competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM121Nov21

Net1 Applied Technologies South Africa (Pty) Ltd (Primary Acquiring Firm)

and

Ovobix (RF) (Pty) Ltd and Luxiano 227 (Pty) Ltd (Primary Target Firms)

Heard on:	03 March 2022
Last Submission:	07 March 2022
Order Issued on:	09 March 2022
Reasons Issued on:	07 April 2022

REASONS FOR DECISION

1. On 09 March 2022, the Competition Tribunal ("Tribunal") conditionally approved a large merger in terms of which Net1 Applied Technologies South Africa Proprietary Limited ("Net1 SA") intends to acquire Ovobix (RF) Proprietary Limited ("Ovobix") and Luxanio 227 Proprietary Limited ("Luxanio"). Upon implementation of the proposed transaction, Net1 SA will control Ovobix and Luxanio.

2. The proposed transaction essentially involves the acquisition of the entities owning and operating the business of Cash Connect Management Solutions (Pty) Ltd ("CCMS") and K202111477132 (South Africa) (Pty) Ltd ("K2021") and their subsidiaries. Ovobix and Luxanio each have a shareholding in CCMS and K2021.

3. The primary acquiring firm is Net1 SA. Net1 SA is wholly controlled by Net1 UEPS Technologies, Inc. ("Net1 UEPS"). Net1 UEPS is a United States company and is not controlled by any single firm. In addition to Net1 SA, Net1 UEPS controls a number of firms in South Africa. Net1 UEPS and all its subsidiaries (including Net1 SA) will collectively be referred to as the Acquiring Group.

4. The Acquiring Group, through its subsidiaries, provides payment solutions, transaction processing services and financial technology across industries. In South Africa, Net1 SA

is active in the provision of low-cost financial services to underserviced consumers and payment processing. Relevant to the competition assessment of the proposed transaction are the activities of the Acquiring Group in relation to the sale of prepaid airtime and electricity, provision of billing payments, POS solutions (devices and software) and Value Added Services (VAS) solutions.

5. The primary target firms are Ovobix and Luxanio (collectively referred to as the “Target Firms”). Ovobix, Luxanio and all firms directly or indirectly controlled by Ovobix will collectively be referred to as the Target Group.

6. Ovobix and Luxanio are investment holding companies, holding shares in CCMS and K2021. Save for their shareholding in CCMS and K2021, Ovobix and Luxanio do not carry out any other business activities in South Africa or elsewhere. In South Africa, the Target Group, through CCMS, provides services in the following general areas:
   (i) Cash (automated cash management) through its "Cash Connect" division;
   (ii) Lending (access capital in 24 hours) through its "Capital Connect" division;
   (iii) Card (card payment solutions) through its "Card Connect" and "Kazang Pay" divisions; and
   (iv) VAS (prepaid and value added services) through its "Kazang Connect" division.

7. K2021 controls K202063969 (South Africa) (Pty) Ltd (“K2020"). K2020 provides unsecured short-term business loans to the South African retail sector.

Competition assessment

8. The Competition Commission (“Commission”) found that the proposed transaction results in both horizontal and vertical overlaps. The Commission also found that the merging parties offer complementary services.

Horizontal overlap

9. The horizontal overlap occurs in that both the Acquiring Group and the Target Group (through Kazang Connect) are active in the provision of a range of VAS solutions. These services include:
   (i) the supply of prepaid airtime;
   (ii) the supply of prepaid electricity; and
   (iii) bill payments.

10. In the markets for the sale of (i) prepaid airtime and data; and (ii) electricity, the Commission found that the proposed transaction is unlikely to substantially prevent or

lessen competition given *inter alia* the combined relatively low national market shares of the merging parties in these markets.

11. With respect to the market for the provision of bill payments, the Commission found that the merged entity will have a significant national market share. However, the Commission concluded that the proposed merger is unlikely to alter the structure of this market given the insignificant market share accretion of less than 1% as a result of the proposed transaction. Further, the merging parties will continue to face constraints from a number of other players such as Blue Label, Flash, Cigicell, CellAir and RA Cellular. In addition, the Commission found that in this market, the merging parties target different customer groups as the Target Firms focus more on informal retailers and the Acquiring Group focuses on the formal retailer.

Vertical overlap

12. The vertical overlap occurs in that the Acquiring Group, via Net1 Universal Electronic, is a supplier of POS terminals with integrated software. On the other hand, the Target Firms, through Card Connect and Kazang, purchases POS devices from third parties and supplies these to its customers for the processing of card payments and the integration of VAS.

13. The Acquiring Group is active in the upstream market for the supply of POS devices (that is, hardware and integrated software, and repair services). The Target Firms, through CCMS, buys POS devices for distribution to its customers. Currently, the Target Firms (CCMS) imports all its POS hardware and software and rents them to its customers (mainly SMEs) so they are able to accept debit cards. The Target Group does not purchase POS devices from the Acquiring Group. Furthermore, the Acquiring Group currently only has one customer of POS hardware and software.

14. The Commission found that the merging parties will have a combined national market share of less than 10% in the market for the provision of POS devices.

15. The Commission concluded that the proposed transaction is unlikely to result in any significant input foreclosure concerns as the Acquiring Group will continue to face competition from the major banks in the supply of POS. In addition, given that Kazang/Card Connect represents less than 10% of POS devices, Kazang competitors will have access to several other POS suppliers such as YOCO, iKhokha and JustPos, including the major

banks. Furthermore, the Acquiring Group does not supply POS to any competitors of the Target Group.

16. The Commission further found that the proposed transaction is unlikely to result in any customer foreclosure concerns as the Target Group does not procure POS from any supplier in South Africa. The Target Firms import all its POS devices directly from firms located outside of South Africa. In addition, the Target Group is a small player in the distribution of POS devices in South Africa with a less than 10% market share in the distribution of POS devices.

Complimentary services

17. The complementarity between the activities of the merging parties occurs in that the Acquiring Group (through EasyPay) provides a card payment processing facility. That is, EasyPay provides switching services that enable all transactions to be collated and reconciled daily for clearing and settlement by the banks.

18. The Target Firms (through Kazang) are active as authorised aggregator, in that they act as an agent and aggregate these transactions together and send them to a bank. The bank settles Kazang, which in turn settles the individual merchants. The aggregation services offered by Kazang are mainly offered to informal retailers and it is necessary to aggregate these transactions across different merchants in order to make the provision of card payment services to the customer base viable. The merging parties can therefore potentially bundle their offering, i.e., the EasyPay card payment processing facility with the aggregation services offered by Kazang.

19. Given the complementarity of the merging parties payment processing services, the Commission also assessed if the proposed transaction would result in anticompetitive portfolio effects. The Commission assessed whether the merging parties will have the ability and incentive to bundle merchant acquiring services provided by Kazang Connect with the issuing processing services provided by the Acquiring Group.

20. As indicated above, the Commission found that the Target Group (through Kazang Connect) has a market share of less than 10% in the provision of POS devices and competes with the South African banks. The Commission noted that it does not have market shares relating to the provision of card payment processing facility and switching services but noted that the Acquiring Group competes with the South African banks such as First National Bank, Standard Bank South Africa, Capitec, ABSA Limited and Nedbank Limited.

21. The Commission concluded that the merged entity will not have the market power post-merger to engage in an anticompetitive tying and bundling strategy. The Commission further noted that the POS services market is dominated by the large banks with extensive resources compared to the Target Group. Further, the Commission was of the view that the merged entity will not have an incentive to engage in an exclusionary bundling strategy because there is no incentive on either of the merging parties to restrict the interoperability of its card issuing or acceptance.

22. The Commission ultimately concluded that the proposed transaction is unlikely to result in any competition concerns. We have no reason to disagree with the Commission conclusion.

Public Interest

Employment

23. The merging parties confirmed that no retrenchments will arise as a result of the proposed transaction.

24. 45 retrenchments however took place at Net1 SA in 2020, of which 26 were forced retrenchments. The Commission could not find any evidence to suggest that the retrenchments implemented by Net1 SA in the past year, were in any way linked to the proposed transaction. Documents provided by the parties indicated that the retrenchments were triggered by the financial performance of Net1 SA. Therefore, the Commission was of the view that the pre-merger retrenchments were as a result of operational reasons and unlikely to be merger specific.

25. Considering the current economic climate and the unemployment rate in South Africa, the Commission engaged the merging parties about imposing a condition obligating the merging parties to give preference to the retrenched employees[1] when vacancies become available, provided that the employees have the requisite qualifications, skills, know-how or experience for the vacancy. This commitment will apply for a period of 24 (twenty-four) months after the implementation of the proposed transaction. The merging parties agreed

[1] In terms of the imposed conditions, retrenched employees mean the 26 (twenty-six) employees of the Acquiring Group who were retrenched in the 12 (twelve) months prior to notification of the merger and any employees of the Acquiring Group who are retrenched as a result of the process commenced in January 2022 to close sub-economic points of presence and rationalise roles within Net1 SA's Consumer Financial Services business, and who have not subsequently been rehired by the Acquiring Group.

to the latter employment-related condition, and it was included in the Tribunal's imposed conditions.

Spread of ownership

26. The Acquiring Group has 1.95% B-BBEE shareholding. This arises from the mandated investments managed by Value Capital Partners ("VCP"), representing 21.8% of the shareholding in Net1 SA's holding company, Net1 Inc.

27. The Target Group currently has a 3.57% indirect B-BBEE ownership. This comes from Old Mutual's own BEE shareholding (and is thus indirect and through institutional shareholding).

28. Given the above, the Commission found that the proposed transaction will result in a dilution of B-BBEE shareholding by 1.62% and concluded that the proposed transaction does not promote a greater spread of ownership by historically disadvantaged persons (HDPs) and workers in firms in the market as contemplated under section 12A(3)(e) of the Competition Act. Consequently, the Commission invited the merging parties to make submissions on conditions which can address the reduction in ownership by HDPs occasioned by the proposed transaction.

29. In response to the Commission's request, Net1 SA proposed to introduce a programme to facilitate participation and ownership by workers in the business, together with contributions to develop its supply chain and relevant communities, within its financial constraints.

30. A set of conditions were proposed by the Commission and the merging parties regarding the establishment of an employee share ownership scheme (ESOP). The Tribunal sought clarity and further details from the parties regarding certain aspects of the tendered conditions relating to the ESOP, including issues such as the level of shareholding allocation in Net1 Inc. to the ESOP, what costs, if any, there will be to the employees/beneficiaries regarding the ESOP, the funding arrangement, the criteria to be applied for qualification as beneficiary and any exclusions that may apply, benefits that the beneficiaries will be entitled to, representation of employees and consultation processes.

31. The Tribunal further invited the parties to revisit the proposed ESOP conditions and enhance them where necessary to provide more clarity in terms of the above considerations. The Tribunal also posed questions at the hearing to the parties relating to

the ESOP, its design principles and future consultation with the Commission regarding the design principles.

32. The merging parties subsequently enhanced the tendered ESOP-related conditions in certain respects. These amended ESOP-related conditions were acceptable to the Tribunal after motivation by the merging parties and the Commission.

33. We approved the proposed transaction subject to the following set of conditions relating to the establishment of an ESOP for the benefit of workers:

(i) By the end of 36 (thirty-six) months from the implementation date of the proposed transaction, Net1 Inc shall establish an ESOP for the benefit of workers of the merged entity to receive shareholding in Net1 Inc equal in value to at least 3% (three percent) of the issued shares in Net1 Inc as at the implementation date of the proposed transaction, in accordance with the design principles set out in Annexure B to the imposed conditions. Workers mean employees as defined in the Labour Relations Act, and in the context of ownership, refers to ownership of a broad base of workers.

(ii) If, within 24 (twenty-four) months of the implementation date of the proposed transaction, Net1 Inc generates a positive net profit for 3 (three) consecutive quarters (as reported in its Form 10-Q filings to the Securities and Exchange Commission in the United States), the ESOP to be established by the end of the abovementioned period, shall receive shareholding in Net1 Inc equal in value to at least 5% (five percent) of the issued shares in Net1 Inc as at the implementation date of the proposed transaction, in accordance with the design principles set out in Annexure B to the imposed conditions.

(iii) Prior to the establishment of the ESOP, the Acquiring Group shall consult with the Commission on the principles which it proposes to apply in the ESOP (in addition to the principles contained in Annexure B to the imposed conditions). Such consultation shall involve meaningful engagement with the Commission on ensuring the ESOP structure is established in accordance with objectives underlying the design principles in Annexure B to the imposed conditions.

(iv) If there is a material dispute between the Commission and the merging parties regarding whether the final ESOP design will meet the objectives underlying the design principles in Annexure B to the imposed conditions, then the Commission and

/ or the Acquiring Group may apply to the Tribunal to seek clarity on the implementation of the order.

34. Annexure B to the imposed conditions deals with the ESOP design principles, including the ESOP's structure, funding, cost to workers, governance, duration, participants, participation benefits and approvals required. These design principles as contained in Annexure B to the conditions provide *inter alia*:

(i) All workers of the merged entity as at the ESOP establishment date who are not part of existing equity ownership and long-term incentive schemes at that date will be beneficiaries of the ESOP;

(ii) Beneficiaries will be entitled to: (i) dividends to the extent that they are declared by Net1 Inc and in terms of an applicable trickle dividend to the ESOP; and (ii) capital growth/upside due to the vesting of the ESOP after 7 (seven) years;

(iii) The ESOP shall be at no cost to the participants (the workers of the merged entity). For the avoidance of doubt, no cash outlay will be required to participate in the ESOP;

(iv) The funding will entail notional vendor financing or a similar funding arrangement and other facilitation by Net1 Inc. The terms of the vendor financing will provide for a fixed trickle dividend rate, meaning that a portion of any dividends declared by Net1 Inc in respect of the shareholding of the ESOP trust will flow to the beneficiaries of the trust and the other portion will be utilised to service the vendor financing; and

(v) A balanced composition of Board of Trustees, including 1 (one) appointed by the merged entity, and 1 (one) appointed by workers and 1 (one) independent. The independent trustee will be recommended and appointed by the workers, subject to the candidate being acceptable to the merged entity.

35. The above ESOP-related conditions address the greater spread of ownership issue.

Development initiatives

36. The merging parties furthermore made commitments to supplier and enterprise development initiatives and socio-economic development investments. In terms of the imposed conditions Net1 Inc will make a combined contribution equivalent to R12 million (twelve million Rands) in Net1 Inc's current financial year, to supplier and enterprise

development initiatives, together with socio-economic development investments. These contributions will include:

(i) R6 million (six million Rands) in supplier development contributions, involving providing working capital solutions, operating expenses support, and extending multi-year contracts where viable, to support the financial viability of, and potential job creation by, HDP owned SME suppliers to the merged entity;

(ii) R3 million (three million Rands) in enterprise development contributions, involving operating expenses support and technical support to HDP owned SMEs that have the potential to graduate into the merged entity supply chain, or that can participate within the broader value chain in which the merged entity operates; and

(iii) R3 million (three million Rands) in socio-economic development contributions, targeting the upliftment of the communities which the merged entity serves, and in particular to facilitate the provision of resources necessary to enable dignity, such as safe drinking water, and facilities for the disabled.

Other public interest

37. The proposed transaction raises no other public interest concerns.

Conclusion

38. We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. The proposed transaction has been approved subject to the abovementioned public interest conditions which collectively address any potential public interest concerns. The imposed conditions are annexed hereto as **Annexure "A"** and **Annexure "B"** (Design Principles of the ESOP).

Signed by:Andreas Wessel Wessels
Signed at:2022-04-07 12:38:19 +02:00
Reason:Witnessing Andreas Wessel We

Andreas Wessel Wessels

07 April 2022

Mr Andreas Wessels | **Date**

Ms Yasmin Carrim and Dr. Liberty Mncube concurring

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