



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM230Jan19

In the matter between

Ethos Fund VII

Primary Acquiring Firm

And

Echotel Proprietary Limited

Primary Target Firm

Panel : Y Carrim (Presiding Member)
: M Mazwai (Tribunal Member)
: I Valodia (Tribunal Member)
Heard on : 06 February 2019
Order Issued on : 06 February 2019
Reasons Issued on : 18 February 2019

REASONS FOR DECISION

Approval

- [1] On 06 February 2019, the Tribunal unconditionally approved a transaction in terms of which Ethos Fund VII ("Ethos") acquired joint control of Echotel (Pty) Ltd ("Echotel").
- [2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Ethos is a private equity investment fund comprising various local and foreign investors. Ethos is controlled by Ethos (Pty) Ltd (“Ethos Management”), which acts as its discretionary fund manager. In addition to Ethos Fund VII, Ethos Management is a discretionary manager to Ethos Fund V, Ethos Private Equity Fund VI, and Ethos Technology Fund. Ethos and its controller will collectively be referred to as the ‘acquiring group’.
- [4] Ethos invests in medium to large companies in multiple industries in sub-Saharan Africa, with the intent of controlling and participating in the active management of such acquisitions.

Primary Target Firm

- [5] The primary target firm is Echotel trading as Echo SP. Pre-transaction, Echotel was jointly controlled by Ethos Mid-Market Fund I (“EMMF”), Diplonamix Investments (Pty) Ltd (“Diplonamix”), Anthony Richard Southgate (“Southgate”), and Grant Wayne Thom (“Thom”).
- [6] Echotel provides ISP services via a multi-carrier converged network. Echotel is an independent aggregator of communication and cloud computing services.¹

Proposed transaction and rationale

- [7] In terms of the transaction, Ethos will acquire 33.7% of the issued share capital of Echotel resulting in Ethos being the largest shareholder of Echotel. Post-transaction, Ethos will enjoy joint control over Echotel, with EMMF and

¹ Echotel provides internet services to the South African market as an internet transit provider, routing traffic from one ISP’s network to another. Echotel’s offerings include VPN, VoIP, hosting, security and hardware services.

Diplonamix exercising minority protections by way of vetoes over key company resolutions.²

- [8] In terms of rationale, Ethos submitted that Echotel holds a strong position within a high growth market and this transaction is congruent with its investment strategy. Echotel submitted that it sought to undertake acquisitions throughout Africa and required the arrangement with Ethos to be adequately financially capacitated.

Relevant market and impact on competition

- [9] The Commission considered the activities of the parties and found that the transaction does not result in any horizontal overlaps as no firm within the acquiring group holds an interest in a business conducting activities that are substitutable or competing with that of the target firm.

- [10] The Commission found that the proposed transaction would not give rise to any vertical overlaps as there is no pre-existing business relationship between the parties.

Public interest

- [11] The parties to the transaction confirmed that the transaction would not have any adverse effects on employment. The transaction raises no other public interest concerns.³

² Transcript page 4, line 4.

³ Ethos Management submitted that it will not integrate the operations of Echotel into any of its existing portfolio companies, and Echotel will continue to be operated on a stand-alone basis post-merger. Therefore, the transaction would not result in any duplication of roles within the acquiring group.

Conclusion

[12] In light of the above, we concluded that the transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no adverse public interest issues arise from the transaction. Accordingly, we unconditionally approved the transaction.



Ms. Yasmin Carrim

18 February 2019

Date

Ms. Mondo Mazwai and Prof. Imraan Valodia concurring.

Tribunal Case Manager : Andiswa Nyathi

For the Merging Parties : Robert Wilson of Webber Wentzel

For the Commission : Yolanda Okharedia and Wiri Gumbie