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**THE MERGER ACTION GROUP – NEWS RELEASE
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Business Secretary Lord Mandelson 'short-circuited' the law to push through the Lloyds TSB takeover of HBOS under pressure from the Prime Minister and Chancellor who had already decided it must go ahead, a tribunal heard today. [tues]

But bypassing competition rules was not only unacceptable, it was also unlawful, according to a leading QC.

Ian Forrester told the second day of a hearing into an appeal against Lord Mandelson's decision to sanction the proposed merger without referring it to the Competition Commission that he accepted the Minister had been in a difficult position.

In his summing up of the case brought by The Merger Action Group, he told the Competition Appeal Tribunal: 'There is an elephant in the corner of the room today – and that is the Government's policy.'

He said there was clear evidence from the public statements Gordon Brown and Alistair Darling made in mid-September – that were prepared to 'rip up' competition law - that they had already decided the fate of HBOS.

This meant that when Lord Mandelson came to announce his decision some six weeks later he was already bound or "'fettered' by what his senior Cabinet colleagues had already declared.

'They [the Government] had decided at the highest level that the merger would go through and that competition rules would be waived,' said Mr Forrester.

He said it was MAG's contention that this had been a 'unique' decision and the Government's promotion of new legislation to accommodate the move had been done entirely with the Lloyds TSB HBOS merger in mind.

He said MAG's challenge was based on the legality or otherwise of the Minister's decision – a decision, he said, that should be annulled.

Mr Forrester urged the judge, tribunal chairman Sir Gerald Barling QC, sitting with Michael Blair QC and Professor Peter Grinyer, to order Lord Mandelson to take into account Office of Fair Trading [OFT] concerns about the anti-competitive impact of the proposed takeover and refer it to the Competition Commission for further consideration.

Mr Forrester said he made no apology for taking instruction in the case from six sober and responsible citizens 'who are troubled, worried and aggrieved' that the merger would lead to a significant restriction of competition within the banking sector, particularly in Scotland.

He added: 'It is not fanciful as has been suggested for this group and their 600 or so supporters to be concerned about the impact of this merger on their personal lives, on their businesses and therefore the lives of their employees.

'Many of them have debts, loans, mortgages with HBOS. They are not busy-bodies looking over the fence at something that does not concern them. They are regular users of banking services and they will undoubtedly suffer if competition is severely reduced.'

Paul Lasok QC, for Lord Mandelson, had earlier accused MAG of using 'spoiling tactics' and 'inadequate and spurious grounds' in a bid to block the merger.

He claimed that MAG's argument that there was no need for a merger after the Government had announced its banks recapitalisation measures was 'a matter of judgement'. Lord Mandelson, he said, had exercised his judgement when he decided to allow the merger to go forward without reference to the Competition Commission.

Nicholas Green QC, for HBOS, told the tribunal that Lord Mandelson had 'discretion in law' to make the decision he did, having taken into account what was best for the economy as a whole.

On the opening day of the appeal on Monday, Mr Forrester told the tribunal that the takeover was 'preordained' by the Chancellor and Prime Minister when in mid-September they revealed publicly that they were prepared to 'rip up' the rules to allow the deal through without reference to the Competition Commission.

The stated policy of Brown and Darling had 'fettered' Lord Mandelson, said Mr Forrester. The Business Secretary was 'bound' by what had already been said by his Cabinet colleagues when he announced his decision on October 31 to ignore the OFT's advice and bypass the Competition Commission, it was claimed.

Today [tues] Helen Davies QC, for Lloyds TSB, claimed there was no proof that Lord Mandelson had been 'fettered' by the statements made by the Prime Minister or the Chancellor.

Although the appeal is being held in London, it is being heard under Scots law and any appeal that may arise will be heard at the Court of Session in Edinburgh.

The panel heard on Monday that MAG had won the backing of some 630 members of the public, while First Minister Alex Salmond and Mr Peter Vicary-Smith, chief executive of Which? – Europe's largest independent consumer body with more than 700,000 members - were among others who had written to the tribunal in support of the appeal.

Around 40 lawyers are taking part in the case at the Competition Appeal Tribunal's building in central London, 35 of them representing Lord Mandelson, HBOS and Lloyds TSB.

The tribunal today [tues] finished hearing evidence and summaries from both sides.

Sir Gerald has indicated that the panel may reach a decision by as early as tomorrow [wed] but it will depend on how long their private deliberations take.

After the case, MAG spokesman Malcolm said he was pleased with the way the group's arguments had been presented.

He added: 'We firmly believe we have a very strong case and we are confident the panel will reach the right decision. Despite suggestions from the opposing sides, we are convinced that we had every right and every justification for bringing this appeal because of the vital public interest concerns that dominate this issue.'

HBOS shareholders are due to meet in Birmingham on Friday to vote on the proposed merger. It is unclear whether the meeting will still go ahead if the tribunal finds for the appellant, has not been able to reach a decision, or the case goes to further appeal at the Court of Session.

For further information please contact:

Ian McKerron on 07740 510411 or Gordon Hay on 07784 772905

