

26 February 2018

Hon. Joan Fubbs  
Chairperson of the Portfolio Committee on Trade & Industry  
Parliament  
Cape Town

Dear Honourable Fubbs

**RE: BRIEFING NOTES: AFRICAN BANK MATTER**

1. The NCR received complaints relating to alleged reckless lending from various consumers against African Bank Limited (African Bank) in 2012/13. An investigation was conducted, finalized and a referral was served on African Bank and filed with the National Consumer Tribunal (NCT) on 11 February 2013;
2. The NCR met with the Registrar and Deputy Registrar of Banks, Mr Rene van Wyk and Mr Nkosana Mashiya respectively on 8 November 2012 to inform them about the outcome of the above investigation. The investigation revealed that African Bank engaged in reckless lending. They were informed that African Bank will also be invited to a meeting to inform them about this outcome and that NCR will propose that a consent order be concluded between African Bank and the NCR. This consent order would be filed with the NCT to finalize the matter speedily and amicably. This way, consumers would also benefit from speedy redress;
3. Subsequent to the above meeting, a meeting was held between the NCR and representatives of the Executive Management of African Bank, represented by the late, Mr Tami Sekutu, and Mr George Rossous. They were also informed of the outcome of the investigation and the proposal to enter into a consent order. This was followed by a letter to African Bank;
4. African Bank did not accept the NCR's proposal for conclusion of a consent order and referred the matter to its attorneys who sent correspondence to the NCR. The NCR appointed attorneys to deal with the matter. No agreement could be reached with African Bank and the NCR had no option but to refer the matter to the NCT for adjudication;

5. In terms of order of the NCT, the Tribunal may impose the penalties as prescribed in section 150 of the Act for each act of non-compliance, including:
  - (a) declaring any conduct to be prohibited;
  - (b) interdicting such prohibited conduct;
  - (c) imposing an administrative fine not exceeding the greater of 10% of the annual turnover during the preceding financial year or R1m;
  - (d) suspending or cancelling a registration;
  - (e) any other appropriate order.
6. An administrative fine of R300m was proposed to the NCT and this was within the 10% on the annual turnover of African Bank during the preceding financial year;
7. Subsequent to the referral, NCR represented by the CEO, Ms Nomsa Motshegare and the Company Secretary, Mr Lesiba Mashapa, were requested to attend a meeting with the Honorable Minister of Trade & Industry, Dr. Rob Davies, at the dti. The meeting was also attended by the then DDG, Ms Zodwa Ntuli. The purpose of the meeting was to provide the Minister with an update on the African Bank matter. The Minister indicated that he received a call from the then Governor of the Reserve Bank, Ms Gill Marcus, who was concerned about the referral of the African Bank to the NCT. An update was provided to the Minister;
8. After the above brief meeting, the Minister requested us to accompany him to the meeting with Ms Marcus as according to him, she had requested that they meet;
9. During the meeting, Ms Marcus did raise concerns about the effect of the referral and its effect to the financial stability of the banking system in South Africa;
10. A letter dated 17 July 2013, was also sent to the Hon. Minister of Trade & Industry by the then Hon. Minister of Finance, Mr Pravin Gordhan. The letter was forwarded to the NCR by the DG, Mr Lionel October's office. The title of the letter was "Expediting the Tribunal Process to Minimise Risks of the Fiscus". Mr Pravin, in short, was concerned about the delays by the NCR in finalizing the African Bank matter at the Tribunal. The NCR responded to the letter, addressed to the DG, on 25 July 2013 detailing all the steps taken up to date of referral to the NCT;

11. On the date of the NCT hearing, African Bank contacted the NCR to indicate that they request to settle the matter. A settlement agreement was signed in October 2013. In terms of the agreement, African Bank agreed to pay an amount of R20million into the National Revenue Fund, write-off the loans, refund consumers, rescind judgments taken against consumers, remove judgment and adverse information listings from the credit bureaus records of consumers, monitor the compliance programme and develop an active engagement process with the NCR.
  
12. In arriving at the above, the NCR considered the following factors: the degree to which the respondent cooperated with the NCR, balancing consumer protection with financial stability in the banking sector, and the inability of the NCR to rebut the claims made by African Bank that their ICT systems were manipulated by some of their employees – this was picked up during the exchange of affidavits. Some of these employees had deposed to affidavits.



**Nomsa Motshegare**  
**Chief Executive Officer (CEO)**