COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 03/LM/Jan02

In the large merger between:

Old Mutual Bank Limited

and

Permanent Division of Nedbank Limited, a division of Nedcor Bank Limited

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Reasons

Approval

1. We approved without conditions the merger between Old Mutual Bank Limited and the Permanent Division of Nedcor Bank Limited, a division of Nedcor Limited on 07 March 2002. Below we give the reasons for the approval.

The Parties

2. Old Mutual Holdings Bank Limited ("OMBL") is a wholly-owned subsidiary of Old Mutual Holding Limited ("OMBH"). OMBH is a bank holding company, it has no other interests apart from its shares in OMBL. Old Mutual (SA) Limited owns 100% of the issued share capital in OMBH. Old Mutual (SA) is a wholly-owned subsidiary of Old Mutual plc.

3. Nedcor Bank is a wholly-owned subsidiary of Nedcor Limited. OMSA owns 15% of the shares in Nedcor Limited, and a wholly-

owned subsidiary of OMSA, OMLACSA has a 36 % share in the same company. OMSA therefore controls Nedcor Limited, and therefore indirectly controls Nedcor Bank. It would appear therefore that OMSA controls both the acquiring and target firms.

The transaction

4. Early last year Nedcor Bank took a decision to rationalise its Permanent Division because of perceived stagnancy. As an alternative to total closure of the business, Nedcor Bank and Old Mutual Group entered into a joint venture to attempt to change the fortunes of the business. Through this transaction, 45 branches of the Permanent Division of Nedbank are being injected into OMBL. It is intended that post the merger, Nedcor and OMBH will each own 50% of OMBL. The mechanism for achieving this end is that Nedcor Bank will acquire from OMSA 50% of the entire issued share capital of OMBH, the other 50% will remain in the hands of OMSA. As OMBH will continue to own and control OMBL, Nedcor Bank and OMSA will have joint ownership and control of OMBL. There are provisions allowing either of OMBL or Nedcor Bank to become majority shareholder by acquiring one share from the other, but the parties submit that the transaction is essentially aimed at creating a 50/50 arrangement between the OMBL and Nedcor Bank.

5. It is intended that the Permanent Bank brand will run in parallel with the Old Mutual Brand and the Old Mutual Brand will be used exclusively once the businesses have been integrated. Nedcor Bank views this merger as a revenue-growth initiative, rather than a cost-cutting exercise.

The Relevant Market

6. Both firms are involved in the broad market for the provision of financial services. The target firm provides the following services: home loans, asset-based finance, overdraft, deposits, investments, current accounts, savings accounts and credit and debit cards.

7. OMBL was established to enhance the financial services products offered by the Old Mutual Group and the retention of funds within the Group. It aims to leverage the Old Mutual brand, its client base and its distribution and support infrastructures. Its business strategy is to provide services and products that supplement and enhance the core business and strategies of the Old Mutual Group. It provides deposits and lending products. OMBL's initial focus is on short- and medium-term deposit products. With regard to lending products, OMBL offers housing loans, mortgages and asset-backed loans. In addition, OMBL aims to launch a new innovative product called "Universal Product" later in the year which will provide its customers with multiple services in the financial sector.

8. The relevant product market is therefore the market for the provision of personal retail banking services. This market is subdivided into cash/cheque and transmission accounts, deposits, overdraft facilities, mortgages and credit cards. The overlaps between the services of the merging parties occur in the following sub-marjkets: retail deposit taking; provision of mortgages and asset-backed loans.

9. The parties provide the above services throughout the Republic of South Africa through a range of channels. There is no evidence of competition between the banks at local or regional level. The relevant geographic market is therefore national.

Impact on competition

10. In the sub-market for retail deposit taking the Nedcor's estimated market shares (including Perm[1]) is 17,9% and 0,03% for OMBL. Nedcor (including Perm[2]) has an estimated market share of 17.7% of the sub-market for the provision of mortgage bonds, OMBL's share is 0,07%. The merging parties claimed that it was not possible to compute the market shares of the various companies in the sub-market for asset-backed loans because it is not a statutory requirement to identify this product for DI return purposes. They claimed, furthermore, that the market share of OMBL in this sub-market would

1 Perm's share of this sub-market is 1,4%.
2 Perm's share of this sub-market is 5,7%.

be 0%, in other words, they are not in the market at all. The Commission, however, claims to have evidence that OMBL in fact participates in this sub-market and has an estimated market share of about 0,017%.[3]

11. The Commission found that that the parties' share in the sub-markets for the provision of retail deposit taking and mortgage bonds make it unlikely that the merger will result in competition problems. Furthermore, regardless of the market share of Nedbank in the sub-market for asset-backed loans, it is highly unlikely that a merger with a competitor with a market share as low as that of OMBL will result in the substantial lessening or prevention of competition in any market. The Commission therefore recommended that the merger be approved without conditions.

12. We agree with the above finding by the Commission. In addition to the small market share of the parties and insignificant increase in concentration levels as a result of the merger, the parties are faced with very strong competition in the broad retail banking services market. The biggest players in this market are ABSA Bank, Standard Bank and First National Bank. The presence of these very strong competitors in the three sub-markets identified above precludes the possibility that the merged entity may behave anti-competitively.

Public Interest issues

13. Perm employs 1085 individuals in South Africa, 588 of them are employed in the sold business and 497 belong to the branches that do not form part of the sold business. Pursuant to the merger, all employees of the sold business will continue to be employed by OMBL. Those who are employed in the other branches of Perm will lose their jobs. The parties argue that the job losses are not directly attributable to the merger but arise as a result of an efficiency drive on the part of Nedcor Bank. The parties point out that if this transaction does not go ahead, all 1085 employees of Perm employed in the various branches would lose their jobs.

3 The Commission believes that OMBL in fact advanced R1,5 million over the period December 2001/January 2002; the total amount of loans over this period in South Africa was about R85 billion.

14. There will be job losses at OMBL businesses as well. The parties estimate that a maximum of 200 employees will be retrenched as a result of this merger. Half of the retrenched employees will be senior managerial staff, and the other half, clerical staff.

15. The Unions representing the employees of the merging firms, IBSA and SASBO, agree with the merging parties' submission with regard to employment and have no objection to the merger. The merger parties have undertaken to explore all possible alternatives to compulsory retrenchments through redeployment, retraining, voluntary early retirement and other measures in consultation with the Unions. The Unions are satisfied that the provisions of the Labour Relations Act provides sufficient protection for their members.

Finding

16. The merger between Old Mutual Bank Limited and the Permanent Division of Nedcor Bank Limited, a division of Nedcor Limited is not likely to lead to a substantial lessening or prevention of competition. Taking into account the circumstances of this merger, we believe that there are no substantial public interest issues that warrant a prohibition or the imposition of any conditions on the merging parties.

____________	**10 April 2002**
N.M. Manoim	**Date**

Concurring: S. Zilwa; D.H. Lewis