COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No.: 54/LM/Jun05

In the large merger between:

Business Venture Investments No. 976 (Pty) Limited

and

SAGE Group (Pty) Limited

Reasons for Decision

APPROVAL

1. On 24 August the Tribunal approved the proposed acquisition by Business Venture Investments No. 976 (Pty) Ltd of Sage Group Ltd subject to the condition that:

1.1. Any compulsory retrenchments resulting from the merger will be effected in such a manner as is substantially no less favourable to employees than that contained in the submission made by Momentum Group Ltd to the Competition Commission dated 29 July 2005 attached hereto as "Annexure A".

1.2 for the purpose of subparagraph 1.1, "*substantially*" means no more than a 10% variation.

The Merging Parties

2. The acquiring firm is Business Venture Investments No. 976 (Pty) Ltd ("BVI 976"), a special purpose vehicle created by Momentum Group Ltd ("Momentum"), a wholly owned subsidiary of FirstRand Ltd ("FirstRand"). Momentum owns a variety of subsidiaries.[1]

3. The target firm is Sage Group Ltd ("Sage"). None of its shareholders has control over Sage.[2]

The merger transaction

4. The proposed transaction entails the acquisition by Momentum, through BVI 976, of the entire issued share capital in Sage other than those held by Sage Life Ltd.

Rationale for the transaction

5. The merging parties asserted that the proposed merger would give Momentum the

[1] See Annexure "A" to the Form CC4(1) of the merging parties.
[2] The major shareholders of Sage (holding in excess of 5% of the issued share capital of Sage) are ABSA Group Ltd (21.3%), Financial Securities Ltd (17.7%), Mines Pension Funds (16.5%), Transnet Retirement Fund (8.3%) and Sagecor (7.7%).

opportunity to expand its distribution reach and achieve greater economies of scale. From Sage's perspective, the deal would give Sage a capital injection to service the debts Sage incurred from its venture into the United States. The parties asserted further that Sage's failure to meet its debt obligations could result in the closure of all or most of Sage's business operations hence the proposed merger.

The relevant product market

6. Momentum is responsible for certain of the insurance, investment and multi-management activities of the FirstRand group. Momentum also markets and distributes a variety of products of other financial and related institutions, such as risk insurance (life and disability), investments (retirement annuities, endowments, linked unit trust investments, etc), employee benefits (pension funds, provident funds and group lifer and disability cover), and medical aid cover.

7. FirstRand comprises a large group of companies that operate in the financial services sector. It owns a number of subsidiaries that provides, amongst others, the following: long-term insurance products to individuals and groups; short-term insurance products, property rental services and unit trusts.

8. Discovery Holdings Limited ("Discovery Holdings"), which is also a FirstRand subsidiary, is the holding company for a group of companies that market and administer healthcare funding and life insurance products.

9. Sage is a life insurance and investment organisation controlling and managing assets and is also involved in related property services. It holds 100% of the issued share capital in two of its operating companies, viz., Sage Life Ltd ("Sage Life") and Sage International Finance Ltd ("Sage International"). Sage Life in turn owns a number of subsidiaries.[3]

10. The product overlap between the activities of the merging parties is in the provision of long-term insurance products (to individuals and groups), short-term insurance products, unit trusts, and property rental services.

11. We need not confine ourselves with what the relevant product market is as the transaction is unlikely to prevent or lessen competition substantially irrespective of any market definition adopted.

The relevant geographic market

12. The Commission's view is that since both parties and their competitors provide long-term and short-insurance products as well as unit trusts throughout the country, the geographic domain is national. It further appears that the geographic areas with respect to property rental services can be segmented into different nodes as per the classification of the South African Property Association. The Commission's market enquiries revealed that the merging parties carry on their property rental services in geographic areas such as Johannesburg, Sandton, Durban and Cape Town. We agree with this approach.

[3] These include companies such as Sage Unit Trusts Ltd ("Sage Unit Trusts"), Sage Specialised Insurances (Pty) Ltd ("Sage Specialised Insurances"), Town Homes (Pty) Ltd and SMH Land Development (Pty) Ltd.

Effect on competition

13. The merging parties market shares will remain low post-merger. The merging parties will enjoy no more than 15.15%, 5.7%, 5.59%, and 13.5% with regarding to long-term insurance, short-term insurance, unit trusts and property rental services respectively.

14. We are furthermore persuaded by the reasons advanced by the Commission and the merging parties that Momentum and Sage's vertical integrated relationship would not lead to customer foreclosure and/or input foreclosure post-merger.[4] This is also necessitated by factors such as Sage' relatively low pre-merger market shares, the merged entity's low combined market shares as well as a significant number of large and small competitors in the respective markets.

The effect of the merger on employment

15. The merger filing reflected that the proposed merger would result in negative effect on employment. From a worst-case scenario the merging parties estimated four-hundred (400) job losses. In its recommendation the Commission concluded that "*although the merger will result in approximately 400 job losses, the Commission is of the view that no significant employment concerns would arise from the transaction, as the retrenchment process would be implemented systematically."* On the other hand, the merging parties noted that "*although specific employees might become redundant, the effect of the proposed transaction on employment is a positive one since a failure to implement the proposed transaction would probably have a worse effect on employment."*[5] However, the merging parties' correspondence with the Commission during its investigation process indicated that the parties where, willing to, amongst others, facilitate redeployment within the FirstRand group, engage in voluntary retrenchment process, assist staff with re-skilling and retraining, etc. To this end, the parties had also set up a timetable setting out how retrenchment process will unfold.

16. It was not clear from the papers whether any employee representatives or their respective trade unions indicated their desire to participate in the hearing of this merger. A certain Ms. Gizelle Conradie, a representative of SASBO, attended the hearing of this merger. Upon questioning by the members of the Tribunal she asserted that SASBO is opposed to the retrenchments, but requested that some form of conditions be imposed permitting consultation - in terms of the Labour Relations Act - by the parties with the trade union pertaining to the retrenchment process.[6] We were told that SASBO was not a recognised trade union, that there was no recognised trade union and that no collective bargaining unit exists within the merging parties.

17. Notwithstanding the above, our major concern was that the merging parties might retrench as they deem fit particularly because there was no recognised trade union or at the very least a collective bargaining unit in the merging parties who will look after the employees' interests and to see to it that the merging parties comply with their proposed retrenchment timetable. In his argument, the merging parties' legal representative was initially opposed to the imposition of conditions on structured retrenchments saying that only 400 employees will be affected and which might even be lesser than 400.

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[4] Page 14 of the Commission's Merger Competitiveness Report.
[5] See page 891, paragraph 12.2.5, of the record.
[6] See pages 2-4 of the transcript of 24 September 2005.

18. Notwithstanding the merging parties' assertion and undertaking that they would engage in a staff consultation process regarding the integration of Sage with Momentum,[7] we nevertheless considered it necessary that such a plan be made available to the public domain so as to ensure that the retrenchment process gets monitored, given the lack of employee representation at the merged firm. Note that the condition imposed requires no more of the parties than that they adhere to retrenchments in accordance with the plan they had proposed to the Commission.

19. Such a retrenchment undertaking or a plan by the merging parties was incorporated into our Order of 24 August 2005 and is therefore unnecessary to reproduce here.

Conclusion

20. We found that the merger will not substantially lessen or prevent competition in any market. However, the merger itself may have an adverse effect on employment hence we are satisfied that the condition imposed will obviate any substantial public interest concern.

________________ 29 November 2005

Norman Manoim **Date**

Concurring: **M. Moerane, M. Mokuena**

For the merging parties:	Gareth Driver, *Werksmans Attorneys*
For the Commission:	Odie Strydom, *Mergers & Acquisitions*
For SASBU:	Ms. Gizelle Conradie (SASBU)

[7] See Mr Meyer's testimony, pages 12-13 of the transcript of 24 September 2005. See also pages 17-19 of the transcript. Mr Meyer is the Director of Momentum.