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17 May 2021

For attention: Mr Allan Wicomb  
Secretary of the Standing Committee on Finance  
Email: [awicomb@parliament.gov.za](mailto:awicomb@parliament.gov.za)

For attention: Ms Teboho Sepanya  
Secretary of the Standing Committee on Finance  
[tsepanya@parliament.gov.za](mailto:tsepanya@parliament.gov.za)

Dear Mr Wicomb and Ms Sepanya

## **WRITTEN SUBMISSION ON THE FINANCIAL SECTOR LAWS AMENDMENT BILL [B15 - 2020].**

Thank you for the opportunity to provide a written submission on the Financial Sector Laws Amendment Bill [B15 – 2020] (**Bill**).

I am the Chief Executive Officer of Betweenity (Pty) Ltd, a company specialising in Africa competition law and policy foresight.

Among others, Betweenity (Pty) Ltd controls the Betweenity App, which provides users with daily updates on competition law and policy developments across Africa. The purpose of the App is to promote Africa-wide sharing of competition policy developments, best practices and insightful ideas to the end of promoting inclusive economic growth in Africa at a faster pace.

### **1. Focus of comments**

1.1. The author's comments is limited to section 19 of the Bill, which deals with the amendment of section 18 of the Competition Act, 1998 (**Competition Act**). Section 19 of the Bill provides as follows:

19. Section 18 of the Competition Act, 1998, is hereby amended by the addition of the following subsection:



“(4) In addition to subsections (2) and (3), if the Governor of the Reserve Bank, or a person authorised by the Governor to do so, has, after consultation with the Competition Commission, determined in writing that this section applies to a transaction in terms of section 166S of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) —

- (a) the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b) in relation to the transaction;
- (b) the Competition Tribunal may not make an order in terms of section 16(2) in relation to the transaction; and
- (c) sections 13(6) and 14(2) do not apply in relation to the transaction.”

## 2. **Comments**

- 2.1. The author fully appreciates the importance of swift action to protect financial stability where a bank, or a systemically important non-bank financial institution, is failing or likely to fail.
- 2.2. It is also understood that one of the ways in which financial stability could be ensured is via the implementation of a merger in accordance with the new section 166S of the Financial Sector Regulation Act, 2017.
- 2.3. However, it is respectfully proposed that the way in which the amendment is articulated has the effect of permanently removing the oversight function of the Competition Commission SA (**Commission**) in relation to such a merger.
- 2.4. This leaves the possibility that a merged entity that has recovered may dominate and act abusively in relation to customers in certain market segments without swift regulatory recourse.
- 2.5. It must be kept in mind that, worldwide, financial markets are facing large-scale disruption. Some institutions may acquire a significant market power where strong brands, albeit in technical distress, are added to their banking portfolio.
- 2.6. Various African competition authorities have identified financial markets as priority industries. These markets are being investigated for anti-competitive conduct.
- 2.7. Certain features of financial markets are highly problematic in Africa, including the high price of money transfers across borders, vague and cumbersome pricing of products, and high banking costs. Mergers involving banks are often approved subject to conditions that prevent the merging banks from full integration in relation to certain areas, due to concerns about critical mass and its effects.
- 2.8. Examples also exist of banks that have used the disruption of the pandemic to exploit customers. It is highly likely that the same exploitation may occur pursuant to a disruption impacting the banking sector itself (as contemplated in the Bill).



### 3. **Proposal**

3.1. The author respectfully proposes that the following provisions be included in section 19 of the Bill:

3.1.1. Within six months after a merger has been implemented in accordance with section 166S of the Financial Sector Regulation Act, 2017, the Competition Commission shall commence with an investigation into the merger in accordance with section 12A of the Competition Act in the normal course.

3.1.2. Conditions to address any anti-competitive concerns with the merger will be imposed in consultation with the Governor of the Reserve Bank.

3.2. It is respectfully submitted that the above proposed provisions are essential in order to protect markets and consumers during the current period of large-scale financial market disruption, as well as ample efforts across Africa to deconcentrate financial markets for purposes of financial inclusion.

### 4. **Summary**

4.1. To summarise the submission, it is respectfully proposed that, due to the risk of market consolidation and consumer harm pursuant to a takeover in accordance with section 166S of the Financial Sector Regulation Act, 2017, the Competition Commission be granted with the mandate to conduct a merger investigation, in terms of section 12A of the Competition Act, within six months after the takeover, in the normal course.

### 5. **Oral submission**

5.1. I will gladly present my argument to the Standing Committee on Finance on 18 May 2021 if required.

5.2. My details are as follows:

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5.3 All the best with the consideration of the issues.

Yours faithfully,

Odie Strydom

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