

**In the large merger between:**

**Established Investments (Pty) Limited**

**and**

**National Cereal Holdings (Pty) Limited**

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### **Reasons for Decision**

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#### **Approval**

1. On 08 September 2004 the Competition Tribunal issued a merger clearance certificate approving unconditionally the merger between Established Investments (Pty) Ltd ("EI") and National Cereal Holdings (Pty) Ltd ("NCH"). The reasons for this decision follow.

#### **The merging parties**

2. The primary acquiring firm is **EI**, a special purpose vehicle created solely for purpose of holding interests of parties to the merger transaction.
3. The primary target firm is **NCH**, which controls National Cereal Investments (Pty) Ltd ("NCI"). The latter company controls Premier Foods (Pty) Ltd ("Premier Foods").

#### **The Merger Transaction**

4. This transaction constitutes a restructuring of a loan agreement that existed between Fabvest Investment Holdings Ltd ("Fabvest")<sup>1</sup> and Nedbank Ltd ("Nedbank").<sup>2</sup> The merger transaction makes provision for Fabvest to sell shares which it holds in NCH to EI, and simultaneously to subscribe for 55% of the shares in EI. Nedbank will acquire a 45% interest in EI and will simultaneously subscribe for the senior and junior preference shares in the share capital of EI. The merging parties have stated that Nedbank's subscription for these preference shares in EI will enable EI to fund the acquisition of a 72.9% interest in NCH. It is further envisaged that as soon as the debt has been paid off, Nedbank will dispose of its interest in EI.

5. According to the shareholders' agreement concluded between Nedbank, Fabvest and EI, Nedbank will be entitled to control EI and the subsidiaries of NCH, which are Premier Foods and NCI.<sup>3</sup> Nedbank will also have the right to appoint directors of NCH. The parties informed us at the hearing that Fabcos and Nedcor will – by virtue of this transaction - enjoy joint control over NCH. They confirmed that they will notify

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<sup>1</sup> The Fabcos Trust controls Fabvest which in turn wholly owns Fabcos Investment Holdings (Pty) Ltd ("FIH"). FIH has a 38% interest in Tsogo Investment Holding Company (Pty) Ltd ("TIH").

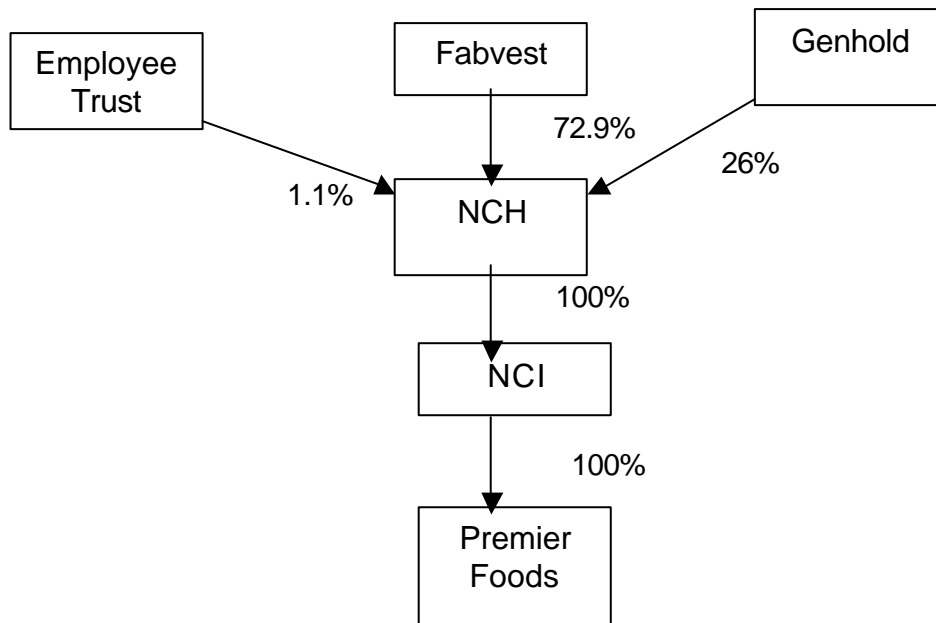
<sup>2</sup> Nedbank is a banking group controlled by Nedcor Limited.

<sup>3</sup> The parties stated that for as long as Nedbank is a preference shareholder in EI it is in a position to exercise control over EI despite the fact that it is a minority shareholder with only 45% in EI.

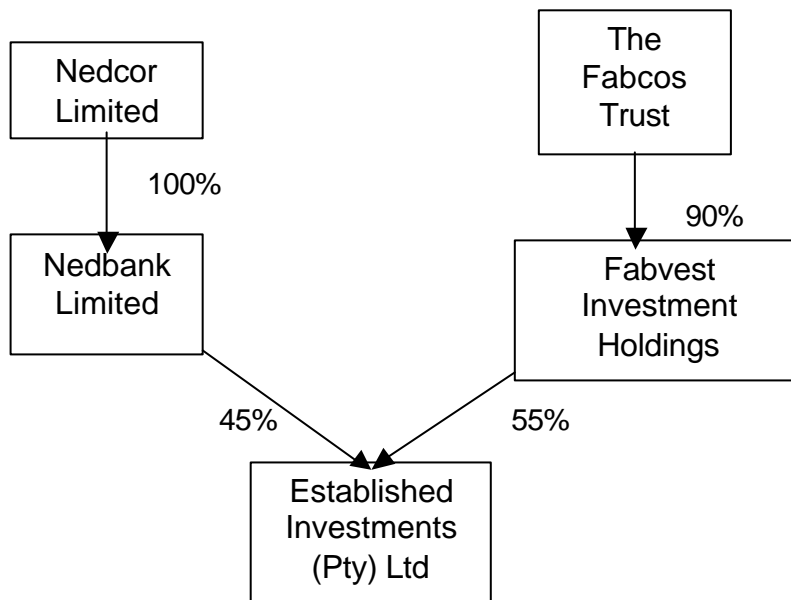
the transaction should there be any change of the joint control in the future.<sup>4</sup>

Below are diagrams which depict the ownership structure of Premier Foods pre-merger and that of EI post-merger.

**DIAGRAM 1: OWNERSHIP STRUCTURE OF PREMIER PRE-MERGER**



**DIAGRAM 2: OWNERSHIP STRUCTURE OF EI**



### Rationale for the transaction

6. Nedcor had extended a large loan to Fabvest to purchase its equity in Premier via NCH. It appears that concerns over Fabvest's ability to repay this loan have led the parties to restructure their relationship in the present form<sup>5</sup>.

<sup>4</sup> See the transcript (page 4).

## **The relevant product market**

7. As alluded to above, EI is a special purpose vehicle created for purposes of this transaction.

8. Fabvest is an investment holding company which holds a 38% indirect interest in TIH, which is involved in the hotel and gaming industry. Post-merger, Fabvest will be involved in the maize, wheat and bread industry<sup>6</sup>.

9. Nedbank is a commercial bank offering a broad range of financial services products.

10. Both NCH and NCI are investment vehicles and do not trade in any product markets or provide any services. The only trading entity within the target firm is Premier Foods. Its main activities include milling, marketing, selling and distribution of bread, maize meal and wheat flour products<sup>7</sup>.

## **Impact on Competition**

11. We were advised that neither Nedcor nor Fabvest own any significant interest in any competitor of Premier. (Premier's major competitors are Tiger Brands and Pioneer Foods). Although Nick Denis, the CEO of Tiger, is a non-executive member of the Nedcor Board, we were advised at the hearing that he recuses himself during any discussion of the Nedcor relationship with Premier.

12. Since the merger creates no overlaps nor leads to any vertical integration we are satisfied that it raises no competition issues.

## **Public interest issues**

13. The merging parties stated that the transaction would not affect the operations of either of the merging parties' businesses nor result in any job losses.

## **Conclusion**

14. We agree with the Commission's submission that this transaction is unlikely to result in the substantial lessening or prevention of competition. We accordingly approve this merger unconditionally.

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<sup>5</sup> The parties made it clear during the hearing that the EI structure was not a long term proposition. If Premier performs successfully the loan will be redeemed and Nedcor will exit. If not, there is a possibility that Nedcor will be left as the sole controlling shareholder. Nedcor is unlikely to be a long-term owner and will presumably want to sell, possibly to a competitor of Premier's. We were assured that in the unlikely event of such a scenario the merger would be notifiable, but failing which, it is an industry which the Commission says it monitors and it would require the transaction to be notified as a small merger. (See Transcript (pages 6-7).

<sup>6</sup> This is so because of Premier Foods which forms part of the primary target firm.

<sup>7</sup> The main brand in respect of maize meal is Iwisa No. 1; wheaten flour is Snowflake Flour; rice is Premier Rice; and in bread products, the Blue Ribbon brand.

Norman Manoim

15 September 2004  
**Date**

Concurring: **Medi Mokuena and Lawrence Reyburn**

For the merging parties: Elize van Biljon (*Taback & Associates*)

For the Commission: Martin van Hooven (*Mergers & Acquisitions*)