

In the large merger between:

Citibank NA South Africa Branch  
(Registration No. 1995/007396/10)

and

Mercantile Bank Limited

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### Reasons for Decision

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#### Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 15 December 2004 approving without conditions the merger between the abovementioned merging parties. The reasons for approving the merger are set out below.

#### Merging parties

[2] The **primary acquiring firm** is Citibank N.A. South Africa Branch ("Citibank"), a wholly owned subsidiary of Citibank N.A. New York which forms part of the Citigroup Holdings Company with its principal place of business in New York, USA.

[3] The **primary target firm** is Mercantile Bank Limited ("Mercantile") controlled by Mercantile Lisbon Bank Holdings operating in Sandton. Mercantile has been cited as the target firm as it was the owner of the asset finance book which forms part of the subject matter of this transaction. The Commission's view is that the asset finance book of Mercantile as defined by the parties should be regarded as the transferred firm.

#### Background

[4] During November 2001, Mercantile ceded its title in and to certain credit agreements and discounting agreements to Citibank. In terms of the transaction Citibank acquired the right to receive the rental, lease and instalment payments ("the transaction asset book") under these agreements while Mercantile was paid the discounted net value of the cash flows the transaction asset book would generate.

[5] Both Citibank and Mercantile applied for and received approval from the South African Reserve Bank for the transaction in terms of the Banks Act<sup>1</sup> as well as from the Minister of Finance.

[6] The transaction was not notified to the Commission.

[7] On 11 March 2002, the Commission wrote a letter to Mercantile stating that it

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<sup>1</sup> Act 94 of 1990.

was the Commission's opinion that the transaction constituted a merger as defined in the Competition Act 89 of 1998 (as amended) ("the Act"). The Commission requested further information from Mercantile to determine whether the transaction was a small, intermediate or larger merger.

[8] On 29 May 2002, Mercantile received a further letter from the Commission, in which the Commission notified Mercantile that it was of the view that the parties to the transaction had contravened section 13A of the Act and that the Commission would refer the matter to the Tribunal. Pursuant to a request by Citibank's legal representatives the Commission postponed the referral of the matter to this Tribunal in order to resolve the issues of dispute between the Commission, Citibank and Mercantile.

[9] Through an extensive period of engagement between the legal representatives of Citibank, Mercantile and the Commission, the attempt to resolve the differing positions between the parties culminated in a meeting with the Commission on 28 January 2004, at which Citibank and Mercantile agreed to settle the differences on the basis that the transaction would be notified and both Citibank and Mercantile would pay an administrative penalty of R 100 000,00, subject to confirmation by the Tribunal. Such amount follows the merging parties' breach of section 13A(3) of the Act for having implemented a merger without prior approval of the relevant competition authorities<sup>2</sup>.

[10] The agreement between the merging parties and the Commission was subsequently made a Consent Order of this Tribunal on 15 December 2004.

### **The merger transaction**

[11] As alluded to above, Citibank acquired in November 2001 a portion of Mercantile's asset finance book.<sup>3</sup> This portion of the asset finance book related to certain credit agreements in terms of which Mercantile rented or sold on instalments certain office automation equipment and to certain discounted credit agreements.

### **Rationale for the transaction**

[12] The merger arose out of restructuring of the Mercantile business that took place in 2001.

### **Evaluating the merger**

#### **The relevant market**

[13] **Citibank** provides a full range of financial and banking services throughout South Africa. These services include the provision of asset-based finance; global

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<sup>2</sup> Section 13A(3) of the Competition Act 98 of 1998 provides:

“Notification and implementation of other mergers –  
(3) The parties to an intermediate or large merger may not implement that merger until it has been approved, with or without conditions, by the Competition Commission in terms of section 14(1)(b), the Competition Tribunal in terms of section 16(2) or the Competition Appeal Court in terms of section 17.”

<sup>3</sup> The parties aver that at the time that the transaction was concluded the parties were of the view that this acquisition would not constitute the acquisition of control over “part of the business” of Mercantile as contemplated by s 12 of the Act.

transaction services (i.e., cash management & trade services for corporations & financial institutions on a global basis); lending services; project and structured finance; equities, research and investment banking services; and treasury services.

[14] Citibank has advised the Commission that although it provides asset-based finance the underlying assets, which it financed, did not relate to rental or instalment sales with regard to office automation equipment.

[15] **Mercantile** provides a full range of domestic and foreign banking services. It operates in selected retail, commercial, corporate and alliance banking niches to which it offers banking, financial and investment services. Its current activities can be divided into 4 main categories, namely accounts, investments, lending products and other services.<sup>4</sup>

[16] However, the only asset that is being sold (or which has already been sold) by Mercantile is a portion of its asset finance book. The underlying assets, which are financed, relates to rental and instalment sale agreements of office automation equipment.<sup>5</sup> It is this asset finance book that forms the core of this transaction for purposes of competition analysis.

### **Geographic market**

[17] The Commission's investigation revealed that the merging parties' customers could reasonably turn to suppliers located throughout the country for these services. The Commission therefore defined the geographic market as national. We concur with the Commission's viewpoint on the geographic market.

### **Impact on competition**

[18] In the instant case, the Commission noted that Citibank was not involved in the financing of office automation equipment and thus no overlap will occur between Citibank and Mercantile if the market is defined narrowly. It is the Commission's view that if the narrow market definition approach is adopted then the transaction is unlikely to result in the substantially prevention or lessening of competition. The Commission nevertheless analysed – in the event that they may have been some changes in the market resulting in product overlaps between the merging parties' services - the broader market of the provision of rental sale and instalment sale agreement services.

[19] Market share figures (for the provision of rental sale and instalment sale agreements) based on DI900 returns submitted to the SA Reserve Bank show that Citibank enjoys **3.1%** with Mercantile having **0.1%**. It is clear that the merged entity's post-merger market share will be relatively low compared to those of other market players. FNB leads the group with **29.1%**; ABSA (**23.6%**), Standard Bank (**20.7%**), Nedcor Bank (**9.1%**), BoE Bank (**2.9%**), Saambou (**1.7%**), FBC Fidelity Bank (**0.3%**), and others (**9.4%**).<sup>6</sup>

[20] Last but not the least, it seems the merging parties do not compete with each other from a narrow product market perspective. There too appears to be no vertical concerns arising from this merger.

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<sup>4</sup> See the Record (Page 49).

<sup>5</sup> See also *New Republic Bank Ltd / FBC Fidelity Bank Ltd* [2001-2002] CPLR 272 (CT).

<sup>6</sup> Refer to Page 4 of the CC's Recommendations as well as Page 53 of the Record.

## **Public Interest Concerns**

[21] The transaction led to 63 (out of 1 500) employees being retrenched during the period 2001/2003. This was based on operational reasons in that Mercantile Lisbon Group underwent significant restructuring during this period. Considering that the transaction took place 3 years ago and that the employees were retrenched then, the Commission submits that it is unable to address the job losses adequately at this time. There seems to be no practical solution pertaining to the job losses that took place some 2 to 3 years ago. We accordingly sympathise with the individuals affected.

## **Conclusion**

[22] We agree with the Commission's submission that this transaction is unlikely to result in the substantial lessening or prevention of competition irrespective of any market definition adopted. We accordingly approve this merger unconditionally.

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**Norman Manoim**

17 January 2005  
**Date**

Concurring: **MTK Moerane and Medi Mokuena**

For the merging parties:	Adv. Jerome Wilson instructed by <i>Webber Wentzel Bowers and Bowman Gilfillan.</i>
For the Commission:	Maarten van Hooven ( <i>Mergers &amp; Acquisitions</i> )