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

**Case No.: 49/LM/Sep03**

**In the larger merger between:**

**Mutual and Federal Insurance Company Limited**

**and**

**Credit Guarantee Insurance Corporation of Africa Limited**

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## Reasons for decision

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## Approval

1. On 5 November 2003 we issued a Merger Clearance Certificate approving unconditionally the merger between Mutual and Federal Insurance Company Limited **("M&F")** and Credit Guarantee Insurance Corporation of Africa Limited **("CGIC")**. Our reasons for the decision follow.

## The parties

2. The primary acquiring firm is **M&F**, a listed company on the JSE Securities Exchange. Various entities hold issued share capital in M&F[1]. Old Mutual plc, an international financial services company listed on the London Stock Exchange, ultimately controls M&F. Old Mutual plc has substantial operations in life assurance, asset management, banking and general insurance. It also has a number of subsidiaries worldwide.

3. The primary target firm is **CGIC**, a registered short-term insurer, which operates solely in the credit insurance market[2].

## The merger transaction

4. This is a proposed merger pursuant to the acquisition by M&F of additional shares in the capital of CGIC from certain shareholders of CGIC other than M&F[3]. This will result in M&F increasing its shares in CGIC from 35,07% to 50,98%. Post-merger, M&F will hold at least 50,98% of the issued share

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[1] Mutual and Federal Investments Ltd ("MFIL") – 50%; Royal and Sun Alliance Group plc – 37,3%; and the Public – 12,3%. The parties claim that no shareholders' agreement exists between Royal Sun and MFIL hence Royal Sun has no form of control over M&F.
[2] Its major shareholders include M&F, Santam Limited, Munich Reinsurance Company of Africa Limited, IDC of South Africa, SA Eagle Insurance Company Limited, and ABSA Bank Limited.
[3] By way of a background, M&F recently acquired a further 6,2% stake in CGIC from Fedsure General Insurance Ltd. This increased M&F's shares in CGIC from approximately 28% to 35% and triggered the requirement that M&F make a mandatory offer in respect of the balance of the shares not owned by it.

capital of CGIC. The parties submit that M&F will, post-merger, acquire control over CGIC but the structure and business of CGIC will remain unchanged.

5. Pursuant to the implementation of this merger, M&F will continue to operate in the general short-term insurance business - excluding the credit insurance business - with CGIC operating solely in the credit insurance business.

**The relevant market**

6. ***M&F*** operates in the general short-term insurance business. It sells short-term insurance products relating to property, transport, motor, guarantee, accident, liability and engineering insurance. It does not, however, sell credit insurance products.

7. **CGIC** sells short-term insurance products, namely: short-term domestic credit insurance, short-term export credit insurance, and medium to long-term export credit insurance.

8. The parties and the Commission state that both firms sell short-term insurance products to corporate clients[4]. According to the parties, the business conducted by M&F in the general short-term insurance market is not interchangeable with the business conducted by CGIC in the credit insurance market.

9. From the above, it appears that no product overlap exists in the activities of the merging parties in that M&F offers no insurance products substitutable for those offered by CGIC.

10. The Commission averred that credit insurance is a category in the specialist market, and that it is broadly classified under guarantee insurance. The Commission contends that the parties operate in different market segments within the short-term insurance market. In its analysis of the relevant market the Commission considered the nature of the product, the type of customer, and the industry's view of the relevant market. According to a number of market participants interviewed by the Commission general short-term insurance and credit insurance do not fall in the same relevant market. It is the Commission's submission that the parties are perceived by the industry to operate in two different markets[5].

11. The parties hold that although the credit insurance market falls within the broader general short-term insurance market, the credit insurance market is a distinct market in itself. Having considered the nature of the business of CGIC, the parties identified two distinct markets, viz. the '*general short-term insurance and the credit insurance markets'*.

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[4] See page 1 of the transcript dated 05 November 2003.
[5] Refer to page 6 of the Commission's merger report.

12. With regard to the relevant geographic market, the parties contend that because general short-term insurance and credit insurance products are sold throughout the Republic of South Africa, the relevant geographic market is thus national[6]. In our previous decisions, the relevant geographic market for short-term insurance products in South Africa was construed to be national[7].

13. The Commission did not make a definitive recommendation on the relevant market. The Commission does not believe that competition is lessened on either a narrow or broad view of the market corresponding to the general and specialist short-term insurance markets and the primary short-term insurance market.

**Competitive effect of this transaction**

14. According to the figures supplied by the Commission, M&F has – as per the Commission's market analysis based on segments – a market share of 18,4%. The Commission contends that there are a number of players in this market who actively compete with each other[8]. The Commission further indicated that CGIC's market share in the credit category of the specialist insurance market is 80%. The Commission aver that it may be possible for customers to seek credit insurance from outside South Africa. Market participants indicated that high market shares in this market could be easily eroded. According to the Commission, this is possible either from international competitors who offer competitive prices or from other short-term insurers who may easily enter the market for credit insurance.

15. In its broad market analysis, the Commission estimated M&F's market share in the primary short-term insurance market at 12,4%[9]. CGIC's estimated market share in the broad market is 1,8%. *According to the Commission, the merged entity will thus have a combined post-merger market share of 15,5%.*

16. It is the Commission's submission that at the narrow market level, no product overlap arises.

17. At the broad market level, the transaction will create an overlap in the primary short-term insurance market with the parties' post-merger market share of 15,5%. The Commission's view is that this overlap will not lead to anti-competitive consequences, as the market will remain relatively fragmented post-merger. The Commission contends that the market will remain fairly competitive with several players operating within this market who

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[6] According to a number of competitors and customers interviewed by the Commission, the geographic market could be wider than a South African market. Competitors indicate that they compete with international credit insurers for services; however, some of them see themselves as competing only with international players if they have subsidiaries outside the country. Furthermore, consumers of credit insurance are said to be huge export companies who could obtain credit insurance from international insurers.

[7] For a detailed discussion on this topic, refer to *Santam Limited and Guardian National Insurance Company Limited* 14/LM/Feb00 and *Santam Limited and Allianz Risk Transfer Limited* 28/LM/May02.

[8] See page 7 of the Commission's merger report.

[9] According to the Commission, the entire market share of Old Mutual in this market is 13,7%.

could constrain the merged entity should it increase prices above the competitive level[10].

18. The parties further maintained that this transaction will not result in the removal of an effective competitor in the market as the business of CGIC will continue to operate separately from M&F, in the same manner as it did prior to the proposed merger.

19. The parties contend further that there is a great deal of countervailing power in the market due to the influence exercised by insurance brokers. They further state that these brokers control approximately 80% of the business introduced to CGIC and are able to place business at an insurer of their choice. It is the parties' further contention that it is a common practice in the credit insurance market that if clients are dissatisfied with the price or services offered by insurers in this market, the client concerned would move its business to an alternative insurer or self-insure[11]. This is another factor that enhances competition in the short-term insurance market, as there is an ease with which customers are able to move their business from one insurer to another. According to the Commission, the consumers of credit insurance are huge export companies, who could obtain credit insurance from international insurers.

20. At the hearing, the parties contended that a number of new players have entered the market since the late 1950s when CGIC entered this market. Some of the larger banks such as Nedbank and Standard Bank who were previous shareholders in CGIC have withdrawn and can place their business elsewhere than with Credit Guarantee. Consequently, such shareholders may have an interest in starting up businesses in competition with CGIC where previously there was no incentive for them to do so[12].

21. As a result, the parties averred further that this transaction would not confer any market power on M&F and/or CGIC as both parties operate in a separate product market.

**Public interest considerations**

22. The transaction will have no effect on public interest considerations as contemplated in the Competition Act.

**Conclusion**

23. In light of the above findings, we conclude that this merger is unlikely to substantially lessen or prevent competition in any of the relevant markets. We accordingly approve this transaction without any conditions.

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[10] See page 9-10 of the Commission's merger report.
[11] See pages 9-10 of the parties' merger competitiveness report.
[12] See page 10 of the transcript dated 05 November 2003.

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| ____________________ | <u>04 December 2003</u> |
| D. Lewis | **DATE** |

Concurring: N. Manoim, F. Fourie

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| For the merging parties: | Mr Justin Balkin, Edward Nathan & Friedland (Pty) Ltd. |
| For the Commission: | Mr M Worsley assisted by Ms. Seema Nunkoo, Competition Commission |