

CORPORATE

FINANCE

BULLETIN

*A Recent Report on  
Developments Regarding  
Canadian Bank Mergers*

*November 2002*

## **RECENT DEVELOPMENTS REGARDING THE CANADIAN BANK MERGER REVIEW PROCESS**

The extensive federal financial institution reform package announced by the Government in June 2000 (which was implemented by legislation in October, 2001) included guidelines setting out a merger review process for any proposed merger of banks with equity of more than \$5 billion. The elements of this merger review process are outlined on the reverse side.

On October 25, 2002, John Manley, the Deputy Prime Minister and Minister of Finance, and Maurizio Bevilacqua, Secretary of State (International Financial Institutions), released to the public a letter that they had sent to the House of Commons Standing Committee on Finance and the Senate Committee on Banking, Trade and Commerce. In the letter the Ministers sought advice from the two parliamentary committees to clarify one of the sections of the merger review process guidelines. This section concerns the review that the Government will conduct in response to a bank merger application to determine whether the proposed merger is in the public interest. Specifically, the Ministers sought advice on the considerations that should apply in making such a determination.

Many banking industry representatives and commentators have complained that the absence of the considerations to be applied in the public interest review has resulted in too much uncertainty surrounding the merger review process. The Ministers' letter seeking clarification of these considerations was therefore viewed as a positive step.

The Ministers' letter was also viewed initially as a signal that the Government was becoming more receptive to entertaining a merger proposal than it has been up to now. However, the publication of the Ministers' letter was followed almost immediately by newspaper reports that the Prime Minister's Office would oppose any bank merger prior to Prime Minister Jean Chretien's planned retirement in early 2004.

As well, shortly after the publication of the letter, further newspaper reports stated that Bank of Nova Scotia and Bank of Montreal had been close to announcing a proposed merger, but had abandoned the talks on the basis of the news from the Prime Minister's Office.

As a result, any bank mergers that might be contemplated currently would appear to be on hold for the time being. While the Government's stated policy in the June 2000 financial institution reform package was that bank mergers can be a "viable business strategy", it remains to be seen when the Government will turn this stated policy into practice by allowing a proposed merger to be brought forward for consideration under the merger review process that it put in place more than two years ago.

## MERGER REVIEW PROCESS

There are three distinct phases to the merger review process outlined in the guidelines issued by the Government in its June 2000 financial institutions reform package: an examination stage; a decision stage; and if applicable, a negotiation of remedies stage.

During the examination stage, the merging banks must submit a written application to the Competition Bureau, the Office of the Superintendent of Financial Institutions (“OSFI”) and the Minister of Finance requesting approval to merge and containing information necessary to properly assess the merger request. During this stage, the Competition Bureau will conduct a review of the competition issues and OSFI will review the prudential issues to ensure the safety and soundness of the financial system. Once they have completed their reviews of the proposed merger, the Competition Bureau and OSFI will provide to the Minister of Finance written reports outlining their views on the proposed merger.

Also during the examination stage, the banks must submit a Public Interest Impact Assessment containing information relating to the rationale for the merger and the steps that the banks propose to take to mitigate any potential costs and concerns resulting from the merger. Two separate parliamentary committees will conduct public hearings into the public interest issues raised by the merger proposal using the Public Interest Impact Assessment as a key input. Upon completion of public hearings and deliberations, each of the committees will

submit a report to the Minister of Finance on the public interest issues raised by the proposed merger.

Once the Minister of Finance has received the reports prepared by the Competition Bureau, OSFI and the parliamentary committees, the merger review process will move forward to the decision stage. Upon reviewing all of the reports submitted, the Minister of Finance will make a decision on whether the competition, prudential and public interest concerns raised by the proposed merger are capable of being satisfactorily addressed. If the Minister decides that these concerns cannot be adequately addressed, the merger application will be denied and the merger review process will end at this second stage. If the Minister decides that these concerns are capable of being addressed, the merger review process will proceed to the negotiation of remedies stage.

During this final negotiation of remedies stage, the Competition Bureau will negotiate the remedies necessary to deal with the competition concerns raised during the examination stage and OSFI will negotiate the remedies necessary to address the prudential concerns. In addition, both the Competition Bureau and OSFI will work with the Minister to co-ordinate an overall set of public interest remedies. If remedies are successfully negotiated to the satisfaction of the Minister, the Competition Bureau and OSFI, the Minister will approve the proposed merger subject to the terms and conditions reflected in the negotiated remedies.

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