

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No's: 86/LM/Dec02 and 87/LM/Dec02

In the larger merger between:

**Nedcor Investment Bank
Holdings Limited**

Primary Acquiring Firm

and

**Franklin Templeton NIB Asset
Management (Proprietary) Limited**

Primary Target Firm

And the larger merger between

Old Mutual (South Africa) Limited

Primary Acquiring Firm

and

**Franklin Templeton NIB Asset
Management (Proprietary) Limited**

Primary Target Firm

Reasons for Decision

Approval

On 19 December 2002, the Competition Tribunal issued Merger Clearance Certificates for two large merger transactions between:

1. Nedcor Investment Bank Holdings Ltd and Franklin Templeton NIB Asset Management (Pty) Ltd (“the first transaction”), and
2. Old Mutual (SA) Ltd and Franklin Templeton NIB Asset Management (Pty) Ltd (“the second transaction”)

These transactions are linked with the first being a pre-requisite for the second. The Tribunal therefore heard and approved both transactions at the same time. The Tribunal’s reasons for its decision follow.

The Transactions

The first transaction (85/LM/Dec02) involves Nedcor Investment Bank Holdings' acquisition of 50% of the entire issued share capital and 50% of the claims on

loan account held by Templeton International Inc in Franklin Templeton NIB Asset Management.

The second transaction (86/LM/Dec02) involves the acquisition by Old Mutual (SA) from Nedcor of 50% of the entire issued share capital of and claims on loan account against Franklin Templeton NIB and an entitlement to 50% of the banking profits generated by Franklin Templeton NIB through an arrangement with Nedbank, a division of Nedcor.

The parties to the transactions

Nedcor Investment Bank Holdings Limited

In the first transaction, the primary acquiring firm is *Nedcor Investment Bank Holdings Limited*. Nedcor Investment Bank Holdings Limited ("NIBH"), is a wholly owned subsidiary of Nedcor Limited ("Nedcor"). Old Mutual (SA) Ltd (OMSA) and its wholly owned subsidiary, Old Mutual Life Assurance Company (SA) (OMLACSA) have 18% and 33% shareholdings in Nedcor respectively. Old Mutual Plc is effectively the ultimate controlling company of NIBH.

Franklin Templeton NIB Asset Management (Pty) Ltd

In both the transactions the primary target firm is Franklin Templeton NIB Asset Management (Pty) Ltd ("Franklin Templeton NIB") is an asset management joint venture formed in 2000 when the asset management businesses conducted by each of the member firms in NIB Asset Management Limited ("NIBAM"), NIB Management Company Limited, Franklin Templeton Asset Management (Proprietary) Limited ("FTAM"), and Franklin Templeton Management Company Limited were consolidated into a single business. Franklin Templeton NIB is jointly owned by NIBH and Templeton International Inc, each having 50% of its issued share capital.

Old Mutual (South Africa) Ltd

In the second transaction the primary acquiring firm is Old Mutual (SA) Ltd ("OMSA") is a wholly owned subsidiary of Old Mutual Plc, a public company listed on the London Stock Exchange. OMSA has a 100% shareholding in Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA"). OMSA and OMLACSA have 18% and 33% shareholding in Nedcor respectively.

The Rationale for the transactions

The transactions under consideration are part of the restructuring within the Nedcor group that will result in a reorganization and rationalization within the same group of companies, all of which are controlled by OM Plc. The Nedcor restructuring will result in the transformation of the old joint venture between

NIBH and Templeton International Inc into a new joint venture between OMSA and NIBH.

In 2000 the asset management business conducted by each of the member firms in NIB Asset Management Limited ("NIBAM"), NIB Management Company Limited, Franklin Templeton Asset Management (Proprietary) Limited ("FTAM"), and Franklin Templeton Management Company Limited were consolidated into a single business conducted under the name Franklin Templeton NIB Asset Management (Proprietary) Limited ("Franklin Templeton NIB"). In terms of clause 12 of Annexure C to the merger agreement [Shareholders' Agreement between Templeton International Inc ("TII"), NIBH, FTAM {which later changed its name to Franklin Templeton NIB Asset Management (Proprietary) Limited} and Templeton Global Advisors Limited] in the year 2000, NIBH was *inter alia*, entitled by means of a *call option* to call upon TII to sell to it all (but not a portion only) of the TII group's shares in and claims on loan account against FTAM (being the shares and claims in FTAM held by TII and its subsidiaries and Franklin Resources Inc and its subsidiaries from time to time), under certain conditions.

The parties submit that NIBH is currently exercising the Call Option referred to above. In terms of the Call Option, NIBH is acquiring all of TII group's shares in and claims on loans against Franklin Templeton NIB.

The nature of these transactions is such that Old Mutual (South Africa) Limited ("OMSA"), the ultimate controlling company of NIBH (the acquiring firm in the first transaction) in the current transaction is purchasing 50% of the entire issued share capital of the target firm.

The transaction was put together to establish a joint venture in the high net worth private client market segment of their respective wealth management businesses. Post the transaction Franklin Templeton will function as a provider of private client management service to high net worth individuals.

Evaluating the Merger

The Relevant Market

Product Market

NIBH through its various subsidiaries provide a host of corporate services. NIBH's banking activities are conducted through its wholly owned subsidiary, Nedcor Investment Bank, which is organized into a number of functional areas focusing on different market segments – the corporate and institutional markets and the commercial and property market.

NIBH's operational focus areas include corporate and legal advisory services; asset management; private equity investments; property (including the financing of commercial and industrial properties); local and international structured and project finance; treasury (including market making, funding, derivatives, financial products and sales); strategic alliances across a broad range of financial activities including, inter alia, property development, asset management, empowerment asset management, stock brokering and trust and fiduciary activities; and capital account management fund incorporating both domestic and international aspects.

Franklin Templeton NIB is involved in unit trust management, private client asset management and institutional asset management. NIBH is indirectly represented in the product market for the provision of asset management services through the target firm.

OMSA is the holding company for all of Old Mutual Plc's South African operations, save for its asset management operations. As OMSA is a holding company, it does not sell any products or render any services. OMSA's most material subsidiary is OMLACSA, which is a registered long-term insurer. OMLACSA's principal activity is the transaction of all classes of life assurance and retirement funding business in the SA market.

In the first transaction, there are no product overlaps and we agree with the Commission's definition of the relevant product markets as the markets for the provision of institutional, private and unit trust management.

In the second transaction, we agree with the Commission's definition of the relevant market as the market for wealth management (management of assets and cash) for high net worth private individuals and their estates, as OMSA and Nedcor are relinquishing their wealth management businesses of the target firm.

Geographic Market

In both transactions the Commission defines the relevant geographical market as national, the Republic of South Africa. The parties offer their products and services throughout the Republic.

Effect on competition

Post-merger, NIBH will in terms of the first transaction, own the entire issued share capital of Franklin Templeton NIB, which will cease to exist as a joint venture between NIBH and TII. Franklin Templeton NIB will become NIBH's wholly owned subsidiary. Thereafter, in terms of the second transaction Nedcor (NIBH's holding company) will sell 50% of the issued share capital of Franklin Templeton NIB to OMSA. In essence, the second transaction is merely a restructuring by Nedcor of the shareholding in Franklin Templeton NIB within the

group of companies. Hence there is no significant competitive change from the status quo.

This, together with the lack of product overlap, ensures that there will be no fundamental change to the existing structure of the market, nor will any existing competitor be removed.

Public interest Issues

The first transaction will not result in any retrenchments. While there are job losses anticipated in the second transaction, they result mainly from the overall restructuring within the Nedcor Group. Potentially 18 jobs will be lost as a direct result of the current transactions. We agree with the Commission that this number is insignificant when compared to the total jobs to be retained. The transaction does not raise any public interest grounds.

In light of the above we agree with the Commission that the merger will not substantially prevent or lessen competition.

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28 January 2003

Concurring: D Lewis, M Holden

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| For the merging parties: | Vani Chetty, Edward Nathan & Friedland. |
| For the Commission: | Alan Coetzee, Miriam Sebothoma. Competition Commission |