

In the large merger between:

Business Venture Investments 904 (Pty) Limited

Acquiring Firm

and

**Certain Businesses of Momentum Group Ltd
and m Cubed Holdings Ltd**

Target Firms

Reasons for Decision

Approval

1. The Competition Tribunal issued a Merger Clearance Certificate on 12 January 2005 approving without conditions the merger between the abovementioned merging parties. The reasons for this decision follow.

The merging parties

2. The **primary acquiring firm** is Business Venture Investments 904 (Pty) Ltd ("NEWCO"), a shelf company. NEWCO is a joint venture company created by Momentum Group Ltd ("Momentum") and m Cubed Holdings Ltd ("m Cubed").

Other acquiring firms

3. Momentum and m Cubed jointly control NEWCO. FirstRand Ltd ("FirstRand") is the 100% controlling shareholder of Momentum. FirstRand controls FirstRand Bank Holdings Ltd, which in turn controls FirstRand Bank Ltd. According to the parties, Momentum controls RMB Asset Management, African Life Assurance, and Momentum MultiManagers. Momentum has a 100% shareholding in FirstRand Asset Management (Pty) Ltd ("FirstRand Asset"). FirstRand Asset comprises of companies including, but not limited to: RMB Asset Management ("RMBAM"); RMB Investment Services (Pty) Ltd; RMB Unit Trusts (Pty) Ltd; and FutureGrowth Asset Management (Pty) Ltd ("FutureGrowth"). Momentum also has a 73% shareholding in Momentum International Multi-Managers (Pty) Ltd ("MIMM").¹

4. M Cubed is a listed company on the JSE and is not controlled by any other firm. It does, however, control a number of firms.²

5. The **primary target firms** are certain businesses of Momentum and m Cubed listed below. They do not have any subsidiaries.

¹ See the record (page 406) – "the FirstRand group structure" (Schedule 13.2).

² The details of these entities appear on page 8 and 9 of the record.

The Merger Transaction

6. The proposed transaction involves NEWCO (a newly formed holding company) acquiring certain businesses of m Cubed and its subsidiaries as well as those of Momentum.³ M Cubed's businesses being acquired are: the business of m Cubed Asset Management (Pty) Ltd operations ("MCAM"), which provides asset management services (based on the multi-management model) mainly to retirement funds; the business of Escher Structured Products (Pty) Ltd ("ESP"), which sells structured products to the retirement / pension fund market and to external financial service providers; and the Asset Management Outsourcing Services ("AMOS") division, which provides asset management administration services to the internal multi-manager operations and external clients. The Momentum business to be acquired is the South African multi-manager operations of MIMM.

7. In terms of the Memorandum of Understanding ("MOU") agreed to by Momentum and m Cubed, NEWCO will acquire the target firms as outlined above. Momentum and m Cubed will acquire 40 and 184 shares in NEWCO respectively as a settlement of the purchase consideration. Momentum will increase its interest in NEWCO to 50% by acquiring 72 additional NEWCO shares from m Cubed, with the result that the parties will each hold 50% of the shares in NEWCO. M Cubed and Momentum will equally nominate the board of NEWCO. In the event of a deadlock, a Momentum representative will have the casting vote. NEWCO will have its own corporate and business identity, and will operate under a new brand.

8. The parties expressly stated that NEWCO would not acquire all the operations of m Cubed and Momentum. M Cubed will nevertheless continue to carry on its Wealth Management Services (being retail asset management services, sale and management of unit trusts, retail WRAP products and life insurance products), its specialised investment services and various other stand-alone businesses. It can be seen from the above that NEWCO is only acquiring Momentum's domestic (South African) multi management operations. It would also not acquire the asset management services carried on elsewhere in the FirstRand group.

Rationale for the Transaction

9. The merging parties' rationale for this deal is four-fold, namely:

- To create a far bigger presence in the multi-management arena, with the possibility to receive more new business opportunities;
- To bulk assets together in order to be able to negotiate lower fees from underlying asset managers;
- To benefit from the joint multi-management skills of the two entities; and
- To benefit from economies of scale in respect of administration and other costs.

The merging parties' activities

Acquiring Firms

³ See the parties' Memorandum of Understanding of 2/11/2004 (Pages 107-110 of the file).

10. **NEWCO** is a shelf company created for purposes of this acquisition. It does not trade at the moment.

11. **The FirstRand Group** operates within the financial services industry and provides the entire spectrum of financial services to its customers. However, the underlying divisions within the FirstRand Group are relevant to the assessment of the proposed transaction.

- *MIMM* offers a range of products with different risk profiles and different asset classes mainly to the retirement fund industry.
- *The FirstRand Group* is involved in asset management services.
- *The FirstRand Group* also provides structuring for pension funds and retirement funds for external clients. It appears that other financial institutions generally offer this service.
- *RMBAM* and *FutureGrowth* provide direct asset management services in competition with the multi-management services of the target firms.

12. **m Cubed** provides wealth management services, i.e., retail asset management, sale and management of unit trusts, retail WRAP products and life insurance products. There are other specialised investment services and other stand-alone businesses within m Cubed. The following m Cubed activities are relevant for the present transaction.

- m Cubed – through its multi-manager solutions division – operates a business similar to MIMM.
- The AMOS business of m Cubed provides asset management services. It predominantly provides a support role to the multi-management business. AMOS attends to the back office administration functions of the funds under the administration of m Cubed. AMOS also has external clients such as unrelated third party pension funds established by firms such as AECI and Rand Mutual Assurance. These third party retirement funds simply use the services of AMOS to facilitate their administration functions, mainly the accounting function.
- ESP provides structuring services for clients in the pension fund and retirement industries. It provides capital guarantees only, and thus guarantee the capital for a fixed period usually for a year. According to the Commission, if market conditions deteriorate the client benefits as the capital is guaranteed, and if market conditions improve ESP and the client benefits.

The Target Firms

13. The business of **MCAM** provides asset management services mainly to retirement funds. **ESP** sells structured products to the retirement/pension fund market and to external financial service providers. **AMOS** (m Cubed's Division) provides asset management administration services to the internal multi-manager operations and external clients. **MIMM** offers a range of products with different risk profiles and different asset classes mainly to the retirement fund industry.

The relevant market⁴

⁴ Please see the parties' discussion on product overlaps (Page 47-56) as well as page 6-11 of the

14. The parties identified the overlapping business operations of m Cubed and Momentum and those of the Target Firms. These overlaps occur in respect of structuring, asset management administration services and asset management/multi-management services. The parties claimed that no overlaps between the parties' products and/or services would remain within m Cubed and those of the target firms after transfer from Momentum and m Cubed had taken place.

15. We now turn to consider what these services and/or products entail in brief.

Asset management administration services

16. The parties pointed out that these services basically encompass the provision of back office administration functions for the asset management and multi-management business. All assets are priced daily in every portfolio and the values of the portfolios are worked out taking cash flows and payments into account.

17. RMB Asset Management, which is (like Momentum) part of the FirstRand Group, and MIMM provides asset management administrative services similar to those provided by m Cubed's Division, AMOS (forming part of the target firm). AMOS provides these services for the funds administered by m Cubed as well as for external clients such as 3rd party pension funds. It appears that RMBAM and MIMM do not provide these services externally. In light of this, the Commission found that no overlap exists, and did not analyse this market from a horizontal perspective any further.

Asset management and/or multi-management services

18. As defined elsewhere⁵, asset management refers to the management of funds referred to as funds under management by the so-called asset managers on behalf of various clients such as institutional investors, linked product service providers and pension funds. Asset management is generally not accessible to individual clients. As indicated above, asset managers offer a range of products with different risk profiles and different asset classes. According to the Commission, these products are offered to different clients (mainly retirement funds) either by direct asset managers (who directly invest the funds in the stock and bond markets) or by multi-managers (who act as conduits between the clients and the direct asset managers).

19. MCAM and MIMM's operations (both of which will form part of NEWCO) overlap in that they both offer asset management services. In the FirstRand Group, FutureGrowth Asset Management and RMB Asset Management provide direct asset management services in competition with the multi-management service businesses of the target firms.

20. The merging parties assert that multi-managers do not constitute a separate market, but compete directly with asset managers. According to the parties, the narrowly defined asset multi-management segment constitutes only 10.2% of the total asset management industry whilst 89.8% of the funds under management are managed directly by asset managers.

Commission's Report.

⁵ See *Investec Group Ltd /Fedsure Investments Ltd* (Tribunal Case No: 19/LM/Mar01, page 3)

21. The Commission's investigation revealed that multi-managers do compete with asset managers.⁶ The Commission did not for purposes of this transaction conclude on the market definition as in its view in either the broadly defined asset management market or a more narrowly defined multi-management market the transaction was unlikely to substantially lessen or prevent competition.

Structuring services

22. The parties pointed out that the term 'structuring' encompasses a wide range of activities and products. Both m Cubed (through ESP) and the FirstRand Group offer structuring services to the pension and retirement industries. Therefore the parties overlap in the market for structured products / structuring services. The parties assert that although the FirstRand group provides structuring for external clients this is a general function provided by all financial service institutions.

Geographic market

23. The Commission's interview with the merging parties revealed that foreign companies do not exert much of a competitive constraint to their operations as their clientele is mainly within South Africa. The Commission then defined the geographic market for each of the relevant market as national as companies operating in the asset management industry adopt a national pricing strategy and are not location-bound within South Africa. We concur with the Commission in this regard.

Competition evaluation

24. We had no concerns pertaining to the overlaps identified above as well as to the transaction in general, as there was nothing before us to indicate that any competitive harm would result from the proposed transaction.

25. In the structured products markets the market share figures that the Commission received from the parties show that ESP's market share of the structured products is below 1%. Therefore the merger will lead to an increase in concentration that is trivial and has little impact on increasing concentration.

26. In respect of the asset management businesses, the extent of concentration varies greatly depending on whether one regards multi-management as a segment of the broader asset management market or a relevant sub-market on its own. In the broader asset management market the merger will lead to the merged entity (NEWCO) having a share of 26.3%.⁷ (Of this 6.8% is contributed by Momentum and 19.5% by M-Cubed).

27. If multi-management is an independent market then the merging parties will have a post-merger market share of 45.86%.

⁶ In reaching this view, the Commission consulted with the merging parties' customers, KPMG, competitors in the multi-management market, and the Financial Services Board.

⁷ Although there have been some discrepancies between the market share figures provided by the merging parties, Alexander Forbes and KPMG, the Commission nevertheless did not query this a lot, but simply adopted the worst-case scenario approach.

28. There are some suggestions that multi-management may well constitute a relevant market *inter alia* the business operates differently, employs people with different skills, seems to be marketed and administered as a stand alone business. We need not make a conclusive finding on this because although the merged firm would enjoy a high share of this market it appears that entry is relatively easy and likely to come from firms in the asset management industry.

29. Indicative of this is the fact that a number of direct asset management companies (including Sanlam Multi-managers; Chorus; and Access (park) have recently entered the multi-management industry. The parties asserted that customers could - from the demand side – easily switch between multi and direct asset management with decisions being made depending on their aversion to risk.

30. The market also appears to be a very competitive one in which countervailing power exists. The clients of a multi-manager are large institutions in the retirement fund industry and they can exert significant pressure on the merging parties should they engage in anti-competitive behaviour. Clients seem to possess the ability to use more than one asset manager. The merging parties and the Commission submit that these clients have the ability to withdraw their funds based on a 30-day notice period and in some cases may withdraw the assets under management on a day's notice.

31. The Commission further examined the vertical relationships between asset managers and multi-managers; between AMOS, multi-managers and asset managers; as well as with regard to services provided by ESP. In our view, the vertical relationships so identified were not so extensive to cause concern..

32. We agree with the Commission's submission that this transaction is unlikely to result in the substantial lessening or prevention of competition irrespective of any market definition adopted. We accordingly approve this merger unconditionally.

Public Interest Issues

33. There appear to be no public interest issues to militate against the approval of this transaction. The parties expressly stated that no staff retrenchment programme is envisaged pursuant to this merger.

Norman Manoim

21 January 2005

Date

Concurring: David Lewis and Mbuyiseli Madlanga

For the merging parties:	Andries le Grange & Marlene Botha (<i>Hofmeyr, Herbstein & Gihwala</i>)
For the Commission:	Hardin Ratshisusu & Asogren Chetty (<i>Mergers & Acquisitions</i>)

