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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019653

In the matter between:

Dimension Data (Pty) Ltd Acquiring Firm

and

MWEB Connect (Pty) Ltd Target Firms

In Respect of the following Divisions:

MWEB Business/VOID Division,

Optinet Network and Optinet Services

Panel	:	Yasmin Carrim (Presiding Member) Medi Mokuena (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on	:	18 December 2014
Order issued on	:	18 December 2014
Reasons issued on	:	28 January 2015

Reasons for Decision

Approval

1. On 18 December 2014 the Competition Tribunal (the "Tribunal") conditionally approved an acquisition by Dimension Data (Pty) Ltd "DiData") of the three divisions of MWEB (Pty) Ltd ("MWEB"), namely MWEB Business/VOID Division ("MWEB Business"), Optinet Network Division ("Optinet Network") and Optinet Services Division ("Optinet Services").

2. The reasons for the approval of the proposed transaction follow.

The Parties and their activities

3. The primary acquiring firm is DiData. DiData is controlled by Internet Solutions (Pty) Ltd ("IS"), which is in turn controlled by Dimension Data Middle East and Africa (Pty) Ltd ("DiData MEA"). DiData MEA is controlled by Dimension Data Holdings Plc ("DiData Holdings"), a company headquartered in the United Kingdom. DiData Holdings is controlled by Nippon Telegraph and Telephone Corporation ("NTT"), a firm incorporated in term of the laws of Japan.[1] DiData controls the following firms: IS Fax (Pty) Ltd, Layer One Telecommunications (Pty) Ltd and The Internet Solution Security (Pty) Ltd.

4. In South Africa the DiData group operates through a variety of subsidiaries and divisions that specialise in information technology ("IT") and communication services. The group provides solutions that help clients plan, build, support and manage their IT and communications infrastructures. DiData's lines of business include network integration, converged communications (network, voice and data), security, data centre and storage, customer interactive solutions and Microsoft solutions. IS through its Internet Service Provider ("ISP") service business provides internet based connectivity and communications (including *inter alia* corporate internet access, virtual private networks, community–based connectivity services and broadband, as well as voice, messaging, facsimile, mobility and fixed-mobile convergence) , data centre and carrier services throughout Africa.

5. The primary target firm is MWEB, in respect of three of its divisions, i.e. MWEB Business, Optinet Networks and Optinet Services. These divisions are controlled by MWEB which is in turn controlled by Huntley Holdings

[1] NTT does not have any business activities in South Africa other than those conducted through the subsidiaries of DiData Holdings.

(Pty) Ltd ("Huntley"). Huntley is controlled by MultiChoice Investments (Pty) Ltd ("MultiChoice Investments") which is in turn controlled by MultiChoice South Africa (Pty) Ltd ("MultiChoice South Africa"). MultiChoice South Africa is controlled by MultiChoice South Africa Holdings ("MultiChoice South Africa Holdings") which is in turn controlled by MIH Holdings (Pty) Ltd ("MIH Holdings"). MIH Holdings is controlled by Naspers Ltd ("Naspers"). MWEB does not control any firm.

6. MWEB business sells products and services in the following broad categories: connectivity, hosting, cloud services, security, VOIP and email services. Optinet Network operates as an internal division of MWEB that provides products and services only to companies within the Naspers group. Optinet Services is also an internal division of MWEB which provides services predominantly to the Naspers group as well as to a small number of companies historically associated with the Naspers group. These services include server hosting, network services and IT support services.

Proposed transaction and rationale

7. In terms of the proposed transaction DiData intends to acquire, as a going concern and in one indivisible transaction, the three divisions of MWEB. Following implementation of the proposed transaction, the three divisions will be fully integrated into DiData's operations.

8. The rationale for DiData is that the proposed transaction will *inter alia* support economies of scale on the network of IS as well as improved return of assets, as IS will be able to consolidate carious cloud products (currently hosted by the three divisions) onto existing IS platforms.

9. MWEB submitted that the proposed transaction will *inter alia* afford Naspers the opportunity to obtain network services from an independent entity of a much larger combined scale.

Competition Analysis

10. The Commission identified horizontal overlaps between the activities of the merging parties in respect the following eight markets: (1) the market for wholesale of ADSL/fixed line data services (2) the market for the retail of ADSL data services with potential sub markets separately comprising large corporates and residential and SMME customers, (3) the market for the retail of mobile data services, with potential submarkets separately comprising large corporates and residential and SMME customers, (4) the narrow market for the provision the hosting and collaboration services, (5) the narrow market for the provision of cloud services, (6) the narrow market for the provision of managed security services and (7) the narrow market for the provision of fixed voice services and (8) the market for IP VPN.

11. The Commission defined the relevant geographic market in respect of all these market as being national.

12. In relation to market shares, the Commission found that the merging parties' post-merger market shares will be as follows: (1) the market for wholesale of ADSL/fixed line data services: 22%,(2) the market for the retail of ADSL data services with potential sub markets separately comprising large corporates and residential and SMME customers: 15.94%, (3) the market for the retail of mobile data services, with potential submarkets separately comprising large corporates and residential and SMME customers: 1.53%, (4) the narrow market for the provision the hosting and collaboration services: 23%, (5) the narrow market for the provision of cloud services: 23%, (6) the narrow market for the provision of managed security services: 23%, (7) the narrow market for the provision of fixed voice services: 22.45% and (8) the market for IP VPN :18.81%. The Commission further found that the market share accretion in all the identified markets is small (less than 3%).

13. The Commission found that the merging parties will continue to face competition in all the above markets from other competing firms such as Telkom, Neotel, MTN-Afrihost, WebAfrica, Vodacom, MTN, Cell C, BCX, Gijima, IBM, BT South Africa, Orange Business and Vox. The Commission therefore concluded that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition as the market share accretion in all the relevant markets is small and there are other significant players who will continue to constrain the merged entity post-merger.

14. However in certain of the markets identified by the Commission there were discrepancies between the market shares provided by the merging parties to the Commission as well as those that are contained in a report compiled by BMI-TechKnowledge report ("BMI-T Report").[2] For instance, the merging parties' market share estimations in relation to the markets for the retail of mobile data services and IP VPN were 1.53% and 18.81% respectively whereas the BMI-T Report's estimations were 7% and 30% respectively.

15. At the hearing the merging parties explained that there is a possibility that market share estimations by the BMI-T Report were based on total IS and MWEB revenues, including revenues derived outside of South Africa whereas the merging parties' estimations were based on actual relevant revenues. In their view the BMI-T Report has over-estimated their market shares. We were satisfied with this clarification and noted that in the market for IP VPN, even if it was assumed that the BMI-T estimate of 30% was correct (which the merging parties disputed) the accretion of 1% is insignificant and unlikely to negatively affect competition in this market.

Public interest

16. The merging parties submitted that the proposed transaction may result in approximately 35 permanent skilled employees losing their jobs on a worst case scenario within 12 to 18 months of the merger being approved.

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[2] This report is titled *"SA Internet Services Market – October 2013"*

17. According to the merging parties, the reasons for these possible retrenchments are (1) the closure of the IT Technical support division of MWEB, resulting in approximately 10 retrenchments from the transferred divisions (out of a total combined staff complement of 327)and (2) the sale of the transferred divisions will result in too many stuff remaining within MWEB who perform support functions, resulting in approximately 25 retrenchments from MWEB (out of a total combined staff complement of 550).

18. In order to ensure that the proposed transaction does not result in any further retrenchments, other than those of the 35 skilled employees, the Commission proposed that the transaction be approved subject a condition that no more than 35 employees of the merged entity will be retrenched as a result of the transaction. The merging parties have agreed to the proposed condition. The proposed transaction raises no other public interest concerns.

Conclusion

19. For the reasons mentioned above, we approve the proposed transaction subject to the employment condition attached hereto market as "Annexure A".

Ms. Yasmin Carrim

28 January 2015
Date

Mrs. Medi Mokuena and Ms. Andiswa Ndoni concurring

Tribunal Researcher	: Ipeleng Selaledi
For Dimension Data	: Desmond Rudman of Webber Wentzel
For MWEB	: Dominique Arteiro of Werksmans
For the Commission	: Tshegofatso Radinku

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Annexure A

Dimension Data Proprietary Limited

And

MWEB Connect (Proprietary) Limited on behalf of its MWEB Business/VoIP Division and Optinet Network Division & Optinet Services Division

CC CASE NUMBER: 2014Sep0517

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below –

1.1. **"Approval Date"** means the date referred to in the Tribunal's merger clearance certificate (Form CT10);

1.2. **"Commission"** means the Competition Commission of South Africa;

1.3. **"Conditions"** means these conditions;

1.4. **"DiData"** means Dimension Data (Proprietary) Limited;

1.5. **"Effective Date"** means the date on which all of the conditions precedent contained in the sale of business agreement entered into between DiData and MWEB Connect giving rise to the Merger have been fulfilled or waived, as the case may be;

1.6. **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);

1.7. **"Merger"** means the acquisition, as a going concern, of all of the businesses, assets, contracts and employees of the Three Divisions by DiData;

1.8. **"Merged Entity"** means the merged business activities of Didata and MWEB Connect;

1.9. **"Merging Parties"** means DiData; and MWEB Connect;

1.10. **"MWEB Connect"** means MWEB Connect (Proprietary) Limited; and

1.11. **"Three Divisions"** means the MWEB Business/VoIP Division, Optinet Network Division and Optinet Services Division of MWEB Connect.

2. **Recordal**

2.1. The Commission's investigation of this Merger found that it would not substantially prevent or lessen competition in the markets for the wholesale of ADSL/ fixed line data services; for the retail of ADSL data services with potential sub markets separately comprising large corporates and residential and SMME customers and for the retail of mobile data services because there are alternatives for customers in all the affected markets.

2.2. From a public interest point of view, the Commission's investigation found that this Merger is likely to have an adverse effect on employment due to a duplication of certain roles in the Merged Entity.

2.3. On a worst case scenario, the Merging Parties anticipate that, as a result of the Merger, approximately 35 permanent skilled employees of the Merged Entity may possibly lose their jobs within 12 to 18 months of the Approval Date. According to the Merging Parties, the 35 employees will be retrenched as a consequence of the following factors: –

2.3.1. the closure of the IT Technical support division of MWEB Business/VoIP division post-merger will result in a duplication of roles as DiData has sufficient IT support employees in similar roles. This duplication is likely to result in approximately 10 retrenchments from the Three Divisions); and

2.3.2. with the sale of the Three Divisions, there will be a duplication of roles within MWEB Connect, particularly those roles which perform shared service functions such as finance, legal human resources and other support functions. This duplication is likely to result in approximately 25 retrenchments from MWEB Connect.

2.4. In order to allay the Commission's concerns set out above, the Commission imposes these Conditions with the view to ensure that no more than 35 employees are retrenched as a direct result of the Merger.

3. Conditions to the approval of the Merger

3.1. The Merging Parties and their respective direct and indirect subsidiaries shall, subject to the consultation requirements of section 189 of the Labour Relations Act, ensure that the number of retrenchments does not exceed 35 (thirty-five) as a result of the Merger. Such retrenchments may only be effected within 18 months from Effective Date.

3.2. For the sake of clarity, retrenchments as a result of the Merger do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act.

4. Monitoring of compliance with the conditions

4.1. The Merging Parties shall circulate a copy of these Conditions to all their employees and/or their respective employee representatives within 5 days of the Approval Date.

4.2. As proof of compliance therewith, the Merging Parties shall within 5 business days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merged Entity attesting to the circulation of the Conditions and attaching a copy of the notice circulated.

4.3. Any employee who believes that his/her employment has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

4.4. All correspondence with the Commission in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.5. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5. Duration of the Condition

5.1. These Conditions shall remain in effect for a period of 18 (eighteen) months from the Approval Date.