



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR212Feb17/SA220Feb17

In the matter between:

The Competition Commission

Applicant

And

Citibank, N.A

Respondent

Panel : A Ndoni (Presiding Member)
E Daniels (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 22 March 2017

Last submission received on : 13 April 2017

Decided on : 26 April 2017

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Citibank, N.A annexed hereto marked "A".



**Presiding Member
Ms Andiswa Ndoni**

26 April 2017
Date

Concurring: Mr Enver Daniels and Prof Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No: CR212FGB17/SA220Feb17

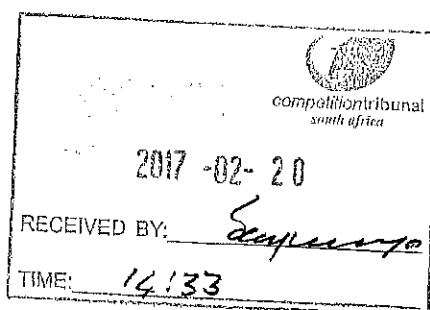
CC Case No: 2014Apr0200 & 2016Aug0432

In the matter between:

The Competition Commission

And

Citibank, N.A.



Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii), (v) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND CITIBANK N.A. AND ITS SUBSIDIARIES IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) OF THE COMPETITION ACT

Preamble

The Competition Commission and Citibank, N.A. and its subsidiaries hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with sections 58(1)(a)(iii), (v), 58(1)(b) and 59(1)(d) of the Competition Act No. 89 of 1998, as amended (the "**Act**"), on the terms set out below.

[Signature] EPM

1. Definitions

For the purpose of this Consent Agreement the following definitions shall apply:

- 1.1. **"Act"** means the Competition Act, 1998 (Act No.89 of 1998), as amended;
- 1.2. **"Affiliate"** means, in respect of a person, any person that Controls (directly or indirectly) that first mentioned person, any person Controlled (directly or indirectly) by that first mentioned person or by any person Controlling that first mentioned person, and including, where that first mentioned person is a company, any Holding Company of that first mentioned person, any Subsidiary of that first mentioned person and any Subsidiary (direct or indirect) of any such Holding Company;
- 1.3. **"Citibank"** means Citibank, N.A., a national banking association organised under the laws of the United States of America with its principal place of business at 388 Greenwich Street, New York, NY 10013, United States of America;
- 1.4. **"Citigroup"** means Citigroup Inc., a corporation organised and existing under the laws of Delaware with its principal place of business 388 Greenwich Street, New York, United States of America;
- 1.5. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and the Citibank;
- 1.6. **"Control"** means, in relation to a person, including and without limiting the generality of the meaning of the word "control":



1.6.1. the beneficial ownership of the majority in number of the equity instruments in that person's issued share capital;

1.6.2. the beneficial ownership of the whole or a major portion of that person's assets or business;

1.6.3. the right or ability to appoint or remove, or veto the appointment or removal of, directors (or equivalent functionaries such as trustees of a trust) holding a majority of voting rights at meetings of the board of directors (or equivalent institution) of that person;

1.6.4. the right or ability to exercise or to direct or otherwise control the exercise of more than 50% of the votes attaching to that person's issued equity instruments; and/or

1.6.5. the right to manage the affairs of that person, whether directly or indirectly and whether in law or effect.

1.7. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.8. **"Commissioner"** means the Commissioner of the Competition Commission,



appointed in terms of section 22 of the Act;

1.9. **"Companies Act"** means the South African Companies Act, 2008, as amended from time to time;

1.10. **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2014Apr0200 and 2016Aug0432;

1.11. **"Holding Company"** means a holding company as defined in the Companies Act and shall include any person who would, but for not being a company under the Companies Act, qualify as a "holding company" as defined in the Companies Act;

1.12. **"Parties"** means the Commission, Citibank and all of Citibank's subsidiaries;

1.13. **"Respondent"** means Citibank;

1.14. **"Subsidiaries"** means a subsidiary as defined in the Companies Act and shall include any person who would, but for not being a company under the Companies Act, qualify as a "subsidiary" as defined in the Companies Act;

1.15. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.16. **"USD"** and **"dollars"** denote the lawful currency of the United States of America;

and

1.17. "ZAR" or "Rand" or "R" means South African Rand, the lawful currency of the Republic of South Africa.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1. On 01 April 2015, the Commissioner initiated a complaint against Barclays Bank Plc; Barclays Africa Group Ltd; BNP Paribas; BNP Paribas South Africa; Citigroup Inc. Citigroup Global Markets (Pty) Ltd; JP Morgan Chase & Co; and JP Morgan South Africa, Investec Ltd, Standard New York Securities Inc. Standard Chartered Bank collectively referred to as the "Respondents" for collusive conduct with regards to trading in foreign currency exchange involving the South Africa Rand (ZAR). This case was investigated under case number 2015Apr0147.

2.2. The allegations against the Respondents are that they entered into an agreement and/or engaged in a concerted practice to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trades through, inter alia, coordination/alignment of the bids, offers and bid-offer spreads that they quote to customers who buy and sell certain foreign currency pairs involving the ZAR in possible contravention of 4(1)(b)(i) of the Act, as amended.

2.3. On 23 August 2016, the Commissioner amended the initiation to include ABSA Bank Limited, Barclays Capital Inc, Credit Suisse Group; Commerzbank AG; Bank of America Merrill Lynch International Limited, HSBC Bank Plc; ANZ, Citibank N.A, JP Morgan, Nomura International Plc., Macquarie Group and JP Morgan Chase Bank N.A as additional respondents and to include the conduct of dividing markets by

allocating customers against the respondents. This case was investigated under case number 2016Aug0432.

2.4. Further, it is alleged that the Respondents being competitors in the foreign exchange market involving the ZAR agreed and/or engaged in a concerted practice of assisting each other through allowing a trader with a large open risk position to complete his trades first before trading and through holding and/or pulling their trades to reserve liquidity for each other instead of trading normally in the market in possible contravention of section 4(1)(b) (ii) of the Act, as amended.

2.5. The Commission found that Citibank and its competitors fixed prices of bids, offers and bid-offer spreads in relation to spot trades of ZAR currency pairs, as set out in paragraph 2.2 above. In addition, the Commission found that Citibank and its competitors assisted each other through allowing a trader with a large open risk position to complete his trades first before trading and through holding and/or pulling their trades to reserve liquidity for each other instead of trading normally in the market, as set out in paragraph 2.4 above. This conduct amounts to price fixing and market division which contravene section 4(1)(b)(i) & (ii) of the Act.

3. ADMISSION

3.1. The Respondent admits that between September 2007 and October 2013 it engaged in the prohibited practices in respect of spot trading of ZAR currency pairs as set out in paragraph 2 above in contravention of section 4(1)(b) (i) & (ii) of the Act.

4. COOPERATION



- 4.1 Citibank confirms that it has ceased to engage in the conduct set out in paragraph 2 above.
- 4.2 Citibank shall fully cooperate with the Commission in relation to the prosecution of other participants in the alleged contravention in the Complaint. Without limiting the generality of the foregoing, Citibank specifically agrees to:
- 4.1.1 testify in the Complaint referral (if any) in respect of alleged contraventions covered by this Consent Agreement; and
- 4.1.2 to the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control (and which is not subject to legal privilege), concerning the alleged contraventions contained in this Consent Agreement.

5 FUTURE CONDUCT

- 5.1 Citibank agrees to:
- 5.1.1 refrain from to engaging in, and will not in the future engage in, any form of conduct in contravention of section 4(1)(b) of the Act;
- 5.1.2 continue to implement its existing compliance programme designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act and to submit evidence of the compliance program to the Commission within 90 days of the date of confirmation of this agreement as an order of the Tribunal; and



5.1.3 to prepare and circulate a statement summarising the content of this Consent Agreement to its managers and directors who have market-making responsibilities at Citibank in the Republic of South Africa within 14 days from the date of confirmation of this Consent Agreement by the Tribunal.

6 ADMINISTRATIVE PENALTY

6.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, Citibank is liable to pay an administrative penalty.

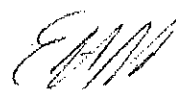
6.2 Citibank agrees and undertakes to pay an administrative penalty in the amount of **ZAR69,500,860** (Sixty Nine Million Five Hundred Thousand Eight Hundred and Sixty Rand), which does not exceed 10% (ten percent) of Citibank's annual turnover in the Republic of South Africa for its financial year ended 2015.

6.3 Citibank will pay the amount set out in paragraph 6.2 above to the Commission within thirty (30) days of confirmation of this Consent Agreement as an order of the Tribunal;

6.4 The administrative penalty shall not accrue interest pending its payment in full; and

6.5 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission Fee Account



Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345

Ref: 2015Apr0147 & 2016Aug0432 / Citibank

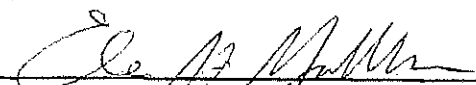
- 6.6 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

7 FULL AND FINAL SETTLEMENT

7.1 This Consent Agreement is entered into in full and final settlement of all conduct engaged in by Citibank, Citigroup Inc., Citigroup Global Markets (Pty) Ltd and their respective Subsidiaries and Affiliates as set out in paragraph 2 of this Consent Agreement and, upon confirmation as an order by the Tribunal, no further action will be brought by the Commission against the Respondent, Citigroup Inc, and all of their Subsidiaries and Affiliates with regards to spot trading in foreign currency exchange involving ZAR currency pairs or any other currency pairs, as at the date of this Consent Agreement.

Dated and signed at 388 Greenwich Street
New York, NY 10013
United States of America on the 27th day of
January 2017.

For the Respondent:

Signature: 


Name: Elaine H. Mandelbaum

Capacity: Vice President and Assistant Secretary



Dated and signed at PRETORIA on the 31st day of
JANUARY 2017.

For the Commission:

Signature: 

Name: TEMBINKOSI BONAKELE

Capacity: COMMISSIONER