First Nations FINANCIAL MANAGEMENT BOARD | CONSEIL DE GESTION FINANCIÈRE des Premières Nations

VIA E-MAIL

Department of Finance Canada
legreview-examenleg@fin.gc.ca

Dear Madam or Sir:

RE: Consultation on Strengthening Competition in the Financial Sector

I. Opening Comments

We write further to our letter of December 8, 2023, in reply to Finance Canada's Consultation on Upholding the Integrity of Canada's Financial Sector (the "**December Letter**"). Today's letter is in response to Finance Canada's Consultation on Strengthening Competition in the Financial Sector.

The First Nations Financial Management Board (the "**FMB**") is a First Nations-led organization established under the *First Nations Fiscal Management Act*.[1] We have responded only to questions that are relevant to our clients and our mandate.

As we set our in our December Letter, Indigenous Peoples in Canada are often in unique and inequitable positions in regards to financial institutions ("**FIs**"). This can include:

- Long distances from reserves and/or rural and/or remote Indigenous communities (together, "**RIC**") to brick and mortar FI branches and FI ABMs;
- Disproportionately high need to rely on white label ABMs;
- Inconsistent and lower quality Internet, including restrictions on band width and speeds; and
- Restrictions on borrowing and insuring capabilities on Indigenous businesses.

Please see our December Letter for more detail on these limitations and inequitable positions. We have included same as an attachment for your convenience.

In its report on RBC's acquisition of HSBC, the Competition Bureau of Canada found that that financial service markets are concentrated, and that there are high barriers to entry and expansion in many of the relevant financial services markets.[2] These observations are important. This concentration is in Toronto. This is significant because in our experience, the banks in Toronto have the least familiarity with Indigenous reconciliation principles. This will be a relevant consideration throughout our submission.

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[1] S.C. 2005, c. 9. The FMB works with clients to develop fiscal capacity and responsible fiscal governance, and further serves Indigenous people by advocating for the necessary inclusion of Indigenous interests in financial and economic policy matters throughout Canada and internationally.
[2] Report to the Minister of Finance Regarding the Proposed Acquisition of HSBC Bank Canada by Royal Bank of Canada

II. What existing barriers do Canadian consumers face in accessing banking services? How could these barriers best be addressed within the scope of the acquisitions and mergers framework?

A. Barriers

In our view, those living in Indigenous Communities experience (among others) the following significant barriers to accessing banking services:

- Unduly long distances between Indigenous Communities and brick and mortar FIs and FI ABMs;
- Difficulty with using online banking services; and
- Lack of financial literacy.

In addition, Indigenous individuals, communities and businesses struggle to access capital from banks and are thus often undercapitalized.

B. The Public Interest Test Should Specifically Consider Indigenous Issues in Accessing FI Services

An essential feature in the mergers and acquisitions ("**M&A"**) framework is whether the proposed merger or acquisition is in the public interest. This standard is a discretionary one.

In our view, the public interest test for M&As for federally regulated financial institutions:

- Must be clarified to take into account these (and other) consistent and systemic issues and outcomes set out above; and
- Should specifically include Indigenous considerations (including Truth and Reconciliation ("**TRC**") considerations), on a case-by-case basis.

These considerations may result in outcomes where RICs receive better financial services and will also be in keeping with Canada's commitment to reconciliation. Truth and Reconciliation Call to Action 92[3] ("**TRC 92**") calls on corporate Canada (including banks and all those government institutions that regulate them) to provide equitable opportunities to Indigenous Peoples in Canada, including gaining long-term benefits from economic development. Improved access to capital is an essential aspect of responding to TRC 92.

These considerations should be set out in writing, and when a proposed FI M&A is before the Minister for review, the Minister should provide written reasons that analyze each of these. With respect to RBC's acquisition of HSBC, we were not able to find reasons for the Minister's decision. Accordingly, we

[3] TRC 92 calls on corporate Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation. Actions under TRC 92 include: (i) meaningful consultation with Indigenous Peoples to obtain free, prior and informed consent before beginning economic development projects; (ii) providing Indigenous Peoples with equitable access to jobs, training and educational opportunities, and ensuring Indigenous communities gain long-term sustainable benefits form economic development projects; and (iii) providing education and training to all levels of employees on reconciliation and the true history of Canada's Indigenous Peoples.

additionally recommend that reasons for decision be either (i) more accessibly located for the public to review; or (ii) if not already, made public.

We think that many of these barriers can be addressed in terms and conditions. We will discuss terms and conditions in the following question regarding remedies.

III. What changes, if any, are required or desirable to the merger and acquisition review process for banks? What new considerations should be included in a review of a merger or acquisition under the Bank Act? What are the range of appropriate remedies that should be considered to address any competition or concentration concerns?

A. Changes and Considerations: Indigenous Considerations

The M&A review process should include specific considerations for how the proposed M&A will further or detract from Canada's commitment to reconciliation, including:

- Will the merger or acquisition improve Indigenous Canadians' access to financial services by:
    - Decreasing travel distance to a brick and mortar FI;
    - Decreasing travel distance to an FI ABM;
    - Improving financial literacy programming;
    - Increasing innovation in banking services or products, including services or products that will rely less heavily on internet access and which will be comparable to products available to those with the highest quality internet access;
    - Increasing other types of financial services, including insurance, securities, and trusts.
- A specific analysis of any negative consequences, including unintended consequences, that could result from the merger or acquisition. For example:
    - Will the merger or acquisition increase concentration in Toronto, and in Ontario generally? In our experience, the banks in Toronto have the least familiarity with Indigenous reconciliation principles, so further concentration in Toronto may have negative effects on RICs and Indigenous businesses.
    - Will the merger or acquisition result in branches closing near RICs? Will a loss of branches and reduction in competition make it even more difficult for Indigenous individuals, communities and businesses to access capital?

B. Changes and Considerations: Innovation

While the Competition Bureau considered innovation in its letter, it is not clear that the Finance Minister did the same under the *Bank Act*. In determining whether to approve a proposed merger or acquisition, the Minister should be required to consider financial services innovation. We make this observation noting that that Terms and Conditions imposed by the Minister of Finance on the sale of HSBC Bank Canada to the Royal Bank of Canada (the "**RBC/HSBC Terms and Conditions**") did not impose any banking-specific innovation requirements.

There are many Canadians, especially Indigenous Canadians, who would benefit from creative and thoughtful innovations in the financial services sector. We recommend an increased focus on innovation be included in the M&A framework.

C. Remedies

The most pragmatic remedy to these concerns is terms and conditions. Accordingly, we recommend that any future mergers or acquisitions under the Bank Act need strong terms and conditions that manage some of the systemic issues facing Indigenous Communities. Terms and conditions should be included that mitigate the negative consequences from the analysis we propose above. Here are some examples:

1. Remedies: Social and Economic Terms and Conditions for Underserved Indigenous Communities

After RBC's acquisition of HSBC, there are now only six major banks in Canada. With a further decrease in the number of major banks in Canada, there is a risk that RICs will be further ignored by FIs. These RICs need to have more focus on and innovation to meet their needs. However, there is a real risk that in the absence of competition to drive this innovation, RICs will not be contemplated by the major banks in Canada.

To remedy this, we recommend that terms and conditions for future M&s should include social and economic terms and conditions targeted at increasing access to financial services for Indigenous communities. The RBC/HSBC Terms and Conditions model social and economic terms and conditions that would be in the appropriate nature for Indigenous Communities. See, for example, the RBC/HSBC Terms and Conditions regarding housing, charitable organizations, and agriculture.

2. Remedies: Terms and Conditions to Decentralize focus on Toronto

Canada is a large country where citizens have distinct cultures, ways of life, and interests. As previously noted in this submission, we have concerns with the concentration of FIs in Toronto. We do not yet observe the major banks (or other FIs) to be publishing reconciliation action plans. We observe that there is less familiarity with Indigenous Peoples and their needs in Toronto than in other parts of Canada. For example, we observe the bundling of Indigenous Peoples in with other racialized groups (i.e. BIPOC – Black, Indigenous, People of Colour), rather than focusing on Indigenous Peoples as their own unique group.

In addition, centralization of head offices in one city negatively affects the opportunities that are available in other jurisdictions. Those living in other places will never access career opportunities in their home jurisdictions like those available in Toronto.

For future M&As, we thus recommend terms and conditions that, for example, require head offices in other cities outside of the Greater Toronto Area, and preferably outside of Ontario, or require business lines to be operated primarily from outside of the Greater Toronto Area.

3. Remedies: Terms and Conditions to Include Indigenous-Specific Terms and Conditions

There are no RBC/HSBC Terms and Conditions that respond to the various barriers faced by RICs and Indigenous businesses. Instead, the terms and conditions:

- seek to preserve the level of services that could be affected by RBC's acquisition of to RBC;
- provide financing for certain social purposes (e.g. $7 billion for affordable housing); and
- require certain increases in the workforce in Winnipeg, including for francophone Manitobans.

These terms and conditions exemplify the types of terms and conditions that are possible, and which could have been very beneficial for Indigenous Canadians:

1. **Workforce**: This could have included, for example, a term and condition to develop an Indigenous employee onboarding and development process at RBC for Indigenous Canadians across the country. The recent data on bonus pay in financial institutions shows that Indigenous men and Indigenous women earn, on average, 65 cents and 33 cents, respectively, for every dollar in bonus pay earned by non-Indigenous men. This indicates a lack of Indigenous individuals in senior roles and at decision-making tables. Terms and conditions can mitigate this inequitable arrangement.
2. **Accessibility**: This could have included, for instance, the establishment of RBC ABMs in an agreed-upon number of RICs, with the possibility of opening bank accounts virtually, including by telephone where internet speeds do not allow for virtual meetings. This would reduce the number of white label ABMs (which carry prohibitively high fees) that many RICs rely on.

In our view, it will be consistent with the Government's commitment to Truth and Reconciliation to include Indigenous-specific factors in the M&A framework.

3. <u>Remedies: Maintain Innovation of Acquired FinTech</u>

Upon the acquisition of a company, the acquiring company may or may not continue to operate the acquired business. When an FI acquires a smaller FinTech or a controlling interest in the FinTech, we recommend terms and conditions that require the acquiring company to continue operating the acquired assets. This will ensure that innovation continues following acquisition.

IV. Should the government formalize a ban on mergers between large banks, and if so, how? what would be an ideal threshold size for such a ban?

An outright ban on mergers or acquisitions between large banks may be too uncompromising. The question is whether the merger or acquisition is in the public interest. Please refer again to our proposed changes to PI test.

It may be useful to determine factors other than the size of the acquisition. For example, whether the concentration of banking services would be too high in Toronto, and would be unduly diminished in other parts of the country.

V. What measures would support a stronger tier of smaller, disruptive competitors (e.g., small- and medium-sized banks, credit unions, and fintech)? How could different orders of government work together more effectively to support smaller, disruptive companies?

A. <u>Measures to Support Competitors</u>

We are supportive of the increased development of smaller and disruptive competitors and challenger banks. The statement on Consumer Driven Banking is important. We see particular utility in ideas like innovating for solutions such as services that will allow consumers to build their credit by proving they have, for example, paid rent on time. We would urge Canada to ensure such credit-building solutions are available when using pre-paid credit cards (see, e.g., OneFeather PAY).

Canada should incentivize inexpensive payment and banking solutions for RICs, and should provide more incentives to FinTech in Canada, generally. This could include: loan guarantees, or grant and contribution programs with terms favourable to innovative companies.

When considering the M&A of an emerging FinTech, the Minister should specifically consider whether the innovation in question serves people in ways that a traditional bank is unable to. As noted above, the acquiring bank should be required to continue operating the acquired FinTech.

B. Different Orders of Government

Many FIs own their own investment and wealth management firms (e.g. RBC owns RBC Dominion Securities). Accordingly, the banks are indirectly controlling provincial/territorially regulated enterprises. We thus encourage the federal, provincial and territorial governments to develop coordination with the Canadian Securities Administrators and other provincial regulators.

VI. Could the framework better ensure a more level playing field for all participants to support competition? Should large banks be required or incentivized to offer third-party products and services?

There is a presumption that most people have a basic level of financial literacy and know, for example, what basic banking services or products exist. This is not usually the case. It results in an uneven power balance between the buyer and the seller. This is a prime occasion for government to regulate to protect the public.

To that end, we think banks should be required to offer third-party products and services, to ensure consumers are aware of the full suite or products that are available. This is particularly the case for investment products and is also applicable to insurance.

VII. Should there be a regular public report on concentration and competition in Canada's banking sector? What would be important areas to consider in such a report?

Yes. There should be regular report regarding the banking sector. However, this report should be wider in scope that simply concentration and competition in the banking sector. Instead, it should also answer the following question each year: is the public being adequately served?

This report should include Indigenous concerns, issues, and solutions. An Indigenous person should be part of any committee struck for this purpose. Ideally, Indigenous representatives from across the country would be part of this committee.

VIII. What other measures, if any, should the government take to address factors that affect competition such as market concentration, barriers to entry and expansion, regulatory burdens, switching costs, and the conditions facilitating coordinated behaviour in the banking sector? What is the role of provinces in supporting more competition in the financial sector and are there issues that should be addressed with better coordination and collaboration?

The Government must better provide financial literacy to ordinary consumers, especially those consumers coming from disadvantaged starting positions. This notably includes Indigenous people in rural, remote and northern communities, but may equally apply to other, similarly situated non-Indigenous Canadians. An agency dedicated to this work is essential.

Many of our comments appear to fall within the latter part of the Financial Consumer Agency of Canada's ("**FCAC**") mandate of supervising federally regulated financial entities and **strengthening the financial literacy of Canadians**.

We recommend that Government prioritize revitalizing FCAC's financial literacy scope and purpose. While FCAC struck an Indigenous Financial Literacy Working Group in 2018, there is little to be found about the work, success, failures, policies or projects of this working group. The FCAC's most recent annual report (2022-23) mentions the working group once, but does not provide a substantive update.

As we have said in both this and the December Letter, financial literacy is essential to a successful overhaul of the FRFI legislative framework. FCAC, or a similar entity, must begin to do more to advance financial literacy of Canadians, especially Indigenous Canadians.

We recommend more partnership with, among others, the Aboriginal Financial Officers Association, Junior Achievement, CPA Canada and its provincial and territorial branches, and, as noted, the CSA.

We recommend that, following an M&A, Finance Canada should complete a post-M&A review within a prescribed. This should be a transparent assessment, which is in writing and easily accessible by the public. The review should consider and specifically set out any failures to correspond with terms and conditions. If there are failures, these should be required to be rectified within a specified period of time (e.g. two years).

IX. What measures to encourage competition could also support the creation of new jobs, and the protection of existing jobs, in the Canadian financial sector?

We recommend that government require FI head offices and business lines to be geographically diversified across Canada. The majority of banks of all sizes (from large banks to small challenger banks) are headquartered in Toronto. This means that the majority of jobs are in Toronto. This creates a drain of talent from other jurisdictions, and also deprives the other jurisdictions of the suite of jobs that a major bank's head office would offer. The COVID-19 Pandemic has led to major advances in the efficiency of working virtually. There is no reason why a head office must be in Toronto.

X. Final Remarks

There are many opportunities for the Government to make the mergers and acquisitions of financial institutions better for Indigenous Peoples and all Canadians. Many of these changes will also be in keeping with reconciliation.

As we close, and having canvassed how M&As may impact Indigenous Peoples, we raise a question regarding RBC's acquisition of HSBC. Was this administrative decision made in compliance with Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*? Article 19 provides:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and

> informed consent before adopting and implementing legislative or administrative measures that may affect them.

We additionally ask whether the Minister completed any research to understand whether there would be affects on Indigenous Peoples as a result of the then-proposed acquisition of HSBC by RBC?

In the case of policy development, administrative decisions and legislative amendments, Finance Canada should consider whether there is compliance with UNDRIP Article 19. We remind the Ministry that it has obligations under TRC 57:

> We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

We look forward to hearing from you regarding these questions. We also invite you to contact us should you have any questions arising from our comments.

Sincerely,

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Per: ______________________________
Geordie Hungerford, CFA, CAIA, MBA, LLB

CEO