



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019554

In the matter between:

DARK FIBRE AFRICA (PTY) LTD

Primary Acquiring Firm

And

MCT TELECOMMUNICATIONS (PTY) LTD

Primary Target Firm

Panel : Yasmin Carrim (Presiding Member)
: Andreas Wessels (Tribunal Member)
: Prof Fiona Tregenna (Tribunal Member)
Heard on : 22 October 2014
Order Issued on : 22 October 2014
Reasons Issued on : 12 November 2014

Reasons for Decision

Approval

[1] On 22 October 2014, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Dark Fibre Africa (Pty) Ltd ("DFA") and MCT Telecommunications (Pty) Ltd ("MCT").

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

- [3] The primary acquiring is DFA, a firm incorporated in accordance with the company laws of the Republic of South Africa. DFA is controlled by Community Investment Ventures Holdings Ltd (“CIVH”). CIVH is jointly controlled by New GX En Commandite Partnership 2 (“New GX”) and Industrial Electronic Investments (Pty) Ltd.
- [4] New GX is controlled by the Khuno Share Trust. The Khuno Share Trust is for the benefit of Mr. Khudusela Pitje and the Khuno Family Trust. Industrial Electronic Investments (Pty) Ltd is controlled by Remgro Ltd.
- [5] DFA owns “dark fibre” communications infrastructure, which it operates and maintains. It *inter alia* leases out infrastructure elements (such as fibre and ducts) to licenced operators of telecommunications service providers. The dark fibre is used for the transmission of metro and long haul telecommunications traffic.

Primary target firm

- [6] The primary target firm is MCT which is a wholly owned subsidiary of CIE Telecommunications (Pty) Ltd (“CIET”), which is in turn wholly owned and controlled by CIVH and therefore falls within the CIVH Group.
- [7] MCT is a specialist installations contractor of fibre based communications infrastructure, including maintenance and repairs. MCT further provides services referred to as ‘Cable Managed Services’ (“CMS”). These services include:
- Network engineering support;
 - Programme and services management which includes contractor and material management, installation quality management, budget and timeline management;
 - Installation management; and
 - Maintenance of optical fibre based communications infrastructure.

Proposed transaction and rationale

- [8] In terms of an Intra-Group Sale of Shares Agreement, DFA intends to acquire the entire issued share capital in MCT from CIET. Pre-merger MCT is wholly owned by CIET, which in turn is a wholly owned subsidiary of CIVH. The proposed transaction thus amounts to an internal restructuring in terms of which the ownership of MCT will be transferred from CIET to DFA.
- [9] The merging parties submitted that that the internal restructuring is for purposes of simplifying the CIVH Group structure.

Impact on competition

- [10] According to the Commission's findings the proposed transaction does not give rise to a horizontal overlap of the merging parties' activities. DFA operates as a provider of dark fibre communications infrastructure whereas MCT operates in the CMS market.
- [11] The Commission however found there to be a vertical relationship between the merging parties in respect of services (CMS) offered by MCT to DFA and other services offered by subsidiaries within the CIVH, New GX and Remgro Group. However, this situation existed pre-merger. The Commission concluded that the proposed transaction will not result in any customer or input foreclosure in that the merging parties will continue to provide their products and services to other customers after the proposed merger.
- [12] We concur with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

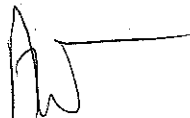
Public interest

- [13] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.¹ The proposed transaction further raises no other public interest concerns.

¹ Merger Record *inter alia* pages 8 and 64.

Conclusion

[14] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transactions. Accordingly we approve the proposed transaction unconditionally.



Andreas Wessels

12 November 2014

DATE

Yasmin Carrim and Prof Fiona Tregenna concurring

Tribunal Researcher: Derrick Bowles

For the merging parties: Janine Simpson and Christopher Kok of Webber Wentzel

For the Commission: Relebohile Thabane and Grace Mohamed