



Determination of the Competition Authority, dated 7th October 2005, under Section 21 of the Competition Act, 2002 in respect of Merger Notification Case No. M/05/057 - Proposed merger of Bank of America Corporation and MBNA Corporation

Introduction

1. On 09 September 2005, the Competition Authority, in accordance with Section 18 (1) of the Competition Act, 2002 ("the Act"), was notified on a mandatory basis of a proposal whereby MBNA Corporation ("MBNA") would merge into Bank of America Corporation ("BoA").

The Parties

2. BoA, the purchaser, is a large financial institution incorporated in Delaware in the United States and is a bank and financial holding company under U.S. federal law listed on the New York Stock Exchange.
3. BoA provides a full range of banking, investment, asset management and other financial and risk-management services and products to a large range of customers including individual consumers, small and middle market businesses and large corporations.
4. In Europe, BoA has offices in the United Kingdom, Switzerland, Portugal, Spain, Italy, the Netherlands, Greece, Belgium, Germany, France and Ireland which principally provide global corporate and investment banking services and products.
5. In Ireland, BoA's activities are carried out through Bank of America, N.A. Dublin branch ("BoA Dublin").
6. BoA Dublin provides corporate investment banking services. Banc of America Securities Ireland, a subsidiary of Bank of America, N.A. also provides services in Ireland.
7. BoA's turnover in Ireland for the financial year ended 31 December 2004 was less than USD\$ 230 million (€190 million approx.)
8. MBNA, the target, is a large financial services company providing lending, deposit and credit card insurance products and services through its subsidiaries. MBNA is an independent credit card lender and competes in affinity marketing. MBNA is listed on the New York Stock Exchange.
9. In the EU, MBNA operates offices in Spain, the United Kingdom and Ireland making loans in Europe through its wholly-owned foreign bank subsidiary, MBNA Europe Bank Limited ("MBNA Europe").



10. In Ireland, MBNA Europe provides loans to consumers through credit cards and personal loans to existing credit card customers. MBNA Europe is also an insurance intermediary for the provision of several ancillary products to consumers in Ireland, for example, payment protection cover, card protection plan and travel insurance.
11. MBNA's turnover in the State for the financial year ended 31 December 2004 was less than Stg£100 million (€145 million approx.).

The Transaction

12. The proposed transaction involves the merger of MBNA into BoA, effected by the conversion of MBNA common stock into BoA common stock. BoA will be the surviving entity after the merger.
13. The main drivers for the merger lie in the complementary nature of the respective businesses, customer bases, products and skills of MBNA and BoA. In the US, the merger will present an opportunity to combine MBNA's existing market position in the credit card industry, its substantial base of affinity relationships and its marketing expertise with BoA's national branch and ATM network, and wide product array. The merger will provide potential cost saving opportunities, the opportunity to enhance BoA's position in the United States financial services industry and to expand its presence in key markets outside of the United States.
14. The proposed transaction has been notified to the respective competition authorities of the United Kingdom, Canada and the United States¹ and where necessary the Authority has discussed the proposed transaction with these notified authorities.

Analysis

15. BoA's activities in the State can be generally described as banking services, while MBNA's activities in the State fall into both banking services and insurance services. Consequently and for the purpose of this review, the Authority has considered both BoA's and MBNA's activities in banking services only.
16. Generally, the services provided by a universal bank can be categorised as (a) retail banking services; (b) corporate banking services; and (c) financial market services². The Authority, in its recent Banking Study³, broadly subscribes to this categorisation. However, the Authority for the purposes of its Study, further divides 'Retail banking services' into 'personal retail banking services' and small (SME) retail banking services.

¹ See for example Case No IV/M.387 – Bank Austria/Creditanstalt and Case No. IV/M.1029 Merita/Nordbanken – available from the European Commission website at <http://www.europa.eu.int/comp/competition/mergers>.

² See further, decisions of the European Commission, *inter alia*, *supra* fn.1.

³ See further, <http://www.tca.ie/banking.html>.



The Competition Authority

An tÚdarás Iomaíochta

17. BoA's banking services in the State are carried out through BoA Dublin. BoA Dublin provides BoA's corporate investment banking service in the State, providing for services in relation to capital markets, global transaction services, treasury outsourcing and administration of structured capital market booking units. Through Banc of America Securities Ireland, BoA provides additional services in the State which include equity securities, equity swaps and equity stock borrowing. BoA does not provide "retail banking" services in the State and its activities in the State fall for consideration as corporate banking and financial market services, in line with the European Commission's decisions in this area.
18. MBNA's banking services in the State constitute solely the provision of retail banking services in the form of the provision of loans to consumers through credit cards and personal loans to existing credit card customers.
19. On the basis of the relevant decisions of the European Commission, the Parties' submissions and the Authority's inquiries, the Authority has concluded that BoA's activities in the State do not overlap with those of MBNA in the State. Consequently, there is no overlap of the Parties activities in the State.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed merger by Bank of America and MBNA will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Edward Henneberry

Member of the Competition Authority