

COMPETITION TRIBUNAL SOUTH AFRICA

Case No: 119/LM/Nov08

In the matter between:

Bank of America Corporation

Acquiring firm

And

Merrill Lynch & CO Inc

Target firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and T Orleyn (Tribunal Member)

Heard on : 26 November 2008

Decided on : 26 November 2008

Reasons Issued : 03 December 2008

Reasons for Decision

Approval

[1] On 26 November 2008 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Bank of America Corporation and Merrill Lynch & Co Inc. The reasons appear below.

Parties

[2] The primary acquiring firm is MER Merger Corporation ("Merger Sub") a company incorporated in terms of the laws of the State of Delaware in the United States of America. Merger Sub is a special purpose vehicle created specifically for the purposes of this transaction and it is a wholly owned subsidiary of Bank of America Corporation ("Bank of America").¹

[3] The primary target firm is Merrill Lynch & Co Inc ("Merrill Lynch"), a company incorporated in terms of the laws of the State of Delaware in the United States of America. Merrill Lynch is a publicly owned corporation listed on the New York Stock Exchange and it is not controlled by any undertaking or person.²

¹ Bank of America is a company incorporated in terms of the State of Delaware in the United State of America. It is a publicly owned corporation listed on the New York Stock Exchange and it is not controlled by any undertaking or person.

² In South Africa Merrill Lynch indirectly controls Merrill Lynch South Africa (Pty) Ltd ("Merrill Lynch SA"), a private company.

Transaction

[4] In terms of the proposed transaction, Merger Sub will acquire the entire issued capital of Merrill Lynch. Post merger Merrill Lynch will be a wholly owned subsidiary of Bank of America.

Rationale

[5] From the Bank of America's perspective, the proposed transaction provides an opportunity to diversify its business mix and, therefore, reduce the potential impact on the parties of further dislocations in the financial markets post merger. From the target firm's perspective, the proposed transaction will enable it to be better placed to offer the full breadth of financial services to its customers globally, with significantly enhanced investment banking capabilities.

Parties' Activities

[6] Merger Sub is a special purpose vehicle created specifically for the purposes of this transaction and it is a wholly owned subsidiary of Bank of America Corporation.³

[7] Merrill Lynch provides a wide range of services worldwide to a diversified client base that includes corporations, financial institutions, governments and high-net worth individuals. Merrill Lynch divides its activities into two core business segments namely: global markets and investment banking and wealth management.⁴

Competition Analysis

[8] The Commission found that there is an overlap in the activities of the merging firms in the provision of investment banking. According to the Commission there is no geographic overlap as the primary acquiring firm is not active in South Africa. The Commission thus concludes that the proposed transaction is therefore unlikely to substantially prevent or lessen competition in any market. We agree with the Commission's conclusions.

Conclusion

[9] There are no public interest issues. Accordingly the transaction is unconditionally approved.

³ Bank of America has no physical presence and does not report revenues in South Africa

⁴ In South Africa, Merrill Lynch is active only in two years, namely financial markets services (comprising, for example, trading in securities on own account and on an agency basis for customers) and investment banking (comprising, for example, M&A advisory services).

D Lewis

Tribunal Member

03 December 2008

Date

Y Carrim and T Orleyn concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Webber Wentzel

For the Commission : Kwena Mahlakoana (Mergers and Acquisitions)