



MERGER ACTION GROUP – NEWS RELEASE

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LEGAL CHALLENGE TO HBOS MERGER DECISION

A group of businessmen, customers, account holders and shareholders is mounting a legal challenge against the UK Government's controversial move to allow the merger of HBOS and Lloyds TSB without referring it to the Competition Commission.

The Merger Action Group [MAG] has lodged an application with the Competition Appeal Tribunal [CAT] claiming the decision by Business, Enterprise and Regulatory Reform Secretary Lord Mandelson was 'unlawful'.

The group, whose spokesman is Edinburgh architect Malcolm Fraser, responsible for the repair and renewal of HBOS HQ on The Mound, has submitted a 37-page appeal with CAT, which has the power to overturn the Government's decision.

The group is asking for the tribunal to sit in Edinburgh because the appellant is Scottish and both Lloyds TSB and HBOS are registered Scottish companies.

However, the group wants to act as a rallying point for interested parties across the UK. They will be engaging with trade unions, industry bodies, consumer associations and communities across the country in an attempt to ensure the public interest is protected.

Mr Fraser said: 'As a group, we are extremely concerned that due legal process has been ignored. In Scotland particularly, there is a widespread and growing unease about what has taken place.

'Given that taxpayers are ultimately funding the takeover, we are simply asking that the law is properly applied, and that our long-term interests are protected. We do not feel that is too much to ask.'

CAT, comprised of High Court Chancery Division judges and other senior lawyers, is presided over by Sir Gerald Barling QC, one of the UK's most experienced competition and technology barristers.

MAG has engaged Brussels-based Scots advocate Ian Forrester QC, a specialist in European and competition law, to lead the appeal.

Given the legal implications, MAG initially restricted itself to contacting some of those who have previously spoken out about the merger, but has been setup to accommodate all those who wish to join. MAG expects a huge interest over the next few weeks.

Mr Fraser went on: 'Let no-one doubt the seriousness and responsible nature of our submission. We have taken the best legal advice on UK and European competition law, and feel that we have uncovered matters which deserve proper consideration.'

'CAT has available a number of remedies, all of which we feel would be better than a decision which we feel was taken in haste, and without cognisance of changing circumstance.

'This is an official review before High Court judges. They have the power, under the Act, to force the Secretary of State to refer the proposed merger to the Competitions Commission and their decision is legally binding.

'Decisions by the Secretary of State to refer a merger to the CC have been challenged through CAT in the past. However, this is the first time a decision not to follow a decision made by the OFT to refer the merger to the CC has been legally challenged.

'We are not taking this step lightly but feel it is in the interests of jobs, competition and the taxpayer that the decision must be seen to have been taken properly. The implications are so huge that we could not comfortably stand aside.'

In conjunction with the official Appeal, MAG is launching a public 'grassroots' campaign for support from anyone – business people, mortgage holders, current account holders, shareholders – who shares its view that the proposed merger should have been referred to the Competition Commission.

The circumstances which led to MAG's formation and appeal began on September 16 when the HBOS share price fell to 88p, casting serious doubts on

the bank's ability to raise funds on the money markets. The following day, it emerged that HBOS was in advanced merger talks with Lloyds TSB.

The Prime Minister Gordon Brown revealed that he had personally intervened to broker the deal and made clear the Government was prepared to 'rip up Britain's competition laws' to allow the merger to go ahead. The Chancellor, Alistair Darling, added: 'We have made a decision that we will waive the competition requirements in relation to these two banks – that's not going to be revisited.'

On September 18, the then BERR Secretary John Hutton, announced the Government would introduce an intervention order to overrule a decision by the Office of Fair Trading [OFT] to refer the proposed merger to the Competition Commission.

By the beginning of October, it was recognised by both the UK and US governments that a rescue package was required to support the stability of the financial systems. The UK Government announced a package of £400 billion and on October 13 announced a total of £37 billion to be invested in three banks, RBS, Lloyds and HBOS. The Government stated that the recapitalisation was designed to help those banks receiving funds to achieve prudent but efficient capital structures.

On October 31, Lord Mandelson – who had succeeded Mr Hutton – confirmed that he was overruling the OFT, claiming competition issues were outweighed by the public interest benefits of creating financial stability.

MAG's case against the Secretary of State is based on three key points:

- In law, the Minister was obliged to keep an open mind when making his decision. However, statements made by the Prime Minister and Chancellor of the Exchequer in September 'fettered' the Minister to keep an open mind in making his decision on October 31.
- Instead of using the legislation in place at the time of the merger as the justification for not referring the merger, the Secretary of State created new laws specifically to approve the merger, thereby retrospectively giving powers to himself that were not available at the time the merger was announced.
- The decision was predicated on the justification that if this specific merger did not take place HBOS would collapse and destroy stability in the financial system. Following the Government rescue package this was no longer the case, because there was provision for the Government to provide the capital as stated by the OFT, and therefore his decision was made on a false assumption.

MAG maintains that the 'unlawful' actions over the proposed merger of the Prime Minister, Chancellor and the Secretary of State are against the interests of fair competition, HBOS, its shareholders, its customers and its workforce, and that they are stifling competition.

Mr Fraser said: 'The Government has gone out of its way to discourage alternative interests to come into play for the future of HBOS. This is not a level playing field. We aim to level it, and to ensure that the UK's public interest is served as it should be.

'Our primary concern – as recognised by the OFT report – is that the Government has ripped up the competition laws. These concerns will come back to haunt us in the future.

'Lord Mandelson, in our view, is acting unlawfully.'

The MAG website where supporters can join the campaign is
www.mergeractiongroup.org.uk

[Please note that the website will not go live until Saturday]

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