COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 71/LM/Jun08

In the matter between:

Old Mutual Investments Group (South Africa) (Pty) Ltd Acquiring Firm

and

Future Growth Asset Management (Pty) Ltd Target Firm

Panel	:	D Lewis (Presiding Member), Y Carrim (Tribunal Member) and N Manoim (Tribunal Member)
Heard on	:	26 August 2008
Order issued on	:	26 August 2008
Reasons issued on	:	08 December 2008

Reasons for Decision

Introduction

[1] On 26 August 2008 the Tribunal approved the acquisition by Old Mutual Investments Group (South Africa) (Pty) Ltd of Future Growth Asset Management (Pty) Ltd. The reasons follow below.

Parties

[2] The primary acquiring firm is Old Mutual Investments Group (South Africa) (Pty) Ltd ("OMIGSA"), which is wholly owned by Old Mutual (South Africa) Ltd ("OMSA"). OMSA is a wholly owned subsidiary of Old Mutual (Netherlands) BV, which is in turn controlled by OM Group (UK) Ltd ("OM Group"). OMIGSA has seven subsidiaries and also holds interests in various associate companies, joint ventures and other interests.[1]

[1] According to the parties, OMIGSA does not exercise control over any of its associate companies, joint ventures or over its other interests.

[3] The primary target firm is Future Growth Asset Management (Pty) Ltd ("Future Growth"). Future Growth is jointly controlled by Wipcapital and the Staff Trust, with 69% and 31% of the issued share capital respectively. Future Growth has 40% share in Advent Asset Management (Pty) Ltd ("Advent"). The remaining shares are held by the Public investment Corporation ("PIC").

Transaction

[4] In terms of the structure of the proposed transaction, OMIGSA will acquire 69% of the issued share capital of Future Growth from Wipcapital. Further, there are call and put options in favour of and against Future Growth by the Staff Trust in respect of the remaining 31% share. OMIGSA will acquire direct control over a significant part of the business of Future Growth pursuant to the implementation of the transaction.[2]

Rationale

[5] OMIGSA submits that its rationale is, inter alia, acquiring Future Growth's fixed income capability in the market place and thereby bolstering its existing portfolio, adding a new brand to its set of boutique offerings and bringing a set of skills and products in areas in which it sees considerable future market potential (high yield fixed income and equity products).

[6] Future Growth submits that the transaction will, inter alia, give it access to Old Mutual's life license for the pooling of its clients[3] and also give it access to the strong retail distribution arm of OMIGSA.

[2] It is submitted by the merging parties that post-merger, Future Growth will continue to retain its clients that it has on its books and will also retain its name. Thus the parties will still compete for business in the market place. However, this does not preclude the possible cross-selling of products.

[3] It is submitted that Future Growth used Momentum's life license when it was part of the FirstRand Group for pooling institutional investment clients (It is no longer part of this group and therefore had to find a new life license, which is described as being critical for an asset management company that runs large pooled investment funds).

Parties' Activities

The Acquiring Group

[7] OMIGSA is a registered Financial Services Provider which provides services mainly to institutional investors via a multi-boutique offering. It consists of 12 investment boutiques, each of which focuses on its investment area and is managed by a team of investment professionals. OMIGSA currently manages assets in excess of R373 billion.

[8] The business of OMIGSA is divided into the following 12 boutiques: Absolute Return Investment, Alternative Investments, Core Equity Investments, Fixed Income Investments, Macro Strategy Investments, Marriot Income Investments, Property Investments, Select Equity Investments, Symmetry Multi-Manager, Umbono Fund Managers, Value Equity Investments and Retail and Institution Investment.

[9] OMSA acts as an investment holding company in respect of a variety of businesses in the financial services field. The businesses relevant for the present transaction are Marriot Income Specialists (business is to invest retired investor's capital conservatively), Umbono Fund Managers (focuses on providing investors with cost effective and efficient access to the markets) and Nedbank (activities include corporate and retail banking, property finance, investment banking, private banking etc).

[10] Old Mutual Plc is based in London and has operations spanning life assurance, asset management, banking and general insurance sectors of financial services.

The Target Firm

[11] Future Growth is a specialist asset manager mandated to invest client's funds directly into specific asset classes, namely fixed income and equity. Its subsidiary, Advent, provides property asset management services and property management services in respect of commercial and retail property investments.

[12] The four areas of Future Growth's expertise are equities, specialist fixed interest (also known as fixed income), alternative investments and socially responsible investments.

Relevant markets

[13] Both merging parties are involved in the provision of asset management services, fixed income / interest investment services as well as the provision of equity management services.

[14] Asset Management is defined broadly by the parties as consisting of either asset managers who invest directly into asset classes or as a market comprised of asset managers who invest directly into asset classes together with those who act as conduits between clients and direct asset managers (multi-managers).

[15] In this regard, customers[4] and competitors[5] of the merging parties informed the Commission that multi-managers compete directly with asset managers (Allan Gray and Sanlam Investment Management, amongst others). The Commission further submits that it acknowledges the possible existence of a narrow product market comprising of only the supply of fixed income or interest investment funds.

[16] This is borne out by the fact there are asset managers such as Future Growth who do not provide asset management services in all investment classes but rather specialise in the supply of asset management services in particular investment classes. This was confirmed by the Motor Industry Fund Administrators and the Public Investment Corporation who submitted that they apportion funds to multiple fund managers according to specialised investment mandates.

[17] The Commission, however, came to the conclusion that it is not necessary to reach a definite relevant product market because in either the broadly defined market (i.e. asset management services - including multi-managers), or the narrowly defined market (i.e. specific asset classes), the merging parties' combined post-merger market shares remain relatively low. The Commission therefore assessed the impact of this transaction on the market for asset management services, fixed income and equity management services.

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[4] The Motor Industry Fund Administrators and the Public Investment Corporation.
[5] Allan Grey and Sanlam Investment Management.

Competition Analysis

[18] The merging parties' combined post-merger market shares are as follows: asset management services 21%, fixed income 27% and equity funds 20%. Competitors of the merging parties in these markets include Sanlam Investment Management, STANLIB, Rand Merchant Bank, Investec and Metropolitan Asset Management as well as others.[6] The Commission also assessed other factors such as the removal of an effective competitor, barriers to entry and countervailing power.

The removal of an effective competitor

[19] According to the parties, this transaction will not result in the removal of an effective competitor because Future Growth will, post-merger, continue to operate as a separate entity using its existing name and current premises. From the perspective of customers and competitors of the merging parties, Future Growth is an effective competitor and an alternative source of asset management services.

[20] The Commission, however, recognises that even though this transaction will result in the removal of a credible competitor, the existence of numerous asset managers who are able to offer asset management services in direct competition with the merging parties allays any potential competition concerns.

Barriers to entry

[21] The Commissions' investigation revealed that it is not easy to enter the asset management market. Potential entrants require professional qualifications, knowledge and expertise, financial resources and clients (funds) in order to be able to compete in the market.

[22] Further, prospective entrants have to be registered as licensed financial services providers, report to the FSB and comply with the FICA Act. However, the parties have submitted that these barriers are not insurmountable given that the market is not concentrated and there are numerous competitors of various intellectual capabilities, strengths and sizes.

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[6] Other competitors include Coronation, Investment Solutions, Oasis, Glacier Financial Solutions, Taquanta, Prudential etc.

[23] According to the FSB, there has been an increase in the number of registered asset managers in South Africa and currently there are about 500 registered asset managers, up from 302 in 2003.[7]

[24] The Commission is of the view that although barriers to entry are high, these are not insurmountable – based on the fact that the turn-around times to complete the registration process with the relevant regulatory bodies such as the FSB takes about 2 months. Further, technological and administrative processes can be out-sourced whilst the intellectual capacity of the asset management firm is dependent on the availability of skills in the labour market.

Countervailing Power

[25] The Commission submit that customers of the merging parties are highly sophisticated and knowledgeable about the kind of products or services as well as the investment return expected from their service providers.

[26] The Commission has also been informed that switching between asset managers is not uncommon in the Market. Customers indicated that they are able and would switch to other service providers and that there are no hindrances to procuring the services of asset managers when the need arises.

[27] The proposed transaction is therefore unlikely to lead to a substantial lessening or prevention of competition in the markets for asset management, fixed income and equity management services.

Public Interest

[28] The transaction does not raise any significant public interest concerns.

[7] The number of operational asset managers as of June 2007 was 446 (54 are currently dormant).

____________________ **08 December 2008**

D Lewis Date

N Manoim and Y Carrim concurring.

Tribunal Researcher:	I Selaledi
For the merging parties:	Cliffe Dekker Hofmeyr Attorneys
For the Commission:	T Masithulela