2.22 **"SABA"** means the South Africa Bank of Athens Limited;
- 2.23 **"Target Firm"** means SABA;
- 2.24 **"Tribunal"** means the Competition Tribunal; and
- 2.25 **"VBS Bank"** means VBS Mutual Bank.

### **3. Conditions to the approval of the merger**

#### **3.1. Board seats and management**

3.1.1. For as long as the PIC can nominate individuals to the board of GroCapital and/or the Target Firm as directors, it shall ensure that their nominees to the board of GroCapital and/or the Target Firm:

3.1.1.1. are not the same individuals serving, nominated and/or appointed on any board or management committees or sub-committee of the Competing Firms.

3.1.2. The PIC shall ensure that its representative/s appointed to the board of GroCapital and/or the Target Firm must not have served on the board of directors and/or management

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committees of the Competing Firms for a period of 6 (six) months prior to being nominated to the board of GroCapital and/or the Target Firm.

### **3.2. Information flow restriction**

3.2.1. The PIC shall procure that its representative/s appointed to the board of the GroCapital and/or the Target Firm:

3.2.1.1. signs a confidentiality undertaking confirming that he or she will keep confidential, the Competitively Sensitive Information of the GroCapital and/or Target Firm from any individual/s or representatives of the PIC with any Operational Involvement in the Competing Firms.

3.2.2. The PIC shall ensure that Competitively Sensitive Information in respect of GroCapital and/or the Target Firm and the Competing Firms is not shared among different management teams within the PIC managing the listed and/or unlisted equities, respectively.

3.2.3. The PIC shall ensure that any of GroCapital and/or the Target Firm and the Competing Firms' Competitively Sensitive Information is only reported to the respective investment committee in closed door sessions and such information is aggregated.

### **3.3. Confidentiality and Information Exchange Policy**

3.3.1. The PIC shall design and implement a Confidentiality and Information Exchange Framework to the satisfaction of the Commission that will be used in this transaction. The Confidentiality and Information Exchange Framework shall stipulate *inter alia* that the PIC's representative/s on the board of GroCapital and/or the Target Firm shall not share or discuss any Competitively Sensitive Information with any individual/s or representatives of the PIC with any Operational Involvement in any of the Competing Firms.

## **4. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five)



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Days of it becoming effective.

- 4.2. PIC shall within 3 (three) months of the Approval Date, develop and submit a Confidentiality and Information Exchange Policy to the Commission in line with the Conditions.
- 4.3. The Commission shall provide comments to the Confidentiality and Information Exchange Policy contemplated in these Conditions within 15 (fifteen) Days of receipt.
- 4.4. Within 20 (twenty) Days of the Implementation Date, PIC shall submit to the Commission an affidavit, deposed to by its Authorised Director –
- 4.4.1.1. listing the names of its representative/s on the board of GroCapital and/or Target Firm;
  - 4.4.1.2. confirming that the PIC's representatives on the board of GroCapital and/or Target Firm meet the requirements set out in clause 3.1 above;
  - 4.4.1.3. confirming that a copy of these Conditions have been circulated to the PIC's representative/s on the board of GroCapital and/or Target Firm; and
  - 4.4.1.4. attaching a copy of the signed confidentiality undertaking referred to in clause 3.2.1 above.
- 4.5. On each anniversary of the Implementation Date, the PIC shall provide the Commission with an affidavit:
- 4.5.1. deposed to by its Chief Executive Officer –
    - 4.5.1.1. attesting to compliance with clause 3.1 of the Conditions;
    - 4.5.1.2. attesting to compliance with clause 3.2.1 of the Conditions;
    - 4.5.1.3. attesting to compliance with clause 3.3.1 of the Conditions; and
    - 4.5.1.4. highlighting any changes to the PIC's representatives on the board of GroCapital and/or the Target Firm.

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**5. DURATION OF THE CONDITIONS**

- 5.1. These Conditions shall apply for as long as the PIC holds an interest in GroCapital and/or the Target Firm and the Competing Firms.

**6. VARIATION**

- 6.1. The Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

**7. BREACH**

- 7.1. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been a breach by the Merging Parties of the Conditions, the breach will be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

**8. GENERAL**

- 8.1. All correspondence in relation to the Conditions shall be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).