**COMPETITION TRIBUNAL**
**REPUBLIC OF SOUTH AFRICA**

**Case No: 19/LM/Mar01**

**In the large merger between**

**Investec Group Ltd**

**and**

**Fedsure Investments Ltd**
**Fedsure International Ltd**

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**Reasons for the Competition Tribunal's Decision**

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## Approval

The Competition Tribunal issued a Merger Clearance Certificate on 30 May 2001 approving the merger between Investec Group Ltd and Fedsure Investments Ltd and Fedsure International Ltd without conditions. The reasons for approving the merger are set out below.

## The merger transaction

The transaction involves Investec acquiring the entire issued share capital of, and claims against, Fedsure Investments Limited ("Fedsure") and Fedsure International Limited ("Fedsure International") from Fedsure Holdings Limited. The Fedsure Healthcare business, which includes Medicross, Mediscor, G Net, Ampath, Fedsure Healthcare and The Federated Employers Mutual Assurance Company will not form part of the transaction.

Investec is a holding company, which holds shares in the operational companies which together constitute the Investec group and which are primarily involved in banking. 50% of the undiluted issued share capital of Investec is held by Investec Holdings Limited ("Inhold"), the shares of which are also listed on the JSE. Inhold is not controlled by anyone shareholder.

Fedsure Holdings, which is listed on the JSE, is a holding company that holds shares in the operational companies, which together constitute the Fedsure group. Fedsure is primarily involved in insurance.

Since 1991, Investec has held a strategic investment in Fedsure, which currently amounts to approximately 19%. In turn, Fedsure Life Assurance Ltd currently holds approximately 23% in Inhold through its policyholders' fund.

According to the parties the ongoing consolidation and rationalisation of the financial services industry has created the opportunity for Investec and Fedsure to restructure these crossholdings. The cross-holdings will be eliminated through an unbundling of Fedsure's shares in Investec. Investec, however, will continue to hold shares in Fedsure Holdings, which will be a separate group post the merger.

## Evaluating the merger

### The relevant market

Both parties operate within the financial services industry, but they have largely focussed their activities in different sectors of the industry, Investec on banking and Fedsure on insurance.

Quite obviously the provision of financial services is too broad a category to constitute a relevant market for our purposes. The Commission and the merging parties have used the same product classes as defined in the Commission's Report to the South African Reserve Bank on "The Proposed Merger between Nedcor and Stanbic" dated 14 April 2000. Save with one exception which we refer to below, we have agreed that this approach is a convenient one to evaluate this merger although we would stress that these categories are not to be considered as written in stone for the purpose of evaluating financial service mergers.[1]

Following this approach we have outlined below the areas of overlap followed by a brief explanation of what is entailed by that service where required. This is followed by a table, which sets out the parties'respective shares of the respective markets. This is then followed by an analysis of those overlapping markets where some comment is required.

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[1] What emerges from the documentation is the industry is changing rapidly and that new products and services are continually being offered. Even traditional services such as retail banking are not immune to this process of change. For this reason formulating the appropriate relevant markets is difficult. Investec may provide certain services to its clients, which look like those provided by the traditional bank but are based on a fundamentally different model, which would tend to distinguish them as products from those of its more traditional rivals. Thus for the Investec client mortgage finance forms part of a larger suite of private client banking services all rolled up into one facility whilst with the traditional approach these are discrete services which compete with their equivalent in rival banks. This must differentiate them for competition purposes as the one institution is offering a package whilst the other offers a range of individual products and services.

A. INSURANCE

Although Investec's activities are primarily related to banking it controls a subsidiary, Investec Insurance Brokers (Pty) Ltd, which acts as a broker or intermediary between short-term insurance underwriters and their policyholders. Fedsure sells short-term insurance through its subsidiary Fedgen.

B. BANKING

The Competition Commission categorized the banking sector into retail banking services (personal and small business), corporate banking (corporate, investment and merchant banking), asset and retail investment banking, estate planning and administration and property management which contains the following separate product markets in which there is *product overlap* between the merging parties:

1. Retail Banking Services
    - i. *Personal Banking*, which is subdivided into cash/cheque and transmission accounts, deposits, overdraft facilities, mortgages and credit cards.
    - ii. *Small Business Banking*, which comprises mainly access to capital, funding of small businesses in the initial phases of operation and also for sustenance of these enterprises and banking facilities to small businesses.

2. Corporate banking

    Corporate banking can be defined as the rendering of banking services to large enterprises. The overlapping services in this market segment are demand deposit and credit, asset backed finance, foreign exchange.

3. Asset and retail investment management
    - i. *Asset management* is the management of funds referred to as funds under management by the so-called asset managers on behalf of various clients such as institutional investors, linked product service providers and pension funds. Asset management is generally not accessible to individual clients.
    - ii. *Retail investment management* is similar to asset management except that managers, which include insurance companies, unit trust managers, linked investment service providers and deposit taking institutions, provide the service on behalf of individual clients.

C. ESTATE PLANNING AND ADMINISTRATION

Estate planning and administration services involve the preparation of wills and trust deeds, acting as executors to deceased estates, administering trusts and advising individuals involved.

Fedsure provides this service through its subsidiary Fedtrust and Investec through Investec Private Trust Limited.

D. <u>PROPERTY MANAGEMENT</u>.

This service consists of performing and /or arranging for a number of activities in relation to immovable properties, often where the property is owned for investment purposes by an entity that does not occupy the property.

Investec provides property management services through its subsidiary, IPG Property Trading & Development (Pty) Ltd and Fedsure does so through its subsidiary Fedsure Properties (Pty) Ltd.

**Impact on competition**

The market shares of the parties where services overlap are as follows:

| Sector | Investec | Fedsure | Post-merger |
|---|---|---|---|
| **Insurance** | 1% | 2% | 3% |
| **Retail Banking** | | | |
| Transmission accounts | 1% | 2% | 3% |
| Loans and overdraft | 3% | 2% | 5% |
| Deposits | 1.3% | 5% | 6.3% |
| Mortgages | 3% | 3.3% | 6.3% |
| **Corporate Banking**: | | | |
| Deposits | 5% | 1% | 6% |
| Loans | 5% | 1% | 6% |
| **Asset and retail investment management** | | | |
| Asset management | 7.2% | 4.2% | 11.4% |
| Retail investment management | 4% | 5% | 9% |
| Unit trusts | 11% | 3% | 14% |
| **Estate planning & administration** | 1% | 1% | 2% |
| **Property management** | 1% | 1% | 2% |

<u>Competitive analysis</u>

The markets have been defined narrowly and even on these narrow definitions the combined market shares of the merged parties never exceed 14%.

In respect of retail and corporate banking much of the overlap that is reflected is due to the overlaps between Investec and Fedsure's interest in Saambou.

Fedsure, through its subsidiary Fedlife, owns approximately 41% of the issued share capital of Saambou Holdings Limited, a listed company, which controls banking operations. The shares in Saambou are held in Fedlife's policyholders fund, mainly for the benefit of its policyholders.

Investec and Saambou are both niche-market banks that have focussed their activities on selected product markets rather than providing all possible banking services. Investec, which does not undertake any retail banking offers its services to the upper market segment of corporate and individual clients and offers only businesses access to credit. In contrast Saambou focuses on the "retail banking – personal banking services" category with the majority of its clients being individuals. It operates through a branch network, which offers deposits, loans and traditional mortgage lending, excluding credit cards.

Investec indicated to the Tribunal that, although none of the Fedsure businesses have been subject to any agreement relating to its possible disposal, Saambou might be one of those entities in relation to which such negotiations may commence shortly.

Thus the retail and corporate banking combined shares may overstate the market shares as the two firms are not competing for the same customer base. Although it seems highly unlikely that Investec will retain the current stake in Saambou post merger we are assuming for the purposes of our decision that it will. The overlaps in banking are insignificant and give rise to no concerns. The same may be said of the overlaps in Estate Planning and Administration and Property Management.

In the insurance market there are no overlaps between the two firms but there is a vertical relationship between the broking business of Investec and the insurance product business of Fedsure. However since neither firm is dominant in its respective market this relationship is unlikely to give rise to competition concerns.

In the asset management market we also had no concerns. We did however query whether unit trusts might not be considered a product in a market of their own and not in the broader category of retail asset management. We asked the parties to provide us with market share figures, which they did, based on the Association of Unit Trusts quarterly report dated 31 December 2000.

These figures reflected that the parties'combined market share would be 14%. This would make the merged entity one of the larger players in the unit trust market with Old Mutual and Sanlam the biggest players, each with a market share of 14%. The market is characterised by a high level of competition and entry is easy with market shares changing constantly.

The parties to the merger informed the Tribunal that in relation to the asset management market, the concentration ratio appears to be substantially below 1800 points and the delta increase factor less than 100 points.[2] However, the Tribunal is satisfied that this is a highly competitive market in which countervailing power exists.

The remainder of the retail and asset management market is also very competitive and will continue to be so post merger. Entry by foreign institutions ensures that the market remains contestable.

We, therefore, agree with the recommendation of the Competition Commission that this merger will not substantially lessen competition.

**Public interest consideration**

Except for employment, the transaction is unlikely to have a negative impact on any of the other public interest issues.

According to the parties 627 jobs will be lost mainly because of the significant financial losses incurred by Fedsure while approximately 373 jobs will be lost as a direct result of the merger. According to the Commission's report the parties claim that the majority of employees facing retrenchments are skilled employees and should be able to secure alternative employment and that the parties have also demonstrated to it that some effort is being made to assist those affected employees to find alternative employment. Employees made no representations to the Commission or us so we have no reason not to accept the parties' submissions on this aspect.

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| ____________ | **<u>14 June 2001</u>** |
| N.M. Manoim | Date |

Concurring: M.T.K. Moerane and S. Zilwa

[2] According to the US Merger Guidelines (1992, as revised in 1997) the Agency regards markets with a post-merger HHI in the region between 1000 and 1800 to be moderately concentrated. Mergers producing an increase in the HHI of less than 1000 points in moderately concentrated markets post-merger are unlikely to have adverse competitive consequences.