

## Information exchange viewed by Competition Authorities as reason to ring fence

Commenting on the recent decision by the Competition Authorities in the merger involving Absa and the Private Label Store Card Portfolio of Edcon, Lerisha Naidu, senior association, competition practice, Cliffe Dekker Hofmeyr, points out that the Commission views information exchange as potentially anti-competitive.

In January 2013, the Competition Tribunal issued its reasons for its approval, subject to conditions design to minimise the potential for coordinated effects post-merger.

Pre-merger, certain business activities supplied by the merging parties, namely those relating to the provision of unsecured credit, were found to horizontally overlap. This was because Absa is party to a joint venture with Woolworths called Woolworths Financial Services (WFS), which offered certain types of unsecured credit products and that, post transaction, Absa would acquire the right, title and interest to the accounts and receivables relating to the Edcon portfolio (which offers substitutable products and services WFS).

The Commission regarded Absa's post-transaction interest in both WFS and the Edcon portfolio as a platform for collusion, which could facilitate the exchange of competitively sensitive information (such as pricing, marketing policies and commercial strategies) between Edcon and Woolworths through Absa and could substantially prevent or lessen competition. The Tribunal agreed with the Commission's findings and imposed a set of behavioural conditions, pertaining to the implementation of ring fencing measures designed to prevent anti-competitive information exchange, and monitoring conditions.

In the decision of Business Venture Investments No. 1624 and another and Waco African and another un case number 54/LM/May12, similar conditions were imposed by the Tribunal to prevent the dissemination competitively sensitive information within the acquiring group as regards its interests in competing scaffolding businesses, post-merger.

These decisions and the imposition of such conditions reflect the increasing tendency by the competition authorities to look closely at transactions in which the potential for the dissemination of competitively sensitive information between firms is heightened. In this light, it is important for acquiring firms that seek to acquire interests in competing entities to implement measures and to proactively adopt policies and procedures that ensure that the likelihood of information exchange post-transaction is obviated."