

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 89/LM/Dec02

In the large merger between:

Nedbank Limited

and

Fasic Africa (Pty) Limited

Reasons for Decision

APPLICATION TO SUBSTITUTE

The parties asked us to approve an application to substitute Nedbank Limited for BoE Bank Limited. We hereby approve this substitution.¹

APPROVAL OF MERGER

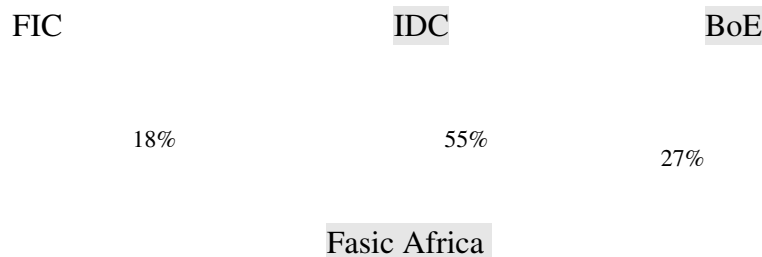
On 17 December 2003 the Competition Tribunal issued a Merger Clearance Certificate in terms of Section 16(2)(a) of the Act approving the merger Nedbank Limited and Fasic Africa (Pty) Ltd. The reasons for the approval of the merger appear below.

Parties

1. The acquiring firm is Nedbank Limited. Pursuant to the referral of this transaction to the Tribunal, the banking business of BoE, including BoE Bank Limited was transferred to Nedbank Limited (formerly Nedcor Bank Limited). In terms of this transaction and in light of section 54 of the Banks Act, all of the assets and liabilities of BoE Bank were transferred to Nedbank Limited. Accordingly, Nedbank Limited has now acquired the same rights and obligations of BoE Bank.

¹ The need for the substitution is technical and arose from the requirement in the Banks Act that we refer to below.

2. The target firm is Fasic Africa (Pty) Ltd (“Fasic”) a diversified consumer goods holding company. One of its subsidiaries is the Lion Match Company, the primary manufacturer of safety matches in RSA. It also has a 50% (minus 1) share of Kimberly-Clark Southern Africa (Pty) Ltd, (a leading manufacturer of tissue, personal care, and health products). It owns 100% of National Shaving Products (Pty) Ltd.
3. Prior to the merger, Fasic is controlled by Industrial Development Corporation of South Africa (“IDC”) as to 55%; BoE as to 27% and Fasic Investment Corporation (“FIC”) as to 18%.



The Merger Transaction

4. The transaction comprises a disposal of IDC’s 55% interest in Fasic. BoE (Corporate), which already owns 27% of Fasic, is acquiring this interest in pursuance of its pre-emptive rights to acquire such shares. The acquisition will thus give it a majority shareholding in the company in that it will hold 82% of the entire issued share capital of Fasic.

Background

5. Just prior to the hearing before us, there were two applications to intervene based on similar grounds by FIC (Fasic Investment Corporation Limited) and Steephill Trading (Pty) Ltd (“Steephill”). FIC claimed that it had a pre-emptive right to acquire the IDC's shareholding in Fasic but was prevented from exercising such right. Steephill claimed that in terms of a prior agreement with the IDC, it is entitled to the shares, in default of FIC exercising its option. Both firms also alleged that insofar as they represent previously disadvantaged groups, the sale to BOEas opposed to them, might have an adverse affect on empowerment. They maintained the merger should either be prohibited or postponed pending the outcome of arbitration proceedings between the parties
6. At a hearing on 15th January 2003, we allowed the intervening parties to intervene and set dates for the filing of certain documents. A revised timetable was agreed to wherein certain additional information was to

be made available to the intervenors by a certain date. They were also given an opportunity to file a statement of issues. A further pre-hearing was convened for early March 2003.

7. During the course of March, we were notified that the parties were attempting to settle the dispute. In October 2003 we were notified that the parties had reached agreement.² On 11 November 2003 Steephill Trading notified that it was withdrawing its objection to the first merger.³

Rationale for the Transaction

8. The IDC wished to realise its investment in Fasic.

The Relevant Market

9. Nedbank is involved in corporate and retail banking, including provision of various financial services, such as investment advice, corporate finance, mortgage loans and client facilitation and proprietary trading.
10. Fasic is engaged in the manufacture and distribution of safety matches, shaving product; the distribution of imported disposable lighters. Furthermore, it manufactures tissues and health products through its interest in Kimberly Clark Southern Africa (Pty) Ltd.

Impact on competition

11. There is no product overlap whatsoever, neither between the merging parties nor any of their subsidiaries or associated companies. There is accordingly no impact on competition. Although Old Mutual, which is the largest shareholder in Nedcor, holds a large investment in Nampak, which is a competitor of Kimberly Clark, there is no evidence that it is able to exercise control over that company as a result of that stake.

We accordingly conclude that this merger will not lead to a substantial lessening of competition. There are no public interest concerns which would alter this conclusion. The merger is therefore approved unconditionally.

N. Manoim

20 January 2004
Date

² Basically, Nedbank, BoE, Steephill and FIC have entered into a sale of shares agreement in terms of which Steephill Trading or its nominee would acquire from Nedbank all of the shares in Fasic held by BoE following the approval of the first merger by the CT.

³ There has been a subsequent ongoing sale of the Nedbank stake to Steephill Trading which transaction was approved by the Competition Commission in early November 2003.

Concurring: L. Reyburn, T. Orleyn

For the merging parties: M. Brassey instructed by Edward Nathan
Friedland

For the Commission: K. Ramathula, Competition Commission