Anticipated acquisition by Investec plc of Evolution Group plc

ME/5227/11

The OFT's decision on reference under section 33(1) given on 25 November 2011. Full text of decision published 1 December 2011

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Investec plc** (Investec) is an international specialist bank and asset manager that provides a range of financial products and services. Investec's core activities are focused in the United Kingdom and South Africa, with some activities in Australia. It also holds a 33.18 per cent share in the stock brokering firm Hargreave Hale Limited, and [ ].

2. **Evolution Group Plc** (Evolution) has two divisions: Williams de Broë, a client investment manager and Evolution Securities, an investment bank serving international corporate client base. It also has a [50-60] per cent interest in Darwin Strategic Limited, a private client investment management and investment banking business.

   i. Williams de Broë is a UK private client investment manager, with assets under management (AUM) of approximately £6 billion as at 30 June 2011. On 20 October 2011, Williams de Broë acquired BNP Paribas Private Investment Management Limited ('BNP PIM'), which had a turnover of £[ ] million in the year ending 31 December 2010. We have considered BNP PIM as part of Evolution for the following merger investigation.

   ii. Evolution Securities is an investment bank serving an international institutional corporate client base, specialising in the UK and European equity and debt markets. Its services include equity and fixed income research, institutional sales and trading, equity market making, debt capital markets and equity corporate finance and corporate broking.

3. The UK turnover of Evolution and the enterprises it controls in the last financial year ending 31 December 2010 was £[ ] million.

TRANSACTION

4. Investec proposes to acquire the entire share capital of Evolution. The recommended share offer was announced on 9 September 2011. The Offer valued the entire issued share capital of Evolution at £[ ] million.

5. The parties notified the OFT of the proposed merger by a merger notice on 18 October 2011 and the extended statutory deadline for a decision is 25 November 2011.

JURISDICTION

6. As a result of this transaction Investec and Evolution will cease to be distinct for the purposes of Section 23(1) of the Enterprise Act 2002 (the Act). The UK turnover of Evolution exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

7. The proposed transaction is not subject to EC Council Regulation No 139/2004, since it does not meet the relevant turnover thresholds. The proposed transaction was also notified to The Competition Authority, Ireland, and cleared on 3 November.

MARKET DEFINITION

Product scope

8. The parties overlap in two broad service areas, the supply of investment banking (and securities) services and wealth and investment management (WIM) services.

Investment Banking

9. Investment banking includes a range of services whereby the bank acts as an intermediary to a financial transaction which generally involves other companies. The parties submitted that investment banking could be split in to the following segments:

    i) Merger and Acquisition (M&A) advisory services
    ii) Equity and debt underwriting, whereby the intermediary guarantees part or all of the sale of debt or equity on behalf of a corporation or government, and
    iii) Securities trading, whereby the intermediary will buy and sell securities on the instruction of clients.

10. The OFT has previously considered that banking services may be subdivided into three separate product markets: (i) corporate banking services (which includes M&A advisory and equity and debt underwriting); (ii) financial and investment services (which includes securities trading); and (iii) retail banking services.[1] The European Commission came to a similar conclusion, but split financial and investment services into money markets and other financial services.[2] However, the Commission has not excluded the possibility that further subdivision of these markets may be appropriate.

11. It is unnecessary for the OFT to conclude on this point since even using the narrowest candidate market the merger does not competition concerns. We therefore present the competition assessment in relation to the subdivision of investment banking in paragraph 8, without concluding whether these subdivisions do form distinct markets.

Wealth and Investment Management (WIM)

12. WIM services, the second product area where the parties overlap, include:

    i) **discretionary managed portfolios,** whereby trades are executed on behalf of clients at the manager's discretion

[1] Proposed merger between Bank of America Corporation and FleetBoston Financial Corporation (OFT decision of 27 February 2004)
[2] For example, cases IV/M.981 Fortis/ASLK-CGER and IV/M11.72 Fortis AG/Generale Bank

ii) **advisory managed portfolios,** whereby the asset manager advises clients on suitable trades and strategies but requires consent for any trades

iii) **collectives** which are pooled investments or funds that enable a client to buy a range of securities, stocks and shares through the purchase of one product, and

iv) **'dealing with advice',** which includes advice to clients about investment opportunities and executing trades on their clients' behalf.

13. The OFT has previously stated that discretionary, advisory and 'dealing with advice' services are all relatively close substitutes to each other since they all entail day to day management and advisory services, and therefore concluded that wealth management forms a single market.[3] With regard to our previous approach to collectives, we were informed that collectives can be bought through a wide variety of means other than a wealth management service provided, but we did not conclude on this point. We received no evidence to suggest we should take a different approach to this previous case. We therefore proceed under the assumption that WIM forms a distinct market.

Geographic scope

14. The European Commission has previously considered the market for M&A advisory services[4] to be at least Europe-wide.[5] It has also considered that the market for equity and debt underwriting services to be EU-wide or worldwide.[6] The parties provided market shares based on what they submit to be the narrowest candidate market – the UK.

15. The European Commission has previously considered securities trading as national in scope, because an operator has to be authorised to act on the national stock exchanges. (See footnote 4). The parties do not dispute this and provide market shares on a national basis. The parties also put forward a national basis for the relevant geographic market for WIM, as UK infrastructure is required to serve UK-based clients, and a firm operating in the UK will require a licence from the Financial Services Authority.

[3] Anticipated acquisition by Barclays Bank Plc of Gerrard Management Services Ltd (OFT decision of 12 December 2003).

[4] See Case COMP/M.2158 – Credit Suisse Group/Donaldson Lufkin and Jenrette.

[5] See Case COMP/M.1856 - Citigroup/Schroders

Conclusion on the frame of reference

16. Although it has not been necessary to conclude on product and geographic scope, the OFT has taken a conservative approach, assessing this merger on a national market. We will assess the competitive impacts of the transaction within each of the following frames of reference:

    i) M&A advisory in the UK
    ii) Equities and debt underwriting in the UK
    iii) securities trading in the UK, and
    iv) wealth and investment management in the UK.

COMPETITIVE ASSESSMENT

Unilateral Effects

17. The OFT has considered whether the transaction increases the incentives for the merged party to raise prices, reduce service quality or product range.

M&A advisory in the UK

18. Information provided by the parties shows the fragmented nature of the supply of M&A advisory services in the UK, with in excess of 200 firms providing M&A advisory services in the UK as at October 2011. The largest firm is Barclays Capital with an [0-10] per cent share of supply, with shares decreasing steadily for other firms. Both parties have very small market shares, and the combined share is also very low, at [0-10] per cent, which is not at a level that might be expect to give rise to competition concerns.

19. The parties' low combined market shares, on the face of it do not raise concerns in M&A advisory. A number of third party responses indicated that client size is one source of heterogeneity in M&A advisory.

20. Since market shares are not always reliable indicators of the potential for harmful effects, the closeness of competition between the merging parties on these areas are therefore of particular interest.

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[6] See Case COMP/M.2158 – Credit Suisse Group/Donaldson Lufkin and Jenrette and Case No IV/M.597 Swiss Bank Corporation/SG Warburg.

21. One customer of Evolution reported that they did not consider the parties to be competitors, and one competitor of Investec said that they were unaware of Evolution providing M&A advisory services. These two responses suggest the parties are not especially close competitors.

Equities and debt underwriting services in the UK

22. The parties submitted that market data is not readily available on debt and equity underwriting, citing a European Union Merger Regulation decision that noted this as well.[7] The parties submit that many of the 200 or so firms which provide M&A advisory services will also provide equity and debt underwriting services. In the absence of firm evidence, consideration of closeness of competition between the parties is desirable. However, no third party considered the parties to be particularly close competitors.

23. A recent OFT market study in to equity underwriting found that although fees charged by equity underwriters had increased by above trend levels since 2009, concentration of supply is not unduly high.[8]

24. As mentioned above, Evolution has a majority shareholding in Darwin, which is active in equity underwriting. Darwin provides equity funding facilities (EEFs), which allow clients to 'drawdown' capital by selling newly issued shares to Darwin at any time during an agreed time up to a maximum amount. Third parties were informed of this shareholding, but again none had any concerns in relation to it.

Securities trading

25. Data provided by the parties estimated the market shares for securities trading, based upon the value of equity trades brokered on the FTSE 100 in 2010.[9]

26. The data on the 25 firms which responded in 2010 indicate a highly fragmented market. The largest firm, Credit Suisse, had [10-20] per cent with shares decreasing steadily for other firms. Evolution is the fourteenth largest broker with [0-10] per cent of supply, whilst Investec is sixteenth,

[7] See Case COMP/M.2158 – Credit Suisse Group/Donaldson Lufkin and Jenrette
[8] Equity Underwriting and Associated Services; OFT Market Study, January 2011
[9] Data is based on self-reporting of firms and therefore may underestimate the size of the market.

again with a share of less than [0-10] per cent; combined, their share would be no more than [0-10] per cent.

27. There are other types of securities that are traded – debt securities and derivatives being the two main categories. No shares of supply are provided for these securities. We have not received any evidence to suggest that the market structure for these should be significantly different to equity trading.

Wealth and investment management (WIM)

28. Information provided by the parties again showed a highly fragmented market. The shares of supply provided for the 11 largest firms gave a combined share of 65.3 per cent with 34.7 per cent being served by a tail of smaller firms. The parties submit that there are no significant economies of scale to be gained from being a larger entity, and, as a result, all firms in the sector are likely to be able to provide a competitive constraint on the parties post-transaction.

29. The acquisition will add [0-10] percentage points to Investec's [0-10] per cent market share (including BNP PIM and Hargreave Hale), giving the merged firm [0-10] per cent of the market (as measured by assets under management). The acquisition will make Investec the third largest wealth management firm. However, the first and second players in the market, Coutts & Co and Brewin Dolphin, respectively, will have less than [10-20] per cent and [0-10] per cent of the market.

30. Although there is overlap between Hargreave Hale – in which Investec has a 33 per cent shareholding – and Evolution in private wealth management services, the parties submit that the clients serviced by the two firms are different, with Evolution catering to clients with larger accounts. Third parties were informed of this shareholding, and none raised any concerns.

Closeness of competition

31. The OFT has considered whether the parties are sufficiently close competitors such that the merged entity would be incentivised to raise prices following the merger. The OFT does not believe this is likely for the following reasons:

i) The market share of the merged firm will remain low across all frames of reference
ii) The parties do not appear to be particularly close competitors in relation to the full range of suppliers and
iii) There are many alternative suppliers that will continue to constrain the parties.

Barriers to entry

32. Given that the OFT does not have competition concerns, it is unnecessary to conclude on the extent to which entry will provide a competitive constraint on the parties post-merger.

THIRD PARTY COMMENTS

33. No unsolicited responses were received following the OFT's invitation to comment. Third parties' comments have been considered, where appropriate, above. Only one third party voiced any concerns about a reduction in competition from the merger in the equity and debt underwriting services, however they provided no evidence to support this, and did not respond when pressed to do so. All other respondents were generally unconcerned about the merger.

ASSESSMENT

34. The parties overlap in two service areas, the supply of investment banking (and securities) services and WIM. The supply of investment banking can be further subdivided into:

i) M&A advisory in the UK
ii) Equity and debt underwriting in the UK and
iii) Securities trading in the UK.

35. The OFT has assessed the competitive effects of this merger at a national level in relation to these overlaps.

36. In the supply of M&A advisory in the UK, in relation to the large number of total suppliers, the parties do not appear to be close competitors. The parties account for a very small proportion of the market and no third

parties had any concerns in relation to the merger. The OFT does not believe this aspect of the merger will lead to a substantial lessening of competition.

37. In the supply of equities and debt underwriting services in the UK, although we received little evidence on the parties' market shares, aside from the customer mentioned above, no third parties were concerned about the merger. Moreover, some third parties suggested that the parties are not close competitors. The OFT therefore does not believe that a substantial lessening of competition is a realistic possibility in this sector.

38. In the supply of securities trading in the UK, whilst some third parties said the parties are close competitors, they also noted a very wide range of alternative suppliers and no responses indicated any concerns about the merger. Moreover, the parties appear to be relatively small players in a fragmented market where prices are transparent and the cost of switching is low. The OFT therefore has no concerns relating to securities trading.

39. Finally in the supply of WIM, given that a wide range of firms will provide a competitive constraint on the parties post-merger, and that we received no third party concerns relating to WIM, the OFT does not believe there is a realistic prospect of a substantial lessening of competition as a result of the merger.

40. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

41. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.