
Anticipated merger of ISIS Asset Management plc and Foreign & Colonial Group (Holdings) Limited

The OFT's decision on reference under section 33 given on 19 August 2004

PARTIES

ISIS Asset Management plc (ISIS) is a listed investment management business. It provides asset management services to financial services group, Friends Provident plc (its majority shareholder), and other external institutional and private investors. For the financial year ending 31 December 2003, the UK turnover of ISIS was £111 million.

Foreign & Colonial Group (Holdings) Limited (F&CG) is a pan-European asset management group which provides a range of investment and advisory services to private and institutional investors, in addition to insurance funds, in the UK and Europe. It is a wholly owned subsidiary of the Dutch financial services group, Eureko B.V. For the financial year ending 31 December 2003, the UK turnover of F&CG was £85.6 million.

TRANSACTION

ISIS and F&CG announced on 2 July 2004 that they have entered into an agreement to merge their businesses conditional on, inter alia, the receipt of regulatory consents.

The merger was notified on 8 July 2004 and the 30 day statutory deadline is 19 August 2004.

JURISDICTION

As a result of this transaction ISIS and F&CG will cease to be distinct. The UK turnover of F&CG 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.

RELEVANT MARKET

Product market

ISIS and F&CG overlap in the provision of asset management services. These include:

- the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open ended investment companies); and
- the provision of portfolio management services to pension funds, institutions, international organisations, and private individuals.

Asset management services can be divided by customer type: institutional or retail. Differences between the two include the larger resources and expertises devoted to institutional funds, and the customer tailored management service that institutional clients receive. Furthermore, asset management providers seem to specialise in either institutional or retail funds as a core client segment, which suggests possible barriers to switching. At the narrowest level, institutional customers may be further subdivided into pension fund institutions, insurance companies, other institutional clients, central banks, and charities; or by different asset classes (such as investment trusts or unit trusts). The parties argue that there are no grounds for such segmentation, as although investors have varying objectives in terms of rates of return, approaches to risk, and tax efficient preferences which may hamper switching, they generally face a similar, wide range of investment choices and may be able to substitute between different types of products.

In relation to the supply-side perspective, the parties and third party respondents generally agree that asset management skills gained by a company in relation to one particular type of fund, whether it be for institutions or individuals, are easily switched to another type. One third party noted that some additional skills (such as actuarial skills for life funds) may be required for certain products, although the possibility of outsourcing exists. Third parties also identified different regulatory provisions depending on the type of product as acting as a barrier to switching.

As the degree of substitutability between various sub-segments of asset management products and between institutional and retail customers is unclear, a cautious view is taken and customer type and those product classes in which the parties overlap are considered separately.

Geographic market

The parties take the view that the relevant frame of reference for the asset management sector is global in scope. Whilst it is acknowledged that many asset management companies operate and pool risk on an international basis, some third

party respondents indicated that they find it advantageous from a commercial perspective to have a local presence in certain countries where they have customers. Some have similarly stated a preference for fund managers within the UK.

As the competitive assessment does not materially differ under either a global or UK frame of reference, a cautious view is taken and the relevant frame of reference for assessment is the UK for the purposes of this inquiry.

HORIZONTAL ISSUES

Market shares

The parties estimate that there are a total of £2 trillion assets under management in the UK. Post merger, the merged entity will have a combined share of asset management services in the UK of 4.8 per cent (increment of 0.7 per cent), based on value of assets managed on behalf of UK-domiciled clients in 2002.¹ Whilst the merged entity will be the fifth largest asset management provider in the UK, this is a highly fragmented industry. As a result, all of the other firms in this sector are likely to be able to provide a strong competitive constraint on the merged entity.

Institutional and retail funds

On the basis of league table data, the parties estimate that, post merger, the merged entity will be the fourth largest institutional fund manager in the UK and the eighth largest retail fund manager. Its share in institutional funds will be 6.5 per cent (increment of 0.7 per cent), and 1.7 per cent (increment of 0.9 per cent) in retail funds, based on 2002 values.² When examined on the basis of customer group, therefore, the share of supply remains low (below 10 per cent) and the increments are negligible. Furthermore, there are a wide range of providers of asset management in both segments in the UK.

Overlapping asset classes

In relation to institutional customers, the parties overlap in managing insurance funds (life and pension). Post merger, the merged entity's share will be 4.2 per cent (increment of 0.7 per cent), based on total assets under management in the UK.³

In relation to retail customers, the parties overlap in investment trusts and also open ended investment companies / unit trusts. Post merger, the parties estimate that its

¹ Source: Mercer Report 2003 – United Kingdom

² Source: Mercer Report 2003 – United Kingdom

³ Source: IMA Survey (2004)

share will be 8.7 per cent (increment of 6.1 per cent) and 4.5 per cent (increment of 2.2 per cent), respectively, based on total assets under management in the UK.

When examined on the basis of overlapping asset class, therefore, the share of supply remains low (below 10 per cent) and the increments are negligible.

Barriers to entry and expansion

Regulatory requirements and clearance act as a barrier to entry, as does a proven record of competence. As a result, de novo entry into the asset management sector may be inhibited.

By comparison, barriers to entry in respect of companies already active in other areas of the financial services industry, or by employees with a reputation in the industry, do not appear high. The presence of intermediaries through which sales of funds are generally made may further facilitate entry and expansion if they regularly recommend institutions. In addition, entry is possible from non-UK companies which, under European legislation⁴, being licensed to conduct asset management business in their own home jurisdiction automatically qualify for authorisation in other European jurisdictions.

Buyer power

Customers in the retail sector are individuals and are, therefore, to be considered to be too disparate to have any countervailing buyer power. However, institutional customers, such as insurance companies and pension funds, are large and, therefore, may be able to exert some downward pressure on prices.

VERTICAL ISSUES

The transaction does not give rise to any vertical issues.

THIRD PARTY VIEWS

Third party enquiries revealed no concerns about this transaction.

ASSESSMENT

The parties overlap in the provision of asset management services. For the purposes of this assessment, the impact of this anticipated transaction has been considered in relation to institutional and retail asset management segments, in addition to different asset classes for which the parties overlap, within the UK.

⁴ Investment Services Directive (Directive 2004/39/EC)

The combined share of supply in the UK of the merged entity will be less than 10 per cent, and the increment negligible, on even the narrowest frames of reference under consideration.

A number of factors lend to the conclusion that a high degree of competition exists in this sector. The asset management services sector is highly fragmented, as indicated by the existence of a large number of other operators in this sector at every geographical level, including the UK. The nature of the sector is international in scope. Barriers to entry and expansion appear to be low in respect of existing financial services companies. Finally, there may exist a degree of countervailing buyer power in institutional asset management.

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

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