



## **Media Statement**

**For Immediate Release**

**06 February 2024**

### **COMMISSION REQUESTS LEAVE TO APPEAL CAC JUDGMENT IN CASE AGAINST BANKS ALLEGED TO HAVE COLLUDED IN THE RAND/DOLLAR CURRENCY PAIR**

The Competition Commission (Commission) has approached the Constitutional Court of South Africa (ConCourt) for leave to appeal the Competition Appeal Court (“CAC”) judgment handed down on 08 January 2024 in which it upheld the appeal by the majority of the respondent banks accused of price-fixing and division of markets in contravention of section 4(1)(b) of the Competition Act 89 of 1998 (as amended).

In June 2020, the Commission had referred, to the Competition Tribunal (“Tribunal”), a case against 28 local and foreign banks which are alleged to have colluded with one another to fix the foreign exchange rate in respect of the US Dollar and the South African Rand (“USD/ZAR”) currency pair. The respondent banks were ordered by the Tribunal in March 2023 to file their answering affidavits in response to the Commission’s complaint referral but objected to the Tribunal order and appealed it to the CAC.

The CAC delivered its judgment in January 2024 and ordered four of the 21 respondent banks to file, within 40 days, their answering affidavits with the Tribunal. The CAC also upheld the appeal by 17 respondent banks which sought a CAC order to set aside the March 2023 Tribunal decision. The four respondent banks ordered by the CAC to file their answering affidavits are BNP Paribas, JP Morgan Chase and Co, HSBC Bank Plc, and Credit Suisse Securities (USA) LLC.

The CAC order therefore released 17 respondent banks from the complaint referral before they answered the allegations against them and restricted the Commission’s case to only four respondent banks.

In its current application for leave to appeal, the Commission is appealing the CAC order to the ConCourt against 13 respondent banks. These banks are Bank of America Merrill Lynch International Designated Activity Company, JP Morgan Chase Bank N.A., Australia and New Zealand Banking Group Limited, Standard Bank of South Africa Limited, Nomura International PLC, Commerzbank AG, Macquarie Bank Limited, HSBC Bank, USA National Association, Merrill Lynch Pierce Fenner & Smith Inc, Bank of America, National Association, Nedbank Limited, FirstRand Bank Limited, and Standard Americas, Inc.

The Commission will not appeal the CAC order in respect of the Nedbank Group Limited, FirstRand Limited, Credit Suisse Group, and Standard New York Securities Inc.

The Commission will also not appeal the CAC order that dismissed the appeals of these four respondent banks: BNP Paribas, JP Morgan Chase and Co, HSBC Bank plc, and Credit Suisse Securities (USA) LLC.

ABSA Bank Limited, Barclays Capital Inc and Barclays Bank plc applied for leniency. Citibank N.A. and Standard Chartered Bank have settled with the Commission. Investec Limited and Investec Bank Limited remain respondent banks required to file answering affidavits.

“This appeal will provide the Constitutional Court with an opportunity to pronounce on whether the South African competition authorities have jurisdiction to investigate and prosecute firms that are based outside of the Republic whose anti-competitive conduct affects the South African economy,” said Commissioner Doris Tshepe.

## **BACKGROUND**

On 1 April 2015, the Commission initiated a complaint against various financial entities centered on allegations of price-fixing and market division in the trading of the USD/ZAR currency pair. The anticompetitive practices are alleged to have taken place between September 2007 to at least September 2013. On 1 August 2016, the Commission amended the complaint adding additional financial institutions and including allegations of market allocation through customer allocation against the financial institutions. The Commission subsequently referred the complaint to the Tribunal on 15 February 2017. The respondent banks took exception to the original referral. Those objections were adjudicated by the Tribunal in 2019 and considered again on appeal before the CAC in 2020 which ordered that the Commission file a new referral affidavit to substitute for and

replace all the complaint referral affidavits. In accordance with the 2020 CAC order the Commission filed its complaint referral anew on 1 June 2020.

**[ENDS]**

**Issued by:**

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