

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM069Jul22

In the large merger between:

African Bank Limited

Primary Acquiring Firm

And

Grindrod Financial Holdings Limited

Primary Target Firm

REASONS FOR DECISION

- [1] On 21 September 2022, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between African Bank Limited ("African Bank") and Grindrod Financial Holdings Limited ("Grindrod FH").
- [2] In terms of the proposed transaction, African Bank intends to purchase all of the issued ordinary shares in Grindrod FH and all the issued preference shares in Grindrod Bank from Grindrod Limited.¹
- [3] African Bank is wholly owned and controlled by African Bank Holdings, which is in turn controlled by the South African Reserve Bank ("SARB").² In addition to controlling African Bank, African Bank Holdings wholly owns and controls African Insurance Group Limited ("African Insurance").

¹ The Commission considered indivisibility and found that the share purchases amount to a single indivisible transaction as Grindrod FH and Grindrod Bank are part of the Grindrod Group, and the sale occurs cumulatively as regulated by a single Sale of Shares Agreement.

² In addition to SARB, the remaining shareholders of African Bank Holdings include Government Employees Pension Fund ("GEPF"), FirstRand Bank Limited ("FirstRand"), The Standard Bank of South Africa Limited ("Standard Bank"), Absa Trading and Investments Solutions Proprietary Limited ("ABSA"), Nedbank Limited ("Nedbank"), Investec Bank Limited ("Investec"), and Capitec Bank Limited ("Capitec").

- [4] African Bank's current banking activities consist of retail banking and corporate banking. Its retail banking activities include unsecured lending, transactional banking, retail investments, and credit and life insurance products.
- [5] Grindrod FH is wholly owned and controlled by Grindrod Limited, which is a public company listed on the Johannesburg Stock Exchange.³ Grindrod FH wholly owns and controls Grindrod Bank and GFH Investments Proprietary Limited ("GFH Investments"). Grindrod Bank, in turn, has an interest in Commerce Square Corporate Finance Proprietary Limited ("Commerce Square") and Grindrod Preference Share Investment Trust ("Investment Trust").
- [6] Grindrod FH is a bank holding company which holds interests in Grindrod Bank and GFH Investments. Grindrod Bank specialises in providing financial services to private, corporate, and institutional clients. GFH Investments, Commerce Square, and Investment Trust are all dormant firms that conduct no business activities.

Competition assessment

- [7] The Competition Commission ("Commission") considered the activities of the merging parties and found horizontal overlaps in the broad market for the provision of banking services, and in the narrower market for corporate banking in South Africa.
- [8] In both above markets, the Commission found that the combined market shares of the merging parties are very low below 1% respectively. Furthermore, the merged entity will continue to face competition from larger commercial banks as well as smaller competing banks.
- [9] No vertical overlap was found between the activities of the merging parties.
- [10] The Commission engaged with various competitors of the merging parties who raised no concerns.
- [11] Accordingly, the proposed transaction does not give rise to any competition concerns.

³ The shares in Grindrod Limited are widely held and Grindrod Limited is not controlled by any single firm. Shareholders which hold more than a 5% interest in Grindrod Limited include Industrial Partnership Investments Proprietary Limited, Grindrod Investments Proprietary Limited, PSG Konsult, and GEPP.

The Minister of Finance (“the Minister”)

- [12] The Commission notified the Minister of the proposed transaction, who in his response, stated that he will not assert jurisdiction over the proposed transaction as it does not militate against government’s objectives for the regulation of the financial sector.
- [13] In addition, the Minister concurred that the merging parties hold small market shares. The Minister was of the view that the proposed transaction will facilitate the merging parties competitiveness in the South African financial sector, as they will be better able to provide a suite of products that can compete against product offerings of larger financial institutions.
- [14] The Minister further stated that the proposed transaction does not create an institution that can pose risk to the stability of the country’s financial sector if it were to fail.

Public interest

Employment

- [15] The merging parties submitted that the proposed transaction will not have any negative effect on employment. In particular, there will be no job losses as a result of the proposed transaction.
- [16] The Commission engaged with the trade union representative [REDACTED] of The Finance Union (“SASBO”) who represent employees of African Bank as well as the employee representative for the non-unionised employees of Grindrod Bank [REDACTED]. Both representatives confirmed that the relevant employees are aware of the proposed transaction and have not raised any concerns.

Spread of ownership

- [17] Grindrod Bank has an historically disadvantaged person (“HDP”) shareholding of 70.12%.
- [18] African Bank’s shareholding as per the Broad-Based Economic Empowerment (“B-BBEE”) certificate is 27.14%. However, the merging parties submit that this does not fully reflect the extent to which African Bank’s ownership is representative of, and for the benefit of HDPs. This is because the B-BBEE certificates calculation excludes the HDP shareholdings of SARB and GEPP. If their shareholding were included, African

Bank submits that a notional HDP empowerment measure would be approximately 78%.

[19] The Commission noted that based on this proxy figure provided by the merging parties, there would be an increase in the greater spread of ownership by 7.88%.

[20] In light of the above the proposed transaction is unlikely to raise employment concerns or have any negative impact on the promotion of the greater spread of ownership.

Conclusion

[21] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on public interest.

Signed by: Yasmin Tayob Carrim
Signed at: 2022-09-21 08:19:25 +02:00
Reason: Witnessing Yasmin Tayob Carrim

Primo Legal Centre

21 September 2022

Ms Yasmin Carrim

Date

Prof Imraan Valodia and Ms Andiswa Ndoni concurring

Tribunal Case Manager:

Leila Raffee

For the Merging Parties:

Lara Granville and Reece May of Cliffe Dekker Hofmeyr Inc on behalf of African Bank; Richardt van Rensburg and Zaid Bhayat of ENS Africa on behalf of Grindrod Financial Holdings

For the Commission:

Mishkah Abdool Sattar and Thabelo Masithulela