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## **LEGAL CHALLENGE TO HBOS LLOYDS MERGER TO START ON MONDAY**

The legal challenge to the UK Government's decision to approve the HBOS-Lloyds TSB merger without referring it to the Competition Commission is to begin on Monday. [DEC 8]

The Competition Appeal Tribunal [CAT] today ruled that The Merger Action Group's appeal against Business and Enterprise Secretary Lord Mandelson is expected to be completed by the following day.

Although the case will be heard in London, the Tribunal accepted a plea by MAG that it be conducted under Scots Law.

MAG spokesman Malcolm Fraser, an Edinburgh architect and businessman, welcomed the decision.

He said: 'We are delighted that the tribunal recognises the serious and responsible nature of our claim and that the case clearly has merit.

'Although we would have preferred the appeal to be heard in Edinburgh, I am pleased it will be heard under Scots Law. This clearly reflects the tribunal's recognition of the appeal's importance especially to customers, shareholders and business interests in Scotland.

'The unprecedented rate at which CAT has decided to fast-track our appeal also demonstrates how vital this case is. This rather contrasts with the stated view of HBOS spokesman Shane O'Riordan that the appeal had "no merit whatsoever".

'We are very confident of our legal case and we are greatly encouraged by the huge groundswell of support that our public campaign has attracted in the very short period of time since it was launched only a few days ago.'

The decision on the date, venue and jurisdiction for the hearing was taken at a preliminary case management conference presided over by CAT president Sir Gerald Barling QC, sitting with Professor Peter Grinyer and Michael Blair QC.

MAG, representing so far more than 500 shareholders, account holders, businessmen and politicians, was represented at today's hearing by Ian Forrester QC. He made a strong plea for the hearing to be held in Scotland on the grounds that both HBOS and Lloyds TSB were registered in Scotland, as was MAG.

However, Sir Gerald said that given the urgency of the case and the very short timescales involved it would be impractical to move the tribunal to Edinburgh. This was the only reason he rejected MAG's plea in this regard, he added.

But he agreed that the appeal should be conducted under Scots Law, rejecting a plea by Lord Mandelson's legal team that it should be heard under English Law.

Today's preliminary hearing ruled that the appeal proper would be heard as soon as Monday, starting at mid-day. It is expected to be concluded by lunchtime the following day.

Counsel for Lord Mandelson, Paul Harris, along with counsel for HBOS, Nicholas Green QC and Lloyds TSB, Helen Davies QC, called for a quick judgement in the case.

Sir Gerald said there were three possible outcomes – firstly, that it might be possible to deliver an instant judgement; secondly, that it might be possible to deliver an instant decision without reasons; or the tribunal might be unable to reach a quick decision.

Among those who have signed up to the MAG campaign are Dan Macdonald, chief executive of Macdonald Estates; prominent Edinburgh businessman Tim Noble; financier Peter de Vink; Mark Shaw, chief executive of Hazledene Group; and David Alexander, of DJ Alexander, Scotland's largest independent residential letting company.

The Scottish Government is among parties that has lodged notes of interest with CAT and had also made a plea for the case to be heard in Edinburgh.

A cross-party group of MSPs has also thrown its weight behind MAG's appeal. Scottish Liberal Democrat leader Tavish Scott, independent Margo MacDonald,

the SNP's Alex Neil and Scottish Greens leader Patrick Harvie share MAG's belief that the decision by Business and Enterprise Secretary Lord Mandelson to allow the merger to go through without referring it to the Competitions Commission was unreasonable, irrational and unlawful.

By lunchtime today, MAG's fighting fund to finance the legal action and public campaign, which will run into six figures, stood at more than £50,000 as support from a wide cross-section of the community continued to grow rapidly.

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, thus preventing him keeping an open mind when 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 promoted 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 Lord Mandelson were against the interests of fair competition, HBOS, its shareholders, its customers and its workforce, and that they will stifle competition.

Mr Fraser said: 'The UK 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 ripped up the competition laws to allow this shotgun wedding between HBOS and Lloyds TSB to go ahead.'

## **Notes to Editors and Correspondents:**

Background to the appeal:

*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 that the Government would introduce an Intervention Order that would set aside the Office of Fair Trading's stated concerns that the proposed merger would lead to a significant lessening of competition. Such concerns by the OFT would automatically, under competition legislation, lead to the matter being referred to the Competition Commission for further investigation. But this step was bypassed after the Government intervened.*

*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.*

### **For further information please contact**

Ian McKerron on 07740 510411 or  
Gordon Hay on 07784 772905

The MAG website where supporters can join the campaign is  
[www.mergeractiongroup.org.uk](http://www.mergeractiongroup.org.uk)