



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CO076Aug22**

In the matter between:

The Competition Commission of South Africa

**Applicant**

And

Nedbank Ltd and ERF 7 Sandown (Pty) Ltd

**Respondent**

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Panel: I Valodia (Presiding Member)  
Y Carrim (Tribunal Member)  
T Vilakazi (Tribunal Member)

Heard on: 17 August 2022

Decided on: 17 August 2022

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**CONSENT AGREEMENT**

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The Tribunal hereby confirms the consent agreement concluded between the Competition Commission And Nedbank Ltd and ERF 7 Sandown (Pty) Ltd annexed hereto.

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**Presiding Member  
Prof. Imraan Valodia**

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**17 August 2022  
Date**

**Concurring: Ms Yasmin Carrim And Dr. Thando Vilakazi**

**RECEIVED**

*By Themba Chauke at 12:18 pm, Aug 03, 2022*

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CT Case No:**

**CC Case No: 2021Aug0006**

**In the matter between:**

**THE COMPETITION COMMISSION**

**Applicant**

And

**NEDBANK LIMITED**

**First Respondent**

**ERF 7 SANDOWN PROPRIETARY LIMITED**

**Second Respondent**

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**CONSENT AGREEMENT IN TERMS OF SECTION 49D, READ WITH SECTION 58(1)(b)  
OF THE COMPETITION ACT, NO. 89 OF 1998 AS AMENDED, BETWEEN NEDBANK  
LIMITED AND ERF 7 SANDOWN PROPRIETARY LIMITED IN RESPECT OF AN  
ALLEGED CONTRAVENTION OF SECTION 13A(3) OF THE COMPETITION ACT**

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**1. PREAMBLE**

The Competition Commission ("Commission") and Nedbank Limited ("Nedbank"), and Erf 7 Sandown Proprietary Limited ("Erf 7 Sandown") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this settlement agreement as a consent order of the Tribunal in terms of section 49D read with sections 58(1)(b) and 59(1)(d) of the Competition Act, on the terms set out below.

## 2. DEFINITIONS AND INTERPRETATION

2.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

2.1.1 “**Agreement**” means this agreement duly signed and concluded between the Commission and Nedbank and Erf 7 Sandown that will be referred to the Tribunal for confirmation as a consent order;

2.1.2 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

2.1.3 “**Competition Act**” means the Competition Act 89 of 1998, as amended;

2.1.4 “**Competition Commissioner**” means the Competition Commissioner of South Africa, appointed in terms of section 22 of the Competition Act;

2.1.5 “**Confirmation Date**” means the date upon which the Tribunal confirms this Agreement as a consent order in terms of section 49D, read with section 58(1)(b) of the Competition Act;

2.1.6 “**Days**” mean any business day being a day which is not a Saturday, Sunday or an official holiday in South Africa;

2.1.7 “**Erf 7 Sandown**” means Erf 7 Sandown Proprietary Limited, with Registration 2005/039070/07. Erf 7 Sandown has its principal place of business at 81 Maude Street, Sandton, Johannesburg, South Africa;

2.1.8 “**Nedbank**” means Nedbank Limited, registration 1951/000009/06.

Nedbank has its principal place of business at 135 Rivonia Road, Sandton, Johannesburg, South Africa;

2.1.9 “**Respondents**” mean the first to the second Respondents being Nedbank and Erf 7 Sandown; and

2.1.10 “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

### 3. **RECORDAL**

This consent agreement relates to the transaction between Nedbank and Erf 7 Sandown in terms of which Nedbank was unable to dispose of its controlling interest in Erf 7 Sandown, which it acquired through a risk mitigating transaction in the ordinary course of its business as a financial institution, within a period of 24 months as required by the *Commission’s Practitioner Update on Risk Mitigation Transactions*.

### 4. **BACKGROUND**

4.1 On 27 May 2021, Nedbank voluntarily approached the Commission regarding a transaction that was implemented prior to approval by the Commission. The transaction concerned the exercise of Nedbank’s security rights as a risk mitigation transaction [REDACTED]. Accordingly, Nedbank through Nedbank Property Partners, a Division of Nedbank Corporate and Investment Banking (“NPP”) was forced to purchase the balance of the [REDACTED] shareholding in the company to protect its financial interests in a risk mitigating exercise. In terms of the Commission’s Practitioner Update on Risk Mitigation Transactions, Nedbank was required to dispose of its controlling interest in Erf 7

Sandown within 24 months after the exercise of its security interest but was unable to do so within the timelines for risk mitigation transactions.

4.2 At the time of the prior-implemented transaction the shares in Erf 7 Sandown were held [REDACTED] by Nedbank prior to Nedbank exercising its security rights. Erf 7 Sandown owns a single property described as Sandown Village Office Park comprising 17,703 m<sup>2</sup> (seventeen thousand seven hundred- and three-square meters) of rentable A grade office space situated at 81 Maude Street, Sandown, Sandton, Johannesburg.

4.3 On 05 August 2021, the Respondents filed the transaction with the Commission. In the merger filing, the Respondents acknowledged that the transaction was a notifiable large merger, and that their conduct of implementing the merger without the required prior approval was an unintentional contravention of section 13 A(3) of the Competition Act and constitutes an implementation of a merger without the Commission's approval as defined in section 13A of the Competition Act.

## 5. THE COMMISSION'S FINDING

5.1 The Commission's investigations found that Nedbank, through NPP acquired the remaining [REDACTED] shares in Erf 7 Sandown from [REDACTED] in exercising its security rights in a risk mitigation transaction against a loan advanced to [REDACTED]. After Nedbank exercised its security interest it acquired sole control of Erf 7 Sandown effectively from 24 August 2017. This transaction constituted a merger and was notifiable in terms of section 13A of the Competition Act. The Respondents implemented this transaction without prior approval and therefore contravened section 13A(3) of the Act .

5.2 Following the voluntary disclosure made by the Respondents, the Commission assessed the large merger and recommended to the Tribunal that the transaction be approved without conditions. The Tribunal approved the large merger without conditions.

## 6. **ADMISSION**

The Respondents admit that they have contravened section 13A(3) of the Competition Act, by implementing the transaction prior to obtaining the approval of the Tribunal.

## 7. **AGREEMENT REGARDING FUTURE CONDUCT**

7.1 The Respondents agree and undertake to:

7.1.1 notify the Commission of any future transactions that constitute a notifiable merger as defined in section 12(1) read together with section 11(5) of the Competition Act;

7.1.2 refrain from engaging in prior implementation of notifiable mergers in contravention of section 13A(3) of the Competition Act;

7.1.3 update their corporate governance by enhancing Nedbank's competition law compliance programmes to ensure that its employees, management and executive directors do not engage in future contraventions of the Act;  
and

7.1.4 submit a copy of their competition law compliance programme to the Commission within 120 days of the date of the Confirmation Date.

## 8. ADMINISTRATIVE PENALTY

- 8.1 Having regard to the provisions of section 59(1)(d), 59(2) and 59(3) of the Competition Act, the Respondents accept that they are jointly and severally liable to pay an administrative penalty, the one paying, the other to be absolved.
- 8.2 The Respondents have agreed that Nedbank will pay an administrative penalty in the total amount of R2 000 000.00 (two million Rand). This penalty does not exceed 10% of the Respondents' annual turnover.
- 8.3 The administrative penalty shall be paid within 30 Days from the Confirmation Date.
- 8.4 The administrative penalty will be paid into the Commission's bank account. The Commission's banking details are as follows:

**Bank: ABSA Bank**

**Name of Account: The Competition Commission**

**Branch Name: Pretoria**

**Branch Code: 632005**

**Account Number: 40-8764-1778**

**Payment Ref: 2021Aug0006/Nedbank/ERF Sandown**

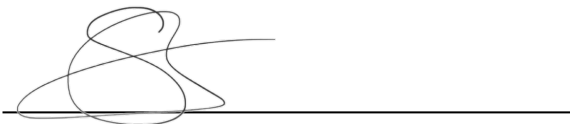
- 8.5 The administrative penalty will accrue interest in terms of the provisions of section 80(1) of the Public Finance Management Act 1 of 1999 for any amounts not paid within a year from the Confirmation Date.

8.6 The Commission will pay the administrative penalty amount into the National Revenue Fund in compliance with section 59(4) of the Competition Act.

## 9. FULL AND FINAL SETTLEMENT

This Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and the Respondents relating to the contravention of section 13A(3) of the Competition Act by the Respondents that were the subject of the Commission's investigation under CC case number 2021Aug0006.

Dated and signed at **Sandton** on the **22** day of **July** 2022.



**Duly authorised signatory**

**Nedbank Limited**

Name in full: **Bongane Sibanyoni**

Authority: **Executive Head: Nedbank CIB Compliance & Governance**

Dated and signed at **Sandton** on the **22** day of **July** 2022.



**Duly authorised signatory**

**Nedbank Limited**



Name in full: **Zanele Mngadi**

Authority: **Chief Legal Counsel**

Dated and signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
**Duly authorised signatory**  
**Erf 7 Sandown Proprietary Limited**

Name in full: \_\_\_\_\_

Authority: \_\_\_\_\_

Dated and signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 2022.

For the Commission



\_\_\_\_\_  
**Competition Commissioner**