

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 105/LM/Sept07

In the matter between:

African Bank Investments Limited

Acquiring Firm

And

Ellerine Holdings Limited

Target Firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and
M Mokuena
Heard on : 19 December 2007
Order Issued : 19 December 2007
Reasons Issued: 8 February 2008

Reasons for Decision

Approval

[1] On 19 December 2007, the Tribunal unconditionally approved the merger between African Bank Investments Limited and Ellerine Holdings Limited. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firm is African Bank Investments Limited ("ABIL"), a public company listed on the JSE Securities Exchange. ABIL does not have a single controlling shareholder. The shareholders of ABIL who hold in the region of 5% of its shareholding are the Public Investment Corporation (with a 5.7% shareholding), Fidelity Growth and Income Unit Trust (with a 4% shareholding), Leon Kirkinis (with a 3.2% shareholding), JP Morgan Investment Funds (with a 3.2% shareholding) and Investec Value Fund (with a 3.1% shareholding).

[3] ABIL controls 6 firms including African Bank.¹

¹ The other firms controlled by ABIL are Theta Investments (Pty) Ltd, The Standard General Insurance Company, Credit Save (Pty) Ltd, Teba Credit (Pty) Ltd, and Miners Credit Guarantee (Pty) Ltd.

- [4] ABIL has a number of dormant firms which are being liquidated.²
- [5] The primary target firm is Ellerine Holdings Limited (“Ellerines”), a public company listed on the JSE Securities Exchange. Ellerines is not controlled by any single shareholder. The Public Investment Corporation, Ellerines Properties (Pty) Ltd, Liberty Life and Investec beneficially own in the region of 5% of the issued share capital of Ellerines.
- [6] Ellerines owns 100% shares in Relyant Retail Limited. In retail Ellerines trades as Ellerine Personal Finance (Pty) Ltd; Ellerine TM (Pty) Ltd; Ellerine Management Services (Pty) Ltd; Ellerine Trading (Pty) Ltd trading as Beares, Savells/Fairdeal, Dial-a-Bed, Geen & Richards Furniture; Relyant Retail (Swaziland) (Pty) Ltd and Geen & Richards (Swaziland)(Pty) Ltd.
- [7] In insurance, Ellerines trades as Ellerine Services (Pty) Ltd, Customer Protection Insurance Company Limited. Relyant Retail Lesotho (Pty) Ltd is non-trading.

Description of the transaction

- [8] ABIL will acquire the entire issued share capital of Ellerines through a scheme of arrangement in terms of section 311 of the Companies Act, 1973, as amended. At the conclusion of the transaction, ABIL will own 100% of the entire issued share capital of Ellerines.

Rationale for the transaction

- [9] The primary acquiring firm perceives this transaction as an opportunity to continue to grow its business to sufficient scale so that it can further lower the cost of credit to its clients and accelerate the innovation of new credit products and risk underwriting models to take full advantage of the changing landscape of the credit markets. ABIL believes that the credit furniture retail market offers attractive growth opportunities, and Ellerines offers a strategic fit to pursue its strategies.
- [10] The primary target firm believes that the transaction with ABIL offers it the perfect opportunity to fulfil its strategic objectives of aligning with a financial institution, stem the loss of retail credit customers and provide the ideal

² See Annex B1 of the parties' filing.

platform to address the growing burden of regulatory compliance and to rapidly expand the Ellerines group's reach and range of financial services products.

The parties' activities

Primary acquiring firm

[11] ABIL is involved in the provision of unsecured credit to the South African market. ABIL targets mainly customers in the LSM3-8 category, a category designed for those formally employed and banked.

[12] ABIL offers the following:

[12.1] Credit cards which are primarily issued to existing customers with a proven credit history;

[12.2] Term loans, offered in differentiated product offerings such as payroll based, debit order based and cash loans;

[12.3] Credit life insurance offered to borrowers who are required to insure their debt for the term of their loan against contingencies such as death, disability and retrenchment.

Primary target firm

[13] Ellerines is a furniture retailer and supplier of household goods and appliances. Its activities are carried out through:

[13.1] Traditional credit retail division which comprises of Ellerines, Town Talk and FurrnCity brands trading out of 553 stores;

[13.2] Universal credit retail division which comprises of Beares, Geen & Richards, Lubners and Savells/Fairdeal, trading out of 403 stores;

[13.3] Value retail division which comprises of Furniture City, Dial-a-bed and Mattress Factory trading out of 68 stores; and

[13.4] Decorating division which targets the upper end of the market and comprises of 11 Wetherlys' stores and 11 Osier retail outlets as well as Roodefurn Manufacturing.

[14] Apart from retail activities, Ellerines offers the following products to middle and lower market segments:

- [14.1] Furniture credit which consists of instalment credit provision and micro-loans which are ancillary to and inextricably linked to the sale of furniture and household goods and appliances;
- [14.2] Personal loans which are small, short-term, unsecured personal loans through its "Rainbow loans" division;
- [14.3] Home loans which are offered in partnership with a bond originator company to customers and which are coupled with a discounted furniture credit facility;
- [14.4] Insurance is offered for funeral cover and credit life cover to third parties and customers of its Rainbow loans division. It offers short-term credit and all risk insurance, legal assistance and extended warranty policies to its retail customer base and to other third parties' retail customers through the Relyant Insurance Company and Customer Protection Insurance Company; and
- [15] Ellerines' Early Bird outlets provide repair services for a wide range of home appliances.

Relevant product market

Unsecured credit market

- [16] The parties have submitted that the relevant market is the market for the provision of unsecured credit. They submitted that in the past the market could have been segmented further.³ However the advent of the National Credit Act has removed the statutory barriers that used to separate the consumer credit market into a number of distinct markets.⁴ The merging parties stated that to the extent that credit is granted there is an overlap in the activities of the merging firms in respect of the provision of unsecured credit.⁵ Moreover while the furniture bought by Ellerines' customers could be attached or recovered in

³ Consumer credit has traditionally been segmented with reference to term of the loan, the loan amount, the use of the loan, and the type of the product being loaned. With reference to the term, the loan would be typically less than 3 months, less than 12 months or 36 months. With reference to the amount it would be classified as less than R10 000.00 or greater than R10 000.00. Loan use would typically include educational loans, home loans, retail credit and vehicle and asset finance. The types of credit ranged from secured and unsecured, cash versus card based facilities/ bank accounts and credit cards versus personal loan. Credit providers focused on specific target markets such as the formal, banked sector versus the informal consumer credit sector, and high income earners versus low income groups.

⁴ See record page 72.

⁵ At the hearing the parties submitted that the unsecured credit market envisages a post National Credit Act era which cannot be fully accurately quantified and known at present.

the event of non-payment of the loan, used furniture was not considered sufficient security for the provision of credit by Ellerines.⁶

[17] The Commission argued that a broader market of unsecured credit is more appropriate in this case. However, it acknowledges the possibility of a defining a narrower market for credit provision for the purchase of furniture. If that narrow approach is adopted then there would be no product overlap between the parties

[18] In the course of its investigation, the Commission also procured the views of the National Credit Regulator (“NCR”). The NCR was of the view that both ABIL and Ellerines were players in the micro-lending market. The NCR estimated that the market shares of the merging parties in the micro-lending market will be 34% based on the loan book value, and 17% based on branches. However, as submitted by the NCR, the micro-lending market focuses on the low income credit market which is a subcomponent of the broader unsecured credit market.⁷ The NCR also indicated that it had provided the market share estimates on limited information available to it.⁸ Hence, having regard to all of the above, we find that for purposes of this transaction, the relevant market is the market for the provision of unsecured credit.

Credit life insurance

[19] ABIL offers credit life insurance to borrowers who are required to insure their debt for the term of their loan against contingencies such as death, disability and retrenchment. Ellerines offers funeral cover and credit life cover to third parties and customers of its rainbow loans division. It offers short-term credit and all risk insurance, legal assistance and extended warranty policies to its retail customer base and to other third parties’ retail customers through the Relyant t Insurance Company and Customer Insurance Company. However, the overlapping activities of the merging parties are limited to the provision of credit life insurance as ancillary to the provision of unsecured credit and not in the broader market for life insurance as such.⁹ Hence we do not consider this as a relevant market for purposes of competition evaluation.

⁶ See p10 of the Commission’s Recommendations.

⁷ See p737 of the record.

⁸ See page 740 of the record. The NCR also submitted that its market shares estimates were obtained from those providers who had registered. There were a large number of unregistered providers. Its analysis of the merging parties’ activities was also limited because the information available to it was limited to those matters required by the NCA.

⁹ See record page 79.

Relevant geographic market

[20] The relevant geographical market is national. Both Ellerines and ABIL have a national footprint and operate from a number of outlets spread throughout the country.

Competition analysis

[21] The major participants in the market for unsecured loans may include the major banks, furniture and clothing retailers and a host of other players that are not necessarily registered with the NCR due to the fact that they are exempted from the provisions of the NCA.¹⁰

Table 1: Market shares of the competitors in the provision of unsecured loans during 2006/2007

Entity	Market Share
Standard	20
ABSA	19
FNB	15
Nedbank	11
Other Banks	4
ABIL	6
Ellerines	4
Merged entity combined	10
Edcon	6
JD Group	6
Woolworths	4
Lewis	2
Foschini	2
Total	100

Source: Merging Parties

[22] The combined post merger market share of the merging parties will be 10%. The market share in comparison to other players in the market is relatively low.

¹⁰ See letter from the NCR on page 740 of the record.

The merged entity will continue to face competition from at least four larger players and several other players. In our view the transaction is unlikely to substantially prevent or lessen competition.

Foreclosure concerns

[23] Given that the acquiring firm saw this acquisition as an opportunity to grow its credit business the Tribunal requested the parties and the Commission to address it on the vertical effects, if any, of this merger and in particular to address us on whether this transaction was likely to result in the foreclosure of ABIL's competitors from the Ellerines customer base or foreclosure of Ellerines' competitors from ABIL's credit provision services. Both the Commission and the merging parties addressed the Tribunal in this regard. .

Foreclosure of ABIL's competitors

[24] The merging parties submitted that it is not possible to isolate Ellerines' customer base from the credit granting activities of competitors in the unsecured credit environment. This is so because the NCA has blurred distinctions between the traditional types of credit and has made it more difficult to lock-in customers with a single credit provider. Ellerines' customer base would therefore be accessible to other credit providers. In addition, in order to effectively foreclose against other credit providers, Ellerines would have to refuse to accept cash sales from its customers who had obtained credit from credit providers other than ABIL, an eventuality which is highly unlikely.¹¹

Foreclosure of Ellerines' competitors

[25] The merging parties submitted that Ellerines' competitors would not be foreclosed from ABIL's credit provision services because the very nature of unsecured credit implies that a credit provider such as ABIL could not control where its customers spend their money. Thus attempting to foreclose Ellerines' competitors from the credit provision facilities of ABIL was not practically feasible. In addition, ABIL's market research has shown that only a small percentage of the loans granted to its customers are spent on buying furniture or appliances. The research shows that approximately 30% of ABIL's customers spend their money on education, 30% on home improvements, and the remainder ABIL on *ad hoc* emergency expenses such as funerals, with very

¹¹ See submissions from the merging parties dated 13 December 2007 where it is stated that Ellerines would never turn away cash sales.

little credit being used for furniture or appliance purchases. It would thus not be a viable option to foreclose Ellerines' competitors.

[26] In light of the above we are persuaded that this transaction does not give rise to any competition foreclosure concerns.

Public interest

[27] There are no public interest issues.

Conclusion

[28] The merger does not give rise to any substantial horizontal or vertical competition concerns and is approved unconditionally.

Y Carrim
Tribunal Member

8 February 2008
DATE

D Lewis and M Mokuena concur in the judgment of Y Carrim

Tribunal Researcher : R Kariga
For the merging parties: Cliffe Dekker Attorneys
For the Commission: L Khumalo (Mergers and Acquisitions)