



DETERMINATION OF MERGER NOTIFICATION M/07/018 – BNY/Mellon

Section 21 of the Competition Act 2002

Proposed merger between Bank of New York Company, Inc. and Mellon Financial Corporation

Dated 01/06/07

Introduction

1. On 4 May 2007, the Competition Authority, in accordance with Section 18(1) of the Competition Act, 2002 ("the Act"), was notified on a mandatory basis of the proposed merger between Bank of New York Company, Inc. ("BNY") and Mellon Financial Corporation ("Mellon").
2. As a result of the proposed transaction, BNY and Mellon will merge into The Bank of New York Mellon Corporation ("BNY Mellon"), a newly established Delaware corporation jointly owned by BNY and Mellon.

The Undertakings Involved

3. BNY is a global provider of banking services, including securities servicing, treasury management, investment management, corporate trust, corporate banking and private banking products and services, as well as investment banking, asset management, mutual funds and securities brokerage.
4. In the State, BNY provides corporate trust services, clearing services through its affiliate Pershing Securities (International Limited) and fund administration services through its two affiliate BNY Fund Services (Ireland Limited) and BNY Acentra Group Holdings Inc. Also, BNY provides securities services to some clients in Ireland that are serviced from locations outside the State.
5. Mellon is also a global provider of financial services, as well as a provider of securities and treasury services to corporations, high net worth individuals, business and other institutions.
6. In the State, Mellon is the holding company of two asset servicing entities- Mellon Fund Administration and Mellon Trustee Limited- that provides fund administration and trustee services to pooled investment vehicles. Mellon also provides custody services, securities lending, and performance analytics to three other clients in Ireland from locations outside the State through its joint venture, ABN AMRO Mellon.

Analysis

7. On a global basis, the activities of the parties overlap in the provision in the provision of custody services, securities lending, transition

management, performance analytics, transfer agency, and fund administration and trustee services.

8. In the State, both parties provide the following services which are described in more detail below:
- fund administration and trustee services from offices in the State;
 - custody services from their operations outside Ireland to clients located in the State;
 - securities lending from their operations outside Ireland to clients located in the State; and
 - performance analytics from their operations outside Ireland to clients located in the State.

Fund Administration and Trustee Services

9. The parties submitted that these services involve all the necessary services to support a fund other than issuing shares in the fund and managing the fund's investment. It involves, amongst other things, administering the fund's contracts with its service providers; monitoring the fund's compliance with applicable regulations; preparing and filing financial reports with regulatory agencies, providing accounting services; creating financial statements; acting as a transfer agent and providing custody services.
10. In the State, there is limited overlap in the parties' activities concerning fund administration. Using data compiled by Lipper Fitzrovia¹, the parties submitted that merged entity will account for c.7% of the market. There are 45 other companies that provide this service in the State.
11. Give the resulting low market share of the merged entity and the presence of other competitors, the Authority considers that the proposed transaction does not raise competition concerns in relation fund administration in the State.

Custody Services

12. The parties submitted that these relate to those securities services that are selected and utilised by owners of securities (or their advisers) to assist them in holding and keeping track of their securities and ensuring all revenues are collected. Using Lipper Fitzrovia data which only compiles data relating to custody services to Irish-domiciled funds, the parties estimated that the merged entity will account for c.17.56% of the market. There are, however, 21 other companies that provide these services in the State.
13. The Authority considers that in light of the number and type of competitors that are present the proposed transaction does not raise competition concerns in relation to custody services in the State.

Securities Lending

14. This involves the temporary exchange of securities, supported by collateral in the form of cash or other securities of a slightly greater value, with an

¹ Lipper Fitzrovia is a London-based investment funds research company.

obligation to redeliver a like quantity of the same securities on a future date. The lenders of securities are investors-primarily institutional investors such as pension funds, foundations, and endowments.

15. The parties estimated that their market share in this segment in the State is minimal as BNY offers securities lending services to only two clients while Mellon offers these services to three clients. The Authority notes that all these services are also provided by at least all the companies that provide custody services.
16. The Authority considers, therefore, that the proposed transaction does not raise competition concerns in relation to securities lending services in the State.

Performance Analytics

17. The parties submitted that this service is provided to some institutional investors who would like to obtain performance and risk evaluations of their investment strategies or investment managers' strategies from independent sources.
18. As with securities lending, the Authority notes that this service is also provided by all the companies that provide custody services. Additionally, this service is provided by a number of investment consultants including Mercer Consulting and Russell Investment Group.
19. The Authority considers, therefore, that the proposed transaction does not raise competition concerns in relation to performance analytics in the State.

Determination

20. 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 between Bank of New York Company Inc. and Mellon Financial Corporation, 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

Dr Paul K. Gorecki
Member of the Competition Authority