



DETERMINATION OF MERGER NOTIFICATION M/10/042 -

Elavon/ Bank of America

Section 21 of the Competition Act 2002

Proposed acquisition by Elavon Financial Services Limited of Certain Businesses of Bank of America N.A.

Dated 23 December 2010

Introduction

1. On 8 December 2010, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby U.S. Bank National Association ("USB"), and its subsidiaries Elavon Financial Services Limited ("Elavon"), and U.S. Bank Trust National Association ("USB Trust") would acquire certain businesses (collectively, the "Target Business") from Bank of America, N.A. ("BANA") and its subsidiaries Bank of America (GSS) Limited, and Bank of America National Trust Delaware.

The Undertakings Involved

The Acquirer

2. The acquiring parties are USB, Elavon and USB Trust. Both USB Trust¹ and Elavon are wholly owned subsidiaries of USB, which in turn is wholly-owned by US Bancorp, a diversified US-based financial services holding company.
3. In the United States. USB is active in brokerage, insurance, investment, mortgage, trust and payment services products to consumers, businesses and institutions.
4. Elavon is a fully licensed credit institution regulated by the Central Bank of Ireland. Elavon is active in the State in the provision of end-to-end payment processing services to merchants and financial institutions in Europe. Elavon's payment products are supported by credit and debit card processing, electronic cheque services, gift cards, dynamic currency conversion, multi-currency support, and cross-border acquiring.²
5. Neither USB nor any other USB subsidiary other than Elavon is active in the State. For the year ended 31 December 2009, Elavon's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.³

¹ USB Trust, formerly known as First Trust National Association, is a financial services provider founded in 2000 and based in Wilmington, Delaware. U.S. Bank. It is not active in the State.

² For more information refer to <<http://www.elavon.com/about/index.aspx>>.

³ Turnover calculated according to the definition under Article 5(4) of the EU Merger Regulation.

The Target

6. The Target business comprises elements of the securitisation trust and administration businesses of BANA, Bank of America (GSS) Limited, and Bank of America National Trust Delaware. The parties submit that the Target business is involved globally in the following:
 - collateralised debt obligations ("CDO"), both asset-backed security CDOs and synthetic CDOs;⁴
 - commercial mortgage backed securities ("CMBS");⁵
 - residential mortgage backed securities ("RMBS");⁶ and,
 - asset backed securities ("ABS").⁷
7. The parties submit that for the year ended 30 September 2010 the Target business had worldwide turnover of €[...] million.
8. MBNA Ireland Limited provides back office support services to BANA's London office under an internal service agreement.⁸ The parties submit that for the year ended 30 September 2010, BANA's London office generated revenues in the State of approximately €[...]million.⁹

Third Party Submissions

9. No submissions were received.

Rationale for Proposed Transaction

10. The parties submit that the proposed transaction will enable:
 - USB to strengthen its positions in CDOs, CMBSs and RMBS;
 - USB to establish a corporate trust services presence in Europe with offices in Ireland and London, England, while significantly enhancing its corporate trust presence in Chicago; and,
 - BANA and its subsidiaries to concentrate on their core business.

⁴ A CDO is a security backed by a pool of various other securities such as bonds and loans but not usually mortgages. CDOs are often sold to investors who want exposure to the income generated by a debt but do not want to purchase the debt itself. A synthetic CDO is backed by credit derivatives such as options and forward contracts.

⁵ A CMBS is a security backed by a pool of commercial property mortgages.

⁶ A RMBS is a security backed by a pool of residential property mortgages.

⁷ An ABS is a security backed by loans, leases, receivables, or instalment contracts on personal property other than real estate.

⁸ MBNA Ireland and the Target Business are part of the Bank of America Merrill Lynch Group.

⁹ These services were provided by BANA's London office in conjunction with back-up services provided by MBNA Ireland Limited's office in Carrick-on-Shannon, County Leitrim.

Analysis

11. There is no horizontal overlap between the operations of the merging parties in the State.
12. USB does not provide any securitization trust and administration services to Irish or non-Irish domiciled undertakings in the State.
13. The proposed transaction does not raise any vertical issues within the State.
14. In light of the above, the Authority considers that the proposed transaction will not raise competition concerns in the State.

Ancillary Restraints

15. As part of the proposed transaction the vendors have entered into non-compete and non-solicitation covenants, to apply for a duration of [...] years. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby U.S. Bank National Association, and its subsidiaries Elavon Financial Services Limited, and U.S. Bank Trust National Association would acquire certain businesses from Bank of America, N.A. and its subsidiaries Bank of America (GSS) Limited, and Bank of America National Trust Delaware will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Dr Stanley Wong
Member of the Competition Authority